

MUNICIPAL FACILITY LICENSE AGREEMENT

THIS MUNICIPAL FACILITY LICENSE AGREEMENT (the “Agreement”) is dated as of _____, 20__ (the date fully executed by all parties, referred to herein as “Effective Date”), and entered into by and between the City of Hayward, a California municipal corporation (the “Licensor”), and _____, a _____ (“Licensee”). Licensor and Licensee are referred to herein collectively as the “Parties” or individually as a “Party.”

Recitals

A. WHEREAS, the Licensor is the owner of certain Municipal Facilities (as defined below) located in the Rights-of-Way (as defined below) of the City of Hayward (“City”);

B. WHEREAS, Licensee is authorized to conduct business as a telephone company in the State of California;

C. WHEREAS, Licensee desires to use space on certain of the Licensor’s Municipal Facilities in the Rights-of-Way to construct, attach, install, operate, and maintain of its Equipment (as defined below);

D. WHEREAS, Licensor is willing to allow Licensee to use and physically occupy portions of the Municipal Facilities in the Rights-of-Way subject to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. DEFINITIONS. The following definitions shall apply generally to the provisions of this Agreement:

1.1 “Equipment” means the equipment cabinets, antennas, related equipment, utilities, and fiber optic cables, and wires, whether referred to individually or collectively, to be installed on a Municipal Facility and operated by Licensee under a particular Supplement.

1.2 “Hazardous Substance” means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including, but not limited to, petroleum products and asbestos.

1.3 “Laws” means any and all applicable statutes, codes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, court orders, or other requirements of the Licensor or other governmental agency having jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

1.4 “Make-Ready Work” means the work required on or in a Municipal Facility to create space for the Equipment, and/or replacing and/or reinforcing the existing Municipal Facility to accommodate Equipment including, but not limited to, rearrangement or transfer of existing Equipment and the facilities of other entities, and Municipal Facility relocation and replacement if applicable.

1.5 “Municipal Facilities” means Licensor-owned structures and equipment in the ROW, including, but not limited to, street lights, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW, and may refer to such facilities in the singular or plural, as appropriate to the context in which used. The term includes Replacement Facilities referred to in Section 4.1.4. The term excludes decorative light poles and traffic signal poles.

1.6 “Person” means and includes any individual, partnership of any kind, corporation, limited liability company, association, joint venture, or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns, or any combination of such persons.

1.7 “PUC” means the California Public Utilities Commission.

1.8 “Right(s)-of-Way” or “ROW” has the same meaning as the definition of “Public right of way” in Section 7-4.10 of the Hayward Municipal Code.

1.9 “Services” means the transmission and reception of communications signals for the provision of personal wireless services, telecommunications services and mobile data services as defined in federal law, but specifically excluding cable services and/or video services as defined by the Digital Infrastructure and Video Competition Act (as codified in Public Utilities Code section 5800 et seq.).

1.10 “Supplement” shall mean each separate authorization, granted by Licensor to Licensee with regard to a specific Equipment installation, the form of which is attached hereto as Exhibit A, each and every of which shall be subject to the terms and conditions of this Agreement.

1.11 “Transfer” means any transaction in which the rights and/or obligations held by Licensee under this Agreement or a Supplement are transferred, directly or indirectly, in whole or in part to a party other than Licensee.

2. TERM; SUPPLEMENT TERM.

2.1 **Term.** The initial term of this Agreement shall be for a period of ten (10) years (the “Initial Term”), commencing on the Effective Date and ending on the tenth (10th) anniversary thereof, unless sooner terminated as provided herein. Provided that Licensee is not in default of the Agreement or any Supplement following written notice and the expiration of any applicable cure period at the time of renewal, this Agreement shall be automatically renewed for two (2) successive five (5) year renewal terms (each, a “Renewal Term”), unless either Party gives the other Party written notice of the intent not to renew this Agreement at least six (6) months prior to the expiration of the Initial Term or any Renewal Term, as applicable. The Initial Term and all Renewal Terms shall be collectively referred to herein as the “Term.” Except as

provided in Section 6.12, any holding over after the termination or expiration of the Term shall constitute a default by Licensee, notwithstanding that Licensor may elect to accept one or more payments of fees from Licensee after such default occurs.

2.2 **Supplement Term.** Unless otherwise specified in a Supplement, the initial term for each particular Supplement shall begin on its effective date (“Supplement Effective Date”) and shall end upon the expiration of the Term, unless such individual Supplement is earlier terminated or this Agreement is earlier terminated, as provided for herein (the “Supplement Term”). All of the provisions of this Agreement shall be in effect during the Supplement Term. The expiration or termination of the Agreement shall immediately terminate all Supplements. Except as provided in Section 6.12, any holding over after the expiration of the Supplement Term shall constitute a default by Licensee, notwithstanding that Licensor may elect to accept one or more payments of fees from Licensee after such default occurs.

3. **REPRESENTATION CONCERNING SERVICES; NO AUTHORIZATION TO PROVIDE OTHER SERVICES.** Licensee represents, warrants, and covenants that its Equipment installed pursuant to this Agreement and each Supplement will be utilized solely for providing the Services, and Licensee is not authorized to and shall not use its Equipment installed on Municipal Facilities to offer or provide any other services not specified herein without Licensor’s prior written consent. At any time that Licensee ceases to operate as a provider of Services under federal or state law, it shall provide written notice of the same to Licensor within ten (10) business days of such cessation, at which time the Licensor shall have the option, in its sole discretion and upon six (6) months’ written notice to Licensee, to terminate this Agreement and to require the removal of Licensee’s Equipment from the ROW and from Municipal Facilities, including the cost of any site remediation, at no cost to the Licensor and without any liability to Licensee related directly or indirectly to such termination.

4. **SCOPE OF AGREEMENT.** Licensee may only use Municipal Facilities pursuant to an approved Supplement. Any and all rights expressly granted to Licensee under this Agreement shall be exercised at Licensee’s sole cost and expense, and shall be subject to the restrictions set forth herein.

4.1 **Attachment to Municipal Facilities.** Subject to the conditions herein, Licensor hereby authorizes and permits Licensee to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment on identified Municipal Facilities located in the ROW for the purpose of providing Services.

4.1.1 In any situation where Licensee has a choice of attaching its Equipment either to Municipal Facilities or to third-party-owned property in the ROW, Licensee shall use good faith efforts to seek approval to attach to the Municipal Facilities, provided that: (i) such Municipal Facilities are at least equally functionally suitable for the operation of Licensee’s Equipment to meet Licensee’s Service needs and (ii) the rental fee and installation costs, including Make-Ready Work, associated with such attachment over the length of the Term are comparable to the rental fee and installation costs, including Make-Ready Work, to Licensee of attaching to third-party-owned property.

4.1.2 Licensee will submit to the authorized representative of the Licensor an application substantially in the form of Exhibit B (“Application”) hereto including a proposed design for any proposed Equipment installations that identifies both the Equipment and the Municipal Facility Licensee proposes to use. One Application is required per Municipal Facility. A total of 10 applications can be submitted at the same time if the proposals use the same type of equipment and are being placed on the same type of structure.

4.1.3 Licensor may approve, approve with conditions, or disapprove an Application in its sole discretion, subject to applicable federal and state laws; provided however, that Licensor shall not unreasonably delay its decision. Any approved Equipment shall be included as part of the applicable Supplement.

4.1.4 If Licensee submits an Application to use a Municipal Facility that is structurally inadequate or otherwise unsuitable to accommodate its proposed Equipment, Licensor may permit the replacement of the Municipal Facility with a non-standard pole to accommodate Licensee’s Equipment (a “Replacement Facility”) with one that is acceptable to and approved by the Licensor as part of the applicable Supplement. Any Replacement Facility shall be installed and maintained in accordance with Section 6 of this Agreement.

4.1.5 Unmetered electricity where possible. Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to the Equipment, including, but not limited to, making payments to electric utilities. Where commercially feasible and available, Licensee shall secure unmetered electricity services. If a meter is required by the electric utility, the City and Licensee will cooperate to use a low-profile wireless smart meter on the Municipal Facility or utilize an underground vault for the meter, wherever possible, rather than a separate meter pedestal. If service using a flat rate, a pole-mounted wireless smart meter, or a meter in an underground vault would be facilitated by sharing a City circuit or provisioning point serving the Municipal Facility, the Parties will cooperate to enter into a separate circuit use agreement and the application will include the information needed to evaluate such use.

4.2 **Additional Authority.** Nothing in this Agreement shall limit in any way Licensee’s obligation to obtain any additional required regulatory approvals or permits from any City department, board, commission, or other governmental agency that has regulatory authority over the Licensee’s proposed activities involving use of the Municipal Facilities in the ROW.

4.3 **No Interference.** Licensee acknowledges and agrees that the primary purpose of the Municipal Facilities is to serve the Licensor and the public. In the performance and exercise of its rights and obligations under this Agreement, Licensee shall not interfere in any manner with Licensor’s own services or the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the Licensor, electroliers, cable television, location monitoring services, public safety and other then existing telecommunications equipment, utilities, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by Laws or this Agreement. If any physical interference occurs or if any RF interference affects Licensor’s services and facilities, Licensee shall take corrective measures to eliminate such interference, including powering down or discontinuing using the Equipment,

methodology, or technology that causes the interference until such time as the interference is corrected or eliminated. . In the event that such interference does not cease promptly, Licensee acknowledges that continuing interference may cause irreparable injury and harm, and therefore, in addition to any other remedies, and without limitation of any other remedy, Licensor shall be entitled to seek temporary and permanent injunctions against the breach of this Subsection. Notwithstanding the foregoing, Licensor and Licensee agree to work in good faith with each other to resolve any interference to or by Licensee, and to meet and confer with each other to try to address and resolve interference issues before seeking injunctive relief. To the extent the interference concerns RF interference between Licensee and third parties, the regulations promulgated by the Federal Communications Commission shall control the resolution of same.

4.4 **Permits; Default.** In addition to any other remedies available hereunder, whenever Licensee is in default of this Agreement or an applicable Supplement, after all applicable notice and cure periods, Licensor may deny further encroachment, excavation, or other permits for work in connection with installations under this Agreement until such time as Licensee cures all of its defaults.

4.5 **Compliance with Laws.** Licensee shall comply with all Laws in the exercise and performance of its rights and obligations under this Agreement.

4.6 **Non-Exclusive Use Rights.** Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Licensee under this Agreement shall be non-exclusive (except the Licensed Areas (as defined in each applicable Supplement) of individual Municipal Facilities identified in approved Supplements shall be exclusive to Licensee's use), and shall be subject and subordinate to (1) the continuing right of the Licensor to use, and to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities (except the Licensed Areas) of individual Municipal Facilities identified in approved Supplements), exclusively or concurrently with any other person or persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title (collectively, "Encumbrances") which may affect the ROW or Municipal Facilities now or at any time during the Term of this Agreement, including, without limitation any Encumbrances granted, created, or allowed by the Licensor at any time.

5. **COMPENSATION.** Licensee shall be solely responsible for the payment of all fees in connection with Licensee's performance under this Agreement, including, but not limited to, those set forth below.

5.1 **One Time Fees.** The Licensor activities described in this Section 5.1 are "One-Time Fees" that reimburse the City for its costs associated with this Agreement, and reviewing and approving permits and applications to attach Equipment on identified Municipal Facilities located in the ROW pursuant to this Agreement and Supplements to this Agreement.

5.1.1 **Permit Fees/Deposits.** Licensee shall be responsible for paying all costs associated with City review, processing and inspection as part of all permit applications filed for the installation, modification, maintenance and removal of Equipment on identified Municipal Facilities located in the ROW. Applicable permit fees/deposits are set forth in the City of

Hayward Master Fee Schedule, which may be amended from time to time by the City of Hayward.

5.1.2 MLA Processing and Supplement Fees/Deposits. Licensee shall be responsible for paying all costs associated with Licensor review and processing of this Agreement and any Supplements thereto (or any amendment thereto) and/or the other administrative review, consultation and inspection described in this Agreement, including review of Licensee submittals. Applicable MLA processing and Supplement fees/deposits are set forth in the City of Hayward Master Fee Schedule, which may be amended from time to time by the City of Hayward.

5.1.3 Deposits. The fee and deposit amounts shall be assessed and administered consistent with standard Licensor practice and Master Fee Schedule(s) as currently adopted and subsequently amended or replaced, in a manner consistent with applicable law. Where a deposit is required, Licensee shall submit a deposit to Licensor to cover the fees and costs in Sections 5.1.1 and 5.1.2 above in accordance with the City's Master Fee Schedule(s). All actual costs incurred by Licensor shall be reimbursed by Licensee to Licensor from any such deposit. Licensee shall replenish the deposit at Licensor's request as the deposit is depleted or within sixty (60) days of a final invoice. No permit or Supplement will be issued until all permit and Supplement costs are paid in full. Any portion of the deposit not used to reimburse Licensor's costs shall be credited towards future Application review costs or, at Licensee's request, repaid to Licensee.

5.2 **Rent.**

5.2.1 Licensee acknowledges that the FCC has issued an Order (FCC 18-133) that relates to the rent which went into effect on January 14, 2019 but that FCC Order is currently the subject of litigation. Paragraphs 5.2.2, 5.2.3, 5.2.4, and 5.2.5 govern the payment of rent and how it may be impacted by the FCC Order and the resolution of related litigation during the Term.

5.2.2 During any period in which the FCC Order is in effect and during any period in which the Adjusted Rent or Alternate Rent provisions in paragraphs 5.2.3 and 5.2.4, respectively, are not applicable, the Licensee shall pay rent as described in this paragraph. Licensee shall pay to the Licensor the base amount of two hundred and seventy dollars (\$270.00) per calendar year for each location covered by a Supplement. The base amount under all Supplements shall be subject to an annual adjustment of three percent (3%) applied on each anniversary of the Effective Date. Any new Supplements entered into during a given year shall commence at the rent, as adjusted by this Section to reflect the then-current rate. (the "Rent"). If the cost-based requirement is not invalidated but the two hundred seventy dollar (\$270) safe harbor established by the FCC Order is invalidated, the Licensee shall continue to pay Rent until: (i) the FCC establishes a new safe harbor amount for recurring fees; (ii) the City establishes an Adjusted Rent under paragraph 5.2.3; or (iii) the Alternate Rent becomes applicable.

5.2.3 Cost Study. During any period in which the FCC Order is in effect, Licensor reserves the right to adjust the Rent paid in paragraph 5.2.2 ("Adjusted Rent") based on

a study of its actual costs (“Cost Study”). In the event the Licensor conducts a study hereunder and elects to apply the Adjusted Rent, the Licensor must provide any study and a breakdown of actual costs considered resulting in the Adjusted Rent, and the Adjusted Rent shall apply as of the next anniversary of the Effective Date. The Adjusted Rent shall be subject to an annual adjustments of three percent (3%) applies on each anniversary of the Effective Date.

5.2.4 In the event that the cost-based requirement for recurring fees from the FCC Order ceases to be effective, (for example, because it is stayed, or it is vacated or invalidated), the Licensee shall automatically and immediately be obligated to pay Alternate Rent as described in this paragraph and paragraph 5.2.5, if applicable. For each location covered by a Supplement, Licensee shall pay Alternate Rent to Licensor for each Municipal Facility used by Licensee, on an annual basis on the Effective Date, in the base amount of one thousand five hundred dollars (\$1,500). The base amount under all Supplements shall be subject to an annual adjustment of three percent (3%) applied on each anniversary of the Effective Date. (“Alternate Rent”). Any new Supplements entered into during a given year shall commence at the Alternate Rent.

5.2.5 The Licensor agrees that irrespective of whether the relevant provisions of the FCC Order cease to be effective, no Alternate Rent shall be due for any periods during which the relevant provisions of the FCC Order were in effect. However, if Licensee has paid Rent or Adjusted Rent pursuant to the provisions of paragraph 5.2.2 or paragraph 5.2.3, respectively, for a calendar year, and the cost-based requirement for recurring fees from the FCC Order subsequently ceases to be effective during the same calendar year, the Licensee shall pay the difference between the Rent or Adjusted Rent, as applicable, and the Alternate Rent for the period from the date the cost-based requirement for recurring fees from the FCC Order ceased to be effective, until the next anniversary of the Effective Date (“Rent Adjustment”). Such Rent Adjustment shall be paid to Licensor on the anniversary of the Effective Date of the following year.

5.2.6 Receipt of any Rent, Adjusted Rent, or Alternate Rent by the Licensor, with knowledge of any breach of this Agreement by Licensee, or of any default on the part of Licensee in the observance or performance of any of the conditions or covenants of this Agreement, shall not be deemed a waiver of any provision of this Agreement. There shall be no refunds of Rent, Adjusted Rent, Alternate Rent or Rent Adjustment paid due to the termination or expiration of the License or any Supplement for any reason.

5.3 **Fiber-in-Lieu of Rent, Adjusted Rent, or Alternate Rent.** If Licensee owns and installs fiber in connection with this Agreement, Licensor and Licensee may, but shall not be required to, agree in any Supplement(s) that, as partial or full consideration for the deployment of Equipment on Municipal Facilities within the ROW, in lieu of payment of Rent, Adjusted Rent, or Alternate Rent, Licensee may transfer ownership to Licensor of designated strands of fiber and associated conduit and pull boxes installed in the ROW and owned by Licensee.

5.4 **Payment.**

5.4.1 Licensee shall make the first payment of the Rent, Adjusted Rent, or Alternate Rent (whichever is applicable) under any Supplement within forty-five (45) days of the

Supplement Effective Date (as defined therein). The amount of the first payment of the Rent, Adjusted Rent, or Alternate Rent for any Supplement shall be prorated to cover the period from the Supplement Effective Date of the applicable Supplement to the next anniversary of the Effective Date of this Agreement. Thereafter, the Rent, Adjusted Rent, or Alternate Rent shall be paid in advance for each Municipal Facility used on or before each anniversary of the Effective Date. Acceptance by Licensor of any payment of the Rent, Adjusted Rent, or Alternate Rent shall not be deemed a waiver by Licensor of any breach of this Agreement occurring prior thereto, nor will the acceptance by Licensor of any such payment preclude Licensor from later establishing that a greater amount was actually due or from collecting any balance that is due. Licensor hereby agrees to provide to Licensee certain documentation (the "License Documentation") evidencing Licensor's interest in, and right to receive payments under, this Agreement, including without limitation: (i) a complete and fully executed Internal Revenue Service Form W-9 and California Franchise Tax Board Form 590, or their respective tax equivalents, in a form acceptable to Licensee, for any party to whom rent payments are to be made pursuant to this Agreement; and (ii) other documentation requested by Licensee in Licensee's reasonable discretion. From time to time during the Term of this Agreement and within thirty (30) days of a written request from Licensee, Licensor agrees to provide updated License Documentation in a form reasonably acceptable to Licensee.

5.4.2 The Rent, Adjusted Rent, or Alternate Rent (and any Rent Adjustment) shall be paid by check made payable to the City and mailed or delivered to the Director of Public Works, at the address provided for in Section 10 below. The place and time of payment may be changed at any time by Licensor upon thirty (30) days' written notice to Licensee. Mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt. Licensee assumes all risk of loss and responsibility for late payment charges if payments are made by mail. Notwithstanding the foregoing, upon agreement of the parties, Licensee may pay the Rent by electronic funds transfer, and if agreed, the Licensor will provide to Licensee bank routing information for such purpose upon request of Licensee.

5.5 **Delinquent Payment.** A five percent (5%) late fee shall be added to the Rent, Adjusted Rent, or Alternate Rent (and any Rent Adjustment) if not received by Licensor within 30 calendar days after the due date. In addition, all unpaid fees shall accrue interest on the amount due at the rate of five percent (5%) per annum until paid in full. All late fees and interest payments shall be treated as part of, and subject to the same terms as, the Rent under this Agreement.

5.6 **Additional Remedies.** The late fee set forth in Section 5.5 above is not exclusive, and does not preclude the Licensor from pursuing any other or additional remedies in the event that payments become overdue by more than thirty 30 days.

6. **CONSTRUCTION.** Licensee shall comply with all applicable federal, state, and local codes related to the construction, installation, operation, maintenance, and control of Licensee's Equipment installed on Municipal Facilities. Except as permitted in Section 6.9 below, Licensee shall not attach, install, maintain, or operate any Equipment on Municipal Facilities without the prior written approval of an authorized representative of the Licensor for each location as evidenced in a signed Supplement. Licensee shall keep the Municipal Facilities free and clear

from any liens arising out of any work performed, material furnished, or obligations incurred by or for Licensee. Licensee shall complete the installation of its Equipment on each Municipal Facility within one (1) year of the Supplement Effective Date unless otherwise specified in the Supplement. The City may extend the one-year deadline for completing installation, in its sole discretion, in specific situations for good cause.

6.1 **Reports.** On an annual basis on January 1 of each year, Licensee shall promptly furnish to Licensor a current list and map that identifies the exact location of the Equipment in or on each Municipal Facility approved in a Supplement. That information must be provided in a format that is compatible with Licensor's information technology, including but not limited to ESRI compatible GIS shapefiles, which Licensor shall provide to Licensee upon request.

6.2 **Site Selection and Design Standards.** The Equipment and any Replacement Facility shall comply with the then-current site selection and design standards posted on the Public Works webpage, as may be revised or amended from time to time, and with the City permit and conditions of approval. The version in effect as of the Effective Date is set forth in Exhibit D and available at the following link: <https://www.hayward-ca.gov/documents/small-cell-development-and-design-guidelines-street-light>. All future Supplements and modifications to existing Equipment shall be subject to then-current design standards in the Hayward Municipal Code or published on the City website. It is the sole responsibility of Licensee to ensure that the then-current standards are consulted before applying for any future Supplement.

6.3 **Obtaining Required Permits.** Licensee acknowledges that in addition to a signed Supplement, each installation of Equipment and maintenance thereof shall also be subject to then-current City permitting requirements as set out in the City's Municipal Code, including but not limited to Chapter 7 – Public Works, Article 4 – Wireless Communications Facilities in the Public Right of Way. Licensee agrees to comply with the current applicable ordinances regarding such installations and maintenance as well as any future regulations that may be adopted by the City related to such installations and maintenance. Licensee shall apply for the appropriate permits and pay any standard and customary permit fees.

6.4 **Relocation and Displacement of Equipment.**

6.4.1 This Agreement creates no right for Licensee to receive any relocation assistance or payment for any reason under the Relocation Assistance Act, the Uniform Relocation Assistance Act, or under any existing or future law upon any termination of tenancy.

6.4.2 Licensee understands and acknowledges that Licensor retains all discretion to relocate Municipal Facilities and may require Licensee to relocate one or more of its Equipment installations on a Municipal Facility or due to the relocation of the Municipal Facility. Licensee shall at Licensor's direction and upon ninety (90) days' prior written notice to Licensee, relocate such Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (b) because the Equipment is interfering with or adversely affecting proper operation of Municipal Facilities; or (c) to protect or preserve the public health or safety, including, but not limited to, the safe or efficient use of rights-of-way. In

any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate any Equipment as requested by the Licensor within the prescribed time, Licensor shall be entitled to remove or relocate the Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal or relocation work and any storage of Licensee's property after removal within forty-five (45) days of the date of a written demand accompanied by supporting documentation for this payment from the Licensor.

6.4.3 To the extent the Licensor has actual knowledge thereof, the Licensor will attempt promptly to inform Licensee of the displacement or removal of any Municipal Facility on which any Equipment is located.

6.5 Relocations at Licensee's Request. In the event Licensee desires to relocate any Equipment from one Municipal Facility to another, Licensee shall so advise Licensor. Licensor will use reasonable efforts to accommodate Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement. Licensor may require Licensee to submit an application and/or enter into a new Supplement for the prospective relocation site. Licensee shall be liable for all costs of relocation, including any costs which Licensor may incur.

6.6 Make Ready

6.6.1 Make Ready Work and Costs.

(a) Licensee shall bear responsibility for all Make-Ready Work. If a Person other than Licensee or Licensor would have to rearrange or adjust any of its facilities in order to accommodate new Equipment, Licensee shall be responsible, at Licensee's sole expense, to coordinate such activity. Licensee shall be responsible for directly paying such other Person for its charges for the same. If Licensee is requested by another Person, in comparable circumstances, to relocate or adjust any Equipment to accommodate that Person's facilities, subject to Licensor's written approval of such relocation, Licensee shall reasonably cooperate with such request.

(b) Construction, installation, and operation of the Equipment shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with NESC, and with Licensor's regulatory rules and engineering standards, and subject to the inspection and approval of Licensor; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant at the time of Licensee's Application.

6.6.2 Notification of Completion of Installation. Within twenty (20) business days of completing the installation of Equipment on each Municipal Facility, Licensee shall notify Licensor of such completion.

6.7 Replacement Facilities

6.7.1 Ownership of Replacement Facilities Licensor shall own any approved Replacement Facility. Where needed, Licensee shall cooperate with Licensor to transfer ownership and any associated warranties of any Replacement Facility from Licensee to Licensor without charge to Licensor.

6.7.2 Replacement Facility Installation. If Licensee is performing Make-Ready Work, Licensee shall be responsible for providing and installing any approved Replacement Facility.

6.8 Damage, Maintenance & Repair.

6.8.1 Licensee shall, at its sole cost and expense and to the satisfaction of the Licensor: (a) remove, repair, or replace any of its Equipment that is damaged or becomes detached; and/or (b) repair any damage to ROW, Municipal Facilities, or other property, whether public or private, caused by Licensee, its agents, employees, or contractors in their actions relating to attachment, operation, repair, or maintenance of Equipment. Licensee shall complete such removal, repair, or replacement within thirty (30) days' of written notice.

6.8.2 Licensor shall maintain and keep the Municipal Facilities authorized to be used by Licensee pursuant to any Supplement (other than any Replacement Facilities) in good condition in accordance with Licensor's standard maintenance requirements. Such maintenance of Municipal Facilities shall be at Licensor's sole cost and expense, except to the extent this Agreement provides otherwise. In the event that a Replacement Facility needs to be cleared from the ROW, Licensor shall conduct this work. In the event a Municipal Facility (including any Replacement Facility) being used by Licensee pursuant to a Supplement needs to be replaced or repaired, Licensor shall conduct this work at Licensee's expense using Replacement Facilities provided by Licensee in advance. For every five (5) Equipment installations, Licensee shall provide the Licensor with one extra Replacement Facility during the Terms of the Agreement, which Licensor will store.

6.8.3 The work to be performed by or services to be provided by Licensee under this Agreement or a Supplement may be subject to prevailing wage rate payment as set forth in California Labor Code Section 1771 ("**Section 1771**"). Accordingly, to the extent that such services are subject to the prevailing wage rate payment requirements set forth in Section 1771, Licensee shall comply with all applicable California Labor Code requirements pertaining to "public works" or "maintenance," including the payment of prevailing wages in connection with the services to be provided hereunder (collectively, "**Prevailing Wage Policies**"). Within thirty (30) business days following Licensee's receipt of Licensor's written request, Licensee shall make available during Licensee's regular weekday business hours for Licensor's inspection at Licensee's corporate offices Alameda County which Licensee shall designate, copies of Licensee's payroll records that pertain to this Agreement or a Supplement and are subject to the Prevailing Wage Policies to the Licensor. Licensor shall also have the right to copy such records, subject to Licensor's written agreement that Licensor shall only disclose such records to the extent that Licensor is required under applicable Laws to make such records available for review by or disclosure to third parties.

6.8.4 Licensee shall defend, indemnify and hold Licensor 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 directly from or in direct connection with Licensee’s failure to comply with any Prevailing Wage Policies that apply to the work relating to Licensee’s Equipment under this Agreement or any Supplements, including all Claims made by contractors, subcontractors or other third party claimants with whom Licensee has contracted to perform work relating to Licensee’s Equipment within the scope of this indemnity pursuant to Labor Code sections 1726 and 1781, as amended and added by Senate Bill 966.

6.8.5 If Licensee does not remove, repair, replace, or otherwise remediate such damage to its Equipment, a Replacement Facility, or to the ROW, Municipal Facilities or other property as required in this Section 6.8, the Licensor shall have the option to perform or cause to be performed such removal, repair, or replacement on behalf of Licensee and shall charge Licensee for the actual costs incurred by the Licensor. If such damage causes a public health or safety emergency, as reasonably determined by Licensor, Licensor may immediately perform reasonable and necessary repair or removal work on behalf of Licensee and will notify Licensee as soon as practicable; provided, however, that such repair work shall not include any technical work on Licensee’s Equipment. Licensor shall have no obligation to maintain or safeguard the Equipment.

6.8.6 Upon the receipt of a demand for payment, along with supporting documentation, by the Licensor pursuant to this Section 6.8, Licensee shall within thirty (30) days of such receipt reimburse the Licensor for such costs.

6.8.7 The terms of this Section 6.8 shall survive the expiration termination of this Agreement.

6.9 **Change in Equipment.** If Licensee desires to install Equipment which is different in any material way from the then-existing and approved Equipment, then Licensee shall first obtain the written approval for the use and installation of such Equipment from an authorized representative of the Licensor. Any such approval shall take the form of an amendment to the applicable Supplement. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide “load” (structural) calculations for all Equipment changes. In addition to the foregoing, Licensee shall comply with any other applicable City permitting or approval process for the Equipment change. Notwithstanding the foregoing, Licensor’s approval for modifications or an amendment to the applicable Supplement shall not be required in connection with routine maintenance or modifications that consist of upgrades or replacement of “like-kind” Equipment which is substantially similar (or smaller in size) in appearance, dimensions, weight, and RF emissions to the then-existing and approved Equipment.

6.10 **Unauthorized Equipment.** If Licensor discovers any Equipment has been installed on Municipal Facilities without authorization pursuant to this Agreement or a Supplement, Licensor may send an invoice to Licensee for a sum equal to five (5) times the then-current Rent as compensation for the unauthorized attachments, and, within sixty (60) days from the date of such invoice, Licensee shall (i) pay the invoiced amount to Licensor and submit an

Application for the unauthorized Equipment, or (ii) produce documentation showing Licensor's prior approval of the Equipment identified in the invoice. If, in accordance with this Section, Licensee fails to pay all fees and submit the Application or submit documentation satisfactorily showing Licensor's prior approval within sixty (60) days of Licensor's invoice, Licensor may remove the unauthorized Equipment at Licensee's expense. If Licensor removes such unauthorized Equipment, Licensee has ten (10) days to pick up the Equipment and pay the Licensor a storage fee or such Equipment shall become the property of Licensor, who shall have sole rights over such Equipment's disposition. Licensor's removal of unauthorized Equipment shall not release Licensee from its obligation to pay those invoiced fees accruing pursuant to this Section.

6.11 Termination of a Supplement.

6.11.1 Licensee shall have the right to terminate any Supplement on thirty (30) days' notice to Licensor. In the event of such termination, removal of Equipment associated with the terminated Supplement shall be governed by Section 6.12 below and Licensor shall retain any Rent paid, without refund or setoff.

6.11.2 Licensor shall have the right to terminate any Supplement in any of the following circumstances: if Licensor determines the covered Equipment has been inoperative for sixty (60) consecutive days; if Licensee's operation under a particular Supplement is deemed by Licensor to endanger or pose a threat to the public health, safety, or welfare or interfere with the normal day-to-day operation of any Licensor department or service or the ROW; or Licensor is mandated by law, a court order or decision, or the federal, state, or local government to take certain actions that will cause or require the removal of an Equipment. Licensor shall provide written notice to Licensee regarding its intent to terminate the applicable Supplement pursuant to this Section, after which Licensee shall have thirty (30) days to cure. The City may extend the cure period, in its sole discretion, for good cause. If Licensee does not cure within thirty (30) days following notice, Licensor may then terminate the applicable Supplement upon written notice to Licensee.

6.12 Removal of Equipment. Within sixty (60) days after the expiration or earlier termination of a Supplement, Licensee shall promptly, safely, and carefully remove the Equipment covered by the terminated or expired Supplement from the applicable Municipal Facility and ROW. Within sixty (60) days after the expiration or earlier termination of this Agreement, Licensee shall promptly, safely, and carefully remove all Equipment from all applicable Municipal Facilities and ROW. The City may extend the timeline for removal of Equipment, in its sole discretion, for good cause. If Licensee fails to complete removal work pursuant to this Section, then the Licensor, upon written notice to Licensee, shall have the right at the Licensor's sole election, but not the obligation, to perform this removal work and charge Licensee for the actual costs and expenses, including, without limitation, reasonable administrative costs. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the Licensor. After the Licensor receives the reimbursement payment from Licensee for the removal work performed by the Licensor, the Licensor shall promptly make available to Licensee the property belonging to Licensee and removed by the Licensor pursuant to this Section at no

additional liability to the Licensor. If the Licensor does not receive reimbursement payment from Licensee within such thirty (30) days, or if Licensor does not elect to remove such items at the Licensor's cost after Licensee's failure to so remove pursuant to this Section, or if Licensee does not remove Licensee's property within thirty (30) days of such property having been made available by the Licensor after Licensee's payment of removal reimbursement as described above, any items of Licensee's property remaining on or about the ROW, Municipal Facilities, or stored by the Licensor after the Licensor's removal thereof may, at the Licensor's option, be deemed abandoned. If Licensee's property is deemed abandoned, the Licensor may either dispose of such property in any manner allowed for by Law or elect to take title to the abandoned property. If Licensor elects to take title to the abandoned property, then upon notice written notice from Licensor to Licensee, ownership of such abandoned property shall transfer to Licensor without the need for any further actions or documentation from either Party. Further, Licensee agrees to execute any mutually agreeable additional documents that may be reasonably necessary to effectuate the transfer of ownership of the abandoned property to Licensor. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.13 Risk of Loss. Licensee acknowledges and agrees that Licensee, subject to the terms of this Agreement, bears all risks of loss, damage, relocation, or replacement of its Equipment and materials installed in the ROW or on Municipal Facilities pursuant to this Agreement from any cause, and Licensor shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the Licensor's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or gross negligence of the Licensor, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Section 7.3 below.

6.14 Hazardous Substances. Licensee agrees that Licensee, its contractors, subcontractors, and agents, will not use, generate, store, produce, transport, or dispose any Hazardous Substance on, under, about or within the area of a ROW or Municipal Facility in violation of any Law. Except to the extent of the gross negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend, and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance on behalf of Licensee will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services.

6.15 Inspection. Licensor may conduct inspections of Equipment on Municipal Facilities. Except in circumstances where Licensor has special reason to be concerned about potential violations or in case of an emergency, Licensor will give Licensee five (5) business days' prior written notice of such inspections, and Licensee shall have the right to be present at and observe any such inspections. Licensee shall pay Licensor for its reasonable costs for safety inspections performed for the purpose of determining if a safety violation of which Licensor has provided notice to Licensee has been corrected by Licensee.

6.16 Access. Licensee shall have access to the Equipment for non-emergency purposes, between the hours of 7:00 AM and 7:00 PM, consistent with the Municipal Code's

limitation on construction noise and/or activity. If Licensee requires non-emergency access outside of these hours, Licensee shall provide telephonic notice, at least 24 hours in advance of accessing its Equipment, to the Licensor at the following telephone number: 510-583-4730. In the event of an emergency at any time, Licensee will, if time permits, attempt to provide prior telephonic notice to the Licensor at the following telephone number: 510-583-4730.

7. INDEMNIFICATION AND RELEASE. Licensee and its affiliates, predecessors, successors, assigns, officers, directors, employees, agents, attorneys, consultants and volunteers voluntarily and knowingly release and forever discharge Licensor and its employees, consultants, officers, officials, agents and successors in interest (“Releasees”) from any and all claims, demands, causes of action, damages, liabilities and obligations: a) for injury to or death of Licensee or its respective officers, employees or agents or to damage to property of Licensee pursuant to entry upon the Licensor’s ROW or performance of this Agreement or any subsequently issued permit; b) arising from the termination of any right to be in the ROW or termination or transfer of Licensee’s ownership of the Equipment, resulting from the act of a third party or termination of the Agreement by Licensor in accordance with the terms of this Agreement, including without limitation claims for inverse condemnation, precondemnation damages, eminent domain, improvements within the public right-of-way, unreasonable preacquisition activity, loss of goodwill, bonus value of the Equipment, interest, attorney fees, expert witness fees, court costs and any and all other expenses which may have been payable to Licensee, including relocation assistance benefits which may arise by reason of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the California Government Code, Article 9 of Chapter 4 of Division 24 of the California Health and Safety code and federal requirements titled as “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” (Public Law 91-646), as amended, and any and all regulations promulgated thereunder (the “Relocation Laws”) or by reason of any law or regulation of the United States of America, the State of California, or the City of Hayward. Licensee understands and agrees that this release fully and finally releases the Releasees from all unknown and unanticipated injuries, losses, or damages, arising out of the claims released hereby. Licensee does further hereby waive all rights and benefits of Section 542 of the Civil Code of the State of California which provides as follows:

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

Licensee shall indemnify, defend, and hold Licensor, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Licensee, its employees, subcontractors, or agents, or on account of the performance or character of the work pursuant to this Agreement or any subsequently issued permit issued hereunder or Licensee’s entry upon the ROW, except for any such claim arising solely out of the active negligence, sole negligence, or willful misconduct of Licensor, its officers, employees, agents, or volunteers. This indemnification shall survive termination of this Agreement

7.1 **Waiver of Claims.** Licensee waives any and all claims, demands, causes of action, and rights it may assert against the Licensor on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the control of the Licensor.

7.2 **Waiver of Subrogation.** Licensee hereby waives and releases any and all rights of action for negligence against Licensor which may hereafter arise on account of damage to Equipment, Municipal Facilities, or to the ROW, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Licensee. This waiver and release shall apply between the Parties and shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by Licensee concerning the Municipal Facilities, Equipment, or the ROW shall waive the insurer's right of subrogation against the Licensor.

7.3 **Limitation on Consequential Damages.** Neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

8. SECURITY DEPOSIT. In order to secure the performance of its obligations under this Agreement, Licensee will provide the following security instrument to the Licensor:

8.1 **Performance Bond.** Prior to the commencement of any work under this Agreement or any applicable Supplement, Licensee must provide a performance bond running to the Licensor in the sum of \$25,000 for the first ten Supplements, and an additional \$25,000 to cover up to an additional ten Supplements, and so on. The performance bond is conditioned upon the faithful performance by Licensee of all the terms and conditions of this Agreement and upon the further condition that, if Licensee fails to comply with any terms or conditions governing this Agreement, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the Licensor as a result, including, without limitation, the full amount of any compensation, indemnification, or costs of removal or abandonment of Licensee's property, plus costs and reasonable attorneys' fees up to the full amount of the performance bond. Licensee shall keep the performance bond in place during the term of this Agreement. The bond forms shall be in a form approved by the City Attorney. Upon completion of Licensee's removal obligations hereunder, Licensee may terminate the performance bond and City shall cooperate with Licensee in connection with such termination.

8.2 **Assessment of the Bond.** The performance bond may be assessed by the Licensor for any failure by Licensee to pay Licensor an amount owed under this Agreement beyond applicable notice and cure periods, including, but not limited to:

(a) Reimbursement of costs borne by the Licensor to correct violations of the Agreement not corrected by Licensee, after Licensor provides notice and a reasonable opportunity to cure such violations. This shall include, without limitation, removal of Equipment.

(b) Providing monetary remedies or satisfying damages assessed against Licensee due to a material breach of this Agreement.

8.3 Restoration of the Bond. Licensee must deposit a sum of money or a replacement instrument sufficient to restore the performance bond to its original amount within thirty (30) days after written notice from the Licensor that any amount has been recovered from the performance bond and the reasons therefor. Failure to restore the bond to its full amount within thirty (30) days will constitute a material breach of this Agreement. Licensee will be relieved of the foregoing requirement to replenish the bond during the pendency of an appeal from the Licensor's decision to draw on the performance bond.

8.4 Required Endorsement. The performance bond is subject to the approval of the Licensor and must contain the following endorsement:

"This bond may not be canceled until sixty (60) days after receipt by the City of Hayward, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

8.5 Reservation of Licensor Rights. The rights reserved by Licensor with respect to the performance bond are in addition to all other rights and remedies Licensor may have under this Agreement or any other Law.

8.6 Admitted Surety Insurer. The surety supplying the bond shall be an "admitted surety insurer", as defined in California Code of Civil Procedure Section 995.120 and authorized to do business in the State of California.

9. INSURANCE. On or before beginning any of the services or work called for by any term of this Agreement, Licensee, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to Licensor of the insurance specified below with insurers and under forms of insurance satisfactory in all respects to Licensor. Licensee shall not allow any subcontractor to commence work on any subcontract until all insurance required of Licensee has also been obtained for the subcontractor.

9.1 Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Licensee shall be provided with limits not less than One Million Dollars (\$1,000,000). In the alternative, Licensee may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or Licensee, if a program of self-insurance is provided, shall waive all rights of subrogation against Licensor for loss arising from work performed under this agreement.

9.2 Commercial General and Automobile Liability. Licensee, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply

separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

9.2.1 Licensors, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Licensee, including the insured's general supervision of Licensee; products and completed operations of Licensee; premises owned, occupied or used by Licensee; or automobiles owned, leased, hired, or borrowed by Licensee. The coverage shall contain no special limitations on the scope of protection afforded to Licensors, its officers, employees, agents, or volunteers.

9.2.2 The insurance shall cover on an occurrence basis, and not on the basis of an accident or claims made.

9.2.3 The insurance must cover personal injuries as well as bodily injuries. Any exclusion of contractual liability in personal injury provisions of the policy or any endorsement to it must be eliminated.

9.2.4 The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.

9.2.5 Any explosion, collapse, and underground property damage exclusion must be deleted.

9.2.6 An endorsement must state that coverage is primary insurance and that no other insurance affected by the Licensors will be called upon to contribute to a loss under the coverage.

9.2.7 The policy must contain a cross liability or severability of interests clause.

9.2.8 Any failure of Licensee to comply with reporting provisions of the policy shall not affect coverage provided to Licensors and its officers, employees, agents, and volunteers.

9.2.9 Broad form property damage liability must be afforded. A deductible that does not exceed Twenty Five Thousand Dollars (\$25,000) may be provided.

9.2.10 Insurance is to be placed with California- admitted insurers with a Best's rating of no less than B:XI.

9.2.11 Notice of cancellation or non-renewal must be received by Licensor at least thirty days prior to such change.

9.3 Property Insurance. Property Insurance for all of Licensee's Equipment, improvements, trade fixtures and other personal property on, in or upon the right of way against loss or damage by fire, vandalism and other such risks. The amount of insurance shall be 100% the then actual replacement costs. Licensor shall not be required to maintain insurance against fire or any other insurance risk for the ROW, and Licensee will make no claim of any nature against Licensor by reason of any damage to Licensee's Equipment or other personal property or improvements in the event it is damaged or destroyed by fire or by any other cause.

9.4 Deductibles and Self-Insured Retentions. During the period covered by this agreement, upon express written authorization of City's City Attorney, Licensee may increase such deductibles or self-insured retentions with respect to Licensor, its officers, employees, agents, and volunteers. Licensor may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Licensee procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

9.5 Notice of Reduction in Coverage. In the event that any coverage required under Sections 9.1, 9.2, and 9.3 of this Agreement is reduced, limited, or materially affected in any other manner, Licensee shall provide written notice to Licensor at Licensee's earliest possible opportunity and in no case later than five days after Licensee is notified of the change in coverage.

9.6 Licensor's Remedies. In addition to any other remedies Licensor may have if Licensee fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Licensor may, at its sole option:

9.6.1 Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;

9.6.2 Order Licensee to stop work under this agreement or withhold any payment which becomes due to Licensee hereunder, or both stop work and withhold any payment, until Licensee demonstrates compliance with the requirements hereof;

9.6.3 Terminate this Agreement following all applicable notice and cure periods in the Agreement.

9.6.4 Exercise of any of the above remedies, however, is an alternative to other remedies Licensor may have and is not the exclusive remedy for Licensee's failure to maintain insurance or secure appropriate endorsements.

9.7 **Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this Agreement, Licensee shall file with the Licensor the required certificate(s) of insurance with blanket additional insured endorsements, which shall state the following:

(a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that Licensee's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the Licensor may possess, including any self-insured retentions the Licensor may have; and any other insurance the Licensor does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(c) that Licensee's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the Licensor.

The certificate(s) of insurance with endorsements and notices shall be mailed to the Licensor at the address specified in Section 10 below.

9.8 **Severability of Interest.** "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

10. NOTICES.

10.1 **Method and Delivery of Notices.** All notices pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:

If to the Licensor: City of Hayward
Director of Public Works
777 B Street, 2nd Floor
Hayward, CA 94541

If to Licensee: [Licensee ADDRESS]

10.2 **Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the mail, or the next business day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by thirty (30) days' prior written notice to the other party delivered in the manner set forth in this Section.

11. DEFAULT; CURE; REMEDIES.

11.1 **Licensee Default and Notification.** This Agreement is granted upon each and every condition herein, and each of the conditions is a material and essential condition to the

granting of this Agreement. Except for causes beyond the reasonable control of Licensee, if Licensee fails to comply with any of the conditions and obligations imposed hereunder, and if such failure continues for more than thirty (30) days after written demand from the Licensor to commence the correction of such noncompliance on the part of Licensee, the Licensor shall have the right to revoke and terminate this Agreement by written notice to Licensee, if such failure is in relation to the Agreement as whole, or any individual Supplement, if such failure is in connection solely with such Supplement, in addition to any other rights or remedies set forth in this Agreement or provided by law.

11.2 Cure Period. If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under Licensee's control, the period of time in which Licensee must cure the violation shall be extended for such additional time reasonably necessary to complete the cure, provided that: (a) Licensee has promptly begun to cure; (b) Licensee is diligently pursuing its efforts to cure; and (c) Licensee provides a timeline to complete its cure efforts and responds within twenty-four (24) hours of any status request by Licensor. Licensor may not maintain any action or effect any remedies for default against Licensee, unless and until Licensee has failed to cure the breach within the time periods provided in these Sections 11.1 and 11.2.

11.3 Licensor Default. If Licensor breaches any covenant or obligation of Licensor under this Agreement in any manner, and if Licensor fails to commence to cure such breach within thirty (30) days after receiving written notice from Licensor specifying the violation (or if Licensor fails thereafter to diligently prosecute the cure to completion), then Licensee may enforce any and all of its rights and/or remedies provided under this Agreement or by Law[.

12. ASSIGNMENT AND CUSTOMER EQUIPMENT. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties.

12.1 This Agreement is not assignable unless Licensor consents in writing. Such consent to assignment shall bind and insure to the benefit of the respective successors and assigns of the parties. This requirement for consent shall not apply to: (a) any disposition of all or substantially all of the assets of Licensee in the market in which the City is located as defined by the FCC; (b) any merger, consolidation or reorganization of Licensee whether voluntary or involuntary; (c) any collateral assignment, security interest or pledge of this Agreement by Licensee to any lender to Licensee; and (d) any assignment to an affiliate of Licensee that wholly or majority owned by such affiliate, except that any assignment to such an affiliate shall cause Licensee to notify Licensor of the affiliate's name and change of address, if any.

12.2 Licensee need not own all components of Equipment subject to this Agreement, and may permit its customers to maintain ownership of Equipment components under the following conditions: (1) all Equipment must be wholly under the control and management of Licensee; (2) Licensee shall be liable for all acts or omissions, and all harms associated with the Equipment whether the same are its acts or omissions, or the acts or omissions of the owner of the Equipment; (3) Licensee acknowledges and agrees that no rights of ownership in Equipment by Licensee's customers shall permit any such customer to enter upon, or use any portion of the Municipal Facilities or the Equipment, in any other manner or at any other place, including to add to, or modify or install Equipment, which shall be Licensee's sole responsibility; and (4)

Licensee delivers to Licensor, in a form acceptable to Licensor, an acknowledgment and agreement by the entity on whose behalf the Equipment has been installed that the Licensor has not granted it a consent to be in the ROW for any purpose; that it is bound by Licensee's representations, obligations and duties hereunder; that it shall have no rights or claims against the Licensor of any sort related to the Equipment or Municipal Facilities; that its Equipment may be subject to taxes, fees or assessments as provided in the Laws or the Agreement, and that Licensor may treat any Equipment owned by such entity as if it were owned by Licensee for all purposes (including, but not limited to, removal and relocation); and the Equipment may only be used for the purposes and uses permitted herein. Such acknowledgement may be provided for all Equipment on Municipal Facilities, and need not be provided separately, site by site.

13. RECORDS; AUDITS.

13.1 **Records Required by Code.** Licensee will maintain complete records pursuant to all applicable Laws.

13.2 **Additional Records.** The Licensor may require such additional reasonable non-confidential information, records, and documents from Licensee from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Agreement.

13.3 **Production of Records.** Licensee shall provide such records or make them available at a mutually agreeable location within twenty (20) business days of a request by the Licensor for production of the same, unless additional time is reasonably needed by Licensee, in which case, Licensee shall have such reasonable time as needed for the production of the same. If any person other than Licensee maintains records on Licensee's behalf, Licensee shall be responsible for making such records available to the Licensor for auditing purposes pursuant to this Section.

13.4 **Public Records.** Licensee acknowledges that information submitted to Licensor may be open to public inspection and copying under the Law. Licensee shall avoid providing information that it considers confidential or proprietary and no information provided by Licensee pursuant to this Agreement shall be treated by Licensor as "confidential" or "proprietary" unless provided in writing and clearly marked as such by Licensee. Licensor shall notify Licensee within five (5) business days of receiving a request for any records which include information marked as "confidential" or "proprietary" by Licensee in order to allow the Licensee an opportunity to protect against any such disclosure and/or obtain a protective order narrowing the scope of such disclosure and/or use of the information, and to the extent allowed by Law and at the Licensor's sole determination, Licensor shall apply exceptions to disclosure of such information that are applicable under the Law. If a suit is filed by a member of the public with respect to any such request, Licensor will cooperate in any action to intervene filed by Licensee.

14. MISCELLANEOUS PROVISIONS. The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

14.1 **Waiver of Breach.** The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of any condition, or of any breach of any term, covenant,

representation, or warranty contained herein, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

14.2 **Severability of Provisions.** If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such provision shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity or constitutionality of the remaining portions of the Agreement.

14.3 **Contacting Licensee.** Licensee shall be available to the staff employees of any Licensor department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The Licensor may contact by telephone the Licensee's network control center operator at telephone number [REDACTED].

14.4 **Intentionally omitted.**

14.5 **Force Majeure.** Except for payment of amounts due, neither Party shall have any liability for its delays or its failure of performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes reasonably beyond its control, whether or not similar to the foregoing.

14.6 **"AS IS" condition of Municipal Facilities.** Municipal Facilities licensed to Licensee pursuant to this Agreement are licensed to and accepted by Licensee "as is" and with all faults. The Licensor makes no representation or warranty of any kind as to the present or future condition of or suitability of the Municipal Facilities for Licensee's use and disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Municipal Facilities and their merchantability or fitness for a particular purpose. Licensee is solely responsible for investigation and determination of the condition and suitability of any Municipal Facility for Licensee's intended use.

14.7 **Representations and Warranties.** Each of the Parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the Party's respective obligations hereunder and that such obligations shall be binding upon such Party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in Section 4.2 above. This Agreement shall not be revocable or terminable except as expressly permitted herein.

14.8 **Amendment of Agreement.** This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.9 **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters addressed herein, except as to any Supplements that may be issued in accordance with this Agreement.

14.10 Non-Exclusive Remedies. No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

14.11 No Third-Party Beneficiaries. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Licensor with respect to third parties shall remain as imposed by state law.

14.12 Construction of Agreement. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California. Venue for any action shall either be in the United States District Court for the Northern District of California or the Alameda County Superior Court of California. The rights and remedies of Licensee and Licensor for default in performance under this Agreement are in addition to any other rights or remedies provided by law. The prevailing party in any action brought under this Agreement shall be entitled to reasonable attorneys' fees in addition to any other relief to which the party may be entitled.

14.13 Effect of Acceptance. Licensee (a) accepts and agrees to comply with this Agreement and all Laws; (b) agrees that this Agreement was entered into pursuant to processes and procedures consistent with Law; and (c) agrees that it will not raise any claim to the contrary or allege in any claim or proceeding against the Licensor that at the time of acceptance of this Agreement any provision, condition or term of this Agreement was unreasonable or arbitrary, or that at the time of the acceptance of this Agreement any such provision, condition or term was void or unlawful or that the Licensor had no power or authority to make or enforce any such provision, condition, or term.

14.14 Time is of the Essence. Time is of the essence with regard to the performance of all of Licensee's obligations under this Agreement.

14.15 Taxes. Licensee shall be responsible for payment of all fees and taxes charged in connection with the right, title and interest in and construction, installation, maintenance and operation of the Equipment for the purposes set forth herein, including but not limited to the following:

(a) **Business License.** Licensee shall obtain a business license from Licensor and pay the applicable business license tax.

(b) **Possessory Interest Tax.** Licensor hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Licensee acknowledges, that this Agreement may create a possessory interest and Licensee may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107.6. Licensee shall pay directly to the appropriate authority, when due, all real and personal property taxes, fees, and assessments, assessed against the area licensed and the Equipment.

14.16 **Counterparts.** This Agreement (and any Supplement) may be executed in multiple counterparts, including by electronic means, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.

[signature page to follow]

SIGNATURE PAGE TO MUNICIPAL FACILITY LICENSE AGREEMENT

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be legally executed as of the Effective Date.

Licensor:

CITY OF HAYWARD

By: _____

Name: _____

Title: _____

ATTEST:

_____, Clerk

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: _____
City Attorney

Licensee:

By: _____

Name: _____

Title: _____

Exhibits:

Exhibit A – Supplement
Exhibit B – Application

EXHIBIT A
FORM OF SUPPLEMENT
SUPPLEMENT

This Supplement (“Supplement”), is approved by the City of Hayward as Licensor this _____ day of _____, 20____ (the date executed by all parties, referred herein as “Supplement Effective Date”).

1. Supplement. Licensee has submitted an application for approval to use a Municipal Facility pursuant to that certain Municipal Facility License Agreement between Licensor, City of Hayward, and Licensee, dated _____, 20__ (“Agreement”). Licensor has reviewed the Application to Use Municipal Facility and grants approval subject to the terms of this Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification, or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein. IF THE SUPPLEMENT IS NOT COUNTER-SIGNED BY LICENSEE AND RETURNED TO LICENSOR WITHIN 30 DAYS AFTER LICENSOR HAS GRANTED APPROVAL, THE SUPPLEMENT SHALL BE VOID AND OF NO LEGAL EFFECT. IF LICENSEE STILL WANTS TO USE THE MUNICIPAL FACILITY, LICENSEE WILL BE REQUIRED TO SUBMIT A NEW APPLICATION AND ASSOCIATED FEES.
2. Licensed Area Description and Location. Licensee shall have the right to use the space on the specific Municipal Facility (the “Licensed Area”) depicted in Attachment 1 attached hereto to install Equipment as further listed in Attachment 2 attached hereto.
3. Equipment. The Equipment to be installed at the Licensed Area is described in Attachment 2 and depicted in Attachment 1.
4. Term. The term of this Supplement shall commence on the Supplement Effective Date and continue for in the Term of the Agreement.
5. Compensation. The initial Rent/Adjusted Rent/Alternate Rent for this Supplement shall be as follows per year: _____. Rent/Adjusted Rent/Alternate Rent is subject to annual increase and the automatic increases and is payable in accordance with Section 5 of the Agreement. *[Or if applicable in lieu of Rent/Adjusted Rent/Alternate Rent, as provided for in Section 5.3 of the Agreement, Lessee shall provide (describe fiber facilities)].*
6. Performance Bond. The Performance Bond *[circle one]* is / is not covered by existing performance bond. If not covered by existing performance bond, a bond is required pursuant to Section 8 of the Agreement in the amount of _____.
7. *[If applicable]* Use of City Wiring. Licensee is authorized to use City circuits and provision point in accordance with the terms of a separate City circuit use agreement and the

following conditions [if applicable]:

8. Miscellaneous.

[signature page follows]

IN WITNESS THEREOF, the parties hereto have caused this Supplement to be legally executed in duplicate, effective upon execution by both parties.

Licensor:

THE CITY OF HAYWARD

By: _____

Name: _____

Title: _____

Date: _____

Licensee:

Accepted:

By: _____

Name: _____

Title: _____

Date: _____

Attachments:

Attachment 1 – Licensed Area

Attachment 2 – Equipment List and Description

Attachment 1

Licensed Area

[site plan showing licensed area of applicable Municipal Facility and showing proposed Equipment installation]

Attachment 2

Equipment List and Description

EXHIBIT B

APPLICATION TO USE MUNICIPAL FACILITY

Applicant: _____ Date: _____

Licensee: _____ Application/License#: _____

Type of Municipal Facility	Alteration Required	Small Cell Equipment Heights (provide both (1) the overall height of pole structure with added facilities; and (2) the height of individual facilities)	Small Cell Equipment Weights	Small Cell Equipment Dimensions	Location of Any Additional Equipment
<i>[street light] [other, specify]</i>	<i>[Pole Reinforcement] [Pole Replacement] [None]</i>				<i>[Installed on Pole, specify attachment height, weight and dimensions] [Installed on/in Ground (Vault), specific dimensions] [Other Location] [Not Applicable/Needed]</i>

APPLICANT SHALL PROVIDE THE FOLLOWING AS APPLICABLE:

- Site plan and engineering design and specifications for installation of Equipment, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, and electrical conduit and cabling. Where applicable, the design documents should include specifications on design, pole modification, and ADA compliance.
- Include a load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate attachment of proposed Equipment.
- If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specification drawings.
- The number, size, type, and proximity to the facilities of all communications conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed. Indicate whether unmetered electricity is available at the site.
- List of the contractors and subcontractors, and their contact information, authorized to work on the project.
- If proposing to use a City circuit or provisioning point, provide information required by a separate City circuit use agreement to evaluate such use.

- Payment of the applicable One-Time Fees (pursuant to Section 5.1 of the Agreement).

APPLICANT REPRESENTATIVE: _____

PRINT NAME: _____

TITLE: _____

TELEPHONE: _____ **EMAIL:** _____