

Agenda Item: File ID 20-00332 (1-J)

Date: 04/09/2020

FRESNO CITY COUNCIL



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Agenda Related Item(s) – File ID 20-00332 (1-J)

ITEM(S)

File ID 20-00332 (1-J) – Approve a Master License Agreement for placement of telecommunication equipment on City assets as defined by Federal Communications Commission (FCC) Order 18-33.

Contents of Supplement: Revised pages 3 & 4 of the Master Licenses Agreement. Redline and Clean Copy included

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (Agreement) is made as of the date of the final signature below, by and between the City of Fresno, a municipal corporation, having a mailing address of 2600 Fresno Street, Fresno, CA 93721 (City or Licensor) and _____ (Licensee) having a mailing address of _____.

1. Definitions.

- A. "Approvals" means all certificates, permits, licenses and other approvals that Licensee must obtain as required by law in order for Licensee or its agents to use the Licensed Premises for the purpose intended by this Agreement.
- B. "Company Facilities" means any and all Wireless Telecommunications Facilities to be installed, operated, and maintained by Licensee on the Licensed Premises.
- C. "City Facilities " means any and all existing facilities, inclusive of but not limited to all buildings and improvements owned by and under the possession and control of Licensor, including but not limited to utility poles, lamp posts, other utility facilities, fences, gates, and all roof tops of all such buildings, facilities and/or improvements.
- D. "Defaulting Party" means the party to this Agreement that has defaulted as provided for in Section 20 of this Agreement.
- E. "Harmful Interference" means Interference that endangers the functioning of a radio navigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radio communication service operating in accordance with both International Telecommunications Union Radio Regulations and the regulations of the Federal Communications Commission.
- F. "Hazardous Material" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, or (viii) radioactive materials.
- G. "Environmental Law(s)" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., and the Clean Water Act, 33 U.S.C. Section 1251 et seq., as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state

or local law, statute, rule, regulation or ordinance that regulates or proscribes the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Hazardous Material.

- H. "Improvements" means a Wireless Telecommunications Facility(ies).
 - I. "Interference" means the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any performance degradation, misinterpretation, or loss of information.
 - J. "Licensed Premises" means the property set forth in each fully executed Right of Entry Agreement executed hereunder.
 - K. "Licensee's Notice Address" means _____.
 - L. "Licensor's Notice Address" means 2600 Fresno Street, Fresno, CA 93721.
 - M. "Licensor's Properties" means all those properties owned by Licensor which is subject to this License Agreement.
 - N. "Non-Defaulting Party" means the party to this Agreement that has not defaulted as provided for in Section 20 of this Agreement.
 - O. "Wireless Telecommunications Facilities" means the equipment and associated structures needed to transmit and/or receive electromagnetic signals. A Wireless Telecommunication Facility typically includes antennas, supporting structures, enclosures and/or cabinets housing associated equipment, cable, access roads and other accessory development.
2. **Term.** The Term of this Agreement shall commence on _____, 20____, and continue for the shortest of the following: (1) ten years from the above-referenced commencement date; (2) until the license for each Licensed Premise has expired; or (3) until this Agreement is otherwise terminated hereunder.
- A. The term of each License shall commence upon the Commencement Date of said License, as set forth in each fully executed **Exhibit A** License and Right of Entry Agreement, and shall continue for a period of five years. The term of each License shall renew for up to four five-year renewal terms unless either Party gives sixty days' written notice of its intent not to renew.
3. **Rent/License Fees.**
- A. From and after the Commencement, Licensee shall pay a license fee for each of the Licensed Premises in the amount of Two Hundred and Seventy Dollars (\$270) per year, paid annually on July 1 of each year for each Licensed Premises, in accordance with Federal Communications Commission Order No. 18-133 (FCC 18-133) (the Rent).
 - B. The Parties acknowledge that as of the date of this Agreement, the validity of FCC 18-133 has been challenged by the City of Fresno in Federal Court and is the subject of ongoing litigation nationwide. In the event that FCC 18-133 is invalidated in any way which affected the amount which can be charged by the City for the Licensed Premises (whether stayed, overturned,

shall pay City's actual costs for performing inspection services.
~~should~~ Should Licensor in its sole discretion, determine ~~said~~ defect(s) on licensed City Facilities are attributable to Licensee's use, Licensee shall, within thirty days of notice by the City, remedy the defect in a manner acceptable to the City Engineer. Licensee's obtaining a structural analysis and/or conducting an inspection shall not relieve Licensee of any liability under this Agreement.

- B. Licensee shall make every reasonable effort to ensure that each proposed Wireless Telecommunications Facility will not affect, detract, or impact the operation of existing Licensor facilities, particularly traffic signal control and street lighting devices.
- C. Licensee shall ensure that the proposed Wireless Telecommunications Facility is not dependent on the resources dedicated to Licensor facilities unless otherwise approved by Licensor.
- D. Licensee shall propose new locations for Wireless Telecommunications Facilities to Licensor. Not all Licensor facilities will be accessible due to necessary Licensor operations. However, to the extent Licensee is seeking to install its Wireless Telecommunications Facility on a Licensor pole, and the Wireless Telecommunications Facility can be accommodated by rearranging other facilities on the poles and/or replacing the pole with a stronger and/or taller pole, Licensee may utilize such pole upon written approval by Licensor; such rearrangement or replacement shall be coordinated with Licensor and/or other facility(s) owner, shall be at Licensee's cost, and shall comport with all applicable City policies. Licensor shall have the final and absolute authority to approve or reject said locations.

In the event of damage, Licensor shall not be obligated to repair or restore the Wireless Telecommunications Facility to normal operating conditions unless Licensor is the primary and direct cause of such damage. As between Licensee and Licensor, Licensee shall bear all other costs incurred to repair or restore Wireless Telecommunications Facilities. Licensee shall make every reasonable effort during the deployment and maintenance of the Wireless Telecommunications Facilities to restore Licensor facilities in a safe and timely manner. Licensee shall be fully responsible for all damages incurred by Licensor, including but not limited to loss of revenue incurred in association therewith.

- E. Licensee shall give Licensor reasonable notice (of no less than fourteen days) prior to impacting Licensor facilities in a manner that is beyond the routine maintenance (including changing the frequency of the equipment and like-for-like replacement of the equipment) and operation of Wireless Telecommunications Facilities. Provided, however, that in the event of an emergency, including but not limited failure of Licensee's equipment, Licensee shall give such notice, if any, as is reasonable under the circumstances.

5. **Construction, Engineering, and Other Costs.**

- A. Licensor shall have no financial responsibility for planning, construction, and engineering costs associated with the implementation of this License Agreement.
- B. Licensee shall pay appropriate City permitting fees as set forth in the Master Fee Schedule.
- C. Licensee shall furnish and install its own power source independent from the Licensor for the electricity used by the Wireless Service Providers.
 - i. Where feasible, appropriate and desirable, Licensee may non-exclusively lease from the City excess access to power (i.e. conductor(s) and/or conduit(s)) for the purpose of providing power to Licensee's equipment at a rate of \$400 per year per Licensed Premise, subject to the same automatic annual adjustment set forth in Section 3.B.i., in order for the City to recoup the additional operating cost associated with such access. Licensee shall be responsible for all costs and for the procurement of all approvals, permits, and inspections associated with and required for access. The Licensee understands that the City's design for its street lighting access to power and the operating of those streetlights does not allow shared conductor(s) and/or conduit(s) use. This provision may be re-addressed at the time that the City re-designs its systems.
 - ii. Licensee acknowledges existing conduit(s) and/or conductor(s) are not designed or built to accommodate third party access. Existing conduit(s) and/or conductor(s) may fail at any time and Licensor shall retain the ability to repair damaged conduit(s) and/or conductor(s) at any time and within its sole discretion. Licensee may repair the damaged conduit(s) and conductor(s) at no cost to the Licensor. Licensee acknowledges that many City Facilities are serviced by direct burial conductors to the utility point of connection, which fail often; Licensee may replace the direct burial conductor with a new conduit and conductors per City standards and specifications to have reliable utility service. Licensor shall not bear any cost to replace the existing direct burial conductors with a new conduit and conductors. All new conduit and conductors proposed for replacement, repair, modification, or installation shall be noted in designs submitted for City approval; such installations shall be paid for by Licensee and shall be property of the Licensor upon acceptance by the City.
 - iii. Per State and Federal regulations, the City is not allowed to share its power for powering light fixtures on poles. Licensee shall be required to:
 - a) Set a pull box for existing poles that do not have one.
 - b) Update locking lids if existing concrete layer is broken for installation of equipment.

- c) Locking lids shall be keyed to City of Fresno keys.
 - d) Utilize striped conductor wires or label wires properly to differentiate from Licensor's existing conductor wires.
 - e) Comply with all applicable City of Fresno standard specifications for like facilities and/or work.
- D. Where Licensor implementations exist on poles, Licensee may only coexist where physically possible, taken into consideration possible rearrangements or replacement in accordance with Section 4.C. Licensee shall not install equipment where such installing equipment on a pole would compromise the safety of that pole (wind rating, weight bearing, etc.).
- 6. **Licensed Premises; Survey.** Licensee has provided Licensor with a copy of an "as-built" survey for each Licensed Premises, which shall depict and identify the boundaries of each Licensed Premises and any attendant easements.
- 7. **Access.** Licensee shall execute a Right of Entry Agreement in the form attached hereto as **Exhibit A** for each Licensed Premise. Conditioned upon and subject to commencement of the License Term, Licensor grants to Licensee and Licensee's employees, agents, contractors, licensees and their employees, agents, and contractors access to the Licensed Premises, for the purpose of constructing, repairing, maintaining, replacing, and removing the facility to be located upon each Licensed Premises as necessary to obtain or comply with any stipulations in the Right of Entry Agreement (**Exhibit A**). The Right of Entry Agreement shall be utilized for the purposes provided.
- 8. **Use of Property.** The Licensed Premises and the Right of Entry Agreement shall be used for the purpose of constructing, repairing, maintaining, replacing, operating, and removing the Improvements and for uses incidental thereto. All Improvements shall be constructed at no expense to Licensor. All Improvements, inclusive of security fences, shall comply with the requirements of the Fresno Municipal Code and all other laws and regulations applicable thereto, and Licensee shall obtain all required and necessary governmental agency Approvals and permits. Licensee will maintain the Licensed Premises in a safe condition. It is the intent of the parties that Licensee's Improvements shall not constitute a fixture.
 - A. **Maintenance and Operation.** At its sole cost and expense, Licensee shall construct, install, and maintain Wireless Telecommunication Facilities on Licensor's Properties in accordance and conformity with all applicable laws, polices, guidelines, and contractual obligations to Licensor. Licensor shall not be responsible for any cost of maintaining or operating any Wireless Telecommunication Facility. If the Licensor elects, in its sole discretion, to remove or relocate the pole comprising the Licensed Premises subject to this Agreement, Licensee shall promptly remove and reinstall its Wireless Telecommunication Facility, at no cost to Licensor. In the event of pole relocation, the Licensor shall provide sixty days' notice to Licensee. Licensor shall not be responsible for any damage to any Wireless Telecommunication Facility in the event that a pole falls or is

knocked down, nor shall Licensor be responsible for any damage to Licensee's Wireless Telecommunication Facilities caused by a pole removal or relocation.

B. Compliance with FCC Regulations.

- i. Licensee will operate its Wireless Telecommunications Facilities in compliance with all FCC regulations regarding Interference with the radio signal transmissions of Licensor and other third parties in or upon a City Facility, which transmissions are operated in compliance with Laws.

9. **Removal of Obstructions.** Licensee has the right to remove obstructions from Licensor's Property, as approved by Licensor, which approval shall be requested in writing by Licensee and shall not be unreasonably withheld, conditioned or delayed by Licensor. Potential obstructions include but are not limited to vegetation, which may encroach upon, interfere with or present a hazard to Licensee's use of the Licensed Premises Licenses. Licensee shall dispose of any materials removed.

10. **Hazardous Materials.**

A. **Licensee's Obligation and Indemnity.** Licensee shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials on or from the Licensed Premises in any manner prohibited by law. Licensee shall indemnify and hold Licensor harmless from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the release of any Hazardous Materials on the Licensed Premises if caused by Licensee or persons acting under Licensee.

11. **Real Estate Taxes.** To the extent that a possessory interest is deemed created, Licensee acknowledges that notice is and was hereby given to Licensee pursuant to California Revenue and Taxation Code Section 107.6 that use or occupancy of any public property may subject the Licensee to possessory interest taxes or other taxes levied against Licensee's right to possession, occupancy or use of any public property. Licensee shall pay all applicable (federal, state, county, city, local) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon Licensee's services under this Agreement. Licensee agrees to reimburse Licensor for any documented increase in real estate or personal property taxes levied against Licensor's Property that are directly attributable to the Improvements. Licensor agrees to provide Licensee any documentation evidencing the increase and how such increase is attributable to Licensee's use. Licensee reserves the right to challenge any such assessment, and Licensor agrees to cooperate with Licensee in connection with any such challenge.

12. **Insurance.** At all times during the performance of its Due Diligence Investigation and during the License Term, Licensee, at its sole expense, shall obtain and keep

in force the required insurance as set forth in the attached **Exhibit B**. The insurance provisions shall be separate and independent from the indemnification and defense provisions between the Licensee and Licensor and shall not in any way limit the applicability, scope or obligations of the indemnification defense provisions in Section 13

13. **Indemnification.** To the furthest extent allowed by law, Licensee shall indemnify, hold harmless and defend Licensor and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Licensor, Licensee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Licensee's obligations under the preceding sentence shall apply regardless of whether Licensor or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of Licensor or any of its officers, officials, employees, agents or volunteers. If Licensee should subcontract all or any portion of the work to be performed under this Agreement, Licensee shall require each subcontractor to indemnify, hold harmless and defend Licensor and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph. This section shall survive termination or expiration of this Agreement.
14. **Eminent Domain.** If Licensor receives notice of a proposed taking by eminent domain of any part of the Licensed Premises, Licensor will notify Licensee of the proposed taking within five days of receiving said notice and Licensee will have the option to: (i) declare this Agreement null and void and thereafter neither party will have any liability or obligation hereunder other than payment of Rent for so long as Licensee remains in physical possession of the Licensed Premises; or (ii) remain in possession of that portion of the Licensed Premises that will not be taken, in which event there shall be an equitable adjustment in Rent on account of the portion of the Licensed so taken.
15. **Sale of Property.** If during the Lease Term, Licensor sells all or part of Licensor's Property, of which the Licensed Premises is a part, then such sale shall be subject to this Agreement.
16. **Surrender of Property.** Upon expiration or termination of this Agreement, Licensee shall, within a reasonable time, remove all above and below ground Improvements and restore the Licensed Premises to its original condition, normal wear and tear excepted, without, however, being required to replace any trees or other plants removed, or alter the then existing grading.
17. **Recording.** Licensee shall have the right to record a memorandum of the Agreement with the Fresno County Recorder's Office. Licensor shall execute and deliver each such memorandum, for no additional consideration, promptly upon Licensee's request.

18. **Quiet Enjoyment.** Licensor covenants that Licensee, on paying Rent and performing the covenants of this Agreement, shall peaceably and quietly have, hold and enjoy the Licensed Premises.
19. **Default.**
- A. **Notice of Default; Cure Period.** If there is a default by Licensor or Licensee (the Defaulting Party) with respect to any of the provisions of this Agreement or Licensor's or Licensee's obligations under this Agreement, the other party (the Non-Defaulting Party) shall give the Defaulting Party written notice of such default. After receipt of such written notice, the Defaulting Party shall have thirty days in which to cure any monetary default and thirty days in which to cure any non-monetary default. If a non-monetary default reasonably requires more than a thirty-day cure period, the Defaulting Party shall diligently pursue cure to completion and shall request additional time to cure from the Non-Defaulting Party. The Non-Defaulting Party shall not unreasonably withhold approval of additional time to cure. The Non-Defaulting Party may not maintain any action or effect any remedies for default against the Defaulting Party unless and until the Defaulting Party has failed to cure the same within the time periods provided in this Section.
- B. **Consequences of Licensee's Default.** In the event that Licensor maintains any action or effects any remedies for default against Licensee resulting in Licensee's dispossession or removal, (i) the Rent shall be paid up to the date of such physical dispossession or removal and (ii) Licensor shall be entitled to recover from Licensee, in lieu of any other damages, as liquidated, final damages, a sum equal to six months' Rent which shall be calculated at the highest value of the Rent which is in effect on the date of default and for the six-month period thereafter. In no event shall Licensee be liable to Licensor for indirect or speculative damages in connection with or arising out of any default.
- C. **Consequences of Licensor's Default.** If Licensor is in default beyond the applicable periods set forth above in Section 20(A), Licensee may, at its option, upon written notice: (i) terminate the Lease, vacate the Licensed Premises and be relieved from all further obligations under this Agreement; (ii) perform the obligation(s) of Licensor specified in such notice, in which case any expenditures reasonably made by Licensee in so doing shall be deemed paid for the account of Licensor and Licensor agrees to reimburse Licensee for said expenditures upon demand; (iii) take any actions that are consistent with Licensee's rights; (iv) sue for injunctive relief, and/or (v) set-off from Rent any amount reasonably expended by Licensee as a result of such default.
20. **Termination.** Notwithstanding any other provision to the contrary, Licensor and Licensee shall each have the absolute right to terminate this Agreement for cause as provided herein; either Party may terminate any individual License and Right of Entry Agreement executed hereunder upon sixty days' notice to the other party with cause. Licensee may also terminate any individual License and Right of Entry

Agreement executed hereunder without cause upon sixty days' notice to Licensor and removal of all Company Facilities from the License Premises subject to the License and Right of Entry Agreement being terminated.

21. **Amendments.** This Agreement may be amended with the mutual agreement of the parties. All amendments hereto shall be in writing executed by the parties.
22. **Force Majeure.** If an event or condition constituting a "force majeure"—including, but not limited to, an act of God, labor dispute, civil unrest, epidemic, or natural disaster—prevents or delays either the Licensor or the Licensee (Party) from performing or fulfilling an obligation under this Agreement, said Party is not in Default, under Section 20 of this Agreement, of the obligation. A delay beyond a Party's control automatically extends the time, in an amount equal to the period of the delay, for the Party to perform the obligation under this Agreement. The Licensor and Licensee shall prepare and sign an appropriate document acknowledging any extension of time under this Section.
23. **Applicable Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of California. The parties agree that the venue for any litigation regarding this Agreement shall be the state of California.
24. **Assignment, Sublease, Licensing and Encumbrance.** Licensee may assign this Agreement to a person or entity with demonstrated capacity to carry out Licensee's obligations under this Agreement. Licensee shall provide thirty days' prior written notice of such assignment to Licensor. Notwithstanding the foregoing, upon thirty days' written notice, Licensee may assign this Agreement or its rights or obligations to (a) an affiliate or (b) in connection with the sale or other transfer of substantially all of Licensee's assets in the FCC market area where the City Facilities are located. Licensee may enter into subleases, licenses, or other authorizations (Sub-Authorizations) to allow a third party to utilize and operate from the Leased Premises, so long as such third party is a provider of services that utilize Wireless Telecommunications Facilities. Sub-Authorizations shall not require the consent of Licensor.
25. **Miscellaneous.**
 - A. **Entire Agreement.** Licensor and Licensee agree that this Agreement contain all of the agreements, promises and understandings between Licensor and Licensee with regard to the subject matter herein. No oral agreements, promises or understandings shall be binding upon either Licensor or Licensee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.
 - B. **Captions.** The captions preceding the Sections of this Agreement are intended only for convenience of reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.
 - C. **Construction of Document.** Licensor and Licensee acknowledge that this document shall not be construed in favor of or against the drafter by virtue

of said party being the drafter and that this Agreement shall not be construed as a binding offer until signed by Licensee.

- D. **Notices.** All notices hereunder shall be in writing and shall be given by (i) established national courier service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to Licensor at Licensor's Notice Address and to Licensee at Licensee's Notice Address.
- E. **Partial Invalidity.** If any term of this Agreement is found to be void or invalid, then such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, Licensor and Licensee, having read the foregoing and intending to be legally bound hereby, have executed this Agreement as of the day and year this Agreement is fully executed.

LICENSOR
CITY OF FRESNO,
A California municipal corporation

LICENSEE

By: _____

By: _____

Name: _____

Title: _____

(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____

By: _____
Raj Singh Badhesha Date
Senior Deputy City Attorney

Name: _____

Title: _____

(If corporation or LLC., CFO,
Treasurer, Secretary or Assistant
Secretary)

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy Date

EXHIBIT A
LICENSE AND RIGHT OF ENTRY AGREEMENT
PURSUANT TO MASTER LEASE AGREEMENT _____

This License and Right of Entry Agreement (this License) is made as of the date of the final signature below, by and between the City of Fresno, a municipal corporation, having a mailing address of 2600 Fresno Street, Fresno, CA 93721 (Licensor) and _____ (Licensee).

RECITALS

- A. Licensor and Licensee are parties to that certain Master Lease Agreement, dated _____ (the Master Lease Agreement), which is incorporated herein by this reference. All defined terms not otherwise defined herein, shall have the same meaning provided in the Master Lease Agreement.
- B. Pursuant to the Master Lease Agreement, the parties are to enter into a License and Right of Entry Agreement for each individual License under the Master Lease Agreement.
- C. The parties desire to enter into a License for Licensee's use of the Lease Premises more particularly identified and depicted in **Exhibit A** hereto (the Licensed Premises).
- D. Licensor is the owner, either in fee or as right-of-way of the real property interest underlying the Licensed Premises.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, the Parties agree as follows:

AGREEMENT

- 1. **Recitals.** Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.
- 2. **Purpose.** Pursuant to this License, Licensee may enter upon the Licensed Premises for the purpose of constructing, repairing, maintaining, replacing, demolishing and removing its Improvements.
- 3. **License and Right of Entry.** Licensor hereby grants to Licensee and its agents, employees, contractors, subcontractors, and volunteers non-exclusive permission to enter over and across, as well as to use the Licensed Premises as is reasonable and necessary to execute the Purposes of this License set forth above.
- 4. **Commencement Date and Term.** This License shall commence on _____ (Commencement Date) and shall continue for the period set forth in the Master Lease Agreement.
- 5. **Rent.** Licensee shall pay Rent as set forth in the Master Lease Agreement.
- 6. **Entry at Own Risk; No Duty to Warn.** Licensee and its agents, employees, contractors, subcontractors, and volunteers shall access, enter and use the Property at their own risk and peril. Licensor shall have no duty to inspect the

Property (or any portion thereof) and no duty to warn of any latent or patent defect, condition or risk which may exist on the Property.

7. **Liens.** Licensee shall not permit to be placed against the Property, or any part thereof, any mechanics', materialmen's, contractors' or other liens (collectively, the Liens) arising out of the acts or omissions of the Licensee or its agents, employees, contractors, subcontractors, or volunteers hereunder. Licensee hereby indemnifies and agrees to hold the Licensor and the Property free and harmless from all liability for any and all such Liens, together with all costs and expenses, including, but not limited to, attorneys' fees and court costs reasonably incurred by Licensor in connection therewith.
8. **Hazardous Substances.** Licensee and its agents, employees, contractors, subcontractors, and volunteers shall not use, store or transport or allow the use, storage or transportation of any hazardous substances on or onto the Property.
9. **Restoration of the Property.** Upon the expiration or termination of this License Licensee shall, at its own cost and expense, restore the Property to the same condition in which it was prior to Licensee's entity.
10. **Successors and Assigns.** This License shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.
11. **Permits.** Prior to beginning any work, Licensee at its sole expense, shall obtain all necessary permits to use the Premises as permitted under this License.
12. **All Expenses to Be Borne by Licensee.** Licensee shall bear any and all costs and expenses associated with the rights granted to Licensee to use the Premises, or any unforeseen costs or expenses incurred by the City relating to Licensee's use of the Premises in the performance of this License.
13. **Governing Law.** This License shall be governed in accordance with the laws of the State of California.
14. **Counterparts.** This License may be executed in counterparts, each of which shall be deemed an original and which together shall constitute a single agreement.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, Licensor and Licensee having read the foregoing and intending to be legally bound hereby, have executed this License as of the day and year this License is fully executed.

LICENSOR
CITY OF FRESNO,
A California municipal corporation

By: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Raj Singh Badhesha Date
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy Date

LICENSEE

By: _____

Name: _____

Title: _____
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: _____

Name: _____

Title: _____
(If corporation or LLC., CFO,
Treasurer, Secretary or Assistant
Secretary)

EXHIBIT B

(a) Throughout the life of this Agreement, Licensee shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in his/her sole discretion, except to the extent Licensee elects to self-insure in accordance with this Agreement. The required policies of insurance as stated herein shall maintain limits of liability in the amounts stated therein.

(b) If at any time during the life of the Agreement or any extension, Licensee or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Licensee shall be withheld until notice is received by city that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Licensee of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee, vendors, suppliers, invitees, Licensees, subcontractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement, to the extent applicable under the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01) with limits of liability set forth under "Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The

Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

LIMITS OF INSURANCE

LICENSEE shall procure and maintain for the duration of the contract insurance with limits of liability set forth below.

1. **COMMERCIAL GENERAL LIABILITY**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability of:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **PROPERTY:** Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of Licensee's business property. Licensee may self-insure this risk in accordance with the terms for self-insurance herein.

UMBRELLA OR EXCESS INSURANCE

In the event Licensee purchases an Umbrella or Excess insurance policy(ies) to meet the "Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers. Licensee may use any combination of primary and excess insurance to meet the total limits required.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Licensee shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Licensee shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) LICENSEE shall provide at least thirty calendar days' written notice to CITY of cancellation or nonrenewal of any required coverage that is not replaced, except ten days for nonpayment of premium. Upon issuance by the insurer, broker, or agent of a notice of cancellation or non-renewal, or reduction in coverage or in limits below those required by this Agreement, Licensee shall furnish City with a new certificate and applicable required endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Licensee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than ten calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall include City, its officers, officials, agents, employees, and volunteers as an additional insured. Licensee shall establish additional insured status for the City and for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: both CG 20 10 & CG 20 37, current versions or their equivalent.
- (iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the Licensees' insurance shall be primary to and require no contribution from the City. The Commercial General Liability policy is required to include primary and non- contributory coverage in favor of the City for both the ongoing and completed operations coverage. For any claims related to this Agreement, Licensee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees and volunteers shall be excess of the Licensee's insurance and shall not contribute with it.
- (v) These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers.
- (vi) Should any of the policies required under this Agreement provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated limits.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to City, its officers, officials, agents, employees, and volunteers.

- (viii) The Commercial General and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to City, its officers, officials, agents, employees, and volunteers.
- (ix) Notwithstanding the foregoing, Licensee shall have the right to self-insure the coverages required in this Agreement. In the event Licensee elects to self-insure its obligation to include the City as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)): (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); (ii) licensee continuously maintains appropriate loss reserves for the amount of its self-insurance obligations under this **Exhibit B**, 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 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.

PROVIDING OF DOCUMENTS - Licensee shall furnish City with all certificate(s) and applicable required endorsements effecting coverage required herein. **If determined by the City to be compliant with this Agreement all certificates and applicable endorsements are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City in connection with Licensee's denial of a claim under an insurance policy, or as required to meet insurance requirements under this Agreement, Licensee shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Licensee shall also be required to provide all documents noted herein.

SUBCONTRACTORS- If Licensee subcontracts any or all of the services to be performed under this Agreement, Licensee shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance

protection. Any required Side Agreement(s) and associated insurance documents for the subcontractors must be reviewed and preapproved by City Risk Manager or designee. If no Side Agreement is able to be obtained, Licensee shall be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry. Provided, however, nothing in this section shall diminish Licensee's indemnification obligations pursuant to Section 13 of this Agreement.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (Agreement) is made as of the date of the final signature below, by and between the City of Fresno, a municipal corporation, having a mailing address of 2600 Fresno Street, Fresno, CA 93721 (City or Licensor) and _____ (Licensee) having a mailing address of _____.

1. Definitions.

- A. "Approvals" means all certificates, permits, licenses and other approvals that Licensee must obtain as required by law in order for Licensee or its agents to use the Licensed Premises for the purpose intended by this Agreement.
- B. "Company Facilities" means any and all Wireless Telecommunications Facilities to be installed, operated, and maintained by Licensee on the Licensed Premises.
- C. "City Facilities " means any and all existing facilities, inclusive of but not limited to all buildings and improvements owned by and under the possession and control of Licensor, including but not limited to utility poles, lamp posts, other utility facilities, fences, gates, and all roof tops of all such buildings, facilities and/or improvements.
- D. "Defaulting Party" means the party to this Agreement that has defaulted as provided for in Section 20 of this Agreement.
- E. "Harmful Interference" means Interference that endangers the functioning of a radio navigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radio communication service operating in accordance with both International Telecommunications Union Radio Regulations and the regulations of the Federal Communications Commission.
- F. "Hazardous Material" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, or (viii) radioactive materials.
- G. "Environmental Law(s)" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., and the Clean Water Act, 33 U.S.C. Section 1251 et seq., as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state

or local law, statute, rule, regulation or ordinance that regulates or proscribes the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Hazardous Material.

- H. "Improvements" means a Wireless Telecommunications Facility(ies).
 - I. "Interference" means the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any performance degradation, misinterpretation, or loss of information.
 - J. "Licensed Premises" means the property set forth in each fully executed Right of Entry Agreement executed hereunder.
 - K. "Licensee's Notice Address" means _____.
 - L. "Licensor's Notice Address" means 2600 Fresno Street, Fresno, CA 93721.
 - M. "Licensor's Properties" means all those properties owned by Licensor which is subject to this License Agreement.
 - N. "Non-Defaulting Party" means the party to this Agreement that has not defaulted as provided for in Section 20 of this Agreement.
 - O. "Wireless Telecommunications Facilities" means the equipment and associated structures needed to transmit and/or receive electromagnetic signals. A Wireless Telecommunication Facility typically includes antennas, supporting structures, enclosures and/or cabinets housing associated equipment, cable, access roads and other accessory development.
2. **Term.** The Term of this Agreement shall commence on _____, 20____, and continue for the shortest of the following: (1) ten years from the above-referenced commencement date; (2) until the license for each Licensed Premise has expired; or (3) until this Agreement is otherwise terminated hereunder.
- A. The term of each License shall commence upon the Commencement Date of said License, as set forth in each fully executed **Exhibit A** License and Right of Entry Agreement, and shall continue for a period of five years. The term of each License shall renew for up to four five-year renewal terms unless either Party gives sixty days' written notice of its intent not to renew.
3. **Rent/License Fees.**
- A. From and after the Commencement, Licensee shall pay a license fee for each of the Licensed Premises in the amount of Two Hundred and Seventy Dollars (\$270) per year, paid annually on July 1 of each year for each Licensed Premises, in accordance with Federal Communications Commission Order No. 18-133 (FCC 18-133) (the Rent).
 - B. The Parties acknowledge that as of the date of this Agreement, the validity of FCC 18-133 has been challenged by the City of Fresno in Federal Court and is the subject of ongoing litigation nationwide. In the event that FCC 18-133 is invalidated in any way which affected the amount which can be charged by the City for the Licensed Premises (whether stayed, overturned,

wholly or partially invalidated or otherwise limited), the Rent going forward shall be the maximum amount allowed under the then-applicable law or \$270 per year per pole, whichever is greater. In the absence of any applicable law mandating a maximum, the fee shall immediately be calculated based upon the following formula:

- i. As of October 1, 2019, the Rent/License Fee shall be Twelve Hundred and Fifty Dollars (\$1250), subject to an automatic annual adjustment of 3% each October 1st thereafter.
- C. Licensee shall also pay to Licensor fees as set forth in the City of Fresno Master Fee Schedule and defined further below, for inspections of the Improvements and for rental of City of Fresno infrastructure utilized by Licensee for its Improvements, including, but not limited to normal permitting fees per location and fees for rental of electric conduits.
4. **Occupancy Restrictions.** Occupancy of the Licensed Premises, subject to the following:
- A. Licensee acknowledges existing City Facilities are not designed or built to support Wireless Telecommunication Facilities and Licensor does not warrant or represent the ability of the City Facilities to support Wireless Telecommunications Facilities.
 - i. If Licensee elects to attach onto City facilities, Licensee shall perform and submit to Licensor a structural analysis report signed and stamped by a California licensed professional civil or structural engineer showing that the subject City Facility is capable of handling the maximum load being added by Licensee. A structural analysis shall be submitted for each licensed premise. Neither submission of a structural analysis required hereunder, nor acceptance of the same by the City, shall act, in any way, as a waiver by City of its rights, or otherwise limit Licensee's obligations under Section 4.A.ii and Section 13 herein.
 - ii. Licensee expressly waives any claims against Licensor relating to defects with the City Facilities, including, but not limited to, any improvements located thereon and/or the habitability or suitability of the City Facilities or the improvements located thereon for any permitted purpose(s). Licensee indemnifies, holds Licensor harmless, and shall defend Licensor as set forth in Section 13, from any damages caused by Licensee's negligence, including but not limited to damage due to Licensee's modifications to, or the addition of Licensee's facilities to City Facilities. At City's request not more than once every five (5) years, Licensee shall perform-be responsible for an inspection of the structure(s) and report to the Licensor of any corrosion, dents, cracking or other defects; upon request from Licensee, such inspection may be performed by City and Licensee

shall pay City's actual costs for performing inspection services.
~~should~~—Should Licensor in its sole discretion, determine said defect(s) on licensed City Facilities are attributable to Licensee's use, Licensee shall, within thirty days of notice by the City, remedy the defect in a manner acceptable to the City Engineer. Licensee's obtaining a structural analysis and/or conducting an inspection shall not relieve Licensee of any liability under this Agreement.

- B. Licensee shall make every reasonable effort to ensure that each proposed Wireless Telecommunications Facility will not affect, detract, or impact the operation of existing Licensor facilities, particularly traffic signal control and street lighting devices.
- C. Licensee shall ensure that the proposed Wireless Telecommunications Facility is not dependent on the resources dedicated to Licensor facilities unless otherwise approved by Licensor.
- D. Licensee shall propose new locations for Wireless Telecommunications Facilities to Licensor. Not all Licensor facilities will be accessible due to necessary Licensor operations. However, to the extent Licensee is seeking to install its Wireless Telecommunications Facility on a Licensor pole, and the Wireless Telecommunications Facility can be accommodated by rearranging other facilities on the poles and/or replacing the pole with a stronger and/or taller pole, Licensee may utilize such pole upon written approval by Licensor; such rearrangement or replacement shall be coordinated with Licensor and/or other facility(s) owner, shall be at Licensee's cost, and shall comport with all applicable City policies. Licensor shall have the final and absolute authority to approve or reject said locations.

In the event of damage, Licensor shall not be obligated to repair or restore the Wireless Telecommunications Facility to normal operating conditions unless Licensor is the primary and direct cause of such damage. As between Licensee and Licensor, Licensee shall bear all other costs incurred to repair or restore Wireless Telecommunications Facilities. Licensee shall make every reasonable effort during the deployment and maintenance of the Wireless Telecommunications Facilities to restore Licensor facilities in a safe and timely manner. Licensee shall be fully responsible for all damages incurred by Licensor, including but not limited to loss of revenue incurred in association therewith.

- E. Licensee shall give Licensor reasonable notice (of no less than fourteen days) prior to impacting Licensor facilities in a manner that is beyond the routine maintenance (including changing the frequency of the equipment and like-for-like replacement of the equipment) and operation of Wireless Telecommunications Facilities. Provided, however, that in the event of an emergency, including but not limited failure of Licensee's equipment, Licensee shall give such notice, if any, as is reasonable under the circumstances.

5. Construction, Engineering, and Other Costs.

- A. Licensors shall have no financial responsibility for planning, construction, and engineering costs associated with the implementation of this License Agreement.
- B. Licensee shall pay appropriate City permitting fees as set forth in the Master Fee Schedule.
- C. Licensee shall furnish and install its own power source independent from the Licensor for the electricity used by the Wireless Service Providers.
 - i. Where feasible, appropriate and desirable, Licensee may non-exclusively lease from the City excess access to power (i.e. conductor(s) and/or conduit(s)) for the purpose of providing power to Licensee's equipment at a rate of \$400 per year per Licensed Premise, subject to the same automatic annual adjustment set forth in Section 3.B.i., in order for the City to recoup the additional operating cost associated with such access. Licensee shall be responsible for all costs and for the procurement of all approvals, permits, and inspections associated with and required for access. The Licensee understands that the City's design for its street lighting access to power and the operating of those streetlights does not allow shared conductor(s) and/or conduit(s) use. This provision may be re-addressed at the time that the City re-designs its systems.
 - ii. Licensee acknowledges existing conduit(s) and/or conductor(s) are not designed or built to accommodate third party access. Existing conduit(s) and/or conductor(s) may fail at any time and Licensor shall retain the ability to repair damaged conduit(s) and/or conductor(s) at any time and within its sole discretion. Licensee may repair the damaged conduit(s) and conductor(s) at no cost to the Licensor. Licensee acknowledges that many City Facilities are serviced by direct burial conductors to the utility point of connection, which fail often; Licensee may replace the direct burial conductor with a new conduit and conductors per City standards and specifications to have reliable utility service. Licensor shall not bear any cost to replace the existing direct burial conductors with a new conduit and conductors. All new conduit and conductors proposed for replacement, repair, modification, or installation shall be noted in designs submitted for City approval; such installations shall be paid for by Licensee and shall be property of the Licensor upon acceptance by the City.
 - iii. Per State and Federal regulations, the City is not allowed to share its power for powering light fixtures on poles. Licensee shall be required to:
 - a) Set a pull box for existing poles that do not have one.
 - b) Update locking lids if existing concrete layer is broken for installation of equipment.

- c) Locking lids shall be keyed to City of Fresno keys.
 - d) Utilize striped conductor wires or label wires properly to differentiate from Licensor's existing conductor wires.
 - e) Comply with all applicable City of Fresno standard specifications for like facilities and/or work.
- D. Where Licensor implementations exist on poles, Licensee may only coexist where physically possible, taken into consideration possible rearrangements or replacement in accordance with Section 4.C. Licensee shall not install equipment where such installing equipment on a pole would compromise the safety of that pole (wind rating, weight bearing, etc.).
- 6. **Licensed Premises; Survey.** Licensee has provided Licensor with a copy of an "as-built" survey for each Licensed Premises, which shall depict and identify the boundaries of each Licensed Premises and any attendant easements.
- 7. **Access.** Licensee shall execute a Right of Entry Agreement in the form attached hereto as **Exhibit A** for each Licensed Premise. Conditioned upon and subject to commencement of the License Term, Licensor grants to Licensee and Licensee's employees, agents, contractors, licensees and their employees, agents, and contractors access to the Licensed Premises, for the purpose of constructing, repairing, maintaining, replacing, and removing the facility to be located upon each Licensed Premises as necessary to obtain or comply with any stipulations in the Right of Entry Agreement (**Exhibit A**). The Right of Entry Agreement shall be utilized for the purposes provided.
- 8. **Use of Property.** The Licensed Premises and the Right of Entry Agreement shall be used for the purpose of constructing, repairing, maintaining, replacing, operating, and removing the Improvements and for uses incidental thereto. All Improvements shall be constructed at no expense to Licensor. All Improvements, inclusive of security fences, shall comply with the requirements of the Fresno Municipal Code and all other laws and regulations applicable thereto, and Licensee shall obtain all required and necessary governmental agency Approvals and permits. Licensee will maintain the Licensed Premises in a safe condition. It is the intent of the parties that Licensee's Improvements shall not constitute a fixture.
 - A. **Maintenance and Operation.** At its sole cost and expense, Licensee shall construct, install, and maintain Wireless Telecommunication Facilities on Licensor's Properties in accordance and conformity with all applicable laws, polices, guidelines, and contractual obligations to Licensor. Licensor shall not be responsible for any cost of maintaining or operating any Wireless Telecommunication Facility. If the Licensor elects, in its sole discretion, to remove or relocate the pole comprising the Licensed Premises subject to this Agreement, Licensee shall promptly remove and reinstall its Wireless Telecommunication Facility, at no cost to Licensor. In the event of pole relocation, the Licensor shall provide sixty days' notice to Licensee. Licensor shall not be responsible for any damage to any Wireless Telecommunication Facility in the event that a pole falls or is

knocked down, nor shall Licensor be responsible for any damage to Licensee's Wireless Telecommunication Facilities caused by a pole removal or relocation.

B. Compliance with FCC Regulations.

- i. Licensee will operate its Wireless Telecommunications Facilities in compliance with all FCC regulations regarding Interference with the radio signal transmissions of Licensor and other third parties in or upon a City Facility, which transmissions are operated in compliance with Laws.

9. **Removal of Obstructions.** Licensee has the right to remove obstructions from Licensor's Property, as approved by Licensor, which approval shall be requested in writing by Licensee and shall not be unreasonably withheld, conditioned or delayed by Licensor. Potential obstructions include but are not limited to vegetation, which may encroach upon, interfere with or present a hazard to Licensee's use of the Licensed Premises Licenses. Licensee shall dispose of any materials removed.

10. **Hazardous Materials.**

- A. **Licensee's Obligation and Indemnity.** Licensee shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials on or from the Licensed Premises in any manner prohibited by law. Licensee shall indemnify and hold Licensor harmless from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the release of any Hazardous Materials on the Licensed Premises if caused by Licensee or persons acting under Licensee.

11. **Real Estate Taxes.** To the extent that a possessory interest is deemed created, Licensee acknowledges that notice is and was hereby given to Licensee pursuant to California Revenue and Taxation Code Section 107.6 that use or occupancy of any public property may subject the Licensee to possessory interest taxes or other taxes levied against Licensee's right to possession, occupancy or use of any public property. Licensee shall pay all applicable (federal, state, county, city, local) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon Licensee's services under this Agreement. Licensee agrees to reimburse Licensor for any documented increase in real estate or personal property taxes levied against Licensor's Property that are directly attributable to the Improvements. Licensor agrees to provide Licensee any documentation evidencing the increase and how such increase is attributable to Licensee's use. Licensee reserves the right to challenge any such assessment, and Licensor agrees to cooperate with Licensee in connection with any such challenge.

12. **Insurance.** At all times during the performance of its Due Diligence Investigation and during the License Term, Licensee, at its sole expense, shall obtain and keep

in force the required insurance as set forth in the attached **Exhibit B**. The insurance provisions shall be separate and independent from the indemnification and defense provisions between the Licensee and Licensor and shall not in any way limit the applicability, scope or obligations of the indemnification defense provisions in Section 13

13. **Indemnification.** To the furthest extent allowed by law, Licensee shall indemnify, hold harmless and defend Licensor and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Licensor, Licensee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Licensee's obligations under the preceding sentence shall apply regardless of whether Licensor or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of Licensor or any of its officers, officials, employees, agents or volunteers. If Licensee should subcontract all or any portion of the work to be performed under this Agreement, Licensee shall require each subcontractor to indemnify, hold harmless and defend Licensor and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph. This section shall survive termination or expiration of this Agreement.
14. **Eminent Domain.** If Licensor receives notice of a proposed taking by eminent domain of any part of the Licensed Premises, Licensor will notify Licensee of the proposed taking within five days of receiving said notice and Licensee will have the option to: (i) declare this Agreement null and void and thereafter neither party will have any liability or obligation hereunder other than payment of Rent for so long as Licensee remains in physical possession of the Licensed Premises; or (ii) remain in possession of that portion of the Licensed Premises that will not be taken, in which event there shall be an equitable adjustment in Rent on account of the portion of the Licensed so taken.
15. **Sale of Property.** If during the Lease Term, Licensor sells all or part of Licensor's Property, of which the Licensed Premises is a part, then such sale shall be subject to this Agreement.
16. **Surrender of Property.** Upon expiration or termination of this Agreement, Licensee shall, within a reasonable time, remove all above and below ground Improvements and restore the Licensed Premises to its original condition, normal wear and tear excepted, without, however, being required to replace any trees or other plants removed, or alter the then existing grading.
17. **Recording.** Licensee shall have the right to record a memorandum of the Agreement with the Fresno County Recorder's Office. Licensor shall execute and deliver each such memorandum, for no additional consideration, promptly upon Licensee's request.

18. **Quiet Enjoyment.** Licensor covenants that Licensee, on paying Rent and performing the covenants of this Agreement, shall peaceably and quietly have, hold and enjoy the Licensed Premises.
19. **Default.**
- A. **Notice of Default; Cure Period.** If there is a default by Licensor or Licensee (the Defaulting Party) with respect to any of the provisions of this Agreement or Licensor's or Licensee's obligations under this Agreement, the other party (the Non-Defaulting Party) shall give the Defaulting Party written notice of such default. After receipt of such written notice, the Defaulting Party shall have thirty days in which to cure any monetary default and thirty days in which to cure any non-monetary default. If a non-monetary default reasonably requires more than a thirty-day cure period, the Defaulting Party shall diligently pursue cure to completion and shall request additional time to cure from the Non-Defaulting Party. The Non-Defaulting Party shall not unreasonably withhold approval of additional time to cure. The Non-Defaulting Party may not maintain any action or effect any remedies for default against the Defaulting Party unless and until the Defaulting Party has failed to cure the same within the time periods provided in this Section.
- B. **Consequences of Licensee's Default.** In the event that Licensor maintains any action or effects any remedies for default against Licensee resulting in Licensee's dispossession or removal, (i) the Rent shall be paid up to the date of such physical dispossession or removal and (ii) Licensor shall be entitled to recover from Licensee, in lieu of any other damages, as liquidated, final damages, a sum equal to six months' Rent which shall be calculated at the highest value of the Rent which is in effect on the date of default and for the six-month period thereafter. In no event shall Licensee be liable to Licensor for indirect or speculative damages in connection with or arising out of any default.
- C. **Consequences of Licensor's Default.** If Licensor is in default beyond the applicable periods set forth above in Section 20(A), Licensee may, at its option, upon written notice: (i) terminate the Lease, vacate the Licensed Premises and be relieved from all further obligations under this Agreement; (ii) perform the obligation(s) of Licensor specified in such notice, in which case any expenditures reasonably made by Licensee in so doing shall be deemed paid for the account of Licensor and Licensor agrees to reimburse Licensee for said expenditures upon demand; (iii) take any actions that are consistent with Licensee's rights; (iv) sue for injunctive relief, and/or (v) set-off from Rent any amount reasonably expended by Licensee as a result of such default.
20. **Termination.** Notwithstanding any other provision to the contrary, Licensor and Licensee shall each have the absolute right to terminate this Agreement for cause as provided herein; either Party may terminate any individual License and Right of Entry Agreement executed hereunder upon sixty days' notice to the other party with cause. Licensee may also terminate any individual License and Right of Entry

Agreement executed hereunder without cause upon sixty days' notice to Licensor and removal of all Company Facilities from the License Premises subject to the License and Right of Entry Agreement being terminated.

21. **Amendments.** This Agreement may be amended with the mutual agreement of the parties. All amendments hereto shall be in writing executed by the parties.
22. **Force Majeure.** If an event or condition constituting a "force majeure"—including, but not limited to, an act of God, labor dispute, civil unrest, epidemic, or natural disaster—prevents or delays either the Licensor or the Licensee (Party) from performing or fulfilling an obligation under this Agreement, said Party is not in Default, under Section 20 of this Agreement, of the obligation. A delay beyond a Party's control automatically extends the time, in an amount equal to the period of the delay, for the Party to perform the obligation under this Agreement. The Licensor and Licensee shall prepare and sign an appropriate document acknowledging any extension of time under this Section.
23. **Applicable Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of California. The parties agree that the venue for any litigation regarding this Agreement shall be the state of California.
24. **Assignment, Sublease, Licensing and Encumbrance.** Licensee may assign this Agreement to a person or entity with demonstrated capacity to carry out Licensee's obligations under this Agreement. Licensee shall provide thirty days' prior written notice of such assignment to Licensor. Notwithstanding the foregoing, upon thirty days' written notice, Licensee may assign this Agreement or its rights or obligations to (a) an affiliate or (b) in connection with the sale or other transfer of substantially all of Licensee's assets in the FCC market area where the City Facilities are located. Licensee may enter into subleases, licenses, or other authorizations (Sub-Authorizations) to allow a third party to utilize and operate from the Leased Premises, so long as such third party is a provider of services that utilize Wireless Telecommunications Facilities. Sub-Authorizations shall not require the consent of Licensor.
25. **Miscellaneous.**
 - A. **Entire Agreement.** Licensor and Licensee agree that this Agreement contain all of the agreements, promises and understandings between Licensor and Licensee with regard to the subject matter herein. No oral agreements, promises or understandings shall be binding upon either Licensor or Licensee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.
 - B. **Captions.** The captions preceding the Sections of this Agreement are intended only for convenience of reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.
 - C. **Construction of Document.** Licensor and Licensee acknowledge that this document shall not be construed in favor of or against the drafter by virtue

of said party being the drafter and that this Agreement shall not be construed as a binding offer until signed by Licensee.

- D. **Notices.** All notices hereunder shall be in writing and shall be given by (i) established national courier service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to Licensor at Licensor's Notice Address and to Licensee at Licensee's Notice Address.
- E. **Partial Invalidity.** If any term of this Agreement is found to be void or invalid, then such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, Licensor and Licensee, having read the foregoing and intending to be legally bound hereby, have executed this Agreement as of the day and year this Agreement is fully executed.

LICENSOR
CITY OF FRESNO,
A California municipal corporation

LICENSEE

By: _____

By: _____

Name: _____

Title: _____

(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____

By: _____

Raj Singh Badhesha Date
Senior Deputy City Attorney

Name: _____

Title: _____

(If corporation or LLC., CFO,
Treasurer, Secretary or Assistant
Secretary)

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____

Deputy

Date

EXHIBIT A
LICENSE AND RIGHT OF ENTRY AGREEMENT
PURSUANT TO MASTER LEASE AGREEMENT _____

This License and Right of Entry Agreement (this License) is made as of the date of the final signature below, by and between the City of Fresno, a municipal corporation, having a mailing address of 2600 Fresno Street, Fresno, CA 93721 (Licensor) and _____ (Licensee).

RECITALS

- A. Licensor and Licensee are parties to that certain Master Lease Agreement, dated _____ (the Master Lease Agreement), which is incorporated herein by this reference. All defined terms not otherwise defined herein, shall have the same meaning provided in the Master Lease Agreement.
- B. Pursuant to the Master Lease Agreement, the parties are to enter into a License and Right of Entry Agreement for each individual License under the Master Lease Agreement.
- C. The parties desire to enter into a License for Licensee's use of the Lease Premises more particularly identified and depicted in **Exhibit A** hereto (the Licensed Premises).
- D. Licensor is the owner, either in fee or as right-of-way of the real property interest underlying the Licensed Premises.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, the Parties agree as follows:

AGREEMENT

- 1. **Recitals.** Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.
- 2. **Purpose.** Pursuant to this License, Licensee may enter upon the Licensed Premises for the purpose of constructing, repairing, maintaining, replacing, demolishing and removing its Improvements.
- 3. **License and Right of Entry.** Licensor hereby grants to Licensee and its agents, employees, contractors, subcontractors, and volunteers non-exclusive permission to enter over and across, as well as to use the Licensed Premises as is reasonable and necessary to execute the Purposes of this License set forth above.
- 4. **Commencement Date and Term.** This License shall commence on _____ (Commencement Date) and shall continue for the period set forth in the Master Lease Agreement.
- 5. **Rent.** Licensee shall pay Rent as set forth in the Master Lease Agreement.
- 6. **Entry at Own Risk; No Duty to Warn.** Licensee and its agents, employees, contractors, subcontractors, and volunteers shall access, enter and use the Property at their own risk and peril. Licensor shall have no duty to inspect the

Property (or any portion thereof) and no duty to warn of any latent or patent defect, condition or risk which may exist on the Property.

7. **Liens.** Licensee shall not permit to be placed against the Property, or any part thereof, any mechanics', materialmen's, contractors' or other liens (collectively, the Liens) arising out of the acts or omissions of the Licensee or its agents, employees, contractors, subcontractors, or volunteers hereunder. Licensee hereby indemnifies and agrees to hold the Licensor and the Property free and harmless from all liability for any and all such Liens, together with all costs and expenses, including, but not limited to, attorneys' fees and court costs reasonably incurred by Licensor in connection therewith.
8. **Hazardous Substances.** Licensee and its agents, employees, contractors, subcontractors, and volunteers shall not use, store or transport or allow the use, storage or transportation of any hazardous substances on or onto the Property.
9. **Restoration of the Property.** Upon the expiration or termination of this License Licensee shall, at its own cost and expense, restore the Property to the same condition in which it was prior to Licensee's entity.
10. **Successors and Assigns.** This License shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.
11. **Permits.** Prior to beginning any work, Licensee at its sole expense, shall obtain all necessary permits to use the Premises as permitted under this License.
12. **All Expenses to Be Borne by Licensee.** Licensee shall bear any and all costs and expenses associated with the rights granted to Licensee to use the Premises, or any unforeseen costs or expenses incurred by the City relating to Licensee's use of the Premises in the performance of this License.
13. **Governing Law.** This License shall be governed in accordance with the laws of the State of California.
14. **Counterparts.** This License may be executed in counterparts, each of which shall be deemed an original and which together shall constitute a single agreement.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, Licensor and Licensee having read the foregoing and intending to be legally bound hereby, have executed this License as of the day and year this License is fully executed.

LICENSOR
CITY OF FRESNO,
A California municipal corporation

LICENSEE

By: _____

By: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

Name: _____

Title: _____
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: _____
Raj Singh Badhesha Date
Senior Deputy City Attorney

By: _____

Name: _____

Title: _____
(If corporation or LLC., CFO,
Treasurer, Secretary or Assistant
Secretary)

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy Date

EXHIBIT B

(a) Throughout the life of this Agreement, Licensee shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in his/her sole discretion, except to the extent Licensee elects to self-insure in accordance with this Agreement. The required policies of insurance as stated herein shall maintain limits of liability in the amounts stated therein.

(b) If at any time during the life of the Agreement or any extension, Licensee or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Licensee shall be withheld until notice is received by city that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Licensee of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee, vendors, suppliers, invitees, Licensees, subcontractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement, to the extent applicable under the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01) with limits of liability set forth under "Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The

Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

LIMITS OF INSURANCE

LICENSEE shall procure and maintain for the duration of the contract insurance with limits of liability set forth below.

1. **COMMERCIAL GENERAL LIABILITY**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability of:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **PROPERTY:** Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of Licensee's business property. Licensee may self-insure this risk in accordance with the terms for self-insurance herein.

UMBRELLA OR EXCESS INSURANCE

In the event Licensee purchases an Umbrella or Excess insurance policy(ies) to meet the "Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers. Licensee may use any combination of primary and excess insurance to meet the total limits required.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Licensee shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Licensee shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) LICENSEE shall provide at least thirty calendar days' written notice to CITY of cancellation or nonrenewal of any required coverage that is not replaced, except ten days for nonpayment of premium. Upon issuance by the insurer, broker, or agent of a notice of cancellation or non-renewal, or reduction in coverage or in limits below those required by this Agreement, Licensee shall furnish City with a new certificate and applicable required endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Licensee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than ten calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall include City, its officers, officials, agents, employees, and volunteers as an additional insured. Licensee shall establish additional insured status for the City and for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: both CG 20 10 & CG 20 37, current versions or their equivalent.
- (iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the Licensees' insurance shall be primary to and require no contribution from the City. The Commercial General Liability policy is required to include primary and non- contributory coverage in favor of the City for both the ongoing and completed operations coverage. For any claims related to this Agreement, Licensee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees and volunteers shall be excess of the Licensee's insurance and shall not contribute with it.
- (v) These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers.
- (vi) Should any of the policies required under this Agreement provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated limits.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to City, its officers, officials, agents, employees, and volunteers.

- (viii) The Commercial General and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to City, its officers, officials, agents, employees, and volunteers.
- (ix) Notwithstanding the foregoing, Licensee shall have the right to self-insure the coverages required in this Agreement. In the event Licensee elects to self-insure its obligation to include the City as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)): (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); (ii) licensee continuously maintains appropriate loss reserves for the amount of its self-insurance obligations under this **Exhibit B**, 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 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.

PROVIDING OF DOCUMENTS - Licensee shall furnish City with all certificate(s) and applicable required endorsements effecting coverage required herein. **If determined by the City to be compliant with this Agreement all certificates and applicable endorsements are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City in connection with Licensee's denial of a claim under an insurance policy, or as required to meet insurance requirements under this Agreement, Licensee shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Licensee shall also be required to provide all documents noted herein.

SUBCONTRACTORS- If Licensee subcontracts any or all of the services to be performed under this Agreement, Licensee shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance

protection. Any required Side Agreement(s) and associated insurance documents for the subcontractors must be reviewed and preapproved by City Risk Manager or designee. If no Side Agreement is able to be obtained, Licensee shall be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry. Provided, however, nothing in this section shall diminish Licensee's indemnification obligations pursuant to Section 13 of this Agreement.