

20-0177

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

between

**CITY OF FREMONT,  
A CALIFORNIA MUNICIPAL CORPORATION**

and

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

Effective Date: June 15, 2020

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

This MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON CITY LIGHT POLES IN THE PUBLIC RIGHT-OF-WAY (“**Master License**” or “**Master License Agreement**”) dated June 15, 2020 (the “**Effective Date**”) is between the CITY OF FREMONT, a California municipal corporation (the “**City**”) and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (the “**Licensee**”). City and Licensee are sometimes individually referred to herein as a “**Party**”, and collectively as the “**Parties**”.

**BACKGROUND**

- A. **WHEREAS**, technology developments and demand for high-speed mobile data service and capacity has extended beyond the capabilities of traditional macrocell wireless communications facilities. To meet this demand, wireless providers have accelerated their small cell and distributed antenna system (“**DAS**”) deployments in the public right-of-way and the City has a clear incentive to develop public-private agreements that manage these accelerated deployments in a way that preserves local aesthetics and public health and safety while also deriving the benefits of these new technologies for the City’s residents to the greatest extent practicable; and
- B. **WHEREAS**, Licensee is in the business of installing, maintaining and operating wireless communication facilities and typically installs, maintains and operates its wireless communications facilities on existing vertical infrastructure in the public right-of-way; and
- C. **WHEREAS**, the City owns or controls as its personal property a number of existing Poles and Utility Infrastructure within the public right-of-way that are potentially suitable for installing wireless communications facilities within the City’s jurisdiction and has a duty under California law to derive appropriate value from the City’s property assets for the public good; and
- D. **WHEREAS**, Licensee desires to install, maintain and operate wireless communications facilities on the City’s Poles in the public right-of-way and to obtain the right to use the Utility Infrastructure, Licensee is willing to compensate the City for the right to use the City’s Poles and Utility Infrastructure for wireless communications purposes; and
- E. **WHEREAS**, consistent with California state law, the City intends this Master License and any Pole License to be applicable only to City-owned Poles and Utility Infrastructure, and does not intend this Master License or any Pole License to require any consideration as a precondition for any telephone corporation’s access to the public rights-of-way permitted under California Public Utilities Code § 7901; and

- F. **WHEREAS**, consistent with all applicable Laws, the City does not intend this Master License to grant the Licensee any exclusive right to use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the City may enter into similar or identical agreements with other entities, which include without limitation Licensee's competitors, subject to the terms and conditions set forth herein; and
- G. **WHEREAS**, the City desires to authorize Licensee's access to individual City Poles based on a comprehensive and uniform Master License according to the terms and conditions set forth in this Master License Agreement, any applicable Pole License, and pursuant to all the applicable permits issued by the City to protect public health and safety; and
- H. **WHEREAS**, on Jan. 14, 2020, the City Council of the City of Fremont approved the form and material terms for a Master License Agreement for Wireless Facilities on City Poles in the right-of-way to be used in connection with the licensing of Poles and other City-owned property (including, without limitation, Utility Infrastructure) for wireless communications facilities, and further delegated authority to the City Manager to enter into such agreements.

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

## **AGREEMENT**

### **1. GENERAL DEFINITIONS**

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

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

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

**"Control"** means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

**"CPUC"** means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or its duly appointed successor agency.

**“EMF”** means electromagnetic fields or radio frequency generally between 30 kHz and 300 GHz in the electromagnetic spectrum range and other frequencies licensed to Licensee by the FCC.

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

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

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

**“Hazardous Material”** means any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any Regulatory Agency to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (codified as 42 U.S.C. §§ 9601 *et seq.*) or Section 25316 of the California Health & Safety Code; and any “hazardous waste” listed California Health & Safety Code § 25140; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

**“Interference”** or **“Interferes”** means any material and adverse electronic or physical obstruction or impairment with the radio/communication signals or operation of (i) Licensee’s Equipment utilizing a Pole and/or Utility Infrastructure authorized by the City to be used by Licensee pursuant to a Pole License or (ii) the City’s or other third parties’ communications or computer equipment.

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

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

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

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

**"Permitted Use"** means Licensee's installation, operation and maintenance of Equipment for the transmission and reception of wireless, cellular telephone and data and related communications and communication services in License Areas.

**"Person"** means any entity with standing to be sued or to sue, including any natural person, corporation, body politic, governmental unit, agency, authority, partnership, trust, estate, association, company or group of any of the above.

**"Pole"** or **"City Pole"** means a street light pole located in the public right-of-way within the City and owned by the City.

**"Pole License"** and **"Pole License Agreement"** mean the document in the form of Exhibit A that, when fully executed, incorporates the provisions of this Master License and authorizes Licensee to install, operate and maintain Equipment for the Permitted Use on a City Pole and Utility Infrastructure, if applicable, identified in the Pole License.

**"Pole Location"** means the geographic information identifying each City Pole on which Licensee is authorized to install, operate and maintain Equipment under Pole Licenses. Pole Locations will be identified in Exhibit A-1 to each Pole License.

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

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

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

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

“**RF**” means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range, and other frequencies licensed to Licensee by the FCC or which Licensee is otherwise authorized by the FCC to use.

“**RF Compliance Report**” means a report prepared and certified by an RF engineer reasonably acceptable to the City that certifies that RF emissions from Licensee’s Equipment installed on the City Pole, as well as the cumulative RF emission from any collocated facilities on the City Pole, will comply with applicable federal RF exposure standards and exposure limits. The RF Compliance Report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and describe the location and orientation of all transmitting antennas and the extent of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the extent of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC).

“**Utility Infrastructure**” means any and all forms of existing power supply, conduit, pull boxes, electrical circuits, or other form of infrastructure fixtures or equipment owned, or controlled by the City for the delivery of power or communication services to a Pole or otherwise located in the public right-of-way or other location owned or controlled by the City.

## **2. SCOPE OF LICENSE**

### **2.1. License Area**

#### **2.1.1 Pole License Issuance and Effect**

Subject to the terms and conditions in this Master License, the City will issue to Licensee one or more Pole Licenses, which will grant Licensee a contractual license to use the space on the subject Pole approved for the Equipment, which includes the use of Utility Infrastructure specifically identified in the Approved Plans attached to the Pole License (individually for each licensed Pole and collectively for all licensed Poles, the “**License Area**”). Any approved Pole License will become effective on the first day of the month following the date on which both the City and Licensee execute such Pole License. After the City approves a Pole License and thereafter during the Pole License Term, the City will not license any space on the licensed Pole to any third party (other than the City’s Agents and/or Invitees for equipment used in connection with the City’s municipal functions) who desires to use that specific Pole for the Permitted Use that Interferes with Licenses’ use of the Pole.

#### **2.1.2 Limitations on License Areas**

This Master License applies to only Poles identified in final and fully executed Pole Licenses and may include the replacement of Poles by Licensee at its sole cost and expense. In the event Licensee desires to replace a Pole in connection with the installation of Equipment at a particular Pole Location, Licensee shall indicate the same on the particular Pole License Agreement. In the event any Poles are replaced by Licensee, title to the replacement Pole shall immediately transfer to City upon

completion of installation of the replacement Pole. In the event required by applicable Laws, City and Licensee shall execute any necessary documents in a commercially reasonable form to effectuate such transfer. This Master License does not authorize Licensee or any other persons or entities to enter on to or use any other City property, except the License Areas specified in any Pole Licenses. Furthermore, neither this Master License nor any Pole License encumbers or authorizes or confers any rights in Licensee or any other persons or entities to use the public rights-of-way, or any improvements or other personal property within the public rights-of-way owned by any third parties. Licensee expressly acknowledges and agrees that the City has the absolute right to deny for any or no reason, and will not be obligated to issue, any Pole License or other license to Licensee for any purpose related to the following Poles:

- (1) any decorative Pole, which includes any Pole or light standard with ornate features or characteristics designed or intended to enhance the appearance of the Pole or light standard;
- (2) intentionally omitted;
- (3) any Pole in any area with undergrounded utilities when the Licensee does not propose to install the non-antenna equipment (other than the electric meter as may be required by Licensee's utility provider, radios, and a disconnect switch installed on the Pole) underground;
- (4) any wood Pole; provided, however, that the City may, in its sole discretion and on a case-by-case basis, allow Licensee to replace, at Licensee's sole cost and expense, an existing wood Pole with a steel or concrete Pole for purposes of installing, maintaining and operating Licensee's Equipment.

## **2.2. Limitations on Licensee's Interests**

### **2.2.1 Limited Interest Created**

Licensee expressly acknowledges and agrees that (1) Licensee does not have any rights to use or possess interest or rights in any Pole and/or Utility Infrastructure for any purpose whatsoever until and unless the City issues a Pole License for the use of such Pole and/or Utility Infrastructure; and (2) it is the parties' intent that, and each of the City and Licensee shall ensure that, neither this Master License nor any Pole License issued pursuant to this Master License creates or will be deemed to create any lien, encumbrance, leasehold, easement, franchise or any other possessory interest or real property interest whatsoever in the License Area or Pole. Licensee also expressly acknowledges that this Master License Agreement and Pole License Agreement remains subject to Fremont Municipal Code Chapter 12.05.

## **2.2.2 Limited Rights Created/Revocability of License**

Pursuant to the City's proprietary function, any Pole License the City approves pursuant to this Master License grants to Licensee only a non-possessory license, which is revocable only in accordance with the terms and conditions of this Master License, to enter on to and use the License Area for the Permitted Use. Licensee expressly acknowledges and agrees that (1) neither this Master License nor any Pole License will be coupled with an interest, provided, however, that any Pole License issued pursuant to this Master License shall be revocable only in accordance with the terms and conditions of this Master License; (2) the City retains legal possession and control over all Poles for the City's operations, which will be superior to Licensee's interest at all times; (3) subject to the terms and conditions in this Master License, the City may terminate a Pole License in whole or in part at any time; (4) except as specifically provided otherwise in this Master License, the City may enter into any agreement with third parties in connection with the use and occupancy of Poles and other City Property; (5) Licensee has no ownership rights in or lien on any Pole; and (6) neither this Master License nor any Pole License creates or will be deemed to create any partnership or joint venture between the City and Licensee. Notwithstanding any characterization of City's ownership of its Poles as proprietary and except as provided herein, Licensee reserves all of its rights under applicable Laws, including but not limited to the Ruling (defined below).

## **2.2.3 No Impediment to Municipal Uses**

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

## **2.3. Diminutions in Light, Air and Signal**

In the event that any existing or future structure diminishes any light, air or signal propagation, transmission or reception, whether erected by the City or not, Licensee shall not be entitled to any reduction in any License Charge, Additional Costs or any other sums payable to the City under this Master License or any Pole License, and the City shall have no liability to Licensee whatsoever and such diminution will not affect this Master License, any Pole License or Licensee's obligations except as may be expressly provided in this Master License. If the foregoing situation occurs, Licensee may immediately terminate the applicable Pole License and submit a new Pole License Agreement to relocate the affected Equipment to a location reasonably acceptable to City.

## 2.4. License Area Condition

### 2.4.1 “As-Is and With All Faults” Condition

Licensee expressly acknowledges and agrees to enter on to and use the License Area in its **“AS-IS AND WITH ALL FAULTS”** condition. Except as may otherwise be expressly set forth herein or in a Pole License, the City makes no representations or warranties whatsoever, whether express or implied, as to the License Area’s condition or suitability for Licensee’s use. Except as may otherwise be expressly set forth herein or in a Pole License, Licensee expressly acknowledges and agrees that neither the City nor its Agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the physical, structural or environmental condition of the License Area, the present or future suitability of the License Area for the Permitted Use, or any other matter related to the License Area.

### 2.4.2 Licensee’s Due Diligence

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

### 2.4.3 Certified Access Specialist Disclosure

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

## 3. TERM

### 3.1. Master License Term

The term under this Master License (the “**Term**”) will commence on the Effective Date and will automatically expire 10 years from the Effective Date on June 15, 2030 (the “**Expiration Date**”), unless earlier terminated in accordance with this Master License. The Licensee shall have the option to extend the Term for two (2) five (5) year renewal terms (each, a “**Renewal Term**”) with the consent of the City.

### **3.2. Pole License Term**

The term under each Pole License ("**Pole License Term**") will commence on the Commencement Date and will automatically expire upon the expiration or earlier termination of the Master License, unless earlier terminated in accordance with this Master License. To determine the applicable License Charge for each Pole License, the minimum term will be one year from the Commencement Date (the "**Minimum Term**"). Except as specifically provided otherwise in this Master License, the Minimum Term will prevail over Licensee's right to abate rent or terminate this Master License or any Pole License. All Pole Licenses will end upon the expiration or earlier termination of the Master License, even if such expiration or termination results in less than a one-year term for any particular Pole License. All parties shall make good faith efforts to negotiate a new agreement to continue the Pole Licenses upon expiration of this Master License.

## **4. LICENSE CHARGE; OTHER PAYMENTS**

### **4.1. License Charges**

#### **4.1.1 Commencement Date**

Licensee shall pay an annual License Charge under each Pole License beginning on its "**Commencement Date**," which is defined as the first day of the month after the City countersigns the Acknowledgement Letter. The parties define a "**License Year**" to mean any 12-month period (or shorter period in the event that a Pole License commences less than 12 months from the next January 1 or the Expiration Date) that begins on the Commencement Date for each Pole License.

#### **4.1.2 Acknowledgment Letter**

For each Pole License approved by the City pursuant to Section 6.4.4 (Pole License Agreement Approval), Licensee shall deliver to the City a letter in the form shown in Exhibit A-3 to the Pole License (the "**Acknowledgment Letter**") within approximately 10 business days after Licensee obtains all Regulatory Approvals necessary for the Permitted Use on any License Area. The parties intend the Acknowledgement Letter to: (1) confirm the Commencement Date; (2) [intentionally omitted]; (3) provide the City with copies of all Regulatory Approvals for the Equipment on each licensed Pole; and (4) confirm that Licensee has submitted all information required in Section 18 (Insurance) under this Master License. Upon written notice to Licensee, the City shall have the right to correct the Commencement Date stated in Licensee's Acknowledgement Letter after the City examines the Regulatory Approvals if, in the City's reasonable determination, the Commencement Date stated on the Acknowledgment Letter is incorrect or inaccurate based on the definition of the Commencement Date set forth in Section 4.1.1 of this Master License. The City's reasonable determination in connection with this Section 4.1.2 will be final for all purposes under this Master License. The City will use reasonable and good faith efforts to deliver a countersigned Acknowledgement Letter to Licensee within approximately ten business days after the City receives the partially executed Acknowledgment Letter with all required attachments and enclosures from

Licensee. The fully executed Acknowledgment Letter will be Licensee's notice to proceed with its installation.

#### 4.1.3 License Charge Amount

Licensee shall tender to the City an annual charge at the rate specified below, which shall also be set forth in the License Charge Schedule attached to each Pole License (the "**License Charge**"). The License Charge shall be \$270 per Pole, subject to annual adjustments as set forth in Paragraph 4.1.4, (Annual License Charge Adjustments). Without conceding that this amount represents actual fair market value in the absence of putative regulatory constraints, the City accepts this value as the fair market value of the privilege to use a City Pole for the purpose of locating wireless small cell facilities. Licensee, in turn, agrees that this amount represents a reasonable estimate of the City's costs in administering this Master License, as well as a reasonable per Pole allocation of the cost to the City of maintaining its rights of way, and waives any objection to the contrary. Licensee shall pay each annual License Charge on January 1<sup>st</sup> of each year during the applicable Pole License Term without any prior demand, deduction, setoff or counterclaim for any reason, except to account for a partial year in the event that (1) the Commencement Date falls on a date other than January 1; (2) this Master License or the applicable Pole License expires or terminates; or (3) any other abatement rights expressly granted in this Master License becomes effective. Any amounts for less than a full year or full month will be calculated based on a 360-day year and a 30-day month.

For any Party to whom payments are to be made under this Master License or any Pole License, City or any successor in interest of the City hereby agrees to provide to Licensee (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) completed and fully executed state and local withholding forms if required; and (iii) other documentation to verify the City's or such other Party's right to receive payments as is reasonably requested by Licensee.

#### 4.1.4 Annual License Charge Adjustments

Each year throughout the Term on January 1 (each an "**Adjustment Date**") the License Charge will be increased 3% over the License Charge payable in the immediately previous year. The adjustment provided in this Section will be effective even if the first License Year was for less than a full calendar year and/or if the first License Year is not the first year of the Term. Therefore, a Pole License that begins three years after the Term will be charged \$286.44 for the first License Year.

Term Year	Year	Annual License Charge
1	2020	270.00
2	2021	278.10
3	2022	286.44
4	2023	295.03

5	2024	303.89
6	2025	313.00
7	2026	322.39
8	2027	332.06
9	2028	342.03
10	2029	352.29

#### 4.1.5 License Charge Due Date

Licensee shall pay the License Charge for the first year of a Pole License within forty-five (45) days after its Commencement Date without any deduction or setoff for any reason. Thereafter, Licensee shall pay the annual License Charge by January 1 in each year throughout the Term. As an illustration, and not a limitation, if the Commencement Date for a Pole License falls on June 1, then the License Charge due in the first License Year will be prorated 50% (to account for the six-month difference between January and May) and will be due on the Commencement Date. The full License Charge for the second License Year, and each subsequent year thereafter, will be due on January 1.

#### 4.1.6 License Charge Recalculation

On September 26, 2018, the FCC issued its Declaratory Ruling and Third Report and Order in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket Nos. 17-79 and 17-84, FCC 18-133 (the "**Ruling**"). The City maintains that the Ruling violates the Fifth and Tenth Amendments of the U.S. Constitution, insofar as the Ruling: (1) purports that local agencies control public rights of way in their regulatory capacities only, and not as proprietors; (2) limits the ability of local agencies to control the placement of wireless facilities on agency property within public rights of way; and (3) limits the maximum amount that a local agency may charge for the use of its rights of way by private wireless carriers. On the contrary, it is the City's position that it holds public rights of way and City Poles and other City infrastructure located thereon in its proprietary capacity. The parties agree that in entering into this Master License or taking any action in connection herewith, the City is in no manner waiving its objections to the Ruling.

Notwithstanding the foregoing, if, during the Term of this Master License, any final legislative, regulatory, judicial, or other action affecting the rights or obligations of the parties, or establishing rates for the construction, operation, maintenance, repair or replacement of Equipment on Infrastructure or in the right-of-way, that differ, in any material respect from the rates of the Agreement (collectively, "**New Laws**") are finally adopted, or any applicable Laws are interpreted or clarified through further regulatory proceedings, orders, rules, regulations, contested court decisions or appeals including, without limitation, the Ruling (collectively, "**Clarification of Existing Law**"), the terms of this Section 4.1.6 shall apply.

The parties acknowledge that City intends to enter into similar agreements (such agreements and this Master License collectively referenced as "**Master License Agreements**") with other parties who desire to install small wireless facilities within the public right-of-way in a form substantially similar to this Master License. The City may, upon thirty (30) days' written notice to all parties to any Master License Agreements, request that the License Charge of the Master License Agreements which are affected by any New Law or Clarification of Existing Law be renegotiated to conform to the New Law or Clarification of Existing Law on a going forward basis for all existing and new Pole Licenses.

The City and all parties to any Master License Agreements shall meet and confer to negotiate in good faith for an amendment to the License Charge in the Master License Agreements to fully and fairly implement the License Charge of the New Law or Clarification of Existing Law, it being the intention that all Master License Agreements are to be amended in a substantially similar manner. If within ninety (90) days after delivery of a request for renegotiation by the City, the parties are unable to agree upon an amendment to the Master License Agreements, a party may send a written notice of impasse ("**Notice of Impasse**") to the other parties. Within thirty (30) days after the date of the Notice of Impasse, a party may request mediation of the issues by any entity offering dispute resolution procedures as may be acceptable to the parties in writing. If the parties agree to mediation, then the cost of the mediation shall be shared equally by the parties. If none of the parties have requested mediation within thirty (30) days after the Notice of Impasse or if the parties are unable to reach an agreement during mediation, then thereafter, any party may pursue all available remedies at law or in equity, including regulatory or judicial relief. Notwithstanding the foregoing, if City and Licensee agree on the manner in which this Master License should be amended to implement the License Charge, City and Licensee may proceed with such amendment even if City has not reached a similar agreement with the other parties to any Master License Agreements, in which case, Licensee shall not be required to participate in or be bound by any subsequent dispute resolution procedures between City and other parties to any Master License Agreements.

If, at any time after the License Charge is recalculated pursuant to the foregoing procedures, the Ruling is reinstated, then the License Charge shall likewise be reinstated for such period of reinstatement, provided that no License Charge previously paid by Licensee shall be refunded by reason of the reinstatement.

#### **4.2. Pole License Administrative Fee**

At the time Licensee delivers to the City a Pole License Agreement, Licensee shall pay to the City a nonrefundable administrative fee in the amount of \$400 (the "**Pole License Administrative Fee**"), which the parties agree approximately represents the City's reasonable costs to review each Pole License Agreement. The City will not be obligated to commence its review for any Pole License Agreement until the City receives the Pole License Administrative Fee. Each year throughout the Term on January 1 (each an "**Adjustment Date**") the Pole License Administrative Fee will be increased 3% over the Pole License Administrative Fee payable in the immediately previous year. The

adjustment provided in this Section will be effective even if the first License Year was for less than a full calendar year.

Term Year	Year	Pole License Administrative Fee
1	2020	400.00
2	2021	412.00
3	2022	424.36
4	2023	437.09
5	2024	450.20
6	2025	463.71
7	2026	477.62
8	2027	491.95
9	2028	506.71
10	2029	521.91

#### **4.3. Late Charges**

In the event that Licensee fails to pay any License Charge, Additional Costs, or any other amount payable to the City within 15 days after the City notifies that such amounts are due and unpaid, such amounts will be subject to a late charge equal to 5% of unpaid amounts.

#### **4.4. Default Interest**

Any License Charges, Additional Costs, and all other amounts payable to the City other than late charges will bear simple interest at the rate of 10% per annum on any outstanding balance from the date which is thirty (30) days following the due date for such amount until the past due amount is paid in full to the City. Any sums received shall be first applied towards any interest, then to the late charge and lastly to principal amount owed. Any interest or late charge payments will not alone excuse or cure any default by Licensee.

#### **4.5. Additional Costs**

The parties to this Master License define “**Additional Costs**” to collectively mean any sums payable by Licensee to the City in its proprietary capacity as the licensor, which includes without limitation any late charges, storage of Equipment costs actually and reasonably incurred by the City, actually and reasonably incurred costs in connection with a request for the City’s consent to an Assignment under Section 16.2 (Proposed Assignment Procedures) and Default Fees under Section 25.2.4; provided, however, that the term excludes any (1) License Charges; (2) Pole License Administrative Fee; (3) any other amounts payable to the City by Licensee in connection with the City’s

review of Pole License Agreements or coordinating and inspecting Equipment installed on the License Area; and (3) any payments made to the City in its regulatory capacity.

#### 4.6. Payment Procedures

Licensee shall pay all License Charges, Additional Costs and all other amounts payable to the City in cash or other immediately available funds by (1) local check payable to the City of Fremont, 3300 Capitol Ave, Fremont, CA 94538 or (2) electronic wire transfer to an account specified by the City, with advance email notification to the City of payment amount. Any payment made with a dishonored check will be deemed unpaid. The parties may change the payment address from time-to-time by written notice. All charges and/or costs, including the Additional Costs (but excluding the License Charge) payable under this Master License shall be billed by the City within one (1) year from the end of the calendar year in which the charges or costs, as the case may be, were incurred. Any charges and/or costs beyond such period shall not be billed by the City and shall not be payable by Licensee.

#### 4.7. Estimated Costs

The parties agree that the Additional Costs payable under this Master License represent a fair and reasonable estimate of the administrative costs that the City will incur in connection with the matters for which they are imposed and that the City's right to impose the Additional Costs is in addition to, and not in lieu of, any other rights it may have under this Master License. Furthermore:

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

Licensee 

City 

### 5. USES

#### 5.1. Permitted Use

Licensee may use the License Area solely for the installation, operation and maintenance of Equipment for transmission and reception of wireless communications signals (the "Permitted Use") in compliance with all applicable Laws and any conditions in any Regulatory Approvals and for no other use whatsoever without the City's prior written consent, which the City may withhold in its sole and absolute discretion for any or no reason. Licensee may sublicense or otherwise allow its Invitees to use capacity on

Licensee's Equipment; provided, however, that any such third parties shall not be permitted to perform any physical work or add any equipment on any Pole without the City's prior written consent, which the City may reasonably withhold or condition as the City deems necessary to protect the Pole or public health safety and/or welfare.

## **5.2. Prohibition on "Macro Cell" Uses**

The City and Licensee intend this Master License and any Pole License to cover only "small cell" and/or distributed antenna system installations, as those terms are commonly understood to mean small, low-power, low-elevation, unobtrusive wireless facilities intended to cover relatively small geographic areas. Licensee expressly acknowledges and agrees that the Permitted Use under this Master License does not include the right to use any Pole as a support structure for a "macro cell" or a traditional wireless tower typically constructed on private property involving a high-powered deployment, typically installed relatively high on a tower, to provide signal coverage to a large geographic area. The City may, in its sole and absolute discretion, approve "macro cell" facilities on its Poles on a case-by-case basis.

## **5.3. Prohibition on Illegal Uses or Nuisances**

Licensee shall not use the License Area in whole or in part in any unlawful manner or for any illegal purpose. In addition, Licensee shall not use the License Area in whole or in part in any manner that constitutes a public or private nuisance or hazard as determined by the City in its reasonable judgment; provided, however, the City acknowledges and agrees that the Permitted Use is not and shall not, in and of itself, be considered a public or private nuisance or hazard. Licensee shall take all commercially reasonable precautions to minimize the occurrence of any public or private nuisances or hazards in connection with its uses and activities on or about the License Area.

## **5.4. Signs or Advertisements**

Licensee acknowledges and agrees that its rights under this Master License and any Pole License do not authorize Licensee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on the License Area, except as required by applicable Laws or as approved by City in connection with Pole License.

# **6. POLE LICENSES**

## **6.1. City Approval Required**

Licensee shall not have any right to use the License Area in whole or in part for any purpose until and unless the City approves a Pole License. Subject to any express limitations in this Master License, the City will not be obligated to subordinate its municipal functions or proprietary interest in any manner whatsoever to Licensee's interest under any Pole License. When the City considers whether to approve or disapprove any Pole License Agreement, the City may consider any matter that affects its municipal functions or proprietary interests, which include without limitation: (1)

Licensee's proposed plans and Equipment specifications; (2) compliance with any applicable Laws; (3) impacts on the City's street light operations; (4) any potential hazards or unsafe conditions that could result from Licensee's installation, operation or maintenance of Equipment on the Pole and/or Utility Infrastructure; (5) any potential visual or aesthetic impacts, which includes without limitation whether any commercially reasonable alternative locations or configurations would be more aesthetically desirable or appropriate in the City's sole discretion; (6) the additional load on the Pole and/or Utility Infrastructure the proposed Equipment would create; and (7) any municipal plans for the Pole and/or Utility Infrastructure or right-of-way in proximity to the Pole and/or Utility Infrastructure

## **6.2. Design Guidelines**

The parties agree that Equipment that meets the design guidelines more particularly described and depicted in **Exhibit B** (the "**Design Guidelines**") will be presumptively approvable by the City. The City may update and amend the Design Guidelines from time-to-time, and may substitute such updated or amended Design Guidelines for the current **Exhibit B** upon written notice to Licensee; provided, however, such updated or amended Design Guidelines shall not apply retroactively unless required by Laws. The City shall consult in good faith with Licensee before any update or amendment to the Design Guidelines becomes effective and shall adopt and apply the Design Guidelines in a reasonable, uniform and nondiscriminatory manner. Nothing in this Section 6.2 is intended to limit or affect the City's rights to disapprove any Pole License Agreement pursuant to Section 2.1.2 (Limitations on License Areas), Section 6.1 (City Approval Required), Section 6.4.5 (City's Right to Disapprove) or any other provision in this Master License that expressly reserves the City's right to disapprove any Pole License Agreement.

## **6.3. Pole License Agreement**

Each Pole License application must include: (1) two partially executed (i.e., executed by Licensee) duplicate counterparts of a Pole License in the form attached as **Exhibit A** to this Master License, with fully completed Exhibit A-1 and Exhibit A-2 attached to such partially executed Pole License; (2) the Pole License Administrative Fee; and (3) Radio & Antenna Equipment Specifications.

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

The City will review complete Pole License applications in a reasonably prompt manner, taking into account the nature and scope of each Pole License application and/or the particular Poles requested in such Pole License application, and in the chronological order (date and time) in which a complete Pole License application is submitted or deemed submitted. Except as specified otherwise in this Master License, the City will not prioritize any application or licensee over any other application or licensee. The parties acknowledge and agree that (1) the City will not be obligated to prioritize Pole License Agreement review over its municipal functions; (2) the City's staff and budget considerations will impact the City's ability to review and process Pole License

application; and (3) City will complete its review of any Pole License application within sixty (60) days following the date when a complete Pole License application is submitted by Licensee to the City. The Parties agree that Licensee shall not submit more than fifteen (15) Pole License applications to the City per month during the first nine (9) months of the Term of the Master License Agreement.

#### **6.4.1 Incomplete Pole License Applications**

The City will not be obligated to review or approve any incomplete Pole License application. In the event that Licensee submits an incomplete Pole License application, the City will provide written notice to Licensee by email of why the Pole License application is incomplete and will suspend its review for that incomplete Pole License application until Licensee delivers all required elements for a complete Pole License application. The date and time when Licensee submits the missing elements will be deemed the date and time that Licensee submitted the Pole License application.

#### **6.4.2 Required Changes to the Pole License Application**

In the event that the City reasonably determines for any reason that the Permitted Use at any particular Pole Location would impede its municipal functions or otherwise negatively affect its proprietary interests, the City will provide written notice to Licensee as soon as reasonably practicable. Licensee will have 30 days from receipt of such notice to change its Pole License application without any impact on the Pole License application's priority relative to any other applications then under review or later received by the City. Any changes received after the 30-day period or any other changes Licensee may make to the Pole License application will cause the date and time on which the application was submitted or deemed submitted to be changed to the date and time on which Licensee submitted the proposed changes.

#### **6.4.3 Consultation with Other City Departments**

The City may consult with other departments within the City to assess whether Licensee's proposed Equipment poses any concerns, which includes without limitation any concerns about aesthetics, historic or environmental impacts, traffic control, pedestrian access and general right-of-way management. Licensee acknowledges that any consultation with any other City departments in accordance with this Section 6.4.3 and any actions or failures to act by the City that may result from such consultations would be in the City's proprietary capacity as the Pole owner and not an exercise of the City's regulatory authority.

#### **6.4.4 Pole License Application Approval**

In the event that the City approves a Pole License application, the City will return one fully executed Pole License to Licensee. Licensee acknowledges and agrees that the City's decision to approve or disapprove any Pole License application is not, and will not be deemed to be, a regulatory determination subject to any administrative appeal, but is an exercise of the City's proprietary authority over its Poles as its personal property. In the event that Licensee fails to submit complete applications for Regulatory Approvals

within forty-five (45) days from the date the City returns the fully executed Pole License Agreement, the Pole License shall automatically expire. In the event that Licensee fails to commence construction pursuant to the Pole License within six (6) months from the date the City fully executes the Acknowledgment Letter, the Pole License shall automatically expire unless the City Manager or designee grants a written extension that may not exceed one (1) additional year. Licensee shall not be entitled to any refund for any fees, which include without limitation the License Charge, paid in connection with a Pole License that expires pursuant to this Section 6.4.4. Nothing in this Section 6.4.4 is intended to prohibit or prevent Licensee from submitting a new Pole License application for the same or substantially the same Poles as those covered under a Pole License that expired pursuant to this Section 6.4.4.

#### **6.4.5 City's Right to Disapprove**

Licensee acknowledges that the City reserves the absolute right to disapprove any Pole License application in whole or in part when the City determines in its sole but reasonable judgment that the subject Pole Location or proposed Equipment would interfere with the City's municipal functions or proprietary interests, or create a hazardous or unsafe condition. In addition, Licensee acknowledges that the City reserves the absolute right to disapprove any license within a Pole License application when the subject Pole would involve above-ground equipment (other than antennas, any required electric meter on the Pole and the equipment otherwise permitted above ground in Section 2.1.2). If the City disapproves any Pole License application, then the City shall provide written notice by email, of the denial to Licensee of why the Pole License application has been denied with the basis for such disapproval.

#### **6.4.6 Collocation**

Notwithstanding 47 U.S.C. § 332(c)(7); 47 U.S.C. § 253; 47 U.S.C. § 1455; 47 C.F.R. § 1.40001; California Public Utilities Code §§ 7901 or 7901.1; California Government Code §§ 50030, 65850.6, 65964 or 65964.1; and any judicial or administrative interpretations in connection with any such Laws, the parties agree as follows: (i) Licensee may not sublicense any portion of a Pole licensed to Licensee under a Pole License Agreement or permit a third party to collocate on such Pole without City's prior written approval, which City may withhold in its sole and absolute discretion; (ii) a third party, who is not party to a Master License Agreement with the City or sublicensee of a party to a Master License Agreement that desires to use or occupy City's Poles (including any Poles licensed to Licensee) shall be obligated to enter into a separate Master License Agreement with the City that governs the terms and conditions in which the third party may use and occupy City's Poles and specifically authorizes the third party's use and occupancy of the Pole; (iii) in the event a third party attempts to collocate or otherwise occupy a Pole licensed to Licensee without the approval of both City and Licensee, City and Licensee shall reasonably cooperate to determine the use or occupation of such Pole by such third party; and (iv) nothing in this Master License Agreement gives Licensee the right to use the Poles pursuant to Public Utilities Code sections 7901 and 7901.1. Pursuant to Section 16.6, Licensee's subleasing of

Equipment to a third party customer carrier ("Carriers") shall not constitute a sublicense under this agreement.

## **7. EQUIPMENT INSTALLATION**

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

Licensee must submit detailed plans and equipment specifications as part of the Encroachment Permit Application, which must include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed in connection with the License Area. Licensee acknowledges that the detailed Plans and Specifications submitted and approved as part of the Encroachment Permit process will be deemed to be the "**Approved Plans**" and, subject to Section 9.2 below, that Licensee will be permitted to install only the Equipment and other improvements shown on such Approved Plans.

#### **7.1.1 Site Identification Required**

On each licensed Pole, Licensee must install one identification plate in strict compliance with the size, material, form and substance as shown on the Approved Plans. The identification plate must include Licensee's corporate name and telephone number at which Licensee's On-Call Representative can be reached at all times (24 hours per day and 7 days per week). Licensee must replace the identification plate within 10 business days in the event that any information on such plate changes.

#### **7.1.2 Changes Required for Regulatory Approvals**

Licensee may amend previously Approved Plans when such changes are required to obtain or maintain compliance with other Regulatory Approvals necessary to install the Equipment. Any such changes, except for changes permitted pursuant to Section 9.2 below, will require the City's prior written approval, which consent shall not be unreasonably withheld, conditioned or delayed. The City will provide notice of its decision to Licensee in accordance with Section 28.1 (Notices).

#### **7.1.3 Corrections to Approved Plans**

Licensee shall have the obligation to correct any material errors or omissions in any Approved Plans and related Regulatory Approvals. Licensee shall promptly send written notice to the City in the event that Licensee discovers any such defects. Any Approved Plans and/or amendments to Approved Plans by the City will not release or excuse Licensee's obligations under this Master License.

### **7.2. Prior Regulatory Approvals Required**

Licensee shall not commence any work at the License Area until Licensee obtains all necessary Regulatory Approvals, which includes without limitation, a design review permit, an encroachment permit, a construction or building permit, electrical permit and any other permit obtained through any other City department, and tenders full and

complete copies of each Regulatory Approval to the City. City shall cooperate with Licensee in its effort to obtain the Regulatory Approvals. The City's consent or refusal to consent to any Pole License issued by the City in its proprietary capacity as the Pole owner will not be deemed to be any approval or denial in connection with any Regulatory Approval issued by the City in its regulatory capacity as a municipal government.

### **7.3. Installation; Strict Compliance with Approved Plans**

Licensee shall not commence any work at the License Area until the City provides Licensee with the Acknowledgement Letter or an equivalent letter to confirm the Commencement Date. Subject to Section 9.2 below, Licensee and/or its Agents shall perform all work in connection with the License Area in strict compliance with the Approved Plans and in a diligent, skillful and workmanlike manner. Subject to Section 9.2 below, all installed Equipment must be in compliance with the Approved Plans. After any work at the License Area concludes, Licensee and/or its Agents shall restore the License Area and any other City Property to the condition that existed immediately prior to when the work commenced, reasonable wear and tear or loss by casualty or other causes beyond Licensee's control excepted.

#### **7.3.1 Alterations to City's Property**

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

#### **7.3.2 Licensee's Contractors**

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

### **7.4. Labor and Materials Costs**

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

proposed installation. Licensee shall timely pay for all labor, materials, Equipment and all professional services related to the Permitted Use or furnished to the License Area at Licensee's direction or for Licensee's benefit.

### **7.5. Project Managers**

The City and Licensee each designate the person listed in this Section 7.5 as its project manager to coordinate Licensee's Equipment design and installation, and serve as each party's respective primary contact person for all design, engineering, construction and installation issues that may arise between the parties in connection with this Master License.

#### **City's Project Manager:**

Name: Hans Larsen  
Title: Public Works Director  
Phone: (510) 494-4700  
Email: hlarsen@fremont.gov  
Address: 39550 Liberty Street  
Fremont, CA 94537-5006

#### **Licensee's Project Manager:**

Name: Tasha Stack  
Title: Project Manager  
Phone: (925) 277-6014  
Email: ts670x@att.com  
Address: 5001 Executive Parkway  
Room 4W750H  
San Ramon, CA 94583

The Parties acknowledge that each Party's project manager is not exclusively assigned to this Master License, and that each Party's project manager may not always be immediately available to the other Party or its project manager. The Parties further acknowledge that the authority delegated by each Party to its respective project manager is limited to the administration of this Master License, any Pole License Agreements and any approved Pole Licenses. The Parties' respective project managers will have no obligation to perform any term or covenant to be performed by the other party under this Master License. Notices to the Parties' respective project managers alone will not be deemed effective notice for any purpose under this Master License. The Parties may change the project managers above from time-to-time through written notice to the addresses above or the then-current notice address.

## **7.6. Coordination with the City**

Licensee must coordinate all of its installation, construction and other work on or about the License Area with the City so as to avoid any interference (physical, electronic or otherwise) with any existing utilities, substructures, facilities, City Property and the City's municipal operations.

## **7.7. Prevailing Wages**

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

Licensee shall defend, indemnify and hold the City harmless and its officers, officials, employees, volunteers, agents and representatives (collectively, "**Indemnitees**") from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "**Claims**"), arising directly from or in direct connection with Licensee's failure to comply with any Prevailing Wage Policies that apply to the work relating to Licensee's Equipment, including all Claims made by contractors, subcontractors or other third party claimants with whom Licensee has contracted to perform work relating to Licensee's Equipment within the scope of this indemnity pursuant to Labor Code sections 1726 and 1781, as amended and added by Senate Bill 966.

## **7.8. Title to Licensee's Equipment and Other Improvements**

All Equipment and other improvements installed, constructed or placed on or about the License Area by Licensee or its Agents or Invitees will be deemed and remain at all times Licensee's personal property. All structural improvements to any Pole, any replacement Pole or Utility Infrastructure, all as approved by the City and shown in the Approved Plans, will become and remain City Property should Licensee vacate or abandon such License Area.

## **8. PUBLIC WORKS OPERATIONS**

### **8.1. City's Access to License Areas**

Except as specifically provided otherwise in this Master License, the City and its Agents have the right to access any License Area in whole or in part at any time without notice for any purpose. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's or its Agents' access to the License Area, which includes any Equipment removed in an emergency or other exigent circumstances pursuant to Section 8.4 (Emergencies), except to the extent that the damage arises directly and exclusively from the active or sole negligence or willful misconduct of the City or its Agents and not contributed to by the acts, omissions or negligence of Licensee, its Agents or Invitees. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the City's active or sole negligence or willful misconduct and not contributed to by Licensee's or its Agents' or Invitees' acts, omissions or negligence. Notwithstanding the foregoing, except in the event of an emergency or other exigent circumstance posing an imminent threat of harm to the safety of persons or property, in no event shall the City or its Agents handle or remove any of Licensee's Equipment.

### **8.2. Repairs, Maintenance and Alterations to Poles**

The City and/or the City's Public Works Department and/or agent or contractor will: (1) maintain and repair Poles in good condition and repair, and otherwise as needed, in its sole but reasonable judgment, for its street light operations and other municipal functions; and (2) correct any immediately hazardous condition. Except as provided in Section 26 (Termination), and excluding conditions that arise from the City's or its Agents' active or sole negligence or willful misconduct, neither any City work on any Pole nor any condition on any Pole will: (a) entitle Licensee to any damages; (b) excuse or reduce any obligation by Licensee to pay any License Charges or Additional Costs or perform any covenant under this Master License; or (c) constitute or be construed as a constructive termination of this Master License or any Pole License.

### **8.3. Repairs, Maintenance and Alterations to License Areas**

Subject to the terms and conditions set forth in Section 27 (Interference) below, the City may, at any time, alter, add to, repair, remove from and/or improve the License Area in whole or in part for any municipal operational purpose, which includes without limitation maintenance and improvements in connection with street light services and compliance with Laws; provided (1) the City makes a good-faith effort to provide advance notice to Licensee's On-Call Representative as soon as reasonably practicable; (2) the City allows Licensee's representative to observe the City's work; and (3) the City takes reasonable steps not to disrupt Licensee's ordinary operations on the License Area. The provisions in this Section 8.3 will not be construed to allow Licensee's ordinary

operations to impede or delay the City's authority and ability to make changes to the License Areas necessary to maintain street light services.

#### **8.4. Emergencies**

In emergencies, the City's work will take precedence over Licensee's operations, which includes without limitation any Equipment operated on the License Area, and the City may access the License Area in whole or in part as the City deems necessary in its sole but reasonable determination and in accordance with this Section 8.4, whether the City has notified Licensee of such emergency or other exigent circumstances or not. When safe and practicable, the City will notify Licensee of any emergency or other exigent circumstances that requires the City to remove or replace any Pole and will allow Licensee to remove its Equipment before the City removes or replaces the Pole; provided, however, that the City will remove the Equipment from the Pole when in the City's sole but reasonable determination it would (1) be unsafe or not practicable to wait for Licensee to perform the work; (2) cause significant delay; or (3) otherwise threaten or compromise public safety or public services. The City will remove any Equipment with reasonable care and store the Equipment for retrieval by Licensee and the City will provide notice as soon as reasonably practicable after such emergency, but in no event later than 24 hours after the emergency. Licensee shall have the right to reinstall such removed Equipment or equivalent Equipment at Licensee's sole expense on the repaired or replaced Pole and in accordance with Section 7 (Equipment Installation). The City's removal of Licensee's Equipment in emergencies or other exigent circumstances will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

### **9. LICENSEE'S MAINTENANCE OBLIGATIONS**

#### **9.1. Damage to Poles**

##### **9.1.1 Notice to the City**

Licensee agrees to give the City notice of the need for any repair to a Pole promptly after Licensee discovers any damage from any cause. Licensee's agreement to provide notice is not an assumption of liability for any life-threatening or hazardous conditions or assumption of the City's duty to maintain and repair a Pole in good condition and repair unless and to the extent the damage is caused by the acts, omissions or negligence of Licensee or its Agents or Invitees.

##### **9.1.2 Damage Caused by Licensee**

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

demand for payment, together with copies of invoices or other evidence to document the costs incurred.

### **9.1.3 No Right to Repair**

Absent notice from the City with a demand to cure any damage to a Pole or as approved in a Pole License, Licensee is not authorized to make any repairs to any Pole. Licensee expressly waives all rights it may have under any applicable Laws to make repairs at the City's expense.

## **9.2. Equipment Maintenance**

Licensee shall, at its sole cost and expense, install, maintain and promptly repair any damage to any Equipment installed on the License Area whenever repair or maintenance may be required, subject to the City's prior approval if required under Section 7 (Equipment Installation). In connection with the foregoing, Licensee shall have access to its Equipment at all times. Licensee is not required to seek the City's prior approval for any Equipment repair, maintenance, replacement or other installation on the License Area when such Equipment is shown on the Approved Plans, or any Equipment modifications or replacements consisting of "like-kind" equipment that is substantially similar (or smaller) in appearance, dimensions and weight, provided that Licensee obtains any required Regulatory Approvals for the same. If the Equipment is replaced in a manner that would affect the RF emissions, Licensee shall submit a new RF Compliance Report to the City. Licensee must obtain the City's prior written approval for any Equipment repair, maintenance, replacement or other installation that involves larger, different or additional Equipment than shown on the Approved Plans or solely contained within Licensee's equipment cabinets, if any. Licensee expressly acknowledges that the installation of larger or additional Equipment shall require City's prior written approval pursuant to this Section 9.2, regardless of the degree in which the larger or additional Equipment extend the height of the Pole or protrude from the Pole. Any work on Licensee's Equipment installed on Poles that is authorized or permitted under this Section 9.2 is subject to Licensee obtaining any required Regulatory Approvals.

## **9.3. Graffiti Abatement**

Licensee's repair and maintenance obligation includes the removal of any graffiti or similar vandalism from the License Area within 2 business days after the City notifies Licensee in writing of said graffiti or vandalism.

## **9.4. Standard of Work**

All work performed by or for Licensee under this Section 9 shall be: (1) at Licensee's sole cost and expense; (2) performed only by qualified and trained persons and appropriately licensed contractors; (3) performed in a manner and with equipment and materials that will not interfere with or impair the City's operations; (4) compliant with all applicable Laws; and (5) performed solely by Licensee and/or Agents and not by Licensee's Invitees.

## **10. LIENS**

Licensee shall keep the License Area free and clear from any and all liens in connection with any work performed, material furnished or obligations incurred by or for Licensee. Licensee shall inform each and every contractor and material supplier that provides any work, service, equipment or material to Licensee in any way connected with Licensee's use of the License Area that the License Area is public property and is not subject to mechanics' liens or stop notices for Equipment or other materials or services provided for Licensee's Equipment. If Licensee does not cause the release of lien of a mechanic's lien or stop notice by any contractor, service provider or equipment or material supplier purporting to attach to the License Area or other City Property within 30 days after receipt of written notice from the City of the lien and City's demand to remove the lien, then thereafter, the City will have the right, but not the obligation, to cause the same to be released by any means it deems proper, including payment of the Claim giving rise to such lien. Licensee must reimburse the City for all expenses it incurs in connection with any such lien (including reasonable attorneys' fees) within 30 days following receipt of the City's written demand together with copies of invoices or other evidence to document the costs incurred. Licensee shall give the City at least 5 business days' prior notice of commencement of any construction or installation on any part of the License Area except for minor and routine repair and maintenance of Licensee's Equipment. Licensee shall not create, permit, or suffer any other encumbrances affecting any portion of the License Area.

## **11. UTILITIES**

Except to the extent the City authorizes connection to electrical facilities on its Pole in accordance with the rules, regulations, and policies of Pacific Gas and Electric Company (PG&E), which authorization the City shall not unreasonably withhold, condition or delay. Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to Licensee's Equipment directly from PG&E, including, but not limited to installation of separate electric meters, if necessary. Licensee shall be responsible for making payments to PG&E for the service attributable to Licensee's Equipment. Licensee shall comply with all Laws and rules and regulations of PG&E relating to installation and connection of Licensee's Equipment to the electricity supply.

While the City is not obligated to make its Utility Infrastructure available to Licensee, nonetheless, the City shall make a good faith effort to make its Utility Infrastructure available in connection with each Pole location identified by Licensee in a Pole License application, and Licensee and the City shall work cooperatively to allow Licensee to use the City's Utility Infrastructure wherever possible.

## **12. TAXES AND ASSESSMENTS**

### **12.1. Possessory Interest Taxes**

Licensee understands and acknowledges that this Master License or Pole License may create a possessory interest subject to taxation and that Licensee will be required to pay any such possessory interest taxes under Revenue and Taxation Code Section 107.6. Licensee further understands and acknowledges that any sublicense or assignment permitted under this Master License or Pole License and any exercised options to renew or extend this Master License may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this Master License or Pole License.

### **12.2. Licensee's Tax Obligations**

Licensee agrees to pay when due and prior to delinquency any and all taxes, assessments, charges, excises and exactions whatsoever, including without limitation any possessory interest taxes, that are attributable to or in connection with Licensee's use within the License Area or Licensee's Equipment that are imposed on Licensee under Law. Licensee shall not allow or suffer any lien for any taxes assessments, charges, excises or exactions whatsoever to be imposed on the License Area or Licensee's Equipment. In the event that the City receives any tax or assessment notices on or in connection with the License Area or Licensee's Equipment, the City shall promptly (but in no event later than 30 days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to Licensee's Equipment.

## **13. COMPLIANCE WITH LAWS**

### **13.1. Compliance with Current and Future Laws**

Licensee shall install, operate and maintain the Equipment, and shall perform all work in connection with such installation, operation and maintenance, in strict compliance with all applicable Laws and all conditions in any Regulatory Approvals issued in connection with the Equipment or its installation and operation on any Pole. The parties agree that Licensee's obligation to comply with all Laws is a material part of the bargained-for consideration under this Master License, irrespective of the degree to which such compliance may interfere with Licensee's use or enjoyment of the License Area, the likelihood that the parties contemplated the particular Law involved and whether the Law involved is related to Licensee's particular use of the License Area. Notwithstanding the foregoing, in the event that the compliance with laws obligation is not triggered as a direct result of Licensee's installation, operation or maintenance of the Equipment, and Licensee determines that the cost of the compliance with laws obligation is too substantial to justify Licensee's continuing use of the License Area, then in lieu of Licensee undertaking the compliance with laws obligation, Licensee may elect to terminate the applicable Pole License Agreement without further liability to the City, and Licensee shall remove its Equipment from the License Area in accordance

with its removal obligations set forth in Section 23.1 of this Master License. Subject to the preceding sentence, no occurrence or situation arising during the Term arising under any current or future Law, whether foreseen or unforeseen and however extraordinary, will relieve Licensee from its obligations under this Master License or to otherwise seek redress against the City. Licensee agrees that, in the event a change in Law or a future Law that would permit Licensee to receive any abatement, diminution, reduction or suspension of payment of License Charges, or to compel the City to make any repairs, will only apply on a going forward basis, unless the change in Law or future Law expressly requires retroactive application. The City agrees to comply with all Laws applicable to the City's ownership or control of the License Areas and any Pole and/or Utility Infrastructure located thereon.

## **13.2. Licensee's Personnel**

### **13.2.1 Personnel Training and Certification**

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

### **13.2.2 Licensee's Indemnification for Personnel Injuries**

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

## **13.3. Compliance with CPUC GO 95**

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

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

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

#### **13.5. Compliance with RF Exposure Regulations**

Licensee shall comply with all Laws related to maximum permissible exposure to RF or EMF emissions on or about the License Area, which includes all applicable FCC standards. Licensee must provide to the City an RF Compliance Report for each Pole on which the Licensee desires to install or operate its Equipment. If not provided earlier, Licensee must submit the RF Compliance Report to the City upon finalization of the Encroachment Permit.

### **14. DAMAGE OR DESTRUCTION**

#### **14.1. City’s Rights After Damage or Destruction**

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

##### **14.1.1 Election to Repair or Replace Damaged Pole**

Within 10 business days after the date on which the City discovers damage or destruction of a Pole and/or Utility Infrastructure licensed to Licensee that was not caused by Licensee, the City will give Licensee written notice of the City’s decision whether to repair or replace the damaged Pole and/or Utility Infrastructure and its good faith estimate of the amount of time the City will need to complete the work. If the City cannot complete the work within 30 days after the date that the City specifies in its notice, or if the City elects not to perform the work, then Licensee will have the right to terminate the affected Pole License on 15 days’ written notice to the City.

##### **14.1.2 Election to Remove Damaged Pole**

If the City elects to remove, rather than repair or replace, a damaged Pole licensed to Licensee, then the applicable Pole License will automatically terminate on the last day of the month in which the removal occurs.

### **14.1.3 Election to Remove Equipment from Damaged Pole**

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

### **14.2. Rights upon Termination**

After the City terminates a Pole License pursuant to Section 14.1 (City's Rights After Damage or Destruction), the City will: (1) refund any pre-paid License Charge in connection with the terminated Pole License on a pro-rata basis determined by the number of days left in the current License Year at the time such termination occurs subject to the Minimum Term as defined in Section 3.2 (Pole License Term) in this Master License; and (2) make efforts to prioritize Licensee's Pole License Agreement for one replacement Pole. However, nothing in this provision shall require the City to replace any Pole or Pole License that has been terminated.

### **14.3. Waiver of Statutory Rights**

The parties understand, acknowledge and agree that this Master License fully governs their rights and obligations in the event that any licensed Poles become damaged or destroyed, and, to the extent applicable, the City and Licensee each hereby waives and releases the provisions in California Civil Code §§ 1932(2) and 1933(4) to the extent such provisions would permit Licensee to terminate a Pole License in a manner that is not consistent with the terms of this Master License.

## **15. CONDEMNATION**

### **15.1. Permanent Takings**

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

#### **15.1.1 Termination**

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

### **15.1.2 Award**

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

### **15.1.3 No Statutory Right to Terminate**

The Parties understand, acknowledge and agree that this Section 15.1 (Permanent Takings) is intended to fully govern the parties' rights and obligations in the event of a permanent taking. Licensee and the City each hereby waives and releases any right to terminate this Master License in whole or in part under California Code of Civil Procedure §§ 1265.120 and 1265.130 to the extent such sections would permit Licensee to terminate a Pole License in a manner that is not consistent with the terms of this Master License.

### **15.2. Temporary Takings**

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

## **16. ASSIGNMENT AND OTHER TRANSFERS**

### **16.1. General Restriction**

Except as specifically provided in Section 16.3 (Permitted Assignments), Licensee shall not directly or indirectly assign its interests or rights, whether in whole or in part, in connection with this Master License, any Pole License or the License Area without the City's prior written consent. The City shall not unreasonably withhold, delay or condition its consent to any proposed Assignment; provided, however, that the parties acknowledge that the City may reasonably withhold its consent to any proposed Assignment at any time in which any monetary or other material default by Licensee under this Master License remains uncured.

## **16.2. Proposed Assignment Procedures**

### **16.2.1 Proposed Assignment Notice**

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

### **16.2.2 City Response**

The City shall approve or disapprove any request for consent to an Assignment within 30 days after the City receives a complete Proposed Assignment Notice, or 30 days after the deemed-effective date if Licensee delivers an incomplete Proposed Assignment Notice as described in Section 16.2.1 (Proposed Assignment Notice) (in either case, the "**Assignment Response Period**"). The City shall not unreasonably withhold, condition, or delay approval if the Proposed Assignee has a demonstrated ability to perform all the obligations of Licensee under this Master License and any Pole License issued hereunder. If the City fails to respond within the Assignment Response Period, the request for consent will be deemed disapproved. If the City delivers to Licensee written consent to the proposed Assignment, then Licensee shall have 100 days from Licensee's receipt of such written consent to complete the Assignment. The City's consent will be deemed revoked if Licensee fails to complete the proposed Assignment within the 100-day period; provided, however, that the 100-day period may be extended to a date certain in a written agreement, which the City shall not unreasonably refuse. As a condition on the City's consent, Licensee shall pay to the City fifty percent (50%) the amount by which any consideration actually received by Licensee by the Assignee exceeds the aggregate sum of all License Charges and Additional Costs that remain payable under the assigned Pole Licenses within 10 days after Licensee receives payment from the Assignee. Notwithstanding anything in this Master License or any Pole License to the contrary, the City may, in its sole and absolute discretion, refuse consent to any assignment to a Proposed Assignee with (i) liquid assets or other immediately available funds less than Ten Million Dollars (\$10,000,000); (ii) any history of discrimination or other employment practices that conflict with the City's nondiscrimination policies; or (iii) any pending or past criminal convictions or civil judgments against the Proposed Assignee or any current executives

of the Proposed Assignee that pertain to this Master License and any Pole License issued hereunder that would impugn or damage the City's reputation by association with said Proposed Assignee.

### **16.3. Permitted Assignments**

#### **16.3.1 Definition**

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

#### **16.3.2 Conditions**

A Permitted Assignment is subject to all the following conditions: (a) the Assignee uses the License Area only for the Permitted Use and holds all Regulatory Approvals necessary to lawfully install, operate, and maintain Equipment on the License Area; (b) Licensee provides the City with notice 30 days before or 30 days after the effective date of Permitted Assignment, stating the contact information for the Proposed Assignee; and (c) Licensee is not then in monetary default beyond all applicable notice and cure periods under this Master License.

### **16.4. Effect of Assignment**

No Assignment by Licensee, consent to Assignment by the City, or Permitted Assignment under Section 16.3 (Permitted Assignments) to any Assignee or other third party will relieve Licensee of any obligation on its part under this Master License, until and unless the Assignee signs a written agreement in a form reasonably acceptable to the City to unconditionally assume all Licensee's obligations under this Master License and any Pole License issued hereunder. Any Assignment that is not in compliance with this Section 16 will be void ab initio and shall entitle the City to declare Licensee in default of the Master License and/or the applicable Pole License Agreement(s) which were the subject matter of the Permitted Assignment. The City's acceptance of any License Charge, Additional Costs, or other payments from a proposed Assignee will not be deemed to be the City's consent to such Assignment, recognition of any Assignee, or waiver of any failure of Licensee or other transferor to comply with this Section.

## **16.5. Assumption by Transferee**

Each Assignee shall assume all obligations of Licensee under this Master License and each assigned Pole License and will be and remain liable jointly and severally with Licensee for all obligations to be performed by Licensee until and unless the Assignee signs a written agreement, in a form reasonably acceptable to the City, to unconditionally assume all Licensee's obligations under this Master License and any Pole License issued hereunder. Other than any Permitted Assignment under Section 16.3 above, no other Assignment will be binding on the City unless Licensee or the Assignee delivers to the City evidence reasonably satisfactory to the City that the Assignee has obtained all required Regulatory Approvals necessary to install, maintain and operate the Equipment and any other associated improvements or personal property, a copy of the Assignment agreement, and an instrument that contains a covenant of assumption by such Assignee reasonably satisfactory in substance and form to the City, consistent with the requirements of this Article. However, the failure or refusal of an Assignee to execute such instrument of assumption will not release such Assignee from its liability as set forth in this Section.

## **16.6. Licensee's Customers**

The parties agree and acknowledge that, notwithstanding anything in this Master License to the contrary, certain Equipment deployed by Licensee pursuant to this Master License may be owned and/or operated by Licensee's third-party wireless carrier customers ("**Carriers**") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Equipment shall be treated as Licensee's Equipment for all purposes under this Master License, which includes the right to remove and relocate the Equipment subject to the terms and conditions of this Master License, under the following conditions: (i) Licensee remains responsible and liable for all performance obligations under the Master License with respect to such Equipment; (ii) City's sole point of contact regarding such Equipment shall be Licensee; and (iii) such use by Licensee or Carriers does not involve any physical changes to the Equipment other than changes permitted or otherwise approved under Section 9.2.2 (Modifications). The parties further agree that only Equipment for one **Carrier** shall be installed per each Pole License.

## **17. LICENSEE'S INDEMNIFICATION OBLIGATIONS**

Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the City, its officials, employees, Agents, Invitees and their respective heirs, legal representatives, successors and assigns (the "**Indemnified Parties**"), harmless from and against any and all liabilities, losses, costs, claims, judgments, suits, demands, causes of action, settlements, damages, liens, fines, penalties and expenses, whether direct or indirect (each a "**Claim**"), caused by or arising in whole or in part from: (1) death or personal injury to any person or property damage or other loss that occurred on or about the License Area and caused by Licensee's or its Agents' or Invitees' authorized or unauthorized uses on or about the License Area; (2) any failure or refusal by Licensee to observe or perform any term, covenant or condition in this Master

License to be observed or performed on Licensee's part; (3) Licensee's or its Agents' or Invitees' uses or occupancy, or manner of use or occupancy, of the License Area; (4) Licensee's failure to comply with all Laws related to maximum permissible exposure to RF or EMF emissions on or about the License Area, which includes all applicable FCC standards; (5) the License Area condition or any occurrence on or about the License Area attributable to the events described in clauses (1), (2), (3) or (4) in this Section 17; (6) Licensee's failure to comply, if applicable, with the Prevailing Wage Policies with respect to the work relating to Licensee's Equipment, or (7) any act, omission or negligence of Licensee, its Agents or Invitees in, on or about the License Area, except to the extent that such Claim(s) arise from the Indemnified Parties' willful misconduct or active or sole negligence. Licensee's obligations under this Section 17 includes, without limitation, reasonable fees, costs and expenses for attorneys, consultants and experts, and the City's costs to investigate any Claim. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim that actually or potentially falls within this Section 17, even when the allegations in such Claim are groundless, fraudulent or false, and which obligation arises at the time the Indemnified Parties tender such Claim to Licensee and continues at all times until such Claim's final resolution. Licensee's obligations under this Section 17 will survive the expiration or termination of this Master License.

## **18. INSURANCE**

### **18.1. Licensee's Insurance**

As a condition to issuance of any Pole License, Licensee must provide proof of compliance with the insurance requirements in this Section except to the extent the City Attorney (or the City Attorney's designee) agrees otherwise.

#### **18.1.1 Required Coverages**

Licensee shall carry and keep in effect at all times during the Term, at Licensee's cost, insurance in the following amounts and coverages: (1) Commercial General Liability insurance as per ISO form CG 00 01 or equivalent (including premises operations; explosion, collapse and underground hazard; bodily injury and property damage; products/completed operations; contractual liability; independent contractors; personal and advertising injury and separation of insureds coverage) with limits of \$2 million per occurrence and \$5 million general aggregate; (2) Worker's Compensation Insurance per California statutory limits with Employer's Liability Limits of \$1 million each accident/disease/policy limits; (3) Commercial Automobile Liability Insurance per ISO form CA 00 01 or its equivalent with a limit of \$2 million combined single limit each accident for bodily injury and property damage, covering all owned and non-owned and hired vehicles including coverage for separation of insureds.

#### **18.1.2 Required Endorsements**

Commercial General Liability Insurance and Commercial Automotive Liability Insurance policies shall: (1) include by endorsement the City, its officers, employees and

volunteers as additional insureds as their interest may appear under this Agreement; (2) be primary insurance and non-contributory to any other insurance available to the additional insureds with respect to any claims that arise in connection with this Master License; and (3) provide that such policies shall afford coverage for all insurable claims based on acts, omissions, injury or damage that occurred or arose (or the onset occurred or arose) in whole or in part during the policy period caused, in whole or in part, by Licensee's use and occupancy of the License Area and operations conducted thereon. The City's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of the City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of the City, its employees, agents or independent contractors; and (iii) not exceed Licensee's indemnification obligation under this Master License, if any.

#### **18.1.3 Cancellation Notices**

Upon receipt of notice from its insurer(s), Licensee shall provide 30 days prior written notice to City of cancellation or non-renewal of any required coverage under this Master License that is not replaced.

#### **18.1.4 Claims-Made Policies**

In the event that any required insurance under this Master License is provided under a claims-made form, Licensee shall continuously maintain such coverage or an extended reporting clause purchased throughout the Term and, without lapse, for three years after this Master License expires or terminates, to the effect that, should a covered event during the Term give rise to a Claim brought after this Master License expires or terminates, such Claims will be covered under Licensee's claims-made policies.

#### **18.1.5 General Aggregate Limit**

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance used to meet requirements herein shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as an insured.

#### **18.1.6 Certificates**

On the Effective Date, Licensee shall deliver to the City ACORD form insurance certificates and blanket additional insured endorsements evidencing all the required coverages under this Master License. In addition, Licensee shall promptly deliver to the City all certificates after Licensee receives a request from the City.

### **18.1.7 Insurer Qualifications**

Licensee's insurance providers must be eligible to do business in California and must meet or exceed an A.M. Best's Key Rating A-VII or its equivalent.

### **18.1.8 Effective Dates**

The City shall not authorize Licensee to install any Equipment on any Pole until and unless all insurance coverages required to be carried by Licensee under this Master License have been obtained. Licensee shall ensure that all insurance coverages required to be carried by Licensee under this Master License remain in effect at all time until all Equipment has been removed from the License Area. The requirements in this Section 18.1.8 (Effective Dates) shall survive the expiration or termination of this Master License.

### **18.1.9 Licensee's Self-Insurance Alternative**

Licensee shall be permitted to meet its insurance obligations under this Master License through self-insurance without prior written consent from the City, where (i) Licensee or its parent company have and continuously maintain a tangible net worth of at least one hundred million dollars (\$100,000,000.00); (ii) Licensee continuously maintains appropriate loss reserves for the amount of its self-insurance obligations under this Section 18, 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 City, at Licensee's sole cost and expense, with counsel selected by Licensee, which counsel shall be licensed and in good standing in the State of California and with a minimum of 10 years of litigation experience with similar cases 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 Master License; 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 Master License. In the event that Licensee self-insures as an alternative insurance program, the permitted self-insurance program will not be deemed an amendment or implied waiver to any other requirement in this Master License. Any amendment to any insurance requirement must be in a written agreement.

### **18.1.10 No Limitation on Indemnification Obligations**

Licensee's insurance obligations under this Section 18 in no way relieves or decreases Licensee's liability under Section 17 (Licensee's Indemnification Obligations) or any other provision in this Master License.

### **18.1.11 Right to Terminate**

The City may elect, in its sole and absolute discretion, to terminate this Master License on written notice to Licensee if Licensee allows any required insurance coverage to lapse and does not reinstate or replace the lapsed insurance coverage within thirty days after Licensee receives such written notice.

### **18.2. City's Insurance**

Licensee acknowledges that the City self-insures against casualty, property damage and public liability risks. The City agrees to maintain an adequate program of self-insurance for public liability risks during the Term and will not be required to carry any third party insurance with respect to the License Area or otherwise.

### **18.3. Subrogation Waiver**

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

### **18.4. Contractors' Bonds and Insurance**

Licensee shall endeavor to require its contractors that install, maintain, repair, replace or otherwise perform any work on or about the License Area: (1) to provide bonds to guarantee the performance of the work and the payment of subcontractors and suppliers for any installation of Equipment, and (2) to have and maintain substantially the same insurance with substantially the same limits as required of Licensee.

## **19. LIMITATIONS ON THE CITY'S LIABILITY**

### **19.1. General Limitations on the City's Liability**

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

## **19.2. Consequential Damages**

Licensee expressly acknowledges and agrees that the License Charges and Additional Costs payable under this Master License do not take into account any potential liability of the City for consequential or incidental damages. The City would not be willing to enter into this Master License or issue any Pole Licenses in the absence of a complete waiver of liability, to the fullest extent permitted by Laws, for consequential or incidental damages due to the acts or omissions of the City, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers contained in this Master License and as a material part of the consideration for this Master License, the parties agree that neither party will be liable to the other in connection with this Master License or any Pole License for any consequential, special, indirect or incidental or punitive damages (including lost revenues, loss of equipment, interference, interruption or loss of service, or loss of data, inconvenience, disturbance, lost business, nuisance or other damages) for any cause of action, whether in contract, tort or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

## **19.3. No Relocation Assistance**

This Master License creates no right in Licensee to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (Cal. Gov. Code §§ 7260 *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 *et seq.*) or similar Law upon any termination of occupancy except as provided in Section 15 (Condemnation). To the extent that any relocation law may apply, Licensee waives, releases and relinquishes forever any and all Claims that it may have against the City for any compensation from the City except as specifically provided in this Master License upon termination of its occupancy of all or any part of the License Area.

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

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

## **19.5. Licensee's Waiver**

Licensee acknowledges the City's rights under this Section and waives any Claims arising from the City's exercise of such rights. In connection with the preceding sentence and releases and waives under Section 8.1 (City's Access to License Areas), Section 9.1.3 (No Right to Repair), Section 13.1 (Compliance with Current and Future Laws), Section 14.1.1 (Election to Repair or Replace Damaged Pole), Section 15.1.3 (No Statutory Right to Terminate), Section 18.3 (Subrogation Waiver), Section 19.1

(General Limitations on the City's Liability), Section 19.2 (Consequential Damages), Section 19.3 (No Relocation Assistance), Section 22.3 (Application) and any other waiver by Licensee under this Master License, Licensee acknowledges that it is familiar with section 1542 of the California Civil Code, which reads:

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

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

## **20. RECORDS**

### **20.1. Accounting Records**

Licensee shall maintain throughout the Term and for at least one year after this Master License expires or terminates the following records in an electronic format: (1) site identification and location for all Poles under active Pole Licenses; (2) the amount and payment date for all License Charges paid to the City pursuant to this Master License; and (3) all Regulatory Approvals issued in connection with the Equipment on Poles. The City, or its designee, will have the right at the City's cost, and as long as litigation is not pending between the City and Licensee arising from or related to this Master License, to inspect and audit Licensee's records once in any consecutive five (5) year period during the Term of this Master License, at Licensee's place of business during regular business hours on 15 days' prior written notice to Licensee. Such written notice from the City must identify with specificity the period for which the City wishes to conduct its audit. Any such inspection and/or audit shall at Licensee's option be under the direct supervision of one or more employees or Agents of Licensee, and shall be subject to Licensee's standard rules for the protection of any books and records which Licensee reasonably considers to be proprietary or confidential, and which are not otherwise in the public domain.

## **20.2. Estoppel Certificates**

Licensee and the City, at any time and from time-to-time on not less than 60 days' prior written notice from the other Party, shall execute, acknowledge and deliver to the requesting party or its designee, a certificate stating: (a) that Licensee has accepted the License Area (or, if Licensee has not done so, that Licensee has not accepted all or any part of the License Area and specifying the applicable portions of the License Area and reasons for non-acceptance); (b) the Commencement Dates of any Pole Licenses then in effect; (c) the Effective Date and Expiration Date of this Master License; (d) that this Master License and Pole Licenses are unmodified and in full force and effect or, if modified, the manner in which they are modified; (e) whether any defenses then exist against the enforcement of any obligations of Licensee or the City, as the case may be, under this Master License (and if so, specifying the same); (f) whether any of the obligations of Licensee or the City, as the case may be, under this Master License are outstanding (and if so, identifying any obligations that the requesting party believes that the other party has failed to meet); (g) the dates, if any, to which the License Charges and Additional Costs have been paid; and (h) any other information reasonably related to the status of this Master License or any Pole Licenses issued pursuant to this Master License that is not proprietary or confidential that may be reasonably required by any such persons.

## **21. RULES AND REGULATIONS**

At all times throughout the Term, Licensee shall faithfully comply with any and all reasonable rules, regulations and instructions that the City may from time-to-time establish and/or amend with respect to the License Area provided that such rules and regulations shall be adopted and applied in a reasonable, uniform and non-discriminatory manner.

## **22. SURETY BOND**

### **22.1. Provision of Surety Bond**

Licensee shall furnish a surety bond in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "**Surety Bond**") as security to provide recourse for the City (at its option) in the event of a default in the performance of any of Licensee's obligations under this Master License, including but not limited to removing Licensee's Equipment from twenty five (25) Poles and storing or disposing thereof. In the event Licensee has installed Equipment on more than twenty-five (25) Poles, City shall require an increase in the amount of the surety bond on an estimated restoration and/or disposal cost of Two Thousand and 00/100 Dollars per Pole. Licensee, in its sole discretion, may elect to increase the amount of the Surety Bond at any time. Such bond shall be with a company and in a form and amount reasonably satisfactory to the City Manager and the City Attorney. Any acceptable surety having an expiration date earlier than the Expiration date of the Master License Agreement shall be automatically renewable. The

Surety Bond will be in addition to the security required for an encroachment permit under Chapter 12.05 of the Fremont Municipal Code.

## **22.2. Replenishment of Surety Bond**

In the event that the City applies or uses the Surety Bond in whole or in part to cure any default by Licensee under this Master License or any Pole License, Licensee shall replenish the Surety Bond in the amount and on the date specified in a written notice to Licensee. The City may, in the City's reasonable judgment, require Licensee to increase the Surety Bond amount from time-to-time in a reasonable amount when the City determines that Licensee's past acts or omissions in connection with the License Area warrants additional security.

## **22.3. Application**

Licensee agrees that the City may use the Surety Bond in whole or in part to remedy any damage to the License Area caused by Licensee, its Agents or Invitees or any failure by Licensee to perform any term, covenant or condition in this Master License or any Pole License (including without limitation any failure to pay any License Charge or other sums due under this Master License or any Pole License after any default by Licensee beyond all applicable notice and cure periods). In the event that the City uses the Surety Bond in whole or in part, the City will not be deemed to have waived any rights under this Master License, or legal or equitable rights whatsoever. Licensee agrees that the City may retain from the Surety Bond any portion reasonably necessary to compensate the City for any foreseeable or unforeseeable loss or damage caused by Licensee's, its Agents' or Invitee's acts or omissions. Upon termination of this Master License and completion of Licensee's removal obligations hereunder, City shall cooperate in causing the surety to release and terminate the Surety Bond.

## **23. SURRENDER OF LICENSE AREA**

### **23.1. Surrender**

No later than 60 days after the expiration or other termination of this Master License or any Pole License, Licensee shall, at its sole cost and expense, peaceably remove its Equipment affected by such termination from applicable portions of the License Area except for any Equipment or improvements that the Licensee offers to the City to remain in place in the License Area and the City agrees in writing to accept. Licensee shall repair any damage caused by the removal work and surrender the applicable portion of the License Area to the City in the same condition existing as of the date that Licensee initially installed its Equipment thereon, normal wear and tear and loss by casualty or other causes beyond Licensee's reasonable control excepted, free of debris and hazards, and free and clear of all liens and encumbrances, except to the extent that any such debris, hazards, liens and/or encumbrances existed as of the date that Licensee initially installed its Equipment thereon. Licensee's obligations under this Section 23.1 will survive the expiration or other termination of this Master License and the applicable Pole License.

## **23.2. Abandonment**

At its option, the City may deem any items of Licensee's Equipment that remain on a City Pole or otherwise on the License Area or other City Property more than 60 days after the expiration or earlier termination of this Master License to be abandoned and in such case the City may dispose of the abandoned Equipment in any lawful manner after expiration of an additional 60-day period initiated by the City's notice to Licensee to remove the Equipment. Licensee agrees that California Civil Code sections 1980 *et seq.* and similar provisions of the Civil Code addressing abandoned property by residential or commercial tenants do not apply to any abandoned Equipment. Any costs incurred by the City in removing or storing abandoned Equipment shall be included in any Additional Costs due and owing from Licensee.

## **23.3. Holding Over**

Any holding over of a License Area after the expiration or earlier termination of this Master License or an applicable Pole License with the express consent of the City will be construed to automatically extend the Term of this Master License or the applicable Pole License Term, as the case may be, for a period of one License Year at a License Charge equal to 125% of the License Charge in effect immediately before the expiration or earlier termination of this Master License or an applicable Pole License, as the case may be, and this Master License or applicable Pole License, as the case may be, otherwise will be on its express terms and conditions. Any holding over without the City's consent will be a default by Licensee and entitle the City to exercise any or all of its remedies, even if the City elects to accept one or more payments of License Charges, Additional Costs or other amounts payable to the City from Licensee after the expiration or earlier termination of this Master License or an applicable Pole License, as the case may be.

## **24. HAZARDOUS MATERIALS**

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

Licensee covenants and agrees that neither Licensee nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed of or Released in, on, under or about the License Area or any other part of City Property, or transported to or from any City Property in violation of Environmental Laws, except that Licensee may use small quantities of Hazardous Materials as needed for routine operation, cleaning and maintenance of Licensee's Equipment that are customarily used for routine operation, cleaning and maintenance of such Equipment and so long as all such Hazardous Materials are contained, handled and used in compliance with Environmental Laws. Licensee shall immediately notify the City if and when Licensee learns or has reason to believe any Release of Hazardous Material by Licensee and/or any of its Agents has occurred in, on, under or about the License Area or other City Property.

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

If Licensee breaches any of its obligations contained in this Section 24, or if any act, omission, or negligence of Licensee or any of its Agents or Invitees results in any contamination of a License Area or other City Property, or in a Release of Hazardous Material from, on, about, in or beneath any part of the License Area or other City Property, or the violation of any Environmental Law, then Licensee, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless the City, including its Agents, and their respective successors and assigns from and against any and all Claims (including damages for decrease in value of the License Area or other City Property, the loss or restriction of the use of usable space in the License Area or other City Property and sums paid in settlement of Claims, reasonable attorneys' fees, consultants' fees, and experts' fees and related costs) arising during or after the Term of this Master License relating to such Release or violation of Environmental Laws; provided, however, Licensee shall not be liable for any Claims to the extent such Release or violation of Environmental Laws was caused by the active or sole negligence or willful misconduct of the City or its Agents or any of them. Licensee's Indemnification obligation includes costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought onto the License Area or other City Property by Licensee or any of its Agents or Invitees and to restore the License Area or other City Property to its condition prior to Licensee's introduction of such Hazardous Material or to correct any violation of Environmental Laws by Licensee. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and the other Indemnified Parties from any Claim that actually or potentially falls within this Indemnity provision even if the allegations supporting the Claim are or may be groundless, fraudulent, or false, which obligation arises at the time such Claim is tendered to Licensee by the Indemnified Party and continues until the Claim is finally resolved. Without limiting the foregoing, if Licensee or any of its Agents or Invitees causes the Release of any Hazardous Material on, about, in, or beneath the License Area or other City Property, then in any such event Licensee shall, promptly, at no expense to any Indemnified Party, take any and all necessary actions to return the License Area or other City Property, as applicable, to the condition existing prior to the Release of any such Hazardous Materials on the License Area or other City Property or otherwise abate the Release in accordance with all Environmental Laws, except to the extent such Release was caused by the active or sole negligence or willful misconduct of the City or its Agents, or any of them. Licensee shall afford the City a full opportunity to participate in any discussions with Regulatory Agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise or proceeding involving Hazardous Material on or about a License Area.

## **24.3. City's Hazardous Material Indemnification Obligations**

Notwithstanding anything to the contrary set forth herein, in no event shall Licensee be responsible or liable for the presence of any Hazardous Materials on, about, in or

beneath a License Area or any other City Property, in whole or in part, or any Environmental Law violation existing prior to the date that Licensee commences construction of Licensee's Equipment in or on the License Area. The City shall indemnify, defend and hold Licensee, the Indemnified Licensee Parties, and each of them, harmless, from and against any and all Claims (including damages for decrease in value of the License Areas or other City Property, the loss or restriction of the use of usable space in the License Areas or other City Property and sums paid in settlement of Claims, reasonable attorneys' fees, consultants' fees and experts' fees and related costs) that arise during or after the Term related to or in connection with the presence of any Hazardous Materials on, about, in or beneath the License Areas or any other City Property, in whole or in part, or any Environmental Law violation which existed prior to the date that Licensee commences construction of Licensee's Equipment in or on the License Area.

## **25. DEFAULT**

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

Any of the following will constitute an event of default by Licensee under a Pole License issued under this Master License: (1) Licensee fails to pay any License Charge or Additional Costs as and when due if the failure continues for 45 days after Licensee's receipt of written notice from the City; (2) Licensee fails to perform or comply with any other material obligation or representation made under this Master License as it pertains to the applicable Pole License(s), if the failure continues for 30 days after the date of Licensee's receipt of written notice from the City, or, if such default is not reasonably capable of cure within the 30-day period, Licensee fails to promptly undertake action to cure such default within such 30-day period and thereafter fails diligently prosecute such cure to completion; or (3) any of the following occurs and are not released, discharged, dismissed or vacated within 90 days after Licensee's receipt of written notice: (i) the appointment of a receiver due to Licensee's insolvency to take possession of all or substantially all of the assets of Licensee; (ii) an assignment by Licensee for the benefit of creditors; or (iii) any action taken by or against Licensee under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief Laws, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within 90 days ((i), (ii) and (iii) are hereinafter collectively referred to as a "**Bankruptcy Default**"). Notwithstanding the foregoing, delay in curing a default will be excused if the delay is beyond the reasonable control of Licensee.

### **25.2. City's Remedies**

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

### **25.2.1 License Continuation**

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

### **25.2.2 Pole License Termination**

If a default specific to one or more Pole Licenses is not cured by Licensee within the applicable cure period, if any, specified in Section 25.1 (Events of Default by Licensee), the City may terminate each Pole License in default upon 10 days written notice to Licensee.

### **25.2.3 Master License Termination**

If (i) Licensee's default is of such a serious nature in the City's reasonable judgment that the default threatens public health or safety on a majority of the Poles licensed to Licensee, and the default or threatened danger to the public is likely to occur again in the future such that the City's Poles are no longer appropriate support structures for the Equipment or the Permitted Use; and (ii) Licensee is unable to cure the default or otherwise mitigate the conditions that pose a threat to the public within the cure periods specified in Section 25.1 above, then the City may terminate this Master License or the affected Pole Licenses. Examples of reasons for termination may include, but are not limited to, malfunctions in several City's streetlights licensed to Licensee hereunder caused by or attributable to the Equipment and/or structural damage caused to several Poles licensed to Licensee hereunder such that the Poles would need to be replaced to be deemed safe. Termination of this Master License in whole will terminate all Pole Licenses issued under it automatically and without the need for any further action by the City. In either case, the City will deliver written notice to Licensee providing 30 days' written notice of termination and specify the reason or reasons for the termination and whether the termination affects the entire Master License or only certain Pole Licenses in the written notice. The City will specify the amount of time Licensee will have to remove its Equipment from any affected City Pole, which will be at least 60 days after the effective date of termination in the City's written notice. If Licensee does not remove its Equipment within the specified period, then the City will be entitled to remove Licensee's Equipment from the City Pole. The City will have the right to make any terminated portion of the License Area available for license to other parties after expiration of the 60 day removal period, even if Licensee's Equipment is still on the Pole.

#### **25.2.4 Default Fees**

Without limiting the City's other rights and remedies under this Master License, and in connection with any default by Licensee beyond the applicable notice and cure period hereunder, the City may require Licensee to pay Additional Costs for the City's administrative cost in providing notice or performing inspections for the events described below (each, a "Default Fee") in the amounts specified in **Schedule A-4** attached to a Pole License by giving notice of the City's demand that Licensee cure the default and specifying the cure period. The Default Fee shall apply on a per default basis, provided however, that Licensee's failure to cure or commence curing a default within the applicable notice and cure period shall constitute a separate default and subject to a subsequent Default Fee. Default Fees will apply to any of the following events: (1) Licensee constructs or installs any alteration or improvement without the City's prior approval to the extent required by Section 6 (Pole Licenses), Section 7 (Equipment Installation), or Section 7.3.1 (Alterations to City's Property) of this Master License; (2) Licensee fails to cure damage required by Section 9 (Licensee's Maintenance Obligations) on a timely basis; (3) Licensee fails to notify the City, through its project manager, before accessing the License Area or following the plan approval procedures as set forth in Section 7 (Equipment Installation); (4) Licensee fails to provide evidence of the required bonds and insurance coverage described in Section 18 (Insurance) on a timely basis; or (5) fails to timely remove Equipment after termination or abandonment of Master License.

#### **25.3. Events of Default By The City**

Any of the following will constitute an event of default by the City under a Pole License: (1) the City's failure to pay any amounts as and when due if the failure continues for forty-five (45) days after the City's receipt of written notice from Licensee; or (2) the City fails to perform or comply with any other material obligation or representation made under this Master License as it pertains to the applicable Pole License(s), if the failure continues for thirty (30) days after the date of the City's receipt of written notice from Licensee, or, if such default is not reasonably capable of cure within the thirty (30) day period, the City fails to promptly undertake action to cure such default within such thirty (30) day period and thereafter fails diligently prosecute such cure to completion. Notwithstanding the foregoing, delay in curing a default will be excused if the delay is beyond the reasonable control of the City.

#### **25.4. Licensee's Remedies**

Licensee's sole remedy for the City's breach or threatened breach of this Master License or any Pole License issued under it will be an action for damages, subject to Section 19 (Limitations on the City's Liability).

## **25.5. Cumulative Rights and Remedies**

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

## **26. TERMINATION**

### **26.1. Termination for Failure to Obtain Regulatory Approvals**

In the event that Licensee cannot obtain all Regulatory Approvals required for any Pole License after 180 days from the date the City returns the fully executed Pole License Agreement, then the Pole License will automatically expire. The parties agree that the Commencement Date will be deemed to have not occurred for any Pole License terminated under this Section 26.1, and Licensee will have no obligation to pay the applicable License Charge for that Pole License.

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

#### **26.2.1 Master License Termination Rights**

Licensee may, in Licensee's sole discretion, terminate this Master License on ninety (90) days written notice to the City at any time after the Effective Date.

#### **26.2.2 Pole License Termination Rights**

Licensee may, in Licensee's sole discretion, terminate any Pole License on sixty (60) days' written notice to the City at any time after twelve (12) months from the subject Pole License Commencement Date. In addition, Licensee may terminate any Pole License on thirty (30) days' written notice after any uncured default of the Pole License by the City, after all applicable cure periods have expired.

#### **26.2.3 Termination Rights after Pole Replacement**

In the event that the City exercises its absolute right to replace any Pole or Utility Infrastructure, the City shall be required to provide Licensee with at least ninety (90) days' prior written notice of the City's intention to undertake a replacement of any Pole and/or Utility Infrastructure other than a replacement pursuant to Section 14. Additionally, to the extent feasible, the City shall allow Licensee to install and operate a temporary portable wireless facility in a mutually acceptable location owned or controlled by the City until Licensee's Equipment is returned to full operation on the replacement Pole and/or Utility Infrastructure as the case may be. The City's failure to provide at least ninety (90) days' notice prior to any Pole replacement shall not affect the City's rights under this Master License. Within ninety (90) days after Licensee receives written notice from the City, Licensee may elect to either (1) install Licensee's Equipment on the replacement Pole at Licensee's sole cost and expense, or (2) terminate the applicable Pole License as to the replacement Pole.

### **26.3. City's Absolute Right to Terminate Pole Licenses**

The City has the right to terminate any Pole License on 60 days' prior written notice to Licensee when the City determines, in the City's sole, but reasonable discretion, that Licensee's continued use of the License Area materially and adversely affects or threatens public health and safety, constitutes a nuisance, materially interferes with the City's municipal functions, or requires the City to maintain a Pole no longer necessary for the City's purposes.

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

In the event that the City terminates any Pole License for reasons unrelated to Licensee's failure to perform its obligations under this Master License, the City shall refund any pre-paid Licensee Charge on a pro-rata basis, and Licensee shall not have any further liability for the License Charge. In addition, the City shall prioritize Licensee's Pole License application for any Pole License to replace the terminated Pole License; provided, however, that (1) the City shall prioritize only as many Pole License applications as Pole Licenses terminated by the City, and (2) the City's prioritization will not affect Licensee's obligations under this Master License. In addition, the City's prioritization of any Pole License application under this Section 26.4 shall not affect the City's rights under Section 6.4.2 (Required Changes to the Pole License Agreement).

## **27. INTERFERENCE**

### **27.1. Licensee Obligation Not to Cause Interference**

Licensee will not operate or maintain its Equipment in a manner that Interferes with or impairs other communication (radio, telephone and other transmission or reception) or computer equipment lawfully used by any person, including the City or any of its Agents. Such Interference will be an event of default under the applicable Pole License(s) by Licensee, and upon receipt of written notice from the City, Licensee shall be responsible for eliminating such interference promptly and at no cost to the City. Licensee will be required to use its best efforts to remedy and cure such Interference. If Licensee does not cure the default within 10 days after receipt of the City's written notice of interference (which may include reducing power or ceasing operation of the Interference causing Equipment, except for intermittent testing, until the Interference is resolved), the parties acknowledge that continuing Interference may cause irreparable injury and, therefore, the City will have the right to bring an action against Licensee to enjoin such Interference or to terminate all Pole Licenses where the Equipment is causing Interference upon 30 days' written notice to Licensee, at the City's election.

## **27.2. City Obligation Not to Cause or Allow Third Parties to Cause Interference.**

Notwithstanding any other provision of this Master License, City agrees that City will not grant after the Commencement Date a Pole License or other permit or other right to any third party if at the time such third party applies to use the Pole and/or Utility Infrastructure the City knows or has reason to know that such third party's use may cause Interference with Licensee's existing Equipment installed or upon a License Area pursuant to a Pole License, Licensee's use of the Pole and/or Utility Infrastructure, or Licensee's ability to comply with the terms and conditions of this Master License or a Pole License. In the event such third party's equipment causes Interference with Licensee's existing Equipment installed or upon a License Area pursuant to a Pole License, City shall require such third party to reduce power or cease operation of the Interfering equipment, except for intermittent testing, until the Interference is resolved.

## **27.3. City's Use of Poles And Utility Infrastructure**

The limitation in Section 27.2 above does not apply to equipment installed by the City for the City's use in carrying out its municipal functions. In the event that Licensee discovers any such Interference caused by the City and/or its Agents, the City shall reasonably cooperate with Licensee to identify the source and mitigate the Interference; provided, however, that the City's cooperation shall not obligate the City to change, alter or power off any City-owned or controlled equipment used for public health and safety or other municipal functions. The parties acknowledge that the Licensee possesses technical expertise that puts Licensee in the best position to identify and mitigate Interference sources, and Licensee shall be primarily responsible for identification and mitigation work. If Licensee reasonably determines that inference is occurring by the City, then the City will meet and confer with Licensee within five (5) days of the City's receipt of notice of Interference from Licensee, and otherwise diligently work in good faith with Licensee to determine the root cause of the Interference and to develop workable solutions to resolve the Interference in a mutually acceptable manner. Notwithstanding the foregoing, the City shall have the right to maintain and install equipment for municipal purposes even if the equipment causes Interference with Licensee's use.

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

Subject to the City's obligations under Sections 27.1, 27.2, and 27.3 of this Master License, if any change in the nature of the City's use of the License Area during the Term results in Interference to Licensee's normal operation of its Equipment making it necessary to alter the Equipment to mitigate the adverse effect, Licensee shall notify the City and provide evidence of the claimed Interference. Upon receipt of such notice, the City will have the right to make its own reasonable determination and, if it agrees with Licensee, investigate whether it can reasonably and economically mitigate that Interference. The City will provide notice to Licensee of the City's determination within fifteen (15) days of receiving Licensee's notice hereunder.

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

If the City determines in its reasonable discretion that mitigation is not feasible or cannot be achieved for a reasonable cost in the City's reasonable judgment, Licensee may elect either to: (1) terminate the Pole License as to the affected City Pole and receive a ratable reduction in the License Charge; or (2) take steps itself at its own cost to mitigate the adverse effect and continue to operate the Equipment on the City Pole, and receive from the City a waiver of the License Charge for the first six (6) months of the following License Year under the affected Pole License(s) to offset the cost of mitigation.

Licensee agrees that the City's temporary and partial abatement or waiver of the License Charge under this Section 27.4 will be the only compensation due to Licensee for costs incurred or otherwise arising from the adverse effect as liquidated damages fully compensating Licensee for all Claims that may arise or be related to the adverse effects. Under no circumstances may the City be required to alter its operations at the identified City Pole or provide a replacement City Pole to Licensee.

#### **27.5. Impairment Caused by City Access**

Licensee agrees that it will not be entitled to any abatement of License Charges if the City exercises its rights of access under Section 8.1 (City's Access to License Area) unless the City's activities cause Licensee to be unable to operate Equipment on the License Area for its permitted use for a period of more than ten (10) days, in which case, subject to proof, License Charges will be abated ratably for the entire period that Licensee is unable to operate any Equipment on any affected City Pole.

### **28. MISCELLANEOUS PROVISIONS**

#### **28.1. Notices**

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

Notices will be addressed to the Parties as follows:

**TO CITY:** City of Fremont City Manager  
3300 Capitol Ave.  
Fremont, California 94538

with a copy to: City of Fremont City Attorney  
3300 Capitol Ave.  
Fremont, California 94538

**TO LICENSEE:** New Cingular Wireless PCS, LLC  
Attn: Tower Asset Group – Lease Administration  
Re: City of Fremont (CA) MLA for Small Cells  
1025 Lenox Park Blvd. NE, 3<sup>rd</sup> Floor  
Atlanta, GA 30319

with a copy to: New Cingular Wireless PCS, LLC  
Attn: Legal Dept. – Network Ops  
Re: City of Fremont (CA) MLA for Small Cells  
208 S. Akard Street  
Dallas, TX 75202

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

## **28.2. Waiver; No Implied Waivers**

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

### **28.3. Amendments**

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

### **28.4. Interpretation**

The following rules of interpretation apply to this Master License.

#### **28.4.1 General**

Whenever required by the context, the singular includes the plural and vice versa; the masculine gender includes the feminine or neuter genders and vice versa; and defined terms encompass all correlating forms of the terms (e.g., the definition of "indemnify" applies to "indemnity," "indemnification," etc.).

#### **28.4.2 Joint and Several Liability**

In the event that the City provides consent, which the City may withhold for any or no reason, to enter into this Master License with more than one Licensee, the obligations and liabilities under this Master License imposed on Licensee will be joint and several among them.

#### **28.4.3 Captions**

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

#### **28.4.4 City Actions**

All approvals, consents or other determinations permitted or required by the City under this Master License will be made by or through the Public Works Director/City Engineer or his or her designee, unless otherwise provided in this Master License or any City ordinance.

#### **28.4.5 Words of Inclusion**

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

### **28.5. Successors and Assigns**

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

### **28.6. Brokers**

Neither party has had any contact or dealings regarding the license of the License Area, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the license contemplated herein ("**Broker**"), whose commission, if any is due, is to be paid pursuant to a separate written agreement between such Broker and the party through which such Broker contracted. In the event that any Broker perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, Licensee shall indemnify the City from all Claims brought by the Broker. This Section 28.6 will survive expiration or earlier termination of this Master License.

### **28.7. Severability**

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

## **28.8. Governing Law; Venue**

This Master License must be construed and enforced in accordance with the laws of the State of California, without regard to the principles of conflicts of law. This Master License is made, entered and will be performed in the City of Fremont, County of Alameda, State of California. Any action concerning this Master License must be brought and heard in Superior Court for the County of Alameda or the United States District Court in the Northern District of California.

## **28.9. Time for Performance**

Provisions in this Master License relating to number of days mean calendar days, unless otherwise specified. "Business day" means a day other than a Saturday, Sunday or a bank or City holiday. If the last day of any period to give notice, reply to a notice, or to undertake any other action occurs on a day that is not a business day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding business day. Time is of the essence with respect to all provisions of this Master License in which a definite time for performance is specified.

## **28.10. Survival**

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

## **28.11. Recording**

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

## **28.12. Counterparts**

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

### **28.13. Approval Authority**

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

**[END OF MASTER LICENSE -SIGNATURES APPEAR ON NEXT PAGE]**

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

**THE CITY:**

City of Fremont,  
a California municipal corporation

By:   
Name: BRIAN STOTT  
Its: Assistant City Manager  
Date: 6/15/2020

**LICENSEE:**

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

By: AT&T Mobility Corporation  
Its: Manager

By:   
Name: Michael Guibord  
Its: Director  
Date: 5/22/2020 Construction & Engineering

**APPROVED AS TO FORM:**

By:   
Bronwen Lacey  
Sr. Deputy City Attorney

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

**EXHIBIT A**

**FORM OF POLE LICENSE**

[Appears on Following Page]

**POLE LICENSE NO. [INSERT NUMBER IN CONSECUTIVE ORDER]**  
**POLE NUMBER:** \_\_\_\_\_  
**APPROXIMATE ADDRESS OF POLE:** \_\_\_\_\_

Pursuant to that certain Master License Agreement between the City of Fremont, a California municipal corporation (the "City") and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Licensee"), Licensee submits to the City two partially executed counterparts of this Pole License, together with all the following materials listed below, as its Pole License application in accordance with Section 6 (Pole Licenses) under the Master License:

1. Exhibit A-1, which designates a Pole Location that Licensee seeks to be included in the License Area under this Pole License Agreement;
2. Exhibit A-2, which includes a conceptual plan for all Licensee's Equipment (but excluding any makes and model numbers) to be installed in the License Area, subject to Regulatory Approvals;
3. a Pole License Administrative Fee; and
4. Radio & Antenna Equipment Specifications.

Licensee acknowledges that: (1) this Pole License will not be effective until the City returns a fully executed copy to Licensee; (2) [Intentionally omitted]; (3) Licensee will not have the right to access or install Equipment on the License Area until after Licensee has: (a) submitted a complete Acknowledgment Letter to the City with all information and funds required; (b) submitted insurance information to the City as specified in Exhibit A-3; and (c) the City has provided notice to proceed by returning to Licensee a countersigned copy of the Acknowledgment Letter.

This Pole License is executed and effective on the last date written below and, upon full execution will be the City's authorization for the City to begin its review of the Pole Locations and plans and specifications proposed in this Pole License Agreement. This Pole License shall expire if either of the following conditions are not met:

1. Licensee submits completed applications for an Encroachment Permit and Planning Design Review within 45 calendar days from executed date of this Pole License; or
2. Construction of Equipment has not commenced within 180 calendar days from executed date of the Acknowledgment Letter.

**THE CITY:**

City of Fremont,  
a California municipal corporation

**LICENSEE:**

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

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A-1**

**POLE LOCATIONS / LICENSE AREA**

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

[Licensee to show proposed pole location requested in this Pole License Agreement on a City of Fremont Base Map, Pole number, and the latitude and longitude coordinates of the pole.]

**EXHIBIT A-2**

**LICENSEE'S CONCEPTUAL DRAWINGS**

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

[Licensee to attach a photo simulation and schematic diagram for all Equipment proposed to be installed at proposed Pole Location. The schematic diagram shall be consistent with the Design Guidelines attached as Exhibit B to the Master License Agreement. Licensee shall provide the dimensions of all the equipment and location within the pole.]

**EXHIBIT A-3**

**FORM OF ACKNOWLEDGEMENT LETTER**

[Licensee to complete and submit after Regulatory Approvals have been obtained]

[insert date]

[insert addressee information]

**RE: Pole License No. \_\_\_**

Dear City Manager:

This letter will confirm the following: (1) that Licensee has obtained all the Regulatory Approvals required for the Permitted Use under this Pole License, copies of which are attached to this letter, as specified below; and (2) the Commencement Date of this Pole License is [insert date], which is the first day of the month after Licensee obtained all Regulatory Approvals.

This letter also confirms that Licensee has submitted all required insurance information to the City. A check or wire transfer pursuant to Section 4.6 for the License Charge for the first License Year of this Pole License will be provided within 45 days after the Commencement Date of this Pole License.

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

Sincerely,

\_\_\_\_\_  
[insert name]

[insert title]

Enc.

[insert all required Regulatory Approvals]

Insurance certificates

Contractor's bonds and insurance certificates

City Acknowledgement:

**SCHEDULE A-4**

**DEFAULT FEE SCHEDULE**

<b>DEFAULT FEE SCHEDULE</b>		
<b>VIOLATION</b>	<b>INITIAL NOTICE</b>	
unauthorized installations	\$350	
failure to make required repairs	\$300	

## EXHIBIT B

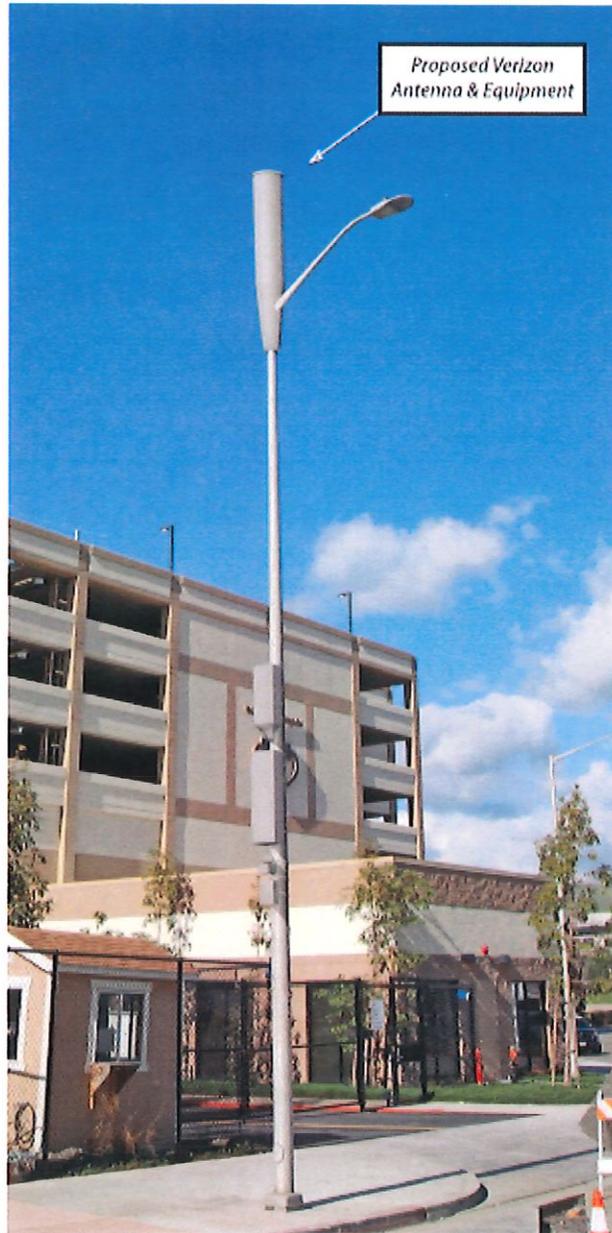
### DESIGN GUIDELINES

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

1. All wireless communication facility (facility) shall be located entirely on the pole .
2. No at grade level equipment installation will be allowed.
3. The facility shall be substantially consistent with the designs attached to this Exhibit. Minor changes to the design may be reviewed and approved on an administrative level by the City Manager or its designee. However, substantial changes to the design may require City Council approval.  
Avoid wide off-sets (more than four inches) of equipment enclosures brackets that protrude from the pole.
4. An antennae(s) is recommended to be mounted on top of the pole with an antennae shroud.
5. The antennae shroud shall not impinge the removal of the mast arm.
6. If permitted by PG&E or the applicable utility provider and to the extent technically feasible, the facility power must be connected to a PG&E or such utility provider smart meter.
7. The PG&E disconnect switch shall be attached to the pole at a minimum and a maximum height of 8 and 10 feet, respectively, above grade.
8. The facility, including the antennae shroud and brackets, must match the color of the Pole and the material must be constructed out of non-reflective materials.
9. The facility must be high quality, safe, fire resistant, modern in design and attractive in appearance.
10. The facility must not cause severe negative visual impact as determined by the City.
11. The facility must not interfere with City operations, i.e. sign and signal visibility.
12. The facility must be designed in accordance with the requirements for streetlight facilities and appurtenances including hardware, corrosion protection, signs, and labels and matching finish.
13. All wiring and cabling for the facility must be concealed from public view, i.e., within the pole.
14. All wiring and cabling for the facility must be labeled in the pole hand hole and all pull boxes with the company name and function, i.e. "AT&T COMM", "VERIZON POWER", etc.
15. The facility must include signage that accurately identifies the Facility owner/operator. This includes the owner/operator's name or identification number and a toll-free number. Facility must not have any other signage, flashing lights or advertisements unless expressly approved by the City, required by law or recommended under existing and future FCC or other United States governmental agencies for compliance with RF emissions regulations.
16. The signage, including radio-frequency warning sticker must be the smallest and lowest visibility required by government or electric utility requirements.

17. Licensee shall verify each Pole's condition, size and foundation and provide structural calculations and drawings prepared by a certified structural engineer certifying that the Pole and foundation is sufficient to withstand the additional loads.
18. Poles showing signs of damage or corrosion must be replaced in kind.
19. Existing foundation must be replaced when it's determined that an existing pole is required to be replaced.

Example of 4G:



Example of 5G

