

**SMALL CELL LICENSE AGREEMENT
BETWEEN THE CITY OF SUNNYVALE
AND GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP
DBA VERIZON WIRELESS**

This SMALL CELL LICENSE AGREEMENT (hereinafter "LICENSE") is dated for identification this ____ day of _____ 20__, by and between the CITY OF SUNNYVALE, a California charter city and municipal corporation, whose address is 456 Olive Avenue, Sunnyvale, California 94086 (hereinafter "CITY"), and GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP, DBA VERIZON WIRELESS, a California limited partnership, whose address is 180 Washington Valley Road, Bedminster, New Jersey 07921 (hereinafter "LICENSEE"). The CITY and LICENSEE may be collectively referred to as "Parties."

RECITALS

A. WHEREAS, LICENSEE holds a Federal Communications Commission (FCC) spectrum license to provide wireless telecommunications services to CITY residents, businesses and visitors, and is authorized to construct, install, operate, repair, replace and maintain small cell cellular antenna and radio sites, including antennas, transmitters, receivers, radios and all other equipment or apparatus used to provide wireless telecommunications services (collectively "Network" or "Antenna") to provide such service in the public rights-of-way within the State of California pursuant to Public Utilities Code §7901; and

B. WHEREAS, to the extent LICENSEE's Network is in CITY public rights-of-way; and

C. WHEREAS, CITY owns, operates, and maintains the street light poles ("CITY POLES") within the public right-of-way and owns or controls public right-of-way within CITY for the purpose of providing street lighting to the public; and

D. WHEREAS, local entities, such as CITY, may allow LICENSEE to install, construct, and maintain its Network within the public rights-of-way and/or public utility or service easements within CITY in accordance with Public Utilities Code §§5885(a) and 7901; and

E. WHEREAS, pursuant to Public Utility Code §7901.1, CITY has the right to exercise reasonable control as to the time, place, and manner for the construction, installation, and maintenance of LICENSEE's Network in the public rights-of-way; and

F. WHEREAS, LICENSEE is a limited partnership organized under the laws of the State of California, legally qualified to do business within the State of California whose business includes the installation of Antennas; and

G. WHEREAS, LICENSEE requests the use of certain CITY POLES for the installation and operation of LICENSEE's Antennas; and

H. WHEREAS, CITY is willing to grant non-exclusive rights to LICENSEE to construct and maintain Antennas on CITY POLES in accordance with the terms, conditions, and covenants of this LICENSE.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, and other good and valuable consideration, CITY hereby grants to LICENSEE the non-exclusive rights to construct and maintain Antennas on CITY POLES and agrees to issue Site License Supplement(s) for LICENSEE's Network in the form shown in Exhibit A, attached hereto and incorporated herein, pursuant to the terms and conditions below:

1. **License to use City Poles.** CITY hereby licenses use to LICENSEE from CITY for the term, at the rental rate and upon all of the other terms and conditions set forth herein, CITY POLES.

2. **Improvements.** CITY licenses to LICENSEE the limited right to use CITY POLES only to locate Antennas of the same or substantially similar initial design as previously approved by CITY and as shown on Exhibit B, attached hereto and incorporated herein. It is understood and agreed that the final Antenna design will be shown on the plans submitted to CITY in connection with CITY's Site License Supplement process.

Notwithstanding the foregoing, from time to time during the term of this LICENSE, LICENSEE may propose revisions or new Antenna installation designs to the CITY to become a pre-approved Antenna installation upon the CITY's prior written consent ("Pre-Approved Antenna Installation"). Any such LICENSEE proposed Antenna installation designs that become a Pre-Approved Antenna Installation shall meet the City's current Small Cell Design Guidelines. An Amendment to Exhibit B will be required upon approval of any Pre-Approved Antenna Installation. A request by the LICENSEE for a Pre-Approved Antenna Installation shall not be considered a planning application for purposes of triggering the time period for CITY approval under the FCC 2018 Order referenced in Section 9(a)(ii) of this LICENSE. LICENSEE hereby acknowledges that the CITY considers physical dimensions, coloring and shrouding as concealment elements, and that such concealment elements are a material factor in the CITY's decision to provide its written consent to any Pre-Approved Antenna Installation. All other municipal reviews and approvals pursuant to Section 21, including the planning application, building permits, right-of-way permits, and the execution of a Site License Supplement shall apply to the installation of any Pre-Approved Antenna Installation.

3. **Limitation of Rights.** This grant of permission does not constitute a deed or grant of an easement or any other real property interest by CITY. LICENSEE is not authorized to use any CITY property located outside the public rights-of-way without the express written consent of CITY.

4. **Additional Use Request.** It is the sole responsibility of LICENSEE to obtain any other agreements, authorizations, licenses, permits, environmental clearances, and/or easements, and to comply with all local, State, or Federal rules, regulations, laws, and legal rights of private or public property holders.

5. **Scope of Agreement.** All rights expressly granted to LICENSEE under this LICENSE, which shall be exercised at LICENSEE's sole cost and expense, shall be subject to the prior and continuing right of the CITY to use all parts of the public right-of-way exclusively or

concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the right-of-way as of the date of this LICENSE.

6. **Term.** The term of this LICENSE shall be for a period of ten (10) years commencing on the Commencement Date and terminating on the tenth anniversary of the Commencement Date, unless terminated by either Party in accordance with the provisions herein.

The initial term of each Site License Supplement shall be for a period of ten (10) years commencing upon the mutual execution of the Site License Supplement ("Site License Supplement Commencement Date") and may be extended for two (2) successive five (5) year renewal terms, upon mutual written agreement by the parties. Notwithstanding anything herein, after the expiration or earlier termination of this LICENSE, the terms and conditions of a Site License Supplement which was signed during the term of the LICENSE shall survive and remain in full force and effect until the expiration or earlier termination of such Site License Supplement.

7. **Commencement Date.** The Commencement Date of this LICENSE shall be the date this License is (i) approved by the City Council, and (ii) executed by both Parties.

8. **Option to Extend.** Provided LICENSEE is not in default beyond any applicable cure periods either at the time of exercise or at the time the extended Term commences, LICENSEE shall have the option to extend the Term of this LICENSE for two (2) additional periods of five (5) years each ("Option Term") on the same terms and conditions provided, subject to the written consent of CITY. LICENSEE shall provide CITY written notice ("Option Notice") at least sixty (60) days, but not more than one hundred twenty (120) days, prior to the expiration of the Term of this LICENSE.

9. **Base Rent.**

a. LICENSEE shall pay to CITY as annual rent ("Base Rent") for each CITY POLE for which a Site License Supplement has been issued, the higher of the following amounts:

(i) Two Hundred Seventy Dollars (\$270.00), or

(ii) CITY's cost, which is CITY's cost set in accordance with the requirements of the Federal Communications Commission's Declaratory Ruling and Third Report and Order, FCC 18-133, Released September 27, 2018 ("FCC 2018 Order"), calculated pursuant to a cost study (the "Cost Study") calculated pursuant to a cost study which has been reviewed, adopted and approved by CITY's Council and is not subject to further appeals or subject to a complaint before a competent regulatory agency or court ("Cost Approval") which reflects a reasonable approximation of the City's objective costs that are no higher than the fees charged to similarly situated licensees. After CITY's Cost Approval is final as described in the preceding sentence, CITY shall provide written notice to LICENSEE of the Base Rent in accordance with the notice requirements of this LICENSE. The Base Rent payable under this

LICENSE will adjust to CITY's cost starting with Base Rent payments that are due at least 90 days after the date of such notice. CITY shall deliver to LICENSEE a copy of CITY's cost study no less than ninety (90) days before the cost study is presented to CITY's Council for adoption or approval so that CITY and Licensee may have the opportunity to use reasonable efforts to meet and confer regarding the cost study.

The CITY shall not have the right to elect to have the Base Rent determined pursuant to a Cost Study more than one time during the initial ten (10) year term, and not more than one time during the total ten (10) years of the two Option Terms.

The Base Rent is per CITY POLE, and includes all appurtenant equipment and facilities used in connection with each Antenna. Except in the event of a voluntary termination of a Site License Supplement, the Base Rent will be prorated for any partial year based on a 360-day calculation.

b. Reserved.

c. The Base Rent under each Site License Supplement shall commence on the first day of the month following the date that Licensee commences installation of an Antenna ("Base Rent Commencement Date"). LICENSEE shall make the first payment of the Base Rent under any Site License Supplement within ninety (90) days after the Base Rent Commencement Date. Thereafter, the Base Rent for each Site License Supplement shall be paid on or before each anniversary of the Commencement Date during the term of the Site License Supplement. All payments, including the Transactional Costs in Section 12 below and all rent, shall be mailed or delivered to: City Property Administrator - Department of Public Works, City of Sunnyvale, 650 W. Olive Ave, Sunnyvale, CA 94086.

10. **Annual Increase.** The Base Rent shall be increased by 2% annually on the anniversary of the Commencement Date of each successive year resulting in a compound rate of increase. This annual increase is in lieu of a cost study and is presumed to be consistent with the FCC 2018 Order justifiable cost requirement.

11. **Reserved.**

12. **Transactional Costs.** LICENSEE shall pay to CITY upon execution of this LICENSE, as additional rent, a one-time payment for any reasonable and actual transactional costs, which shall include any reasonable attorneys' fees, third party consultant fees, and staff time incurred by CITY as a result of the negotiation, preparation, execution, and delivery of this LICENSE, any amendment, any future consent of CITY required, and the preparation and negotiation of an amendment to the LICENSE ("Transactional Costs"). The Parties agree that a reasonable amount for these costs shall be \$10,000, which shall be made in a one-time payment by LICENSEE, and that further payments of Transactional Costs shall not be required with respect future amendments, consents or Site License Supplements.

13. **Late Charge.** LICENSEE acknowledges late payment by LICENSEE to CITY of rent will cause CITY to incur costs not contemplated by this LICENSE, the exact amount of such

costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed by CITY. Any installment of rent (excepting Base Rent) due from LICENSEE not received by CITY within ten (10) days of the date of billing shall be deemed delinquent. LICENSEE shall pay to CITY an additional sum of twelve percent (12%) per year non-compounding daily basis of the overdue rent that shall accrue, on a daily basis, from the thirty-first (31st) day after the date of billing. The Parties agree this late charge represents a fair and reasonable estimate of the costs CITY will incur because of late payment by LICENSEE. Acceptance of any late charge shall not constitute a waiver of LICENSEE's default with respect to the overdue amount, nor prevent CITY from exercising any of the other rights and remedies available to CITY.

14. **Permitted Uses.** LICENSEE represents, warrants, and covenants that the Antennas installed pursuant to this LICENSE will be utilized solely for providing the telecommunications services identified herein. LICENSEE is not authorized to and shall not use its Antennas to offer or provide any services not specified herein. LICENSEE shall be solely responsible for all costs associated with the construction, installation, maintenance, and use of the Antenna.

15. **Prohibited Uses.** LICENSEE shall not use CITY POLES for any purpose not expressly permitted herein. LICENSEE shall not: (a) create, cause, or permit any nuisance or waste in, on, or about the CITY POLES or permit CITY POLES to be used for any unlawful purpose; or (b) do or permit to be done anything that unreasonably disturbs the CITY's use of CITY POLES or the occupants of neighboring property. Specifically, and without limiting the above, LICENSEE agrees not to cause any unreasonable odors, noise, vibration, electro-magnetic emissions or other item to emanate from the Antenna on CITY POLES. No materials or articles of any nature shall be stored outside adjacent to any portion of CITY POLES.

16. **Compliance with Laws.** LICENSEE shall not do or permit anything to be done in or on CITY POLES, or bring or keep anything in or on CITY POLES which will conflict with any applicable law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted.

17. **Co-Location.** LICENSEE acknowledges this is a non-exclusive LICENSE and that the CITY has the right to license additional positions on CITY POLES to third parties. All operations by LICENSEE shall comply with all FCC requirements. If CITY adds new CITY POLES or other facilities in the future, LICENSEE's Antenna shall not electromagnetically or physically interfere with CITY-owned and operated equipment. LICENSEE shall reasonably cooperate with current and future Licensees. Any future license of the CITY POLE site, which permits installation of Antennas, shall be conditioned upon the new Antennas not interfering with LICENSEE's Antenna. LICENSEE shall be responsible for re-installing its Antenna on new CITY POLES that accommodate the addition of other third party equipment at such third party's cost and expense.

18. **CITY POLE Access.** LICENSEE may enter onto CITY POLES during normal business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m. upon reasonable notice to CITY for purposes of installing its Antenna(s). In the event of an emergency, LICENSEE's access shall be twenty-four (24) hours per day, seven (7) days per week. During times of high security alert by the Homeland Security Advisory System, LICENSEE must obtain CITY's consent to

access CITY POLES. LICENSEE acknowledges that other licensees also have rights to access CITY POLES, and that if another licensee or multiple licensees request simultaneous access, the CITY may have to delay LICENSEE's access to CITY POLES to accommodate others or vice versa.

19. **Ladder Access.** It is anticipated, after installation of the Antenna is completed, that LICENSEE shall require reasonable access for the purpose of ordinary tuning of LICENSEE's equipment and appropriate maintenance and repair of the Antenna, including replacement of all or part of an Antenna with substantially similar components and shall make commercially reasonable efforts to utilize the smallest equipment available that provides equivalent performance effectiveness. As a part of this LICENSE, the CITY grants to LICENSEE reasonable ladder access to the area adjacent to the CITY POLES ("City Property") for the purposes of maintaining or repairing the Antennas.

20. **City Access.** The CITY or its agents, may enter onto CITY POLES at all times during the term of this LICENSE to determine whether LICENSEE is complying with the terms and conditions or for any other purpose incidental to rights of the CITY.

21. **Approval by the City and Other Agencies.** In accordance with Sunnyvale Municipal Code section 19.54.160, LICENSEE, at its sole cost and expense, may install the Antennas, subject to LICENSEE's obtaining all required permits, licenses, and approvals from CITY and any other governmental agencies having jurisdiction. LICENSEE shall maintain such permits, licenses, and approvals in force through the Term and the Option Term, if any. The revocation or expiration of any such permit, license, or approval is a breach of this LICENSE subject to the cure periods set forth in Section 54.d of this License. If LICENSEE replaces the Antenna, it shall not do so without the prior written approval of CITY, and all required permits, licenses, and approvals from CITY and any other governmental agencies with jurisdiction. If LICENSEE replaces the Antenna, it shall not do so without the prior written approval of CITY, and all required permits, licenses, and approvals from CITY and any other governmental agencies with jurisdiction; provided, however, CITY approval shall not be required in the case of replacement with a substantially similarly functioning and sized Antenna. If a modification to the Antenna is approved in accordance with Section 33, LICENSEE and CITY shall amend Exhibit B to reflect the change. Should LICENSEE change or expand any Antenna without the prior approval of CITY, CITY may require that LICENSEE remove the expansion at LICENSEE's sole cost and expense within 15 days of written notification by City. LICENSEE shall be solely responsible for conducting any environmental review required in association with LICENSEE's use of CITY POLES and for all costs associated, as well as all fees, charges, or other expenses imposed by other regulatory agencies in connection with LICENSEE's use of CITY POLES prior to LICENSE commencement, or at any time during the Term of LICENSE.

22. **Reserved.**

23. **Condition, Use of City Poles.** CITY makes no warranty or representation concerning the condition of CITY POLES and facilities, which include but are not limited to poles, power supplies, conduits and other forms of infrastructure for the delivery of power, or the fitness of CITY POLES and facilities for the use intended by LICENSEE, and disclaims any personal knowledge. LICENSEE has personally inspected the CITY POLES and facilities, knows their

condition, finds them fit for LICENSEE's intended use, accepts them "as is", and has ascertained that they can be used for the limited purposes specified in Section 14.

24. **Hazardous Materials.**

a. **Hazardous Materials on City Poles.** LICENSEE shall not introduce any Hazardous Materials (as defined below) to the City Property, (excluding any Hazardous Materials which are components of commercially available products) unless the Hazardous Materials are transported, obtained, handled, stored, and/or disposed of in accordance with all Federal, State, and local laws, ordinances, rules, regulations, or policies.

b. **Hazardous Materials Defined.** The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material, or waste or any pollutant or contaminant or infectious or radioactive material, including, but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the: (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Secs. 9601, *et seq.*; (b) RCRA, 42 U.S.C. Secs. 6901, *et seq.*; (c) CWA, 33 U.S.C. Secs. 1251, *et seq.*; (d) CAA, 42 U.S.C. Secs. 7401, *et seq.*; (e) TSCA, 15 U.S.C. Secs. 2601, *et seq.*; (f) The Refuse Act of 1899, 33 U.S.C. Secs. 407; (g) OSHA, 29 U.S.C. Secs. 651, *et seq.*; (h) Hazardous Materials Transportation Act, 49 U.S.C. Secs. 5101, *et seq.*; (i) USDOT Table (49 CFR Sec. 172.101 App. A and amendments) or the EPA Table (40 CFR Part 302 and amendments); (j) Carpenter-Presley-Tanner Hazardous Substance Account, Act, Cal. Health & Safety Code Secs. 25300, *et seq.*; (k) California Hazardous Waste Control Act, Cal. Health & Safety Code Secs. 25100, *et seq.*; (l) Porter-Cologne Act, Cal. Water Code Secs. 13000, *et seq.*; (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220, *et seq.*; (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5, *et seq.*; (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280, *et seq.*; (p) California Hazardous Substance Act, Cal. Health & Safety Code Secs. 108100, *et seq.*; (q) Air Resources Law, Cal. Health & Safety Code Secs. 39000, *et seq.*; (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500, *et seq.*; (s) TPCA, Cal. Health and Safety Code Secs. 25208, *et seq.*; and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the Federal, State, and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials, and wastes which are, or in the future become regulated under applicable local, State or Federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any Federal, State, or local law, regulation or order or by common law decision, including, without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene, and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos; (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and (vii) radioactive materials and waste.

c. **Hazardous Materials Indemnity.** LICENSEE shall indemnify, defend (by counsel acceptable CITY), protect, and hold CITY harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including, without limitation, diminution

in value of CITY POLES or City Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of CITY POLES or, damages arising from any adverse impact or marketing of CITY POLES and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings, or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems, and atmosphere), arising from, or caused or resulting, either prior to or during the License Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about CITY POLES by LICENSEE, LICENSEE's agents, employees, LICENSEEs or invitees or at LICENSEE's direction, of Hazardous Material, or by LICENSEE's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability, except to the extent of the negligence or willful misconduct of the CITY or its agents, employees, or invitees. LICENSEE's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup, or detoxification or decontamination of CITY POLES and City Property, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the License Term. For purposes of the indemnity, any acts or omissions of LICENSEE or its employees, agents, customers, assignees, contractors, or subcontractors of LICENSEE (whether or not they are negligent, intentional, willful, or unlawful) shall be strictly attributable to LICENSEE. Notwithstanding the foregoing, LICENSEE shall not be responsible or liable for any Hazardous Materials that existed on the City Poles or City Property before the execution of this LICENSE, or that otherwise do not result from the activities of LICENSEE.

d. City's Right to Perform Tests. At any time during the License Term, CITY shall have the right to enter upon CITY POLES in order to conduct tests of water and soil and to deliver to LICENSEE the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of LICENSEE's use of CITY POLES. LICENSEE shall be solely responsible for and shall indemnify, protect, defend and hold CITY harmless from and against all claims, costs and liabilities including actual attorneys' fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return CITY POLES and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials. The testing shall be at LICENSEE's expense if CITY has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about CITY POLES, which has been caused by or resulted from the activities of LICENSEE, its agents, employees, contractors, or invitees. LICENSEE shall demonstrate that the Antenna meets or exceeds all appropriate Federal Communications Commission (FCC) requirements. LICENSEE shall provide results of any test results on the Antenna prepared for the FCC or any other testing body.

e. Survival. This entire Section 24 of this LICENSE shall survive termination of the LICENSE, as to any activities during the Term or Option Term of this LICENSE.

25. Termination of License. CITY shall have the right to immediately terminate the Term of any applicable Site License Supplement(s) in CITY's sole and absolute discretion in the event that: (i) any use of CITY POLES or City Property by LICENSEE involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose

prohibited by any governmental agency, authority or Hazardous Materials Laws; (ii) LICENSEE has been required to but refuses to take remedial action in connection with Hazardous Material contaminating CITY POLES or City Property, if the contamination resulted from LICENSEE's action or use of CITY POLES or City Property; or (iii) LICENSEE is subject to and refuses to comply with an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on CITY POLES or City Property. Should termination under this provision be required, all other clauses in this agreement for removal of ANTENNA shall survive.

26. **Electromagnetic Emissions.** LICENSEE's operations on the CITY POLES shall comply with all applicable Federal, State, and local laws and regulations regarding electromagnetic emissions. LICENSEE shall conduct all necessary tests after its Antenna are constructed on the CITY POLES to ensure that its facilities comply with those laws and regulations. The tests shall be conducted by a licensed professional engineer, and the results shall be provided to the CITY.

27. **Telecommunications Services.** At any time that LICENSEE ceases to operate as a provider of telecommunications services under Federal Law, and LICENSEE has not cured said condition within sixty (60) days of receiving notice thereof from CITY, the CITY shall have the right, in its sole and absolute discretion and upon sixty (60) days written notice to LICENSEE, to terminate this LICENSE and to require the removal of LICENSEE's Antennas and any related appurtenances from CITY POLES, including the cost of any City Property remediation, at no cost to the CITY, without any liability to CITY related directly or indirectly to such termination.

28. **Antenna Design Criteria.** LICENSEE will submit to CITY, no more than two (2) proposed designs for any proposed Antenna installations. Assuming that all of CITY's requirements are met, CITY will authorize up to two acceptable designs for Antennas. LICENSEE may only use Antenna designs that are authorized. All Antenna installations shall, to the maximum extent practicable, be placed behind equipment shrouds or existing signage, or otherwise located so as to minimize aesthetic impacts, to the satisfaction of the Public Works Director. The Public Works Director will require photo simulations of all Antenna installations and may require a physical mock-up. If required, the mock-up shall be the actual size of the equipment and include the actual color(s) to be used for the final installation. LICENSEE is prohibited from installing ground-mounted cabinets. LICENSEE shall install all wires within the CITY POLE to be hidden or shrouded from view. Each Antenna shall have identifying information printed on it, including emergency contact information. Advertising or logos may not be placed on any Antenna or CITY POLE.

29. **Covenant of Non-Interference.** LICENSEE shall be responsible for inspecting CITY POLES and finding adequate space at the site without moving or relocating any of CITY'S POLES or equipment, or any other facility, or utility located at the City Property (unless permitted by CITY or other party), at the time Licensee's facilities are installed. LICENSEE will comply with all FCC regulations regarding radio frequency ("RF") emissions and exposure limitations. LICENSEE's equipment shall not negatively impact any other existing facility or antenna. In the event that Licensee's equipment does negatively impact other existing facilities, LICENSEE shall be required to take reasonable measures to correct the problem. LICENSEE shall be required to coordinate with other existing utilities located at the City Property, to ensure that LICENSEE's

equipment does not interfere with the frequencies utilized by existing utilities or other parties existing at the time of Antenna installation.

30. **No Interference.** LICENSEE shall not interfere in any manner with the existence and operation of any public or private property, including, but not limited to, sanitary sewer mains and laterals; water mains and services; storm drain lines; gas mains and services; utility poles and signs; aerial and underground electrical and telecommunication equipment; traffic signals; and electroliners without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable law or this LICENSE. However, CITY agrees that CITY and/or any other licensees, or users of City Property who currently have, or in the future take possession of, space within City Property adjacent to any of LICENSEE's Antennas will be permitted to install only equipment that is of the type and electromagnetic frequencies which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LICENSEE. LICENSEE shall act reasonably to accommodate future providers of FCC/PUC-regulated telecommunications services so that City Property may be used by additional providers.

31. **PG&E Power Connection, Metering, and Costs.** LICENSEE shall cause a separate electric line to be run to its equipment as permitted by PG&E. LICENSEE shall pay all electricity costs directly to Pacific Gas and Electric Company ("PG&E") or CITY's other electric service provider (as applicable). If feasible, LICENSEE may use and access CITY's existing power supply, conduit or other form of infrastructure for the delivery of power and fiber access to CITY POLES to power its Antenna upon approval from the CITY. LICENSEE shall make good faith efforts to negotiate a flat rate with PG&E to avoid above ground metering facilities where practicable. Should LICENSEE be unable to secure a flat rate service from PG&E, then pole-mounted and concealed smart meters may be utilized, subject to PG&E requirements, with written approval by CITY's Public Works Director. All electric meters shall have a master cutoff switch installed which will allow power shut down to the Antenna in case of emergencies.

32. **Site License Supplement.** For each new site, LICENSEE shall submit to CITY all required applications and permits to enter upon the right-of-way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace the Antenna on CITY POLES in the right-of-way for the purposes of providing telecommunications services. Each application for a site location is subject to any applicable public outreach and CITY reserves the right to deny any application for the installation of an Antenna to CITY POLES if all lawful CITY requirements have not been met. After the CITY approves all required applications and permits, LICENSEE shall submit a Site License Supplement ("Site License Supplement") to memorialize each new site location. However, LICENSEE may also concurrently submit a Site License Supplement in draft form along with its Site Supplement Application(s) for the City's review, but approval of same shall not occur until all required applications and permits have been submitted by LICENSEE.

33. **Site License Supplement Application Priority.** LICENSEE expressly acknowledges that the CITY either already has or may in the future enter into similar master license agreements for its CITY POLES with other persons or entities, and that LICENSEE and such third parties may from time-to-time desire to license the same CITY POLES (including the utility infrastructure serving the CITY POLES, as the case may be) from the CITY. To promote a fair

and competitively neutral process, the CITY shall implement a first-in-time prioritization process as provided in this Section. The CITY shall review each Site License Supplement application, which includes without limitation any Site License Supplement applications submitted by other licensees, in the order received. Each Site License Supplement application will be date and time stamped when received by the CITY, and such stamp shall control the Site License Supplement application's priority relative to other Site License Supplement applications. In the event that the CITY receives two Site License Supplement applications for the same CITY POLES, the applications with lower priority will be held in abeyance until the higher-priority application is withdrawn, denied or timed-out as provided in this LICENSE, at which time the CITY will commence to review the next-highest priority Site License Supplement application for that CITY POLE (including the utility infrastructure serving the CITY POLE, as the case may be).

In order to facilitate the timely review of all applications, the CITY will limit the submission of site applications as follows:

- a. LICENSEE is limited to no more than 20 new site applications at any one time; and
- b. LICENSEE shall submit a map which shows the locations of poles in the area.

34. **Conditions Precedent.** Before construction of any improvements are commenced on CITY POLES and before any building materials have been delivered to CITY POLES by LICENSEE or its agents, LICENSEE shall comply with the following conditions or procure CITY's written waiver of the conditions specified:

- a. **Protection of Adjacent Property, Indemnity of CITY.** LICENSEE shall protect City Property and adjacent property against damage resulting from the performance of work undertaken by LICENSEE or LICENSEE's agents, employees, contractors (excluding any damage caused by gross negligence or the willful act of CITY) and shall indemnify CITY against all liens or liability arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment, or power.

- b. **Insurance.** CITY shall require any third party contractor performing work at the CITY POLES to maintain workers' compensation insurance as contractor's sole cost and expense at all times when any work is in process and shall otherwise conform to the requirements of this LICENSE with respect to insurance.

- c. **Security Requirements.** LICENSEE shall provide a bond to CITY in the amount of Fifty Thousand Dollars (\$50,000), for the first twenty-five (25) installed Antennas, and an additional \$50,000 (or pro rata portion thereof) for each additional twenty-five (25) Antennas thereafter, to protect CITY in that event that LICENSEE fails to remove its Antennas upon termination of this LICENSE. The bonding company shall be a United States based entity with legal rights to issue bonds in the State of California. Subsequent increases in the number of installed antennas shall require a proportionate increase in bond amounts. The bond forms shall be in a form approved by the City Attorney.

35. **LICENSEE Payment for Labor or Materials.** LICENSEE shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for LICENSEE at or for use on CITY POLES, which claims are or may be secured by any mechanic or material lien against CITY POLES or any interest therein. LICENSEE shall give CITY not less than ten (10) days' notice prior to the commencement of new installation on CITY POLES. If CITY shall require a surety bond, LICENSEE shall furnish to CITY a surety bond satisfactory to CITY in an amount equal to the contested lien, claim indemnifying CITY against liability for and holding CITY POLES free from the lien or claim. In addition, CITY shall have the right to require LICENSEE to pay CITY's attorneys' fees and costs in participating in the action if CITY decides to participate.

36. **Changes to Installation Plans.** Upon completion of the installation of any Antenna, and prior to final inspection approval, LICENSEE shall give CITY notice of all changes in the plans and specifications made during the course of the work and at the same time deliver to CITY "as built" drawings accurately reflecting all changes, provided that no change that substantially alters the final plans last approved by CITY shall be made without CITY's prior written approval.

37. **Final Inspection.** LICENSEE shall not provide service to its customers from the Antenna in any way without receiving final inspection approval of the Antenna from CITY.

38. **As Built Plans.** LICENSEE shall provide as-built plans, to the CITY, for each Antenna installation within thirty (30) days of the completion of the installation.

39. **Commencement of Installation and Operation.** LICENSEE shall commence installation of an Antenna no later than nine (9) months after the mutual execution of an applicable Site License Supplement. LICENSEE shall commence operations no later than three (3) months after LICENSEE commences installation, excepting delays due to any force majeure event. Failure of LICENSEE to commence installation or commence operation of the applicable telecommunications service as provided above shall afford CITY the right to terminate the right to use the applicable CITY POLE and Site License Supplement upon thirty (30) days' notice to LICENSEE, unless within such thirty (30) day period, LICENSEE shall commence installation or commence operation, as applicable.

40. **General.** LICENSEE shall keep in good order, condition, and repair the Antenna placed on CITY POLES. LICENSEE shall keep the Antenna and CITY POLES clean and free of debris and graffiti attributed to LICENSEE's use of the CITY POLES. Graffiti shall be removed within a 48 hour period.

41. **Discontinued Use of Antenna.** On the last day of the Term, or of the Option Term, CITY POLES shall be in the same condition as when installed, clean and free of debris and graffiti, normal wear and tear excepted. LICENSEE shall also remove all LICENSEE improvements including equipment, cables, and wires located above ground or below ground that LICENSEE placed with CITY POLES, and repair any damage to CITY POLES or City Property, including the Right-of-Way, by the installation, maintenance, or removal of LICENSEE's Antenna and any related cables, wires or other equipment within sixty (60) days of such expiration of the Term or Option Term.

42. **CITY's Rights.** If LICENSEE is in default after expiration of the applicable cure periods, CITY may (but shall not be required to) enter upon CITY POLES, (except in the case of an emergency, in which case no notice shall be required), to perform obligations on LICENSEE's behalf and put CITY POLES and/or Antenna in good order, condition and repair, and the cost, together with interest at the maximum rate then allowable by law, shall become due and payable as additional rent to CITY with LICENSEE's next rental installment, provided, however, in the case of a non-emergency, CITY shall notify LICENSEE of CITY's intention to perform LICENSEE's obligations ten (10) days prior to performing any work on LICENSEE's behalf. If no rental installment is due to CITY, these costs shall become due and payable within thirty (30) days from the date of CITY's invoice.

43. **City Repair Obligations.** CITY shall have no obligation to repair and maintain the CITY POLES nor the improvements and facilities. City's obligation is to maintain safety lighting related components on the CITY POLES only. LICENSEE expressly waives the benefit of any statute now or hereinafter in effect which would afford LICENSEE the right to make repairs at CITY's expense or to terminate this LICENSE because of CITY's failure to keep CITY POLES in good order, condition, and repair. Notwithstanding the foregoing, if CITY elects to not repair or replace a damaged CITY POLE, then CITY and LICENSEE will use reasonable efforts to coordinate any necessary responses. In the event of any damage to a CITY POLE that impacts LICENSEE's use, LICENSEE may repair or replace the CITY POLE with a like-kind pole at its own expense, subject to the CITY's approval, which shall not be unreasonably withheld, conditioned or delayed. LICENSEE shall be responsible at its own cost and expense to dispose of any removed CITY POLES.

44. **Relocation and Displacement of Equipment.** Upon the CITY's ninety (90) days written notice to LICENSEE, LICENSEE shall relocate its equipment at LICENSEE's sole cost and expense when the CITY determines that the equipment relocation is necessary for the construction, modification, completion, or relocation of roads, streets, sidewalks, curbs, gutters, storm drainage facilities, sewer lines, water utility lines or other capital improvement project within CITY's jurisdiction undertaken by or on behalf of CITY. If LICENSEE shall fail to relocate any Antenna as requested by the CITY in accordance with this provision, the CITY shall be entitled to remove or relocate the equipment at LICENSEE's sole cost and expense, without further notice to LICENSEE. LICENSEE shall pay to the CITY actual costs and expenses incurred by the CITY in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the CITY's written demand for such payment. If any CITY POLE is damaged or downed for any reason, and as a result disrupts use of the Antenna, the CITY will have no obligation to repair or replace the CITY POLE for the use of LICENSEE's Antenna. LICENSEE shall bear all risk of loss to LICENSEE's Antenna due to damaged or downed CITY POLES, and may choose to replace CITY POLES pursuant to the provisions herein.

45. **Damages Caused by Licensee.** LICENSEE shall, at its sole cost and expense and to the satisfaction of the CITY: (a) remove, repair, or replace any of its Antennas that are damaged or become detached; and/or (b) repair any damage to public right-of-way, City Property, or other property, whether public or private, caused by LICENSEE, its agents, employees, or contractors in their actions relating to attachment, operation, repair, or maintenance of its Antennas. If LICENSEE does not remove, repair or replace such damage to its Antenna or to the public right-of-way, City Property or other property, the CITY shall have the option, upon thirty (30) days'

prior written notice to LICENSEE, to perform or cause to be performed such removal, repair, or replacement on behalf of LICENSEE and shall charge LICENSEE for the actual costs incurred by the CITY. If such damage causes a public health or safety emergency, as reasonably determined by the CITY, the CITY may immediately perform reasonable and necessary repair or removal work on behalf of LICENSEE and will notify LICENSEE as soon as practicable; provided, such repair work involves reattachment of its Antennas to a Pole or repair of the Pole itself, and shall not include any technical work on LICENSEE's equipment. Upon the receipt of a demand for payment from the CITY, LICENSEE shall within thirty (30) days of such receipt, reimburse the CITY for such costs. The terms of this provision shall survive the expiration, completion, or earlier termination of this LICENSE.

46. **Indemnity.** To the fullest extent permitted by law, LICENSEE shall indemnify, defend (with competent counsel reasonably acceptable to the City Attorney), and hold harmless CITY and its directors, officers, employees, and volunteers from and against all liabilities (including, without limitation, all claims, lawsuits, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs, including, but not limited to, reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) regardless of nature or type that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of LICENSEE or the acts or omissions of an employee, agent, or subcontractor of LICENSEE in the performance of this LICENSE, related to the installation of Antenna as described in this LICENSE, except to the extent of the negligence or willful misconduct of the CITY or its agents, employees, or invitees. The provisions of this paragraph survive completion of the services or termination of this LICENSE.

47. **Insurance.**

a. **Commercial General Liability Insurance.** LICENSEE shall obtain and maintain Commercial General Liability insurance including premises operations, products and completed operations with a limit of \$2,000,000.00 per occurrence for bodily injury and property damage and \$5,000,000.00 general aggregate, such insurance to be written on an occurrence basis.

b. **Automobile Liability Insurance.** LICENSEE shall obtain and maintain Automobile Liability insurance in the amount of Two Million Dollars (\$2,000,000) combined single limit each accident.

c. **Workers' Compensation Insurance.** LICENSEE shall obtain and maintain statutory Workers' Compensation insurance in compliance with the statutory requirements of the state(s) of operation and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident/disease per employee/disease policy limit.

d. **Acceptability of Insurers.** Insurance is to be placed with California eligible insurers with a current A.M. Best's Rating of A- minus:VII unless otherwise acceptable to CITY.

e. **Verification of Coverage.** Original Certificates of Insurance with blanket additional insured endorsements shall be received and on an ACORD form or Licensee's form for self insurance as reasonably approved by City before work commences, and insurance must be in effect for the duration of the LICENSE. The absence of insurance or a reduction of stated limits

shall cause all work on the project to cease. Any delays shall not increase costs to CITY or increase the duration of the project.

f. Other Insurance Provisions:

(1) Reserved.

(2) The City of Sunnyvale, its officers, officials, employees, and volunteers are to be included as an additional insured as their interest may appear under this LICENSE by blanket additional insured endorsement at least as broad as ISO Form or its equivalent as approved by CITY.

(3) For any claims related to this LICENSE, LICENSEE's required general liability insurance coverage at least as broad as ISO Form or its equivalent as approved by CITY shall be primary coverage with respect to CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, and volunteers shall not contribute to it.

(4) To the extent permitted by law, LICENSEE grants CITY a waiver of any rights to subrogation which any insurer of LICENSEE may acquire against CITY by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not CITY has received a waiver of subrogation endorsement from the insurer.

(5) Upon receipt of notice from its insurer(s) LICENSEE shall provide thirty (30) days' notice to CITY in the event of cancellation of any required insurance that is not replaced.

(6) LICENSEE shall require its contractors and subcontractors to obtain and maintain substantially the same insurance as required of LICENSEE.

(7) Approval of the insurance by CITY or acceptance of the Certificate of Insurance by CITY shall not relieve or decrease the extent to which LICENSEE may be held responsible for payment of damages resulting from LICENSEE's services or operations pursuant to this LICENSE, nor shall it be deemed a waiver of CITY's rights to insurance coverage hereunder.

(8) If, for any reason, LICENSEE fails to maintain insurance coverage that is required pursuant to this LICENSE, the same shall be deemed a material breach of LICENSE. CITY, at its sole option, may terminate this LICENSE and obtain damages from LICENSEE resulting from said breach.

g. Notwithstanding the foregoing, LICENSEE shall have the right to self-insure the coverages required in this section. In the event LICENSEE elects to self-insure its obligation to include CITY as an additional insured, the following additional provisions shall apply:

(1) CITY shall promptly and no later than thirty (30) days after notice thereof provide LICENSEE with written notice of any claim, demand,

lawsuit, or the like for which it seeks coverage pursuant to this Section and provide LICENSEE with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(2) CITY shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of LICENSEE; and

(3) CITY shall fully cooperate with LICENSEE in the defense of the claim, demand, lawsuit, or the like.

48. **Nontermination and Nonabatement.** Except as provided herein, no destruction or damage to the CITY POLES by fire, windstorm, earthquake, vehicular incident, or other casualty, whether insured or uninsured, shall entitle LICENSEE to terminate this LICENSE, unless CITY POLES are rendered unusable for the Antenna.

49. **Force Majeure.** Prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire, or other casualty, and other causes beyond the reasonable control of LICENSEE, shall excuse the performance by LICENSEE for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to rent to be paid by LICENSEE pursuant to this LICENSE. In the event any work performed by LICENSEE or LICENSEE's contractor's results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by LICENSEE of the provisions of this LICENSE.

50. **Waiver.** CITY and LICENSEE waive the provisions of any statutes, which relate to termination of Licenses when licensed property is destroyed and agree that such event shall be governed by the terms of this LICENSE.

51. LICENSEE shall pay for all power and telecommunication services supplied to the LICENSEE's Antenna, together with any taxes.

52. LICENSEE shall not place any signs upon CITY POLES without prior written consent of CITY, except as required by law.

53. **Assignment and Subletting.**

a. **City's Consent Required.** LICENSEE shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of LICENSEE's interest in this LICENSE or in CITY POLES, without CITY's prior written consent, which consent shall not be unreasonably withheld. CITY shall respond to LICENSEE's request for consent in a reasonably timely manner and any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of this LICENSE.

b. Net Worth Requirements. Notwithstanding the foregoing, LICENSEE may assign or transfer this Agreement or sublet its equipment attached to the CITY POLES, or any portion thereof, without the CITY's consent, to any entity which controls, is controlled by, or is under the common control with LICENSEE, or to any entity resulting from any merger or consolidation with Licensee, or to any partner of LICENSEE or to any partnership in which LICENSEE is a general partner, or to any person or entity which acquires all or substantially all of the assets of LICENSEE that are the subject of this Agreement, or to any entity which obtains a security interest in a substantial portion of LICENSEE's assets that are the subject of this Agreement, provided, however, that LICENSEE shall upon request provide CITY with documentation demonstrating adequate financial qualifications of any assignee or transferee covered by this paragraph.

c. No Release of Licensee. No subletting or assignment as approved by CITY shall eliminate LICENSEE's obligation or alter the primary liability of LICENSEE to pay the rent and to perform all other obligations of LICENSEE hereunder.

The acceptance of rent by CITY from any other entity shall not be deemed to be a waiver by CITY of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of LICENSEE or any successor of LICENSEE in the performance of any of the terms hereof, CITY may proceed directly against LICENSEE without the necessity of exhausting remedies against said assignee.

54. Defaults. The occurrence of any one or more of the following events shall constitute a material default or breach of this LICENSE by LICENSEE:

a. The abandonment of the Antenna by LICENSEE as defined by Civil Code §1951.3.

b. If any installment of rent due from LICENSEE is not received by CITY within thirty (30) days of the due date shall be deemed delinquent, LICENSEE shall pay to CITY an additional sum of twelve percent (12%) per year of the overdue rent that shall accrue, on a daily basis, from the thirty-first (31st) day after the date of billing. The parties agree this late charge represents a fair and reasonable estimate of the costs CITY will incur because of late payment by LICENSEE. Acceptance of any late charge shall not constitute a waiver of LICENSEE's default with respect to the overdue amount, nor prevent CITY from exercising any of the other rights and remedies available to CITY.

c. The failure by LICENSEE to make any payment of rent or any other payment required to be made by LICENSEE hereunder, as and when due, where the failure shall continue for a period of thirty (30) business days after written notice from CITY to LICENSEE. In the event CITY serves LICENSEE with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

d. The failure by LICENSEE to observe or perform any of the covenants, conditions, or provisions of this LICENSE in any material respect to be observed or performed by LICENSEE, where the failure shall continue for a period of thirty (30) days after written notice

from CITY to LICENSEE; provided, however, that if the nature of LICENSEE's default is that more than thirty (30) days are reasonably required for its cure, then LICENSEE shall not be deemed to be in default if LICENSEE commences cure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion.

e. The making by LICENSEE of any general arrangement or assignment for the benefit of creditors; LICENSEE's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against LICENSEE, it is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of LICENSEE's Antenna on CITY POLES or of LICENSEE's interest in this LICENSE where possession is not restored to LICENSEE within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of LICENSEE's Antenna located at the CITY POLES or of LICENSEE's interest in this LICENSE, where seizure is not discharged within thirty (30) days.

f. The failure of LICENSEE to maintain CITY-approved insurance.

55. **Remedies.** In the event of any material default or breach by LICENSEE, CITY may at any time thereafter, following any notice required by this LICENSE, and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of default or breach:

a. Terminate LICENSEE's right to use of CITY POLES and applicable Site License Supplement to which the material default or breach relates, in which case this LICENSE shall terminate as to those CITY POLES and LICENSEE shall immediately cease use of Antenna on those CITY POLES. In that event, CITY shall be entitled to recover from LICENSEE all damages incurred by CITY by reason of LICENSEE's default including, but not limited to, expenses of reletting, including if necessary, removal of Antenna and, if requested by City, restoration of CITY POLES to their original condition/type, normal wear and tear excepted; reasonable attorneys' fees; the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this LICENSE; and the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of such award exceeds the amount of rental loss for the same period that LICENSEE proves could be reasonably avoided;

b. Maintain LICENSEE's right to use, in which case this LICENSE shall continue in effect whether or not LICENSEE shall have abandoned Antenna on CITY POLES. In that event, CITY shall be entitled to enforce all of CITY's rights and remedies under this LICENSE, including the right to recover rent as it becomes due; and

c. Pursue any other remedy now or hereafter available to CITY under the laws or judicial decisions of the State of California.

56. **No Relief from Forfeiture after Default.** LICENSEE waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event LICENSEE is evicted or CITY otherwise lawfully uses CITY POLES by reason of any default or breach of this LICENSE by LICENSEE.

57. **Termination by LICENSEE.** Except as provided otherwise herein or by applicable law, LICENSEE may terminate this LICENSE for cause upon the giving of not less than thirty (30) days written notice to CITY if any of the following occur:

a. The failure by CITY to observe or perform any of the covenants, conditions, or provisions of this LICENSE in any material respect to be observed or performed by CITY, where the failure shall continue for a period of thirty (30) days after written notice from LICENSEE to CITY; provided, however, that if the nature of the CITY's default is such that more than thirty (30) days are reasonably required for its cure, then CITY shall not be deemed to be in default, if CITY commenced to cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion;

b. LICENSEE fails to obtain or loses any permits necessary for operation of the CITY POLES as a cellular telecommunications facility; or

c. LICENSEE determines that the site is inappropriate for technological reasons, beyond its control, including, but not limited to telecommunications signal interference.

In addition to termination, in the event of any material default or breach by CITY of this LICENSE, LICENSEE may pursue any other remedy now or hereafter available to LICENSEE under the laws or judicial decisions of the State of California.

Notwithstanding the foregoing, LICENSEE may terminate its use of specific CITY POLES and applicable Site License Supplement(s) at any time upon providing sixty (60) days' written notice to CITY.

58. **Termination by CITY.** Except as otherwise provided or by applicable law, CITY may terminate this LICENSE as to the affected CITY POLES and applicable Site License Supplement(s) for cause upon giving thirty (30) days written notice if any of the following occur:

a. A final, non-appealable FCC determination is made that with regard to the type of Antenna operated on CITY POLES, that such Antenna is a threat to public health or safety; or

b. LICENSEE loses or fails to satisfy any condition of any permit required by CITY necessary for operation of CITY POLES as a location for the Antenna and does not remedy such failure within the time periods set forth in Section 54.d. of this LICENSE.

59. **Condemnation of Licensed CITY POLES.** Should all or part of the Licensed CITY POLES be taken by any public or quasi-public agency or entity under the power of eminent domain under the term of this LICENSE:

a. Either CITY or LICENSEE may terminate this LICENSE as to the affected CITY POLES and applicable Site License Supplement(s) by giving the other thirty (30) days written notice of termination; and

b. Any damages and compensation awarded or paid because of the taking shall belong to the CITY, except for amounts paid LICENSEE for moving expenses or for damage to property owned by LICENSEE.

60. The term "CITY" as used herein, shall mean the City of Sunnyvale only while the CITY is the owner of the title of CITY POLES. In the event of any transfer of title or interest, the CITY (and in case of any subsequent transfer, then the grantor) shall, after the date of such transfer, be relieved from all liability with respect to its obligations hereunder occurring after the transfer date, provided that any funds in the hands of CITY at the time of transfer, in which LICENSEE has an interest, shall be delivered to the CITY's grantee.

61. Reserved.

62. Unless the LICENSE is terminated early, LICENSEE shall contact CITY at least six (6) months prior to the expiration of the Term or Option Term in order to request additional Term extensions.

63. Reserved.

64. To the extent applicable by law to LICENSEE's activities under this Agreement, LICENSEE shall pay prevailing wages.

65. CITY reserves to itself the right to grant such easements, rights, and dedications that CITY deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as the easements, rights, dedications, maps and restrictions do not materially interfere with LICENSEE's use of the CITY POLES. LICENSEE shall sign any of the aforementioned documents upon request of CITY and failure to do so shall constitute a material breach of this LICENSE.

66. **Severability.** If any provision of this LICENSE is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this LICENSE.

67. **Time of Essence.** Time is of the essence under this LICENSE.

68. **Additional Rent.** Any monetary obligations of LICENSEE to CITY under the terms of this LICENSE shall be deemed to be rent and all references herein to "rent" shall be deemed to include the Base Rent and all other sums paid or payable by LICENSEE to CITY.

69. **Entire LICENSE.** This LICENSE contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this LICENSE which are not fully expressed herein.

70. **No Warranty.** Except as otherwise stated in this LICENSE, LICENSEE hereby acknowledges that neither the CITY nor any employees or agents of the CITY has made any oral or written warranties or representations to LICENSEE relative to the condition or use by

LICENSEE of CITY POLES. LICENSEE assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of CITY POLES, and compliance with all applicable laws and regulations in effect during the Term of this LICENSE.

71. **Notices.** Any notice required to be given to LICENSEE shall be in writing and may be given by registered or certified mail return receipt requested by depositing same in the United States mail or with a commercial courier addressed to:

GTE Mobilnet of California Limited Partnership,
dba Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attn: Network Real Estate

or personally delivered to LICENSEE at such address or at such other addresses as LICENSEE may designate in writing to CITY.

Any notice required to be given CITY shall be in writing and may be given by registered or certified mail return receipt requested by depositing same in the United States mail or with a commercial courier addressed to:

City of Sunnyvale
Department of Public Works
ATTN: Real Property Administrator
456 W. Olive Avenue
Sunnyvale, CA 94086

or personally delivered to CITY or at such other addresses as CITY may designate in writing to LICENSEE.

Notices shall be deemed effective upon delivery or refusal of same.

72. **Waivers.** The failure of CITY to insist upon a strict performance of any of the terms, conditions, and covenants contained herein shall not be deemed a waiver of any rights or remedies that CITY may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, and covenants contained herein.

73. **Cumulative Remedies.** No remedy or election under this LICENSE shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

74. **Choice of Law.** This LICENSE shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a Party to this LICENSE, the Parties agree that trial of such action shall be conducted exclusively in the state or federal courts of California, County of Santa Clara. The language of all parts of this LICENSE shall be construed with its fair meaning and not strictly for or against the CITY or LICENSEE.

75. **Condition to Effectiveness of License.** The approval of the City Council of CITY constitutes an express condition precedent to the effectiveness of this LICENSE.

76. **Applicable Laws and Attorneys' Fees.** This LICENSE shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this LICENSE or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and other such costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office, if private counsel is not used, shall be based on applicable law.

77. **Brokers.** Each Party represents that it has not had dealings with any real estate broker or finder, with respect to this LICENSE in any manner. Each Party shall hold harmless the other Party from all damages resulting from any claims that may be asserted against the other Party by any broker, finder, or other person with whom the indemnifying Party has or purportedly has dealt.

78. **Authority.** Each individual executing this LICENSE on behalf of LICENSEE and CITY represents and warrants that he or she is duly authorized to execute and deliver this LICENSE on behalf of said Party.

79. **Non-Liability of Officials and Employees of the City.** No official or employee of CITY shall be personally liable for any default or liability under this LICENSE.

80. **Non-Discrimination.** LICENSEE shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status, physical or mental disability, military or veteran status, gender identity or expression, or genetic information.

81. **Independent Contractor.** It is agreed that LICENSEE shall act and be an independent contractor and not an agent nor employee of CITY.

82. **Conflict of Interest.** LICENSEE shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this LICENSE.

83. **FCC Order Validity.** In the event the FCC 2018 Order is reversed, stayed, or altered in a significant manner by the FCC or a court of competent jurisdiction ("Subsequent Action"), either Party to this Agreement may request that the Parties confer whether the Agreement should be modified, and, if so, both Parties agree to negotiate in good faith any changes required as a result of the Subsequent Action.

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IN WITNESS WHEREOF, this LICENSE, dated _____ for identification, between the City of Sunnyvale and LICENSEE is executed on _____, by CITY and by LICENSEE.

“CITY”:

CITY OF SUNNYVALE,
a California charter city and municipal
corporation

By: _____

City Manager

By: _____

City Attorney

“LICENSEE”:

GTE MOBILNET OF CALIFORNIA
LIMITED PARTNERSHIP, DBA VERIZON
WIRELESS

By: Cellco Partnership
Its: General Partner

By: _____
Name: _____
Title: _____

Taxpayer I.D. Number

APPROVED AS TO FORM:

City Attorney

Attachments:

Form Site License Supplement (Exhibit A)
Initial Approved Antenna Design (Exhibit B)

EXHIBIT A
FORM OF SITE LICENSE SUPPLEMENT

This Site License Supplement, is made this ____ day of _____, 20__, between CITY OF SUNNYVALE, a California charter city and municipal corporation (“Licensor”) and GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP, a California limited partnership, dba Verizon Wireless (“Licensee”).

1. License Agreement for Wireless Installations on Public Structures. This Site License Supplement as referenced in that certain Small Cell License Agreement between Licensor and Licensee dated _____, 20__ (“Agreement”). Licensee has submitted a Site License Application pursuant to the Agreement, and Licensor has reviewed the application and grants approval subject to the terms of this Site License Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction or inconsistency between the terms of the Agreement and this Site License Supplement, the terms of this Site License Supplement shall govern. Capitalized terms used in this Site License Supplement shall have the same meaning ascribed to them in the Agreement unless otherwise indicated herein.
2. Project Description and Locations. Licensee shall have the right to install and attach Antennas on, under, and above the public right of way owned or controlled by Licensor, on, in and adjacent to the specific City Poles as identified and described in Exhibit 1 attached hereto (collectively the “Licensed Site”).
3. Term. The Site License Term of this Site License Supplement shall be as set forth in Section 6 of the Agreement. Should the Agreement expire prior to the expiration of the Site License Supplement, the terms of the Agreement shall survive as long as the Site License Supplement is valid.
4. Base Rent. The Base Rent shall be in the amount and otherwise payable in accordance with the Agreement as set forth in Sections 9 and 10 of the Agreement.
5. Special Provisions, If Any (Specific to the Licensed Site).

[SIGNATURES APPEAR ON FOLLOWING PAGE]

LICENSOR:

CITY OF SUNNYVALE,
a California charter city and municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

GTE MOBILNET OF CALIFORNIA LIMITED
PARTNERSHIP, DBA VERIZON WIRELESS

By: Cellco Partnership

Its: General Partner

By: _____

Name: _____

Title: _____

Date: _____

EXHIBITS

- 1 Licensed Site, Antenna Equipment List and Plans

EXHIBIT 1 TO SITE LICENSE SUPPLEMENT

Licensed Site, Antenna Equipment List and Plans

Licensee Antenna Reference: [LICENSEE TO COMPLETE]

Site Name: POLYGON NAME_NODE #

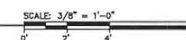
City Pole number: [LICENSOR TO COMPLETE]

City Pole Latitude and Longitude (Approximate): [LICENSEE TO COMPLETE] Antenna

Equipment List: [LICENSEE TO COMPLETE]

Antenna Plans: See the attached plan set dated _____ 20__ prepared by
_____ consisting of (____) page(s).

EXHIBIT B
INITIAL APPROVED ANTENNA DESIGN



Prepared For:



2785 MITCHELL DRIVE, SUITE 9
WALNUT CREEK, CA 94598

Engineer:



2840 HOWE ROAD, SUITE E
MARTINEZ, CA 94553
www.TheCBRGroup.com

Vendor:

Site Number:

N/A

Site Name:

SUNNYVALE 4G

Site Address:

37.382182, -122.012266

County:

SANTA CLARA COUNTY

Issued For:

CONSTRUCTION

[illegible]

Licensors:


IT IS A QUESTION OF LAW FOR THE JURY, UNLESS THERE ARE ACTUAL FACTS TO THE CONTRARY.

Sheet Title:

EQUIPMENT DETAILS

Sheet Number:

EQ-1

						<div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> <small>SHEET:</small> <small>CONTRACTOR TO INPUT SITE ID /</small> <small>SITE NAME / MARKET ID /</small> <small>PS LOCATION CODE</small> </div> </div>					
NOT USED	SCALE: N.T.S.	12	NOT USED	SCALE: N.T.S.	9	NOT USED	SCALE: N.T.S.	6	CAUTION SIGN	SCALE: N.T.S.	3
								<div style="border: 1px solid black; padding: 5px;"> <p>NON-EMERGENCY NOISE SITE POWER SHUT DOWN PROCEDURES:</p> <p>1. FOR NON-EMERGENCY/SCHEDULED POWER SHUT DOWN</p> <ul style="list-style-type: none"> □ CALL VERIZON ~ (800) 264-6620 □ 24-HRS. PRIOR TO SCHEDULED POWER SHUT OFF PROVIDE THE FOLLOWING INFORMATION: <ul style="list-style-type: none"> • SITE NUMBER IDENTIFIED ON SITE NUMBERING STICKER • YOUR NAME AND REASON FOR POWER SHUTOFF • PROMISE DURATION OF OUTAGE □ PULL DISCONNECT HANDLE TO "OFF" POSITION □ POWER SHUT OFF VERIFICATION WITH APPROVED PG&E PROCEDURES □ NOTIFY VERIZON UPON COMPLETION OF WORK □ RESTORE POWER BY PLACING POWER DISCONNECT HANDLE IN THE "ON" POSITION □ REINSTALL LOCK ON POWER HANDLE <p>2. EMERGENCY POWER SHUT OFF</p> <ul style="list-style-type: none"> □ CALL VERIZON ~ (800) 264-6620 □ PROVIDE THE FOLLOWING INFORMATION: <ul style="list-style-type: none"> • SITE NUMBER IDENTIFIED ON SITE-NUMBERING STICKER • YOUR NAME AND REASON FOR POWER SHUTOFF • PROMISE DURATION OF OUTAGE □ PULL DISCONNECT HANDLE TO "OFF" POSITION □ POWER SHUT OFF VERIFICATION WITH APPROVED PG&E PROCEDURES □ NOTIFY VERIZON UPON COMPLETION OF WORK □ RESTORE POWER BY PLACING POWER DISCONNECT HANDLE IN THE "ON" POSITION □ REINSTALL LOCK ON POWER HANDLE </div>			
NOT USED	SCALE: N.T.S.	11	NOT USED	SCALE: N.T.S.	10	NOT USED	SCALE: N.T.S.	5	DISCONNECT SWITCH SIGN	SCALE: N.T.S.	2
								<div style="border: 1px solid black; padding: 10px; text-align: center;"> <p>VERIZON</p> <p>In case of Emergency Contact</p> <p>Phone: 1-(800) 264-6620</p> <p>Please Reference Site ID</p> <p>Site ID SHALL MATCH SITE ID OF THIS PLAN</p> <p>FCC ID </p> </div> <div style="margin-top: 10px;"> <small>OWNER/OPERATOR NOTE:</small> <small>SITE ID LABEL TO BE AFFIXED AT OR NEAR THE POINT OF POWER CONNECTION WITH T265241 LABELING TAPE OR EQUIVALENT BLACK ON WHITE LABELING TAPE OF AT LEAST 18MM. WIDTH WITH EXTRA-STRENGTH ADHESIVE. USE ANY COMPATIBLE P-TOUCH LABEL MAKER. TEXT SHOULD BE PRINTED IN ALL CAPS WITH MINIMUM HEIGHT OF 1/2".</small> <small>NOTE:</small> <small>SITE ID SHALL MATCH SITE ID IN PERMIT PLANS</small> </div>			
NOT USED	SCALE: N.T.S.	10	NOT USED	SCALE: N.T.S.	7	NOT USED	SCALE: N.T.S.	4	EMERGENCY CONTACT SIGN	SCALE: N.T.S.	1

EXISTING



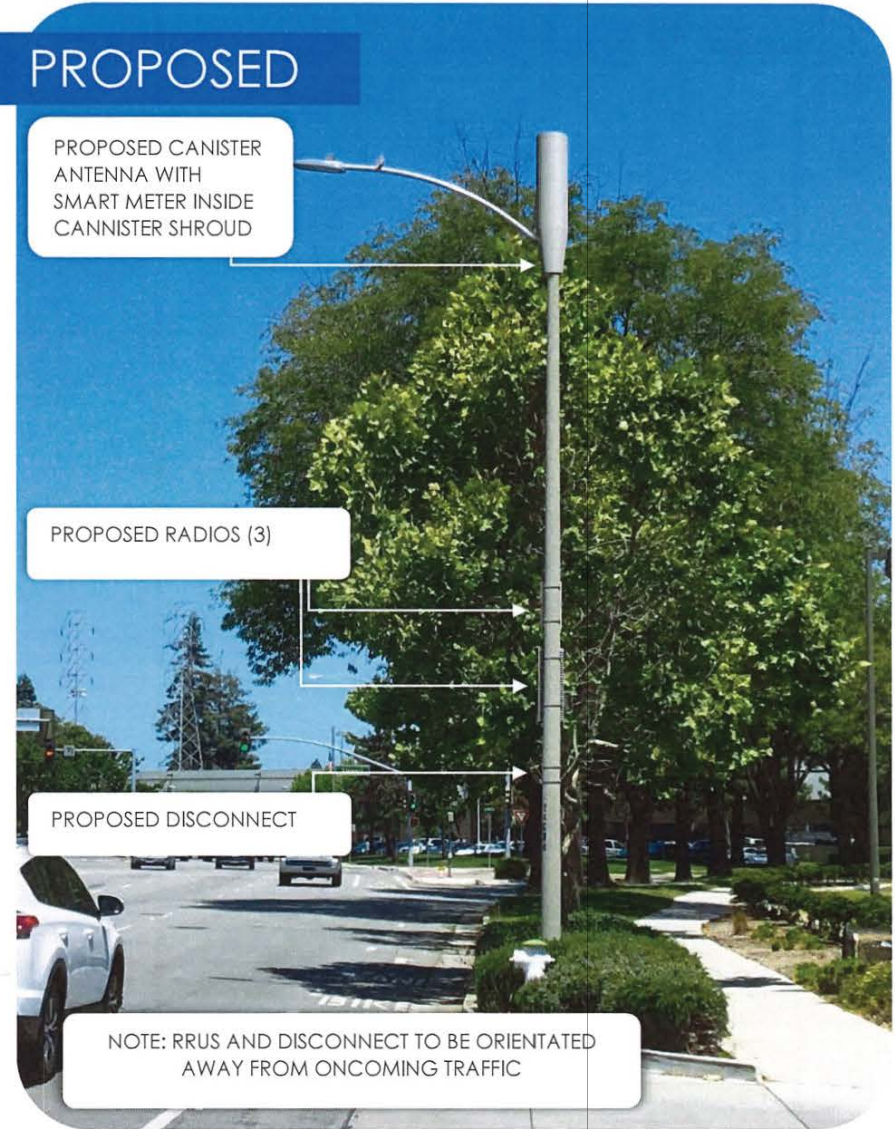
PROPOSED

PROPOSED CANISTER
ANTENNA WITH
SMART METER INSIDE
CANNISTER SHROUD

PROPOSED RADIOS (3)

PROPOSED DISCONNECT

NOTE: RRUS AND DISCONNECT TO BE ORIENTATED
AWAY FROM ONCOMING TRAFFIC

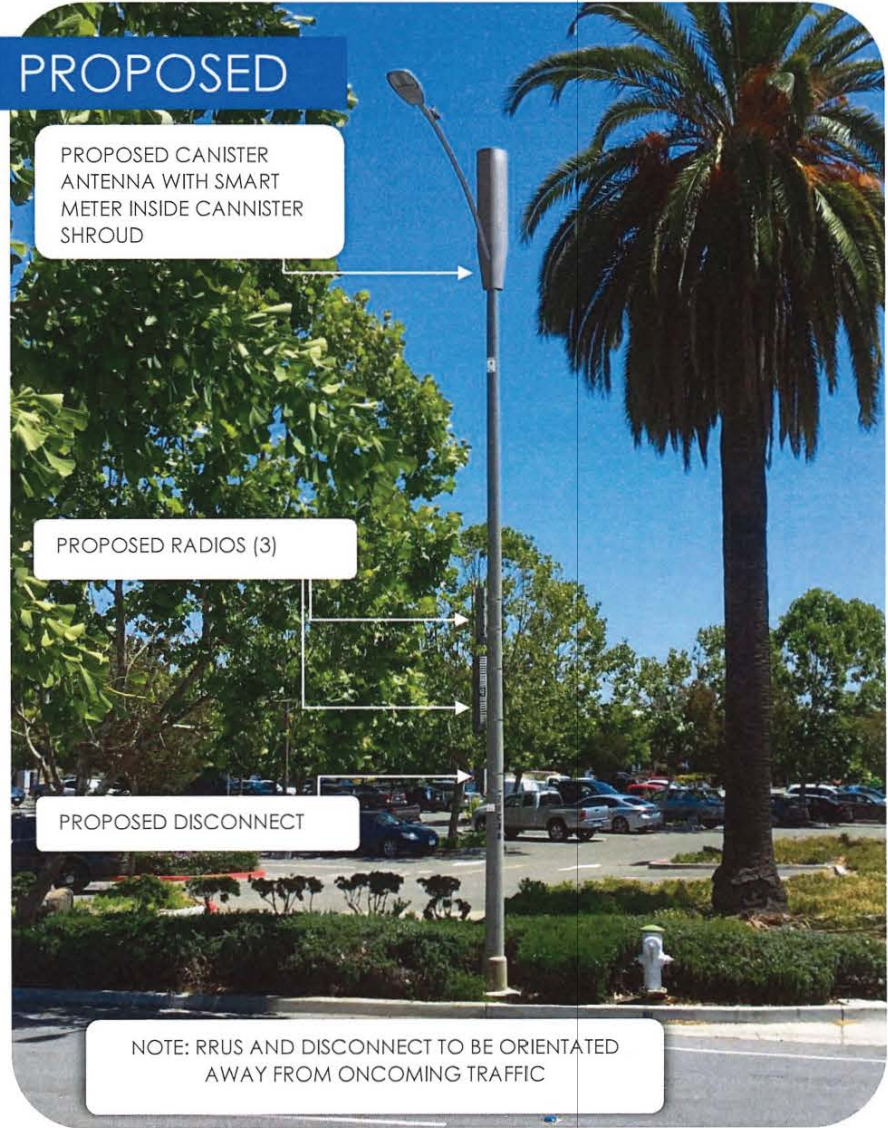


View 1: Sunnyvale 4G | Photosim produced 9/12/2019

EXISTING



PROPOSED



View 2: Sunnyvale 4G | Photosim produced 9/12/2019