Summary Title: Master License Agreement

Title: Adoption of Two Resolutions (1) Adopting Utility Rate Schedule E-16 (Unmetered Electric Service), as Amended, Adding a Wireless Facilities Attachment Fee; and (2) Approving the Master License Agreement and Exhibits for the Use of City-Controlled Space on Utility Poles and Streetlight Poles and in Conduits by Wireless Communications Facilities and Related Equipment

From: City Manager

Lead Department: Utilities

Recommendation
Staff recommends that the City Council:

(1) Adopt a resolution, approving an amended Utility Rate Schedule E-16.

(2) Adopt a resolution, approving a standard form Master License Agreement (the “MLA”) and Exhibits for third party access to and use of City-controlled spaces on utility poles and streetlight poles and in conduits for the purpose of providing wireless communications facilities services in Palo Alto, and delegating to the City Manager the authority to sign the standard form MLA.

Background
Over the past nine months, the City has been contacted by a handful of personal wireless communications service providers and distributed antenna system (“DAS”) network operators, which have expressed strong interest in accessing and using City of Palo Alto-controlled spaces on utility poles and streetlight poles and in conduits for the purpose of installing wireless antennas and related infrastructure. Wireless communications companies are experiencing increasing demand for fourth generation (“4G”) wireless communications services and are expanding their wireless antenna networks to improve both broadband facilities’ capacity and coverage in Palo Alto.

Generally, under federal and California law, and subject to certain conditions protecting the City’s public rights-of-way management and compensation authority and land use authority, the City cannot prohibit wireline and wireless communications facilities from gaining access to the public rights-of-way and utilities infrastructure located therein. Although the law is less clear, federal and California law also generally, and subject to certain conditions, encourage, if
not require, the City to allow wireline and wireless communications facilities to access and use the utilities infrastructure located in the public rights-of-way. The City can, however, establish reasonable rates, terms and conditions of access to utilities infrastructure in the public rights-of-way, including adopting rules and regulations relating to the time, place and manner of attachment to that infrastructure.

The City has been supportive of the placement of advanced broadband communications facilities in Palo Alto since Congress enacted the Telecommunications Act of 1996 (the “1996 Act”). In 1997, the Council approved four Telecommunications Policy Statements (CMR: 369:97), which laid the foundation for bringing advanced broadband services to Palo Alto.

Policy statement number 1 declared the City's policy to facilitate the competitive delivery of conventional and advanced telecommunications services in Palo Alto in light of the 1996 Act. Policy statement number 2 declared the City's policy to regulate these facilities in accordance with reasonable and non-discriminatory regulations. Policy statement number 3 declared the City's policy to permit the use of the Utilities Department’s infrastructure for advance broadband communications purposes, provided such use does not unduly interfere with the City's primary mission of providing electric utility service to its customers. Policy statement number 4 declared the City’s policy to permit interested parties to use other City property and facilities for the siting of telecommunications infrastructure, consistent with the City’s zoning, environmental, legal and other requirements.

At the time, the City’s Telecommunications Policy was focused on encouraging the deployment of dark fiber-related broadband services to expand advance broadband services in Palo Alto. Staff noted that as of August 1997, 48 of the 96 competitive local exchange carriers were authorized to provide “facilities-based services” that would require the construction of new wireline and wireless facilities. Today, the telecommunications industry has changed and there has been a shift in emphasis to wireless communications as the fastest growing form of telecommunications and broadband services. The City’s Telecommunications Policy Statements are sufficiently broad that they can be interpreted to encourage the deployment of wireless communications facilities services today for the same reasons that the policy statements were drafted in support of wireline communications services a dozen years ago.

In 1997, staff reported that the Telecommunications Policy extended certain goals of the draft 1996-2010 Comprehensive Plan, including the development of technologically-advanced communications infrastructure (Policy B-13), working with electronic information network providers to maximize potential benefits for Palo Alto businesses, schools, residences, and other potential users (Policy B-14), and allowing the creative use of City Utilities Department infrastructure and public rights-of-way to ensure competition among networks in providing information systems infrastructure (Policy B-15).

Discussion

Utility Rate Schedule E-16, as amended.
Amended Utility Rate Schedule E-16 incorporates a new license fee that will be charged on an annual basis for permitting communications service providers to attach wireless antenna facilities and communications network equipment on utility poles and streetlight poles and in conduits. The license fee is intended to recover the City’s actual or reasonable estimated costs, including, without limitation, the annual pole operation and maintenance costs, engineering and legal costs incurred to date that are associated with developing a standard form agreement and engineering specifications relating to providing pole and conduit access to wireless communications service providers, and general administration and operational expenses incurred due to the presence of such equipment on City-owned utility poles.

The annual license fees to be charged are contingent on the number of antennas that are attached by wireless communications service providers. The various service and facilities-based providers have applied for, or are anticipated to apply for, attachment to approximately 200 out of approximately 6,000 poles in Palo Alto. Assuming all antenna attachments are processed, the approximate annual revenues will be $300,000 ($1,500 x 200 poles). The annual pole attachment fee ensures that the City will recover its projected and actual costs now and over time.

The City’s rates, fees and charges for pole attachments and conduit occupancy to be charged in accordance with Utility Rate Schedule E-16, as amended, and the MLA are consistent with all of the Telecommunications Policy statements and the Comprehensive Plan goals. In addition, these rates, fees and charges are not considered “charges” or “fees” subject to voter approval under Proposition 218, which does not extend to electric utility charges and fees in any event, and they are not considered “taxes,” “levies,” “charges” or “exactions” subject to voter approval under Proposition 26, as they are charges for the rental of local government property.

Master License Agreement and Exhibits.

The terms and conditions of the MLA also further the Telecommunication Policy Statements. The contract spells out the essential terms and conditions governing the deployment of wireless antennas that will enable current and new service providers to address coverage and capacity issues relating to 4G broadband service in Palo Alto. The deployment will be managed in a manner that allows the Utilities Department’s infrastructure to be used for advanced broadband communications purposes, without materially affecting the City’s provision of electric utility service to the community, and in a manner consistent with applicable City ordinances, rules and regulations.

Among the key terms and conditions are:

**Term** - The initial term of the MLA is ten (10) years, and there is a right to extend the term for another ten years. This period of time has been requested by interested parties who desire a sufficiently long period of time in which to amortize their capital investments.
Changes in law - As the resolution pertaining to the approval of the MLA notes, telecommunications law relating to pole attachments is in a state of flux, and further changes are highly likely. For example, at the federal level, the Federal Communications Commission recently adopted its Order 11-50 (April 7, 2011), which implements Section 224 of the Communications Act of 1934 (the “Pole Attachment Act”) in a very different way compared to past practices. The Order notes the substantial delays allegedly caused by utilities in the processing of pole attachment applications. The FCC Order 11-50, which does not apply to local agencies, sets forth detailed requirements that utilities must comply with in regard to pole attachment requests. At the California state level, there is pending before the California Legislature a bill, Assembly Bill 1027 (“AB 1027”). This legislation, which contains several requirements that are similar in some ways to those of FCC Order 11-50, would apply to California municipal utilities and charter cities. AB 1027 would place limitations on the City in dealing with parties wishing to attach antennas to poles in regard to fees and roll-out schedules; the MLA does not contain any of the limitations set forth in the most recent version of AB 1027. To the extent AB 1027, if enacted, requires the modification of the terms and conditions of the MLA, a process for the parties to deal with these changes is established in the MLA.

Application process - The MLA sets forth a detailed time schedule for the processing of pole attachment and conduit occupancy applications. The attachment of wireless antennas to the City’s utility poles could occur within six months of the filing of a completed application. To the extent there are multiple applications for the same set of poles, the licensees are required to coordinate their activities with their competitors.

Next Steps in Processing DAS Applications
In addition to the master license agreement, wireless communication facilities are subject to the requirements of Municipal Code section 18.42.110, which specifies that such facilities shall be permitted subject to architectural review and/or a conditional use permit requirements governing placement and design of the antennas and related equipment to provide for facilities that blend with the existing surroundings.

Planning Staff has reviewed section 18.42.110 with the City Attorney’s Office and determined that DAS applications qualify as co-location facilities because DAS attachments would be added to utility poles that already support utility and communications uses. Section 18.42.110(b) provides that collocation facilities are subject only to architectural review and do not require a conditional use permit. Therefore, DAS applications will be processed as minor architectural review projects subject to staff-level review pursuant to PAMC 18.76.020(b)(3). To facilitate implementation of this process, staff will initially request that the ARB provide feedback on potential design criteria for DAS facilities, which staff would use in processing DAS applications.

Timeline Resource Impact
The MLA represents an increased workload for Utilities, but staff will make the time to review and administer the installation, inspection and billing associated with these wireless communication facilities. Assuming all antenna attachments are processed, the estimated
annual revenues will be $300,000 ($1,500 x 200 poles). Staff expects that the revenue will be deposited in the Electric Fund and the General Fund based on the type of installation. If approved, staff will monitor the revenue and propose a mid-year 2012 budget adjustment to reflect the revenue change in the appropriate funds.

Policy Implications
This recommendation is consistent with the Telecommunications Policy adopted by the Council in 1997, to facilitate the competitive delivery of advanced telecommunications services in Palo Alto in an environmentally sound manner.

Environmental Review
The California Environmental Quality Act (CEQA) does not apply to the Council’s approval of legal documents such as the MLA and Exhibits, because approval of these documents does not constitute a “project” for purposes of CEQA review. In the case of a third party applying to undertake certain action under the MLA, whether or not CEQA applies will be determined by Staff on a case-by-case basis with respect to each application, based on location, supporting structure, and other factors.

Attachments:

- Attachment A: Resolution Amending Utility Rate Schedule E-16 (PDF)
- Attachment B: E-16 effective Rev July 2011 (PDF)
- Attachment C: Resolution Approving Master License Agreement (PDF)
- Attachment D: MLA Final Draft (PDF)
- Attachment E: MLA Exhibits Final Draft (PDF)

Prepared By: James Fleming, Management Specialist

Department Head: Valerie Fong, Director

City Manager Approval: James Keene, City Manager
*NOT YET APPROVED*

Resolution No.
Resolution of the Council of the City of Palo Alto Amending
Utility Rate Schedule E-16 of the City of Palo Alto Utilities
Rates and Charges Pertaining to Electric Rates

The Council of the City of Palo Alto does hereby RESOLVE as follows:

SECTION 1. Pursuant to Section 12.20.010 of the Palo Alto Municipal Code, Utility Rate Schedule E-16 (Unmetered Electric Service) is hereby amended to read in accordance with sheet E-16-1 through E-16-4, attached hereto and incorporated herein. The foregoing Utility Rate Schedule, as amended, shall become effective July 26, 2011.

SECTION 2. The Council finds that the revenue derived from the authorized adoption enumerated herein shall be used only for the purpose set forth in Article VII, Section 2, of the Charter of the City of Palo Alto.

SECTION 3. The Council finds that the adoption of this resolution does not constitute a project under the California Environmental Quality Act, California Public Resources Code section 21080, subdivision (b)(8).

INTRODUCED AND PASSED:

AYES:
NOES:
ABSENT:
ABSTENTIONS:
ATTEST:

_________________________  _________________
City Clerk              Mayor

APPROVED AS TO FORM:  APPROVED:

_________________________  _________________
Senior Asst. City Attorney  City Manager

_________________________  _________________
                Director of Utilities  Director of Administrative Services
UNMETERED ELECTRIC SERVICE

UTILITY RATE SCHEDULE E-16

A. APPLICABILITY:

This rate schedule is applicable under the regular terms and conditions of the City of Palo Alto Utilities Department to Customers who contract with the City for unmetered electric service for billboards, unmetered telephone services, telephone booths, railroad signals, cathodic protection units, traffic cameras, WiFi equipment, community antenna systems, wireless antenna and related equipment, community antenna television and video systems, cable TV power supplies, and automatic irrigation systems and also applies to other miscellaneous Electric Utility fees to various public agencies and private entities.

B. TERRITORY:

Within the incorporated limits of the City of Palo Alto and land owned or leased by the City.

C. NET MONTHLY BILL:

1. Customer Charge: $9.00 per month

2. Energy Charge:
   (for all kWh supplied) using Electric Rate Schedule E2 plus all applicable riders

3. Minimum Charge:
   Minimum monthly charge will be the Customer Charge.

D. DETERMINATION OF ENERGY REQUIREMENTS:

a. Initial Inventory
   Customer shall enter into a contract for service under this Schedule and provide a written inventory of all equipment at each of service requested, including the type and nameplate rating for each piece of equipment. The billing energy for each point of service will be determined by the Utilities Electric Engineering Division estimation of the kWh usage based on the type, rating and quantity of the equipment provided by the Customer.

   Monthly bill will be based on the following calculations:
   1. Total Wattage.
   2. Total Wattage times estimated annual operating hours as set in the contract equals annual watt hours.
3. Annual watt hours divided by 1000 hours equals annual kilowatt hours (kWh)
4. Annual kWh divided by twelve (12) months equals monthly kWh.
5. Monthly kWh times current rate per kWh = monthly bill for each unmetered service location or equipment.

b. Updating Inventory
Customer will update its inventory by informing the Utilities Electric Engineering Division in writing of changes in type, rating and/or quantity of equipment as such changes occur, and billings will be adjusted accordingly. Upon Utilities Electric Engineering Division request, but no later than the one year anniversary of the date on which Customer first takes service, Customer shall provide an updated inventory of all equipment at each point of service.

c. Test Metering
The Utilities Electric Engineering Division may, at its discretion, test meter the load at various types and ratings of the Customer’s equipment to the extent necessary to verify the estimated kWh usage used for billing purpose and, where dictated by such test metering, Utilities Electric Engineering Division will make prospective adjustments in estimated usage for subsequent billing purposes; however, Utilities shall be under no obligation to test meter the load of Customer’s equipment. Utilities’ decision not to test meter the load of Customer’s equipment shall not release Customer from the obligation to provide to Utilities Electric Engineering Division, and to update, annually as provided in section b, an accurate inventory of the types, rating and quantities of equipment upon which billing is based.

d. Inspection
The Utilities Electric Engineering Division shall endeavor to inspect the equipment at each point of service annually as close to the anniversary date of the contract as is practical, and make prospective adjustments in billing as indicated by such inspections; however, Utilities shall be under no obligation to conduct such inspections for the purpose of determining accuracy of billing or otherwise. Utilities decisions not to conduct such inspections shall not release Customer from the obligation to provide to Utilities Electric Engineering Division, and to update, an accurate inventory of the types, rating and quantities of equipment upon which billing is based.
e. Billing for Service
   As the service described in this schedule is unmetered, Customer agrees to pay amounts
   billed in accordance with the current inventory, regardless of whether any of the installations
   of the Customer’s equipment were electrically operable during the period in question and
   regardless of the cause of such equipment failure to operate.

E. MISCELLANEOUS RATES:

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Rate *</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Traffic Signal maintenance and energy costs</td>
<td></td>
</tr>
<tr>
<td>(A) Controller</td>
<td>$522.26 ea</td>
</tr>
<tr>
<td>(B) 8&quot; Lamp (LED)</td>
<td>$1.85 ea</td>
</tr>
<tr>
<td>(C) 12&quot; &amp; PVH Lamp (LED)</td>
<td>$2.16 ea</td>
</tr>
<tr>
<td>(D) Pedestrian Head (LED)</td>
<td>$5.58 ea</td>
</tr>
<tr>
<td>(E) Vehicle, System and Bike Sensor Loop</td>
<td>$43.22 ea</td>
</tr>
<tr>
<td>2. Permit License Fee for Electric Conduit Usage</td>
<td></td>
</tr>
<tr>
<td>(A) Exclusive use</td>
<td>$1.40/ft/yr</td>
</tr>
<tr>
<td>(B) Non-Exclusive use</td>
<td>$0.70/ft/yr</td>
</tr>
<tr>
<td>3. Processing Fee for Electric Conduit Usage</td>
<td>Actual Cost</td>
</tr>
<tr>
<td>4. Permit License Fee for Utility Pole Attachments</td>
<td></td>
</tr>
<tr>
<td>(A) 1 ft. of usable space</td>
<td>$24.41/pole/yr</td>
</tr>
<tr>
<td>(B) 2 ft. of usable space</td>
<td>$26.86/pole/yr</td>
</tr>
<tr>
<td>(C) 3 ft. of usable space</td>
<td>$29.32/pole/yr</td>
</tr>
<tr>
<td>(D) 4 ft. of usable space</td>
<td>$31.77/pole/yr</td>
</tr>
<tr>
<td>5. Processing Fee for Utility Pole Attachments</td>
<td>$54.00/pole</td>
</tr>
<tr>
<td>6. License Fee for mounting communication equipment</td>
<td>$1,500.00/pole/yr</td>
</tr>
<tr>
<td>including distributed antenna systems on utility poles</td>
<td></td>
</tr>
</tbody>
</table>

* Rates are monthly unless otherwise indicated.

F. NOTES:
The fees set forth in Section E.1 through E.6, inclusive, are subject to adjustment annually in accordance with fluctuations in the Consumer Price Index (CPI), if any. The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-San Jose MSA, which is published by the U.S. Department of Labor, Bureau of Labor Statistics for the month of December of a base year, which falls within the year in which a master license agreement is signed by the City and the licensee. The adjustment shall be calculated, if there is an increase or decrease between December of a base year (when the rate(s) is/are first applicable) and December of any subsequent base year.

{End}
Resolution No.
Resolution of the Council of the City of Palo Alto
Approving the Master License Agreement and the Exhibits
to the Master License Agreement For Use of City-controlled
Space on Utility Poles and Streetlight Poles and in Conduits
by Privately-owned Wireless Communications Facilities

WHEREAS, Section 224 of the Communications Act of 1934, as amended (the
“Pole Attachment Act”), directs the Federal Communications Commission (the “FCC”) to ensure
the rates, terms and conditions applicable to utility pole attachments and access to utility
conduits by cable television systems and telecommunications service providers are just and
reasonable, but permits utilities to deny access to their utility poles and conduits, where there is
insufficient capacity and for reasons of safety, reliability or generally applicable engineering
purposes;

WHEREAS, the Pole Attachment Act exempts municipal, state and cooperative
utilities from its requirements, and twenty states, including California, have certified to the FCC
that they directly regulate pole attachments of the investor owned utilities but not the publicly
owned utilities;

WHEREAS, municipal utilities in California are not currently subject to the Pole
Attachment Act and FCC rules or the California Public Utilities Commission’s pole attachment
rules;

WHEREAS, in 1996, Congress enacted the Telecommunications Act of 1996 (the
“Telecommunications Act”), to promote competition and reduce regulation in order to secure
lower prices and higher quality services for American telecommunications consumers and
courage the rapid deployment of new telecommunications technologies;

WHEREAS, the Telecommunications Act provides, subject to certain exceptions,
state and local governments laws or requirements may not prohibit or have the effect of
prohibiting the ability of any entity to provide telecommunications services;

WHEREAS, the Telecommunications Act further provides certain statutory
protections to applicants seeking local land use or zoning approval to construct or modify
wireless telecommunications facilities, but the Act also preserves local agency decision-making
authority with regard to the placement, construction and modification of wireless
telecommunications facilities, subject to specified limitations;

WHEREAS, in 1997, the Council adopted Telecommunications Policy
Statements, to facilitate the competitive delivery of advanced telecommunications services in
Palo Alto in an environmentally sound manner;
WHEREAS, in 2009, Congress adopted the American Recovery and Reinvestment Act, which includes a requirement that the FCC develop a national broadband plan that would ensure all Americans enjoy access to broadband services;

WHEREAS, in 2010, the FCC released its National Broadband Plan, which identifies access to public rights-of-way and utility poles as having a significant impact on the deployment on broadband;

WHEREAS, in 2011, the FCC, as part of its Broadband Acceleration Initiative, issued a Notice of Inquiry, to determine how it can work with state and local agencies to improve policies governing access to public rights-of-way and for wireless facilities siting, and also issued a Report and Order and Order on Reconsideration, to revise its pole attachment rules, applicable to investor owned utilities, improve the efficiency and reduce potentially excessive costs of deploying telecommunications and broadband networks, and adopt rules that establish a specific timeline for access to poles and conduits, a revised formula for the telecommunications access rate, and a process to ensure just and reasonable rates, terms and conditions for pole attachments;

WHEREAS, in 2011, Assembly Bill 1027 ("AB 1027"), sponsored by the California Cable and Telecommunications Association, has been introduced to amend the California Public Utilities Code, to require local publicly owned electric utilities, including Palo Alto, to make surplus space and excess capacity on their utility poles available to cable television corporations, video service providers, and telephone corporations, permit those publicly owned utilities to impose fees to cover the actual cost of access to and use of utility poles, permit those fees to be challenged by pole attachers within a specified timeframe, and to otherwise preempt local laws, rules and regulations that may be in conflict with the provisions of AB 1027;

WHEREAS, personal wireless service providers and operators of distributed antenna system networks have expressed strong interest in accessing and using City of Palo Alto-controlled space on utility poles and streetlight poles and in conduits in order to address capacity and coverage issues that are presented by the rapid demand for 4G broadband service in Palo Alto;

WHEREAS, the City wishes to accommodate the requests of parties which desire access to and use of the City Department of Utilities’ electric utility infrastructure and gain access to the public rights-of-way and public utility easements for the purpose of making expanded and advanced telecommunications and broadband services available in the City, taking into account the City’s primary obligation to provide reliable electric utility service and otherwise protect the public health, safety and general welfare; and

WHEREAS, the City has developed the Master License Agreement and Exhibits for the purpose of facilitating the deployment of advanced broadband facilities in Palo Alto;

NOW, THEREFORE, the Council of the City of Palo Alto does hereby RESOLVE as follows:
SECTION 1. The Council hereby makes the following findings:

A. Since 1978, Congress and the FCC have taken action to (1) promote the development of advanced broadband communications networks by cable television companies and telecommunications carriers, (2) ensure, subject to certain conditions protecting the ability of utilities to provide safe and reliable utility service and the authority of state and local governments to promote the public health, safety and welfare, that the owners of utility poles and conduits make available their facilities to broadband service providers at rates, terms and conditions that are just and reasonable, (3) afford states the opportunity to participate in the regulation of utility-owned infrastructure and the management of access to their facilities by telecommunications and broadband service providers, and (4) subject to certain conditions protecting the rights of local governments and utilities, streamline and otherwise expedite the procedures for gaining access to utility pole facilities and public rights-of-way in order to minimize the costs and delays to deploying advanced broadband networks.

B. On November 17, 1997, the Council approved Telecommunications Policy Statements that (1) promote the competitive delivery of advanced telecommunications services in Palo Alto in an environmentally sound manner, (2) support the regulation of new telecommunications facilities in Palo Alto in regard to their placement and construction in a safe, orderly and efficient manner, (3) permit the use of City Department of Utilities’ infrastructure to promote the delivery of advanced telecommunications services in Palo Alto, provided such usage does not interfere with the City’s provision of safe and reliable electric, natural gas, water, wastewater and other utility services to its residents and businesses or the City’s planned use of any City property or facilities, and (4) authorize the use of City property facilities and property other than Utilities Department property to support the deployment of new telecommunications services without creating adverse effects associated with the development of necessary infrastructure, and to encourage third parties to use City-owned and -controlled property for the siting of telecommunications infrastructure in a manner consistent with the City’s real estate, zoning, legal, environmental and other requirements.

C. The City has developed the Master License Agreement and Exhibits to the Master License Agreement, which contain the standard rates, terms and conditions applicable to utility and streetlight pole and conduit access and usage and which shall apply to all interested communications service providers, including, without limitation, personal wireless service providers and operators of distributed antenna system networks, on a competitively neutral and nondiscriminatory basis.

D. The City’s electric utility rates, applicable to pole attachments and conduit occupancy to be charged under one or more applicable Utility Rate Schedules and/or the Master License Agreement and Exhibits thereto, are not considered charges or fees subject to voter approval under Proposition 218, Article 13D Section 3(b), as they relate to the provision of electric service, and are not considered taxes, levies, charges or exactions subject to voter approval under Proposition 26, Article 13C Section 1(e)(4), as they are charges for rental of local government property.
SECTION 2. The Council hereby approves the form of the Master License Agreement and the Exhibits to the Master License Agreement, and further delegates to the City Manager the authority to sign any Master License Agreement entered into by the City and any third party interested in providing advanced broadband services in Palo Alto.

SECTION 3. The Council finds that the adoption of this resolution, approving the form of the Master License Agreement and the Exhibits to the Master License Agreement, does not meet the definition of a project under Section 21065 of the California Environmental Quality Act and, therefore, no environmental assessment is required.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST: 

______________________________
City Clerk

APPROVED AS TO FORM:

______________________________
Senior Asst. City Attorney

APPROVED:

______________________________
Mayor

______________________________
City Manager

______________________________
Director of Utilities

______________________________
Director of Public Works

______________________________
Director of Planning and Community Environment
MASTER LICENSE AGREEMENT FOR USE OF
CITY-CONTROLLED SPACE ON UTILITY POLES
AND STREETLIGHT POLES AND IN CONDUITS
BETWEEN THE
CITY OF PALO ALTO
AND

______________________________________________
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>Terms and Termination</td>
<td>6</td>
</tr>
<tr>
<td>3</td>
<td>Grant and Scope of License</td>
<td>8</td>
</tr>
<tr>
<td>4</td>
<td>Other Rights and Obligations of Licensee</td>
<td>11</td>
</tr>
<tr>
<td>5</td>
<td>Application for Access</td>
<td>13</td>
</tr>
<tr>
<td>6</td>
<td>Costs and Fees</td>
<td>17</td>
</tr>
<tr>
<td>7</td>
<td>Construction and Installation of the Licensee Facilities</td>
<td>18</td>
</tr>
<tr>
<td>8</td>
<td>Moving the Licensee Facilities</td>
<td>20</td>
</tr>
<tr>
<td>9</td>
<td>Inspection of the Licensee Facilities</td>
<td>20</td>
</tr>
<tr>
<td>10</td>
<td>Unauthorized Attachment or Occupancy</td>
<td>21</td>
</tr>
<tr>
<td>11</td>
<td>Installation and Replacement of the Licensee Facilities</td>
<td>21</td>
</tr>
<tr>
<td>12</td>
<td>Indemnity; Waiver; Risk of Loss</td>
<td>23</td>
</tr>
<tr>
<td>13</td>
<td>Insurance</td>
<td>24</td>
</tr>
<tr>
<td>14</td>
<td>Performance Bond; Letter of Credit</td>
<td>26</td>
</tr>
<tr>
<td>15</td>
<td>Representations and Warranties</td>
<td>26</td>
</tr>
<tr>
<td>16</td>
<td>Default; Remedies for Default</td>
<td>27</td>
</tr>
<tr>
<td>17</td>
<td>Dispute Resolution</td>
<td>29</td>
</tr>
<tr>
<td>18</td>
<td>Notices</td>
<td>30</td>
</tr>
<tr>
<td>19</td>
<td>Miscellaneous Provisions</td>
<td>30</td>
</tr>
</tbody>
</table>
MASTER LICENSE AGREEMENT FOR USE OF CITY-CONTROLLED
SPACE ON UTILITY POLES AND STREETLIGHT POLES AND
IN CONDUITS BETWEEN THE CITY OF PALO ALTO
AND

____________________________________________________________________

THIS MASTER LICENSE AGREEMENT (the “Agreement”), dated as of
__________________, ___ (the “Effective Date”), is entered into by and between the CITY OF
PALO ALTO, a California chartered municipal corporation (the “City”), and
__________________________, a _______________ (the “Licensee”) (individually, a “Party” and,
collectively, the “Parties”), in reference to the following facts and circumstances:

RECITALS

1. The City represents that it owns (or co-owns with Pacific Bell Telephone
Company dba AT&T California or Pacific Gas and Electric Company, or both) or controls, operates
and maintains certain utility poles and streetlight poles located within its jurisdictional boundary.
The City also represents that it owns, controls, operates and maintains certain ducts and conduits
located within its jurisdictional boundary.

2. The Licensee represents that it is either (a) a personal wireless service
provider authorized, certificated or licensed by the FCC or other agency, (b) an operator of a
distributed antenna system network authorized, certificated or licensed by the FCC, the CPUC or
other agency, (c) a wireline provider of Telecommunications Service authorized, certificated or
licensed by the CPUC, or (d) a provider of Multichannel Video Services which is franchised by the
CPUC or other agency.

3. The Licensee represents that it is authorized to provide Communications
Service, is otherwise qualified to do business in California, and has obtained all necessary
authorizations, certifications or licenses from the FCC, the CPUC or other agency. A copy of the
Licensee’s CPCN or WIRN, if applicable, is attached hereto as Exhibit “A.”

4. The Licensee desires access to and use of the City-controlled spaces on
certain Poles and/or in certain Conduits in order to attach and/or install its wireline and/or wireless
communications facilities and equipment for the purpose of providing Communications Service in
Palo Alto. As of the Effective Date, the identity of certain Poles and/or Conduits, which the Licensee
seeks access to and use thereof, and their locations are described in Exhibits “B” (Poles) and “C”
(Conduits). This information may be updated periodically as provided in this Agreement or an
amendment hereto and as the Licensee’s requirements may change during the term of this
Agreement. The Licensee Facilities, which will be attached to certain Poles and/or installed in
certain Conduits, are identified in Exhibit “D.” This information may be updated periodically as
provided in this Agreement or an amendment hereto and as the Licensee’s requirements may change
during the term of this Agreement.
5. Subject to the terms and conditions of this Agreement and further subject to the City’s good faith determination that the Licensee Facilities will not unreasonably interfere with the City’s duty to serve its municipal utility customers (including, without limitation, its electric, natural gas, dark fiber optics and water utility customers) or will not adversely affect the City’s obligation to otherwise provide for and protect the public health, safety and general welfare, the City is willing to grant to the Licensee a non-exclusive license to attach and/or install the Licensee Facilities on certain Poles and/or in certain Conduits.

NOW, THEREFORE, in consideration of the Recitals and the following agreements, covenants, and obligations, the value and sufficiency of which are acknowledged, the Parties mutually agree:

AGREEMENT

1.0 DEFINITIONS

Except as the context otherwise requires, the capitalized terms used in this Agreement shall have the meanings noted in this Article 1.0.

“Applicant” means any Person who requests the approval and authorization of the City to access, use and occupy any City-controlled space on Poles and/or in Conduits.

“Application” means the application to access and use Poles and/or Conduits, as set forth in the Processing Request Form, Exhibit “I,” referred to in Section 5.1. The term does not extend to an application for a permit that is required by Title 12 or Title 18 of the Palo Alto Municipal Code, with which the Licensee shall comply.

“Available” means, when used in the context of Conduit Occupancy or Pole Attachment, any usable space on a Pole or in a Conduit that is not otherwise occupied by the City, a joint owner of a Pole and/or an existing licensee at the time an Application is submitted and is available for use by the Licensee.

“Business Day” means any Day, except a Saturday, Sunday, and any Day observed as a legal holiday by the City.

“City Facilities” mean the Poles, Conduits and any other City and/or CPAU facilities that are exclusively controlled by the City.

“City Manager” means the individual designated as the City Manager of the City by Palo Alto Municipal Code section 2.08.140, and any individual who is designated the representative of the City Manager.

“Communications Service” means a Telecommunications Service, Multichannel Video Service, Information Service, or any other service involving the transport or transmission of information electronically by wire or radio.
“**Conduit**” means any metal, plastic or like-material duct or pipe that is wholly-owned and/or exclusively controlled by the City.

“**Conduit Occupancy**” means any attachment and/or installation in Conduit.

“**Costs**” means the utility rates, fees and charges estimated or incurred by the City to perform the Preparatory Work and the Make-Ready Work at the Licensee’s request, including, without limitation, (a) the estimated or actual rates, fees and charges or other expenditures to be incurred or incurred by the City and/or any general contractor or subcontractor acting on behalf of the City to perform the Make-Ready Work, and (b) if the City’s employees perform the Make-Ready Work, the work performed at their labor rates.

“**CPAU**” means the City’s Department of Utilities, including, without limitation, the City’s electric utility, fiber optics utility, gas utility and water utility.

“**CPCN**” means the certificate of public convenience and necessity, issued by the CPUC to the Licensee.

“**CPUC**” means the California Public Utilities Commission or successor agency.

“**Day**” means a calendar day, unless a Business Day is specified.

“**Director**” means the Public Works Director, the Utilities Director, the Planning Director or any other Person who exercises the responsibilities of the director of any City department, identified in Chapter 2.08 of the Palo Alto Municipal Code.

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

“**Fee**” means any fee, assessment, charge (other than Costs), imposition, or other levy (but excluding a franchise fee and any tax, including the telephone utility users tax, now or hereafter in effect), lawfully imposed by the City; provided, however, that “Fee” shall not include “Costs” as defined herein.

“**Force Majeure**” means an incident, event or cause, whether or not foreseeable, that is beyond the reasonable control of a Party, including, without limitation, an act of God, act of a superior governmental authority, earthquake, fire, flood, labor strike or sabotage, which has an adverse effect on the design, construction, installation, management, operation, testing, use or enjoyment of the Facilities.


“**Law**” means any applicable administrative or judicial act, decision, certificate, charter, code, constitution, opinion, order, ordinance, policy, procedure, rate, regulation, resolution, rule, schedule, specification, statute, tariff, or other requirement of the City, of any county, state or federal agency, or of any other agency having joint or separate jurisdiction over the Licensee or the
City, or both, and their separate facilities, now or hereafter in effect during the term of this Agreement, including, without limitation, any regulation or order of an official entity or body.

“Letter of Credit” means an irrevocable standby letter of credit issued by a U.S. bank or other financial institution, which has an issuer or other creditworthiness rating of at least “A” by Standard & Poors and an “A2” by Moody’s Investor Services.

“Licensee Facilities” means, without limitation, aerial, surface or underground wires, amplifiers, antennas, boxes, cabinets, cables (including fiber optic and coaxial cables), circuits, conduits, conductors, converters, copper wires, decoders, demodulators, drop wires, ducts, electronics, encoders, equipment, generators, hubs, inner-ducts, lasers, manholes, microwave, modulators, multiplexers, networks, nodes, optical fibers, optical repeaters, patch panels, processors, receivers, splice boxes, switches, tap-offs, terminals, traps, vaults, wires, wire and wireless transmitters and receivers, and other similar equipment owned, leased, or controlled by the Licensee that is used for or is useful in the provision of Communications Service, in existence either as of the Effective Date or at any time during the term of this Agreement and located in or on the City Facilities.

“Make-Ready Work” means changes to be made to City-owned or -controlled Poles, its own Pole Attachments, the existing Pole attachments of any joint owner(s) and any existing licensee, or the existing additional equipment associated with those attachments, that may be needed to accommodate a proposed additional pole attachment. It also includes Make-Ready Work relating to access to Conduits by the Licensee Facilities.

“Multichannel Video Services” means “cable service” as defined in Chapter 2.10 of Title 2 of the Palo Alto Municipal Code and in 47 U.S.C. § 522(6), “video service” as defined in Cal. Pub. Util. Code § 5820(s), services provided over an open video system certificated by the FCC pursuant to 47 U.S.C. § 573 or a cable communications system, as defined in Chapter 2.10 of Title 2 of the Palo Alto Municipal Code, and any other form of delivery of multichannel video services to subscribers in Palo Alto over the Licensee Facilities located in the Public Rights-of-Way or Public Utilities Easements.

“Person” means any individual, for-profit corporation, nonprofit corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint venture, business trust, sole proprietorship, or other form of business association, but it does not include the City.

“Pole” means (a) any utility pole, excluding towers, used to support mainly overhead distribution wires and cables, jointly or separately owned by the City, (b) any Streetlight Pole, wholly owned by the City, and (c) the anchors and guy strands/guy wires, which are located in the Public Rights-of-Way and the Public Utility Easements. The term does not include any utility pole that is wholly owned by a Person other than the City.

“Pole Attachment” means any attachment to a Pole by the Licensee.
“Preparatory Work” means, except as otherwise provided herein, work of a preliminary nature undertaken by City staff, including, without limitation, survey and field inspection work, review of engineering plans and specifications and other related work, that precede, and are required to establish, the Make-Ready Work in order to facilitate the attachment and/or installation of the Licensee Facilities in, on or about Poles and/or Conduits.

“Provision” means any agreement, circumstance, clause, condition, covenant, fact, objective, qualification, restriction, recital, reservation, representation, term, warranty, or other stipulation in this Agreement or an Exhibit or by Law that defines or otherwise controls, establishes, or limits the performance required or agreed by any Party hereto. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

“Public Rights-of-Way” means the areas in, upon, above, along, across, under, and over the public alleys, boulevards, courts, lanes, places, roads, streets, and ways, including, without limitation, all Public Utility Easements, within the jurisdiction of the City. This term shall not include any real property, in whole or in part, owned by any Person or agency other than the City except as provided by Law or pursuant to an agreement between the City and any such Person or agency, nor shall it include any real property owned and/or controlled by the City that is not dedicated to utility or public transit use.

“Public Utility Easement” means any privately owned land, in which the City holds an easement for public utility uses and purposes, without regard to whether any “public utility,” as defined in California Public Utilities Code section 216(a), has an easement for similar public utility uses and purposes.

“Schedule” means a site-specific license for the attachment and/or installation of Licensee Facilities, as identified in Exhibit “E,” commencing with Schedule “E-1.”

“Standard Drawings and Specifications” means the general terms and conditions, specifications, and requirements of the City which govern the design, construction, installation, and maintenance of any improvement to be located within the Public Rights-of-Way and Public Utility Easements. This document is authored by the City’s Department of Public Works, Engineering Division, and any reference to such document shall include additions, amendments, deletions, revisions, modifications, and updates to this document. This term shall include documents entitled “General Conditions” or words of similar import, now or hereafter existing, which directly pertain to all aspects of general construction work.

“Streetlight Pole” means any standard design concrete, steel or aluminum (or other metal) or wooden pole, including any decorative streetlight pole, that is used for street lighting purposes.

“Telecommunications Service” means to the extent not inconsistent with federal law, the transmission of voice, video or data information in rendering audio, video or data service, which may be offered by the Licensee pursuant to its FCC, CPUC or other agency approval, authorization, certification or license. Multichannel Video Service shall not be considered a
Telecommunications Service or an Information Service hereunder, except to the extent required by Law.

“Utilities Rules and Regulations” means the City’s utilities rules and regulations, authorized by Chapter 12.20 of the Palo Alto Municipal Code.

“WIRN” means the wireless identification registration number that the Licensee is required to obtain from the CPUC in order to offer intrastate wireless telecommunications services in California.

“Work” means and includes both Preparatory Work and Make-Ready Work.

2.0 TERMS AND TERMINATION

2.1 Initial and Extension Terms. The initial term of this Agreement is ten (10) years (the “Initial Term”), commencing on the Effective Date, unless and until it is earlier terminated in accordance with this Agreement. The extension term of this Agreement is ten (10) years (the “Extension Term”), commencing on the expiration of the Initial Term, provided that: (a) the Licensee shall give the City Manager written notice of its intention to extend this Agreement no less than sixty (60) Days prior to the expiration of the Initial Term; (b) the Licensee is in substantial compliance with the Provisions; (c) there has not been any change in Law that may materially affect the Provisions or their enforceability; and (d) the City has not otherwise terminated this Agreement in accordance with the Provisions.

2.2 Renewal of Agreement. The Parties may in good faith negotiate the terms and conditions of a new master license agreement, which negotiations the Parties shall use reasonable effort to commence by no later than six (6) months before the expiration of the Extension Term; provided, however, the negotiations shall be based on the terms and conditions of the City’s standard master license agreement then in effect or in accordance with such other contract rates, terms and conditions or Law as may be adopted by the City. If the Parties fail to negotiate the renewal of a new master license agreement, then the Licensee shall be deemed to hold over and shall be otherwise liable to perform its obligations hereunder, including the payment of all Costs and Fees, in accordance with the terms and conditions of the standard master license agreement then in effect, unless there is no such standard master license agreement then in effect, in which event the terms and conditions of this Agreement shall continue to apply.

2.2.1 If a new master license agreement has not been executed by the Parties by the expiration of the Extension Term and the Parties do not otherwise agree, in writing, to renew, then the Licensee at its option shall either: (a) sell the Licensee Facilities to the City at fair market value, if the Licensee desires to sell and the City desires to purchase the Licensee Facilities or any part thereof; (b) at the Licensee’s sole cost and expense, remove the Licensee Facilities from the City Facilities if the City does not intend to purchase the Licensee Facilities; (c) without cost or charge to the City, abandon the Licensee Facilities on Poles and/or in Conduits, provided the City first approves, in writing, the proposed abandonment of the Licensee Facilities and the terms and conditions applicable to that abandonment, whereupon in the absence of any agreement by the Parties to the contrary, such facilities shall become the property of the City; or (d) sell or transfer the
Licensee Facilities to a third party subject to the City’s prior written approval, which will not be unreasonably withheld. Upon the occurrence of subsection 2.2.1(d), this Agreement shall be deemed terminated, and the Licensee shall not be deemed to have made an assignment pursuant to Section 19.2.

2.3 Termination. Except as otherwise provided herein, the City may terminate this Agreement for cause (as defined in subsection 2.3.1) upon ten (10) Days’ prior written notice sent by the City to the Licensee; in that event, the City may exercise its legal rights and/or equitable remedies hereby reserved under this Agreement or by Law at any time, including, without limitation, the right to recover any uncollected Annual Fees that would be due and payable by the Licensee to the City if this Agreement had not been terminated during the Initial Term or the Extension Term, if any.

2.3.1 A termination for cause means: (a) the Licensee has failed to cure a material default of this Agreement within thirty (30) Days after it receives the City’s notice of default, or, if the default can be cured and such cure reasonably requires more than thirty (30) Days to achieve, fails to commence such cure within the specified period but, thereafter, diligently continues such cure until completion thereof; (b) the CPUC, the FCC or other agency exercising jurisdiction over the Licensee has, by final order or action that is no longer subject to appeal, terminated or otherwise revoked the Licensee’s approval, authorization, certification or license to operate the Licensee Facilities, to provide Communications Service, or to transact business referred to in Recital numbers 2 and 3; or (c) the Licensee’s authority to do business in California has expired or is rescinded or terminated by final order or action that is no longer subject to appeal.

2.3.2 Upon the establishment of termination for cause, the right to attach to any Pole and/or occupy any Conduit will immediately terminate after the City delivers thirty (30) Days’ prior written notice to the Licensee. In that event, the Licensee shall, within six (6) months of the effective date of termination of this Agreement, remove or cause the removal of the Licensee Facilities from the Poles and/or Conduits, or, if the Licensee fails to remove or cause such removal within such six-month period, the City may remove the same for the account of and at the sole cost and expense of the Licensee. The preceding sentence notwithstanding, the Parties by mutual agreement may exercise any option made available under subsection 2.2.1.

2.4 Changes in Law. The Parties acknowledge that the subject of wireline and wireless communications facilities in the context of utility pole attachments has been addressed and continues to be addressed by federal and California authorities. If, during the Initial Term or the Extension Term, a Law is adopted, amended or repealed and is made binding upon the City and is applicable to this Agreement, then the Parties shall agree to negotiate in good faith an amendment to this Agreement (or a new agreement, as the case may be) to the extent necessary to comply with such Law. If the Parties cannot mutually agree to an amendment to this Agreement (or a new agreement) within three (3) months after a Party receives the other Party’s request to negotiate an amendment to this Agreement (or a new agreement, as the case may be) pursuant to this section 2.4, then the Parties will agree to submit the dispute to mediation and non-binding arbitration under mutually acceptable terms and conditions.
3.0 GRANT AND SCOPE OF LICENSE

3.1 Grant of License. The City grants to the Licensee, and the Licensee accepts from the City, subject to the Provisions, a non-exclusive license to access and use certain Poles and/or Conduits and attach, install, operate, maintain, repair, remove, reattach, relocate and replace the Licensee Facilities in, on or about those certain Poles and/or Conduits. The rights and obligations of the Licensee under this Agreement will be exercised at the Licensee’s sole cost and expense, unless otherwise agreed to by the Parties.

3.2 Scope of License. The grant of license to the Licensee is subject to (a) the prior use and existing and continuing rights, consents and approvals of the City, including CPAU and other City departments, the joint owner(s) and any existing licensee of certain Poles and/or Conduits, and (b) existing and future recorded and unrecorded deeds, easements, dedications, agreements, conditions, covenants, restrictions, encumbrances and claims of title which may affect any right, title and interest in and to the Public Rights-of-Way, Public Utility Easements, and any City-owned or -controlled facility located in the Public Rights-of-Way or Public Utility Easements.

3.2.1 Nothing in this Agreement shall be deemed to grant, convey, create, or vest in the Licensee a perpetual interest in land or the Public Rights-of-Way or Public Utility Easements, including, without limitation, any fee, leasehold interest, easement, or franchise rights. Neither the City, nor the joint owner(s) of certain Poles, nor any existing licensee shall be liable to the Licensee for the failure of the City, the joint owner(s) of certain Poles, and/or any existing licensee to secure the proper legal authority from a grantor of an easement affecting any Pole or Conduit.

3.2.2 The Licensee, as a condition precedent to its right to access, use, and attach and/or install the Licensee Facilities in, on or about any Pole or Conduit, shall obtain from the City other necessary approvals, authorizations, and/or permits to access and use the Public Rights-of-Way and the Public Utility Easements controlled by the City.

3.2.3 The Licensee’s right to access, use, and attach to and/or install in, on or about any Poles and/or Conduits is subject to the City’s prior right to use or remove from use at a future date any Pole or Conduit space occupied by the Licensee in the reasonable exercise of its governmental or proprietary powers. The Licensee acknowledges and agrees that its right to attach and/or install is also subject to the prior rights of the joint owner(s) of certain Poles and/or any existing licensee. If the Licensee’s right under this subsection 3.2.3 is affected by such City action, then the City will use reasonable efforts to find one or more alternative locations for the Licensee to attach the Licensee Facilities in accordance with the facilities relocation procedure set forth in Section 7.2.

3.2.4 The City may for consideration of the public health, safety, or welfare, including, without limitation, safety, reliability, security or engineering reasons, terminate or otherwise modify the scope of the Licensee’s non-exclusive license granted by this Agreement, upon sixty (60) Days’ prior written notice to the Licensee. If the City exercises its rights under this subsection 3.2.4, then it will use reasonable efforts to find one or more alternative locations for the Licensee to attach the Licensee Facilities.
3.2.5 Except as authorized by Law or this Agreement, the Licensee in the performance and exercise of its rights and obligations, shall not obstruct or interfere in any manner with the Public Rights-of-Way, Public Utility Easements, private rights-of-way, sanitary sewers, sewer laterals, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, Multichannel Video Service facilities, and other telecommunications, utility, and municipal property or facilities without the express written approval of the City and/or the other owner(s) of the affected property or properties.

3.2.6 The City reserves to itself the right to attach, install, maintain, replace and enlarge the City Facilities and to operate the same from time to time in such manner as will best enable it to meet the needs of CPAU’s utility customers and fulfill its service requirements. Except as provided in subsection 12.1.1, the City shall not be liable to the Licensee or its customers for any interruption of service of the Licensee or for interference with the Licensee Facilities arising in any manner relating to the City’s, the joint owner(s)’ or any existing licensee’s use of the City Facilities under this Agreement, or arising in any manner out of the condition or character of the City Facilities or their manner of operation.

3.3 Compliance with Laws. The Licensee shall comply with all Laws, including, without limitation, the CPUC’s General Orders (“GO”) that are applicable to the Licensee, in the exercise and performance of its rights and obligations under this Agreement. The preceding sentence notwithstanding, the Licensee shall furnish a copy of the notification letter required by GO 159A, Section IV.C.2 to the Planning Director, to the extent GO 159A applies to the Licensee.

3.3.1 The Licensee shall obtain the City’s review and approval of the proposed siting and design and the construction methods to be used with respect to the Licensee Facilities, as may be required by Law. The Licensee shall obtain architectural review of the Licensee Facilities by the City’s Planning Department staff and by the City’s Architectural Review Board, which review will be dependent on the characteristics of the Licensee’s proposed project, as may be required by Law. The Licensee acknowledges that additional review by any other City board or commission or the City Council may be required by Law. The reviews referred to in this subsection 3.3.1 shall be conducted in conformance with the City’s land use approval process, to the extent applicable to the Licensee Facilities.

3.3.2 The City may require the Licensee to file one or more written reports with any of the Directors within the time(s) requested. The Licensee shall file with the Utilities Director a copy of the radio frequency propagation study of any Licensee Facilities within thirty (30) Days of the completion of the first authorized attachment and/or installation of the Licensee Facilities occurring during the Initial Term and the Extension Term, if any.

3.3.3 The City may require the Licensee to obtain a conditional use permit, if the City determines that the Licensee Facilities are subject to the requirements of Title 18 of the Palo Alto Municipal Code or other Law.

3.4 Authorized Services. The Licensee shall use the Licensee Facilities for the sole purpose of providing Communications Service that is subject to any FCC, CPUC or other agency approval, authorization, certification, or license. If the Licensee is authorized to offer new
and/or additional Communications Service not now approved, authorized, certified, or licensed under its current FCC, CPUC or other agency approval, authorization, certification, or license, then the Licensee shall furnish the City Manager and the City Attorney with a copy of its application(s) for any such additional approval, authorization, certification, or license and a copy of any additional authorization, certification, grant, license within thirty (30) Days of its filing and its issuance.

3.4.1 The Licensee shall not allow any other Person to control the Licensee Facilities, or any portion thereof, for compensation, whether in cash or cash equivalent, for any purpose not directly related to the Licensee’s provision of Communications Service or other services approved, authorized, certified or licensed by the FCC, CPUC or other agency, unless the Licensee first gives thirty (30) Days’ prior written notice to the City Manager and the City Attorney of such intended use.

3.4.2 The Licensee acknowledges and agrees that (a) this Agreement is not a “franchise” within the meaning of 47 U.S.C. § 522(9), California Government Code § 53066, or California Public Utilities Code § 5800 et seq., and (b) this Agreement does not authorize, certify, grant or license the Licensee to use the Public Rights-of-Way and the Public Utility Easements to provide Multichannel Video Services or any other comparable services to subscribers in Palo Alto.

3.5 Location of Licensee Facilities. The non-exclusive license granted hereby shall not extend to any Pole and/or Conduit to which the attachment and/or installation of the Licensee Facilities thereon or therein would result in a forfeiture of rights by the City or the imposition of additional obligations or liabilities upon the City, the joint owner(s) of certain Poles, and/or any existing licensee to occupy the Public Rights-of-Way or Public Utility Easements.

3.5.1 If the existence of the Licensee Facilities in, on or about such Poles and/or Conduits would result in a forfeiture of the rights of the City, the joint owner(s) of certain Poles and/or any existing licensee, then the Licensee, at its sole cost and expense, shall promptly remove the Licensee Facilities within ninety (90) Days after receipt of written notice from the City. If the Licensee Facilities are not timely removed, the City may at the Licensee’s sole cost and expense remove them or cause their removal after the expiration of the notice period without liability on the part of the City or any third party hired or directed by the City to remove the same or parts thereof. In that event, the Licensee shall pay the City, upon demand, for the City’s actual costs of removal and for all losses and damages that are incurred by the City by such undertaking. This obligation shall survive the early termination or expiration of this Agreement.

3.5.2 The Licensee shall relocate the Licensee Facilities within ninety (90) Days or other period of time established by Law after the Licensee's receipt of written notice by the City that the Licensee must remove or relocate those facilities to another designated location within the City's jurisdictional boundary pursuant to the City’s exercise of its police powers, including, without limitation, in accordance with the establishment of an underground utility district.

3.5.3 During the Initial Term and the Extension Term, if any, the Licensee may voluntarily remove the Licensee Facilities or part thereof from the City Facilities or part thereof on a permanent basis, provided that the Licensee first gives the City and any affected joint owner(s) of certain Poles and/or any existing licensee at least sixty (60) Days' prior written notice of its intention
to remove the Licensee Facilities. The voluntary removal of the Licensee Facilities prior to the expiration of the Initial Term or Extension Term, if any, shall not relieve the Licensee of its obligation to pay any Costs and Fees associated with the removal then due and payable to the City, including the uncollected Annual Fees that would be due and payable by the Licensee to the City if this Agreement had not been terminated. The Licensee shall obtain from the City any other approvals, authorizations, and permits required by Law prior to the commencement of such removal work. Upon removal, the Licensee may transfer the Licensee Facilities to the City, provided that the City first agrees, in writing, to accept title thereto, consistent with subsections 2.2.1(a) and (c). Within six (6) months after the Licensee voluntarily abandons its License Facilities, or parts thereof, and fails to remove them upon the earlier of the date of voluntary abandonment or the date of early termination or expiration of this Agreement, the City shall arrange for the removal of the Licensee Facilities at the Licensee's sole cost and expense if the City does not approve or otherwise accept the abandoned Licensee Facilities. Prior to the effective date of abandonment, the Licensee shall post security with the City to assure the City will recover the reasonable costs of removal of the Licensee Facilities; at the City’s election, the security may take the form of a Performance Bond, described in Article 14.0, or a Letter of Credit in the amount specified therein, as may be established by the City.

3.6 Disclaimer; Waiver. In no event shall either Party or its successors and assigns, elected officials, officers, employees, agents or representatives be liable for any lost profits, consequential, special, exemplary, indirect, punitive or incidental losses or damages, including loss of use, loss of goodwill, lost revenues, loss of profits or loss of contracts even if such Party has been advised of the possibility of such damages, and the Parties each waive such claims and releases each other and each of such Persons from any such liability. This Section 3.6 shall not apply to any Costs or Fees or any other cost or fee referred to herein that the Licensee owes to the City.

3.6.1 The Parties acknowledge that California Civil Code Section 1542 provides that: “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.” The Parties waive the provisions of Section 1542, or other similar provisions of Law, and intend that the waiver and release provided by this subsection shall be fully enforceable despite its reference to future or unknown claims.

4.0 OTHER RIGHTS AND OBLIGATIONS OF LICENSEE

4.1 General. During the Initial Term and the Extension Term, if any, the Licensee shall request, in writing, the City's approvals and authorizations to add, attach, install, move, remove, repair, replace, or otherwise alter or change the Licensee Facilities, except as may be otherwise provided in this Agreement. The Licensee shall file the applicable requests for approvals and authorizations with the appropriate Director(s).

4.1.1 Each Party will use due care, and shall ensure that no damage, beyond reasonable wear and tear, is caused to the other Party’s facilities or the facilities of the joint owner(s) of certain Poles and Conduits and/or any other licensees, including, without limitation, the joint owner(s)’ fibers, wires, cables, poles and/or conduits lawfully located in, on or about the Poles or Conduits to which the License intends to attach and/or install the Licensee Facilities. Any damage or destruction which is caused by any Party or its agent or representative shall be reported within
forty-eight (48) hours to the other Party, the joint owner(s) of certain Poles and Conduits, and/or other licensees who could be directly affected by such damage. The Party causing such damage shall reimburse the other Party and/or any other affected Person, upon demand, for any damage caused the Party or its employees, contractors, subcontractors, agents, and representatives.

4.2 Identification of Facilities. The Licensee shall identify its Licensee Facilities, including, without limitation, its fibers, wires and cables, and wireless facilities with appropriate durable, visible identification tags that describe the Licensee’s name, number, color, identification code, size, and manufacture of the Licensee Facilities, including the fibers, wires and cables and wireless facilities, the type of service, and any other criteria as may be established or agreed to by the Utilities Director. Such information may be provided to the Utilities Director in accordance with the requirements set forth in Exhibits “F,” “G,” and “I.”

4.3 Notices to City, Joint Owners and Licensees. Excepting emergencies which may require the restoration of functionality of the Licensee Facilities within twenty-four (24) hours of loss of functionality, the Licensee shall give not less than ten (10) Business Days' prior written notice to the Utilities Director, the joint owner(s) of certain Poles, and/or any existing licensee, whenever the Licensee will perform any approved or authorized Make-Ready Work in regard to the Licensee Facilities that will concurrently occupy any portion of the Poles and/or Conduits with the City, the joint owner(s) of certain Poles, and/or any existing licensee. Any Make-Ready Work required of the Licensee by the City shall be performed with due care by the Licensee or any Person acting on behalf of the Licensee, including its employees, agents, contractors, subcontractors and representatives. With respect to maintenance and repairs of the Licensee Facilities, the Licensee shall provide the City with reasonable prior notice in order that the City may determine whether to assign appropriate staff to be present during any such work.

4.4 Compliance with Technical Specifications. Subsection 3.3 notwithstanding, the Licensee Facilities shall be attached, installed, maintained, removed and repaired in accordance with the applicable requirements and specifications, including, without limitation, the Standard Drawings and Specifications, the specifications of the National Electrical Safety Code and National Electric Code and amendments thereto, and the applicable rules and regulations of the CPUC, the FCC and any other agency exercising jurisdiction over the Licensee. The Licensee may use the pathways inside the Streetlight Poles only if the attachment and installation work is conducted in accordance with the Standard Drawings and Specifications and the Utilities Rules and Regulations. Use of the Poles and Conduits shall be subject to any security plan now or hereafter approved by the City.

4.5 Repair of City Facilities, Public Rights-of-Way and Public Utility Easements. The Licensee, at no liability, cost or expense to the City, shall repair, replace, or restore, or shall cause the repair, replacement, or restoration, reasonable wear and tear excepted, of any damage to the City's streets, sidewalks, underground facilities, Poles, Conduits, curbs, gutters and other City property caused by or resulting from the performance of any Make-Ready Work by the Licensee, its employees, agents, contractor, subcontractors or representatives, or by the Licensee and others, if the Work is performed jointly by such parties.
4.6 Removal of Markings. The Licensee, at its sole cost and expense, shall remove all Underground Service Alert markings from the streets and sidewalks as may be required by Law or by the City.

5.0 APPLICATION FOR ACCESS

5.1 Processing Request Form. The Licensee shall complete and file a Processing Request Form to request access to and use of Poles and/or Conduits (the “Application”) with CPAU and apply for and receive from the Public Works Director, Planning Director and/or the Utilities Director any other necessary authorizations and approvals. Upon receipt of approval of the Application and other authorizations and approvals and the payment of all required Costs and Fees, the Licensee shall coordinate with CPAU in making attachment to Poles and/or occupancy of Conduits within the time period specified in Section 5.2. To the extent not inconsistent with Law, the City reserves the right to reject any completed Application in accordance with Section 3.2 and subsections 3.2.1 through 3.2.6 or any incomplete Application. The City, in acting upon an Application, will use reasonable efforts to process and accept or reject the Application, within the parameters and time periods set forth below:

A. The City will complete its Preparatory Work to determine whether and where the Pole Attachments and/or Conduit Occupancy are feasible and what Make-Ready Work will be required, within twenty (20) Days of receipt of the processing fee that shall be due and payable following CPAU’s review and acceptance of the Processing Request Form and all attachments thereto, which the Licensee acknowledges shall be complete in all respects in order for the City to deem the Application validly submitted;

B. The City will notify the Licensee within seven (7) Days of completion of the Preparatory Work (1) whether the Poles and/or Conduits identified in the Processing Request Form can be subject to a detailed engineering analysis to be conducted during the Make-Ready Work phase of the Application and (2) whether the Make-Ready Work, including the required replacement of any deteriorated Pole, will be performed by the City or the Licensee or its City-approved, qualified and licensed contractor;

C. Within seven (7) Days of the Licensee’s receipt of the City’s notice to the Licensee referred to in (B) above, the Licensee will give written notice to the City to proceed to the Make-Ready Work phase and the Licensee will proceed to hire qualified and licensed contractor(s) if the City authorizes the Licensee to perform the Make-Ready Work;

D. The City will provide the Licensee with the City’s estimate of Costs of Pole Attachments and/or Conduit Occupancy, including the Costs of any Make-Ready Work to be performed by CPAU, within thirty (30) Days of the Licensee’s notice to the City to proceed with the Make-Ready Work phase referred to in (C) above;

E. The Licensee shall accept or reject the City’s estimate of Costs and make payment of the estimated Costs within seven (7) Days of receipt of the City’s estimate of Costs referred to in (D) above; and
F. The City will complete the Make-Ready Work for the Licensee Facilities, as needed, within one hundred five (105) Days of the receipt of the Licensee’s written acceptance of the City’s estimate of the Costs and the payment of such Costs.

Notwithstanding Sections 5.1(A) through (F), the City may toll or stop the clock on any of the timelines mentioned in Sections 5.1(A), (B), (D) or (F) in the event of an emergency as determined by the City or for other good and sufficient cause. The City will provide written notice to the Licensee of the City’s determination regarding the emergency or other good and sufficient cause. If the City is unable to complete any of the Work contemplated in Sections 5.1(A), (D) and/or (F) within the specified time periods, then the Licensee may request the City’s approval to undertake and complete such Work, provided that (i) the Licensee gives to the City not less than 72 hours’ prior notice of its desire to complete such Work, (ii) the Licensee certifies, in writing, to the City that the Person(s) who will complete such Work on behalf of the Licensee is/are duly qualified and licensed to perform the Work in the electric utility space of the Pole and/or Conduits, and (iii) the Person(s) is/are pre-authorized by the Utilities Director to complete such Work on behalf of the Licensee. As a condition precedent to the City’s obligation to approve any Person(s) who will perform such Work on behalf of the Licensee, the Licensee shall provide the name(s), copy of their license(s), and a statement of qualifications of the Person(s) designated to perform the Work on the Licensee’s behalf in the electric space on the Poles or in the Conduits at the time the Application is submitted.

5.1.1 Except as otherwise approved by the City, the Licensee shall limit the filing of an Application for Pole Attachment to not more than the number of Poles per Applications established by the City by Utility Rule and Regulation or, if no such requirement or specification exists, fifteen (15) poles per Application.

5.1.2 The Utilities Director may approve the modification of the limitations set forth in subsection 5.1.1, if the Licensee requests, in writing. The Licensee shall specify a desired priority of completion of the Work for each Application in the event that the Licensee submits multiple Applications to the City within a rolling thirty-Day period.

5.1.3 If the Utilities Director rejects or otherwise disapproves of the Application, then the City will provide the Licensee with a written detailed explanation of the basis of disapproval.

5.2 Lapse of Application. Authorization or approval to the Licensee to attach to Poles and/or install in Conduits shall terminate without further notice to the Licensee as to any Poles or Conduits covered thereby, to which the Licensee has not attached or occupied within one hundred eighty (180) Days from the date of the City’s notice to the Licensee that such Pole(s) and/or Conduits are Available. The preceding sentence notwithstanding, the Licensee may re-submit the Application and, subject to subsection 7.5.2 hereof, the City will use reasonable efforts to expedite the City’s review and approval in accordance with the process set forth in Sections 5.1(A) through (D), inclusive.

5.3 Multiple Applications for Same City Facilities. Applications received by the City regarding the same Pole or Conduit will be processed by the City on a first-come, first-served
basis. First-come, first-served priority shall be determined according to the Applicant who is determined to have first submitted a complete Application. Whenever two or more Applications are filed with the City pertaining to the same Poles and/or Conduits, the City, within thirty (30) Days of receipt of the later filed Application, will notify all affected Applicants of the following: (a) one or more Applications have been received for some or all of the same Poles and/or Conduits; and (b) the name, email address and telephone number of each Applicant who has submitted such Application.

5.4 **Cost Sharing Arrangements.** In the event that one or more other Applicants may wish to share the costs of attachment and/or installation with the Licensee, unless otherwise agreed to by the Applicants, the Licensee, if it is the “first-in-time” Applicant, will endeavor in good faith to coordinate efforts relating to the sharing of all Make-Ready Work. Unless the Applicants otherwise agree, the Licensee, if it is the “first-in-time” Applicant, will endeavor to transmit to the City any mutually agreed to Make-Ready Work costs on behalf of the Applicants affected by such arrangement. The City shall bill the Licensee, if it is the “first-in-time” Applicant, for the entire cost of all Make-Ready Work necessary to accommodate the Applicants, including the Licensee. The City shall not be responsible, and it expressly disclaims any obligation or responsibility, for assisting the Licensee, if it is the “first-in-time” Applicant, in collecting the prorated costs of Make-Ready Work from any additional Applicant.

5.5 **Performance of Work.**

5.5.1 Prior to the commencement of the Make-Ready Work relating to CPAU facilities which the City may authorize the Licensee to perform, the Licensee shall post or shall cause the posting of notices of its proposed Make-Ready Work in accordance with the Public Works and the Utilities Departments’ rules and regulations. Absent such rules and regulations, the Licensee shall at least ten (10) Days before the commencement of its Make-Ready Work deliver or shall cause to be delivered a written schedule for each portion of Work to: (a) those residents and businesses whose properties abut and are within 300 feet of the proposed Work sites or such other distance as set forth in any City-issued approval or authorization; and (b) other Persons whose facilities will be directly impacted by such Work. In addition, the Licensee shall be required to post “No Parking” notices at least seventy-two (72) hours prior to the commencement of each portion of the Work in the absence of any time period as set forth in the approvals or authorizations.

5.5.2 The Licensee upon the completion of its Make-Ready Work shall promptly furnish to the City accurate plans and record drawings or as-built drawings depicting, in detail, the locations and dimensions of the Licensee Facilities, including, without limitation, the Pole and/or Conduit numbers, if available, notwithstanding that such information may have been initially provided with the Application(s). These plans and drawings shall be incorporated in any form as may be reasonably specified by the City Manager. The Licensee shall furnish its plans and drawings to the City in an electronic storage medium (which utilize AutoCAD or Geographic Data Systems software or equivalent), containing the full set of plans and record drawings or as-built drawings, whenever such information may be required by the City Manager or any Director. Unless the City requires the Licensee to submit the final load calculations prior to the issuance of any authorization, approvals or permits, such information shall include, without limitation, the load calculations for each proposed Pole Attachment, including any Streetlight Pole attachment, as may be required by CPAU, as set forth in Exhibit “I.”
5.5.3 In the event that the City determines any Pole to which the Licensee seeks access for attachment purposes is inadequate to support the Licensee Facilities in accordance with Law, following the receipt of the Licensee’s load calculations as requested by the City, the City will inform the Licensee of any required changes and the estimated costs thereof in order for the City to consider making provision for adequate load-bearing Poles in accordance with the timelines set forth in Sections 5.1(A) through (F). If, after the receipt of the City’s information, the Licensee desires to proceed with the Pole Attachments by submitting to the City the Licensee’s acceptance of the City’s estimate of Work and payment, in advance, in accordance with the timelines set forth in Sections 5.1(A) through (F) to reimburse the City for the total estimated Pole modification or replacement costs and expenses, including, without limitation, the costs of installing new Poles, plus the expenses of replacing or transferring the City’s electric and/or fiber optics utility facilities from the old Poles to the new Poles, the City may, at its option, replace the Poles with suitable Poles. The Licensee will reimburse the joint owner(s) of certain Poles and/or any existing licensee for any expense incurred by each of them in relocating their facilities from the existing Poles to the new Poles. Upon the completion of Make-Ready Work, the City will prepare and submit a final billing for reimbursement by the Licensee to the City for the final Pole replacement costs, including, without limitation, the costs of the new Pole, the labor associated with the transfer or rearrangement of the facilities of the joint owner(s) of Poles and/or other license holders, the cost of removing the old Poles, and other matters itemized on the bill. In the alternative, the City may permit the Licensee to replace any Pole in accordance with terms and conditions mutually agreed to by the City, the joint owner(s) of certain Poles and any existing licensee thereof.

5.5.4 The City shall determine or otherwise specify the point of attachment on each Pole and/or the point of entry in each Conduit to be occupied by the Licensee Facilities after consultation with the Licensee. Information regarding the Licensee’s preferred point(s) of attachment or entry will be included on each Application.

5.5.5 The Licensee shall notify the City in the Application at least thirty (30) Days before the Licensee will add to, relocate, replace or otherwise modify the Licensee Facilities attached to a Pole or occupying a Conduit, where additional space or holding capacity shall be required on either a temporary or permanent basis.

6.0 COSTS AND FEES

6.1 Payment of Costs and Fees. In consideration of the City’s grant of a non-exclusive license to the Licensee under this Agreement, during the Initial Term and the Extension Term, if any, the Licensee shall pay to the City the initial/one-time Costs and Fees (the “Initial/One-Time Costs and Fees”) and the annual Costs and Fees (the “Annual Costs and Fees”) referred to in the Schedules, as set forth in Exhibit “E.” Payments shall be due and payable upon the specified date(s) for the Work relating to any Pole Attachment and/or Conduit Occupancy through the end of the calendar year of the attachments and/or occupancies, unless otherwise provided by Exhibit “E” or by Law. All other payments set forth in the Schedules will be payable on a calendar year basis. All payments shall be made payable by check, draft or other negotiable instrument to the “City of Palo Alto” and delivered to the address set forth in Article 18.0.
6.1.1 Unless otherwise provided by Exhibit “E” or by Law or mutually agreed to by the Parties, the Annual Costs and Fees shall be payable thereafter annually, in advance, by the January 1st of each year during the Initial Term and the Extension Term, if any. Except as expressly provided in the Schedules, the Annual Costs and Fees shall not be adjusted in the event that the Licensee removes or reduce the fibers, wires, cables or wireless facilities, or removes the wireless facilities attachments during any calendar year, whenever the adjustment or removal is effected and the Annual Costs and Fees have been paid. The City shall increase the sum total of all Annual Costs and Fees payable to the City, whenever the Licensee installs additional fibers, wires, cables or wireless facilities, in accordance with the adjustment formula specified in the Schedules or by Law.

6.1.2 In addition to the Initial/One Time Costs and Fees and the Annual Costs and Fees payable hereunder, the Licensee shall pay as additional consideration other Fees and Costs for services rendered by the City (the “Additional Costs and Fees”). The Additional Annual Costs and Fees shall be due and payable in accordance with the Schedules, the Provisions and Law.

6.1.3 In addition to the Costs and Fees referred to in subsections 6.1.1 and 6.1.2 above, the Licensee shall be obligated to pay the City for any uncollected Annual Fees which may be otherwise due and payable by the Licensee on account of its early termination without cause of this Agreement.

6.1.4 The City will prepare and deliver to the Licensee an invoice for Costs and Fees and Additional Costs and Fees estimated or incurred by the City or due and payable by the Licensee for the privilege of accessing and using the City-controlled spaces on the Poles and/or in the Conduits. The amounts shall be due and payable within forty-five (45) Days of the invoice date. Any invoice that is not paid in a timely manner shall be assessed a late fee with respect to the overdue sum, which shall be due and payable with the invoice. The Licensee shall pay amounts not then in dispute. As to any amount subsequently determined to be due and payable, the Licensee shall promptly pay such amount and the applicable late fee with the invoice.

6.2 Failure to Pay. The Licensee’s failure to pay the Initial/One-Time and Annual Costs and Fees any Additional Costs and Fees, and any early termination Fee as and when they shall become due, shall constitute a default by the Licensee under this Agreement; provided, however, the Licensee shall have the right to cure a monetary default in accordance with Article 16.0 and the right to dispute the amount of any Cost or Fee in accordance with Article 17.0. The Licensee’s obligation to pay the Costs and Fees and Additional Costs and Fees existing as of the effective date of early termination or expiration of this Agreement shall survive the expiration or earlier termination of this Agreement.

7.0 CONSTRUCTION AND INSTALLATION OF THE LICENSEE FACILITIES

7.1 Make-Ready Work by City. The City shall perform its Make-Ready Work in regard to the City Facilities before the City or the Licensee can perform the Make-Ready Work in regard to the Licensee Facilities, unless the Parties otherwise agree. Nothing herein shall prohibit the City from authorizing the Licensee to perform the City’s Make-Ready Work in accordance with
City requirements. The Licensee will pay the City’s Costs for the services rendered by the City and/or CPAU to the Licensee in accordance with this Article 7.0.

7.1.1 The City may install or add electrical switches in order to accommodate the Licensee Facilities within or above the electric utility space on the Poles at the Licensee’s sole cost and expense.

7.1.2 The City will trim and cut trees, shrubbery and other vegetation necessary for the proper operation of its utility infrastructure.

7.1.3 Whenever the City deems it necessary to remove or relocate the Licensee Facilities, or any part thereof, pursuant to the lawful exercise of its governmental or proprietary rights and powers, the City will issue timely notice to the Licensee to permit the Licensee to secure the necessary approvals or authorizations, before the removal or relocation may commence.

7.1.4 Within the periods of time reasonably established by the City, the Licensee, at its sole cost and expense, shall construct, install, maintain, remove and relocate the Licensee Facilities in the manner authorized by this Agreement or by Law and in a safe manner, as not to physically or electrically interfere with the City Facilities or the facilities of the joint owner(s) of certain Poles and/or any existing licensee.

7.2 Facilities Relocation. At the request of the City, acting in accordance with Law, including the provisions of Chapter 12.16 of the Palo Alto Municipal Code, the Licensee shall relocate the Licensee Facilities in aerial locations to underground locations in accordance with Law, including, without limitation, any Law which applies to any dominant or non-dominant telephone corporation, as such term is defined in Section 234 of the California Public Utilities Code. In such event and to the extent permitted by the City, the Licensee may elect to relocate the Licensee Facilities, which are wireless facilities, affected thereby to any other available Pole, including a Streetlight Pole, as practicable, subject to the Provisions. If there is not available any other utility pole or a Streetlight Pole, then the City will endeavor to accommodate the Licensee’s request to either relocate, at the Licensee’s sole cost and expense, the Licensee Facilities, which are wireless facilities, or part thereof, to the nearest available utility pole or a Streetlight Pole or to a new utility pole or a Streetlight Pole to the extent the City can accommodate the Licensee’s requirements, which will be located in the Public Rights-of-Way or Public Utility Easements outside of the underground utility district in question.

7.3 Work in Electric Utility Space. Notwithstanding any other Provision in this Agreement to the contrary, no approval or authorization issued to the Licensee, that would allow the attachment of the Licensee Facilities to any Pole, shall allow the Licensee to encroach upon, perform any work, or attach and/or install the Licensee Facilities to the electric utility space on any Pole or in any Conduit, unless it is expressly permitted, in writing, by the Utilities Director. Any attachment and/or installation within the City’s electric utility space on a Pole or in a Conduit shall be performed by the City, at the Licensee’s cost and expense, unless the Licensee is otherwise permitted, in writing, by the Utilities Director to perform such work in accordance with the timelines set forth in this Agreement and Sections 5.1(A) through (F). The terms and conditions under which the Licensee or the Person representing the Licensee may be permitted, in writing, to work within
the electric utility space of a Pole and a Conduit are set forth in Exhibits “F” and “G,” respectively. The Licensee will be permitted to place one or more additional Licensee Facilities onto an existing cable or strand that constitutes a part of the City Facilities subject only to availability as determined by the City and in compliance with prevailing industry safety standards.

7.3.1 In the event that a Pole must be replaced to accommodate the Licensee Facilities, to the extent that the Licensee is authorized to perform such work, the Licensee shall conform to the Pole replacement requirements of the City, as set forth in Exhibit “H.”

7.4 Coordination of Work. In the event of a service outage affecting both the City Facilities and the Licensee Facilities, subject to the City’s reasonable exercise of discretion, the Licensee shall be entitled to maintain and repair the Licensee Facilities concurrently with the City’s maintenance and repair of the City Facilities. The Parties agree to work cooperatively with each other while effecting the maintenance and repairs of their respective facilities.

7.5 Facilities Removal. The Licensee, at its sole cost and expense, will permanently remove the Licensee Facilities from any Pole and/or Conduit within ninety (90) Days of the expiration or termination of the respective Schedule or this Agreement, as applicable, unless the Parties otherwise agree, in writing. The Licensee shall be liable to the City for the payment of all Costs and Fees and any Additional Costs and Fees until all of the Licensee Facilities are permanently removed. This Provision shall survive the expiration or earlier termination of this Agreement.

7.5.1 No proration or refund of any Annual Cost or Fee will be due and payable by the City to the Licensee on account of such removal on a permanent basis; provided, however, the City will not charge any Annual Cost or Fee attributable to the Licensee Facilities for the first calendar year commencing after their proper removal. Should the Licensee thereafter wish to make attachments or placements to such Poles and/or occupancy of such Conduits, it shall apply for and obtain the required authorizations and approvals.

7.5.2 Whenever the Licensee Facilities are removed from the City Facilities, no reattachment to the same Pole or insertion in the same Conduit may be made until: (a) the Licensee has first complied with the Provisions as though no such Pole Attachment and/or Conduit Occupancy had previously been made; and (b) all undisputed Costs and Fees and Additional Costs and Fees due and payable to the City for such previous Pole Attachment and/or Conduit Occupancy have been paid in full.

7.6 Notice to City. The Licensee shall inform the City, in writing, of the dates on which the removal of the Licensee Facilities has been completed. The City reserves the right to inspect each new attachment and/or installation, as conditions may warrant, and the Licensee shall reimburse the City for the Costs of such inspections at the rate per worker-hour then in effect. The surveys and inspections, whether or not made, shall not operate to relieve the Licensee of any responsibility, obligation or liability assumed under this Agreement or imposed by Law. Nothing in this Agreement shall be construed to obligate the Licensee to pay for inspections by the City of the City Facilities, made in the ordinary course of business.
8.0 MOVING THE LICENSEE FACILITIES

8.1 Temporary Removal of Facilities. The Licensee will move or transfer or cause the removal or transfer of the Licensee Facilities on a temporary, non-permanent basis, whenever the City will move or replace the City Facilities. Except as otherwise required by the City, within the time required by Law or, if no such Law exists, thirty (30) Days of receipt of written notification by the City, the Licensee shall move or transfer or cause the removal or transfer of the Licensee Facilities in a workmanlike manner in accordance with the Licensee’s specifications, if those specifications are timely furnished to and subsequently approved by the City, in advance, and, if not, then in accordance with Law and the Provisions. Such movement or transfer by or for the Licensee will be performed only in the common operating areas served by the Parties. If the Licensee Facilities are not moved or transferred within the required period of time, the City may remove or transfer or cause the removal or transfer of the Licensee Facilities on behalf of the Licensee at the Licensee’s sole cost and expense. The Licensee shall pay the City, upon demand, the City’s actual Costs of removal or transfer, and this obligation shall survive the termination or revocation hereof.

9.0 INSPECTION OF THE LICENSEE FACILITIES

9.1 Inspection by City. The City reserves the right to inspect the Licensee Facilities at the time of Pole Attachment and/or Conduit Occupancy and to thereafter make reasonable periodic inspections of any part of the Licensee Facilities that are attached to Poles or installed in Conduits. The frequency and extent of such inspections by the City shall be reasonably established by the City. The Licensee shall reimburse the City for the Costs of any inspections performed by the City that may be made necessary by the Licensee’s actions or as reasonably determined by the City. The obligation to pay shall survive the expiration or earlier termination of this Agreement.

9.1.1 The City shall provide the Licensee with not less than ten (10) Business Days’ prior written notice before conducting the periodic inspections. The preceding sentence notwithstanding, where, in the sole judgment of the City Manager, the public health, safety and welfare considerations warrant an immediate or prompt inspection, the City may conduct such inspection without furnishing any prior written notice to the Licensee.

9.1.2 The City’s conduct of periodic inspections, or the failure to so conduct, shall not operate to impose upon the City any liability of any kind whatsoever, nor relieve the Licensee of any responsibility, obligations or liability assigned to the Licensee by this Agreement or by Law.

10.0 UNAUTHORIZED ATTACHMENT OR OCCUPANCY

10.1 Unauthorized Access. If, during the Initial Term or the Extension Term, if any, the City determines that the Licensee Facilities have been attached to or occupy the City Facilities, for which no Application was submitted to the City and no authorization or approval by the City was issued to the Licensee, the City may audit the Licensee’s records regarding such attachments and occupancies. Without prejudice to its legal rights or equitable remedies made available by this Agreement or by Law, the City may impose Costs and other financial requirements not otherwise prohibited by Law, which Costs for each unauthorized Pole Attachment or Conduit
Occupancy will not exceed the lesser of an amount equal to five (5) times the Annual Costs and Fees referred to in Section 6.1, for the type of Licensee Facilities that are attached without authorization, or the sum of ten thousand dollars ($10,000) or such other sum established by Law. The failure to pay any such Costs shall be subject to the same Provisions set forth in Article 6.0 pertaining to unpaid amounts then due and payable to the City.

10.1.1 The Licensee shall submit, in writing, to the City within ten (10) Days after receipt of the City’s written notice of the unauthorized attachment or occupancy, a statement concerning the unauthorized action purportedly taken by the Licensee and shall promptly submit an Application pertaining to the unauthorized Pole Attachment or Conduit Occupancy. If the completed Application is not received by the City within the time period specified in the notice of unauthorized attachment or occupancy, the City may require the Licensee to remove its unauthorized attachment or occupancy within ten (10) Days of the date on which such Application shall be due, or the City may remove the Licensee Facilities or portion thereof without liability, and the cost and expense of such removal shall be borne by the Licensee. The obligation to pay shall survive the expiration or earlier termination of this Agreement.

10.2 No Implied Ratification. No action or inaction by the City with respect to the unauthorized use of any Pole or Conduit by the Licensee shall be deemed to be a ratification of the unauthorized use.

11.0 INSTALLATION AND REPLACEMENT OF THE LICENSEE FACILITIES

11.1 Lack of Access. Except as otherwise provided by Law, the City reserves the right to refuse to approve or authorize an Application, whenever the City determines that the available City-controlled spaces on Poles or in Conduits are required for the reasons set forth in Section 3.2. The City Facilities, at the City’s discretion, may be rearranged or replaced to accommodate the Licensee Facilities, as practicable. If the City denies the Licensee access to and use of the City Facilities in question pursuant to this Section 11.1, the City will use reasonable efforts to identify one or more alternative locations at which the Licensee may attach and/or occupy the Licensee Facilities, including, without limitation, at the Licensee’s sole cost and expense the placement of a new Pole or Conduit.

11.2 Preparatory Work. The Licensee acknowledges that Preparatory Work, consisting of an engineering survey and other related review and analysis, by the City will be required to determine the load adequacy of the existing Poles and/or the capacity of the Conduits to accommodate the Licensee Facilities, unless the City authorizes, in writing, the Licensee to perform the engineering survey and related work. The City may require the Licensee to provide its preliminary load calculations. The City also will take into account all engineering and other safety-related considerations in determining the utilization of the existing available capacity of an anchor or ability to accommodate an extension, when such utilization does not result in a reduction of the holding capacity below the level normally required by the City for safety or other purposes.

11.2.1 Except as otherwise determined by the City, the field inspection portion of the Preparatory Work will be performed by the Licensee, at its sole cost and expense, as may be
reasonably required by the City. The City, the joint owner(s) of certain Poles, or any existing licensee may participate in the field inspection at its own cost and expense. The administrative processing portion of the Preparatory Work’s work order, the coordination of the Work requirements, and the schedule with the joint owner(s) of certain Poles and/or any existing licensee will be performed by the Licensee, at its sole cost and expense, as may be reasonably required by the City.

11.2.2 Before the Licensee may perform any portion of the Preparatory Work and before the City will be required to review any Application, the Licensee shall submit the required Costs and Fees with the Application or at such other time as may be established by the City. If a nonrefundable deposit is required by the City in order for the Licensee to conduct the Preparatory Work, this deposit will be applied to the cost of the Preparatory Work and/or the total cost of the job to the extent of the City’s participation or to future payments that the Licensee shall owe to the City. Upon receipt of the Application and the deposit, the City will notify the Licensee, in writing, of the estimated charges that will apply, should the City’s participation be required. The Licensee’s failure to respond within the specified period will be a ground for canceling the applicable Application and forfeiting the non-refundable deposit.

11.3 Make-Ready Work. The City, acting by the Utilities Director, will perform the Make-Ready Work for the Licensee Facilities, unless the City authorizes the Licensee to perform such Work under terms and conditions established by the City. If the City performs the Make-Ready Work, the Licensee shall pay the City for the Costs of such Make-Ready Work, and shall also reimburse the City for any other Cost that the City may incur for transferring or rearranging the facilities of the joint owner(s) of certain Poles and/or any existing licensee that are attached to the City Facilities, or part thereof, and for any such Costs incurred by the City, the joint owner(s) of certain Poles, and/or any existing licensee, in transferring or rearranging their facilities to accommodate the Licensee’s requests. The Licensee shall not be entitled to any monies paid to the City for Pole Attachments and/or Conduit Occupancies by reason of the use by the City, the joint owner(s) of certain Poles and/or other licensee, of any additional capacity on such Pole or in such Conduit resulting from such replacement or rearrangement. The City may require the Licensee to obtain the services of a City-pre-approved, pre-authorized and pre-qualified contractor to perform the transfers, rearrangements and/or replacements of facilities. If the City authorizes the Licensee to do the Work, the City reserves the right to inspect such performance of Work. The performance of such Work shall not commence in the absence of the City’s inspectors, who will be made available on a timely basis. All materials, equipment and/or work methods and practices shall be approved by the City prior to the commencement of the Work. Notwithstanding Section 3.6, the Licensee shall be responsible for liability, losses and damages suffered by the City that may result from the Licensee’s failure to comply with the Provisions or otherwise resulting from the Licensee’s attachment, installation, operation, repair or maintenance of the Licensee Facilities.

11.4 Project Collaboration. Should the City, the joint owner(s) of certain Poles, and/or any existing licensee have Pole or Conduit accommodation rights for its own service requirements, or needs to attach additional facilities to any Pole or Conduit to which Licensee is attached or has occupied, and wishes to avail itself of the holding capacity of an anchor being utilized by the Licensee, or needs to use the Conduits occupied by the Licensee, the Licensee will either rearrange the Licensee Facilities in, on or about the designated Pole(s) and/or Conduit(s), or
transfer them to replacement Pole(s) and/or Conduit(s), as determined by the City, so that the additional facilities of the City, the joint owner(s) of certain Poles and/or any existing licensee may be accommodated. The costs and expenses of such rearrangement and/or transfer will be at the sole expense of the Person seeking an additional attachment and/or the modification of an existing Pole Attachment, or additional Conduit capacity.

11.5 City Obligations. Subject to Section 7.1, in performing Make-Ready Work to accommodate the Licensee Facilities, the City will use reasonable efforts to include such work in its normal work load schedule to the extent that its actions exercised in its governmental and propriety capacities are not adversely affected.

11.6 Cost Sharing. Except as otherwise provided herein, all Costs and capital investments subject to reimbursement shall be determined in accordance with the regular and customary methods of determining costs, expenses, and capital investments on the books and records of the City, the joint owner(s) of certain Poles and/or any existing licensees in their respective businesses.

11.6.1 The invoices for replacement, rearrangement, engineering, inspections, expenses and other charges levied or collected under this Agreement, other than rentals for Pole Attachment or Conduit Occupancy, shall be payable within forty-five (45) Days after the date of receipt of such invoices by the Licensee.

12.0 INDEMNITY; WAIVER; RISK OF LOSS

12.1 Indemnity. The Licensee shall indemnify, protect, defend and hold harmless the City, its council members, officers, employees, and agents, from and against claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including the costs of any “hazardous material” (as such term is defined in Section 17.04.040(e) of the Palo Alto Municipal Code, as amended), remedial actions of any kind and all other related costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys’ fees and costs of defense, to the extent caused directly, in whole or in part, by the negligence or willful misconduct of the Licensee, its directors, officers, employees, agents, contractors, subcontractors and representatives, or arising, in whole or in part, from the Licensee’s construction, installation, operation, maintenance or repair of the Licensee Facilities, but not to the extent arising out of the negligence or willful misconduct of the City.

12.1.1 The City shall be liable only for the costs of repair to the damaged Licensee Facilities arising from the City's sole negligence or willful misconduct, and the City shall not be otherwise responsible for any damage, loss, or liability of any kind occurring by reason of anything done or omitted to be done by the City or by any third party, including, without limitation, damages, losses, or liability arising from the City’s approval of an Application.

12.2 Waiver. The waiver by a Party of any breach or default or violation of any Provision by the other Party shall not be deemed to be a waiver or a continuing waiver by that Party of any subsequent breach or default or violation of the same or any other Provision.
12.3 Risk of Loss. The Licensee shall assume all responsibility for, and shall promptly reimburse, in full, the City, the joint owner(s) of certain Poles and/or any existing licensee, for any of their losses and expenses associated with damages caused, directly or indirectly, by the Licensee, its employees, agents and/or contractors to the City Facilities, including, without limitation, any Poles and Conduits or damage caused by the presence of the Licensee Facilities. The Licensee shall provide immediate notification to the other Party upon the occurrence of any such damage.

12.4 Notice to City. The Licensee shall promptly advise the City of all known claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, from the erection, maintenance, repair, replacement, operation, presence, use or removal of the Licensee Facilities. The Licensee shall promptly notify the City, in writing, of any known suits or causes of action which involve the City and, upon request of the City, provide to the City’s insurer copies of all relevant accident reports and statements made to the Licensee or others.

13.0 INSURANCE

13.1 General. Unless the City’s insurance risk manager agrees, in writing, to accept the Licensee’s self-insurance in fulfillment of these insurance requirements, the Licensee shall obtain and maintain at all times during the Initial Term and the Extension Term, if any, commercial general liability insurance and commercial automotive liability insurance protecting the Licensee in an amount of two million dollars ($2,000,000) per occurrence (combined single limit), including death, bodily injury and property damage, and not less than two million dollars ($2,000,000) aggregate, for each personal injury or death liability, products-completed operations, and each accident. Such insurance, pursuant to ISO Form No. GC2010 or equivalent or other commercially reasonable form acceptable to the City's insurance risk manager, shall include the City, its council members, officers, employees, and agents as an additional insured as respects liability arising out of the Licensee's negligent performance of any Work that it performs or may be authorized to perform under this Agreement. Coverage shall be provided in accordance with the limits specified and the Provisions indicated herein. Claims-made policies are not acceptable. Such limits may be satisfied by a combination of primary and umbrella policies. Such insurance shall not be canceled or non-renewed until the City has received at least thirty (30) Days’ prior written notice of such cancellation or non-renewal. The Licensee shall be responsible for notifying the City of such change or cancellation.

13.2 Certificates. The Licensee shall file the required original certificate(s) of insurance with endorsements with the City's insurance risk manager, with a copy to the Utilities Director, subject to the City's prior approval. The certificate(s) shall clearly state or provide:

13.2.1 Policy number; name of insurance company; name, address and telephone number of the agent or authorized representative; name, address and telephone number of insured; project name and address; policy expiration date; and specific required coverage amounts;
13.2.2 With the certificate(s), the Licensee shall provide prior written notice of cancellation to the City that is unqualified as to the acceptance of liability for failure to notify the City; and

13.2.3 That the Licensee's required insurance is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

13.3 Notice. The certificate(s) of insurance with all endorsements and notices shall be mailed to: (a) City of Palo Alto, Utilities Department, P.O. Box 10250, Palo Alto, CA 94303, Attn.: Electrical Engineering Manager; and (b) City of Palo Alto, Public Works Department, P.O. Box 10250, Palo Alto, CA 94303, Attn.: Supervising Project Engineer.

13.4 Other Coverage. Unless the City permits the Licensee to self-insure, the Licensee shall obtain and maintain at all times during the Initial Term and the Extension Term, if any, statutory workers' compensation and employer's liability insurance or qualify as a self-insurer in an amount not less than one hundred thousand dollars ($100,000) or such other amounts as required by Law, and furnish the City with a certificate showing proof of such coverage.

13.5 Insurance Rating. Any insurance provider of the Licensee shall be admitted and authorized to do business in California and shall be rated at least A-:VII in Best's Key Rating Guide. Insurance certificates issued by non-admitted insurance companies will not be acceptable to the City.

13.6 Deductibles. Prior to the execution of this Agreement, any self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to the City, and any deductibles shall be reported, in writing, to the City’s insurance risk manager. "Cross liability", "severability of interest" or "separation of insureds" clauses shall be made a part of the commercial general liability and commercial automobile liability policies.

14.0 PERFORMANCE BOND; LETTER OF CREDIT

14.1 Posting Security. The City may require the Licensee to procure and provide the City with a surety bond (the “Bond”), naming the City as the obligee in the amount of not less than one hundred percent of the estimated cost of the Work or one hundred fifty thousand dollars ($150,000), whichever sum is greater (or such other amount as may be required by Law), to guarantee and assure the faithful performance of the Licensee's obligations under this Agreement. The City will notify the Licensee of the date by which such Bond shall be posted. The City shall have the right to draw against the Bond in the event of a default by the Licensee or in the event that the Licensee fails to meet and fully perform any of its obligations hereunder or in accordance with the City’s exercise of its rights upon the Licensee’s abandonment of the Licensee Facilities and failure to remove them as required by this Agreement.

14.2 Replenishing Bond. Within fifteen (15) Days of receipt of written notice from the City, the Licensee shall renew or replace such sums of money as shall bring the Bond
current. A failure by the Licensee to bring current the Bond within the specified time and give the City notice thereof shall constitute a default under this Agreement. Any Bond may be canceled by the Licensee at the end of the applicable construction or installation project. The Licensee shall provide thirty (30) Days’ prior written notice of cancellation to the City.

14.3 Letter of Credit. The Licensee may provide the City with a Letter of Credit in the amount set forth in Section 14.1 and in accordance with other terms and conditions as may be agreed to by the City, if the City Manager agrees to accept the Letter of Credit in lieu of the Bond to secure the Licensee’s performance under this Agreement.

15.0 REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties of the Parties. As of the Effective Date, each Party represents and warrants to the other Party that:

A. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

B. The execution, delivery and performance of this Agreement and the Exhibits are within its powers, have been duly authorized by all necessary action and do not violate any of its governing documents, any contracts with any joint owners to which it is a party or any Law;

C. The Agreement and the Exhibits and any other document executed and/or delivered in accordance with this Agreement constitute its legally valid and binding obligation, enforceable against it in accordance with its covenants, terms, conditions and provisions;

D. It has not filed and it is not now contemplating the filing for bankruptcy protection or, to its knowledge, any action is threatened against it which would result in it being or becoming bankrupt;

E. There is not pending or, to its knowledge, threatened against it or any of its affiliates any legal or administrative proceedings that could materially adversely affect its ability to perform its obligations under this Agreement and the Exhibits; and

F. No “event of default” or potential “event of default” with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement and the Exhibits.

15.2 Representations and Warranties of the Licensee. The Licensee represents and warrants to the City that:

A. The Licensee has all approvals, authorizations, certifications, licenses and franchises required by the CPUC, the FCC and/or any other agency to provide the Communications Service;
B. The Licensee is not aware of any facts or circumstances that would call into doubt the continuing validity of any such approvals, authorizations, certifications, licenses or franchises; 

C. There is not pending or, to the Licensee’s knowledge, threatened against the Licensee or its parent corporation or any of its subsidiaries or affiliates, any legal or administrative proceedings that could materially adversely affect the validity of such licenses, authorizations or franchises; and 

D. All Work to be performed by the Licensee pursuant to this Agreement will be (i) performed in a good and workmanlike manner, consistent with any specifications and with any prevailing industry standards, applicable Laws, and the Provisions hereof, and (ii) will be free from defects.

16.0 DEFAULT; REMEDIES FOR DEFAULT

16.1 Event of Default. This Agreement may be terminated upon the occurrence of an “event of default” by a Party (the “Defaulting Party”).

16.1.1 An “event of default,” which will constitute a material breach of this Agreement if it is not cured in a timely manner as described below, means the occurrence of any of the following:

A. A representation or warranty made by a Party is false or misleading in any material respect when made;

B. The failure to perform any material covenant, or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) Days after written notice of default is given or, if such cure reasonably requires more than thirty (30) Days, fails to commence such cure within the specified period or, thereafter, fails to continue diligently such cure until completion thereof;

C. A Party files a petition or otherwise commences or acquiesces in the commencement of a proceeding under any bankruptcy, insolvency, reorganization or similar Law, makes an assignment for the benefit of its creditors, has an administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or is generally unable to pay its debts as they fall due;

D. The failure to make, when due, any undisputed payment required by this Agreement if such failure is not remedied within ten (10) Business Days after written notice of default is given; and

E. The revocation, expiration or denial of renewal, by final order or action that is no longer subject to appeal, of any license, authorization or franchise that is required by the FCC, the CPUC, and/or any other agency for the Licensee to provide Communications Service by means of the Licensee Facilities or to install or maintain or operate the Licensee Facilities in Palo Alto, if
such expiration or denial prohibits the Licensee from operating the Licensee Facilities or providing Communications Service.

16.2 Remedies for Default. If an event of default occurs and is continuing with respect to the Defaulting Party, the other Party (the “Non-Defaulting Party”) will have an election of rights and remedies, in addition to all other legal rights and equitable remedies or as otherwise provided in this Agreement, to which the Non-Defaulting Party may resort cumulatively, or in the alternative:

A. The right to terminate this Agreement by giving to the Defaulting Party thirty (30) Days’ prior written notice of termination, in which event this Agreement will terminate on the date set forth in the notice of termination; and

B. Any other right that is made available under applicable Laws.

16.3 Excusing Performance. A Party will be temporarily excused from the performance or further performance of any of its covenants or agreements hereunder, excepting only the obligation to pay Costs and Fees, and such Party’s nonperformance shall not be deemed an event of default under this Agreement for any period, to the extent, but only to the extent, that such Party is prevented, hindered or delayed for any period of time not in excess of thirty (30) Days from performing any of its covenants or agreements, in whole or in part, as a result of a Force Majeure event, including, without limitation, any denial of access to the City Facilities in order to engage in the Work. The Parties hereby agree to use reasonable efforts to remedy the effects caused by the occurrence of the Force Majeure event giving rise to a Party’s temporary nonperformance of its obligations, covenants or agreements under this Agreement. A Party will provide notice promptly to the other Party to the extent that Party relies on the provisions of this Section to temporarily excuse its failure to perform any of its covenants or agreements hereunder.

17.0 DISPUTE RESOLUTION

17.1 Informal Process. If a dispute between the Parties arises in regard to this Agreement or any Exhibit (the “Dispute”), the following procedure will govern the resolution of the Dispute: (a) the Parties will nominate their respective representatives to be responsible for and exercise the appropriate authority to resolve all Disputes hereunder for the fourteen-day resolution period of time set forth below; and (b) if the Dispute remains unresolved within such fourteen-day period, before either Party may resort to the process described in Sections 17.3 and 17.4, either Party may refer the Dispute, in writing, for final settlement to a senior principal, vice-president or other officer of the Licensee and the City Manager, who will jointly convene within ten (10) Days of receipt of a referral request and use reasonable efforts to consider and resolve the Dispute. The Parties will ensure that their respective representatives confer for a period of fourteen (14) days from the date of referral by either Party. If final resolution cannot be achieved, the Parties may resort to the procedures described in Sections 17.3 and 17.4 hereunder.

17.2 No Bar to Other Relief. Nothing contained in this Agreement will prevent or otherwise restrict either Party from pursuing its rights at law or in equity, including injunctive relief and specific performance, in the event of a default and a material breach by the other Party.
17.3 Mediation. In the event of a Dispute, either Party may, by notice to the other Party (the “Mediation Notice”), request that such Dispute be submitted to non-binding mediation in Palo Alto, California, with a mediator acceptable to the Parties. If such mediation does not result in a settlement of the Dispute within one hundred eighty (180) Days from the date of the Mediation Notice, either Party may request that such matter be submitted to non-binding arbitration in Palo Alto, California, under the rules of the American Arbitration Association. Action of any kind by either Party arising out of this Agreement must be commenced within one (1) year from the date the right, claim, demand or cause of action first arises.

17.4 Continuation of Rights. Notwithstanding anything to the contrary set forth herein, in no event will the City interrupt or suspend or terminate the Licensee’s rights granted under this Agreement or perform any action that prevents, impedes, or reduces in any way the Licensee’s rights to conduct its authorized, certificated or licensed services, unless: (a) the authority to do so is granted to the City by this Agreement or by Law or conferred by a court of competent jurisdiction; (b) this Agreement has been validly terminated in accordance with this Agreement; or (c) the Licensee has failed to pay the City any undisputed invoice that is past due in excess of thirty (30) Days after receiving a delinquency notice from the City.

17.5 Immediate Relief. Nothing in this Agreement shall be deemed or construed to prohibit a Party from obtaining judicial, regulatory or other relief necessary in order to preserve the status quo or prevent the loss or violation of that Party’s rights.

18.0 NOTICES

All notices which shall or may be given pursuant to this Agreement shall be given, in writing, and shall be deemed validly given if delivered or sent by certified mail, return receipt request or by commercial courier, provided the commercial courier’s regular business is delivery service, and addressed, as follows:

CITY: City of Palo Alto
Department of Utilities
P. O. Box 10250
Palo Alto, CA 94303
Attn.: Director of Utilities

Copy to: City of Palo Alto
P. O. Box 10250
Palo Alto, CA 94303
Contract No. ____________

Attn.: City Clerk

Copy to: City of Palo Alto
        P. O. Box 10250
        Palo Alto, CA 94303
        Attn.: City Attorney

Any notice to be sent to the City Manager or City Attorney shall be sent to the same post office box referred to above.

LICENSEE: Name
          Address
          Phone:
          Fax:
          Attn.:

19.0 MISCELLANEOUS PROVISIONS

19.1 Amendments. This Agreement may not be amended except pursuant to a written instrument signed by the Parties.

19.2 Assignment. This Agreement is personal to only the Licensee and no other Person. The Licensee may not directly or indirectly assign, transfer or convey to another Person this license or any of the rights and obligations of the Licensee established by this Agreement. Any assignment or transfer of this Agreement shall be void, and the City may terminate this Agreement if the Licensee attempts to assign or transfer this Agreement without compliance hereof. The preceding sentences of this Section 19.2 notwithstanding, the Licensee may assign or transfer this Agreement to its parent corporation or any subsidiary corporation or affiliate or successor in interest, provided that such parent corporation, subsidiary corporation or affiliate or successor in interest first agrees, in writing, to be fully bound by this Agreement and the Exhibits and to assume all of the Licensee’s obligations and liabilities hereunder, whether arising before or after the date of such assignment or transfer.

19.3 Attorneys’ Fees. Each Party in any litigation, including mediation, regarding this Agreement will bear its own costs and expenses of suit, including, without limitation, reasonable attorneys’ fees.

19.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

19.5 Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, warranties, agreements or understandings (whether oral or written) between the Parties relating to the subject matter hereof which are not fully expressed herein.
19.6 **Exhibits.** As of the Effective Date, all exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part hereof.

19.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the State of California without regard to its conflicts of laws rules or principles.

19.8 **Headings.** The headings hereof are inserted for convenience of reference only, are not a part hereof and shall have no effect on the construction or interpretation hereof.

19.9 **Independent Contractor.** Each Party acts as an independent contractor and not as an employee of the other Party. Nothing in this Agreement shall be construed to establish a partnership, joint venture, group, pool, syndicate or agency relationship between the City and the Licensee.

19.10 **Resolving Conflicting Provisions.** To the extent the Provisions and any other authorizations and approvals required to be obtained by the Licensee from the City are in conflict, the Provisions of the Agreement, authorizations and approvals which impose(s) the higher or greater legal duty or obligation upon the Licensee shall take precedence.

19.11 **Rules of Construction.** Each Party and its counsel have reviewed this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the construction and interpretation hereof.

19.12 **Severability.** If a court of competent jurisdiction finds or rules that a Provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected Provisions of this Agreement and any amendments thereto will remain in full force and effect.

19.13 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the lawful successors and permitted assigns of the Parties.

19.14 **Time of Action.** For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as an official holiday by the City, the time for performance shall be extended to the following Business Day.

19.15 **Venue.** In the event that suit is brought by a Party, the Parties agree that trial of such action shall be vested exclusively in the state courts of California, County of Santa Clara, or, assuming jurisdiction is otherwise proper, in the United States District Court, Northern District of California, in the County of Santa Clara.

19.16 **Waiver of Lien Rights.** The City waives any lien rights that it may have in the Licensee Facilities, which shall be deemed personal property for purposes of this Agreement regardless of whether or not the same is deemed real property, fixtures or attachments thereto, or
personal property by Law. Subject to and as limited by the Provisions, the City grants the Licensee and the Licensee’s mortgagee the right to remove or cause the removal of the Licensee Facilities from time to time, whether before or after a default by the Licensee under this Agreement, in the discretion of the Licensee or the Licensee’s mortgagee.

//

//

//

//

//

//

IN WITNESS WHEREOF, this Agreement shall be deemed duly executed by the Parties in Palo Alto, County of Santa Clara, State of California, as of the Effective Date.

APPROVED AS TO FORM

Senior Asst. City Attorney

CITY OF PALO ALTO

City Manager

ATTEST:

DIRECTOR OF UTILITIES

Title: _______________________

LICENSEE

Director of Public Works

General Counsel
EXHIBITS

In accordance with Section 19.6 of the Master License Agreement between the City and the Licensee (the “Agreement”), Exhibits A through I, inclusive, any new exhibits hereinafter existing and any amendments thereto, are hereby incorporated in and made a part of the Agreement.
Exhibit “A”

The Licensee shall submit one of the following documents (or documents), as applicable, which shall be attached hereto:

Exhibit “B”

List of Poles Rented by Licensee

No. of Poles: ______________________

<table>
<thead>
<tr>
<th>City of Palo Alto Pole Number</th>
<th>Nearest Street Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Exhibit “C”**

List and Location of Conduit Footage Rented by Licensee

Total Conduit footage: _____________________

<table>
<thead>
<tr>
<th>Location Number</th>
<th>From Street Address</th>
<th>To Street Address</th>
<th>Footage (Ft)</th>
<th>Number and size of cables to be installed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Etc</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Exhibit “D”

Description of Licensee Facilities
[to be Attached To City-spaces on Poles and/or Streetlight Poles
And/or Installed in City Conduits]

The Licensee shall provide the City with a detailed description of the Licensee Facilities that the Licensee proposes to attach to and/or install in the City Facilities.

The following information shall be included: [1] Typical Installation drawing; and [2] Power requirements for the Licensee Facilities to be attached and/or installed.
Exhibit “E”

Schedule E-1, dated as of __________

Description of Licensee Facilities to be Attached and/or Installed, Duration of Attachment and/or Installation, and Fees and Costs

A. Licensee Facilities:

1. Number of Pole Attachments: ______________________
2. Total Conduit footage: ______________________

B. Duration of Pole Attachment/Conduit Occupancy:

1. For Poles: __________________________
2. For Conduits: __________________________

C. Initial/One-Time Costs and Fees

1. The Licensee shall reimburse the City for its actual or estimated Costs and Fees of preparing the City Facilities (the City’s overhead and underground facilities) for each new or modified Pole Attachment or Conduit Occupancy. This reimbursement is a one-time charge for each attachment to Poles and/or installation in Conduits. The charges shall be due upon the City’s receipt of the Licensee’s written approval to attach, install or modify any Pole contact or Conduit usage, and they shall be paid before the City’s construction shall commence.

<table>
<thead>
<tr>
<th>Charge:</th>
<th>Processing Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description:</td>
<td>The actual or estimated cost for performing preliminary</td>
</tr>
<tr>
<td></td>
<td>field investigation to review pole attachment or conduit</td>
</tr>
<tr>
<td></td>
<td>usage submittal.</td>
</tr>
<tr>
<td>Price:</td>
<td>Total Cost</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Charge:</th>
<th>Engineering Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description:</td>
<td>The costs estimated by the City for reviewing contact</td>
</tr>
<tr>
<td></td>
<td>design, designing City modifications and updating</td>
</tr>
<tr>
<td></td>
<td>operation records.</td>
</tr>
<tr>
<td>Price:</td>
<td>Total Cost</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Charge:</th>
<th>Cable Attachment Charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description:</td>
<td>The costs estimated by the City for making space</td>
</tr>
<tr>
<td></td>
<td>available and other modifications necessary to</td>
</tr>
<tr>
<td></td>
<td>accommodate each line attachment.</td>
</tr>
</tbody>
</table>

Contract No. ______________
Price: Total Cost

**Charge:** Anchor Attachment Charges
**Description:** The costs estimated by the City for making provisions for guyng the structure at the communications level.

Price: Total Cost

**Charge:** Equipment Mounting Charges
**Description:** The costs estimated by the City for making space available and other modifications necessary to accommodate equipment (amplifiers, nodes, battery backup) mounting.

Price: Total Cost

**Charge:** Electric Services Connection Charges
**Description:** The costs estimated by the City for providing electric service connection to provide power to equipment attached to the pole.

Price: Total Cost

**Charge:** Inspection Charge
**Description:** The costs estimated by the City for providing inspection services upon completion of make-ready work and Licensee’s equipment – typically 3 hours per pole.

Price: Total Cost

Total Initial/One-Time Costs and Fees for Schedule E-1: $ ________________.

D. Annual Costs and Fees:

1. **Wire facilities attachment fees.** The Fees for wire communications facilities attachments to Poles shall be as set forth in the City’s Utility Rate Schedule E-16 or, if such rate schedule is not applicable, any other applicable CPAU utility rate schedules.

2. **Wireless facilities attachment fees.** The Fees for wireless communications facilities attachments to Poles shall be as set forth in the City’s Utility Rate Schedule E-16 or, if such rate schedule is not applicable, equal to the rental rate of one thousand five hundred dollars ($1,500.00) per Pole per year.

3. **Conduit occupancy fees.** The Fees for occupancy of Conduits shall be as set forth in the City’s Utility Rate Schedule E-16 or, if such rate schedule is not applicable, other applicable CPAU utility rate schedule(s). The City reserves the right to impose and collect different fees for the exclusive and nonexclusive occupation of the Conduits.

4. **Other City service fees.** The Fees for the City’s rendering of services in regard to the attachment or installation of the Licensee’s wire and/or wireless facilities on Poles.
or in Conduits shall be established in accordance with applicable CPAU utility rate schedules.

5. Electric Service charges. The Fees, rates and charges for electric utility service consumed or used annually by the Licensee shall be as set forth in the City’s Utility Rate Schedule E-16 or, if such rate schedule is not applicable, other applicable CPAU utility rate schedules.

6. Late Payment fee. If the Licensee fails to pay the amounts of Costs and Fees due and payable within the time period required by this Agreement, then the Licensee shall pay a late fee established by Law or the lesser of an amount equal to five percent (5%) of those amounts then due and payable as set forth in the invoices or five hundred dollars ($500).

7. Utility Rate Schedules. The utility rate schedules referred to in this Exhibit “E” and any amendments thereto now or hereafter in effect shall be deemed incorporated herein by reference. The rates may be amended and adopted by the City in the ordinary course and scope of business. The Fees shall be subject to annual cost-of-living increases. The Fees upon commencement of the Extension Term shall be calculated in accordance with the utility rate, fees and charges applicable to Pole Attachments and Conduit Occupancy then in effect.

Total Annual Costs and Fees for Schedule E-1: $ ______________________.

E. Other Terms and Conditions:

F. Attachments:
Contract No. ______________

Exhibit “E”

Schedule E-2, dated as of ____________

Description of Licensee Facilities to be Attached and/or Installed, Duration of Attachment and/or Installation, and Fees and Costs

A. Licensee Facilities:

1. Number of Pole Attachments: ______________________

2. Total Conduit footage : ______________________

B. Duration of Pole Attachment/Conduit Occupancy:

1. For Poles: ___________________________

2. For Conduits: __________________________

C. Initial/One-Time Costs and Fees

1. The Licensee shall reimburse the City for its actual or estimated Costs and Fees of preparing the City Facilities (the City’s overhead and underground facilities) for each new or modified Pole Attachment or Conduit Occupancy. This reimbursement is a one-time charge for each attachment to Poles or installation in Conduit usage. The charges shall be due upon the City’s receipt of the Licensee’s written approval to attach, install or modify any Pole contact or Conduit usage, and they shall be paid before the City’s construction shall commence.

<table>
<thead>
<tr>
<th>Charge:</th>
<th>Processing Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description:</td>
<td>The actual or estimated cost for performing preliminary field investigation to review pole attachment or conduit usage submittal.</td>
</tr>
<tr>
<td>Price:</td>
<td>Total Cost</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Charge:</th>
<th>Engineering Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description:</td>
<td>The costs estimated by the City for reviewing contact design, designing City modifications and updating operation records.</td>
</tr>
<tr>
<td>Price:</td>
<td>Total Cost</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Charge:</th>
<th>Cable Attachment Charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description:</td>
<td>The costs estimated by the City for making space available and other modifications necessary to accommodate each line attachment.</td>
</tr>
</tbody>
</table>

E-2-1
Price: Total Cost

**Charge:** Anchor Attachment Charges  
Description: The costs estimated by the City for making provisions for guyng the structure at the communications level.

Price: Total Cost

**Charge:** Equipment Mounting Charges  
Description: The costs estimated by the City for making space available and other modifications necessary to accommodate equipment (amplifiers, nodes, battery backup) mounting.

Price: Total Cost

**Charge:** Electric Services Connection Charges  
Description: The costs estimated by the City for providing electric service connection to provide power to equipment attached to the pole.

Price: Total Cost

**Charge:** Inspection Charge  
Description: The costs estimated by the City for providing inspection services upon completion of make-ready work and Licensee’s equipment – typically 3 hours per pole.

Price: Total Cost

Total Initial/One-Time Costs and Fees for Schedule E-2: $__________________________.

D. Annual Costs and Fees:

1. *Wire facilities attachment fees.* The Fees for wire communications facilities attachments to Poles shall be as set forth in the City’s Utility Rate Schedule E-16 or, if such rate schedule is not applicable, any other applicable CPAU utility rate schedules.

2. *Wireless facilities attachment fees.* The Fees for wireless communications facilities attachments to Poles shall be as set forth in the City’s Utility Rate Schedule E-16 or, if such rate schedule is not applicable, equal to the rental rate of one thousand five hundred dollars ($1,500.00) per Pole per year.

3. *Conduit occupancy fees.* The Fees for occupancy of Conduits shall be as set forth in the City’s Utility Rate Schedule E-16 or, if such rate schedule is not applicable, other applicable CPAU utility rate schedules. The City reserves the right to impose and collect different fees for the exclusive and nonexclusive occupation of the Conduits.

4. *Other City service fees.* The Fees for the City’s rendering of services in regard to the attachment or installation of the Licensee’s wire and/or wireless facilities on Poles
or in Conduits shall be established in accordance with applicable CPAU utility rate schedule(s).

5. Electric Service charges. The Fees, rates and charges for electric utility service consumed or used annually by the Licensee shall be as set forth in the City’s Utility Rate Schedule E-16 or, if such rate schedule is not applicable, other applicable CPAU utility rate schedules.

6. Late Payment fee. If the Licensee fails to pay the amounts of Costs and Fees due and payable within the time period required by this Agreement, then the License shall pay a late fee established by Law or the lesser of an amount equal to five percent (5%) of those amounts then due and payable as set forth in the invoices or five hundred dollars ($500).

7. Utility Rate Schedules. The utility rate schedules referred to in this Exhibit “E” and any amendments thereto now or hereafter in effect shall be deemed incorporated herein by reference. The rates may be amended and adopted by the City in the ordinary course and scope of business. The Fees shall be subject to annual cost-of-living increases. The Fees upon commencement of the Extension Term shall be calculated in accordance with the utility rate, fees and charges applicable to Pole Attachments and Conduit Occupancy then in effect.

Total Annual Costs and Fees for Schedule E-2: $ ____________________.

E. Other Terms and Conditions:

F. Attachments:
Exhibit “F”

Terms and Conditions Regarding Use of Pole Spaces

1. The Licensee shall be responsible to performing its own engineering analysis, which shall be submitted with the Processing Request Form – Exhibit “I”, in order to enable the City to determine where on the Pole the Licensee Facilities will be attached in compliance with CPUC GO 95 Rule 94 clearance and construction requirements. CPAU in its Make-Ready Work inspection will evaluate the Pole for its ability to accommodate all of the existing and new attachments from a clearance- and pole-loading perspective.

2. Subject to the City’s express written consent, the Licensee shall perform all attachments and installations; only qualified contractors reasonably approved by the City will be allowed to work in the Electric Utility space subject to any monitoring by City staff.

3. As there may be Make-Ready Work that needs to be performed by other parties attached to the Pole, the Licensee shall make arrangements with those other parties to move/transfer their facilities.

4. The Licensee shall remove existing “out of service” communications cable/devices to facilitate the new attachments and installations.

5. The City will approve the Licensee’s Pole Attachment and Conduit Occupancy requests over two phases. The first phase will entail ensuring the Make-Ready Work is completed in accordance with CPAU specifications. The second phase will entail permitting the Licensee to attach the Licensee Facilities to the Poles and/or installation in the Conduits. The City’s personnel will perform a final inspection after all Work is completed.

6. The Licensee shall identify the Licensee Facilities newly installed or serviced at each contact point by means of a marking method mutually agreed to by the Parties. Such identification shall be visible from ground level. The Licensee shall provide the City with a 24/7 contact phone number to enable the City to promptly report any concerns regarding the Licensee Facilities. In the event that the City should report any such concerns to the Licensee, the Licensee shall promptly respond to such call(s) and perform the required repair or correct any adverse impact to the City’s electric utility operations caused by such Licensee Facilities at no cost to the City unless the same shall be caused by the City or a party under the City’s control.

7. The City reserves the right to operate and maintain its electric utility City Facilities in order to fulfill its utility service requirements to its electric utility ratepayers or dark fiber/communications customers. The City shall not be liable to the Licensee for any interruption to the Licensee’s service or for any interference
with the operation of the Licensee Facilities arising in any manner from the use of the City Facilities, including the electric utility overhead facilities, by the City in accordance with this Agreement, provided that the City shall give the Licensee fifteen (15) Days’ advance notice of any non-emergency work which affects the Licensee Facilities.

8. The Licensee Facilities shall not be installed, placed, or maintained on any of the City Facilities which carries voltage of 60,000 volts or greater between the conductors.

9. If, at any time, the City deems it necessary to intentionally increase its voltage to 60,000 volts between conductors, on the Poles jointly occupied under this Agreement, the City shall give the Licensee ninety (90) Days’ prior written notice, as provided herein, of its intention to increase said voltages.

10. In the event any City Facilities occupied by the Licensee under this Agreement are to be replaced, repaired or altered, the Licensee shall, at its own sole risk and expense (except in the case of rearrangements required by third parties or City-owned commercial communications facilities), upon reasonable notice from the City, relocate or replace its Licensee Facilities or transfer them to the replacement City Facilities, as available, or perform any other work in connection with those facilities that may be required by City.

11. In the event of an emergency or other event or condition that the City determines presents an imminent danger or threat to the public health, safety or welfare, the City may remove a Pole and shall in such case immediately notify the Licensee of the action taken. The City shall make commercially reasonable efforts to notify the Licensee of the removal of its Licensee Facilities, prior to the emergency removal of those facilities.

12. The Licensee shall use due care to avoid causing damage to the City Facilities, including its electric utility overhead facilities, and the Licensee shall assume responsibility for any loss arising from such damage caused by the Licensee. The Licensee shall make an immediate report of the occurrence of any such damage to the City and shall, on demand, reimburse the City for its total cost that are incurred in making any repairs.

13. The City shall have the right to inspect each new installation of the Licensee Facilities attached to or installed in the City Facilities and to make periodic inspections at the City’s discretion as conditions may warrant. Such inspections shall not relieve the Licensee of any responsibility, obligation or liability assumed under this Agreement.

14. The Licensee, at its sole risk and expense, shall install and maintain guys and anchors as required where the Licensee’s anchorage requirements are not coincident with the City’s or the City Facilities’ existing anchorage requirements.
15. Where the anchorage requirements of the City Facilities used by the Licensee and the City are coincident, the existing guys and anchors shall be used.

16. If the City, in accordance with accepted electric utility standards, determines that separate guys and/or anchors are necessary, the Licensee, at its sole risk and expense, shall install the new guys and/or anchors.

17. If the City, in accordance with accepted electric utility standards, determines at the time of installation of the Licensee Facilities that the existing guys and/or anchors need to be replaced on account of and due to the weight of the License Facilities to be installed, the City, at the Licensee’s sole cost and expense, shall install the new guys and/or anchors.

18. If the Licensee Facilities cause to displace or pull any reasonably serviceable Poles or anchors out of line, or damage any City Facilities or such other facilities, equipment or installations owned by the City or any other third party in any manner, the Licensee shall pay the cost of any replacements, repairs or restoration of such Poles, anchors, facilities, equipment or installations.
Exhibit “G”

Terms and Conditions Regarding Use of City Conduit

1. The Licensee shall submit a Processing Request Form – Exhibit “I” to the City, which will perform a preliminary site investigation jointly with the Licensee to determine the feasibility of the Licensee’s occupancy or use of any available Conduits.

2. No Licensee Facilities, including any cables, shall be permitted to be installed in electric pull boxes, electric vaults or Conduit that contains the City’s electric or dark fiber cables.

3. The Licensee Facilities or other cables shall be identified with durable and clearly visible tag when they are installed in Conduits.

4. For all installations, inner-duct shall be used prior to installing the Licensee Facilities or other cables. When, in the opinion of the Utilities Director, it is necessary to facilitate maintenance or the additional use of the Conduit, the City will require the Licensee to also install a divide-a-duct prior to installing the inner-duct.

5. Any pull box replacement or enlargement will be made at the Licensee’s sole cost and expense.
Exhibit “H”

Pole Replacement Requirements

1. All Poles identified by the City’s records as being deteriorated and scheduled or planned for replacement within the next twelve (12) months will be addressed as follows:
   - The City will advise the Applicant or the Licensee to seek another good Pole.
   - The Pole will be replaced by the City, but the City will not make any guarantee to complete the replacement to meet the Applicant’s or the Licensee’s desired schedule.

2. Whenever a Pole top extension will be used to mount the Licensee Facilities and whenever the Pole top is deteriorated, then the Pole shall be replaced at the Applicant’s sole cost and expense in order to accommodate the Licensee Facilities’ attachment or installation.
Exhibit “I”

Processing Request Form
(for Pole Attachment/Conduit Usage)

REQUEST SUBMITTED BY: FIELD INVESTIGATION CONTACT:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td>Title:</td>
</tr>
<tr>
<td>Company:</td>
<td>Company:</td>
</tr>
<tr>
<td>Street Address:</td>
<td>Street Address:</td>
</tr>
<tr>
<td>City, State, Zip:</td>
<td>City, State, Zip:</td>
</tr>
<tr>
<td>Telephone Number:</td>
<td>Cell Phone:</td>
</tr>
<tr>
<td>Email Address:</td>
<td>Email Address:</td>
</tr>
</tbody>
</table>

Today’s Date: ____/____/____

Project Description: Attach the following:

1. A list of Poles with City of Palo Alto Pole number and nearest street address;
2. Size and Conduit Occupancy details;
3. Size and number of pull boxes;
4. A map showing the Pole/Conduit locations;
5. Pole loading calculations;
6. Typical Installation details of equipment to be attached on the Pole;
7. Completed Electric Service Request Application (one per wireless pole attachment location; application shall include all power and attachment requests); and
8. Other:

Desired completion date: ____/____/____

NOTE: Please budget 8-12 weeks from make ready and service connection payment (not this processing payment) to completion.

POLE ATTACHMENT/CONDUIT USAGE PROCESSING CONDITIONS:

I am submitting this processing request with the full understanding of the following conditions:
1. The Licensee shall pay the fee to be submitted with this Processing Request Form within seven (7) Days of receipt of the City’s invoice for the processing fee.

2. The processing fee is a non-refundable fee required to cover the cost of completing the Preparatory Work, that is, work of a preliminary nature to be undertaken by CPAU staff, including, without limitation, survey and field inspection work, review of engineering plans and specifications and other related work, that precede or are required to establish the Make-Ready Work in order to facilitate the attachment and/or installation of the Licensee Facilities in, on or about Poles and/or Conduits.

3. Upon the City’s completion of the Preparatory Work, the City will notify the Licensee whether the proposed Pole Attachments and/or Conduit Occupancies will be approved for the preparation of detailed engineering drawings and other specifications.

4. If the Parties mutually agree to proceed to the Make-Ready Work phase, then the City will prepare detailed construction plans and a cost estimate that will include (a) the Costs for any Make-Ready Work that may be performed by CPAU staff and (b) an electric service connection fee, both of which must be paid in full prior to the start of construction.

5. The processing fee will be credited against any Make-Ready Work and the electric service connection fee.

Please Note: You will be invoiced for established standard processing fees or by estimate for special conditions, per Utilities Rate Schedule E-16. Please do not remit any fee until you receive an invoice.

Signature: ____________________________________ Date:__/______/____

Please submit the completed form with authorized signature and direct questions to:

Utilities Electric Engineering
City of Palo Alto Utilities
1007 Elwell Ct
Palo Alto, CA 94303
Phone: (650) 566-4500
Fax: (650) 566-4536

Electric.Engineering@CityofPaloAlto.org

Note that all inquires of a legal nature must be directed to the Office of the City Attorney, 7th Floor City Hall, 250 Hamilton Avenue, P.O. Box 10250, Palo Alto, CA 94303, Attention of Senior Assistant City Attorney, Utilities.