



# City of Palo Alto

## City Council Staff Report

(ID # 7053)

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**Report Type: Consent Calendar**

**Meeting Date: 6/27/2016**

**Summary Title: Amend Master License Agreement & Exhibits with GTE Mobilnet**

**Title: Approval of and Authorization for the City Manager to Execute a Master License Agreement for Use of City-Controlled Space on Utility Poles and Streetlight Poles and In Conduits with GTE Mobilnet of California Limited Partnership, DBA Verizon Wireless for a Combined Initial and Potential Extension Term of 20 Years**

**From: City Manager**

**Lead Department: Utilities**

### **Recommendation**

Staff recommends that Council:

1. Approve a Master License Agreement (“MLA”) with GTE Mobilnet of California Limited Partnership, dba Verizon Wireless (“Verizon”) for a combined initial term and potential extension term of 20 years to allow Verizon to access and use City-controlled spaces on utility poles, streetlight poles and in conduits for the purpose of providing communication services in Palo Alto; and
2. Delegate to the City Manager or his designee the authority to execute on behalf of the City any documents necessary to administer the MLA that are consistent with the Palo Alto Municipal Code and City Council approved policies, including execution of individual Supplements substantially in the form of Exhibit “B”, and non-substantive modifications to the MLA that may be required and approved by the City Attorney’s office.

Note that this MLA, and approval thereof does not authorize any specific installation of facilities by Verizon. Instead, the MLA sets forth the general terms and conditions applicable to such future installations and establishes the process and requirements that the City and Verizon will follow, including filling out an application (Exhibit “G”), executing a Supplement memorializing specific facility requirements and terms (Exhibit “B”), and complying with Palo Alto Municipal Code requirements set forth in Title 12 (Public Works and Utilities) and Title 18 (Zoning), should Verizon elect to pursue an installation or modification of telecommunications equipment on

City utility poles, streetlight poles or in conduit.

## **Background**

Generally, under federal 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 communication facilities from gaining access to the public rights-of-way and utilities infrastructure located therein. Federal and California law encourages, if not requires, the City to allow wireline and wireless communication facilities to access and use the utilities infrastructure located in 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 time, place and manner of attachment to that infrastructure.

The City developed a standard MLA to address the interest of wireless communication service providers and DAS operators 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.

On July 25, 2011, Council adopted Resolution No. 9193 approving the standard MLA and associated 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 in Palo Alto ([City Council Staff Report ID # 1756 <http://www.cityofpaloalto.org/civicax/filebank/documents/28100>](http://www.cityofpaloalto.org/civicax/filebank/documents/28100)). In approving a standard MLA, Council authorized the City Manager to execute such standard agreements. The City and Verizon have agreed to the modifications to the City's standard template as described in more detail in this report, which is why staff is returning to Council for approval.

Since approval of the standard MLA in 2011, the City has executed standard MLA agreements with Extenet, NextG (now Crown Castle), and AT&T Mobility. Under an executed MLA, AT&T Mobility has deployed seventy five (75) DAS installations on City-controlled space on utility poles throughout the City, and Crown Castle is currently installing a small cell antenna network on City-owned streetlight poles at nineteen sites in the downtown area. Staff has been informed by Verizon Wireless representatives that it is possible the carrier will install approximately eighty (80) sites in Palo Alto in the next 3 to 5 years, all of which will be applied for, reviewed and processed in accordance with terms of this MLA and applicable sections of the Palo Alto Municipal Code.

In addition to the MLA, wireless communication and other telecommunications facilities are subject to the requirements of the Palo Alto Municipal Code. For instance, Verizon must still apply for permits and comply with Title 12 and Title 18 of the Palo Alto Municipal Code.

## **Discussion**

As noted above, the MLA sets the essential terms and conditions governing the deployment of wireless antennas and enables current and new service providers to address coverage and capacity issues related to high-speed mobile broadband service in Palo Alto. Deployment is managed in a manner that allows the Utilities Department's infrastructure to be used for advanced broadband communication 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.

The City desired to update, streamline and clarify aspects of its standard MLA. Verizon also requested certain modifications to the City template to do the same, and to account for aspects of their business operations (e.g. Net Worth letter rather than traditional insurance provision, as approved by City's Risk Manager). Collectively, these modifications were incorporated in the updated MLA staff recommends Council approve. Staff recommends that Council approve the MLA with Verizon, which includes the following updates and modifications:

1. Utility Poles, Streetlight Poles: Clarifies the language in the MLA with respect to access to and requirements for Utility Poles as distinguished from Streetlight Poles, the latter of which are not governed by the same federal and state regulatory regime because the City is acting in its proprietary capacity with Streetlight Poles.
2. Streamline, Clarify Exhibits. Under the MLA, telecommunications providers that desire to install or modify their facilities on utility poles, streetlight poles or in conduits must apply and secure approval from the City in order to do so. The updated MLA with Verizon streamlines and updates the Exhibits to the Agreement to (a) condense the total number of exhibits, (b) decrease the length of the exhibits, (c) better reflect the City's current processes and fees, and (d) where mutually agreeable to the City and Verizon adjusts the process and format of the standard Exhibit templates to facilitate Verizon's administrative review and processing.
3. Payment Nomenclature, Timing. Updates the payment nomenclature in the MLA and Exhibits to more closely reflect the City's current business practice with respect to review and approval of attachments.
4. Termination by Verizon. Authorizes Verizon to terminate the MLA or Supplements thereunder at its discretion, provided that Verizon provides the City with adequate advance written notice, pays all costs due and payable at termination with no proration or refunds, and continues to comply with removal requirements set forth elsewhere in the agreement.
5. General Updates. Makes other changes throughout the MLA and Exhibits to remove outdated sections or schedules, updates language for clarity and reflects city's current business practices and procedures more accurately.

**Timeline**

Staff has been informed by Verizon Wireless representatives that it plans to install approximately eighty (80) sites in Palo Alto in the next 3 to 5 years.

**Resource Impact**

The MLA represents an increased work load for Utilities. As required by law, staff will review and administer the installation, inspection and billing associated with these wireless communication facilities as additional work priority. The annual License Fees for DAS attachments to be charged are contingent on the number of antennas that are attached by wireless communications service providers.

**Policy Implications**

These recommendations are 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 (Reference CMR: 369:97).

**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: Master License Agreement with GTE Mobilnet DBA Verizon Wireless (PDF)
- Attachment B: Verizon MLA Exhibits (PDF)

**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**

**GTE MOBILNET OF CALIFORNIA LIMITED  
PARTNERSHIP,  
DBA VERIZON WIRELESS**

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**MASTER LICENSE AGREEMENT FOR USE OF CITY-CONTROLLED SPACE  
ON UTILITY POLES, STREETLIGHT POLES AND IN CONDUITS BETWEEN  
THE CITY OF PALO ALTO AND GTE MOBILNET OF CALIFORNIA  
LIMITED PARTNERSHIP, DBA VERIZON WIRELESS**

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 GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP, DBA VERIZON WIRELESS (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 described in the applicable Supplement. The Licensee Facilities, which will be attached to certain Poles and/or installed in certain Conduits, will be identified in Exhibit “1” to each Supplement.

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, subject to conditions and limitations that the City may impose from time to time as permitted at Law and in this Agreement.

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.

**“Additional Costs and Fees”** has the meaning set forth in Exhibit “C”.

**“Annual Costs and Fees”** has the meaning set forth in Exhibit “C”.

**“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 Application, Exhibit “G,” 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 and Fees”** means the utility rates, fees and charges actually incurred by the City to perform the Preparatory Work and the Make-Ready Work at the Licensee’s request, including, without limitation, (a) the 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. Costs and Fees also includes 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.

**“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.

**“Effective Date”** has the meaning set forth in the Preamble to the Agreement.

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

**“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.

**“Information Service”** means “information service,” as defined in 47 U.S.C. §153(25).

**“Initial/One-Time Costs and Fees”** has the meaning set forth in Exhibit “C”.

**“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 Construction Work”** means all construction-related work associated with Make-Ready Work

**“Make-Ready Construction Work Fees”** means Costs and Fees associated with Make-Ready Construction Work as more particularly described in Exhibit “C.”

**“Make-Ready Engineering Work”** means engineering-related work associated with Make-Ready Work.

**“Make-Ready Engineering Work Fees”** means Costs and Fees associated with Make-Ready Engineering Work as more particularly described in Exhibit “C.”

**“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.

**“Make-Ready Work Fees”** means Make-Ready Engineering Work Fees and Make-Ready Construction Work Fees, including as more particularly described in Exhibit “C” attached to this Agreement. **“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 § 5830(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.

**“Payment Commencement Date”** means the first day of the month following the City’s completion of a final electric service connection for the Licensee Facility under a Supplement.

**“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.

**“Preparatory Work Fees”** has the meaning set forth in Exhibit “C” attached to this Agreement. The term does not extend to any fee associated with an

application or permit that is required by Title 12 or Title 18 of the Palo Alto Municipal Code, which which Licensee shall comply.

**“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.

**“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 pole that is used for streetlighting purposes, including, without limitation, those using concrete, steel or aluminum (or other metal) or, wood.. The term does not include Utility Poles; provided, however, that in the event a pole is used for both streetlighting purposes and for electrical distribution facilities, the pole shall be deemed to be a Utility Pole.

**“Supplement”** means that document in substantially the form attached hereto as Exhibit “B” and incorporated by reference containing information related to Licensee Facilities attachments to Poles. A Supplement shall be effective on the Supplement Effective Date, and upon such execution, shall be deemed incorporated into this Agreement.

**“Supplement Effective Date”** has the meaning set forth in the Preamble to the Supplement.

**“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.

**“Utility Pole”** means any standard design wooden or metal pole that is used for electrical distribution facilities. The term does not include Streetlight Poles; provided, however, that in the event a pole is used for both streetlighting purposes and for electrical distribution facilities, the pole shall be deemed to be a Utility Pole.

**“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 TERM AND TERMINATION**

### **2.1 Term.**

2.1.1 Initial and Extension Terms of Agreement. 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. This Agreement shall extend for an additional ten (10) years (the “Extension Term”), commencing on the expiration of the Initial Term, provided that: (i) Licensee shall give written notice in accordance with to section 18 of its intention to extend this Agreement no less than sixty (60) Days prior to the expiration of the Initial Term; (ii) the Licensee is in substantial compliance with the Provisions; (iii) there has not been any change in Law that may materially affect the Provisions or their enforceability; and (iv) neither the City nor Licensee have otherwise terminated this Agreement in accordance with the Provisions.

2.1.2 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 Annual Costs and Fees or for any other Costs and Fees due and payable under this Agreement, 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.

(i) 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 the City's option provided in writing no later than ninety (90) days prior to the expiration of the Extension Term, 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 (and in such case the City shall accept the Licensee Facilities in its then existing "as is" condition); (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. The City's failure to provide notice or exercise its options pursuant to this section shall not relieve Licensee of its obligation to remove Licensee Facilities pursuant to section 7.5 of this Agreement.

2.1.3 Term of Supplement. The term for each particular Supplement begins on the Supplement Effective Date, and ends upon the expiration of the Initial Term, or the Extension Term, if validly exercised, under this Agreement, unless such individual Supplement is earlier terminated, or this Agreement is extended pursuant to section 2.1.2, as provided for in this Agreement.

2.1.4 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. TERMINATION

## 2.2 Termination

2.2.1 By City. Except as otherwise provided herein, the City may terminate this Agreement, or at City's election, any Supplement, for cause (as defined in subsection 2.2.1(i)) 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 Costs and 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.

(i) 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.

(ii) Upon the establishment of termination of the Agreement or any Supplement for cause, the right to attach to any Pole and/or to occupy any Conduit affected thereby, 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 affected 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.

2.2.2 By Licensee. Except as otherwise provided herein, Licensee may terminate this Agreement or any individual Supplement hereunder, upon sixty (60) Days' prior written notice sent by the City to the Licensee. Termination of the Agreement or any Supplement by Licensee pursuant to this section shall not relieve the Licensee of its obligation to pay any Initial/One-Time Costs and Fees, Annual Costs and Fees, Additional Costs and Fees, or for any other Costs and Fees due and payable

under this Agreement as of the effective date of the termination to the City under the Agreement or applicable Supplement, including the uncollected Annual Costs and Fees that would be due and payable by the Licensee to the City as of the effective date of the termination if the Agreement or Supplement had not been terminated; provided, however, that Licensee shall not be entitled to a refund for any Costs and Fees already paid to City. Provisions of this Agreement related to removal of Licensee Facilities shall also apply. Upon termination of any Supplement, no further annual Costs and Fees shall be due.

### **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 described in the Supplement, provided, however, that Licensee may not place ground facilities, such as cabinets, in Public Utility Easements located on private property without separate written City consent or approval. 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. The rights of Licensee under this Agreement are subject to conditions in this Agreement and to the conditions that the City may from time to time lawfully impose on the use of such Poles and/or Conduits This grant of license to access and use certain Poles and/or Conduits does not permit the Licensee to access and use other Poles and/or Conduits not specifically listed in the Supplement.

3.2 Scope of License. The grant of license to the Licensee is subject to:

3.2.1 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,

3.2.2 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;

3.2.3 any restrictions on permissible uses of City Public Utility Easements under applicable law, and

3.2.4 any restrictions that the City imposes on Poles, including, without limitation, limits on the height of certain Poles or attachments to certain Poles, provided the same do not conflict with any laws or decisions of the California Public



Utilities Commission (CPUC).

3.3 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.

3.3.1 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.

3.3.2 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, or requested to be 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.

3.3.3 The City may for consideration of the public health, safety, or welfare, including, without limitation, safety, reliability, consistency with surrounding area, security or engineering, historic or environmental preservation, or other legally permitted land use reasons, terminate or otherwise modify the scope of the Licensee's non-exclusive license granted pursuant to 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.

3.3.4 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.

3.3.5 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.

3.3.6 Nothing in this Agreement shall be deemed to create an entitlement of Licensee access to any particular Pole or Conduit, except as set forth in the applicable Supplement.

3.4 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.

3.4.1 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. Notwithstanding anything to the contrary in this Agreement, but in compliance with all laws and any CPUC decision, the City reserves the right to prohibit and/or condition initial installations or modifications of Licensee Facilities on Poles, including, but not limited to, increases in height or width of Poles.

3.4.2 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.

3.4.3 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.

3.5 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.

3.5.1 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.

3.5.2 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.

3.6 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.

3.6.1 If the existence of the Licensee Facilities in, on or about such Poles and/or Conduits would result in a forfeiture of any 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.

3.6.2 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.

3.6.3 During the Initial Term and the Extension Term, if any, the Licensee may voluntarily remove any 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 Costs and 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(i) and (iii). 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.

3.7 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 3.7*

*shall not apply to any Costs or Fees or any other cost or fee referred to herein that the Licensee owes to the City.*

*3.7.1 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, modify, 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 property, or the facilities or property of the joint owner(s) of certain Poles and Conduits and/or any other licensees using the Poles and/or Conduits, including, without limitation, the joint owner(s)' or other licensee(s)' fibers, wires, cables, poles and/or conduits lawfully located in, on or about the Poles or Conduits to which the Licensee intends to attach and/or install the Licensee Facilities. Licensee shall use due care, and ensure that no damage, beyond reasonable wear and tear, is caused to the property of any property owner adjoining the Public Rights-of-Way or easements used by Licensee. 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 licensee(s) or property owner(s) 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 "D," "E," and "F."

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, Public Utility Easements and Private Property. The Licensee, at no liability, cost or expense to the City or the affected property owner, 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, or any damage to any private 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.

4.7 Maintenance. The Licensee at its sole cost and expense, shall be responsible for all maintenance of the Licensee Facilities.

4.8 Notice to Affected Property Owners.

4.8.1 Excepting emergencies which may require the restoration of functionality of the Licensee Facilities within twenty-four (24) hours of loss of functionality, Licensee shall give ten (10) Business Days' prior written notice to private property owners near the site of the work whenever the Licensee will perform any approved or authorized Make-Ready Work in regard to the Licensee Facilities that will affect or is likely to affect the private property. The City may, in its reasonable discretion, waive the ten (10) Business Day advance notice requirement where City permits (including, without limitation, a Street Work or Encroachment Permit) issued for the same Make-Ready Work provide alternative notification requirements. With respect to maintenance and repairs of the Licensee Facilities, the Licensee shall provide affected private property owners or likely affected private property owners with reasonable prior notice.

4.8.2 Notwithstanding the foregoing, where installation, maintenance, or repair of Licensee Facilities has the potential to be complex, unusual, or have a significant effect on the City, other licensee(s) and/or private property owners, Licensee agrees to submit for City review and approval a coordination and public notification and outreach plan upon City request prior to commencement of any such work.

## **5.0 APPLICATION FOR ACCESS**

5.1 Processing Request Application. The Licensee shall complete and file a Processing Request Application 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. The form of the Application is attached hereto as Exhibit "G." 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 Utility Poles and/or occupancy of Conduits within the time period specified in Section 5.2, and with the City Manager or his/her designee in making attachment to Streetlight Poles within the time period specified in Section 5.3. Licensee acknowledges that its Applications, including all required attachments, must be submitted and complete in all respects in order for the City to deem the Application complete. To the extent not inconsistent with Law, the City reserves the right to reject any incomplete Application or any completed Application in accordance with this Agreement.

5.2 Access to Utility Poles and/or Conduit. The City, in acting upon an Application, will use reasonable efforts to process and accept or reject the Application for access to Utility Poles and/or Conduit, within the parameters and time periods set forth below:

5.2.1 Upon the City's receipt of a complete Application, the City will invoice the Licensee for a non-refundable Preparatory Work Fee. Licensee will pay the

Preparatory Work Fee within thirty (30) Days of receipt of the City's invoice.

5.2.2 Within twenty (20) Days of the City's receipt of the Preparatory Work Fee, the City will complete Preparatory Work for the Application to determine whether and where the Licensee Facilities are feasible and what Make-Ready Engineering Work will be required.

5.2.3 Within seven (7) Days of the City's completion of the Preparatory Work, the City will notify the Licensee of the Make-Ready Engineering Work necessary for Licensee Facilities and invoice Licensee for a non-refundable Make-Ready Engineering Work Fee.

5.2.4 If Licensee elects to proceed with Licensee Facilities, within thirty (30) Days of receipt of City's notice and invoice for Make-Ready Engineering Work Fees, Licensee will pay the Make-Ready Engineering Work Fee. Licensee's payment of such Make-Ready Engineering Work Fees will serve as notification to City that Licensee intends to proceed with Make-Ready Engineering Work.

5.2.5 Within thirty (30) Days of City's completion of the Make-Ready Engineering Work, the City will provide the Licensee with a description of the necessary Make-Ready Construction Work for the Licensee Facilities and the Make-Ready Construction Work Fees applicable to the Licensee Facilities. Preparatory Work Fees and Make-Ready Engineering Work Fees paid by Licensee will be credited against Make-Ready Construction Work Fees.

5.2.6 If the Parties mutually agree to proceed with Make-Ready Construction Work, the Parties will execute a Supplement, substantially in the form of Exhibit "B" to this Agreement. The Supplement will:

(i) Set forth the non-refundable Make-Ready Construction Work Fee and due date therefore; provided, however, that the Make-Ready Construction Work Fee will be paid prior to the start of Make-Ready Construction Work; and

(ii) Specify whether the Make-Ready Construction Work for Licensee Facilities, 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.

5.2.7 The City will complete the Make-Ready Work for the Licensee Facilities, as needed, within one hundred five (105) Days of execution of the Supplement.

5.3 Access to Streetlight Poles. Attachments to Streetlight Poles will be made on a case-by-case basis. To the extent not inconsistent with Law, the City reserves the right to deny access to any particular Streetlight Pole in accordance with



this Agreement. Any such denial shall be accompanied by a description of any modifications Licensee may make, or alternative locations Licensee may use, to obtain approval and an explanation of the reasons for the rejection of Licensee's application.

5.4 Tolling. Notwithstanding Sections 5.2.1 through 5.2.7, and 5.3, the City may toll or stop the clock on any of the timelines mentioned in Sections 5.2.1, 5.2.2, 5.2.4 or 5.2.6 and 5.3 in the event of an emergency as determined by the City or for other good and sufficient cause.

5.4.1 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 5.2(A), (D) and/or (F) or 5.3 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 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.

5.4.2 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.

5.4.3 The City Manager or his/her designee may approve the modification of the limitations set forth in subsection 5.4.2, 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.

5.4.4 If the City Manager or his/her designee rejects or otherwise disapproves of the Application, then the City will provide the Licensee with a written detailed explanation of the basis of disapproval.

5.5 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 later of the Supplement Effective Date or 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 5.2.1 through 5.2.4, or 5.3, as applicable, inclusive.

5.6 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:

5.6.1 one or more Applications have been received for some or all of the same Poles and/or Conduits; and

5.6.2 the name, email address and telephone number of each Applicant who has submitted such Application.

5.7 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.

5.8 Performance of Work.

5.8.1 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:

(i) 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

(ii) 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.

5.8.2 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.

5.8.3 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 5.2.1 through 5.2.6 or 5.3. 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 5.2.1 through 5.2.6 or 5.3 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.

5.8.4 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.

5.8.5 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 Annual Costs and Fees, and any Additional Costs and Fees, all of which are described with more particularity in Exhibit "C," and will be set forth in a City invoice or the applicable Supplement.

6.1.1 Invoices. Unless an alternate process is specified in this Agreement, the City will prepare and deliver to the Licensee an invoice for all Costs and Fees for the privilege of accessing and using the City-controlled spaces on the Poles and/or in the Conduits, including for Initial/One-Time Costs and Fees, Annual Costs and Fees, Additional Costs and Fees, or for any other Costs and Fees due and payable under this Agreement. At a minimum, the City will invoice for Costs and Fees thirty (30) days in advance of the due date for such payments.

(i) The amounts shall be due and payable on the date specified in such invoice, or where not specified on such invoice or elsewhere in this Agreement within thirty (30) 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.

(ii) 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.

6.1.2 Delivery of Payment. Unless otherwise specified, 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.

6.2 Failure to Pay. The Licensee’s failure to pay any Costs and Fees under this Agreement, including the Initial/One-Time Cost and Fees, the Annual Costs and Fees, and any Additional Costs and Fees, or any costs associated with termination or abandonment of Licensee Facilities as provided for in this Agreement 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 Costs or Fees in accordance with Article 17.0. The Licensee’s obligation to pay Costs and Fees due to City, including the Annual Costs and Fees and any 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.

6.3 Timing of Payment.

6.3.1 Initial/One Time Costs and Fees. Payment for Initial/One Time Costs and Fees will be submitted as provided for in section 5 of this Agreement, Exhibit “G” and the applicable invoice and Supplement, a summary of which is provided below:

(i) Preparatory Work Fee: Within thirty (30) Days of date of City invoice.

(ii) Make-Ready Engineering Work Fee: Within thirty (30) Days of date of City invoice.

(iii) Make-Ready Construction Work Fee: On the date set forth in the applicable Supplement; provided, however, that the Make-Ready Construction Work Fee will be paid prior to the start of Make-Ready Construction Work;

6.3.2 Annual Costs and Fees.

(i) Year one: The Annual Costs and Fees for the first year shall be due and payable to the City within sixty (60) Days of the Payment Commencement Date specified in the applicable Supplement. For the first year, the Annual Costs and Fees shall be prorated, as of the Payment Commencement Date through December 31<sup>st</sup> of the first year.

(ii) Subsequent years. Unless otherwise provided by the applicable Supplement or by Law or mutually agreed to by the Parties, the Annual Costs and Fees for subsequent years shall be payable thereafter annually, in advance, by the January 1st of each year (however, if the Payment Commencement Date is in November or

December, Licensee shall have sixty (60) Days from the Payment Commencement Date to pay the 2<sup>nd</sup> years Annual Costs and Fees) so long as the Supplement remains in effect during the Initial Term and the Extension Term, if any. The City will invoice Licensee for Annual Costs and Fees in accordance with section 6.1.1.

(iii) Except as expressly provided in the Supplements, 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 Supplements or by Law. Such increased costs shall be documented in an amendment to the applicable Supplement.

(iv) In addition to the Costs and Fees referred to in this section, the Licensee shall be obligated to pay the City for any uncollected Annual Costs and Fees which may be otherwise due and payable by the Licensee thru the current calendar year on account of its early termination without cause of this Agreement.

6.3.3 Additional Costs and Fees. Payment for Additional Costs and Fees (if any) will be submitted as provided for in accordance with applicable invoices, Supplements, the Provisions and Law.

## **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 (G). 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 "D" and "E," 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 "F."

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 Supplement 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 Notices 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 Supplement was executed 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, or access to particular Poles and/or Conduits in an Application, for any of the reasons set forth in Sections 3.2, 3.3 or 3.5, or 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 in the exercise of its right to provide utility service to its customers, or to provide street lights or traffic lights, need to attach additional facilities to any Pole and/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 if such rearrangement cannot be accomplished, transfer them to replacement Pole(s) and/or Conduit(s), as determined by the City, so that the additional facilities of the City shall be accommodated. The costs and expenses of such rearrangement and/or transfer will be borne by and at the sole expense of the Licensee.

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, any existing licensee, and/or any adjoining property owner, 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. Licensee will make best efforts to notify the City within 30 days of receipt of notice from its insurer regarding any cancellation or termination of any insurance policies. 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 blanket additional insured 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 and address 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 blanket additional insured 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. Notwithstanding the foregoing, the immediately preceding sentence shall not apply to Licensee so long as Licensee maintains a net worth of no less than \$100 million, as currently evidenced by the net worth letter attached hereto as Exhibit "GH" and made a part hereof. "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:

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

15.1.2 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;

15.1.3 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;

15.1.4 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;

15.1.5 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

15.1.6 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:



15.2.1 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;

15.2.2 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;

15.2.3 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

15.2.4 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:

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

(ii) 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;

(iii) 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;

(iv) Subject to the cure provisions set forth in this Agreement, including in section 6, 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

(v) 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:

16.2.1 The right to terminate this Agreement, or in City’s discretion, an applicable Supplement thereunder, 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

16.2.2 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:

17.1.1 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

17.1.2 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.

17.1.3 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:

17.4.1 the authority to do so is granted to the City by this Agreement or by Law or conferred by a court of competent jurisdiction;

17.4.2 this Agreement has been validly terminated in accordance with

this Agreement; or

17.4.3 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

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

Copy to: City of Palo Alto  
P. O. Box 10250  
Palo Alto, CA 94303  
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: GTE Mobilnet of California Limited  
Partnership, dba Verizon Wireless  
180 Washington Valley Road

Bedminster, New Jersey 07921  
Attention: Network Real Estate

## **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 or any Supplement 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, Supplement(s) 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 assignees 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.

[Signature page follows]

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**

**CITY OF PALO ALTO**

\_\_\_\_\_  
Senior Deputy City Attorney

\_\_\_\_\_  
City Manager

**ATTEST:**

**GTE Mobilnet of California Limited Partnership, dba Verizon Wireless**

**By: Cellco Partnership  
Its: General Partner**

\_\_\_\_\_  
Director of Utilities

By: \_\_\_\_\_  
Name: Phillip French  
Title: Executive Director - Network

\_\_\_\_\_  
Director of Public Works

Date: \_\_\_\_\_



## **ATTACHMENT B**

Contract No. \_\_\_\_\_

### **EXHIBITS**

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

**Exhibit "A"**

**Licensee Wireless Identification Registration Number:**

Wireless Identification Registration Number: U-3002-C

**Exhibit "B"**

**Form of Supplement**

This \_\_\_\_\_ Supplement ("Supplement No. \_\_\_\_"), made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Supplement Effective Date") between the City of Palo Alto, a California chartered municipal corporation ("City") and GTE Mobilnet of California Limited Partnership, d/b/a Verizon Wireless, with its principal offices at c/o Verizon Wireless, 180 Washington Valley Road, Bedminster, New Jersey 07921 ("Licensee"),. This Supplement is governed by the provisions of the that certain Master License Agreement for Use of City Controlled Space on Utility Poles, Streetlight Poles and Conduits between the City and Licensee dated \_\_\_\_\_, 2016 ("Agreement"), and this Supplement is incorporated into the Agreement.

1. Description and Location of Licensee Facilities. A description of the Licensee Facilities and locations of such Licensee Facilities is attached hereto as Exhibit "1". Unless the City elects to accept alternative documentation, the Description and Location of Licensee Facilities in Exhibit "1" shall include City-approved versions of the attachments to the Processing Request Application (in substantially the form of Exhibit "G" to the Agreement) submitted by Licensee.
2. Term. The term of this Supplement shall be as set forth in Section 2.1.3 of the Agreement.
3. Fees and Costs. The Fees and Costs paid by Licensee and those that remain due and payable are outlined in Exhibit 2 attached to this Supplement. Exhibit 2 includes all Initial/One Time Costs and Fees, Annual Costs and Fees and Additional Costs and Fees associated with Licensee Facilities identified pursuant to Section 1 of this Supplement.
4. [RESERVED for Supplement-Specific Provisions]

[Signature page follows]

**IN WITNESS THEREOF**, the Parties hereto have caused this Supplement to be legally executed in duplicate as of the Supplement Effective Date.

CITY:

CITY OF PALO ALTO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

BY: \_\_\_\_\_  
Senior Deputy City Attorney

LICENSEE:

GTE Mobilnet of California Limited Partnership, D/B/A VERIZON WIRELESS, by Cellco Partnership, its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Time: \_\_\_\_\_

**Exhibits:**

Exhibit "1" – Description and Location of Licensee Facilities

Exhibit "2" – Description of Fees and Costs

**Form of Exhibit “1” to Supplement No. \_\_\_\_\_**

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

Pursant to the terms of the Agreement, Licensee is authorized to install the Licensee Facilities described, at the locations in the documentation attached to this Exhibit 1.

*[Documentation required by section 1 of the Supplement to be attached]*

**Form of Exhibit “2” to Supplement No. \_\_\_\_\_**

**Costs and Fees**

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**INITIAL/ONE-TIME COSTS AND FEES**

CHARGE DESCRIPTION	AMOUNT	STATUS
Preparatory Work Fee	[to be specified by City]	PAID
Make-Ready Engineering Work Fee	[to be specified by City]	PAID
Make-Ready Construction Work Fee (less credit for Preparatory Work Fee, Make-Ready Engineering Work Fee paid to City)	[to be specified by City]	Due 60 days following the Supplement Effective Date, and prior to start of any construction

**TOTAL: Initial/One Time Costs and Fees:** \_\_\_\_\_

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**ANNUAL COST AND FEES**

**Payment Commencement Date:** \_\_\_\_\_

CHARGE DESCRIPTION	ANNUAL AMOUNT	DUE DATE
Wires Facilities Attachment Fee	[to be specified by City]	Due 60 days following the Payment Commencement Date in Year 1, January 1 <sup>st</sup> each year thereafter.
Wireless Facilities Attachment Fee	[to be specified by City]	Due 60 days following the Payment Commencement Date in Year 1, January 1 <sup>st</sup> each year thereafter.
Conduit Occupancy Fees	[to be specified by City]	Due 60 days following the Payment Commencement Date in Year 1, January 1 <sup>st</sup> each year thereafter.
Other Licensee Facility	[to be specified by City]	Due 60 days following the Payment Commencement Date in Year 1, January 1 <sup>st</sup> each year thereafter.

**TOTAL: Annual Costs and Fees:** \_\_\_\_\_

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**ADDITIONAL COSTS AND FEES (if applicable)**

CHARGE DESCRIPTION	AMOUNT	DUE DATE
Other City Service Fees ( <i>if applicable</i> )	<i>[to be specified by City]</i>	<i>60 days following the Payment Commencement Date</i>
Electric Service Charges ( <i>if applicable</i> )	<i>[to be specified by City]</i>	<i>60 days following the Payment Commencement Date</i>

**TOTAL: Additional Costs and Fees:**

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**Exhibit “C”**

**Fees and Costs**

**A. INITIAL/ONE-TIME COSTS AND FEES.**

1. The Licensee shall pay the City for its 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 as specified in this Exhibit “C”.

2. Initial/One-Time Costs and Fees include Preparatory Work Fees, Make-Ready Engineering Work Fees and Make-Ready Construction Work Fees and are a one-time charge for each Licensee Facility, as provided for below and in the City’s Rules and Regulations.

(a) **PREPARATORY WORK FEES.** Licensee will pay City a non-refundable Preparatory Work Fee. The Preparatory Work Fee will depend on the specific nature of the Licensee Facilities, but may include, without limitation, the following:

<b>Charge:</b>	<b>Processing Charge</b>
Description:	The actual cost incurred for performing preliminary field investigation to review pole attachment or conduit usage submittal.
Price:	Total Cost

(b) **MAKE-READY WORK FEES.** If Licensee elects to proceed with installation of Licensee Facilities, Licensee will pay City non-refundable Make-Ready Work Fees, which include the Make-Ready Engineering Work Fees and the Make-Ready Construction Work Fees set forth below.

(i) **MAKE-READY ENGINEERING WORK FEES.** Make-Ready Work Engineering Fees depend on the specific nature of the Licensee Facilities, but may include, without limitation, Costs and Fees associated with engineering Make-Ready Work and the following:

<b>Charge:</b>	<b>Engineering Charge</b>
Description:	The actual costs incurred by the City for reviewing contact design, designing City modifications and updating operation records.
Price:	Total Cost

(ii) **MAKE-READY CONSTRUCTION WORK FEES.** Should Licensee elect to move forward with design, installation and construction of Licensee Facilities after completion of Make-Ready Engineering Work, Licensee will pay City a Make-Ready Work Construction Fee. Preparatory Work Fees and Make-Ready Work Engineering Fees



that are paid in full to City will be credited against Make-Ready Work Construction Fees. Make-Ready Work Fees depend on the specific nature of the Licensee Facilities, but may include, without limitation, Costs and Fees associated with construction-related Make-Ready Work and the following:

- |                |   |
|----------------|---|
| <b>Charge:</b> | <b>Cable Attachment Charges</b>   |
| Description:   | The actual costs incurred by the City for making space available and other modifications necessary to accommodate each line attachment.   |
| Price:         | Total Cost  |
| <br>           |   |
| <b>Charge:</b> | <b>Anchor Attachment Charges</b>  |
| Description:   | The actual costs incurred by the City for making provisions for guying the structure at the communications level.   |
| Price:         | Total Cost  |
| <br>           |   |
| <b>Charge:</b> | <b>Equipment Mounting Charges</b>   |
| Description:   | The actual costs incurred by the City for making space available and other modifications necessary to accommodate equipment (amplifiers, nodes, battery backup) mounting.                   |
| Price:         | Total Cost  |
| <br>           |   |
| <b>Charge:</b> | <b>Electric Service Connection Charges</b>  |
| Description:   | The costs incurred by the City for providing electric service connection to provide power to equipment attached to the pole shall be payable in accordance with Utility Rate Schedule E-15. |
| Price:         | Total Cost  |
| <br>           |   |
| <b>Charge:</b> | <b>Inspection Charge</b>  |
| Description:   | The actual costs incurred by the City for providing inspection services upon completion of Make-Ready Work and the Licensee's equipment – typically 3 hours per pole.                       |
| Price:         | Total Cost  |

**B. ANNUAL FEES.**

The Fees applicable to Licensee Facilities attached to Poles or installed in conduit 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. The City reserves the right to impose and collect different fees for the exclusive and nonexclusive occupation of the Conduits in accordance with Laws.

**C. ADDITIONAL COSTS AND FEES**

1. **Other City Service Fees.** Where Licensee's Facilities require City to render services beyond those identified in Sections A or B of this Exhibit C, the Fees for the City's rendering of services in regard to the attachment or installation of the Licensee's Facilities on Poles or in Conduits shall either be established in accordance with applicable CPAU utility rate schedules or be based on cost recovery by City.

2. **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.

**D. ADDITIONAL PAYMENT TERMS AND CONDITIONS**

1. **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 the greater of a late fee established by Law or the an amount equal to five percent (5%) of those amounts then due and payable.

2. **Utility Rate Schedules.** The utility rate schedules referred to in this Exhibit and any amendments hereto 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.

**Exhibit “D”**

**Terms and Conditions Regarding Use of Pole Spaces**

1. The Licensee shall be responsible for performing its own engineering analysis, which shall be submitted with the Processing Request Application – Exhibit “G”, 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 those 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 “E”**

**Terms and Conditions Regarding Use of City Conduit**

1. The Licensee shall submit a Processing Request Application – Exhibit “G” 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 "F"**

**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 “G”**

**Form of Processing Request Application  
Licensee Facility No. \_\_\_\_\_  
(for Pole Attachment/Conduit Usage)**

<b>REQUEST SUBMITTED BY:</b>	<b>FIELD INVESTIGATION CONTACT:</b>
Name:	Name:
Title:	Title:
Company:	Company:
Street Address:	Street Address:
City, State, Zip:	City, State, Zip:
Telephone Number:	Cell Phone:
Email Address:	Email Address:

Today’s Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Project Description: Attach the following:

1. A list of Poles within the City of Palo Alto with Pole number and/or 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: \_\_/\_\_\_\_/\_\_\_

I am submitting this Processing Request Application with the full understanding of the following conditions, including the Costs and Fees applicable to Licensee Facilities described in Exhibit “C” attached to the Agreement:

1. Upon the City’s receipt of a complete Application, the City will invoice the Licensee for a non-refundable Preparatory Work Fee. Licensee will pay the Preparatory Work Fee within thirty (30) days of receipt of the City’s invoice.



2. Within twenty (20) days of the City's receipt of the Preparatory Work Fee, the City will complete Preparatory Work for the Application to determine whether and where the Licensee Facilities are feasible and what Make-Ready Engineering Work will be required.
3. Within seven (7) Days of the City's completion of the Preparatory Work, the City will notify the Licensee of the Make-Ready Engineering Work necessary for Licensee Facilities and invoice Licensee for a non-refundable Make-Ready Engineering Work Fee.
4. If Licensee elects to proceed with Licensee Facilities, within thirty (30) Days of receipt of City's notice and invoice for Make-Ready Engineering Work Fees, Licensee will pay the Make-Ready Engineering Work Fee. Licensee's payment of such Make-Ready Engineering Work Fees will serve as notification to City that Licensee intends to proceed with Make-Ready Engineering Work.
5. Within thirty (30) days of City's completion of the Make-Ready Engineering Work, the City will provide the Licensee with a description of the necessary Make-Ready Construction Work for the Licensee Facilities and the Make-Ready Construction Work Fees applicable to the Licensee Facilities. Preparatory Work Fees and Make-Ready Engineering Work Fees paid by Licensee will be credited against Make-Ready Construction Work Fees.
6. If the Parties mutually agree to proceed with Make-Ready Construction Work, the Parties will execute a Supplement, substantially in the form of Exhibit "B" to this Agreement. The Supplement will:
  - a. Set forth the non-refundable Make-Ready Construction Work Fee and due date therefore; provided, however, that the Make-Ready Construction Work Fee will be paid prior to the start of Make-Ready Construction Work; and
  - b. Specify whether the Make-Ready Construction Work for Licensee Facilities, 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.
7. The City will complete the Make-Ready Work for the Licensee Facilities, as needed, within one hundred five (105) Days of execution of the Supplement.

**For Preparatory Work Fee and Make-Ready Engineering Work Fee 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](mailto:Electric.Engineering@CityofPaloAlto.org)

Note that all inquires of a legal nature must be directed in accordance with section 18 of the Agreement, including to to the Office of the City Attorney, 8th Floor City Hall, 250 Hamilton Avenue, P.O. Box 10250, Palo Alto, CA 94303, Attention of Senior Deputy City Attorney, Utilities.

**Exhibit "H"**

**Net Worth Letter**

See attached.