

**RESOLUTION NO. 2989**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO ENTER INTO A MASTER LICENSE AND RIGHT-OF-WAY USE AGREEMENT FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY WITH NEW CINGULAR WIRELESS PCS, LLC.**

WHEREAS, the Telecommunications Act of 1996, as amended, and more specifically, 47 U.S.C. § 253, preserves the City of Wilsonville's ("City") authority to control access to and use of the rights-of-way within the City's jurisdictional boundaries, and to require reasonable compensation for such use on a competitively-neutral and nondiscriminatory basis, so long as such compensation is disclosed; and

WHEREAS, the Federal Communications Commission ("FCC") adopted rules and made declaratory rulings interpreting various provisions of the Telecommunications Act, including 47 U.S.C. § 253; and

WHEREAS, the City desires to provide a fair and predictable process for the deployment of small wireless facilities in the public rights-of-way that complies with the FCC regulations while managing the public rights-of-way in a manner that promotes the interests of the public health, safety, and welfare; and

WHEREAS, the City requires small wireless facility providers seeking to deploy small wireless facilities within the public rights-of-way to enter into an overarching master license agreement that generally grants a non-exclusive right to access the public rights-of-way to install, maintain, and operate small wireless facility and related infrastructure, subject to site-specific licenses for any particular location; and

WHEREAS, New Cingular Wireless PCS, LLC seeks to enter into such a master license agreement with the City; and

WHEREAS, the parties have negotiated the Master License and Right-of-Way Use Agreement for Small Wireless Facilities in the Public Rights-of-Way, attached hereto and incorporated by reference herein as **Exhibit 1**, which the City intends to use a template for any future master license agreements sought by small wireless facility providers.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to enter into a Master License and Right-of-Way Use Agreement for Small Wireless Facilities in the Public Rights-of-Way that is substantially similar to Exhibit 1 attached hereto.

Section 2. The Master License and Right-of-Way Use Agreement for Small Wireless Facilities in the Public Rights-of-Way attached hereto as Exhibit 1 is the template for any future master license agreement requested by any other small wireless facility provider.

Section 3. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 20<sup>th</sup> day of March, 2023, and filed with the Wilsonville City Recorder this date.

DocuSigned by:  
*Julie Fitzgerald*  
8A974AF3ADE042E...

JULIE FITZGERALD, MAYOR

ATTEST:

DocuSigned by:  
*Kimberly Veliz*  
E781DE10276B498...

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Linville	Yes
Councilor Berry	Yes
Councilor Dunwell	Yes

EXHIBIT:

1. Master License and Right-of-Way Use Agreement for Small Wireless Facilities in the Public Rights-of-Way

**MASTER LICENSE AND RIGHT-OF-WAY USE AGREEMENT  
FOR SMALL WIRELESS FACILITIES IN THE  
PUBLIC RIGHTS-OF-WAY**

between

**CITY OF WILSONVILLE**, a chartered Oregon municipal corporation,

and

**NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company

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**MASTER LICENSE AND RIGHT-OF-WAY USE AGREEMENT FOR  
SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY**

This Master License and Right-of-Way Use Agreement for Small Wireless Facilities in the Public Rights-of-Way (“**Master License**”) dated \_\_\_\_\_, 2022 (the “**Effective Date**”) is between the **CITY OF WILSONVILLE**, a chartered Oregon municipal corporation (the “**City**”), and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (“**Licensee**”).

**RECITALS**

- A. **WHEREAS**, Section 253 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as 47 U.S.C. § 253, preserves the City’s authority to control access to and use of the rights-of-way within the City’s jurisdictional boundaries, and to require reasonable compensation for such use on a competitively-neutral and nondiscriminatory basis, so long as such compensation is disclosed; and
- B. **WHEREAS**, on September 27, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Third Report and Order (FCC 18-133) in the rulemaking proceeding entitled *Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79 (the “**Order**”), which interpreted various provisions in the Telecommunications Act in a manner that, *inter alia*: (1) limited the compensation that state and local governments may receive from wireless communication and infrastructure providers for access to their public rights-of-way and government-owned infrastructure; (2) significantly curtailed state and local discretionary authority over wireless facility placement and design; and (3) imposed procedural regulations that require state and local governments to negotiate agreements, such as this Master License, and approve or deny associated permit applications within sixty (60) or ninety (90) days; and
- C. **WHEREAS**, the City generally desires to license space in its Public Rights-of-Way (as defined below) to wireless communication providers on negotiated terms and conditions but finds that the Order’s provisions leave the City with no incentive or time to conduct such negotiations and, as a result, the City has adopted this Master License, including the Site Licenses that may be entered into pursuant to the terms and conditions in this Master License, as a mandatory form agreement from which no substantive changes can be made by any licensee; and
- D. **WHEREAS**, Licensee desires to install and maintain wireless communications facilities consisting of Licensee’s Equipment (as defined below) attached to certain Vertical Infrastructures and/or Utility Infrastructure in certain portions of the Public Rights-of-Way within the City’s territorial and/or jurisdictional boundaries; and
- E. **WHEREAS**, Licensee warrants and represents to the City that Licensee has the authority under applicable Laws to install and maintain communications facilities within the State of Oregon, which include wireless communications facilities, in the Public Rights-of-Way within the geographic area that encompasses the City’s territorial and/or jurisdictional boundaries to provide wireless communications services; and

- F. **WHEREAS**, Licensee desires to install, maintain, and operate wireless communications facilities on Vertical Infrastructure and/or Utility Infrastructure within the City’s Public Rights-of-Way and the City has a duty to derive appropriate value from the City’s Public Rights-of-Way for the public good; and
- G. **WHEREAS**, Licensee desires to install, maintain, and operate wireless communications facilities in the Public Rights-of-Way in a manner consistent with the City’s regulatory authority and Licensee is willing to compensate the City for the right to use the City’s Public Rights-of-Way; and
- H. **WHEREAS**, the parties desire to enter into this Master License to establish a process by which Licensee may request to license from the City specific Public Rights-of-Way locations, and to establish the rates, terms, and conditions that will be generally applicable to use of the Public Rights-of-Way locations; and
- I. **WHEREAS**, if Licensee desires to operate wireless facilities on Vertical Infrastructure and/or Utility Infrastructure that is owned by a party other than Licensee, then Licensee must first obtain separate rights to install its wireless facilities in or on such Vertical Infrastructure and/or Utility Infrastructure pursuant to leases, licenses, or other written agreements with the owner(s) of such Vertical Infrastructure and/or Utility Infrastructure; and
- J. **WHEREAS**, consistent with federal and Oregon law, the City does not intend this Master License to grant the Licensee any exclusive right to use or occupy the Public Rights-of-Way within the City’s territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the City may, in its sole discretion, enter into agreements with other entities, which include, without limitation, Licensee’s competitors.

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

## **AGREEMENT**

### **1. GENERAL DEFINITIONS**

“**Acknowledgment Letter**” means the letter that Licensee submits to the City that indicates the Licensee has obtained all Regulatory Approvals and other requirements, as more particularly described in **Exhibit A-4** (Form of Acknowledgment Letter), and that serves as Licensee’s notice to proceed with the installation after the City countersigns the Acknowledgment Letter and delivers it to Licensee.

“**Additional Fees**” means, collectively, any sums payable by Licensee to the City as the Licensor, which includes, without limitation, any Late Fees, default interest, Reimbursement Fees, costs in connection with a request for the City’s consent to an assignment or other transfer under **Section 20** (Assignment and Other Transfers) and Default Fees under **Section 18.5**; provided, however, that the term excludes any (1) License Fees; (2) Administrative Fees; (3) any other amounts payable to the City by Licensee in connection with reviewing Site License Applications or coordinating and inspecting Equipment installed within the License Area; and (4) any other payments to the City in its regulatory capacity, which includes, without limitation, Regulatory Fees and cost-based fees for permit issuance.

“**Administrative Fees**” means, collectively, the Master License Administrative Fee (as defined in **Section 4.2.1**) and any Site License Application Fees (as defined in **Section 4.2.2**).

“**Affiliate**” means an entity that directly or indirectly Controls, is Controlled by, or is under Common Control with Licensee.

“**Agent**” means a party’s agent, employee, director, officer, contractor, subcontractor, or representative in relation to this Master License, any Site License, or the License Area.

“**Annual Fee**” means the annual fee for use of the Public Rights-of-Way in connection with each licensed License Area authorized under any Site License, as specified in **Schedule 1** (Annual Fee Schedule).

“**Approved Plans**” means the detailed plans and equipment specifications, which include, without limitation, all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements, poles, and other improvements proposed by Licensee and approved by the City in connection with the License Area, as more particularly described in **Exhibit A-2** (Licensee’s Plans and Specifications) to any approved Site License.

“**Broker**” means any licensed real estate broker or other person who could claim a right to a commission or “finder’s fee” in connection with the license(s) or other real estate rights contemplated or conveyed in this Master License.

“**Business Days**” means Monday through Friday, excluding any holidays observed by the City of Wilsonville where City Hall is closed to the public in observance of the holiday. If not designated herein as a Business Day, reference to “days” shall mean calendar days.

“**City Council**” means the City Council of the City of Wilsonville.

“**City Engineer**” means the City of Wilsonville City Engineer or his or her designee.

“**City Property**” means any interest in real or personal property owned or controlled by the City, which includes, without limitation, any and all (1) land, air, and water areas; (2) license interests, leasehold interests, possessory interests, easements, franchises, and other appurtenant rights or interests; (3) Public Rights-of-Way or public utility easements; and (4) physical improvements such as buildings, structures, infrastructure, utility, and other facilities, and alterations, installations, fixtures, furnishings, and additions to existing real property, personal property, and improvements.

“**Claim**” means any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, whether direct or indirect.

“**Common Control**” means two or more entities that are Controlled by a same third entity.

“**Control**” means (1) as to a corporation, stock ownership with the right to exercise more than fifty percent (50%) of the total combined voting power of all classes of stock, issued and outstanding, of the controlled corporation; or (2) as to partnerships and other business association forms, more than fifty percent (50%) ownership of the beneficial interest and voting control of such association.

“**Default Fee**” is defined in **Section 18.5** (Default Fees).

“**Environmental Laws**” means any Law in relation or connection to industrial hygiene, environmental conditions, or Hazardous Materials (as defined below).

“**Equipment**” means antennas, radios, and any associated utility or equipment box, battery backup, transmitters, receivers, amplifiers, ancillary fiber-optic cables and/or wiring, and ancillary equipment used for radio or other wireless communication (voice, data, or otherwise) transmission and/or reception, which includes, without limitation, the means, devices, and apparatus used to attach any Equipment to any Vertical Infrastructure, and any ancillary equipment such as wiring, cabling, power feeds, or any similar things, any ground based equipment and/or power pedestals needed for the operation of Equipment attached to a Vertical Infrastructure, and any signage attached to such Equipment that may be approved by the City or required by Law.

“**Expiration Date**” means the date on which this Master License will automatically expire.

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

“**Hazardous Material**” means any material that, due to its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any local, regional, state, or federal body with jurisdiction and responsibility for issuing Regulatory Approvals in accordance with applicable Laws to pose a present or potential hazard to the environment, including human or animal health, welfare, or safety, or to the health or safety of any environmental condition. The term “Hazardous Material” will be broadly construed, and includes, without limitation, the following: (1) any material or substance defined as a “hazardous substance,” “pollutant,” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified as 42 U.S.C. §§ 9601 *et seq.*); (2) any petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids; or (3) any substance, material, or product defined or designated as hazardous, toxic, radioactive, or dangerous, regulated wastes or substances, or any other similar term in or under any Environmental Laws as now apply or may apply in the future.

“**Indemnified City Party**” or “**Indemnified City Parties**” means the City and its Agents, Invitees, elected and appointed officials, and volunteers.

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

“**Invitee**” means the client, customer (to the extent Licensee deploys Equipment for use by third-party wireless carrier customers), invited guest, tenant, subtenant, licensee, sublicensee, and/or assignee of a party in relation to the License Area.

“**Late Fee**” means a fee that will be charged by the City to Licensee for failure to make timely payment, pursuant to the terms set forth in **Section 4.3**.

“**Laws**” means all present and future statutes, ordinances, codes, orders, policies, regulations, and implementing requirements and restrictions by federal, state, county, and/or municipal authorities,

whether foreseen or unforeseen, ordinary as well as extraordinary, as adopted or as amended at the time in question.

“**License Area**” means the designated spaces within the Public Rights-of-Way where Licensee installs, operates, and maintains Equipment, which includes, without limitation, any conduits, chases, risers, trays, pipes, vaults, pull boxes, and hand holes on Vertical Infrastructure, Utility Infrastructure, and/or on, in, over, or under the ground of the Public Rights-of-Way for the Permitted Use, as identified on the Approved Plans as licensed to Licensee. The parties may use the term “License Area” to refer to those spaces licensed to Licensee under an individual Site License or to refer to all spaces collectively licensed to Licensee under all Site Licenses in connection with this Master License.

“**Licensee’s On-Call Representative**” means the person(s) assigned by Licensee to be on-call and available to the City regarding the operation of Licensee’s Equipment. Such person(s) shall be qualified and experienced in the operation of Equipment and shall be authorized to act on behalf of Licensee in any emergency and in day-to-day operations of the Equipment. Licensee’s On-Call Representative must have an emergency pager activated twenty-four (24) hours per day, seven (7) days per week.

“**Municipal Code**” means the City of Wilsonville Municipal Code, as may be amended or superseded.

“**NESC**” means the National Electrical Safety Code, as may be amended or superseded, published by the Institute of Electrical and Electronics Engineers.

“**Permitted Use**” is defined in **Section 5.1** (Permitted Use).

“**PUC**” means the Public Utility Commission of Oregon established in the Oregon Revised Statutes, Title 57, Chapter 756, or the PUC’s duly appointed successor agency.

“**Public Rights-of-Way**” means and includes, but is not limited to, the space in, upon, above, along, across, over, or under the public streets, roads, highways, public alleys, bridges, sidewalks, bicycle lanes, or other public ways or areas primarily used or dedicated for vehicular transportation within the City’s territorial and/or jurisdictional boundaries and subject to the City’s management regulations. The term “Public Rights-of-Way” does not include City parks, parkland, or other City Property not generally open to the public for vehicular transportation and does not include any private property, private utility easements, any public easements for pedestrian ingress and egress across private property, or any other public easement not dedicated for use as a public road or highway. This definition applies only to the extent of the City’s right, title, interest, and authority to grant a license to occupy and use such areas for wireless communications facilities.

“**Public Works Director**” means the City of Wilsonville Director of Public Works or his or her designee.

“**Regulatory Approvals**” means all licenses, permits, and other approvals necessary for Licensee to install, operate, and maintain Equipment, Vertical Infrastructure, and/or Utility Infrastructure within the License Area.

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

“**RF**” means radio frequency or electromagnetic waves.

“**Site License**” means the document in the form of **Exhibit A** (Form of Site License Agreement) that, when fully executed, incorporates the provisions of this Master License and authorizes Licensee to install, operate, and maintain Equipment, Vertical Infrastructure, and/or Utility Infrastructure for the Permitted Use within the License Area identified in the Site License.

“**Site License Application**” is defined in **Section 6.2** (Site License Application), and when completed and accepted by the City, becomes the Site License.

“**Site License Effective Date**” means the first day of the month immediately following both the City and Licensee fully executing a Site License. As an illustration, and not a limitation, if the last party to execute a Site License signs on September 4, 2021, the Site License Effective Date would be October 1, 2021.

“**Term**” means the term of this Master License, as defined in **Section 3.1** (Master License Term).

“**Utility Infrastructure**” means any and all forms of power supply, conduit, or other form of infrastructure fixtures or equipment for the delivery of power or communication services (1) approved by the City for use by Licensee and (2) reasonably related to the operation of and reasonably capable of being used in connection with Equipment and/or a Vertical Infrastructure located in the Public Rights-of-Way. Utility Infrastructure does not include City Property indirectly related to a License Area.

“**Vertical Infrastructure**” means all poles or similar facilities owned, leased, licensed, or otherwise controlled by Licensee and located in the Public Rights-of-Way, including, but not limited to, streetlight poles and utility poles owned by the City, Licensee, and/or third parties such as PGE.

## 2. SCOPE OF LICENSE

### 2.1. Site License Issuance and Effect

Subject to the terms and conditions in this Master License, including, without limitation, Licensee’s obligation to obtain a Site License and all Regulatory Approvals, the City does hereby grant to Licensee, and Licensee’s successors and assigns, as approved by the City of Wilsonville under **Section 20** of this Master License, a non-exclusive right, with the privilege and authority to access the Public Rights-of-Way to install, construct, repair, replace, maintain, and operate Vertical Infrastructure, Utility Infrastructure, and/or Equipment in, on, under, and over the surface of the Public Rights-of-Way within a License Area for the Permitted Use. The license granted herein is revocable only in accordance with the terms and conditions of this Master License. After the City issues a Site License to Licensee, the City shall not grant any third parties any present possessory rights or privileges to use or occupy the same space used or occupied by Licensee, as shown in the Approved Plans; provided, however, the City may grant rights or privileges to use any other locations within the Public Rights-of-Way in close proximity to any of Licensee’s License Areas, for any purpose, except to the extent expressly provided otherwise in this Master License. This Master License and any Site Licenses issued hereunder do not govern under what terms and conditions the City, in its proprietary capacity as the owner of Vertical Infrastructure, Utility Infrastructure, or other City Property in the Public Rights-of-Way, would lease, license, or otherwise allow Licensee’s Equipment on such property or structures.

## 2.2. License Area

### 2.2.1. Limitations on License Areas

This Master License applies to only those certain areas in, on, under, and over the Public Rights-of-Way identified in final and fully executed Site Licenses as the License Area. This Master License does not authorize Licensee or any other persons or entities to enter onto or to use any other City Property, except the Public Rights-of-Way constituting the License Areas specified in any fully executed Site Licenses. Licensee expressly acknowledges and agrees that the City will not be obligated to issue any Site License or other license to Licensee for any purpose related to any City Property, including City-owned Vertical Infrastructure and Utility Infrastructure. Licensee must obtain separate leases, licenses, or other agreements from the City to install its Equipment on such City-owned Vertical Infrastructure, Utility Infrastructure, or other City Property within any proposed License Area prior to or concurrent with submitting a Site License Application for any proposed License Area under this Master License. Notwithstanding the foregoing, Licensee acknowledges and understands that the property owner's signature on the City Wireless Communication Facility Permit application is required for Licensee to submit the Wireless Communication Facility Permit application to the City. The City's decision to provide its signature as the property owner consenting to any Wireless Communication Facility Permit application or Site License Application in connection with City-owned Vertical Infrastructure and/or Utility Infrastructure is not, and will not be deemed to be, a regulatory determination subject to any administrative appeal, but is an exercise of the City's authority over its own City Property. In the event that Licensee cannot obtain such separate leases, licenses, or other agreements from the City to install its Equipment on City-owned Vertical Infrastructure and/or Utility Infrastructure within any proposed License Area, Licensee may submit a Site License Application for installation of its Equipment on Licensee-owned Vertical Infrastructure and/or Utility Infrastructure in an alternative License Area in close proximity to the originally desired License Area, subject to the terms and conditions of this Master License, all Regulatory Approvals, and applicable Laws.

### 2.2.2. License Area Condition

Licensee expressly acknowledges and agrees to enter onto and to use the License Area in its **"as-is, where-is, and with all faults"** condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the License Area's condition or suitability for Licensee's use. Licensee expressly acknowledges and agrees that neither the City nor its Agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the License Area's physical, structural, or environmental condition, the License Area's present or future suitability for the Permitted Use, or any other matter related to the License Area.

### 2.2.3. Licensee's Due Diligence

Licensee expressly represents and warrants to the City that Licensee has conducted its own due diligence and independent investigation, either for itself or through an Agent selected by Licensee, into the License Area's condition and suitability for Licensee's intended use, and that Licensee relies solely on its due diligence for such determination. Licensee further expressly

represents and warrants to the City that Licensee's intended use is the Permitted Use, as defined in **Section 5** in this Master License.

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

#### **2.3.1. Limited Interest Created**

Licensee expressly acknowledges and agrees that: (1) Licensee does not have any rights to use, or interest in, any Public Rights-of-Way for any purpose whatsoever until and unless the City issues a Site License that covers such Public Rights-of-Way identified as the License Area; and (2) neither this Master License nor any Site License issued pursuant to this Master License creates or will be deemed to create any leasehold, easement, franchise, or any other possessory interest (whether present, future, contingent, or otherwise) or real property interest whatsoever in the License Area.

#### **2.3.2. Limited Rights Created**

Any Site License the City approves pursuant to this Master License grants Licensee only a non-possessory, non-exclusive, and revocable license to enter onto and use the License Area for the Permitted Use, in accordance with the terms and conditions of this Master License and the applicable Site License. Licensee expressly acknowledges and agrees that: (1) neither this Master License nor any Site License will be coupled with an interest; (2) the City retains legal possession and control over all City Property, including, but not limited to, the Public Rights-of-Way and any City-owned Vertical Infrastructure and Utility Infrastructure, needed for the City's municipal functions, which will be superior to Licensee's rights and interest in Public Rights-of-Way constituting any License Areas, if any, at all times; (3) subject to the terms and conditions in this Master License, the City may terminate a Site License, in whole or in part, at any time under the terms, conditions, and restrictions set forth in **Section 19.2**; (4) except as specifically provided otherwise in this Master License, the City may enter into any agreement with third parties to use and/or occupy any City Property; and (5) neither this Master License nor any Site License creates or will be deemed to create any partnership or joint venture between the City and Licensee.

#### **2.3.3. No Impediment/Limitations on City's Functions**

Except as specifically provided otherwise in this Master License, neither this Master License nor any Site License will limit, alter, or waive the City's absolute right to use any License Area, in whole or in part, as infrastructure established and maintained for the City's and the public's benefit.

#### **2.3.4. Diminutions in Light, Air, or Signal Transmission or Reception**

In the event that any existing or future structure diminishes any light, air, or signal propagation, transmission, or reception, whether erected by the City or not, Licensee shall not be entitled to any reduction in any Annual Fee, Additional Fees, or any other sums payable to the City under this Master License or any Site License, the City shall have no liability to Licensee whatsoever, and such diminution will not affect this Master License, any Site License, or Licensee's obligations, except as may be expressly provided in this Master License.

### 3. TERM

#### 3.1. Master License Term

This Master License will commence on the Effective Date and automatically expire ten (10) years from the Effective Date (the “Initial Term”), unless earlier terminated in accordance with this Master License. Following this Initial Term, this Master License may be renewed for two (2) additional periods of five (5) years (each a “Renewal Term”), upon written agreement of the City and Licensee, which agreement must be fully executed not later than sixty (60) days prior to the expiration of the Initial Term or first Renewal Term, as applicable. As used in this Master License, the Initial Term and Renewal Terms shall collectively be referred to as the “Term.”

#### 3.2. Site License Term

The term of each Site License will commence on its Site License Effective Date and will have an initial term of ten (10) years, unless earlier terminated in accordance with this Master License. The term of each Site License may be renewed for two (2) consecutive five (5) year periods (each a “Site License Renewal Term”) unless, upon written agreement of the City and Licensee, which agreement must be fully executed not later than sixty (60) days prior to the expiration of the initial term or the first Site License Renewal Term, as applicable. In the event that this Master License expires or is terminated, any Site License(s) still in effect shall remain subject to the terms and conditions in this Master License until such Site License(s) expire or are terminated. As an illustration and not a limitation, a Site License entered into four (4) years before the Master License Expiration Date would have six (6) years left on its initial term and two (2) Site License Renewal Terms, and otherwise remain subject to all the applicable terms and conditions in this Master License, after the effective Master License Expiration Date.

### 4. ANNUAL FEE AND OTHER PAYMENTS

#### 4.1. Annual Fee

##### 4.1.1. Annual Fee Amount

Licensee shall pay an Annual Fee, as specified in **Schedule 1**, for each licensed License Area authorized under any Site License. Increases to the Annual Fee on the anniversary of the Effective Date are specified in **Schedule 1**. The Annual Fee shall be: (1) reasonably approximate to the City’s objectively reasonable costs consistent with applicable Laws; (2) in addition to any fees charged by the City in connection with any permit applications, permit issuance fees, inspection fees, fines, penalties, or other fees charged by the City in connection with the Equipment and/or any related Regulatory Approvals (collectively, “**Regulatory Fees**”); (3) in addition to any other cost-based reimbursements owed to the City by Licensee, including, but not limited to, Staff Augmentation (“**Reimbursement Fees**”); and (4) in addition to any fees charged by the City pursuant to separate leases, licenses, or other agreements for Licensee’s use of City-owned Vertical Infrastructure or Utility Infrastructure. Unless otherwise adjusted in accordance with this Master License, the Annual Fee shall automatically increase by three percent (3%) each year. The parties acknowledge that such three percent (3%) increase is memorialized in the Annual Fee Schedule table in **Schedule 1** attached to this Master License.

#### **4.1.2. Annual Fee Payment**

Licensee shall tender the first Annual Fee payment for each Site License, without any deduction or setoff for any reason, at the time Licensee delivers the Site License Application, partially executed by Licensee, to the City. In the event that a Site License Application is denied by the City, the City shall return the applicable pre-paid first Annual Fee payment to Licensee within forty-five (45) days following the City's written notice of denial provided to Licensee pursuant to **Section 6.3.2**. Otherwise, for all Site License Applications approved by the City pursuant to **Section 6.3.1**, after the first Annual Fee payment, on or before this Master License's Effective Date anniversary, Licensee shall pay each Annual Fee (as increased pursuant to **Section 4.1.1**) in advance, without any prior demand, deduction, setoff, or counterclaim for any reason except to account for a partial year, in the event this Master License expires or terminates, or any abatement rights expressly granted in this Master License. Any amounts for less than a full year or full month will be calculated based on a three hundred sixty (360) day year and a thirty (30) day month.

City of Wilsonville  
 Attn: Finance Department  
 29799 SW Town Center Loop East  
 Wilsonville, OR 97070

As a condition to payment of the Annual Fee, the City shall complete and deliver to Licensee: (1) Licensee's standard payment direction form; and (2) IRS W-9, or such other tax reporting forms as may be required to be provided by the City to Licensee under Laws. Any Annual Fee withheld by Licensee pursuant to the preceding sentence shall be paid to the City within ten (10) Business Days of Licensee's receipt of such documents.

#### **4.2. Administrative Fees**

##### **4.2.1. Master License Administrative Fee**

At the time Licensee delivers to the City a partially executed counterpart to this Master License, Licensee shall also deliver to the City a nonrefundable Administrative Fee equal to Twelve Thousand Dollars (\$12,000) (the "**Master License Administrative Fee**"), representing payment in full of Licensee's agreed-upon share of the City's reasonable approximation of the City's objectively reasonable costs, consistent with applicable Laws, to prepare, negotiate, and execute this Master License. The City will not be obligated to execute this Master License until the City receives the Master License Administrative Fee; however, the City will return the Master License Administrative Fee to Licensee if for any reason, or no reason, the City does not execute this Master License.

##### **4.2.2. Site License Application Fee**

At the time Licensee delivers to the City a Site License Application, Licensee shall pay to the City a non-refundable application fee of Five Hundred Dollars (\$500) per Site License Application for the proposed License Area (the "**Site License Application Fee**"). The City will

not be obligated to commence its review for any Site License Application until the City receives the Site License Application Fee for that application.

**4.3. Late Fees**

In the event that Licensee fails to pay any Annual Fees, Additional Fees, Administrative Fees, Reimbursement Fees, or any other amount payable to the City within thirty (30) days after Licensee’s receipt of the City’s written notice that such amounts are due and unpaid, thereafter a fee will be charged to Licensee for failure to make timely payment (“Late Fee”). The Late Fee will be equal to five percent (5%) of unpaid amounts past due.

**4.4. Default Interest**

Any Annual Fees, Additional Fees, Administrative Fees, Reimbursement Fees, and all other amounts payable to the City, other than Late Fees, will bear interest at ten percent (10%) per annum (simple interest) from the due date when not paid within fifteen (15) days after due and payable to the City. Any sums received shall be first applied towards any interest, then to the Late Fee, and lastly to the principal amount owed. Any interest or Late Fee payments will not alone excuse or cure any default by Licensee.

**4.5. Liquidated Charges and Fees**

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

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

Licensee \_\_\_\_\_

City \_\_\_\_\_

**4.6. Method of Fee Payments to City**

Licensee shall pay all Annual Fees, Additional Fees, Administrative Fees, and all other amounts payable to the City in cash or other immediately available funds by either: (1) local check, payable to the City of Wilsonville at the address listed in **Section 4.1.2**; or (2) electronic wire transfer. Any payment made with a dishonored check will be deemed unpaid. Payment by credit card is not allowed.

#### 4.7. Fee Adjustments by City

At any time throughout the Term, the City shall have the option (but not the obligation) to adjust any Annual Fee, Site License Application Fee, Additional Fees, and Administrative Fees to reflect the reasonable approximation of the City's objectively reasonable costs, consistent with applicable Laws, that are incurred in connection with this Master License and any Site License, any Regulatory Approvals issued or administered by the City in connection with this Master License, any Site License, or the Equipment, or Licensee's acts or omissions on or about the License Area and/or the Public Rights-of-Way. The City may exercise such option either by a resolution approved and adopted by the City Council (a "**Fee Resolution**") or by written notice to Licensee (the "**Adjustment Notice**"). If the adjustment concerns the Annual Fee, such adjustment will be applicable to the next occurring Annual Fee due date. The City shall have the right to substitute a new **Schedule 1** to reflect such adjustment in either a Fee Resolution or an Adjustment Notice. Any adjustment by Fee Resolution shall be effective at the same time such Fee Resolution becomes effective. Any adjustment by Adjustment Notice shall be immediately effective. Licensee shall have the right to appeal any Adjustment Notice to the City Council in the manner prescribed by the Municipal Code.

#### 4.8. City's Right to Cost Reimbursement

Notwithstanding anything in this Master License or any Site License to the contrary, and subject to applicable Laws, the City shall be entitled to recover from Licensee the reasonable cost to furnish, provide, and/or perform any services in connection with this Master License, any Site License, and any Regulatory Approvals issued or administered by the City, which includes, without limitation, any costs incurred by City staff, Staff Augmentation for Site License Application review, or the City's contractors, consultants, and experts to review permit applications, issue permits, or supervise or inspect any construction, installation, or other work in connection with this Master License and any Site License. Payments by Licensee for any Annual Fee, Additional Fees, Regulatory Fees, and Reimbursement Fees in connection with this Master License or any related Regulatory Approvals issued or administered by the City shall not relieve Licensee's obligation to reimburse the City for any and all actual costs incurred by the City in the future. Licensee shall reimburse the City for all such costs within thirty (30) days after receipt of a written demand for reimbursement and reasonable documentation to support such costs. The provisions in this **Section 4.8** shall survive this Master License's and any Site License's expiration, revocation, or termination.

#### 4.9. City's Right to Fair Market License Fees Reserved

Licensee acknowledges that: (1) the City is compelled by applicable Laws, which includes, without limitation, the Order, to accept certain reasonable and actual cost-based rates and compensation; (2) but for such Laws, the City would be entitled to condition its assent to any lease, license, or other agreement for access to and use of the Public Rights-of-Way (such as this Master License and any Site License) on consideration that exceeds the City's reasonable and actual costs; and (3) but for such Laws, the City would not assent to all the terms and conditions in this Master License and any Site License. Licensee further acknowledges that, in the event that a repeal or invalidation of the Order or other such laws described in this **Section 4.9** is final and unappealable, the then-current License Fee shown in **Schedule 1** and the Annual Fee in all remaining years on the Term shall be replaced by the amount(s) shown in **Schedule 2** (City's Estimated Fair Market License Fees), attached hereto and incorporated herein, upon thirty (30) days' written notice to Licensee; provided, however, that the replacement fee shall be prorated for the remainder of the first year in which the then current Annual Fee is replaced.

“Final and unappealable,” as used in this **Section 4.9**, means: (a) all appeal rights by the FCC or its supporting intervenors have elapsed or been exhausted after a judicial order finding the limitations on the Annual Fee invalid for any reason, regardless of whether such order includes a remand to the agency for further proceedings; or (b) Congress has legislatively repealed or otherwise invalidated the limitations on the Annual Fee.

#### **4.10. In Lieu Fee for Landscape Restoration and Maintenance**

If the installation, construction, or other work on or about the License Area damages or destroys any landscape features that would require the Licensee to repair, replace, and/or maintain any existing or new landscape features pursuant to the Municipal Code or other applicable City policies, the City may (but shall not be obligated to) enter into a written agreement with the Licensee to accept an in-lieu fee for the actual cost to repair, replace, and/or maintain the existing and/or new landscape features on the Licensee’s behalf. Such in-lieu fee(s) shall be established by the Public Works Director in consultation with the Licensee and shall be reasonably related to the actual cost of any such repair, replacement, and/or maintenance necessitated by the damage or destruction caused by Licensee’s installation, construction, or other work. Specifically, any trees removed or damaged shall have their value assessed by the City’s arborist and such value shall be paid into the City’s tree fund.

### **5. USE**

#### **5.1. Permitted Use**

Licensee may use a License Area solely for the installation, construction, use, maintenance, operation, repair, modification, replacement, and upgrade of Equipment for the purpose of transmission and reception of wireless communications signals, including, without limitation, wireless, voice, data, messaging, or similar type of wireless service, now or in the future offered to the public in general, using spectrum radio frequencies licensed or authorized by the FCC (the “**Permitted Use**”), in compliance with this Master License, the applicable Site License Agreement, all applicable Laws, which includes, without limitation, the Municipal Code and any conditions in any Regulatory Approvals, and for no other use whatsoever without the City’s prior written consent, which the City may withhold in its sole and absolute discretion for any or no reason.

#### **5.2. Prohibition on Non-Small Wireless Facilities**

The City intends this Master License and any Site License to cover only wireless facilities that: (1) qualify as a “small wireless facility” as that term is defined by the FCC under 47 C.F.R. § 1.6002(I); and (2) have been approved by the City in accordance with all applicable provisions in the Municipal Code. Licensee expressly acknowledges and agrees that the Permitted Use under this Master License and any Site License does not include the right to use any License Area, including any Vertical Infrastructure and Utility Infrastructure, as a support for a “macro cell” or a traditional wireless tower or base station.

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

Licensee shall not use the License Area, in whole or in part, in any unlawful manner or for any illegal purpose. In addition, Licensee shall not use the License Area, in whole or in part, in any manner that constitutes a nuisance, as determined by the City in its reasonable discretion. Licensee shall take all

precautions to eliminate any nuisances or hazards in connection with its uses and activities on or about the License Area.

#### 5.4. Signs or Advertisements

Licensee acknowledges and agrees that its rights under this Master License and any Site License do not authorize Licensee to erect, post, maintain, or permit others to erect, post, or maintain, any signs, notices, graphics, or advertisements, whatsoever, on the License Area, except as may be required for compliance with any Regulatory Approvals and applicable Laws. Notwithstanding the foregoing, the City may post or maintain any City road signage or banner(s), if they can be accommodated without unreasonably interfering with Licensee's Equipment.

### 6. SITE LICENSES

#### 6.1. City Approval Required

Licensee shall not have any right to use the License Area, in whole or in part, for any purpose until and unless the City approves and signs the Site License that covers the License Area. Licensee may obtain a Site License only during the Term of this Master License and only after the City approves a Site License Application, as provided in this **Section 6**. Subject to any express limitations in this Master License, the City will not be obligated to subordinate its municipal functions in any manner whatsoever to Licensee's interest under any Site License. The City shall not be obligated to consider or approve any Site License Applications after this Master License expires or is terminated. When the City considers whether to approve or disapprove any Site License Application, the City may consider any matter that affects its municipal functions, which include, without limitation: (1) Licensee's proposed plans and Equipment specifications; (2) compliance with any applicable Laws; (3) impacts on the City's street light, traffic control, or other municipal operations; (4) any potential hazards or unsafe conditions that could result from Licensee's installation, operation, or maintenance; (5) any potential visual or aesthetic impacts, provided the proposed Vertical Infrastructure, Utility Infrastructure, and/or Equipment is not in conformance with objective design standards adopted by the City; and (6) any municipal plans for the Public Rights-of-Way or other City Property in proximity to the subject License Area.

#### 6.2. Site License Application

A complete Site License Application must include the following:

- (1) Two partially executed duplicate counterparts of a Site License in the form attached as **Exhibit A** to this Master License, together with the following:
  - (a) A fully completed **Exhibit A-1**, which shall contain a description and depiction of the proposed License Area, including a summarized list that identifies all Vertical Infrastructure and Utility Infrastructure serving the Equipment covered under the Site License Application;
  - (b) A fully completed **Exhibit A-2**, which shall contain detailed construction plans for the proposed installation(s), including concealment elements consistent with City standards, a detailed traffic control plan for all work on and adjacent to City roadways, an inventory for all proposed Equipment to be installed on the Vertical

Infrastructure and/or the Utility Infrastructure in the proposed License Area covered under the Site License Application, and structural and loading analyses for the Vertical Infrastructure and/or Utility Infrastructure;

- (c) For each Vertical Infrastructure or Utility Infrastructure to be used by Licensee in the proposed License Area covered under the Site License Application, a copy of the lease, license, or other agreement for the Vertical Infrastructure and/or Utility Infrastructure, executed by Licensee and the owner(s) of such Vertical Infrastructure and/or Utility Infrastructure if Licensee is not the owner of such Vertical Infrastructure and/or Utility Infrastructure, attached as **Exhibit A-3**; provided that, if such Vertical Infrastructure and/or Utility Infrastructure lease, license, or other agreement includes nondisclosure terms and Licensee is unable to obtain a waiver from the owner thereof, then **Exhibit A-3** will instead include written confirmation from the Vertical Infrastructure and/or Utility Infrastructure owner that they have entered into an agreement for Licensee's use of the owner's Vertical Infrastructure and/or Utility Infrastructure;
  - (d) A true and correct copy of **Schedule 1**, attached to this Master License;
  - (e) The Annual Fee calculated pursuant to **Schedule 1**; and
  - (f) The Site License Application Fee.
- (2) All other information and materials required for a complete application for all Regulatory Approvals issued by the City's departments, which the City may update from time-to-time in accordance with applicable Laws.
  - (3) If requested by the City, a deposit for the City's estimated costs of Staff Augmentation as provided in **Section 6.3.3** (City Staff Augmentation).

### **6.3. Site License Application Review Procedures**

#### **6.3.1. Site License Application Approvals**

In the event that the City approves a Site License Application, the City will return one fully executed Site License to Licensee. Such approval may occur before or simultaneously with any approvals or denials for any Regulatory Approvals issued by the City in its regulatory capacity. For any Site License, Licensee shall commence construction pursuant to the Site License on the later to occur of (1) the time to commence construction, if any, as may be contained in the applicable Regulatory Approval for the construction of the Equipment, or (2) twelve (12) months from the date the City fully executes the Acknowledgment Letter. Otherwise, the Site License shall automatically expire. Licensee shall not be entitled to any refund for any Administrative Fees or Additional Fees, including, without limitation, the Annual Fee paid in connection with a Site License that expires under this **Section 6.3.1**. Nothing in this **Section 6.3.1** is intended to prohibit or prevent Licensee from submitting a new Site License Application for the same or substantially the same proposed License Area as those covered under a Site License that expired pursuant to this **Section 6.3.1**.

### **6.3.2. Site License Application Denials**

Subject to applicable state and federal Laws, Licensee acknowledges that the City reserves the right to disapprove any Site License Application, in whole or in part, for reasons including, but not limited to, when the City determines, in its sole discretion, that Licensee's proposed Equipment, Vertical Infrastructure, or Utility Infrastructure would unreasonably interfere with the City's municipal functions or create a hazardous or unsafe condition. The City shall provide Licensee with a written denial that states the basis for the denial.

### **6.3.3. City Staff Augmentation**

To assist the City's review and processing of Site License applications in a timely manner, the City shall have the right to select and retain temporary staff members, consultants, and/or other independent contractors with qualifications and expertise acceptable to the City ("**Staff Augmentation**"). Upon the City's request, Licensee shall furnish the City with a deposit in an amount reasonably estimated by the City to cover the Staff Augmentation costs for a particular Site License Application. If Licensee declines to pay the deposit amount, the Site License Application shall be deemed automatically withdrawn by the Applicant. If Licensee consents to Staff Augmentation by paying the deposit amount, Licensee shall be responsible for all costs incurred by the City in connection with Staff Augmentation. If the deposit amount is insufficient to cover the City's costs, Licensee shall reimburse the City for the difference between the deposited amount and the total Staff Augmentation costs as Reimbursement Fees pursuant to **Section 4.8**.

### **6.4. Replacement Vertical Infrastructure**

In the event that Licensee desires to replace any existing Vertical Infrastructure, or in the event that the City requires Licensee to replace any existing Vertical Infrastructure as a condition of the City's approval for a Site License, Licensee shall: (1) design and/or procure the replacement Vertical Infrastructure to be: (a) substantially the same as the existing Vertical Infrastructure to be replaced, (b) consistent with the City's specifications for similar Vertical Infrastructure, and (c) consistent with the City's objective design standards; and (2) install the replacement Vertical Infrastructure at Licensee's sole cost and expense, or in any event not at the City's cost and expense, pursuant to a separate agreement with the owner of such Vertical Infrastructure and in accordance with all applicable provisions in this Master License, which includes, without limitation, **Section 7** (Equipment Installation). Prior to the installation or replacement of any Vertical Infrastructure, Licensee shall obtain a Public Works Permit and pay the requisite fee. After Licensee installs any replacement Vertical Infrastructure, the City will have the right to inspect the improvements and installation work and accept, reject, and/or require corrections to such improvements or installation work. Licensee shall make any and all necessary corrections to any replacement Vertical Infrastructure within sixty (60) days after a rejection by the City.

### **6.5. Future Maintenance and Repairs, Replacements, Modifications, Additions, and Upgrades to Equipment Installed Pursuant to Valid Site License**

All routine maintenance and repair of any Equipment installed in a License Area pursuant to a valid Site License shall be performed pursuant to the requirements in any Regulatory Approvals, the Municipal Code, and the terms of any lease, license, or other agreement with the owner of the Vertical Infrastructure and/or Utility Infrastructure in the License Area, provided that such terms are subject and

subordinate to the requirements in any Regulatory Approvals and the Municipal Code. If not in conflict with any of the foregoing, without the requirement of obtaining the City's prior consent, Licensee may: (1) perform routine maintenance and repair of any Equipment installed on a Vertical Infrastructure and/or Utility Infrastructure pursuant to a valid Site License; and (2) perform "like-for-like" replacements of Equipment so long as: (a) any such "like-for-like" replacement does not alter the visible aesthetic appearance of the installed Equipment; and (b) the resulting installation does not: (i) result in an increase in the size of the License Area; (ii) materially increase the weight, size, or structural loading on the applicable Vertical Infrastructure or the utilization of the Utility Infrastructure beyond the loading or utilization, if any, that was established in the approved Site License, or any subsequent City approval of Licensee's Equipment for which the City's prior written consent was required, as the case may be; (iii) does not change the status of Licensee's compliance with radio frequency emissions standards under applicable Laws; and (iv) does not cause any interference with any municipal functions or equipment. Any other modification, addition, or upgrade to Licensee's Equipment installed on a City-owned Vertical Infrastructure and/or Utility Infrastructure pursuant to a valid Site License shall require the City's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding any modification, addition, and/or upgrade rights granted to Licensee under this Master License, all work performed by or on behalf of Licensee pursuant to this Master License and/or a Site License shall be performed in compliance with all applicable provisions in this Master License, which includes, without limitation, Licensee's obligations to obtain and pay for all applicable Regulatory Approvals required for the proposed modification. Subject to the terms in this **Section 6.5**, Licensee shall not be required to submit a new Site License Application for routine maintenance and repair or "like-for-like" replacements, modifications, additions, or upgrades to Equipment installed pursuant to a valid Site License.

## **7. EQUIPMENT INSTALLATION**

### **7.1. Prior Regulatory Approvals Required**

Licensee shall not commence any installation, construction, repair, upgrade, maintenance, modification, or other work on or about the License Area until and unless Licensee first obtains all necessary prior Regulatory Approvals, which includes, without limitation, any approvals required to provide the services offered by Licensee, either to the public or Licensee's customers, within the geographic area that encompasses the City's territorial and/or jurisdictional boundaries and any required use permits, design review permits, encroachment permits, building permits, excavation permits, grading permits, water or sewer permits, electrical permits, and any other permits or approvals issued by the City. Any installation, construction, and/or other work performed by Licensee or its Agents or Invitees without such Regulatory Approvals will be a default under this Master License and the applicable Site License, in addition to any other liabilities or penalties the City, in its regulatory capacity, may impose on Licensee for the same acts or omissions.

### **7.2. Acknowledgment Letter as Licensee's Notice to Proceed**

After Licensee obtains all necessary prior Regulatory Approvals, Licensee shall tender a partially executed Acknowledgment Letter to the City that includes: (1) copies of all Regulatory Approvals; (2) Licensee's insurance certificates; (3) insurance certificates of Licensee's contractor(s) and/or subcontractor(s); and (4) the required Letter of Credit under **Section 27** of this Master License, or evidence reasonably satisfactory to the City that the required Letter of Credit under **Section 27** of this Master License has been delivered to the City. The City shall use reasonable efforts to review,

countersign, and deliver the fully executed Acknowledgment Letter to Licensee within ten (10) Business Days from the date on which the City receives a partially executed Acknowledgment Letter with all required attachments. Licensee shall not commence any work on or about the License Area until and unless Licensee first obtains a fully executed Acknowledgment Letter from the City. Such fully executed Acknowledgment Letter will serve as Licensee's notice that Licensee has the right to proceed with its installation work.

### **7.3. Installation Work**

Licensee shall perform all installation, construction, and other work in connection with the License Area: (1) in accordance with the terms and conditions in this Master License and the applicable Site License; (2) at Licensee's sole cost and expense, and at no cost or expense to the City; (3) in strict compliance with the Approved Plans; (4) in compliance with all applicable Laws, which includes, without limitation, all applicable provisions in the Municipal Code and any conditions in any applicable Regulatory Approvals; and (5) in a safe, diligent, skillful, and workmanlike manner. After any work at the License Area concludes, Licensee shall restore the License Area and any other City Property to the condition that existed immediately prior to the work commenced, normal wear and tear excepted.

#### **7.3.1. Changes to Approved Plans Required by Regulatory Approvals**

Licensee may amend any Approved Plans when such changes are required to obtain or maintain compliance with Regulatory Approvals necessary to install the Equipment, so long as Licensee obtains the City's prior written consent, which the City shall not unreasonably withhold.

#### **7.3.2. Corrections to Approved Plans**

At all times relevant to this Master License and the applicable Site License, Licensee shall have the obligation to correct any errors or omissions in any Approved Plans and related Regulatory Approvals. Licensee shall immediately send written notice to the City in the event that Licensee discovers any such defects. Any Approved Plans and/or amendments to Approved Plans by the City will not release or excuse Licensee's obligations under this **Section 7.3.2**.

#### **7.3.3. Damage or Alterations to Other Property**

Nothing in this Master License or the applicable Site License authorizes Licensee to use, occupy, remove, damage, or in any manner alter any private personal or real property, wherever located, owned by the City or any third parties, without prior written consent from the property owner. The City may withhold and/or condition its consent to any request to alter any City Property in its sole and absolute discretion.

#### **7.3.4. Damage and Repair to Subsurface Structures**

Any excavation performed in the Public Rights-of-Way must be monitored by Licensee for any lateral movement, trench failures, and other similar hazards. Licensee shall, at Licensee's sole cost and expense, repair any damage (which includes, without limitation, any subsidence, cracking, erosion, collapse, weakening, and/or any loss or reduction in lateral or subjacent support) to the Public Rights-of-Way, any adjacent private property, any utility lines or systems (whether overhead or underground), and any sewer and/or water lines or systems resulting from

or in connection with any excavation by Licensee or its Agents. All repair or restoration work, normal wear and tear excepted, performed pursuant to this **Section 7.3.4** shall be performed under the City Engineer's supervision and satisfaction.

### **7.3.5. Licensee's Contractors**

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

### **7.4. Labor and Material Costs**

Licensee shall be responsible for all direct and indirect costs (labor, materials, and overhead) in connection with designing, purchasing, and installing all Equipment and any Licensee-owned Vertical Infrastructure and Utility Infrastructure, as the case may be, in accordance with the Approved Plans and all applicable Laws. Licensee shall also bear all costs to obtain and maintain all Regulatory Approvals required in connection with the installation, which includes, without limitation, all direct and indirect costs to comply with any approval conditions or mitigation measures that arise from Licensee's proposed installation. Licensee shall timely pay for all labor, materials, Equipment, and all professional services related to the Permitted Use or furnished to the License Area at Licensee's direction or for Licensee's benefit. Licensee shall keep the License Area and all other City Property free from any and all mechanics', materialmen's, and other liens and claims arising out of any work performed, materials furnished, or obligations incurred by or for Licensee.

### **7.5. Project Managers**

The City and Licensee each designate the person listed in this **Section 7.5** as its project manager to coordinate Licensee's Equipment design and installation, and serve as each party's respective primary contact person for all design, engineering, construction, and installation issues that may arise between the parties in connection with this Master License. If no person is designated by either party prior to the Effective Date, then each party shall designate a person through a written notice promptly following the written request of either party to do so.

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

Zachary Weigel, City Engineer  
 City of Wilsonville  
 Phone: (503) 570-1565  
 Email: weigel@ci.wilsonville.or.us

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

Tyrell Fincher, Area Manager, Construction & Engineering  
 Phone: (206) 387-6347  
 Email: tf408s@att.com

Licensee acknowledges that the City's Project Manager is not exclusively assigned to this Master License or any Site License, and that the City's Project Manager may not always be immediately available to Licensee or its project manager, and that the City's Project Manager is subject to change. Licensee further acknowledges that the authority delegated by the City to the City's Project Manager is limited to the administration of this Master License, any Site License Applications, and any approved Site Licenses. The parties' respective project managers will have no obligation to personally perform any term or covenant to be performed by the other party under this Master License. Notices to the parties' respective project managers alone will not be deemed effective notice for any purpose under this Master License.

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

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

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

Except as specifically provided otherwise in this Master License, all Equipment, Licensee-owned Vertical Infrastructure and Utility Infrastructure, and other improvements installed, constructed, or placed on or about the License Area by Licensee or its Agents or Invitees will be and remain at all times Licensee's personal property. Such License Area shall be deemed abandoned if Licensee's Equipment in the License Area is not in operation for any continuous six (6) month period, except if such non-operation is due to acts of nature or other *force majeure* circumstances beyond the reasonable control of Licensee. Subject to **Section 26** (Surrender of License Area), Licensee may remove its Equipment, Vertical Infrastructure, Utility Infrastructure, and other improvements installed, constructed, or placed on or about the License Area from the License Area at any time upon thirty (30) days' prior written notice to the City.

#### **7.8. Underground Service Alert**

Licensee warrants and represents to the City that Licensee is presently a member in good standing with the Oregon Utility Notification Center ("OUNC"). Licensee shall maintain and keep current its membership in the OUNC throughout the Term. Licensee shall register Licensee's underground Equipment and underground utility infrastructure associated with the License Area with the OUNC in accordance with applicable Laws. Prior to any excavation performed in the Public Rights-of-Way, Licensee shall observe and perform all notice, utility locate, and other obligations required under applicable Laws, which includes, without limitation, contacting the OUNC or other entity or organization charged with maintaining and/or safeguarding the underground utility infrastructure from damage.

#### **7.9. Post-Completion Inspections**

Within ten (10) days after Licensee completes any Equipment, Vertical Infrastructure, or Utility Infrastructure construction, installation, or other work within the License Area, Licensee shall provide the City with a written notice that confirms the precise locations and dates on which the Licensee completed the work. The City shall have the right to inspect the License Area at any time after Licensee completes any construction, installation, or other work in connection with this Master License and the

applicable Site License. If the City discovers any defects or non-compliant conditions in connection with the Equipment, Vertical Infrastructure, or Utility Infrastructure within the License area, Licensee shall, at Licensee's sole cost and expense, correct any such defects and conditions within a reasonable time as determined by the City Engineer, but in no event less than fifteen (15) Business Days following Licensee's receipt of the City's written notice of the alleged defects or non-compliance conditions, provided that the defects and conditions do not present a threat to public health and safety. Inspections and any re-inspections reasonably considered necessary by the City are deemed by the parties to be "Regulatory Fees," and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee's receipt of the City's invoice, accompanied by reasonable evidence of the Regulatory Fees so incurred by the City.

### **7.10. As-Built Plans and Maps**

Within thirty (30) days after the City issues a certificate of completion, Licensee shall submit to the City as-built plans and maps, in a format reasonably specified by the City Engineer. In addition to any format required by the City Engineer, all as-built plans and maps shall include digital copies in a native format compatible with the City's document management, GIS, and/or other digital information management systems. Licensee's as-built plans and maps must show the accurate location and dimensions for all Equipment and associated Vertical Infrastructure and Utility Infrastructure. The City shall have the right to reject any as-built plans or maps for cause, in which case Licensee shall file revised as-built plans and/or maps within thirty (30) days after notice from the City. The City shall have the right to incorporate the as-built plans for the then-current description of the License Area in **Exhibit A-1** and/or the then-current Approved Plans in **Exhibit A-2**.

## **8. LICENSEE'S MAINTENANCE, REARRANGEMENT, AND RELOCATION OBLIGATIONS**

### **8.1. Equipment Maintenance**

Licensee shall, at its sole cost and expense, maintain all Equipment and Licensee-owned Vertical Infrastructure and/or Utility Infrastructure installed on, in, under, over, or about the License Area in good, safe, and orderly condition at all times, and shall promptly repair any damage to any Equipment and Licensee-owned Vertical Infrastructure and/or Utility Infrastructure installed in the License Area whenever repair or maintenance may be required, subject to **Section 6.5** and **Section 7** (Equipment Installation).

### **8.2. Damage to Property**

#### **8.2.1. Notice to the City**

Licensee shall promptly notify the City if Licensee discovers damage or other alteration to the Public Rights-of-Way, any City Property, or any personal or real property owned by third parties for any reason and through any cause. Notices shall contain the following information, to the extent available at the time Licensee sends the notice: (1) the location where the event occurred; (2) a statement to describe the damage or other alteration and the surrounding circumstances; (3) the names and contact information for any persons or entities involved in the matter, as well as the names and contact information for any potential witnesses to the damage or other alteration; and (4) any other pertinent information. Licensee will not be deemed to have assumed liability for any such damage or other alteration by giving such notice, unless such

damage or other alteration was caused by or arose in connection with Licensee's or its Agent's or Invitee's act, omission, negligence, or willful misconduct. Licensee's failure to provide notice to the City shall not be a material default entitling the City to terminate this Master License or any affected Site License, unless Licensee or its Agents or Invitees caused such damage or other alteration and Licensee fails to repair the damage or other alteration within the time period prescribed for notice and cure under this Master License following Licensee's receipt of the City's written notice of the damage or other alteration alleged to be caused by Licensee, its Agents, or Invitees. The parties acknowledge and agree that Licensee's failure to notify the City of damage or other alteration caused by any party other than Licensee, its Agents, or Invitees may result only in an action for damages against Licensee. If the damaged property is owned by a third party, Licensee shall also provide written notice to such third party property owner, with a copy to the City to verify that the third party property owner has been notified.

### **8.2.2. Damage Caused by Licensee**

In the event that Licensee or its Agents or Invitees directly or indirectly caused such damage or other alterations, Licensee shall, at its sole cost and expense, repair such damage or other alteration and restore the affected property to the condition that existed immediately before the damage or other alteration occurred, reasonable wear and tear excepted. If Licensee fails or refuses to perform its obligations under this **Section 8** within thirty (30) days after Licensee's receipt of written notice from the City, the City may (but will not be obligated to) cause the repair and restoration to be performed at Licensee's sole cost and expense. The City may exercise its rights to perform Licensee's obligations under this **Section 8** if Licensee has not completed its repair within thirty (30) days following Licensee's receipt of written notice from the City, or without prior notice to Licensee when the City Engineer determines that the repair and/or restoration is immediately necessary to protect public health or safety. Licensee acknowledges that repair or restoration undertaken by the City shall be deemed to be Reimbursement Fees, and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee's receipt of the City's invoice, accompanied by reasonable evidence of the Reimbursement Fees so incurred by the City. The City's right to repair any damage and receive reimbursement from Licensee pursuant to this **Section 8** shall be in addition to (and not exclusive of) any legal and equitable remedies the City may have under applicable Laws. In addition, Licensee shall indemnify, defend, and hold any and all Indemnified City Parties harmless from and against any Claims in connection with such performance by the City, except to the extent of the gross negligence or willful misconduct of the City or any Indemnified City Parties, or any of them.

### **8.2.3. No Right to Repair License Area**

Absent notice from the City with a demand to cure any damage to any License Area, or an authorization to proceed with such work, Licensee is not authorized to make any repairs to any License Area. Licensee expressly waives all rights it may have under any applicable Laws to make repairs at the City's expense. However, Licensee shall have the right to conduct testing and maintenance activities, and repair and replace damaged or malfunctioning Equipment or Licensee-owned Vertical Infrastructure or Utility Infrastructure, at any time during the Term pursuant to the terms of this Master License.

### **8.3. Graffiti Abatement**

In addition to Licensee's other maintenance obligations under this Master License and any Site License, Licensee shall remove any graffiti or other similar markings from the License Area promptly upon actual notice (but in no event later than within ten (10) days after Licensee's receipt of written notice from the City). If the graffiti is not abated by Licensee within ten (10) days after Licensee's receipt of the City's written notice to Licensee, then the City may, at the Public Works Director's sole discretion, abate the graffiti at Licensee's expense. The City's costs to abate the graffiti shall be deemed to be Reimbursable Fees, and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee's receipt of the City's invoice, accompanied by reasonable evidence of the Reimbursement Fees so incurred by the City.

### **8.4. Maintenance Work Performance Standards**

All work performed by or for Licensee under this **Section 8** shall be performed: (1) in accordance with the terms of this Master License and the applicable Site License; (2) at Licensee's sole cost and expense; (3) by only qualified, trained, experienced, and appropriately licensed contractors, or Licensee's Agents or other personnel; (4) in a manner and with equipment and materials that will not unreasonably interfere with or impair the City's municipal operations on or about the License Area during any approved installations; (5) in a safe, diligent, skillful, and workmanlike manner; and (6) in compliance with all applicable Laws, which includes, without limitation, all applicable provisions in the Municipal Code and any conditions in any applicable Regulatory Approvals.

### **8.5. Rearrangement and Relocation**

#### **8.5.1. Rearrangement and Relocation for City Work**

Licensee acknowledges that the City, in its sole discretion and at any time, may: (1) change any street grade, width, or location; (2) add, remove, or otherwise change any improvements owned by the City or any other public agency located in, on, under, over, along, or about any Public Rights-of-Way, which includes, without limitation, any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles, and utility systems for gas, water, electric, or telecommunications; (3) add, remove, or otherwise change any Vertical Infrastructure or Utility Infrastructure owned, leased, licensed, or controlled by the City in, on, under, over, along, or about any Public Rights-of-Way, which includes, without limitation, those used for public street lighting purposes; and/or (4) perform any other work deemed necessary, useful, or desirable by the City (collectively, "**City Work**"). The City reserves the rights to do any and all City Work without any admission on its part that the City would not have such rights without the express reservation in this Master License. In the event that the City Engineer determines that any City Work will require the Equipment, Vertical Infrastructure, and/or Utility Infrastructure to be rearranged and/or relocated, Licensee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the nature of the City Work requires Licensee to relocate its Equipment to a new location outside of the License Area, in whole or in part, and/or on different Vertical Infrastructure and/or Utility Infrastructure, the City shall prioritize processing a new Site License Application submitted by Licensee for the new License Area location, subject to the terms and conditions of this Master License, all Regulatory Approvals, and applicable Laws. If Licensee fails or refuses to either permanently or temporarily rearrange and/or relocate the Equipment, Vertical Infrastructure, and/or Utility

Infrastructure within a reasonable time, which in no event shall be less than thirty (30) days and no more than ninety (90) days following Licensee's receipt of written notice from the City Engineer of the City's intention to undertake City Work which requires the rearrangement and/or relocation of the Equipment, Vertical Infrastructure, and/or Utility Infrastructure, then thereafter, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at Licensee's sole cost and expense. The City will use reasonable efforts to provide Licensee with at least six (6) months' prior notice, but is only obligated to provide ninety (90) days' prior notice. The City may exercise its rights to rearrange or relocate the Equipment, Vertical Infrastructure, and/or Utility Infrastructure without prior notice to Licensee when the City Engineer determines that the City Work is immediately necessary to protect public health or safety. The City shall not be responsible for damage to, repairs to, or maintenance of the Equipment, Vertical Infrastructure, and/or Utility Infrastructure or for any associated costs, except to the extent caused by the City, its employees, Agents, contractors, or subcontractors. The City's work to rearrange or relocate the Equipment, Vertical Infrastructure, and/or Utility Infrastructure shall be deemed to be Reimbursable Fees, and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee's receipt of the City's invoice, accompanied by reasonable evidence of the Reimbursement Fees so incurred by the City. In addition, Licensee shall indemnify, defend, and hold any and all Indemnified City Parties harmless from and against any Claims in connection with rearranging or relocating the Equipment, Vertical Infrastructure, and/or Utility Infrastructure, or turning on or off any water, oil, gas, electricity, or other utility service in connection with the Equipment, Vertical Infrastructure, and/or Utility Infrastructure, except to the extent of the gross negligence or willful misconduct of the City, the Indemnified City Parties, or any of them. Within ninety (90) days after any Equipment, Vertical Infrastructure, and/or Utility Infrastructure have been rearranged or relocated, Licensee shall file as-built plans and maps with the City Engineer in the same manner and subject to the same requirements as provided in **Section 7.10** (As-Built Plans and Maps).

### **8.5.2. Rearrangement and Relocation to Accommodate Third Parties**

Licensee shall reasonably cooperate with and promptly respond to requests to rearrange or relocate the Equipment, Vertical Infrastructure, and/or Utility Infrastructure to accommodate third parties authorized to use the Public Rights-of-Way ("Third-Party Accommodations"). All costs to perform any Third-Party Accommodations shall be borne by the person or entity to be accommodated; provided, however, that Licensee shall be solely responsible to collect any costs incurred by Licensee from such third party and the City shall have no liability to Licensee for any such costs. Prior to any Third-Party Accommodations performed by Licensee, Licensee shall be permitted to require: (1) either a cash deposit, bond, or other surety from the person or entity to be accommodated, in a commercially reasonable form and in an amount reasonably estimated by Licensee to cover the costs associated with the proposed Third-Party Accommodations; and (2) a written agreement signed by the person or entity to be accommodated to indemnify, defend, and hold Licensee and its Agents harmless from and against any and all Claims that arise in connection with the proposed Third-Party Accommodations, except to the extent any Claims are directly caused by Licensee's or its Agent's negligence or willful misconduct. Nothing in this Master License or any Site License shall be construed to require Licensee to perform any Third-Party Accommodations that would materially reduce, impair, or otherwise diminish Licensee's Equipment or Licensee's operations in the License Area. Within ninety (90) days after any Third-Party Accommodations, Licensee shall file as-built plans and maps with the City Engineer in the

same manner and subject to the same requirements as provided in **Section 7.10** (As-Built Plans and Maps).

### **8.5.3. No Right to Rearrange or Relocate City Property**

Nothing in this Master License or any Site License will be construed to require the City or authorize Licensee to change any street grade, width, or location, or add, remove, or otherwise change any improvements owned by the City or any other public agency located in, on, under, over, along, or about the License Area or any Public Rights-of-Way, which includes, without limitation, any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles, and utility systems for gas, water, electric, or telecommunications, for Licensee's or any third party's convenience or necessity.

## **9. UTILITIES**

Licensee shall be responsible to secure its own electricity services for its Permitted Use in each License Area. Licensee shall not be permitted to "submeter" from any electrical service provided to the City on any License Area without the City's prior written consent, which the City may withhold in its sole and absolute discretion, and further subject to the City and Licensee entering into a separate lease, license, or other agreement for such submetering. Licensee shall timely pay when due all charges for all electricity service furnished to its Equipment in the License Area. Any electric meters for Licensee's Equipment installed in any License Area shall be installed pursuant to the Municipal Code.

While the City is not obligated to make its Utility Infrastructure available to Licensee, nonetheless, the City shall make a reasonable effort, where the City deems feasible and reasonable to do so, in its sole discretion, to make its Utility Infrastructure available in connection with each proposed License Area and associated Vertical Infrastructure location identified by Licensee in its Site License Application. In the event that Licensee submits a Site License Application to the City for a proposed License Area, but the City is unwilling to allow Licensee to use the City's Utility Infrastructure at such License Area, Licensee may propose the installation of Utility Infrastructure owned by a third party.

## **10. TAXES AND LIENS**

### **10.1. Taxes, Assessments, and Other Impositions**

Licensee agrees to pay when due (and prior to delinquency) any and all taxes, assessments, charges, excises, and exactions whatsoever, including, without limitation, any possessory interest taxes, that arise from or in connection with Licensee's use within the License Area or Licensee's Equipment, Vertical Infrastructure, or Utility Infrastructure that may be imposed on Licensee under applicable Laws. Licensee shall not allow or suffer any lien for any tax assessments, charges, excises, or exactions whatsoever to be imposed on the License Area or Licensee's Equipment, Vertical Infrastructure, or Utility Infrastructure. In the event that the City receives any tax or assessment notices on or in connection with the License Area or Licensee's Equipment, Vertical Infrastructure, or Utility Infrastructure, the City shall promptly (but in no event later than thirty (30) calendar days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount directly attributable to Licensee's Equipment, Vertical Infrastructure, or Utility Infrastructure. Licensee understands and acknowledges that this Master License and any Site License may create a possessory interest subject to taxation and that Licensee will be required to pay any such

possessory interest taxes. Licensee further understands and acknowledges that any sublicense or assignment under this Master License and any options, extensions, or renewals in connection with this Master License or any Site License may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this Master License.

## **10.2. Liens**

Licensee shall keep the License Area free and clear from any and all liens or other impositions in connection with any work performed, material furnished, or obligations incurred by or for Licensee. Licensee will inform all contractors and material suppliers that provide any work, service, equipment, or material to Licensee in connection with the License Area that the License Area is public property not subject to any mechanics' liens or stop notices. In the event that any Licensee, contractor, or material supplier files any lien or imposition that attaches to the License Area, Licensee shall promptly (but in no case later than thirty (30) days after discovery) cause such lien or imposition to be released. In the event that Licensee does not cause such lien or imposition to be released within the thirty (30) day period, the City will have the right, but not the obligation, to cause such lien or imposition to be released in any manner the City deems proper, which includes, without limitation, payment to the lienholder, with or without notice to Licensee. Licensee shall reimburse the City for all costs and expenses incurred to cause such lien or imposition to be released (which includes, without limitation, reasonable attorneys' fees) within ten (10) days after Licensee receives a written demand from the City, together with reasonable documentation to support such costs and expenses.

## **11. LICENSEE'S OBLIGATIONS TO MAINTAIN COMPLIANCE WITH LAWS**

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

In addition to Licensee's compliance with all other Laws, and to the extent not in contravention of any applicable Law, Licensee shall conduct all activities in the License Area in accordance with the applicable requirements in the Oregon State Building Code and the Oregon Electrical Specialty Code, as adopted by the City with any legally permitted amendments, and any other applicable local building and electrical code, as those codes exist now or may be amended in the future.

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

Licensee's obligation to comply with all Laws includes all Laws related to maximum permissible exposure to RF emissions on or about the License Area, which includes all applicable FCC standards, whether such RF emissions or exposure results from the Equipment alone or from multiple fixed transmitters.

### **11.3. Compliance with PUC Rules and Regulations**

In addition to Licensee's obligation to maintain compliance with all other Laws, Licensee shall conduct all activities in the License Area in accordance with all applicable rules, regulations, and other requirements adopted or enacted by the PUC.

#### **11.4. Compliance with Prevailing Wage Regulations**

The services to be provided under this Master License and any Site License are or may be subject to prevailing wage rate payment as set forth in applicable Laws. Accordingly, to the extent that any such services are subject to the prevailing wage rate payment requirements, Licensee shall, and shall cause its Agents to, comply with all applicable Oregon Revised Statutes requirements pertaining to “public works,” including the payment of prevailing wages in connection with the services to be provided to the City hereunder (collectively, “Prevailing Wage Policies”). Within ten (10) Business Days following Licensee’s receipt of the City’s written request, Licensee shall make available, during Licensee’s regular business hours, for the City to inspect at Licensee’s corporate offices in Clackamas County, which Licensee shall designate, copies of Licensee’s payroll records that pertain to this Master License and any Site License, and other proof of compliance with the Prevailing Wage Policies consistent with the requirements in applicable Laws, as may be amended or superseded. The City shall also have the right to copy such records, subject to the City’s written agreement that the City shall only disclose such records to the extent that the City is required under applicable Laws to make such records available for review by or disclosure to third parties.

Licensee shall defend, indemnify, and hold the City and Indemnified City Parties harmless from and against any and all present and future Claims that arise from or in connection with Licensee’s obligation to comply with Prevailing Wage Policies, and all Laws with respect to the installation, construction, or other work in connection with this Master License and any Site License, which includes, without limitation, any and all Claims that may be made by Licensee’s Agents or any other contractors, subcontractors, or other third parties pursuant to applicable Laws, as may be amended or superseded in the future.

Licensee hereby waives, releases, and discharges forever the City and Indemnified City Parties from any and all present and future Claims that arise from or in connection with Licensee’s obligation to comply with Prevailing Wage Policies and all Laws with respect to the installation, construction, or other work in connection with this Master License and any Site License.

## **12. PUBLIC WORKS’ OPERATIONS**

### **12.1. City’s Access to License Area**

Except as specifically provided otherwise in this Master License, the City and its Agents have the absolute right to access any License Area, in whole or in part, at any time, without notice, for any purpose; however, the City and its Agents shall not interfere in any way with any Equipment, except as provided in this Master License or a Site License. The City will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance, or other damages that may arise from the City’s or its Agents’ access to the License Area, which includes, without limitation, any Equipment, Vertical Infrastructure, or Utility Infrastructure removed in an emergency or other exigent circumstances pursuant to **Section 12.4** (Emergencies), except to the extent that the damage is caused directly by the City’s or its Agent’s gross negligence or willful misconduct, and not contributed to by Licensee’s or its Agents’ or Invitees’ acts, omissions, or negligence.

## **12.2. City's Maintenance, Repairs, or Alterations to City Property**

The City may maintain, alter, add to, repair, remove from, and/or improve the License Area, as the City may, in its sole discretion, deem necessary or appropriate for its street light operations and other municipal functions. The City shall not be obligated to maintain or repair the License Area, in whole or in part, solely for Licensee's benefit. Except as provided otherwise in this Master License, neither any City work in any License Area nor any condition on any License Area will: (1) entitle Licensee to any damages; (2) excuse or reduce any obligation by Licensee to pay any sums due, including, but not limited to, Annual Fees or Additional Fees, or perform any covenant under this Master License or any Site License; or (3) constitute or be construed as a constructive termination of this Master License or any Site License or as constructive eviction or termination from the License Area.

## **12.3. Notice to Licensee for Non-Emergency Maintenance or Repairs**

From time-to-time, the City may find it necessary or appropriate to perform work in the License Area that temporarily affects the Equipment or requires the Equipment to be temporarily powered down. In non-emergency circumstances, the City will use reasonable efforts to: (1) make a good-faith effort to provide prior notice to Licensee's On-Call Representative; (2) to allow Licensee's On-Call Representative to observe the City's work; and (3) avoid or minimize disruption to Licensee's ordinary operations in the License Area, taking into account any exigencies that may threaten persons or property. The provisions in this **Section 12.3** will not be construed to impede or delay the City's authority and ability to make changes to the License Areas necessary to maintain street light services, traffic control services, any municipal utility services (to the extent permissible under applicable Laws), or any other municipal functions carried out for the public's health, safety, welfare, or benefit.

## **12.4. Emergencies**

In emergencies, and unless expressly provided in applicable Laws, the City's work and operations will take precedence over Licensee's operations, which includes, without limitation, any Equipment operated in the License Area, and the City may access the License Area, in whole or in part, as the City deems necessary, in its sole and absolute determination and in accordance with this **Section 12.4**, with or without notice to Licensee. When safe and practicable, as solely determined by the City, the City will notify Licensee of any emergency or other exigent circumstances that requires the City to remove or replace any Vertical Infrastructure or the Utility Infrastructure serving the Vertical Infrastructure, as the case may be, or other City Property and will allow Licensee to remove its Equipment before the City removes or replaces such Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) or other City Property; provided, however, that the City will remove the Equipment from the License Area when, in the City's sole determination, it would: (1) be unsafe or not practicable to wait for Licensee to perform (or cause to be performed) the work; (2) result in significant delay; or (3) otherwise threaten or compromise public health, safety, welfare, or public services. The City will remove any Equipment with reasonable care and store such Equipment for retrieval by Licensee. Licensee shall have the right to reinstall such removed Equipment (or equivalent replacement Equipment), at Licensee's sole expense, on the repaired or replaced Vertical Infrastructure, including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be, and/or License Area, in accordance with the provisions in this Master License, any applicable Site License, and all applicable Laws. Licensee expressly acknowledges that any act(s) taken by the City pursuant to this **Section 12.4**, which includes, without limitation, any Equipment removal or

storage, will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

### **13. INDEMNIFICATION**

#### **13.1. Licensee's Indemnification Obligations**

Licensee, for itself and its successors and assigns, shall indemnify, defend, and hold the Indemnified City Parties harmless from and against any and all Claims incurred in connection with, or arising in whole or in part from, any act or omission by Licensee or its Agents, licensees, customers, or invitees in connection with this Master License, any Site License, or any Equipment, including, without limitation, Claims on the basis of RF emissions, whether any negligence may be attributed to any Indemnified City Parties or not, whether any liability without fault is imposed or sought to be imposed on any Indemnified City Parties or not, but except to the extent that such Claim is caused by the gross negligence or willful misconduct of the City, the Indemnified Parties, or any of them. Licensee's obligations under this **Section 13** include, without limitation, all reasonable fees, costs, and expenses for attorneys, consultants, and experts, and the City's actual costs to investigate and defend any Claim. Licensee expressly acknowledges and agrees that: (1) Licensee has an immediate and independent obligation to defend any Indemnified City Parties from any Claim that falls within this **Section 13**, even when the allegations in the Claim are or appear to be groundless, fraudulent, or false; and (2) Licensee's obligations under this **Section 13** arise at the time any Indemnified City Parties tender such Claim to Licensee, and continue until such Claim's final non-appealable resolution. Licensee's obligations under this **Section 13.1** shall survive this Master License's and any applicable Site License's expiration, revocation, or termination.

#### **13.2. Licensee's Defense of City**

In the event that any Claim is brought against any Indemnified City Parties in connection with any subject matter for which any Indemnified City Parties are indemnified by Licensee under this Master License or any Site License, Licensee shall, upon written notice and at Licensee's sole cost and expense, resist and defend against such Claim with competent and experienced legal counsel reasonably acceptable to the City, the Indemnified Parties, or any of them. Such legal counsel retained by Licensee shall: (1) possess not less than ten (10) years' direct experience in similar actions or proceedings as that brought against the Indemnified City Parties; (2) be duly licensed to practice law in the State of Oregon; (3) have no past or pending disciplinary actions by any United States tribunal or state bar association; and (4) have no actual or potential conflicts of interest with any Indemnified City Parties. Licensee shall not, without the City's written consent, enter into any compromise or settlement agreement on any Indemnified City Parties' behalf that: (a) admits any liability, culpability, or fault whatsoever on any Indemnified City Party's part; or (b) requires any Indemnified City Party to take any action, which includes, without limitation, any change in the City's policies, or pay any money. Nothing in this Master License shall be construed to limit or preclude any Indemnified City Parties or their respective legal counsel from cooperating with Licensee and participating in any judicial, administrative, or other litigation or proceeding. Licensee's obligations under this **Section 13.2** shall survive this Master License's and any applicable Site License's expiration, revocation or termination.

## 14. INSURANCE

Prior to any activities by Licensee on the License Area or other City Property, Licensee and its contractors and subcontractors shall comply with all insurance requirements and other obligations contained in **Exhibit B**, attached hereto and incorporated herein, and shall provide the City with all required certificates, endorsements, and other documentation. The City shall have the right to amend or replace the insurance requirements and other obligations contained in **Exhibit B**, one time during any consecutive sixty (60) month period during the Term of this Master License, upon sixty (60) days' prior written notice to Licensee, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. Any noncompliance with any insurance requirements in this Master License by Licensee, or its contractors or subcontractors, shall entitle the City to declare Licensee in default of this Master License and any affected Site Licenses, subject to Licensee's right to cure such non-compliance within the time period prescribed in this Master License following Licensee's receipt of the City's written notice alleging Licensee's non-compliance with any required insurance in **Exhibit B**.

## 15. LIMITATIONS ON LIABILITY

### 15.1. General Limitation on City's Liability

Licensee expressly acknowledges that the City is not responsible or liable to Licensee for any and all Claims that arise in connection with: (1) acts or omissions by persons or entities using the sidewalk, street, or other areas adjoining, adjacent to, or connected with any License Area; (2) any utility service interruption; (3) theft; (4) burst, stopped, or leaking water, gas, sewer, steam, or other pressurized pipes; (5) fires, floods, earthquakes, or other *force majeure*; (6) any vehicular collision on or about the License Area or other City Property; (7) any costs or expenses incurred in connection with any relocation or rearrangement as provided in **Section 8.5** (Rearrangement and Relocation); or (8) any costs or expenses incurred in connection with any removal or restoration as provided in this Master License or any Site License; all except to the extent such events are caused directly by the gross negligence or willful misconduct of the City, the Indemnified City Parties, or any of them. Licensee, in perpetuity, expressly waives and releases all Claims it may have against the City or any Indemnified City Parties, whether known or unknown, whether foreseeable or unforeseeable, that arise in connection with the events described in this **Section 15.1** as may be related to this Master License, any Site License, or locations on or about the License Area. The provisions in this **Section 15.1** shall survive this Master License's and any applicable Site License's expiration, revocation, or termination.

### 15.2. Consequential, Indirect, or Punitive Damages

Neither party will be liable under this Master License for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption, loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise. Licensee expressly acknowledges and agrees that the Annual Fees and Additional Fees payable under this Master License do not take into account any potential liability on the City's part or any Indemnified City Parties' part for consequential or incidental damages. The City would not be willing to enter into this Master License or issue any Site Licenses unless Licensee completely waived any Claims against the City or any Indemnified City Parties, to the fullest extent permitted by applicable Laws, for consequential or incidental damages due to the acts or omissions by

the City or its Agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligation placed on Licensee or other waivers contained in this Master License, and as material consideration for this Master License and all Site Licenses (if any), Licensee fully releases, waives, and discharges forever any and all Claims against the City for consequential, special, indirect, punitive, and incidental damages that may arise from or in connection with this Master License or any Site License, which includes, without limitation, any lost profits related to any disruption to Equipment and any interference with uses or operations conducted by Licensee under this Master License and/or any Site Licenses, from any cause whatsoever, and whether or not due to the active or passive negligence or willful misconduct by the City or any Indemnified City Parties, and covenants not to sue for such damages the City, the City's departments, and all City agencies, officers, directors, and employees, and all persons acting by, through, or under them. The provisions in this **Section 15.2** shall survive this Master License's and any applicable Site License's expiration, revocation, or termination.

### **15.3. No Personal Liability for City Personnel**

In no event will any City board, agency, member, officer, employee, or other Agent be personally liable to Licensee, or its successors or assigns, for any default, breach, other nonperformance, or unpaid sum by the City. The provisions in this **Section 15.3** shall survive this Master License's and any applicable Site License's expiration, revocation, or termination.

### **15.4. No Relocation Assistance**

This Master License and any Site License shall not create any right in Licensee to receive any relocation assistance or payment for any reason under the Oregon Department of Transportation's Relocation and Reimbursement Policy or the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 *et seq.*), as either may be amended or superseded, or any similar Laws upon or after any termination. To the extent that any such Laws may apply, Licensee waives, releases, and relinquishes forever any and all Claims that it may have against the City, or the urban renewal agency activated by the City pursuant to ORS 457.035 and 457.045, for any compensation from the City or said urban renewal agency, except as provided in **Section 23** (Condemnation).

## **16. HAZARDOUS MATERIALS**

### **16.1. Hazardous Materials in the License Area**

Licensee covenants and agrees that neither Licensee nor its Agents, carriers, tenants, subtenants, sublicensees, assignees, and/or Invitees will cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed of, or Released in, on, under, over, along, or about the License Area or any other City Property, in whole or in part, or transported to or from any City Property in violation of any Environmental Laws, except that Licensee may use small quantities of Hazardous Materials as needed for routine operation, cleaning, and maintenance of Licensee's Equipment that are customarily used for routine operation, cleaning, and maintenance of such Equipment and so long as all such Hazardous Materials are contained, handled, and used in compliance with all Environmental Laws.

## **16.2. Hazardous Material Release Notice**

Licensee shall immediately notify the City if and when Licensee learns, or has reason to believe, any Hazardous Material Release has occurred in, on, under, over, along, or about the License Area or other City Property caused by Licensee or its Agents, carriers, tenants, subtenants, sublicensees, assignees, and/or Invitees; however, no default may be declared by the City pursuant to this **Section 16.2** unless Licensee has actively concealed or otherwise taken no action regarding a Hazardous Material Release after Licensee learns or has reason to believe that a Hazardous Material Release has occurred. Licensee will not be deemed to have assumed liability for any such Release by giving such notice, unless such Release was caused by or arose in connection with the acts, omissions, or negligence of Licensee or its Agents, carriers, tenants, subtenants, sublicensees, assignees, and/or Invitees.

## **16.3. Licensee's Hazardous Material Indemnification Obligations**

If Licensee breaches any obligations contained in this **Section 16** (Hazardous Materials), or if any act, omission, or negligence by Licensee or its Agents, carriers, tenants, subtenants, sublicensees, assignees, and/or Invitees, results in any contamination on or about the License Area or other City Property, or in a Hazardous Material Release from, on, about, in, or beneath the License Areas or any other City Property, in whole or in part, or any Environmental Law violation, then Licensee, for itself and its successors and assigns, shall indemnify, defend, and hold the City and any Indemnified City Parties harmless from and against any and all Claims (including damages for decrease in value of the License Area or other City Property, the loss or restriction of the use of usable space in the License Area or other City Property, and sums paid in settlement of Claims, attorneys' fees, consultants' fees, and experts' fees, and related costs) that arise during or after the Term related to or in connection with such Release or violation; provided, however, Licensee shall not be liable for any Claims to the extent such Release or violation was caused directly by the City's gross negligence or willful misconduct. Licensee's indemnification obligation includes all costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought or Released onto the License Area or other City Property by Licensee, or its Agents or Invitees, and to restore the License Area or other City Property to its condition prior to such introduction or Release, or to correct any Environmental Law violation. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City and the other Indemnified City Parties from any Claim that actually or potentially falls within this indemnity provision, even if the allegations supporting the Claim are or may be groundless, fraudulent, or false, and that said obligation arises at the time such Claim is tendered to Licensee by the Indemnified City Party and continues until the Claim is finally resolved. Without limiting the foregoing, if Licensee or any of its Agents or Invitees causes any Hazardous Material Release on, about, in, or beneath the License Area or other City Property, then in any such event Licensee shall promptly, at no expense to any Indemnified City Party, take any and all necessary actions to return the License Area and/or other City Property, as applicable, to substantially the same condition existing prior to such Hazardous Materials Release in the License Area or other City Property, or otherwise abate the Release in accordance with all Environmental Laws, except to the extent such Release was caused directly by the City's willful misconduct. Licensee shall afford the City a full opportunity to participate in any discussions with regulatory agencies regarding any settlement agreement, cleanup, or abatement agreement, consent decree, or other compromise or proceeding that involves Hazardous Material Release on or about the License Area. Notwithstanding the foregoing or any other provision in this Master License, Licensee shall not be liable or responsible for environmental or industrial hygiene conditions that existed before the execution of the applicable Site License, but Licensee will have the burden of proving that the condition existed prior to the execution of the applicable Site License; and even if it did

exist prior to the execution of the applicable Site License, if Licensee's use of or construction in the License Area causes a Hazardous Materials Release, Licensee shall be solely liable for all costs related to the clean-up of the Hazardous Materials Release to pre-contamination condition.

## **17. INTERFERENCE**

### **17.1. Licensee's Obligation Not to Cause Interference**

Licensee may not install, maintain, or operate any Equipment in a manner that interferes with or impairs other communication (radio, telephone, data, and/or other transmission or reception) or computer equipment lawfully used by any persons or entities, which includes the City and its Agents and Invitees, which includes, without limitation, any first responders or other public safety personnel. Such interference will be a default by Licensee under this Master License and any applicable Site License. Upon notice from the City, by calling Licensee's network operations center at 1-800-832-6662, Licensee shall promptly eliminate such interference at no cost to the City. Licensee will be required to use its best efforts to remedy and cure such interference without any impairment to any City operations. If Licensee does not promptly cure such default, the parties acknowledge that continued interference may cause irreparable injury to the City and, therefore, the City will have the right to bring an action against Licensee to, at the City's election, immediately enjoin such interference and/or to terminate all Site Licenses where the Equipment causes interference or impairment to other communications signal equipment existing at the time of installation of Licensee Equipment. The parties acknowledge that Licensee possesses technical expertise that puts Licensee in the best position to identify and mitigate interference sources, and Licensee shall be primarily responsible for identification and mitigation work. Notwithstanding the foregoing, the City and Licensee hereby agree to comply with FCC guidelines and protocols with regard to third-party interference.

## **18. DEFAULT**

### **18.1. Defaults and Cure Periods**

The parties agree that any failure to perform or observe any term, condition, obligation, or other provision in this Master License or any Site License shall be a default. For any monetary default, the defaulting party shall have thirty (30) days after written notice from the non-defaulting party to perfect a cure. The defaulting party shall not be entitled to any additional time to cure a monetary default. For any non-monetary default, the defaulting party shall have thirty (30) days after written notice from the non-defaulting party to perfect a cure; provided, however, that for any non-monetary default that cannot reasonably be cured within thirty (30) days, the defaulting party shall have additional time as is reasonably necessary to perfect the cure if the defaulting party commences to cure the default within the first thirty (30) days after notice and diligently pursues the cure to completion.

### **18.2. Licensee's Remedies**

Except as may be otherwise provided elsewhere in this Master License, Licensee's sole remedies for the City's uncured default will be: (1) to terminate the Site License(s) affected by the uncured default on thirty (30) days' prior written notice; and (2) an action for limited damages, as set forth in **Section 15** (Limitations on Liability).

### **18.3. Licensee’s Uncured Default and the City’s Remedies**

If Licensee does not cure its default within the applicable cure period in **Section 18.1**, then thereafter the City may elect any of the following remedies:

- (a) Suspend Licensee’s access to the License Area to which the default pertains;
- (b) Terminate the specific Site License Agreement(s), or affected portion thereof, covering the License Area(s) to which the default pertains;
- (c) Require Licensee’s obligation to which the default has been declared to be specifically performed;
- (d) Continue in effect any applicable Site Licenses to which the default pertains, with the right of the City to enforce all its rights and remedies, which include, without limitation, the right to receive all Annual Fees, Additional Fees, Default Fees, and other sums as they may become due and to maintain an action at law against Licensee for damages directly incurred by the City arising directly from Licensee’s uncured default; and
- (e) Any other rights or remedies available to the City at law or in equity.

### **18.4. City’s Uncured Default and Licensee’s Remedies**

If the City does not cure its default, then thereafter, Licensee may bring an action for specific performance or actual damages, subject to all limitations of **Section 15**.

### **18.5. Default Fees**

In addition to all other rights and remedies available to the City, the City may require Licensee to pay an Additional Fee to offset the City’s administrative cost to enforce compliance with the non-monetary terms of this Master License or any Site License, as more particularly described on **Schedule 3** (each a “**Default Fee**”). Licensee shall pay the Default Fee within thirty (30) days after Licensee’s receipt of a written demand from the City. If Licensee fails to timely pay the Default Fee or cure the underlying default within the applicable cure period, the City shall have the right (but not the obligation) to send Licensee a follow-up notice and demand for an additional Default Fee that will be due and payable within thirty (30) days. Licensee’s obligation to pay Default Fees is separate and distinct from the underlying default. Default Fee payments shall not be deemed to cure the underlying default.

### **18.6. Cumulative Remedies**

Except as otherwise provided in this Master License, all rights and remedies available to the City or Licensee are cumulative and not a substitute for any rights or remedies otherwise available to the City or Licensee.

## 19. TERMINATION

### 19.1. Master License Termination

This Master License may be terminated as follows: (1) by a non-defaulting party, upon written notice, if the defaulting party remains in default beyond any applicable cure period and the default affects all or substantially all of the Site Licenses; (2) by the City, upon written notice, if Licensee attempts to assign or otherwise transfer this Master License or all or substantially all of the Site Licenses in a manner that violates this Master License; or (3) by Licensee, upon sixty (60) days' prior written notice to the City, for any or no reason.

### 19.2. Site License Termination

Any Site License subject to this Master License may be terminated as follows: (1) by a non-defaulting party, upon written notice, if the defaulting party remains in default beyond any applicable cure period; (2) by the City, upon written notice, if Licensee attempts to assign or otherwise transfer the applicable Site License in a manner that violates this Master License; or (3) by Licensee, upon sixty (60) days' prior written notice to the City, for any or no reason. In addition, and subject to **Section 26** (Surrender of License Area), the City has the right to terminate any or all Site Licenses if the City determines, in the City's sole discretion, that Licensee's operations on or about the License Area: (a) adversely affect or threaten public health and safety; (b) materially interfere with the City's municipal functions; or (c) require the City to maintain City Property, City-owned Vertical Infrastructure, or Utility Infrastructure for an applicable Site License that the City no longer needs for its own purposes. In the event of termination pursuant to subsections (b) or (c), the City shall provide Licensee with at least thirty (30) days' prior written notice of termination.

## 20. ASSIGNMENT AND OTHER TRANSFERS

### 20.1. General Restriction on Assignment and Other Transfers

Except as specifically provided in **Section 20.3** (Permitted Assignments), Licensee shall not directly or indirectly assign or transfer its interests or rights, whether in whole or in part, in connection with this Master License, any Site License, or the License Area without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

### 20.2. Permitted Assignment and Other Transfer Procedures

#### 20.2.1. Proposed Assignment Notice

In the event that Licensee desires to assign or otherwise transfer any right, title, or interest in this Master License or any Site License, whether in whole or in part, and such assignment or other transfer is not a Permitted Assignment, Licensee shall first send written notice to the City (the "**Proposed Assignment Notice**"), which states in detail the proposed terms and conditions for the proposed assignment or other transfer, and complete information that the City reasonably requires to fully evaluate Licensee's request and render an informed decision, which includes, without limitation, non-confidential financial statements, business track records, references, and other information about the proposed assignee or transferee (the "**Proposed Assignee**"). In the event that Licensee does not provide all such information simultaneously with the Proposed

Assignment Notice, the Proposed Assignment Notice shall not be deemed effective until Licensee delivers all such information as the City may reasonably require.

### **20.2.2. City’s Response to Proposed Assignment Notice**

The City shall approve or disapprove any request for consent to an assignment or other transfer within thirty (30) days after the City receives a complete Proposed Assignment Notice (the “**Assignment Response Period**”). If the City fails to respond within the Assignment Response Period, the request for consent will be deemed disapproved. If the City delivers to Licensee written consent to the proposed assignment or other transfer, then Licensee shall have one hundred (100) days from such written consent to complete the assignment or other transfer. The City’s consent will be deemed to be automatically revoked if Licensee fails to complete the proposed assignment or other transfer within said one hundred (100) day period; provided, however, that the one hundred (100) day period may be extended to a date certain in a written agreement, which the City shall not unreasonably refuse if the extension is necessitated by circumstances outside Licensee’s control. Licensee shall reimburse the City on demand for all reasonable costs that the City incurs in connection with any proposed assignment, which includes the costs to investigate the acceptability of the Proposed Assignee and the City’s reasonable actual legal costs incurred in connection with considering any requested consent.

### **20.3. Permitted Assignments**

#### **20.3.1. General Authorization**

Subject to the conditions in **Section 20.3.2**, The City agrees that Licensee will be permitted to assign or otherwise transfer this Master License and any Site License(s) issued under it without the City’s prior consent, but with written notice to the City as provided below, to: (1) an Affiliate; (2) an entity that acquires all or substantially all of Licensee’s assets in the market in which the License Area is located (as the “market area” is or may be defined by the FCC); (3) an entity that acquires a Controlling interest of Licensee by a change in stock ownership or partnership interest; (4) an entity Controlled by Licensee; or (5) an entity that is a successor to Licensee either by merger or other consolidation of Licensee (each such assignment or transfer, a “**Permitted Assignment**”).

#### **20.3.2. Conditions on Permitted Assignments**

All Permitted Assignments will be subject to all of the following conditions: (1) the Proposed Assignee may use the License Area only for the Permitted Use and holds all Regulatory Approvals necessary to lawfully install, operate, and maintain Equipment on the License Area; (2) Licensee or its assignee provides the City notice of the Permitted Assignment no later than thirty (30) days following the date of the assignment and assumption of the Master License or the applicable Site Licenses, as the case may be; and (3) Licensee is not in default of its obligations under this Master License or any Site License.

### **20.4 Effect of Assignment or Other Transfer**

No assignment or other transfer by Licensee, consent to assignment by the City, or Permitted Assignment under **Section 20.3** (Permitted Assignments) will relieve Licensee from any obligation on

its part under this Master License or any Site License, unless and until the Proposed Assignee signs a written agreement, in a form reasonably acceptable to the City, to unconditionally assume all of Licensee's obligations under the Master License and Site Licenses. Any assignment or other transfer that is not in compliance with this Master License will be void and be a material default by Licensee without a requirement for notice and a right to cure. The City's acceptance of any Annual Fee, Additional Fee, or other payments from a Proposed Assignee will not be deemed to be the City's consent to such assignment or other transfer, recognition of any assignee or transferee, or waiver of any failure of Licensee or other transferor to comply with this **Section 20** (Assignment and Other Transfers).

## **21. LICENSEE'S CUSTOMERS AND COLLOCATORS**

The parties acknowledge that Equipment deployed by Licensee in the License Area(s) pursuant to this Master License and any applicable Site License may be owned and/or remotely operated by third-party wireless carrier customer ("**Carriers**") and installed and maintained by Licensee pursuant to existing agreements between Licensee and a Carrier. Such Equipment shall be treated as Licensee's Equipment for all purposes under this Master License and any applicable Site License. A Carrier's ownership and/or operation of such Equipment shall not constitute an assignment under this Master License or the applicable Site License, provided that Licensee shall not actually or purport to sell, assign, encumber, pledge, or otherwise transfer any part of its interest in the License Area to a Carrier, or otherwise permit any portion of the License Area to be occupied by anyone other than Licensee. Licensee shall remain solely responsible and liable for the performance of all obligations under this Master License and the applicable Site License with respect to any Equipment owned and/or remotely operated by a Carrier. As an illustration and not a limitation, the obligations in **Section 13** (Indemnification) and **Section 14** (Insurance) shall apply to any acts or omissions by a Carrier in connection with this Master License, the applicable Site License, and/or any Equipment. This Master License or any Site License shall not be construed to give any third party, which includes, without limitation, Carriers or any other potential third-party beneficiaries, any right, title, or interest in this Master License or any Site License, or the real or personal property(ies) that may be affected by the same. Such use by Licensee or Carriers shall not involve any physical changes to the Equipment other than changes permitted under **Section 6.5** (Future Maintenance and Repairs). Licensee shall provide prior written notice to the City that: (1) identifies the customer who will be using the Equipment and the location(s) where such use will occur; and (2) includes the appropriate Annual Fee for the additional carrier as specified in **Schedule 1**, prorated to account for any partial year. Thereafter, Licensee shall pay the additional carrier fee each year in the same manner as the Annual Fee so long as the additional carrier continues to use the Equipment. Notwithstanding anything in this Master License to the contrary, Licensee shall not be required to pay any Additional Fee to allow Licensee's customers to use wireline Equipment for data transport, backhaul, or similar services.

## **22. CASUALTY**

### **22.1. City's Rights Upon a Casualty Event**

In the event the License Area, in whole or in part, becomes damaged due to any cause, the City will have no obligation whatsoever to repair or replace the damaged License Area. The City shall only be responsible to Licensee for damage to Licensee's Equipment, Vertical Infrastructure, or Utility Infrastructure to the extent caused by the City, its employees, Agents, contractors, or subcontractors. Within approximately thirty (30) days after the date on which the City discovers damage or destruction to the License Area, the City will give Licensee notice of the City's decision whether to repair or replace

the damaged License Area and its good-faith estimate of the amount of time they will need to complete the work. If the City cannot complete the work within forty-five (45) days after the date that the City specifies in its notice, or if the City elects not to do the work, then Licensee will have the right to terminate the applicable Site License on fifteen (15) days' prior written notice to the City. If Licensee elects not to terminate the applicable Site License, payment of the Annual Fee shall abate until Licensee is able to resume full on-air operation of its Equipment in the ordinary course of Licensee's business, except that Licensee shall not be exempted from its obligations to reimburse the City for the City's actual costs caused by Licensee during this period. If the City elects to remove, rather than repair or replace, the damaged or destroyed License Area, then the applicable Site License will automatically terminate on the last day of the month in which the removal occurs. If the acts of third parties or an act of nature or other *force majeure* circumstance outside the control of Licensee or its Agents or Invitees damages or destroys the License Area to such an extent that, in the City's reasonable determination, the Equipment in the License Area cannot be operated in a safe manner, the City may elect to terminate the applicable Site License, on thirty (30) days' notice to Licensee, and require Licensee to remove the Equipment from the damaged License Area before the termination date specified in the City's notice.

## **22.2. Licensee's Rights After Termination**

In the event that the City terminates a Site License pursuant to **Section 22.1** (City's Rights Upon a Casualty Event), the City will prioritize Licensee's Site License Application for a substantially similar Site License for a different proposed License Area as a replacement for the terminated Site License.

## **23. CONDEMNATION**

If the whole or any part of a License Area is permanently taken or transferred by any local, state, or federal government authority pursuant to applicable Law, the applicable Site License will automatically terminate as to the part of the License Area taken or transferred on the date the permanent taking or transfer occurs. The City will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Licensee will have no Claim against the City for the value of any unexpired term of the applicable Site License, or otherwise, except that Licensee may claim any portion of the award that is specifically allocable to Licensee's loss or damage to Licensee-owned Equipment, Vertical Infrastructure, or Utility Infrastructure. The parties understand, acknowledge, and agree that this **Section 23** is intended to fully govern the parties' rights and obligations in the event of a permanent taking.

## **24. RECORDS**

### **24.1. City Audit Rights of Licensee's Accounting Records**

Licensee shall maintain, throughout the Term (and for at least four (4) years after this Master License expires or terminates), the following records at one of Licensee's physical offices within the State of Oregon, and in an electronic format: (1) identification information and physical location (e.g., a physical address and/or GPS coordinates) for all Equipment and Licensee-owned Vertical Infrastructure and Utility Infrastructure within the City's territorial and/or jurisdictional boundaries; and (2) accounting records that contain the amount and payment date for all Annual Fees and all other sums paid to the City pursuant to this Master License and any Site Licenses. To determine whether Licensee has fully and accurately paid all Annual Fees and other sums payable to the City under this Master License and any Site License, the City, or its designee, will have the right, one time in any consecutive five (5) year period

during the Term of the Master License, and so long as litigation is not pending between the City and Licensee arising from or related to this Master Agreement, to inspect and audit Licensee's accounting records at one of Licensee's offices in the State of Oregon, during regular business hours on thirty (30) Business Days' advance written notice to Licensee. Such written notice from the City must identify with specificity the period for which the City wishes to conduct its audit. Licensee shall have the right to have employees and its Agents physically present at all times that the City, its employees, or Agents are conducting any such audit, and representatives of the City shall comply with Licensee's standard accounting policies and procedures pertaining to the City's auditing of Licensee's accounting records which are considered by Licensee to be proprietary and confidential. In the event that any City audit concludes that Licensee failed to pay Annual Fees and other sums by more than ten percent (10%) of the aggregate amount of Annual Fees and other sums due under this Master License for the period identified by the City in its written notice to Licensee, then Licensee shall, within fifteen (15) Business Days after Licensee's receipt of a written invoice from the City, pay: (a) all outstanding sums; and (b) reimburse the City for the City's reasonable, actual, and documented costs and expenses to conduct the audit. Notwithstanding the foregoing, if the audit reveals that Licensee failed to pay Annual Fees and other sums by less than ten percent (10%) of the aggregate amount of Annual Fees and other sums due under this Master License for the period for which the City notified Licensee, then Licensee shall remit any underpayment within fifteen (15) days after Licensee's receipt of a written demand from the City, but shall not have to reimburse the City for the City's audit costs. If the City's audit reveals that Licensee has overpaid its Annual Fees and other sums due to the City under the Master License, then the City shall reimburse Licensee for any such overpayment within fifteen (15) days of the City's receipt of Licensee's invoice.

#### **24.2. Equipment Inspections and Audits**

The City has the right (but not the obligation) to inspect the License Area and the Equipment to: (1) inspect all the Equipment, all appurtenant structures, and any other equipment or improvements in the Public Rights-of-Way constructed, installed, laid, maintained, or operated by Licensee pertaining to this Master License and any Site License; and (2) evaluate Licensee's compliance with this Master License, any Site License, any Regulatory Approval, and all applicable Laws; however, the City shall not touch or interfere in any way with any Equipment, except as otherwise allowable herein. In the event that any such inspection or evaluation concludes that any of Licensee's Equipment, Vertical Infrastructure, or Utility Infrastructure was installed, operated, or maintained without all Regulatory Approvals, or there is a "Material Defect" in the Equipment installed, operated, or maintained pursuant to any Regulatory Approval, then the costs of the City's inspection or evaluation, including any costs or expenses by any third-party inspectors or consultants, shall be deemed a Regulatory Fee, and Licensee shall promptly reimburse the City for the same within thirty (30) days of Licensee's receipt of the City's invoice, accompanied by reasonable evidence of the Regulatory Fee so incurred by the City. A "Material Defect" means: (a) a substantial deviation from the Approved Plans; and/or (b) an existing violation of an objective health and safety standard which materially and adversely affects the public health or safety of the general public.

#### **24.3. Estoppels**

Licensee, at any time throughout the Term and not less than thirty (30) Business Days following Licensee's receipt of written notice from the City, shall execute, acknowledge, and deliver to the City or its designee an estoppel certificate for the requested Site License with the following statements: (1) that Licensee has accepted the License Area (or, if Licensee has not done so, that Licensee has not accepted

the License Area, in whole or in part, and specifying the applicable License Areas and reasons for non-acceptance); (2) the Site License Effective Date; (3) the Effective Date and Expiration Date of this Master License; (4) that the Master License is in full force and effect and whether or not the Master License and the Site License have been modified and, if so, the manner in which they were modified; (5) whether any defenses currently exist against any action to enforce Licensee's obligations under this Master License (and, if so, specifying the same); (6) whether Licensee believes that the City failed to perform any obligations under this Master License or the Site License (and, if so, specifying any obligations that Licensee believes that the City has failed to meet); (7) the dates, if any, on which the Annual Fees and Additional Fees have been paid; and (8) any other information that may be reasonably required by the City pertaining to the status of the requested Site Licenses.

## **25. RULES AND REGULATIONS**

At all times throughout the Term, Licensee shall fully and faithfully comply with any and all reasonable rules, regulations, and instructions that the City may from time-to-time establish and/or amend with respect to the Permitted Use, the License Area, or the Public Rights-of-Way.

## **26. SURRENDER OF LICENSE AREA**

### **26.1. Licensee's Removal and Restoration Obligations**

Within thirty (30) days after this Master License or any Site License expires or terminates, as the case may be, Licensee shall, at Licensee's sole cost and expense: (1) peaceably remove its Equipment and any Licensee-owned Vertical Infrastructure and Utility Infrastructure from the License Areas affected by the expiration or termination; (2) restore any such License Areas and other City Property affected by the removal to the condition that existed immediately before Licensee installed its Equipment, reasonable wear and tear excepted to the City Engineer's satisfaction; and (3) surrender such License Areas to the City, free and clear from any debris, hazards, liens, and encumbrances caused by Licensee. The obligations under this **Section 26.1** will survive this Master License's or any Site License's expiration, revocation, or termination. If Licensee fails to timely perform its removal and restoration obligations under this Master License, then: (a) Licensee shall remain responsible for all its obligations under this Master License and the applicable Site License, and liable for all Claims that may arise in connection with the Equipment and any Licensee-owned Vertical Infrastructure and Utility Infrastructure through and until such Equipment and Licensee-owned Vertical Infrastructure and Utility Infrastructure are completely removed and the affected areas are completely restored; (b) the City shall have the right (but not the obligation) to perform such obligations; (c) the City shall have the right to store, sell, or destroy any Equipment, Licensee-owned Vertical Infrastructure and Utility Infrastructure, improvements, personal property, or other things installed by Licensee in connection with this Master License and the applicable Site License; and (d) Licensee shall reimburse the City for all costs incurred by the City in connection with such removal and restoration work within thirty (30) days after a written demand for reimbursement and reasonable documentation to support such costs. Within ninety (90) days after any Equipment, Licensee-owned Vertical Infrastructure and Utility Infrastructure have been removed, Licensee shall file as-built plans and maps with the City Engineer, in the same manner and subject to the same requirements as provided in **Section 7.10 (As-Built Plans and Maps)**.

## 26.2. Abandonment

At its option, the City may deem any Licensee-owned Equipment, Vertical Infrastructure, or Utility Infrastructure to be abandoned that remains on any License Area or other City Property for more than sixty (60) days after this Master License or any applicable Site License expires or terminates. In any case, the City may dispose of abandoned Equipment in any lawful manner, at Licensee's sole cost. Licensee agrees that Oregon Civil Code sections 1980 *et seq.*, as may be amended or superseded, and similar Laws addressing abandoned property by residential or commercial tenants do not apply to any abandoned Equipment.

## 26.3. Hold Over

If Licensee fails to surrender the License Area under a particular Site License as required in this Master License, and the City consents, in writing, to Licensee's holdover, the Term will be automatically extended for such Site License on a month-to-month basis for up to one (1) year, on the same terms and conditions except that the Annual Fee shall automatically increase by one hundred twenty-five percent (125%) over the then-current Annual Fee. Any further month-to-month holdover after one (1) year will be subject to an Annual Fee increase of one hundred fifty percent (150%) over the Annual Fee in effect at the start of the holdover. Any holdover without the City's written consent will be a default by Licensee and will entitle the City to exercise any or all rights and remedies for an uncured Default.

## 27. LETTER OF CREDIT

### 27.1. Letter of Credit Amount

Prior to any installation, construction, or other work performed by Licensee pursuant to this Master License or any Site License, Licensee shall furnish the City with an irrevocable standby letter of credit, with drawing instructions acceptable to the City, to be drawn on a bank acceptable to the City, in an amount equal to Ten Thousand Dollars (\$10,000) (the "LC") as security to provide recourse for the City (at its option) in the event that Licensee defaults on its obligations to remove its Equipment from any License Area for a terminated or expired Site License or to perform its restoration obligations as set forth in **Section 26.1** under this Master License. In the alternative, Licensee may provide a performance bond in a form approved by the City.

### 27.2. LC Amount Replenishment

In the event that the City draws on the LC, in whole or in part, to cure a default by Licensee under **Section 26.1**, then Licensee shall replenish the LC to its full amount within thirty (30) days following Licensee's receipt of written notice from the City that the City requires replenishment of the LC in accordance with this **Section 27.2**. The City may, in the City's reasonable discretion, require Licensee to increase the LC amount from time-to-time if the City determines that Licensee has been habitually placed in default of Site Licenses by the City in connection with Licensee's performance of its removal and restoration obligations under **Section 26.1** of this Master License and, therefore, the City warrants additional security to ensure Licensee's performance of its **Section 26.1** obligations.

### 27.3. LC Application

Licensee agrees that the City may draw upon the LC, in whole or in part, to remedy any failure by Licensee to perform any term, covenant, or condition in **Section 26.1** of this Master License. In the event that the City draws on the LC, in whole or in part, the City will not be deemed to have waived any rights under this Master License, or legal or equitable rights whatsoever.

## 28. MISCELLANEOUS PROVISIONS

### 28.1. Notices

Except as may be specifically provided otherwise in this Master License, all notices, demands or other correspondence required to be given in connection with or pursuant to this Master License must be written and delivered through: (1) an established national courier service that maintains delivery records and confirmations; (2) hand delivery; or (3) certified or registered U.S. Mail, with prepaid postage and return receipt requested, and addressed as follows:

To the City:	City of Wilsonville Attn: Zachary Weigel, City Engineer 29799 SW Town Center Loop East Wilsonville, OR 97070
with a required copy to:	City of Wilsonville Attn: City Attorney's Office 29799 SW Town Center Loop East Wilsonville, OR 97070
To Licensee:	New Cingular Wireless PCS, LLC Attn: Network Real Estate Administration Re: WILSV002 (OR) Fixed Asset No: 14824039 1025 Lenox Park Blvd NE, 3 <sup>rd</sup> Floor Atlanta, GA 30319
with a required copy to:	New Cingular Wireless PCS, LLC Attn: AT&T Legal Dept. - Network Operations Re: WILSV002 (OR) Fixed Asset No: 14824039 208 S Akard Street Dallas, TX 75202-4206

All notices, demands, or other correspondence in connection with this Master License shall be deemed to have been delivered: (1) the date delivery is made by personal delivery or overnight delivery; (2) the date an attempt to make delivery fails if a party changes its address without proper notice or refuses to accept delivery after an attempt; or (3) two days after deposit if delivered by U.S. certified mail. Telephone, facsimile, and email information are provided for convenience and for couriers who may require such information. Any notice given solely through electronic means will not be deemed to be effective notice. Any copies required to be given constitute an administrative step for the parties'

convenience and not actual notice. The parties may change the notice addresses above from time-to-time through written notice to the addresses above or the then-current notice address.

## **28.2. Waivers**

No failure by either the City or Licensee to insist that the other strictly perform any obligation, term, covenant, or condition under this Master License, or to exercise any rights, powers, or remedies in connection with the other party's failure to strictly perform such obligation, term, covenant, or condition, no matter how long the failure to insist on such performance or exercise of such rights, powers, or remedies, will be deemed to waive any default for non-performance. No behaviors, patterns, or customs that may arise between the parties with respect to their performance required under this Master License will be deemed to waive any rights, powers, or remedies the parties' may have to insist on strict performance. Neither Licensee's payment nor the City's or its Agents' acceptance of any Annual Fees, Additional Fees, or any other sums due to the City or its Agents under this Master License during any such default will be deemed to cure any such default, waive the City's right to demand material compliance with such obligation, term, covenant, or condition, or be deemed to be an accord and satisfaction for any Claim the City may have for further or additional sums. Any express waiver by either the City or Licensee in connection with any default or obligation to perform any provision, term, covenant, or condition under this Master License will: (1) be limited to the specific default or performance for which the express waiver is granted; (2) not be deemed to be a continuing waiver; and (3) not affect any other default or performance, no matter how similar or contemporaneous such other default or performance may be. The City's or Licensee's consent given in any specific instance in connection with or pursuant to this Master License will not relieve the City or Licensee from the obligation to secure the other's consent in any other or future specific instances, no matter how similar or contemporaneous the request for consent may be.

## **28.3. Integration; Amendments**

This Master License constitutes the entire agreement and understanding between the parties, and supersedes any and all prior agreements and understandings, whether written or oral, with respect to the subject matter covered in this Master License. This Master License and any Site Licenses (and any default in connection with this Master License or any Site Licenses) may not be orally changed, waived, discharged, altered, modified, amended, or terminated. This Master License and any Site Licenses (and any default in connection with this Master License or any Site Licenses) may not be changed, waived, discharged, altered, modified, amended, or terminated, except by a written instrument signed by both parties.

## **28.4. Interpretation**

The parties acknowledge and agree that the following interpretive rules will be applicable to this Master License and any Site License:

### **28.4.1. General**

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

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

In the event that the City consents to enter into this Master License with more than one Licensee, which consent the City may withhold or condition in the City's sole and absolute discretion, the obligations and liabilities imposed on Licensee under this Master License will be joint and several among the multiple Licensees to this Master License.

#### **28.4.3. Captions and Other Reference Material**

The section captions in this Master License and the table of contents have been included for the parties' convenience and reference and neither the captions nor the table of contents in no way define or limit the scope or intent of any provision in this Master License.

#### **28.4.4. Time of the Essence**

Time is expressly made of the essence in the performance of this Master License and any Site Licenses.

#### **28.4.5. Inclusive Words and/or Phrases**

Inclusive terms and/or phrases, which includes, without limitation, the terms and/or phrases "including," "such as," or similar words or phrases that follow any general or specific term, phrase, statement, or matter, may not be construed to limit the term, phrase, statement, or matter to the stated terms, statements, or matters, or the listed items that follow the inclusive term or phrase, whether any non-limitation language or disclaimers, such as "including, but not limited to," and/or "including, without limitation," are used or not. Rather, the stated term, phrase, statement, or matter will be interpreted to refer to all other items or matters that could reasonably fall within such term, phrase, statement, or matter, given its broadest interpretation.

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

Except as may be expressly provided in this Master License, the conditions, covenants, promises, and terms contained in this Master License will bind and inure to the benefit of the City and Licensee, and their respective successors and assigns.

#### **28.6. Brokers**

The parties represent to each other that neither has had any contact, dealings, or communications with any Broker in connection with this Master License, whose commission, if any, would be paid pursuant to a separate written agreement between such Broker and such party with which such Broker contracted. In the event that any Broker perfects any Claim or finder's fee based upon any such contact, dealings, or communications, the party to such written contract with such Broker shall indemnify the other party from all Claims brought by such Broker. This **Section 28.6** will survive this Master License's expiration or earlier termination.

## **28.7. Governing Law; Venue**

This Master License must be construed and enforced in accordance with the laws of the State of Oregon, without regard to the principles of conflicts of law. This Master License is made, entered, and will be performed in the City of Wilsonville, County of Clackamas, State of Oregon. Any action concerning this Master License must be brought and heard in the Clackamas County Circuit Court or, if jurisdiction is proper, the United States District Court, District of Oregon, Portland Division.

## **28.8. Attorney Fees and Costs**

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Master License and any Site License, or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by Law. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

## **28.9. No Recording**

Licensee acknowledges and agrees that: (1) Licensee shall not have the right to record this Master License, any Site License, any memorandum, or any short-form agreement in relation to this Master License or any Site License; and (2) Licensee shall, at Licensee's sole cost and expense, remove any document or other instrument recorded against the City's title to any City Property promptly upon the City's request or demand, in accordance with **Section 10.2** (Liens). In the event that this Master License or any Site License affects or is deemed to affect any real property owned by the City, Licensee may not record any document or instrument in connection with this Master License or any Site License without the City's prior written consent, which the City may withhold in the City's sole and absolute discretion.

## **28.10. No Third-Party Beneficiaries**

Neither this Master License nor any Site License is intended to (and shall not be construed to) give any third party, which includes, without limitation, Licensee's customers or any other third-party beneficiaries, any right, title, or interest in this Master License, any Site License, or the real or personal property(ies) that may be affected by the same.

## **28.11. Survival**

All terms, provisions, covenants, conditions, and obligations in this Master License and any Site License will survive this Master License's or the subject Site License's expiration or termination when, by their sense or context, such provisions, covenants, conditions, or obligations: (1) cannot be observed or performed until this Master License's or any Site License's expiration or earlier termination; (2) expressly so survive; or (3) reasonably should survive this Master License or any Site License expiration or earlier termination. Notwithstanding any other provision in this Master License or any Site License, the parties' rights to enforce any and all indemnities, representations, and warranties given or made to the other party under this Master License, any Site License, or any provision in this Master

License or any Site License will not be affected by this Master License or any Site License expiration or termination.

**28.12. Severability**

If any provision in this Master License, any Site License, or such provision’s application to any person, entity, or circumstances is held by any court with competent jurisdiction to be invalid or unenforceable: (1) such provision or its application to such person, entity, or circumstance will be deemed severed from this Master License or any Site License; (2) all other provisions in this Master License, any Site License, or their application to any person, entity, or circumstance will not be affected; and (3) all other provisions in this Master License, any Site License, or their application to any person, entity, or circumstance will be valid and enforceable to the fullest extent permitted by Law, except to the extent that such enforcement would (a) be manifestly unreasonable or manifestly inequitable under all the circumstances, or (b) undermine one or both parties’ fundamental purpose in entering this Master License.

**28.13. Jointly Drafted**

This Master License has been jointly negotiated and, although formulated at the outset by counsel for the City, the Master License has been reviewed by counsel for Licensee, and each such counsel has participated in the preparation of the final Master License. The language of this Master License shall be construed as a whole according to its fair meaning, and not strictly for or against any party, and it is agreed that no provision hereof shall be construed against any party hereto by virtue of the activities of that party or such party's attorneys.

**28.14. Authority**

Each party signing on behalf of Licensee and the City hereby warrants actual authority to bind their respective party.

**IN WITNESS WHEREOF**, the City and Licensee have executed this Master License as of the Effective Date.

**LICENSEE:**

NEW CINGULAR WIRELESS PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

**CITY:**

CITY OF WILSONVILLE,  
a municipal corporation of the State of Oregon

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Amanda Guile-Hinman, City Attorney

**EXHIBIT A**

**FORM OF SITE LICENSE AGREEMENT**

(appears behind this coversheet – 6 pages)

**APPLICATION NO. \_\_\_\_\_**  
**SITE LICENSE NO. \_\_\_\_\_** *[insert number in consecutive order]*

*[completed and accepted application becomes the Site License Agreement]*

Pursuant to that certain Master License between the **City of Wilsonville**, a municipal corporation of the State of Oregon (the “**City**”), and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (“**Licensee**”), Licensee submits to the City two partially executed counterparts of this Site License Application, together with all the materials listed below, as its Site License Application, in accordance with Section 6 under the Master License:

1. **Exhibit A-1**, which contains a description and depiction of the proposed License Area, including a summarized list that identifies all Vertical Infrastructure and Utility Infrastructure serving the Equipment, covered under this Site License Application;
  2. **Exhibit A-2**, which contains detailed construction plans for the proposed installation(s), including concealment elements consistent with City standards, a detailed traffic control plan for all work on and adjacent to City roadways, an inventory for all proposed Equipment to be installed on the Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be), and structural and loading analyses for the Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) covered under the Site License Application;
  3. **Exhibit A-3**, which contains a copy of each lease, license, or other agreement for Vertical Infrastructure and/or Utility Infrastructure to be used by Licensee in the License Area, executed by Licensee and, if Licensee is not the owner of such Vertical Infrastructure and/or Utility Infrastructure, the owner(s) of such Vertical Infrastructure and/or Utility Infrastructure; provided that, if such Vertical Infrastructure and/or Utility Infrastructure lease, license, or other agreement includes nondisclosure terms and Licensee is unable to obtain a waiver from the owner thereof, then **Exhibit A-3** will instead include written confirmation from the Vertical Infrastructure and/or Utility Infrastructure owner that they have entered into an agreement for Licensee’s use of the owner’s Vertical Infrastructure and/or Utility Infrastructure;
  4. A true and correct copy of the **Fee Schedule (Schedule 1)** attached to the Master License);
  5. An Annual Fee equal to \$ \_\_\_\_\_\*;
- \*Annual Fee to be calculated in accordance with the Fee Schedule to the Master License*
6. All other information and materials required for a complete application for all Regulatory Approvals issued by the City’s departments, which the City may update from time to time in accordance with applicable Laws; and
  7. If requested by the City, as provided in Section 6.3.3 of the Master License, a deposit for the City’s estimated Staff Augmentation costs.

Licensee acknowledges that: (1) this Site License will not be effective until all of the foregoing are submitted and approved, in writing, by the City, and the City returns a fully executed copy to Licensee; and (2) Licensee will not have the right to access or install Equipment in the License Area until after Licensee has: (a) submitted a complete Acknowledgment Letter to the City with all information and funds required; (b) submitted insurance information to the City as specified in **Exhibit B** to the Master License; (c) submitted the required Letter of Credit or evidence that such Letter of Credit is on file with the City; and (d) the City has provided notice to proceed by returning to Licensee a countersigned copy of the Acknowledgment Letter.

This Site License is executed and effective on the last date written below and, upon full execution will be the City's authorization for the City to begin its review of the locations, plans, and specifications proposed in this Site License Application.

**LICENSEE:**

**NEW CINGULAR WIRELESS PCS, LLC,**  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

**CITY:**

**CITY OF WILSONVILLE,**  
a municipal corporation of the State of Oregon

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

**EXHIBIT A-1**

**LICENSE AREA**

**Site License No. \_\_\_\_\_**

*[Licensee to describe and depict the proposed License Area, including a summarized list of all proposed Vertical Infrastructure and Utility Infrastructure serving the Equipment, covered under this Site License Application.]*

**EXHIBIT A-2**

**LICENSEE'S PLANS AND SPECIFICATIONS**

**Site License No. \_\_\_\_\_**

*[Licensee to attach all plans and specifications, including a traffic control plan for each site, for all Equipment proposed to be installed at all proposed Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be), and structural and loading analyses for the Vertical Infrastructure (including the Utility Infrastructure serving the Vertical Infrastructure, as the case may be) covered under this Site License Application.]*

**EXHIBIT A-3**

**LICENSEE'S LEASE, LICENSE, OR OTHER AGREEMENTS FOR VERTICAL  
INFRASTRUCTURE AND UTILITY INFRASTRUCTURE**

**Site License No. \_\_\_\_\_**

*[Licensee to attach a copy of each lease, license, or other agreement for Vertical Infrastructure and/or Utility Infrastructure to be used by Licensee in the License Area, executed by Licensee and, if Licensee is not the owner of such Vertical Infrastructure and/or Utility Infrastructure, the owner(s) of such Vertical Infrastructure and/or Utility Infrastructure; provided that, if such Vertical Infrastructure and/or Utility Infrastructure lease, license, or other agreement includes nondisclosure terms and Licensee is unable to obtain a waiver from the owner thereof, then a written confirmation from the Vertical Infrastructure and/or Utility Infrastructure owner that they have entered into an agreement for Licensee's use of the owner's Vertical Infrastructure and/or Utility Infrastructure and that Licensee and the Vertical Infrastructure owner acknowledge and agree that such Vertical Infrastructure, if replaced, will comply with adopted City design standards.]*

EXHIBIT A-4

FORM OF ACKNOWLEDGEMENT LETTER

[Licensee to complete and submit after Regulatory Approvals obtained.]

[insert date]

[insert addressee information]

RE: Site License No. \_\_\_\_\_

Dear City Manager:

This letter will confirm the following: (1) that Licensee has obtained all the Regulatory Approvals required for the Permitted Use under this Site License, and (2) the Site License Effective Date is \_\_\_\_\_, 20\_\_\_\_, which is the first day of the month after the City has signed this Acknowledgement Letter. This Site License is coterminous with the Master License that expires on \_\_\_\_\_, 20\_\_\_\_.

This letter also confirms that Licensee has submitted all required insurance information to the City and the Letter of Credit, as required under Section 27 of the Master License.

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

Sincerely,

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

encl.

- copies of all Regulatory Approvals issued by the City's departments
- Licensee's insurance certificates
- Contractor's insurance certificates
- Letter of Credit, as required by Section 27 of the Master License

SITE LICENSE NO. \_\_\_\_\_ APPROVED:

By: \_\_\_\_\_  
Bryan Cosgrove, City Manager

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

## EXHIBIT B

### LICENSEE'S INSURANCE OBLIGATIONS

#### 1. General.

A. Prior to performing work under this Agreement, Licensee shall furnish the City a certificate of insurance on a standard insurance industry ACORD form. The insurance coverage required must be issued by an insurance company licensed, authorized, permitted, or, with the City's consent, eligible to transact business in the State of Oregon, possessing a current A.M. Best, Inc. rating of A-VII or better, and evidenced coverage shall be reasonably satisfactory to the City.

B. Licensee shall, and shall require any of its contractors while working hereunder to, obtain and maintain substantially the same coverage as required of Licensee with reasonable and prudent limits, and procure and maintain, until all of their obligations have been discharged, the insurances set forth below.

C. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

D. The City in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

#### 2. Scope and Limits of Insurance.

Licensee shall provide coverage with limits of liability stated below.

A. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance, per ISO Form CG 00 01 or equivalent, with a limit of **\$2,000,000** per occurrence for bodily injury and property damage and **\$4,000,000** general aggregate, including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury, and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of **\$2,000,000** combined single limit each accident for bodily injury and property damage, covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Pollution Liability Coverage. Licensee shall maintain self-insurance in the amount of **\$2,000,000** per claim and in the aggregate covering third-party claims for bodily injury, property damage, or cleanup costs as required by law, where the pollution is caused during and by Licensee's operations under this Agreement.

D. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of **\$2,000,000** for each accident; **\$2,000,000** disease for each employee; and **\$2,000,000** disease-policy limit.

E. Builders' Risk/Installation Floater Insurance. Builders' Risk/Installation Floater Insurance or self-insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered. Licensee self-insures this risk.

(1) The Builders' Risk/Installation Floater insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by City. Licensee self-insures this risk.

(2) The Builders' Risk/Installation Floater insurance must include as additional insureds the City, Licensee, and all tiers of contractors and others with an insurable interest in the work. Licensee self-insures this risk.

(3) The Licensee is responsible for payment of all deductibles under the Builders' Risk/Installation Floater insurance policy. Licensee self-insures this risk.

**3. Additional Policy Provisions Required.**

A. Miscellaneous Provisions.

(1) Licensee's required commercial general and auto liability insurance coverage must be primary insurance with respect to the City, its officers, officials, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) The policies must contain a severability of interest clause and, to the extent permitted by law, a waiver of subrogation against the City, its officers, officials, and employees, for losses arising from work performed by Licensee for the City.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for a period of one (1) year following completion and acceptance of the work. Licensee must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this period, evidencing the insurance requirement, and including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the City with thirty (30) days' prior written notice of cancellation of any required coverage that is not replaced. Such notice shall be sent directly to:

City of Wilsonville  
City Attorney's Office  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

B. City as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability, include the City, its officers, officials, and employees as an additional insured, as their interest may appear under this Agreement, with respect to liability arising out of activities performed by Licensee. Licensor's additional insured status shall: (i) be limited to bodily injury, property damage, or personal and advertising injury caused, in whole or in part, by Licensee, its employees, Agents, or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Licensor, its employees, Agents, or independent contractors, or where such coverage is prohibited by Law, to claims arising out of the gross negligence of Licensor, its employees, Agents, or independent contractors; and (iii) not exceed Licensee's indemnification obligation under this Agreement, if any.

**4. Option to Self-Insure.**

Notwithstanding the forgoing, and provided Licensee maintains an equity balance of at least Two Hundred Million Dollars (\$200,000,000) ("**Minimum Equity Balance**"), Licensee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Licensee elects to self-insure its obligation under this Agreement to include Licensor as an additional insured, the following conditions apply: (i) Licensor shall promptly, and no later than thirty (30) days after notice thereof, provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section, and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Licensor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like. Within thirty (30) days of receipt of the City's written request for same, which request must be accompanied by this Section 4 (Option to Self-Insure), and not be made by the City to Licensee more than one (1) time in any consecutive twelve (12) month period during the Term of this Master License, Licensee shall cause an authorized representative of Licensee and Licensee's ultimate parent company to certify to the City that, as of the most recent unaudited financial statement of Licensee, Licensee maintains the Minimum Equity Balance required hereunder for the right to self-insure any of the required insurance hereunder.

The right to self-insure hereunder is limited to Licensee and any Affiliate of Licensee which is under the ultimate control of Licensee, provided that any such Affiliate of Licensee must maintain the Minimum Equity Balance. Otherwise, the right to self-insure required coverages under this Master License is prohibited unless the City, in its sole discretion, otherwise approves of the party seeking to self-insure required coverages.

**SCHEDULE 1**

**ANNUAL FEE SCHEDULE**

<b>YEAR OF TERM</b>	<b>YEAR</b>	<b>ANNUAL FEE</b>
1	2022	\$303.88
2	2023	\$313.00
3	2024	\$322.39
4	2025	\$332.06
5	2026	\$342.02
6	2027	\$352.28
7	2028	\$362.85
8	2029	\$373.73
9	2030	\$384.94
10	2031	\$396.48

**SCHEDULE 2**

**CITY'S ESTIMATED FAIR MARKET LICENSE FEES**

<b>YEAR OF TERM</b>	<b>YEAR</b>	<b>ANNUAL FEE</b>
1	2022	\$1,000
2	2023	\$1,030
3	2024	\$1,060.90
4	2025	\$1,092.73
5	2026	\$1,125.51
6	2027	\$1,159.28
7	2028	\$1,194.06
8	2029	\$1,229.88
9	2030	\$1,256.78
10	2031	\$1,294.78

**SCHEDULE 3****DEFAULT FEE SCHEDULE**

<b>VIOLATION</b>	<b>INITIAL NOTICE</b>	<b>EACH FOLLOW-UP NOTICE*</b>
unauthorized installations	\$750	\$750
failure to make required repairs within the prescribed time period under the Master License following Licensee's receipt of written notice from the City of the need to make required repairs	\$750	\$750
access violations	\$750	\$750
insurance violations	\$1,000	\$1,000

\*By mutual agreement, the City shall not be required to issue any follow-up Default Fee Notice to Licensee more than one (1) time in any consecutive thirty (30) day period, or until the expiration of the applicable cure period under the Master License to which the alleged violation applies, whichever date is later to occur.