GUIDE

League of Oregon Cities

# Telecom Toolkit

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The LOC first published a Telecommunications Tool Kit in 2010. An update was published in 2023 with the latest laws and best practices. And comprises of multiple sections. This most recent 2025 iteration replaces the former Master Utility Right-of-Way Ordinance with a Model Utility Service Utilizing the Public Rights-of-Way Ordinance.

The Introduction and Background sections and the Master License Agreement for Wireless Facilities on Vertical Infrastructure in the Public Rights-of-Way, were drafted by the attorneys at Telecom Law Firm, PC. The LOC would specifically like to thank Tripp May, Sophie Geguchadze, and Michael Johnston for their assistance with this toolkit. The attorneys at Telecom Law Firm, PC, specialize in telecommunications infrastructure, policy and contracting, and represent both public agencies and private landlords in regulatory and transactional matters. Without their work and expertise, this updated tool kit would not be possible. More information about Mr. May, Ms. Geguchadze, Mr. Johnston and Telecom Law Firm, PC is available at www.telecomlawfirm.com.

The Model Utility Service Utilizing the Public Rights-of-Way Ordinance was developed and drafted by Reba Crocker, CEO of ROW Consultants, LLC. ROW Consultants LLC was formed in 2018 and was opened after 10 years being a direct employee of a local government entity. Ms. Crocker developed, implemented, and managed a ROW program for the employer and that city experienced an increase of over 600% of funds received for use of the ROW. Ms. Crocker was contacted by other cities that needed assistance to develop and manage ROW programs similar to that employer.

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# INTRODUCTION

The League of Oregon Cities created the Telecom Toolkit to provide its constituent cities with basic guidance to navigate the often-complicated legal and technical issues related to franchising and licensing telecommunications providers in Oregon's public right-of-way (or "ROW"). The Toolkit is intended to help local officials understand the issues at a high level and implement local policies more efficiently through sample agreements and ordinances that can be modified to suit each city's unique needs and goals.

Since the last Toolkit edition published more than a decade ago, a lot has changed. More service providers seek to deploy more infrastructure to offer more diverse services than ever before. Telecom technologies and services by traditional telephone companies, cable providers and wireless carriers are converging on—and often competing with—each other. At the same time, new technologies and services are being deployed by new providers and in new ways that often do not fit neatly into traditional service-provider categories familiar to most local officials.

Likewise, significant changes in federal laws and regulations have attempted to respond and/or anticipate technological and market shifts. But many new rules (and continued modifications and challenges to those rules) can leave local governments with less certainty than before. Moreover, Oregon cities must harmonize federal laws that often erode local authority with state laws that tend to bolster municipal rights.

A detailed discussion that covers all these changes could fill volumes. To catch local officials up on the essential information, this Toolkit guide is divided into three parts:

- Part 1 provides background on legal and regulatory developments.

- Part 2 provides flow charts, decision trees and practical advice on when to use a license versus a franchise agreement.

- Part 3 describes the two templates in the Toolkit (*i.e.*, the Model Utility Service Utilizing the Public Rights-of-Way Ordinance and the Small Cell Master License Agreement), which have been developed to protect local authority and facilitate efficient and appropriate infrastructure deployment.

As a disclaimer, this Toolkit and its contents are not legal advice. Not all the templates, tools and/or potential strategies will be appropriate for every city. Likewise, each city may have unique circumstances that affect whether, how or when changes in local agreements can be implemented. Local officials should consult with legal counsel when deciding whether or how to adopt the templates, tools and/or potential strategies in this Toolkit. For example, prior franchise or license agreements will often control until their terms naturally expire. However, as new entrants emerge or old agreements lapse, this Toolkit was developed to become an appropriate starting point for most cities.

# BACKGROUND

This section summarizes the state and federal laws relevant to agreements for communication technologies in the ROW.

## 1. Communication Technologies in the ROW

Over the last decade, communications facilities in the ROW have become increasingly wireless. Cellular networks cover their broader service areas by sub-divided smaller areas called "cells".[1] In general, one wireless facility serves one cell and connects the users/devices within the cell to the broader communications network. When the user or wireless device moves around the service area, the facilities hand off the connection as the user/device leaves one cell and enters another.

Traditional wireless facilities, like tall towers or rooftop installations, often cover very large areas with low- to mid-band frequencies that propagate well over long distances and pass more easily through physical objects but offer relatively limited data capacity. The term "small cell" or "small wireless facility" generally refers to low-power radio access nodes that serve geographic areas between 20 meters and 2 kilometers in diameter at high-band frequencies, which provider higher data capacity but travel shorter distances and less efficiently through solid objects.

Despite recent trends toward wireless technologies, wireline networks remain a critical component of the overall network architecture. Whether for connecting cell sites to the broader telecommunications network, transporting data between edge data centers or connecting businesses and residences to the Internet, many communities are seeing an influx of fiber optic deployments intended to meet these immediate uses while also reserving excess capacity for future needs. A mix of traditional telecommunications providers, cable companies and regional fiber companies are all competing for access to local ROWs and sources of financing to build networks that support increasingly connected users and devices.

## 2. Oregon State Law

Through their home-rule authority, Oregon cities can impose taxes and fees in the manner the city deems appropriate to provide governmental services.[2] However, the Legislature can enact limitations on local authority over taxes and fees. Among the most relevant state-law limitations in the telecommunications context are the limits on "privilege taxes" for telecommunications carriers who actually use the ROW.

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[1] The limited frequencies available to mobile providers explains the need for the cell-based design. Cells allow providers to recycle the same frequencies many times over the same area. This approach allows more users/devices to access the network at the same time.

[2] *See Jarvill v. City of Eugene*, 613 P.2d 1, 8 (Or. 1980).

Oregon state law authorizes cities to "[d]etermine by contract, or prescribe by ordinance, the terms and conditions, including payment of a privilege tax to the extent authorized by ORS 221.515 and other charges and fees, upon which any telecommunications carrier may be permitted to occupy the streets, highways or other public property..... "[3] This statute does not apply to entities that do not "actually use" the ROW—such as entities that purchase services at wholesale rates from incumbent local exchange carriers ("ILECs") and resell them at retail rates to subscribers or VoIP providers.[4] Telecommunications carriers who fail to comply may be excluded or ejected from the ROW and/or charged penalties.[5]

ORS 221.515 caps the privilege tax for access to the ROW at 7% of annual gross revenues (less net uncollectibles).[6] However, this statute does not prevent other charges cities may impose on telecommunication providers in the ROW, like an annual registration fee and application fees for construction permits.[7]

Likewise, this statute does not necessarily limit additional taxes cities might impose on all utilities—including telecommunications utilities—that operate within the city limits, so long as the additional tax(es) do not duplicate the privilege tax for the ROW's actual use by a telecommunications carrier.[8] For example, in *Qwest Corp. v. City of Portland*, 275 Or. App. 874 (2015), the Court of Appeals rejected Qwest's position that Portland's "utility license fee"—which imposed a tax on all utilities in the city based on gross revenues—could not be lawfully imposed on Qwest in addition to Portland's telecom privilege tax. The court found that the utility license fee was not imposed on telecommunications carriers in exchange for the privilege to use the ROW as contemplated by ORS 221.515 and therefore the fee and tax could coexist.[9] However, an important proviso in Portland's ordinances allowed telecommunications carriers to deduct amounts paid for permits to use the ROW from the privilege tax such that if the cumulative taxes paid exceeded 7% of the carrier's gross revenues, the excess would

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[3] ORS § 221.510(2)(a).

[4] *See Qwest Corp. v. City of Portland*, 275 Or. App. 874, 885, 888–89 (2015), *review denied* 384 P.3d 152 (Or. 2016) ("[A] 'privilege tax" to which th[e 7%] limitation applies by its plain text is one that is (1) levied by a municipality, (2) upon a telecommunications carrier, (3) operating within the municipality, and (4) *actually using* the streets, alleys or highways for a purpose other than travel, and is (5) *for the use of the streets, alleys or highways*." (emphasis in original)).

[5] ORS §§ 221.510(2)(a), (c).

[6] ORS § 221.515(1); *see also* ORS § 221.515(2) (defining "gross revenues" by reference to exchange access services as defined in ORS § 403.105, minus "net uncollectibles from such revenues"); ORS § 221.515(4) (defining "telecommunications carrier" by reference to ORS § 133.721).

[7] *See US West Communications, Inc. v. City of Eugene*, 81 P.3d 702, 705 (Or. 2003); *accord Qwest Corp. v. City of Portland*, 275 Or. App. 874, 884 (2015), *review denied* 384 P.3d 152 (Or. 2016).

[8] *See, e.g.*, *Qwest Corp. v. City of Portland*, 275 Or. App. 874, 884 (2015), *review denied* 384 P.3d 152 (Or. 2016) (upholding city's "utility license fee" and privilege tax as charged to the same carrier because the "utility license fee" was not imposed as a tax for the use of the ROW).

[9] *Id.* at 895 (providing that "[t]he statute does not limit a city's authority to impose additional taxes on utilities, such as a tax for the privilege of doing business within the city").

be attributable to activities unrelated to the ROW.[10]

## 3. Federal Telecommunications Act

This section summarizes two key statutes and FCC regulations and interpretations that affect how cities control access by communications providers to the ROW and their infrastructure. Adopted as part of the Telecommunications Act of 1996, Section 253 and Section 332(c)(7) generally preempt local regulations that cause an effective prohibition of service. This preemption authority was one key piece of a broader federal effort to balance exercises of state and local authority with the desire to remove barriers to competition in the telecommunications marketplace. Over the past twenty years, FCC regulations that interpret Section 253 and Section 332(c)(7) have tended to enhance the preemptive effect of these statutes on local authority.

### 3.1. Section 253

Section 253 preempts state and local regulations and "other legal requirement[s]" that prohibit or effectively prohibit any entity's ability to provide a telecommunications service.[11] The statute contains two important exceptions for "fair and reasonable" compensation and for competitively neutral and nondiscriminatory ROW management rules.[12] In other words, if the state or local requirement that effectively prohibits an entity's ability to provide a telecommunication service falls into either exception, Section 253 does not preempt that requirement.

### 3.2. Section 332(c)(7)

Section 332(c)(7) addresses local authority over placement, construction and modifications to personal wireless service facilities. Personal wireless service facilities basically refer to what most people would call a "cell site" and includes cell sites in the ROW.

Section 332(c)(7) generally preserves state and local land use authority over personal wireless service facilities subject to specific limitations listed in the statute.[13] State and local governments cannot: (1) unreasonably discriminate among functionally equivalent services; (2) prohibit or effectively prohibit personal wireless services; (3) fail to act within a reasonable time on a duly-filed request for authorization to place, construct or modify a personal wireless facility; (4) deny requests for authorization without a written decision based on substantial evidence; or (5) regulate personal wireless service facilities based on environmental effects from RF emissions if those emissions comply with standards set by the FCC.[14]

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[10] *Qwest Corp.*, 275 Or. App. at 880–81.
[11] *See* 47 U.S.C. § 253(a).
[12] *See id.* at §§ 253(b)–(c).
[13] *See T-Mobile S. LLC v. City of Roswell*, 574 U.S. 293, 300 (2015).
[14] 47 U.S.C. § 332(c)(7)(B).

Although Section 332(c)(7) appears on its face to concern only zoning and permitting activities, cites dealing with licenses for wireless facilities in the ROW should be familiar with this statute because recent FCC decisions extend some limitations to the way municipalities manage their property interests in the ROW.

### 3.3. Relevant FCC Decisions and Interpretations

Prior to the widespread deployment of fifth-generation (or "5G") services, the FCC opened two administrative proceedings to establish new rules intended to expedite broadband infrastructure deployment.

On August 3, 2018, the FCC formally prohibited moratoria for all personal wireless services, telecommunications services and their related facilities under Section 253(a).[15] On September 27, 2018 the FCC adopted certain limitations on state and local authority over small wireless facilities.[16] The primary interpretation that emerged from the FCC was whether under Section 253 for telecommunications services, or Section 332(c)(7) for personal wireless services, the standard for an effective prohibition should be the same. Under the FCC's interpretation, a state or local regulation or legal requirement constitutes an effective prohibition if it materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.[17]

On August 12, 2020, in *Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), the U.S. Court of Appeals for the Ninth Circuit reversed in part but largely upheld the FCC's orders. The U.S. Supreme Court subsequently denied a petition for review of the Ninth Circuit's decision and the orders as modified by the Ninth Circuit are final with no further pending judicial review. The following sections describe each order and summarize their implications for local governments.

#### 3.3.1. The *Moratorium Order*

The FCC found that both "express" and "*de facto*" moratoria violate Section 253(a).[18] Express moratoria encompass the traditional legislative or administrative actions that halt development activities, even when only on a temporary basis.[19] *De facto* moratoria refer to situations where unreasonable delays either leave applicants with no

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[15] *See generally In re Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, WC Docket 17-84, 33 FCC Rcd. 7705 (Aug. 3, 2018) [hereinafter, the "*Moratorium Order*"].

[16] *See generally In re Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket 17-79, 33 FCC Rcd. 9088 (Sep. 27, 2018) [hereinafter, the "*Small Cell Order*"]; *see also* 47 C.F.R. § 1.6002(l) (defining small wireless facility).

[17] *See Small Cell Order* at 9102, ¶ 35.

[18] *See Moratorium Order* at 7777, ¶ 144.

[19] *See id.* at 7777, ¶ 145 (defining "express moratoria as state or local statutes, regulations, or other written legal requirements that expressly, by their very terms, prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities"); *see id.* at 7779, ¶ 148 (making no exception for temporary express moratoria).

reasonable expectation as to when the local government will act or discourage providers from applying altogether.[20]

Federal courts retain discretion to determine what remedies should be available for violations under Section 253(a). However, the FCC encourages injunctive orders that force defendant municipalities to issue the approvals needed for the deployment.[21]

Model ordinances like the one included in this toolkit that help jumpstart the local legislative process are useful because *de facto* moratoria can include unreasonable delays based on "claims that applications cannot be granted until pending local, state, or federal legislation is adopted."[22]

### 3.3.2. The *Small Cell Order*

Under the FCC's material-inhibition standard, "a state or local legal requirement constitutes an effective prohibition if it materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[23] This test applies to an entity's ability to provide a personal wireless service under Section 332(c)(7) or a telecommunication service under Section 253(a).[24]

> The FCC also adopted an additional test to determine whether fees charged by state or local governments in connection with small wireless facilities violate the effective prohibition provisions in both Section 332(c)(7) and Section 253. Under this test:
>
> > ROW access fees, and fees for the use of government property in the ROW, such as light poles, traffic lights, utility poles, and other similar property suitable for hosting Small Wireless Facilities, as well as application or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of Small Wireless Facilities inside and outside the ROW, violate Sections 253 or 332(c)(7) unless these conditions are met: (1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the

[20] *See id.* at 7780, ¶ 149 (defining *de facto* moratoria as "state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium").
[21] *See Small Cell Order* at 9149-51, ¶¶ 121-23 (providing that injunctive relief is appropriate for failure to act claims under Section 332(c)(7)).
[22] Although the FCC's definition lacks an objective touchstone to know when delays rise to an effective prohibition, it did provide several examples that illustrate their meaning: (1) blanket refusals to issue any permits; (2) refusals to permit specific facilities; (3) frequent and lengthy delays counted in months and years; and (4) refusing to process applications until new legislation or regulations can be adopted. *See Moratorium Order* at 7780-81, ¶ 149.
[23] *Small Cell Order* at 9103, ¶ 35 (internal quotations omitted)
[24] *Id.* at 9104, ¶ 37 n.85.

fees charged to similarly-situated competitors in similar situations.[25]

"Fees" include both one-time and recurrent fees.[26] One-time fees include, for example, fees charged by a state or local government to review and process permit applications, perform inspections or recover costs associated with similar event-centered activities.[27] Limitations on one-time fees apply to small wireless facilities both within and outside the ROW.[28] Recurrent fees include, for example, rent charged by a state or local government for attachments to government infrastructure in the ROW and other charges or fees for access to the local ROW whether the state or local government owns the ROW or not.[29] Limitations on recurrent fees do not apply to facilities placed outside the ROW, such as a small wireless facility installed on the rooftop above city hall.[30]

"Fees" may also include state and local taxes imposed on wireless providers for the ability to use the ROW and/or government-owned structures within the ROW.[31] Although the FCC declined to categorize all such taxes as "fees" under the *Small Cell Order*, it suggested that ROW access fees "do not represent a tax encompassed by Section 601(c)(2) of the 1996 [Telecommunications] Act".[32]

These limitations apply only to small wireless facilities as defined in the FCC's codified regulations. For example, if a provider wanted to install a macro cell on a state highway, insistence on a market-based rental rate would not cause an effective prohibition because the facility does not fit the FCC's definition for a small wireless facility.

In the *Small Cell Order* the FCC established "presumptively reasonable" fees deemed not likely to cause an effective prohibition.[33] Table 1 below summarizes these presumptively reasonable fees.

**Table 1:** Presumptively Reasonable Fees under the FCC's *Small Cell Order*

| Reason for the Fee | Presumptively Reasonable Amount |
|---|---|
| One-time Application Fee for SWFs on Existing Infrastructure | $500 for up to five SWFs in the same application, plus $100 for each SWF beyond five in the same application |
| One-time Application Fee for SWFs on New or Replacement Infrastructure | $1,000 per new or replacement support structure designed to support one or more SWFs |

[25] *Small Cell Order* at 9112–9113, ¶ 50 (internal citations omitted).
[26] *See id.* at 9110, ¶ 32 n.71.
[27] *See id.*
[28] *See id.*
[29] *See id.*
[30] *See id.*
[31] *See Small Cell Order* at 9112, ¶ 50 n.130.
[32] *Id.* at 9112, ¶ 50 n.130.
[33] *See id.* at 9129, ¶79.

| | |
|---|---|
| Annual Fee for Access to the ROW and/or Attachment to Government-owned ROW Infrastructure | $270 per SWF per year |

These fees operate as safe harbors, which means that the FCC presumes the fees do not effectively prohibit SWF deployment under federal law.[34] However, applicants may still challenge fees set at these levels but will bear the evidentiary burdens to prove that such fees nevertheless violate the FCC's three-part test.[35] Likewise, these fees do not preempt any more restrictive state legislation on fees.[36]

By the same token, these presumptively reasonable safe harbors are not a cap on fees. State and local governments may charge higher fees so long as the fees comply with the FCC's limitations. In a legal challenge to fees above these safe harbor thresholds, the state or local government bears the evidentiary burden to prove that its fees comply with the FCC's three-part test.[37]

How state and local governments should structure and document their fees remains a somewhat open question. The FCC does not require "any specific accounting method to document the costs they may incur when determining the fees they charge for [SWF]s within the ROW."[38] So long as the total aggregate fees are reasonably approximate to the total aggregate objectively reasonable and nondiscriminatory costs, the fee is not preempted.[39] Despite the thin guidance on the how fees should be structured and tracked, the *Small Cell Order* and some recent case law helps shed some light on this issue:

- Nothing in the *Small Cell Order* affects the procedures by which state and local governments establish fees or other charges for small wireless facilities in the ROW. Cities should follow their normal procedures for establishing fees and other charges (e.g., by adopting fee resolutions and/or ordinances for taxes).

- Fees based on the provider's gross revenues are not categorically preempted but are more likely to draw scrutiny because the FCC view them as generally intended to produce revenues rather than merely recover costs.[40]

- Nothing in the *Small Cell Order* requires state or local governments to conduct detailed studies before adopting fees or other charges. Simple spreadsheets that show which staff member spent how much time and their corresponding

[34] *Small Cell Order* at 9129, ¶ 79.
[35] *Id.* at 9129-30, ¶ 80.
[36] *Id.* at 9129, ¶ 79 n.233.
[37] *Id.* at 9129-30, ¶ 80.
[38] *Id.* at 9128, ¶ 76.
[39] *See id.*
[40] *See Small Cell Order* at 9124-25, ¶ 70.

fully- burdened hourly rate for their time may be useful tools in lieu of a full-blown cost study, so long as they are prepared accurately and contemporaneously (but not necessarily simultaneously) with the services performed by the local government.[41]

- The *Small Cell Order* does not automatically invalidate existing agreements with wireless providers that entitle the state or local government to above-cost compensation. However, the FCC did not exempt existing agreements from the fee limitations.[42] Agreements entered before January 14, 2019 remain valid but subject to potential challenge by the provider.[43]

- Fee restrictions in the *Small Cell Order* do not appear to be applicable to charges for wireline facilities associated with the small wireless facilities, such as the fiber optic cables or other wired communication lines that connect the wireless radios to the broader communications network. Although the FCC "harmonized" the effective-prohibition provisions in both Section 253 and Section 332(c)(7), the *Small Cell Order* only included factual findings about what charges would be fair and reasonable as applied to *wireless* facilities in the ROW. Likewise, the Ninth Circuit's decision to uphold the FCC's fee limitations mentioned only the FCC's justifications for limits on fees for wireless facilities.[44]

## 4. Federal Cable Act

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[41] *See, e.g.*, *Cellco P'ship v. City of Rochester*,__ F. Supp. 2d.__, 2022 WL 3584476 at *8 (W.D.N.Y. Aug. 22, 2022) (rejecting carrier challenges to exclude staff-time spreadsheets from evidence in a challenge to local fees).

[42] *See Small Cell Order* at 9123, ¶ 66 (finding that existing agreements are not exempt from fee limitations but declining to preempt any specific agreements or general provisions in existing agreements).

[43] *See id*.

[44] *See City of Portland v. United States*, 969 F.3d 1020, 1038 (9th Cir. 2020) (citing *Small Cell Order* at 9114, ¶ 53). Subsequent case law from district courts has been sparse and inconsistent, but appears to depend on whether the providers can persuade the judge that the same rationales cited by the FCC for limits on fees for wireless facilities in the ROW are valid as applied to wireline facilities in the ROW. One district court case from New York held that the fee restrictions in the *Small Cell Order* did apply to local fees charged to wireline providers because the court read the FCC's interpretation of Section 253 as applicable to ***all*** telecommunications facilities and services. *See Cellco P'ship v. City of Rochester*, __F.Supp. 2d__, 2022 WL 3584476 at *8 (W.D.N.Y. Aug. 22, 2022). More recently, a district court in New Mexico reached the opposite conclusion and held instead that the fee restrictions in the *Small Cell Order* applied only to small wireless facilities because the FCC made no factual findings related to wireline facilities. *See CNSP, Inc. v. Webber*, __ F. Supp. 2d__, 2022 WL 4536132 at *5–*6 (D.N.M. Sep. 28, 2022), *appeal filed* No. 22-2131, 2022 WL 4536132 (Oct. 31, 2022). These cases can be reconciled based on the deference each court afforded the FCC's interpretation in the *Small Cell Order*. The court in *City of Rochester* seemed to be persuaded that the *Small Cell Order* directly applied to fees for wireline facilities and was therefore required to defer to the FCC's interpretation. *See Cellco P'ship v. City of Rochester*, __ F. Supp. 2d__, 2022 WL 3584476 at *8 (W.D.N.Y. Aug. 22, 2022). The court in *CNSP* instead determined that, because the *Small Cell Order* did not directly address applicability to wireline facilities, the deference owed to the FCC was only equal to the FCC's persuasiveness, which the district court found unpersuasive. *See CNSP, Inc. v. Webber*, __F. Supp. 2d__, 2022 WL 4536132 at *6 (D.N.M. Sep. 28, 2022) (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 137, 140 (1944))

In a nutshell, the Cable Act requires cable providers to obtain a franchise from state or local authorities. Franchise agreements usually require the cable provider to pay certain fees, provide services to government buildings and reserve channels on the system for public, educational and government programs. Some fees and in-kind services paid by the cable provider count as "franchise fees", which the Cable Act caps at 5% of the gross revenues generated from cable services sold within the franchise area.

### 4.1. The FCC's "Mixed-Use Rule"

The Cable Act anticipated that cable providers would use their cable systems to provide non-cable services.[45] These so-called "mixed-use cable system" materialized and today we find it commonplace that the cable companies also provide phone and broadband Internet services.

Local exchange carriers ("LECs") who traditionally provided telephone and broadband Internet services on a common-carrier basis began to expand into the market for cable services. Incumbent cable providers, who generally did not provide telephone or broadband services as common carriers, also evolved to offer these non-cable services to compete with the LECs.

Mixed-use cable systems brought more services to subscribers and more revenues to the franchised cable provider. Controversies soon followed over whether the revenues from the non-cable services provided over the franchised cable system could be included in the franchise fees.

Eventually, the FCC attempted to resolve these controversies with its so-called "mixed-use rule" that interpreted the Cable Act to prohibit franchise fees on non-cable services provided over cable systems by both common carriers and non-common carriers.[46] The FCC justifies this rule based on a provision from the Cable Act that prohibits regulations on information services offered by cable providers.[47]

### 4.2. Application to Broadband and ROW Fees in Oregon

Recent, significant litigation over the mixed-use rule involves Oregon cities and ordinances that charged cable providers privilege taxes for access to the ROW in connection with broadband Internet services. These cases also concerned several other complex issues but, for the present purposes, the summaries and analysis below focus solely on the privilege tax and ROW fee issues.

The Sixth Circuit in *City of Eugene v. FCC*, 998 F.3d 701 (6th Cir. 2021), upheld the

[45] *See, e.g.*, *City of Eugene v. FCC*, 998 F.3d 701, 714 (6th Cir. 2021).
[46] *See In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, Third Report and Order, MB Docket 05-311, 34 FCC Rcd. 6844, 6879, ¶ 64 (Aug. 2, 2019).
[47] *See* 47 U.S.C. § 544(b)(1) ("[T]he franchising authority, to the extent related to the establishment or operation of a cable system . . . may not . . . establish requirements for video programming or other information services").

FCC's mixed-use rule as applied to non-common carriers and held that Eugene's license fee on broadband Internet services that used the ROW violated the Cable Act as an impermissible regulation over information services offered over a cable system. Similarly, a district court in *Comcast of Oregon II, Inc. v. City of Beaverton*, No. 3:20-cv-1225-SI, __F.Supp.3d__, 2022 WL 2341961 (June 29, 2022), struck down Beaverton's ordinance that required all "utilities" to pay a ROW license fee to the extent that it applied to broadband Internet services provided over a cable system.[48] The judges in both *Eugene* and *Beaverton* characterized the ROW fee as an "end-run" to accomplish through the cities' general policies powers what the Cable Act prohibited if attempted through the cities' franchising authority.[49]

[*space left intentionally blank*]

[48] *See Comcast of Oregon II, Inc. v. City of Beaverton*, No. 3:20-cv-1225-SI, __ F.Supp.3d__, 2022 WL 2341961, at *10–*11 (June 29, 2022).

[49] *See Eugene*, 998 F.3d at 711 (agreeing that "states and localities [may] not 'end-run' the Cable Act's limitations by using other governmental entities or other sources of authority to accomplish indirectly what franchising authorities are prohibited from doing directly" (internal quotation marks omitted); *Beaverton*, 2022 WL 2341961, at *10 ("The City may not 'end-run' § 544(b)(1) by also applying the fee to other utilities that also use public rights-of-way.").

# CHOOSING THE RIGHT TOOL

This section outlines a basic decision process to determine the appropriate agreement in common scenarios. Recommendations in this section are based on applicable laws and good practices to maximize local authority while at the same time mitigate undue risk exposure. Variations among Oregon cities, their past practices, geography, infrastructure, policies and resources should also be considered.

## 1. Franchise or License?

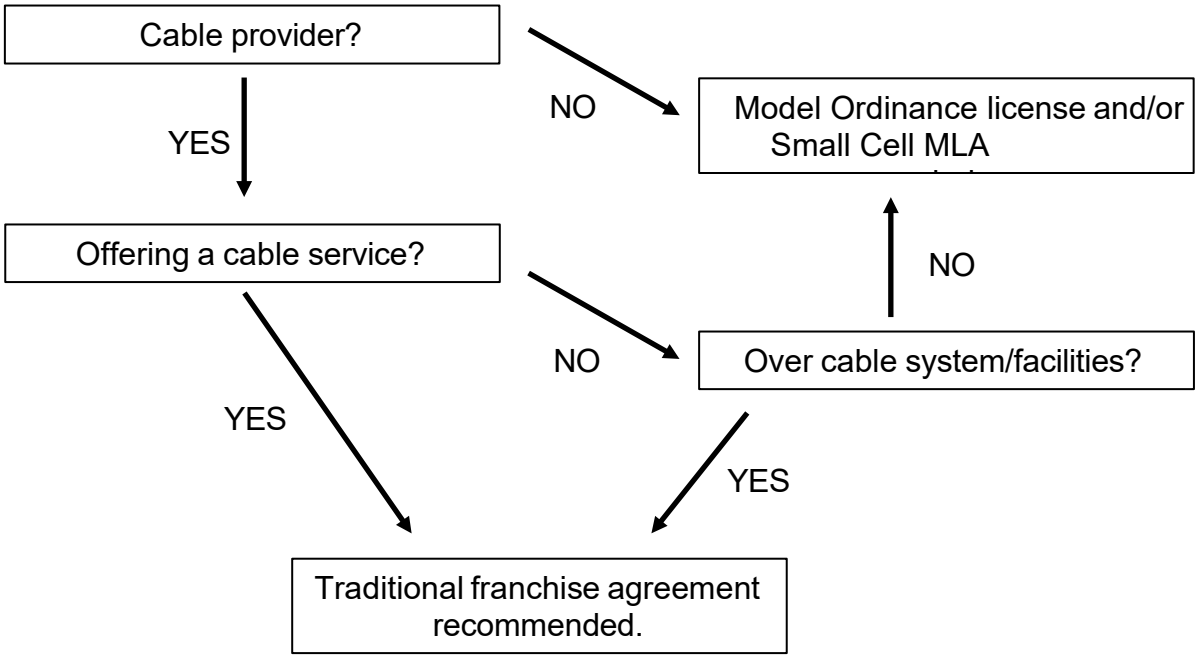
A franchise will almost always be the appropriate tool to authorize cable providers to build and operate cable systems. As discussed above, federal statutes require cable operators to obtain a franchise before they can provide services, the FCC's mixed-use rules prohibit franchise fees on non-cable services provided over cable systems and recent case law strongly indicates that Oregon cities cannot separately charge cable providers of non-cable services (*i.e.*, broadband Internet service) for access to the ROW when the non-cable services are delivered over the franchised cable system. Thus, to the extent that a cable provider's mixed services flow through the cable system, cable franchises may obviate the need for licenses in the Model Ordinance and Small Cell MLA.

Nevertheless, circumstances may arise where a franchised cable provider may still need a license under the Model Ordinance and/or a Small Cell MLA. For example, if the cable franchisee builds and operates a separate, private network that traverses the ROW (like those that interconnect multiple corporate offices), the Model Ordinance would likely be appropriate because the utility service actually uses the ROW and is not delivered over the cable system. Likewise, if a cable franchisee desires to install small wireless facilities within the ROW and either provide personal wireless services directly to the public or lease space on the facilities to wireless service providers, the Small Cell MLA would likely be appropriate because this project involves non-cable services not delivered over the franchised cable system. Although the circumstances where a cable provider would need a separate license tend to be rare today, they may become more common as cable providers offer more non-cable services to compete with traditional telephone and broadband service providers.

Figure 1 below helps cities to analyze circumstances as they may arise and determine whether a franchise or license agreement is most appropriate for a particular service offered by a cable provider.

[*space left intentionally blank*]

**Figure 1:** Decision Tree for Cable Providers




## 2. Small Cell MLA?

For cities that own poles, streetlights, traffic signals or other similar infrastructure in the ROW, many "small cell" deployments will likely trigger the need for the Small Cell MLA template. Providers tend to target these existing structures to avoid the additional costs associated with new and/or replacement infrastructure.[50]

The Small Cell MLA template is intended for a specific circumstance in which: (1) a provider proposes to install a small wireless facility (as defined by the FCC), (2) within the ROW and (3) on city-owned infrastructure. Under these circumstances, the FCC requires cities to process providers' requests faster and limits compensation to approximate cost recovery. As discussed above, the Small Cell MLA template is designed to avoid duplicative negotiations, mitigate risk to cities and maximize municipal authority within the limits imposed by the FCC.

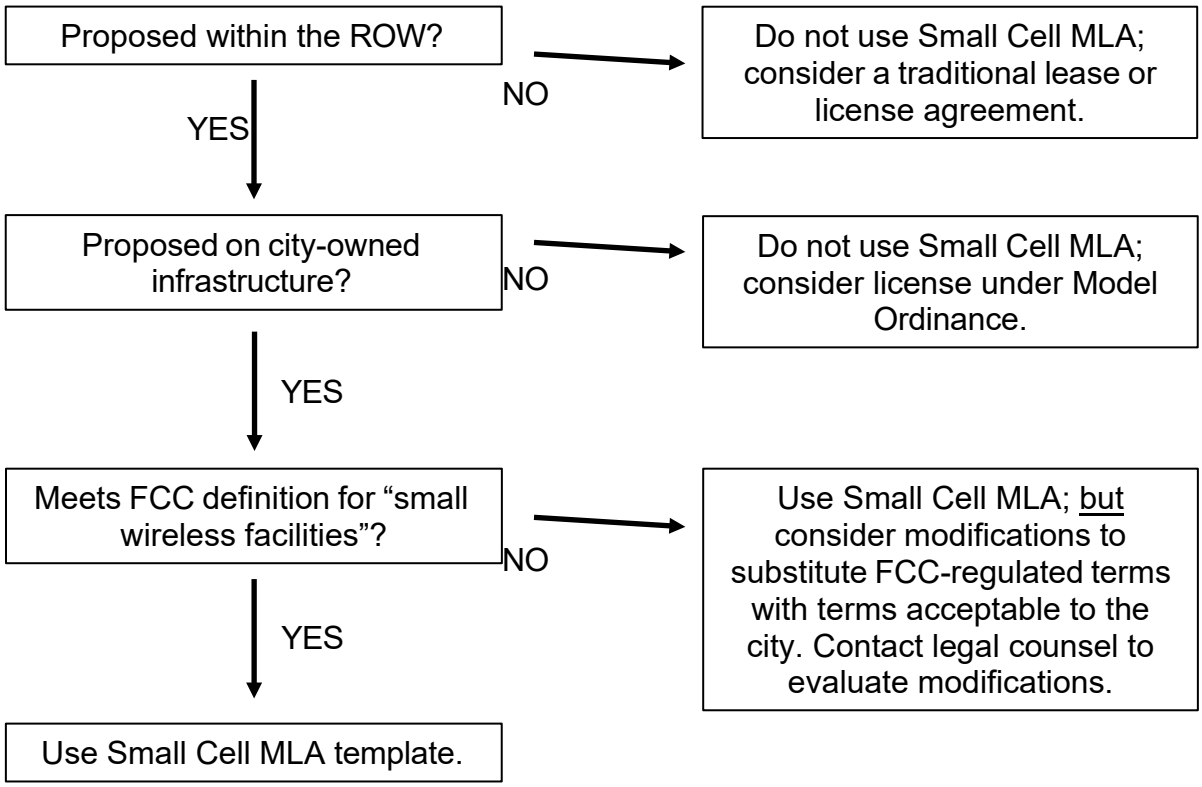
A Small Cell MLA does not replace the Model Ordinance. Small cell providers may require both a license under the Model Ordinance for access to the ROW (including,

[50] Cities should be aware that their infrastructure may be more-preferred by providers relative to other infrastructure owned by investor-owned utilities or other private entities. Limitations in the *Small Cell Order* apply only to state and local governments. Although attachments to such poles may be covered by membership in a joint pole association, attachments to some poles—particularly stand-alone streetlights owned by the electric utilities—are subject to arm's-length negotiations, which tend to include longer review periods and higher fees.

without limitation, any registration, construction permits and other authorizations for physical work in the ROW) and a Small Cell MLA for access to city-owned support structures within the ROW.

Just as important as when cities should use the Small Cell MLA template are the circumstances when cities should not use the Small Cell MLA template, or when cities should consider a modified version. Figure 2 below provides a basic decision tree for understanding when and how to use the Small Cell MLA template.

**Figure 2:** Decision Tree for Small Cell MLA




The Small Cell MLA is not appropriate for large towers on private property. These facilities are more appropriately authorized by a traditional lease or license agreement, similar to agreements the city might use for other commercial tenants on city-owned property. Although the template contains some useful provisions germane to wireless site agreements, those provisions would still need to be modified to suit the private property context.

Likewise, the Small Cell MLA is not appropriate for small wireless facilities on non-municipal infrastructure in the ROW. These installations would be covered by the Model Ordinance and the contractual relationship for access to non-municipal infrastructure would be between the small cell provider and the pole owner (e.g., the electric utility or joint pole association).

Finally, cities should not use the Small Cell MLA "as-is" for installations on city-owned

infrastructure in the ROW that do not meet the FCC's definition for a "small wireless facility". An agreement for these facilities would not be subject to the same federal rules applicable to small wireless facilities. Importantly, cities could charge a revenue-generating fee because the FCC's cost-based fee limitations apply only to small wireless facilities within the ROW. Cities that wish to use the template as a framework for non-small wireless facilities on their ROW infrastructure should consult with legal counsel to make appropriate modifications based on the proposed facilities.

# MODEL UTILITY SERVICE UTILIZING THE PUBLIC RIGHTS-OF-WAY ORDINANCE

*[APPEARS BEHIND THIS COVERSHEET]*

# Model Right-of-Way Ordinance for Local Municipalities

Developed and drafted by Reba Crocker, CEO of ROW Consultants LLC

The model ordinance is intended to regulate providers that use the City's Right-of-Way (ROW). The model ordinance is a guide for cities to use in drafting and adoption of a ROW ordinance that fits their unique community. It is not intended to be adopted "as is. There is not a model ordinance that will work for every jurisdiction and cities should consult a ROW expert.

While some alternative language is provided, there is a plethora of options. Cities should review all sections and may want to delete or add other sections depending on the needs and desires of the city and their residents.

Each city should be aware of other city regulations, code, policies, franchise agreements, and other requirements that would be affected by the adoption of this type of code. Cities should also be aware of any existing federal (including the FCC), state, local laws, along with precents set by prior legislation or court proceedings.

**Examples of alternative language (any and all sections can be modified):**

*Section 5*

"Utility operator" and "Utility provider" as written would include the city itself and other cities. Another section could be added to remove either or both of those requirements.

"Utility service" The definition includes providers of electric energy, natural gas, water, sewer, and storm water services. Those services could be removed.

*Section 6 & 7*

Application and renewal of registration and licenses. If the city is not going to provide the forms, specific requirements should be listed in detail. Renewal applications are listed as required at least 30 days and not more than 120 days before expiation of the current one. Some cities may want to reduce or increase the time period renewal applications are accepted to maximize staff labor.

*Section 13*

Fee remittances. If the city is not providing the remittance form, language should be modified to specifically list the information required.

*Section 16*

Risk management should carefully review this section.

**Section 1. TITLE.** This Ordinance shall be known and may be referenced as the "Utility Service Utilizing the Public Rights-of-Way Ordinance."

**Section 2. PURPOSE AND INTENT.** The purpose of this Ordinance is to:

A. Permit and manage reasonable access to the rights-of-way of the city for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the city consistent with applicable state and federal law;

B. Secure fair and reasonable compensation to the City and its residents, who have invested substantial public funds to acquire, build, and maintain the public rights-of-way and City-owned structures and improvements therein, from utilities that benefit from use of this public asset;

C. Ensure that all persons owning or operating utility facilities or providing utility services within the City register and comply with the ordinances, rules, policies, and other regulations of the City, as well as with applicable provisions of state and federal law;

D. Ensure that the city can continue to fairly and responsibly protect the public health, safety and welfare of its residents;

E. Encourage the provision of advanced and competitive utility services on the widest possible basis to the residents, businesses and visitors within the City's territorial and jurisdictional boundaries;

F. Allow the City to be resilient and adaptive to changes in technology; and

G. Comply with applicable provisions of state and federal law.

**Section 3. JURISDICTION AND MANAGEMENT OF THE PUBLIC RIGHTS- OF-WAY.**

A. The City has jurisdiction and exercises regulatory management over all public rights-of-way within the City under authority of the Oregon Constitution, the City Charter, and state law.

B. The City has jurisdiction and exercises regulatory management over each public right- of-way, whether the City has a fee, easement, or any other legal interest in the right- of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

C. The exercise of jurisdiction and regulatory management over a right-of-way by the City is not official acceptance of the right-of-way and does not obligate the City to maintain or repair any part of the right-of-way.

D. The provisions of this Ordinance are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules, and regulations. Nothing in this Ordinance shall be interpreted, deemed, or applied to authorize or require the City, its Council, Commissions, Boards, officials, directors, managers, employees, agents, contractors, or volunteers to violate applicable state or federal laws, rules, or regulations.

## Section 4. REGULATORY FEES AND COMPENSATION NOT A TAX.

A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the rights-of-way provided for in this Ordinance, are separate from, and in addition to, any and all other federal, state, local, and city charges, including but not limited to: any permit fee, or any other generally applicable fee, tax, or charge on businesses, occupations, property, or income as may be levied, imposed, or due from a utility operator, utility provider or licensee, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee or tax provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees, costs, and other charges provided for in this Ordinance are subject to applicable federal and state laws.

**Section 5. DEFINITIONS**. For the purpose of this Ordinance, the following words, terms, phrases, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall”” and “will” are mandatory and “may” is permissive.

A. “Cable service” is to be defined consistent with federal law and means the one-way transmission to subscribers of: (1) video programming, or (2) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

B. “City” means the City of _____, an Oregon municipal corporation, and its governing authority, and/or its duly appointed and authorized agents.

C. “City Council” means the elected governing body of the City of _____.

D. “City facilities” means structures or equipment located within the right-of-way or public easement that are owned, managed, maintained or operated by the City and used for governmental purposes, including, but not limited to, fiber-optic cable, streetlights, traffic signals, sanitary sewer, storm sewer, or water infrastructure, including but not limited to pipes, manholes, catch basins, wires, conduit, valves, vaults and appurtenances.

E. “City Standards” means the Design and Construction Standards and any other applicable city construction, engineering and design standards and policies in effect at the time of any work.

F. “Communication services” means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. “Communications services” includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 CFR Section 76; (3) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (4) communications provided over a private communications system or a public communications system; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56 (1996).

G. “Days” mean calendar days unless otherwise specified.

H. “Emergency” means a circumstance, as determined by the City, in its sole discretion, in which immediate work to facilities is necessary to restore lost service or prevent immediate harm to persons or property.

I. “Gross Revenue” means any and all amounts, of any kind, nature or form, without deduction for expense, less net write-off of uncollectable accounts within the City, earned or derived directly or indirectly from the operation of utility facilities in the City, including but not limited to revenue derived from any use, rental and/or lease of the facilities to other person(s), and/or the provision of utility service(s) in the City, subject to all applicable limitations in federal and state law.

J. “License” means the authorization granted by the City to a person(s) pursuant to this Ordinance.

K. “Licensee” means any person that has a valid license issued by the city pursuant to this chapter.

L. “Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, municipality, special district, government entity or other organization, including any natural person or any other legal entity.

M. “Private communications system” means a communications system owned by a utility operator for the operator’s exclusive use for internal communications and not for sale or resale, including trade, barter, or other exchange of value, directly or indirectly, to any person.

N. “Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the State of Oregon pursuant to ORS 283.140. “Public communications system” does not include any system used for sale or resale, including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

O. “Public utility easement” means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. “Public utility easement” does not include an easement (1) that has been privately acquired by a utility operator, (2) solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of city facilities, or (3) where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City.

P. “Rights-of-way” means the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, sidewalks, public utility easements and all other public ways or areas generally open to the public for travel, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest, and authority to grant a license or other authorization to occupy and use such areas for utility facilities.

Q. “Small wireless facility” means antenna facilities that are used for the provision of personal wireless service that meets each of the following conditions:

I. The facilities (i) are mounted on structures fifty (50) feet or less in height including the antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent, (10%) whichever is greater;

II. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;

III. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume; and;

IV. The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

"Small wireless facility" does not include fiber, coaxial cable, or similar equipment located within the rights-of-way, other than wireless equipment associated with the structure that meets the criteria set forth in in this subsection.

R. "Utility facility" or "facility" means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights-of-way any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

S. "Utility operator" means any person who owns, places, controls, operates or maintains a utility facility within the city, whether or not the person provides utility services to customers within the City.

T. "Utility provider" means any person who provides utility service to customers within the city limits, whether or not any facilities in the rights-of-way are owned by such provider.

U. "Utility service" means the provision, by means of utility facilities located within, under or above the rights-of-way, whether or not such facilities are owned by the utility service provider, of cable services, communication services, electric energy, natural gas, or wireless communications, water, sewer, and/or storm sewer to or from customers within the corporate boundaries of the City, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions.

V. “Wireless communication services” means any wireless service using Federal Communications Commission-licensed or unlicensed spectrum including without limitation any personal wireless services, as defined in 47 U.S.C. § 332(c)(7)(C).

W. “Work” means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

## Section 6. REGISTRATION.

A. Registration Required. Every person that desires to provide utility services to customers within the City shall register with the City prior to providing any utility services to any customer in the City. Every person providing utility services to customers within the City as of the effective date of this Ordinance shall register within forty-five (45) calendar days of the effective date of this Ordinance. Persons with a valid License or franchise are not required to register.

B. Registration Term. The registration granted pursuant to this Ordinance shall be effective on the date it is issued by the City and shall expire five (5) calendar years from: (1) January 1st of the year in which the registration took effect for registrations that took effect between January 1st and June 30th; or (2) January 1st of the year after the registration took effect for registrations that become effective between July 1st and December 31st.

C. Registration Application. The registration shall be on a form provided by the City, and shall be accompanied by any additional documents required by the City, in the City’s sole discretion and at no cost to the City, to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and list the facilities over which the utility services will be provided.

D. Registration Application and Renewal Fee. Each application for new and renewal registration shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council.

E. Changes to Information Contained on the Registration Application. Within thirty (30) days of a change to the information contained in the application, the applicant shall notify the City in writing of such change(s).

F. Renewal. At least thirty (30), but no more than one hundred twenty (120), calendar days before the expiration of a registration granted under this Section, a provider seeking renewal of its registration shall submit a new registration application to the City as provided in this section. If the City determines that the applicant is in

violation of the terms of this Ordinance or any other City codes, rules, or regulations at the time it submits its application, the City may require that the applicant cure the violation before the City will consider the application or grant the registration.

## Section 7. LICENSES.

A. License Required.

I. Except those utility operators with a valid franchise agreement from the City, every person that wishes to be a utility operator shall obtain a license from the City prior to conducting any work in the rights-of-way or providing services within the city.

II. Every person that owns or controls utility facilities in the rights-of-way as of the effective date of this Ordinance shall apply for a license from the City within forty-five (45) days of the later of (a) the effective date of this Ordinance, or (b) the expiration of a valid franchise agreement granted by the City, unless a new franchise agreement is granted by the City.

III. Any person with a valid cable franchise as provided by federal law is not subject to the provisions of this Ordinance with respect to its cable services, except that, to the extent consistent with applicable law, subsection (II) of this section shall apply to the extent such person provides multiple utility services.

B. License Application. The License application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the City, in the City's sole discretion and at no cost to the City, to identify the applicant its legal status, describe the type of utility services provided or to be provided by the applicant, list the facilities over which the utility services will be provided, provide a map of any facilities within the City.

C. License Application Fee. Every application shall be accompanied by a non-refundable application fee or deposit set by resolution of the City Council.

D. Determination by City. The City shall issue, within a reasonable time after having received a duly filed application, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The application shall be evaluated based upon the provisions of this Ordinance, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Changes to Information Contained on the License Application. Within thirty (30) days of a change to the information contained in the license application, the licensee shall notify the City in writing of such change(s).

F. Rights Granted. A License granted under this Ordinance authorizes the licensee to construct, place, maintain, and operate utility facilities in the rights-of-way, subject to all applicable provisions of the City code, rules, regulations, polices, City standards and applicable provisions of state and federal law.

I. A license granted under this Ordinance authorizes only those utility facilities included in the application and approved by the City. The City may approve in one license utility facilities designed to provide more than one type of utility service.

II. A License granted under this Ordinance shall not convey equitable or legal title in the rights-of-way and may not be assigned, sublicensed, or transferred, in whole or in part, except as permitted by this Ordinance.

III. A License granted under this Ordinance does not grant, convey, create, or vest in the licensee any real property interest in land, including any fee, leasehold interest, or easement, and does not convey equitable or legal title in the rights-of- way. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. A License granted under this Ordinance is not a warranty of title. Licensee expressly acknowledges and agrees to enter on to and use public rights-of-way in its "as-is and with all faults" condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the rights-of-way's condition or suitability for the intended or proposed utilization. By its acceptance of the ROW license, the licensee expressly acknowledges and agrees that neither the City nor its agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the physical, structural, or environmental condition of the rights-of-way, and the present or future suitability of the rights- of-way.

IV. Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the City's exercise of any governmental right or power, including, without limitation, the City's police powers and regulatory powers.

G. Term of License. Subject to the termination provisions in Subsection M, the license granted pursuant to this Ordinance will be effective as of the date it is issued by the City and will have a term ending five (5) calendar years from: (a) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (b) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

H. License Nonexclusive. No license granted pursuant to this Section shall confer any

exclusive right, privilege, license or franchise to occupy or use the rights-of-way for utility facilities, delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises, or other authorizations to other persons, as well as the City's right to use the rights-of-way, for similar or different purposes.

I. Reservation of City Rights. The City reserves all rights, title, and interest in its public rights-of-way. Nothing in the license shall, or shall be construed to, prevent the City from exercising any of its rights, including without limitation grading, paving, repairing, and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing City facilities, or establishing any other public work, utility, or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of licensee's utility facilities interfere with the work, construction, repair, replacement, alteration or removal of any rights-of-way, public work, City utility, city improvement or city facility, licensee's facilities shall be removed or relocated as provided in Section 9, in a manner acceptable to the city and consistent with city standards and industry standard engineering and safety codes.

J. Multiple Services.

I. A utility operator that transmits or provides or allows the transmission or provision of utility services and other services over its facilities is subject to the license and ROW use fee requirements of this Ordinance for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection (J)(1) requires a utility operator to pay the ROW use fee, if any, owed to the city by another person using the utility operator's facilities.

II. A utility operator that transmits or provides more than one utility service to customers in the city is not required to obtain a separate license or franchise agreement for each utility service; provided, that each utility service is included in the application or franchise approved by the City and it gives notice to the City of each utility service provided or transmitted and pays the applicable fee for each utility service provided or transmitted.

K. Transfer or Assignment.

I. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the City prior to the transfer, sublicense, or assignment of the license. The licensee requesting the transfer, sublicense or assignment must provide documentation, as the City deems necessary, in the City's sole discretion and at no cost to the City, to evaluate the proposed transferee's, sublicensee's or assignee's ability to comply with the provisions of the license. The license shall not be transferred or assigned unless

proposed transferee, sublicensee or assignee is authorized under all applicable federal, state, and local laws to own or operate the utility facilities and the transfer, sublicense or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer, sublicense, or assignment.

II. Without limiting any other rights the City may have to condition its consent, the City may condition its consent to any such transfer, sublicense, or assignment on the transferee, sublicensee, or assignee's written agreement to assume all obligations under the license, this Ordinance, and other City codes and regulations.

III. If the City approves such transfer, sublicense or assignment, the transferee, sublicensee or assignee shall become responsible for fulfilling all obligations under the license. A transfer, sublicense, or assignment of a license does not extend the term of the license. No transfer, sublicense, or assignment may occur until the successor transferee or assigned has provided proof of insurance and a bond pursuant to Section 16. In the event approval is not required by this Section, the licensee shall provide the City at least thirty (30) days prior written notice of the transfer, sublicense, or assignment.

L. Renewal. At least thirty (30), but no more than one hundred twenty (120), calendar days, prior to the expiration of a license granted pursuant to this Section, a licensee seeking renewal of its license shall submit a license application to the City, on a form provided by the City, including all information required in subsection B of this section and the application fee required in subsection C of this Section. The City shall review the application and grant or deny the license within a reasonable time period after the application is duly filed. If the City determines that the licensee is in violation of the terms of this Ordinance or any other City codes, rules, or regulations at the time it submits its application, the City may require, that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

I. Revocation or Termination of a License. The City may terminate or revoke the license granted pursuant to this Ordinance for any of the following reasons:

(a) Violation of any of the provisions of this Ordinance;

(b) Violation of any provision of the license;

(c) Misrepresentation in a license application;

(d) Failure to pay taxes, compensation, fees, or costs due the City after final determination by the City of the taxes, compensation, fees, or costs;

(e) Failure to restore the rights-of-way after work as required by this Ordinance or other applicable state and local laws, ordinances, rules and regulations;

(f) Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or

(g) Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.

II. Standards for Revocation or Termination. In determining whether termination, revocation, or some other sanction is appropriate, the following factors shall be considered:

(a) Whether the violation was intentional;

(b) The egregiousness of the violation;

(c) The harm that resulted;

(d) The licensee's history of compliance; and

(e) The licensee's cooperation in discovering, admitting and/or curing the violation.

III. If a license is terminated by the City, within thirty (30) days the licensee shall file a final remittance form with the City stating, "final remittance" and shall remit any funds due.

N. Notice and Cure. The City shall give the licensee written notice of any apparent violations before revoking or terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time period not to exceed thirty (30) days for the licensee to demonstrate that the licensee has remained in compliance, that the licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than

termination or revocation. If the licensee is in the process of curing a violation or noncompliance, the licensee must demonstrate that it acted promptly and continues to actively work toward compliance. If the licensee does not respond within the reasonable time stated in the notice, or if the City determines in its sole discretion that the licensee's response is inadequate, the City shall provide adequate notice and an opportunity to respond. The City shall review all the information available and in its sole discretion, determine whether the license shall be terminated or revoked and if any penalties or sanctions will be imposed.

O. Termination by Licensee. If a licensee ceases to be required to have a license under this Ordinance, the licensee may terminate its license by giving the City thirty (30) days prior written notice. Licensee may reapply for a license at any time. No refunds or credits shall be given for licenses terminated by the licensee or the City.

I. Within thirty (30) days of surrendering a license, the licensee shall file a final remittance form with the City stating "final remittance" and shall pay all fees due under this Ordinance.

II. Upon surrendering a license, unless otherwise agreed to by the City, the licensee shall also remove its utility facilities from the rights-of-way as required by Section 9.

P. Franchise Agreements.

I. If the public interest warrants, as determined by the City in its sole discretion, the City and a utility operator may enter into a written franchise agreement that may include terms that clarify, enhance, expand, waive, or vary the provisions of this Ordinance, consistent with applicable state and federal law. The franchise agreement may conflict with the terms of this Ordinance, with the review and approval of the City Council. The franchise agreement shall be subject to the provisions of this Ordinance to the extent such provisions are not in conflict with any such agreement. In the event of a conflict between the express provisions of a franchise agreement and this Ordinance, the franchise agreement shall control.

II. If requested by the City, a utility operator requesting a franchise agreement shall deposit a non-refundable franchise application fee, as set by resolution of City Council, before franchise negotiations occur.

## Section 8. CONSTRUCTION AND RESTORATION

A. Restoration.

I. A licensee shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people or property

and to carry out the work regardless of whether the work is performed by a licensee or by other person(s) performing the work on behalf of the licensee.

II. When a utility operator, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly restore such rights-of-way to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations in effect at the time of the work unless otherwise directed by the City.

III. If weather or other conditions beyond the utility operator's control do not permit the complete restoration required by the City, the utility operator shall temporarily restore the affected public rights-of-way. Such temporary restoration shall be at the utility operator's sole cost and expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the work schedule shall be subject to approval by the City.

IV. If the utility operator fails to restore rights-of-way as required in this Ordinance, the City shall give the utility operator written notice and provide the utility operator a reasonable period of time to restore the rights-of-way, which shall be not less than ten (10) days unless an emergency or threat to public safety is deemed to exist, and shall not exceed thirty (30) days unless agreed to in writing by the city. If, after said notice, the utility operator fails to restore the rights-of- way as required in this Ordinance, the City may cause such restoration to be made at the sole cost and expense of the utility operator. If the City determines an emergency or threat to public safety exists, it may act without notice to provide necessary temporary safeguards at the utility operators' sole cost and expense. Upon receipt of an invoice from the City, the licensee shall reimburse the City within thirty (30) days for all costs and expenses incurred by the City.

B. Inspection. Every utility operator's utility facilities shall be subject to the right of periodic inspection by the City or its agents to determine compliance with the provisions of this Ordinance and all other applicable state and City laws, codes, ordinances, rules, and regulations. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request by the City. The utility operator shall perform all testing, or permit the City or its agents to perform any testing at the utility operator's cost, required by the City to determine that the installation of the utility operator's facilities and the restoration of the rights-of-way comply with the terms of the permit, this Ordinance, and applicable state and City laws, codes, ordinances, rules, and regulations in effect at the time of the work.

C. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their work schedules with those of the City and other users of the rights-of-way.

I. Prior to January 1st of each year, utility operators shall provide the City with a written schedule of planned work activities for that year in, around, or that may affect the rights-of-way.

II. At the City's request, Utility operators shall meet with the City annually, or as determined by the City, to schedule and coordinate work in the rights-of-way.

III. All work locations, activities and schedules within the rights-of-way shall be coordinated as may be ordered by the City to minimize public inconvenience, disruption, and damage to persons and property.

D. Contractors. A utility operator may authorize a qualified contractor to perform any of the work authorized or required in this Ordinance on the utility operator's behalf. Any contractor performing work on behalf of a utility operator shall be subject to applicable provisions of this Ordinance, except that a contractor that is not a utility operator shall not be required to obtain a license. The utility operator shall remain responsible and liable for compliance with the provisions of this Ordinance.

## Section 9. LOCATION OF FACILITIES.

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities or wireline communication facilities are located underground within the rights-of-way of the City, the utility operator with permission to occupy the same rights-of-way shall install all new facilities underground at no cost to the City.

The requirements in this Section do not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts ("high voltage lines") unless otherwise directed by the City, or to antennas, small wireless facilities, pedestals, cabinets, or other above-ground equipment of any utility operator, subject to applicable City requirements. The City reserves the right to require written approval of the location of any such above-ground equipment in the rights-of-way.

B. Interference with the Rights-of-Way. No utility operator or other person may locate or maintain any utility facilities so as to interfere with the use of the rights-of-way by the City, by the general public, or by other persons authorized to use or be present in or upon the rights-of-way. Utility facilities shall not be located in a manner that restricts the line of sight for vehicles or pedestrians nor interferes with the proper function of

traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the rights-of-way shall at all times be consistent with City codes, ordinances, rules and regulations.

C. Relocation of Utility Facilities.

I. A utility operator shall, at no cost or expense to the City, temporarily or permanently remove, relocate, change, or alter the position of any utility facility within the rights-of-way, including relocation of aerial facilities underground when requested to do so in writing by the city. The requirement to relocate aerial facilities underground shall not apply to high voltage lines unless otherwise directed by the city.

II. Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements; provided, that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

III. The City shall provide written notice of the time by which the utility operator must remove, relocate, change, alter, or underground its facilities. If a utility operator fails to remove, relocate, change, alter, or underground any utility facility as requested by the City and by the date established by the City, the utility operator shall pay all costs and expenses incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facilities to be removed, relocated, changed, altered, or undergrounded, at the utility operator's sole cost and expense. Within 30 days of receipt of an invoice from the City, the utility operator shall reimburse the City the full invoiced amount.

D. Removal of Unauthorized Facilities.

I. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any unauthorized utility facility within the rights-of-way shall, at its own cost and expense, remove the utility facility and restore the rights-of-way as provided in Section 8.

II. A utility facility is unauthorized under any of the following circumstances:

(a) The utility facility, or any portion of the facility, is outside the scope of

authority granted by the City under the license or franchise. This includes utility facilities that were never licensed or franchised and utility facilities that were once licensed or franchised but for which the license or franchise has expired or been revoked or terminated. This does not include any utility facility for which the City has provided written authorization for abandonment in place.

(b) The utility facility has been abandoned and the City has not provided written authorization for abandonment in place. A utility facility is abandoned if it is not in use and is not planned for further use. A utility facility shall be presumed abandoned if it is not used for a period of one (1) year. A utility operator may overcome this presumption by presenting plans for future use of the utility facility to the City, which will determine application of the presumption in its sole discretion.

(c) The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this chapter.

(d) The utility operator is in violation of a provision of this Ordinance and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City, in its sole discretion, extends such time period in writing.

E. Removal by City.

I. The City retains the right and privilege to cut or move any utility facilities located within the rights-of-way, without notice, as the City may determine, in its sole discretion, to be necessary, appropriate or useful in response to a public health or safety emergency. The City shall use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency. The City will use reasonable efforts to provide the utility operator with notice prior to cutting or moving utility facilities. If prior notice is not possible, the City will provide such notice as soon as reasonably practicable after resolution of the emergency.

II. If the utility operator fails to remove any utility facility when required to do so under this Ordinance, the City may remove the utility facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying all costs and expenses incurred by the City, including any administrative or collection costs, in removing the utility facility and obtaining reimbursement. Within thirty

(30) days of receipt of an invoice from the City, the utility operator shall reimburse the City for all costs and expenses the City incurred. The obligation to remove and to reimburse the City for any failure to remove utility facilities shall survive the termination of the license or franchise.

III. City shall not be liable to any utility operator for any damage to utility facilities, or for any incidental or consequential losses resulting directly or indirectly therefrom, by the City in removing, relocating, changing, or altering the utility facilities pursuant to this Section or undergrounding its utility facilities as required by this Section, or resulting from the utility operator's failure to remove, relocate, change, alter, or underground its utility facilities as required by those subsections, unless such damage arises directly from the City's sole negligence or willful misconduct.

F. Engineering Designs and Plans and Maps. A utility operator shall provide, at no cost to the City, as-built plans and/or a comprehensive map showing the location of all utility facilities in the rights-of- way. Such plans and map shall be provided at no cost to the City and in a format acceptable to the City, with accompanying data sufficient to enable the City to determine the exact location of facilities. The licensee shall provide an updated map by February 1, if any changes occurred during the prior year, and at any time upon request by the City. The City may only request such as-built plans and/or map once per calendar year.

**Section 10. LEASED CAPACITY.** A utility operator may rent, sell, lease, or otherwise provide capacity or space on or in its utility facilities to others; provided, that (1) the utility operator provides the City with the name and business address of any lessee, within 60 (sixty) days of the effective date of the lease or other agreement to provide capacity; (2) the use of the utility facilities does not require or involve any additional equipment owned or operated by the lessee to be installed on the utility facility unless the lessee has obtained a License or franchise from the City; and (3) the utility operator maintains control over and responsibility for the utility facilities at all times.

**Section 11. MAINTENANCE.**

A. Every utility operator shall install and maintain all utility facilities in a manner that complies with applicable federal, state and local laws, rules, regulations, and policies. The utility operator shall, at its own cost and expense, repair and maintain utility facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance as required in subsection A of this Section, a utility operator fails to repair or maintain utility facilities as requested by the City and by the date established by the City, the City may perform such repair or maintenance using qualified personnel or

contractors consistent with applicable
state and federal safety laws and regulations at the utility operator's sole cost and expense. Within 30 days of receipt of invoice from the City, the utility operator shall reimburse the City the full invoiced amount.

## Section 12. VACATION OF PUBLIC RIGHTS-OF-WAY.

A. If the City vacates any rights-of-way, or portion thereof, that a utility operator uses, the utility operator shall, within thirty (30) days following written notice from the City or such other time directed or agreed to in writing by the City, and at the utility operator's own cost and expense, remove its utility facilities from the vacated rights-of-way unless (i) the City reserves a public utility easement, which the City shall make a reasonable effort to do provided that there is no expense to the City; or (ii) the utility operator obtains an easement for its utility facilities.

B. If the utility operator fails to remove its utility facilities within thirty (30) days after a right- of-way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the utility facilities using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole cost and expense. Within 30 days of receipt of an invoice from the City, the utility operator shall reimburse the City the full invoiced amount.

## Section 13. RIGHTS-OF-WAY USE AND ACCESS FEES.

A. Every person that owns utility facilities in the City shall pay the rights-of-way use fee in the amount determined by resolution of the City Council.

B. Every person that utilizes utility facilities in the City's rights-of-way to provide utility service to customers in the City, whether or not the person owns the utility facilities utilized to provide the service(s), shall pay the rights-of-way access fee in the amount determined by resolution of the City Council for every utility service provided to customers in the City.

C. A person subject to both the rights-of-way use fee in subsection A and the rights-of- way access fee in subsection B of this Section shall deduct from the total amount due the lower of the fees due under subsection A and subsection B or, in the event the fees due under subsection A and subsection B are the same, deduct from the total amount due the full amount of one of the fees.

D. Fees required by this Section shall be reduced by any franchise fees, but in no case shall be less than zero dollars ($0).

E. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

F. Unless otherwise agreed to in writing by the City, the fees set forth under this Section shall be paid quarterly, in arrears, within forty-five (45) days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable, a remittance form shall be provided by the City. Upon request, a utility operator or utility provider shall provide, at no cost to the City, any additional reports or information the City deems necessary, in its sole discretion, to ensure compliance with this Section. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative describing the calculation, details on number of customers within the City limits, or any other information needed for the City to readily verify compliance.

G. The calculation of the fees required by this Section shall be subject to all applicable limitations imposed by federal or state law.

H. The City reserves the right to enact other fees and taxes applicable to person(s) subject to this Ordinance. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no person may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the fees required under this Ordinance.

## Section 14. PENALTIES AND INTEREST ON FEES.

A. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided under this Ordinance shall pay a penalty listed below in addition to the amount due:

I. First occurrence during any one calendar year; ten percent (10%) of the amount owed, or twenty-five dollars ($25.00), whichever is greater.

II. Second occurrence during any one calendar year; fifteen percent (15%) of the amount owed, or fifty dollars ($50.00), whichever is greater.

III. Third occurrence during any one calendar year; twenty percent (20%) of the amount owed, or seventy-five dollars ($75.00), whichever is greater.

IV. Fourth occurrence during any one calendar year; twenty-five percent (25%) of the amount owed, or one hundred dollars ($100.00), whichever is greater.

V. If the City determines that the nonpayment of any fees due as required by this Ordinance is due to fraud or intent to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars ($500.00), whichever is greater, shall be added thereto in addition to other penalties stated in the Ordinance or as allowed by law.

VI. In addition to the penalties imposed, any person who fails to remit any fees when due shall pay interest at the rate of one and one-half percent (1.5%) per month or fractions thereof, without proration for portions of a month, on the total amount due, from the date on which the remittance first became delinquent, until received by the City.

VII. Every penalty imposed, and such interest as accrues under the provision of this Section, shall be merged with, and become part of, the fees required to be paid.

VIII. The City or its designee, in their sole discretion, shall have the authority to reduce or waive the penalties and interest due under this Section.

IX. Penalties and interest imposed by this Section are in addition to any penalties that may be assessed under other ordinances or regulations of the City.

## Section 15. AUDITS AND RECORDS REQUESTS.

A. The City may audit and/or request information from any person at any time to verify compliance with this Ordinance. Within thirty (30) days of a written request from the City , or as otherwise agreed to in writing by the City, every utility operator and utility provider shall furnish the City, at no cost to the City with information sufficient to demonstrate compliance with all applicable requirements of this Ordinance, all other City regulations, and its franchise agreement, if any, including but not limited to payment of any applicable fees.

B. If the City's audit or review of the books, records, and other documents or information of the utility operator or utility provider demonstrates that the utility operator or utility provider has underpaid the applicable rights-of-way fees or any other fees required by this Ordinance by two percent (2%) or more in any one year, the utility operator, or utility provider shall reimburse the City for the cost of the audit or review, in addition to any interest and penalties owed.

C. Any underpayment, including any interest, penalties, records requests or audit

cost reimbursement, shall be paid within thirty (30) days of the City's notice to the utility operator or utility provider of such underpayment.

D. The utility provider or utility operator shall maintain records subject to this subsection for not less than six years.

## Section 16. INSURANCE AND INDEMNIFICATION.

A. Insurance.

I. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:

(a) Comprehensive general liability insurance with limits not less than:

(i) Three million dollars ($3,000,000) for bodily injury or death to each person;

(ii) Three million dollars ($3,000,000) for property damage resulting from any one accident; and

(iii) Three million dollars ($3,000,000) for all other types of liability.

(b) Commercial automobile liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars ($1,000,000) for each person and three million dollars ($3,000,000) for each accident.

(c) Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars ($1,000,000).

(d) If not otherwise included in the policies required by subsection A.1 of this Section, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars ($3,000,000).

(e) The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, with the exception of worker's compensation, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between

insureds on the policy. The insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City, and the certificate of insurance shall include such an endorsement. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this Section and provide the City with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage in the terms and amounts required. If agreed to in writing by the City, the utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

(f) The utility operator shall at all times maintain on file with the City a current certificate of insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

B. Performance Bond.

Unless otherwise agreed to in writing by the city, before a franchise granted or license issued pursuant to this chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security or assurance, in a form acceptable to the city, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required by this Section.

C. Indemnification.

I. To the fullest extent permitted by law, each utility operator shall defend, indemnify, and hold harmless the City and its officers, employees, agents, and representatives from and against any and all liability, causes of action, claims, damages, losses, judgments, and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place), that may be asserted by any person in any way arising out of, resulting from, during, or in connection with, or alleged to arise out of or result from the negligence, carelessness, wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the work, construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance or by a franchise agreement. The acceptance of a license under this Ordinance or franchise granted by the City shall constitute such an agreement by the

applicant whether the same is expressed or not.

II. Every utility operator shall also indemnify the City for any damages, claims, additional costs, or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights-of-way in a timely manner as required by this Ordinance, except to the extent the utility operator's failure arises directly from the City's negligence or willful misconduct.

**Section 17. COMPLIANCE.** Every utility operator and utility provider shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules, and regulations of the City, heretofore or hereafter adopted or established.

**Section 18. CONFIDENTIAL/PROPRIETARY INFORMATION.** If any person is required by this Ordinance to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps, or information are clearly marked as confidential at the time of disclosure to the City ("confidential information"), the City shall take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably possible the City will notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The City shall not be required to incur any costs to protect any confidential information, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

**Section 19. VIOLATIONS AND PENALTIES.**

A. In addition to any other remedy provided in this Ordinance, a violation of any provision of this Ordinance or any other City regulations, codes, ordinances, or standards, is a civil violation and shall be enforced under the provisions of this Ordinance. Each day that the violation exists or continues shall constitute a separate violation. Each civil violation shall be punishable by a fine of not less than one hundred dollars ($100.00) and not more than one thousand dollars ($1,000).

B. Before issuing the first citation for a violation, the City shall provide written notice of the violation(s), including a short and concise statement of the nature and general facts of the violation, and provide a reasonable time period not to exceed thirty (30) days for the person to demonstrate that the person has (i) not violated this Ordinance or (ii) cured or is in the process of curing any violation. If the person does not respond within the reasonable time stated in the notice, or if the City determines in its sole discretion that the response is inadequate, the City may

proceed with assessing penalties in accordance with applicable City procedures.

C. The rights, remedies, and penalties provided in this Ordinance are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies, and penalties available to the City under any other provision of law, including without limitation any judicial or other remedy at law or in equity, for enforcement of this Ordinance.

## Section 20. SEVERABILITY AND PREEMPTION.

A. The provisions of this Ordinance shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Ordinance is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations, or decision, the remainder of this Ordinance shall not be affected thereby but shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules, or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended, or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

## Section 21. APPLICATION TO EXISTING AGREEMENTS.

To the extent that this Ordinance is not in conflict with and can be implemented consistent with existing franchise agreements, this Ordinance shall apply to all existing franchise agreements granted to utility operators by the City.

# MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON VERTICAL INFRASTRUCTURE IN THE PUBLIC RIGHTS-OF-WAY

[*APPEARS BEHIND THIS COVERSHEET*]

# MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON VERTICAL INFRASTRUCTURE IN THE PUBLIC RIGHTS-OF-WAY

between

**CITY OF [*CITY NAME*]**, an Oregon municipal corporation and

**[*LICENSEE NAME*]**, a [*licensee corporate form*]

**EFFECTIVE DATE: [*effective date*]**

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# MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON VERTICAL INFRASTRUCTURE IN THE PUBLIC RIGHTS-OF-WAY

This Master License Agreement for Wireless Facilities on Vertical Infrastructure in the Public Rights-of-Way (this "**Master License**") dated [*effective date*] (the "**Effective Date**") is between the **CITY OF [*CITY NAME*]**, an Oregon municipal corporation (the "**City**"), and **[*LICENSEE NAME*]**, a [*licensee corporate form*] ("**Licensee**").

## RECITALS

A. **WHEREAS,** technological developments in wireless communications, new and reallocated electromagnetic spectrum band licenses and consumer demand for high-speed mobile broadband and other information services have caused wireless service providers to invest in distributed antenna systems, distributed network systems and other so-called "small cell" deployments that typically utilize smaller equipment placed on existing infrastructure in the ROW (as defined below) that serve a smaller physical area than as compared to traditional "macro cell" deployments on freestanding towers or rooftops; and

B. **WHEREAS,** Section 253 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as 47 U.S.C. § 253, preempts certain state and local regulations that prohibit or effectively prohibit any entity's ability to provide any telecommunication service, but also preserves the City's authority to manage the ROW within the City's jurisdictional boundaries, and to require fair and reasonable compensation for such use by telecommunication service providers on a competitively-neutral and nondiscriminatory basis so long as such compensation is disclosed; and

C. **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 ROW and government-owned infrastructure within the ROW; (2) curtailed certain discretion over aesthetic issues; and (3) applied time limits on negotiations between communications providers and state and local governments over agreements for access to government-owned infrastructure in the ROW.

D. **WHEREAS,** the City owns, as its personal property, certain Vertical Infrastructure (as defined below) in or on the public rights-of-way within the City's territorial

and/or jurisdictional boundaries that may be suitable or useful as support structures for Licensee's Equipment (as defined below); and

E. **WHEREAS,** Licensee installs, maintains and operates wireless facilities as its principal business, and represents to the City that Licensee holds all Regulatory Approvals (as defined below) to provide wireless broadband services within the geographic area that encompasses the City's territorial and/or jurisdictional boundaries; and

F. **WHEREAS,** Licensee desires to install, maintain and operate small-cell wireless facilities on the City's Vertical Infrastructure; and

G. **WHEREAS,** the City generally desires to license certain Vertical Infrastructure to Licensee and other similarly-situated entities, but finds that the Order leaves the City with little incentive or time to conduct negotiations and, therefore, the City has adopted this Master License as a form agreement to establish a process by which Licensee may request to license from the City individual locations on or in the City's Vertical Infrastructure, and also to establish the rates, terms and conditions that will be generally applicable to all Vertical Infrastructure licensed to Licensee by the City; and

H. **WHEREAS,** consistent with federal 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 similar or identical 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

"***Adjustment Notice***" means the same as that term is defined in Section 4.8 (Fee Adjustments by City After Fee Study).

"***Administrative Fees***" collectively refer to the Master License Administrative Fee and Site License Administrative Fee(s).

"***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.

"***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 Site License approved by the City.

"***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 or any Site License.

"**City Attorney**" means the City Attorney of the City of [*city name*], an Oregon municipal corporation, whether permanent or acting, or the City Attorney's designee.

"***City Council***" means the elected governing body of the City of [*city name*], Oregon.

"***City Manager***" means the City Manager of the City of [*city name*], an Oregon municipal corporation, whether permanent or acting, or the City Manager's designee.

"***City Property***" means any interest in real or personal property owned or controlled by the City, which includes without limitation any and all (a) land, air and water areas; (b) license interests, leasehold interests, possessory interests, easements, franchises and other appurtenant rights or interests; (c) the ROW or public utility easements; and (d) physical improvements such as buildings, structures, infrastructure, utilities and other facilities, and alterations, installations, fixtures, furnishings and additions to existing real property, personal property and improvements.

"***City Work***" means the same as that term is defined in Section 13.3 (Rearrangement and Relocation for City Work).

"***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 or person.

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

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

"***Equipment***" means any antennas, radios, associated utility or equipment boxes,

battery backup units, transmitters, receivers, amplifiers, ancillary fiber-optic cables and/or wiring and other ancillary equipment used for radio or other wireless communication (voice, data or otherwise) transmission and/or reception, which includes without limitation the means, devices, brackets, hardware and other apparatuses 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 in connection with the Equipment attached to a Vertical Infrastructure, and any signage attached to such Equipment that may be approved by the City or required by Law.

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

"***Fee Resolution***" means the same as that term is defined in Section 4.8 (Fee Adjustments by City After Fee Study).

"***GIS***" means "geographic information system". "***GPS***" means "global positioning

system".

"***Hazardous Material***" means any material that, due to its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed 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 by any local, regional, state or federal body with jurisdiction and responsibility for issuing Regulatory Approvals in accordance with applicable Laws. The term "Hazardous Material" will be broadly construed, and includes, without limitation, the following: (a) 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.*); (b) any petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and (c) any substance, material, product or waste defined or designated as hazardous, toxic, radioactive, dangerous, regulated 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 any activities undertaken to (a) determine the nature and extent of Hazardous Material that may be located in, on, under, over, along or about the License Area or other City Property in connection with the License Area that has been or is in danger of being released into the environment, and (b) to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

"***Laws***" mean 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 ROW where Licensee installs, operates and maintains Equipment, which includes without limitation any conduits, chases, risers, trays, pipes, vaults, pull boxes and/or hand holes on Vertical Infrastructure and/or on, in, over or under the ground of the ROW 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.

"***License Fee***" means the annual fee for each licensed Vertical Infrastructure authorized under any Site License, as specified in **Schedule 1** (Annual License Fee).

"***License Payment Date***" means the same as that term is defined in Section 4.1 (License Fee).

"***Master License Administrative Fee***" means the same as that term is defined in Section 4.3 (Master License Administrative Fee).

"***Master License Term***" means the same as that term is defined in Section 3.1 (Master License Term).

"***Municipal Code***" means the City of [*city name*] 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.

"***OUNC***" means the Oregon Utility Notification Center, established by ORS § 757.547, as may be amended or superseded, or its duly appointed successor agency.

"***OSHA***" means the Occupational Safety and Health Administration of the United States Department of Labor, as established by the Occupational Health and Safety Act of 1970, or OSHA's duly appointed successor agency.

"***Permitted Use***" means the same as that term is defined in Section 5.1 (Permitted Use).

"***Public rights-of-way***" or "***ROW***" means the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, sidewalks, public utility easements and all other public ways or areas generally open to the public for travel, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel. This definition applies only to the extent of the City's right, title,

interest, and authority to grant a license or other authorization to occupy and use such areas for utility facilities. "***Public Works Director***" means the City of [*city name*] Director of Public Works or their designee.

"***PUC***" means the Public Utility Commission of Oregon, established by ORS § 756.014, as may be amended or superseded, or its duly appointed successor agency.

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

"***Reimbursement Fee***" means any cost-based reimbursements owed to the City by Licensee, which includes without limitation reimbursement for work performed by the City on Licensee's behalf as provided in this Master License and reimbursement for Staff Augmentation pursuant to Section 6.2.5 (City Staff Augmentation).

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

"***RF***" means radiofrequency or electromagnetic waves.

"***Site License***" means the document in the templated form shown in **Exhibit A** (Form of Site License Agreement) that, when fully executed, incorporates the provisions in this Master License and authorizes Licensee to install, operate and maintain Equipment for the Permitted Use on Vertical Infrastructure identified in the Site License.

"***Site License Administrative Fee***" means the same as that term is defined in Section 4.4 (Site License Administrative Fee).

"***Site License Application***" means the same as that term is defined in Section 6.2 (Site License Application).

"***Site License Effective Date***" means the same as that term is defined in **Exhibit A**.

"***Site License Term***" means the same as that term is defined in Section 3.2 (Site License Term).

"***Staff Augmentation***" means the same as that term is defined in Section 6.2.5 (City Staff Augmentation).

"***Term***" refers collectively to the Master License Term and any applicable Site License Term.

"***Third Party Accommodations***" means the same as that term is defined in Section 13.4 (Rearrangement and Relocation to Accommodate Third Parties).

"***Vertical Infrastructure***" means all poles or similar structures and/or facilities owned or controlled by the City and located in the ROW or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control or similar functions.

## 2 SCOPE OF LICENSE

### 2.1. License Area Defined

The parties to this Master License define "License Area" to mean that certain space on that certain Vertical Infrastructure and other City Property, which includes without limitation any conduits, chases, risers, trays, pipes, vaults, pull boxes and hand holes, identified on the Approved Plans as occupied by the Equipment and licensed to Licensee, all as more particularly described and depicted in **Exhibit A-1** (License Area). The License Area shall be for Licensee's exclusive use subject to the terms and conditions of this Master License including the City's paramount rights which will be superior to Licensee's rights at all times as set forth in Section 2.2 below.

### 2.2. Site License Issuance and Effect

Pursuant and subject to the terms and conditions in this Master License, the City, in its proprietary capacity as the Vertical Infrastructure owner, will issue one or more Site Licenses, which will grant Licensee a non-exclusive license to access, use and occupy certain space on the Vertical Infrastructure covered by such Site License(s) signed by the parties pursuant to this Master License for the Permitted Use and to install, maintain and operate the Equipment as shown in the Approved Plans attached to such Site License(s). A single Site License may cover up to [*x*] separate Vertical Infrastructure locations.[51] After the City issues a Site License to Licensee, the City shall not grant any

[51] How many facilities to allow under a single Site License is a choice for the city. The most common practice is to align the limit with how many permit applications for small wireless facilities can be submitted as a batch. Many cities that impose limits on how many facilities can be batched select a number between five and 15. The FCC requires state and local governments to accept "batched" applications for small wireless facilities. As defined by the FCC, a "batch" means either multiple separate applications for individual small wireless facilities submitted by the applicant at the same time and processed by the permitting authority as a group, or a single application that covers multiple small wireless facilities. The FCC does not dictate how many applications may be included in a batch, and so state and local governments may establish reasonable rules for batched applications so long as the rules

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 other spaces on the same Vertical Infrastructure for any other purpose except to the extent expressly provided otherwise in this Master License.

### 2.3. Limitations on License Areas

This Master License applies to only those certain areas in, on, under and over the ROW 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 ROW 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.

Licensee must obtain separate leases, licenses or other agreements from the City to install its Equipment on such City-owned Vertical Infrastructure or other City Property within any proposed License Area prior to submitting a Site License Application for proposed License Area under this Master License.

### 2.4. License Area Condition

Licensee expressly acknowledges and agrees to enter on to and use the License Area in its "as-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. This License shall not be deemed a warranty of title by the City.

### 2.5. Licensee's Due Diligence

Licensee expressly represents and warrants to the City that Licensee has conducted a reasonably diligent 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 this Master License. Any testing performed by Licensee or its Agents shall be subject to the provisions in Section 7.5 (Damage or Alterations to Other Property). In addition to any other conditions that the City may impose on such testing, Licensee shall have the obligation to repair any damage

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are consistent with other FCC and applicable state regulations.

caused by such testing and to restore all affected areas to the condition that existed immediately prior to such testing.

### 2.6. Limited Interest Created

This Master License grants Licensee only a non-possessory license to enter on to and use the License Area for the Permitted Use. The license shall be revocable in accordance with the terms and conditions of this Master License. Licensee expressly acknowledges and agrees that: (a) this Master License is not and shall not be deemed to be coupled with an interest; (b) the City retains legal possession and control over the Vertical Infrastructure for the City's municipal functions, which will be superior to Licensee's rights and interest in the Vertical Infrastructure, if any, at all times; (c) subject to the terms and conditions in this Master License, the City may terminate this Master License in whole or in part at any time; (d) except as specifically provided otherwise in this Master License, the City may enter into any agreement with third parties to use and/or occupy the Vertical Infrastructure and/or other City Property; and (e) this Master License does not create and will not be deemed to create any partnership or joint venture between the City and Licensee.

### 2.7. No Impediment to Municipal Functions

Except as expressly provided otherwise in this Master License, this Master License shall not limit, alter or waive the City's absolute right to use the License Area, in whole or in part, as infrastructure established and maintained for the City's and the public's benefit.

### 2.8. Diminutions in Light, Air or Signal Transmission/Reception

If any existing or future structure diminishes any light, air or signal propagation, transmission or reception, whether erected by the City or not, Licensee shall not be entitled to any reduction in any License Fee, Administrative Fee, Reimbursement Fee or any other sums payable to the City under this Master License, the City shall have no liability to Licensee whatsoever and such diminution will not affect this Master 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 10 years after the Effective Date (the "**Master License Term**"), unless earlier terminated in accordance with this Master License. Licensee shall not have the right to automatically renew this Master License after the Master License Term Expires.

### 3.2. Site License Term

Each Site License will commence on its Site License Effective Date and automatically

expire 10 years after the Site License Effective Date (the "**Site License Term**"), unless earlier terminated in accordance with this Master License. If this Master License expires or terminates before any Site License expires or terminates, any Site License(s) still in effect remain subject to the applicable 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 one year before the Expiration Date would have nine years left on its Site License Term and would remain subject to all the applicable terms and conditions in this Master License.*

## 4 LICENSE FEE AND OTHER PAYMENTS

### 4.1. License Fee

Licensee shall pay an annual License Fee as specified in **Schedule 1** for each licensed Vertical Infrastructure authorized under any Site License. All License Fees shall be paid in advance, without any deduction or setoff for any reason, to the City each year on [*payment date*] ("**License Payment Date**"); provided, however, that the License Fee for the first year in a Site License Term shall be paid within 90 days from the applicable Site License Effective Date and prorated by the number of days between the Site License Effective Date and the next License Payment Date.

> *As an illustration and not a limitation, if the Site License Effective Date occurs 30 days before the License Payment Date, Licensee would pay the City the prorated License Fee for the year in which the Site License Effective Date occurred, plus the full, non-prorated License Fee in advance for the current year within 90 days from the Site License Effective Date (i.e., 60 days after the first License Payment Date), and would thereafter pay full, non-prorated License Fee in advance each year on the License Payment Date.*

### 4.2. Annual Adjustments to License Fee

Increases to the annual License Fee are specified in **Schedule 1**. The parties acknowledge and agree that the increases in annual License Fees specified in **Schedule 1** represent a reasonably estimated adjustment to reimburse the City's reasonably approximate, objectively reasonable and nondiscriminatory costs due to expected average price inflation over the Term.

### 4.3. 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 **[*amount*] and 00/100 Dollars** (**$[*amount*].00**) (the "**Master License Administrative Fee**") representing payment in full of Licensee's share of the City's costs 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.

### 4.4. Site License Administrative Fee

At the time Licensee delivers to the City a Site License Application, Licensee shall pay to the City a nonrefundable administrative fee equal to **[*amount*] and 00/100 Dollars** (**$[*amount*].00**) per proposed Vertical Infrastructure (the "**Site License Administrative Fee**"). The City will not be obligated to commence its review for any Site License Application until the City receives the Site License Administrative Fee.

### 4.5. Late Charges

If Licensee fails to pay any License Fee or any other amount payable to the City on the date that such amounts are due and unpaid, such amounts will be subject to a late charge equal to five percent (5%) of unpaid amounts.

### 4.6. Default Interest

Any License Fees, Administrative 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 15 days after due and payable to the City; provided, Licensee is only subject to this interest if the City notifies Licensee in writing of any unpaid amounts and Licensee does not pay within 15 days after Licensee receives such notice. Any sums received shall be first applied towards any interest, then to the late charge and lastly to principal amount owed. Any interest or late charge payments will not alone excuse or cure any default by Licensee.

### 4.7. Liquidated Charges and Fees

The parties agree that the late charges and default interest 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 late charges and default interest 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 LATE FEE AND DEFAULT INTEREST AS REASONABLE ESTIMATES OF THE CITY'S ADDITIONAL ADMINISTRATIVE COSTS AND OTHER DETRIMENT.

Licensee Initials: _____ City Initials: _____

### 4.8. Fee Adjustments by City After Fee Study

At any time throughout the Term, the City shall have the option (but not the obligation) to adjust any License Fee, Administrative Fee and/or rates for staff time and materials in connection with any Reimbursement 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, any Regulatory Approvals issued or administered by the City in connection with this Master License or the Equipment or Licensee's acts or omissions on or about the License Area and/or the Streets. 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 License Fee, 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.

### 4.9. 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 License Fee, Administrative Fee, Reimbursement Fee and any other sums payable to the City 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 30 days after a written demand for reimbursement and reasonable documentation

to support such costs. The provisions in this Section 4.9 shall survive this Master License's and any Site License's expiration, revocation or termination.

### 4.10. Payment Method

Licensee shall pay all License 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 name*] or (2) electronic wire transfer. Payments by check shall be mailed to:

[*PAYMENT ADDRESS*]

Any payment made with a dishonored check will be deemed unpaid.[52]

## 5 USE

### 5.1. Permitted Use

Licensee may use the License Area solely to construct, install, operate and maintain Equipment for transmission and reception of wireless communications signals (the "**Permitted Use**") in compliance with 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 "Macro Cell" Uses

The City intends this Master License to cover only wireless facilities that (a) qualify as a "small wireless facility" as that term is defined by the FCC under 47 C.F.R. § 1.6002(*l*); and (b) 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 does not include the right to use any Vertical Infrastructure as a support structure 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.

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[52] This section does not include payments by credit card due to transaction fees charged by credit card companies. Cities that accept credit cards as a form of payment should consider passing through the transaction fee to the credit card user to ensure full recovery of lawfully assessed fees.

### 5.4. Signs and Advertisements

Licensee acknowledges and agrees that this Master License does not authorize Licensee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on the License Area, except as may be specifically authorized under this Master License or as may be required for compliance with any Regulatory Approvals and applicable Laws.

## 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 a Site License that covers the License Area. Licensee may obtain a Site License only during the Master License Term 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 Equipment is not in conformance with design standards adopted by the City; (6) the additional load on the Vertical Infrastructure the proposed Equipment would create; and (7) any municipal plans for the Vertical Infrastructure, other City Property or the ROW in proximity to the subject Vertical Infrastructure.

### 6.2. Site License Application

A complete Site License Application must include:

(a) Two partially executed duplicate counterparts of a Site License in the form attached as **Exhibit A** to this Master License, together with:

(1) a fully completed **Exhibit A-1**, which shall contain a list that identifies all Vertical Infrastructure proposed to be covered under the Site License Application by an approximate street address, GPS coordinates compatible with the City's GIS software and, if available, any unique number already assigned to the existing

Vertical Infrastructure;

(2) a fully completed **Exhibit A-2**, which shall contain detailed construction plans for the proposed installation(s), including concealment elements consistent with City standards and a detailed traffic control plan for all work on and adjacent to City roadways, and an inventory for all proposed Equipment to be installed on the Vertical Infrastructure covered under the Site License Application;

(3) a true and correct copy of **Schedule 1** attached to this Master License; and

(4) the Site License Administrative Fee;

(b) 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

(c) if the City elects to augment City staff as provided in Section 6.2.5 (City Staff Augmentation), a deposit for the City's estimated costs.

### 6.2.1. Timeframe for City's Review

The City will review each complete Site License Application within the applicable timeframes under applicable Laws, taking into account any tolling periods for such timeframes as provided in applicable Laws, and as modified in this Master License. Licensee shall provide the City with at least 60 days prior notice for any Site License Application that covers more than five proposed installations on Vertical Infrastructure to allow the City sufficient time to augment its staff as provided in Section 6.2.5 (City Staff Augmentation). Licensee shall use best efforts not to submit successive Site License Applications that would effectively thwart the City's right to the 60-day advance notice provided in this Section 6.2.1. If Licensee fails to provide the notice required in this Section or submits successive Site License Applications that exceed the five-installation threshold within any 30-day period, the parties shall enter into a written agreement to extend the applicable timeframes under applicable Laws for at least an additional 60 days, unless the City, in its sole discretion, agrees to a shorter extension.

### 6.2.2. Site License Application Priority

Licensee expressly acknowledges that the City either already has or may in the future enter into similar master license agreements for its Vertical Infrastructure with other persons or entities, and that Licensee and such third parties may from time-to-time desire to license the same Vertical Infrastructure from the City. To promote a fair and competitively neutral process, the City shall implement a first-in-time prioritization process as provided in this Section 6.2.2. The City shall review each Site License Application, which includes without limitation any Site License Applications submitted by other licensees, in the order received. Each Site License Application will be date and

time stamped when received by the City, and such stamp shall control the Site License Application's priority relative to other Site License Applications. In the event that the City receives two Site License Applications for the same Vertical Infrastructure, the applications with lower priority will be held in abeyance until the higher-priority application is withdrawn, denied or timed-out as provided in this Master License, at which time the City will commence to review the next-highest priority Site License Application for that Vertical Infrastructure.

### 6.2.3. Site License Application Amendments

If the City determines for any reason that the Site License Application is incomplete or the Permitted Use at any particular proposed License Area would impede its municipal functions or otherwise negatively affects its proprietary interests, the City will provide notice to Licensee as soon as reasonably practicable. Licensee will have 15 business days from when Licensee receives such notice to amend its Site License Application without any impact on the Site License Application's priority relative to any other applications then under review or later received by the City. Any amendments received after the 15-day period, or any other material changes Licensee may make to the Site License Application, will cause the date and time on which the application was submitted or deemed submitted to be changed to the date and time on which Licensee submitted the proposed changes.

### 6.2.4. Consultation with Other City Departments

The City, in its proprietary capacity as the licensor under this Master License, may consult with other departments within the City to assess whether Licensee's proposed Equipment poses any concerns, which includes without limitation any concerns about aesthetics, historic or environmental impacts, traffic control, pedestrian access and general ROW management. Licensee acknowledges that any consultation with any other City departments in accordance with this Section 6.2.4 and any actions or failures to act by the City that may result from such consultations would be as the Vertical Infrastructure owner and not an exercise of the City's regulatory authority.

### 6.2.5. 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**"). Licensee shall be responsible for all costs incurred by the City in connection with 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 the deposit 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 within 10 days after Licensee receives the City's demand for reimbursement, together with copies of invoices or other documentation to evidence the

City's costs.

### 6.2.6. Site License Application Approvals

If the City approves a Site License Application, the City will return one fully executed Site License to Licensee. Such approval may occur before or simultaneous with any approvals or denials for any Regulatory Approvals issued by the City in its regulatory capacity. Licensee acknowledges and agrees that the City's decision to approve or disapprove any Site License Application is not, and will not be deemed to be, a regulatory determination subject to any administrative appeal, but is an exercise of the City's proprietary authority over its Vertical Infrastructure as its personal property. If Licensee fails to commence construction pursuant to the Site License within one year from the date the City fully executes the Site License, then the Site License shall automatically expire unless the [*City Manager*][53] grants a written extension that may not exceed one additional year. Licensee shall not be entitled to any refund for any fees, which include without limitation the License Fee, paid in connection with a Site License that expires under this Section 6.2.6. Nothing in this Section 6.2.6 is intended to prohibit or prevent Licensee from submitting a new Site License Application for the same or substantially the same Vertical Infrastructure as those covered under a Site License that expired pursuant to this Section 6.2.6.

### 6.2.7. Site License Application Denials

Subject to applicable Laws, Licensee acknowledges that the City reserves the absolute right to disapprove any Site License Application in whole or in part when the City determines in its sole judgment that the proposed Equipment would unreasonably interfere with the City's municipal functions or proprietary interests or create a hazardous or unsafe condition. The City shall provide Licensee with a written denial that states the basis for the denial.

## 7 EQUIPMENT INSTALLATION, MODIFICATION AND OTHER WORK

### 7.1. 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

[53] This official does not need to be the City Manager and could be a different official designated with general administrative authority over the MLA and Site Licenses. Which official should hold this position is an internal/organizational choice for each city to make based on its own structure, norms and preferences.

issued by the City. Any installation, construction, and/or other work performed by Licensee or its Agents 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. 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. Corrections to Approved Plans

At all times relevant to this Master License and any applicable Site License, Licensee shall have the obligation to correct any errors or omissions in any Approved Plans. Licensee shall promptly send written notice to the City if Licensee discovers any such errors or omissions. Any Approved Plans and/or amendments to Approved Plans by the City will not release or excuse Licensee's obligations under Section 7.

### 7.4. Notice to Proceed[54]

After the City approves the Site License in accordance with Section 6.2.6 (Site License Application Approvals) in this Master License, the City's issuance of all Regulatory Approvals required for construction, which includes, without limitation, any traffic control permits, shall serve as a notice to Licensee that Licensee may proceed with the construction, installation and other work authorized under such Site License and Regulatory Approvals.

### 7.5. Damage or Alterations to Other Property

Nothing in this Master License or any 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. Except as may be expressly provided otherwise in this Master License, the City may withhold and/or condition its consent to any request to alter any City

[54] As a good practice, the cities should keep their proprietary and regulatory functions separate—which is partly why the Site License application (*i.e.*, a request by the licensee for the city to grant access to city-owned property) is a separate process and prerequisite for Regulatory Approvals. Designating the issuance of Regulatory Approvals as a notice to proceed under the Master License maintains the division between these functions without unnecessary administrative burdens or potential delays that eat into the FCC shot clock applicable to small wireless facilities. *See* 47 C.F.R. § 1.6003(c); *Order* at Appx. C, ¶ 3 ("finding that small wireless facilities shot clocks apply to "all authorizations a locality may require, . . . including license or franchise agreements to access ROW, building permits . . . and other authorizations needed for deployment .....").

Property in its sole and absolute discretion.

### 7.6. Work Standards

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.

### 7.7. Licensee's Contractors, Subcontractors and Other Personnel

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 subject to City's prior written approval or disapproval for any or no reason in City's discretion. At least five (5) business days before any installation, construction and other work commences on or about the License Area, Licensee shall provide City with: (1) a schedule with all activities to be performed in connection with the installation, construction and other work; (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; and (3) copies of current certificates of insurance for such contractors and subcontractors conforming to the requirements of Section 15 if such current certificates of insurance are not already on file with City.

### 7.8. 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 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.

### 7.9. 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.

### 7.10. Project Managers

The City and Licensee each designate the person listed in this Section 7.10 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.[55]

**CITY'S PROJECT MANAGER:**
[*name*]
[*title*]
[*mailing address*]
[*telephone number*]
[*email address*]

**LICENSEE'S PROJECT MANAGER:**
[*name*]
[*title*]
[*mailing address*]
[*telephone number*]
[*email address*]

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. 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. The parties may designate a new project manager from time-to-time by written notice to the other party.

### 7.11. Underground Service Alert

Licensee warrants and represents to City that Licensee is presently a member in good standing with the 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

[55] Whether cities elect to name specific project managers responsible for day-to-day administration of the agreement is an individual policy choice. Employee turnover and the long-term nature of this agreement may warrant a more flexible approach that involves identifying a department or position that will generally serve as the project manager. For cities that prefer to specify a particular person, this provision allows each party to designate a new project manager from time-to-time upon written notice.

the OUNC in accordance with applicable Laws. Prior to any excavation performed in the ROW, 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.

### 7.12. Damage and Repair to Subsurface Structures

Any excavation performed in the ROW 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 ROW, 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 7.12 shall be performed under the Public Works Director's supervision and satisfaction.

### 7.13. Post-Completion Inspections and Corrections

Within 10 days after Licensee completes any Equipment, Vertical 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 or Vertical 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 Public Works Director in a written notice to Licensee; provided, however, that, if the defects and conditions threaten public health and safety as determined by the Public Works Director, the City may require Licensee to immediately correct such defects and/or conditions and further provided that the City may correct such defects and/or conditions at Licensee's expense if Licensee cannot or will not perform the corrections in a timely manner.

### 7.14. As-Built Plans and Maps

Within 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 Public Works Director. In addition to any format required by the Public Works Director, 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. 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 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**.

### 7.15. Future Modifications, Replacements, Additions and Other Alterations

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 in this Master License; provided, however, that any stricter requirements in any Regulatory Approvals and the Municipal Code shall control over the terms in this Master License. If not in conflict with the foregoing Licensee may undertake the following without the City's prior consent in its capacity as the licensor under this Master License: (1) perform routine maintenance and repair of any Equipment installed on a Vertical Infrastructure pursuant to a valid Site License, and (2) perform "like-for-like" Equipment replacements so long as (a) any such "like-for-like" replacement does not alter the installed Equipment's visible aesthetic appearance and (b) the replacement does not (i) result in an increase in the size of the License Area; (ii) materially increase the weight, dead loading, wind loading or structural loading on the applicable Vertical 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 RF emissions standards under applicable Laws; and (iv) does not interfere with any municipal functions or equipment. Any other modification, addition or upgrade to the Equipment installed in a License Area 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 required Regulatory Approvals. Subject to the terms in this Section 7.15, Licensee shall not be required to submit a new Site License Application for modifications, replacements, additions or other alterations that do not require the City's prior written consent in its capacity as the licensor under this Master License; provided, however, that Licensee shall provide the City with as-built plans in a manner consistent with Section 7.14 (As-Built Plans and Maps) after Licensee completes any such work, and the City shall have the right to for the then-current description of the License Area in **Exhibit A-1** and/or the then-current Approved Plans in **Exhibit A-2**..

### 7.16. Title to Licensee's Equipment and Other Improvements

Except as may be specifically provided otherwise in this Master License, all Equipment, Licensee-owned Vertical Infrastructure and other improvements installed, constructed or placed on or about the License Area by Licensee or its Agents will be and remain at all

times Licensee's personal property. Subject to Section 27 (License Area Surrender), Licensee may remove its Equipment, Vertical Infrastructure and/or other improvements installed, constructed, or placed on or about the License Area from the License Area at any time upon 30 days' prior written notice to the City.

## 8 LICENSEE'S MAINTENANCE OBLIGATIONS

### 8.1. Equipment Maintenance

Licensee shall, at its sole cost and expense, maintain all Equipment installed on the License Area in good condition, reasonable wear, tear and casualty damage excepted, at all times, and shall promptly repair any damage to any Equipment installed on the License Area whenever repair or maintenance may be required, subject to the City's prior approval if required under Section 7 (Equipment Installation). With the exception of administrative encroachment permits for access to a Site, Licensee will not be required to seek the City's prior approval for any Equipment repair, maintenance, replacement or other installation on the License Area when such Equipment appears on the Approved Plans. Licensee must obtain the City's prior written approval for any Equipment repair, maintenance, replacement or other installation that involves larger, different or additional Equipment than as appears on the Approved Plans. Licensee expressly acknowledges and agrees that Licensee shall not perform any repair, maintenance, replacement or other work authorized under this subsection until and unless Licensee obtains all Regulatory Approvals required for such work.

All work performed by or for Licensee under this Section 8 shall be performed: (1) at Licensee's sole cost and expense; (2) by only qualified and trained persons and appropriately licensed contractors; (3) 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; and (4) in a manner compliant with all applicable Laws.

### 8.2. 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 72 hours after notice from the City). If Licensee fails to timely cure the damage, the City may remove the graffiti at Licensee's expense. Licensee will reimburse the City for all costs incurred to remove the graffiti within 30 days after Licensee receives the City's demand for payment, together with copies of invoices or other evidence to document the costs incurred.

## 9 UTILITIES

Licensee shall be responsible to secure its own utility services for its Equipment and 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. Licensee shall timely pay when due all charges for all utilities furnished to its Equipment on the License Area.

## 10 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 that may be imposed on Licensee under applicable Laws. Licensee shall not allow or suffer any lien for any taxes, assessments, charges, excises or exactions whatsoever to be imposed on the License Area or Licensee's Equipment. If the City receives any tax or assessment notices on or in connection with the License Area or Licensee's Equipment, the City shall promptly (but in no event later than 30 calendar days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to Licensee's Equipment. 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.

## 11 LIENS

Licensee shall keep the License Area free and clear from any and all liens or similar encumbrances 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. If any Licensee contractor or material supplier files any lien or similar encumbrance that attaches to the License Area, Licensee shall promptly (but in no case later than 30 days after discovery) cause such lien or encumbrance to be released. If Licensee does not cause such lien or encumbrance to be released within the 30-day period, the City will have the right, but not the obligation, to cause such lien or encumbrance 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 encumbrance to be released (which includes without limitation reasonable attorneys' fees) within 30 days after Licensee receives a written demand from the City together with reasonable documentation to support such costs and expenses.

## 12 LICENSEE'S OBLIGATION TO MAINTAIN COMPLIANCE WITH LAWS

### 12.1. Compliance with PUC Rules and Regulations

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

### 12.2. Compliance with Building and Other Safety Codes

In addition to Licensee's obligation to maintain compliance with all other Laws, Licensee shall conduct all activities on 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.

### 12.3. 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.

### 12.4. Compliance with Prevailing Wage Laws

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 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 10 business days after Licensee receives a written request from the City, Licensee shall make available during Licensee's regular business hours for the City to inspect at Licensee's corporate offices in [*county name*] which Licensee shall designate, 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.

## 13 CITY OPERATIONS

### 13.1. City's Access to License Areas

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 related to the City's streetlight operations and/or other municipal functions. 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 pursuant to this Section 13.1, which includes without limitation any Equipment removed in an emergency or other exigent circumstances pursuant, except to the extent that damage to the Equipment is directly caused by the City's or its Agent's gross negligence or willful misconduct.

### 13.2. City's Maintenance, Repairs or Alterations to Other 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 on any License Area nor any condition on any License Area will: (a) entitle Licensee to any damages; (b) excuse or reduce any obligation by Licensee to pay any sums due including but not limited to any License Fee or Administrative Fees, or perform any covenant under this Master License or any Site License; or (c) constitute or be construed as a constructive termination of this Master License or any Site License or as constructive eviction from the License Area.

### 13.3. 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 ROW, 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

owned, leased, licensed or controlled by the City in, on, under, over, along or about any ROW, 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 right 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. If the Public Works Director determines that any City Work will require the Equipment, the Vertical 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, 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 within a reasonable time which in no event shall be less than 30 days and no more than 90 days following Licensee's receipt of written notice from the Public Works Director of the City's intention to undertake City Work which requires the rearrangement and/or relocation of the Equipment, Vertical 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 may exercise its rights to rearrange or relocate the Equipment, Vertical Infrastructure without prior notice to Licensee when the Public Works Director 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 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 shall be deemed to be Reimbursable Fees, and Licensee shall promptly reimburse the City for the same within 30 days of Licensee's receipt of City's invoice accompanied by reasonable evidence of the Reimbursement Fee 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, or turning on or off any water, oil, gas, electricity or other utility service in connection with the Equipment, Vertical Infrastructure except to the extent of the gross negligence or willful misconduct of the City, the Indemnified City Parties, of any of them. Within 90 days after any Equipment, Vertical Infrastructure have been rearranged or relocated, Licensee shall file as-built plans and maps with the Director of Public Works in the same manner and subject to the same requirements as provided in Section 7.14 (As-Built Plans and Maps).

### 13.4. 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 to accommodate third parties authorized to use the ROW ("**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 on the License Area. Within 90 days after any Third-Party Accommodations, Licensee shall file as-built plans and maps with the Public Works Director in the same manner and subject to the same requirements as provided in Section 7.14 (As-Built Plans and Maps).

## 14 INDEMNIFICATION

### 14.1. Licensee's Indemnification Obligations

Licensee, for itself and its successors and assigns shall indemnify, defend and hold the City and its Agents, Invitees, elected and appointed officials and volunteers (collectively, the "**Indemnified City Parties**") harmless from and against any and all Claims incurred in connection with or arising in whole or in part from: (1) death or personal injury to any person or damage or loss to any property that occurs on or about the License Area or arises in connection with Licensee's or its Agents' authorized or unauthorized uses or activities on or about the License Area; (2) Licensee's failure or refusal to observe or perform any term, covenant, condition or other provision in this Master License to be observed or performed by Licensee; (3) Licensee's or its Agents' use or occupancy of the License Area, or the manner in which Licensee or its Agents use or occupy the License Area; (4) any exposure to RF emissions from Licensee's Equipment; (5) the License Area condition or any occurrence on or about the License Area attributable to the events described in clauses (1), (2), (3) or (4) under this Section 14.1; or (6) any act or omission by Licensee or its Agents on or about the License Area; all whether any negligence may be attributed to any Indemnified City Parties or not, all 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 directly and exclusively by the City's sole active negligence or willful misconduct. Licensee's obligations under this Section 14 include, without limitation, all reasonable fees, costs and expenses for attorneys, consultants and experts, and the City's actual costs to investigate any Claim. Licensee expressly acknowledges and agrees that (a) it has an immediate and independent obligation to defend any Indemnified City Parties from any Claim that actually or potentially falls within this Section 14, even when the allegations in the Claim

are or appear to be groundless, fraudulent or false; and (b) Licensee's obligations under this Section 14 arise at the time any Indemnified City Parties tender such Claim to Licensee and continue until such Claim's final resolution. Licensee's obligations under this Section 14.1 shall survive this Master License's and any applicable Site License's expiration, revocation or termination.

### 14.2. Licensee's Defense of the City

If 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 City Parties, or any of them. Such legal counsel retained by Licensee shall: (1) possess not less than 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. 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 14.2 shall survive this Master License's and any applicable Site License's expiration, revocation or termination.

## 15 INSURANCE

Before 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** upon 90 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 be a default subject to Licensee's right to cure such non-compliance within the time prescribed this Master License.

## 16 LIMITATIONS ON LIABILITY

### 16.1. General Limitations on 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 Sections 13.3 (Rearrangment and Relocation for City Work) and/or 13.4 (Rearrangement and Relocation to Accommodate Third-Parties); 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 and exclusively by the City's gross negligence or willful misconduct. Licensee expressly waives and releases all Claims it may have against the City or its Agents that arise in connection with the events described in this Section 16.1 as may be related to this Master License, any Site License or any acts or omissions on or about the License Area.

### 16.2. Consequential, Indirect or Punitive Damages

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 16.2 shall survive this Master License's and any applicable Site License's expiration, revocation or termination.

### 16.3. 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 16.3 shall survive this Master License's and any applicable Site License's expiration, revocation or termination.

### 16.4. 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 an 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).

## 17 HAZARDOUS MATERIALS

### 17.1. Hazardous Materials in the License Area

Licensee covenants and agrees that neither Licensee nor its Agents, clients, Carriers, tenants, subtenants, licensees, sublicensees, assignees, guests and/or Invitees will cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed, transported or Released in, on, under, over, along or about the License Area or any other City Property in connection with the License Area, in whole or in part, in violation of any Environmental Laws. Notwithstanding the foregoing, Licensee may use Hazardous Materials in small quantities as needed for routine operation, cleaning and maintenance of the 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.

### 17.2. Notice After Hazardous Material Release

Licensee shall immediately notify the City if and when Licensee learns, or has reason to believe, any Release has occurred in, on, under, over, along or about the License Area or other City Property. 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 Licensee's or its Agent's, client's, tenant's, subtenant's, licensee's, sublicensee's, assignee's and/or guest's acts, omissions or negligence.

### 17.3. Licensee's Hazardous Material Indemnification Obligations

If Licensee breaches any obligations contained in this Section 17, or if any act, omission or negligence by Licensee or its Agents, clients, tenants, subtenants, licensees, sublicensees, assignees and/or guests results in any Release on, about, in or beneath the License Area or 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 without limitation damages for decreasing the License Area's or other City Property's value, the loss or restriction of the use of usable space on, about, in or beneath the License Area or other City Property, and sums paid in

settlement of Claims, attorneys' fees, consultants' fees, 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 and exclusively 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, clients, tenants, subtenants, licensees, sublicensees, assignees and/or guests, and to restore the License Area or other City Property to its condition prior to such introduction or Release and/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 its Agents, clients, tenants, subtenants, licensees, sublicensees, assignees and/or guests causes any Release on, about, in or beneath the License Area or other City Property, then 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 Release or otherwise abate the Release in accordance with all Environmental Laws. 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 Release on or about the License Area or other City Property. Notwithstanding any other provision in this Master License, Licensee shall not be liable or responsible for environmental or industrial hygiene conditions that existed before the applicable Site License Effective Date, but Licensee will have the burden to prove that the condition existed prior to the applicable Site License Effective Date; and even if such condition existed prior to the applicable Site License Effective Date, Licensee shall be liable and responsible to the extent that Licensee's use, construction, operations or other acts on, about, in or beneath the License Area causes a Release.

## 18 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 [*Licensee's network operations center phone number*], 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 the Licensee possesses technical expertise that puts Licensee in the best position to identify and mitigate interference sources, and Licensee shall be primarily responsible for identification and mitigation work. Notwithstanding the foregoing, the City and Licensee hereby agree to comply with FCC guidelines and protocols with regard to third party interference.

## 19 DEFAULT

### 19.1. 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 (*i.e.*, a default that arises from a party's failure to pay a sum when due), the defaulting party shall have 15 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 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 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 30 days after notice and thereafter diligently and continuously pursues the cure to completion.

### 19.2. 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: (a) to terminate the Site License(s) affected by the uncured default on 30 days' prior written notice to the City; (b) an action for specific performance; and/or (c) an action for limited damages, as set forth in Section 16 (Limitations on Liability).

### 19.3. City's Remedies

If Licensee does not cure its default within the applicable cure period in Section 19.1 (Defaults and Cure Periods), 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 until and unless Licensee cures the default;

(b) Terminate the specific Site License(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 License(s) to which the default pertains, and reserve the right to enforce all its rights and remedies, which include without limitation the right to receive all License 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/or

(e) Any other rights or remedies available to the City at law or in equity.

### 19.4. 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.

## 20 TERMINATION

### 20.1. Licensee's Termination Rights

At any time during the Term, Licensee may terminate this Master License, or any Site License issued under this Master License, upon written notice to the City provided at least 360 days in advance.

### 20.2. City's Termination Rights

The City has the right to terminate any or all Site Licenses on 90 days' prior written notice to Licensee if the City determines, in the City's sole judgment, that Licensee's operations on or about the License Area adversely affect or threaten public health and safety, materially interfere with the City's municipal functions or require the City to maintain Vertical Infrastructure that the City no longer needs for its own purposes. If the City terminates any Site License for reasons unrelated to Licensee's failure to perform its obligations under this Master License, the City shall refund any pre-paid Licensee Fee on a pro-rata basis. In addition, the City shall prioritize Licensee's Site License Application for any Site License to replace the terminated Site License; provided, however, that (a) the City shall prioritize only as many Site License Applications as Site Licenses terminated by the City and (b) the City's prioritization will not affect Licensee's obligations under this Master License.

## 21 ASSIGNMENT AND OTHER TRANSFERS

### 21.1. General Restrictions

Except as specifically provided in Section 21.2 (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 the City may withhold or condition in its sole and absolute discretion for any or no reason.

### 21.2. Permitted Assignments

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 notice to the City as provided below, to: (1) an Affiliate; (2) an entity that acquires all or substantially all Licensee's assets in the market area 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 in 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**"). All Permitted Assignments will be subject to all the following conditions: (a) 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; (b) Licensee or its assignee provides the City notice of the Permitted Assignment no later than 30 days after the date of the assignment and assumption of the Master License or the applicable Site Licenses, as the case may be; and (c) Licensee is not in default of its obligations under this Master License beyond any applicable notice and cure period.

### 21.3. Other Assignments or Transfers

If 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 financial statements, business track records, references and other information about the proposed assignee or transferee (the "**Proposed Assignee**"). If Licensee does not provide all the information simultaneously with the Proposed Assignment Notice or if the City requests additional information reasonably necessary to fully evaluate Licensee's request, the Proposed Assignment Notice shall not be deemed effective until Licensee delivers all such information as the City may reasonably require. The City shall approve or disapprove any request for consent to an assignment or other transfer within 45 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; provided, however, that the parties may mutually agree to a longer Assignment Response Period. If the City delivers to

Licensee written consent to the proposed assignment or other transfer, then Licensee shall have 180 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 180-day period; provided, however, that the 180-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.

### 21.4. Effect of Assignment or Other Transfer

No assignment or other transfer by Licensee, consent to assignment by the City or Permitted Assignment under Section 21.2 (Permitted Assignments) will relieve Licensee from any obligation on its part under this Master License or any affected Site License unless the City agrees in writing to release Licensee from future liability to perform such obligations. Except for a Permitted Assignment, no assignment or other transfer will be binding on the City unless: (a) the Proposed Assignee agrees in writing to assume all of Licensee's obligations under the Master License and affected Site Licenses; (b) Licensee or the Proposed Assignee delivers to the City: (1) evidence satisfactory to the City that the Proposed Assignee holds all Regulatory Approvals required to operate the Equipment on the assigned License Area, and (2) a copy of the assignment or other transfer agreement; and (c) Licensee or the Proposed Assignee reimburses the City for all its reasonable, actual and documented costs and expenses, which includes without limitation any attorneys' fees, incurred in connection with the City's consent to the Proposed Assignment Notice. 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 License Fee, Administrative 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 21 (Assignment and Other Transfers).

### 21.5. Licensee's Customers and Collocators[56]

Licensee may provide capacity to Licensee's customers using, or permit such customers to use, the Equipment installed by Licensee without the City's consent required in this Section; provided, however, that: (1) Licensee remains solely responsible for such Equipment and (2) such use by Licensee or Licensee's customers does not involve any physical changes to the Equipment other than changes permitted under Section 6.5 (Future Modifications to Equipment Shown on the Approved Plans). In any other case, Licensee may provide capacity to Licensee's customers using, or permit such customers to use, the Equipment installed by Licensee upon prior written

[56] This provision should be included only if the Licensee is an infrastructure provider rather than a service provider. Infrastructure providers (*e.g.*, Crown Castle, ExteNet) build transport networks and the physical infrastructure that service providers (*e.g.*, AT&T, T-Mobile, Verizon) lease or license to provide wireless services.

notice to the City that: (a) identifies the customer who will be using the Equipment and the location(s) where such use will occur; and (b) 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 License 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

If any Vertical Infrastructure becomes damaged or destroyed by any third parties, force majeure or other cause outside the City's control, the City shall have the right to determine whether to repair or replace the Vertical Infrastructure, remove such Vertical Infrastructure without replacement, or leave the Vertical Infrastructure in place without repairs. Within 30 days after the City discovers damage or destruction on or about any Vertical Infrastructure, the City will give Licensee notice of the City's decision as to whether to repair, replace or remove the damaged Vertical Infrastructure and its good-faith estimate as to the date on which the City will complete any work it may elect to perform. If the City cannot complete the work within 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 affected Site License(s) immediately upon written notice to the City. If the City elects to remove and not replace any damaged Vertical Infrastructure licensed to Licensee, then the applicable Site License will automatically terminate on the last day of the month in which the removal occurs.

If the acts by third parties or other *force majeure* circumstance outside the Licensee's or its Agent's or Invitee's control destroys or damages any Vertical Infrastructure, License Area or other City Property to such an extent that, in the City's reasonable determination, the Equipment on the Vertical Infrastructure, License Area or other City Property cannot be operated, the City and/or Licensee may decide to terminate the affected Site License on 30 days' notice to the other party. Upon such termination, Licensee shall remove the Equipment from the damaged Vertical Infrastructure within 90 days from such written notice.

If the City terminates a Site License pursuant to this Section 22, 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

### 23.1. Permanent Takings

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

(a) **Notice to Licensee.** The City must use good-faith efforts to provide Licensee with written notice at least 60 days before the permanent condemnation date.

(b) **Termination Rights After Condemnation.** Any affected Site License will automatically terminate as to the part taken or transferred on the date the permanent taking or transfer occurs. At the same time, the License Fee under the affected Site License will be ratably reduced to account for the reduction in License Area. Notwithstanding the forgoing, Licensee shall have the right to terminate any Site License upon 30 days' prior written notice to the City if Licensee determines in its sole discretion that any such condemnation (or other transfer in lieu of condemnation) will interfere with Licensee's operations.

(c) **Award.** The City will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Licensee will have no Claim against the City for the value of any unexpired Term under either this Master License, any 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's Equipment.

### 23.2. Temporary Takings

If any person or entity with the power to condemn temporarily takes any License Area, in whole or in part, or if the City transfers any License Area in whole or in part to such entity in lieu of eminent domain, the following provisions will apply:

(a) **Notice to Licensee.** The City must use good-faith efforts to provide Licensee with written notice at least 60 days before the temporary taking date.

(b) **License Fee Abatement.** Any temporary taking that affects any License Area for less than 90 days will have no effect on the Master License or any affected Site License; provided, however, that Licensee will be entitled to a pro-rata abatement in the applicable License Fee to the extent that such temporary taking materially impairs Licensee's ability to use the License Area for more than 10 continuous days.

## 24 RECORDS; CITY'S AUDIT RIGHTS

Licensee shall maintain in accordance with Licensee's standard record retention policies accounting records that contain the amount and payment date for all License Fees and Administrative Fees paid to the City pursuant to this Master License and any Site Licenses. Licensee shall keep such records at a physical office maintained by Licensee within the State of Oregon and in an electronic format. To determine whether Licensee has fully and accurately paid all License 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 to inspect and audit Licensee's accounting records; provided, however, that: (a) such inspection and/or audit shall occur at an office kept by Licensee in the State of Oregon during regular business hours; (b) the City shall provide Licensee with 30 business days' advance written notice that identifies the time periods for which the City wishes to inspect Licensee's records; (c) the City shall not exercise the inspection and/or audit rights under this Section 24 more than once in any five-year period, unless the immediately prior inspection and/or audit revealed underpayment to the City by more than 5%; (d) Licensee shall have the right to have its employees and Agents physically present at all times that the City, its employees or Agents are conducting any such audit; and (e) the City, its employees and Agents shall comply with Licensee's reasonable accounting policies and procedures pertaining to accounting record audits. If any City audit concludes that Licensee underpaid the City by more than 5% of the aggregate amount of License Fees and other sums due under this Master License and any Site License for the period identified in the City's written notice to Licensee then, Licensee shall, within 30 days after Licensee's receipt of a written invoice from the City, pay (i) all outstanding sums and (ii) reimburse the City for the City's reasonable, actual and documented costs and expenses to conduct the audit.

## 25 ESTOPPELS

At any time throughout the Term, the City may require Licensee to execute an estoppel certificate that confirms: (a) 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); (a) the Effective Date and all Site License Effective Dates; (c) the Expiration Date under this Master License; (d) that the Master License and the Site License(s) are unmodified and are in full force and effect; (e) whether the Master License and the Site License(s) has been modified and, if so, the manner in which they were modified; (f) whether any defenses currently exist against any action to enforce Licensee's obligations under this Master License or any Site Licenses (and, if so, specifying the same); (g) whether Licensee believes that the City failed to perform any obligations under this Master License or any Site License (and, if so, specifying any obligations that Licensee believes that the City has failed to meet); (h) the dates, if any, on which the License Fees and Administrative Fees have been paid; and (i) any other information that may be reasonably required by the City pertaining to the status of the Master License and/or the Site License(s). Licensee shall execute, acknowledge and deliver to the City or its designee, the estoppel certificate for the requested Site License(s) within 30 days after Licensee receives the City's request for an estoppel.

## 26 RULES AND REGULATIONS

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

## 27 LICENSE AREA SURRENDER

### 27.1. Licensee's Removal and Restoration Obligations

No later than 60 days after this Master License or any Site License expires or terminates, Licensee shall: (a) peaceably remove its Equipment from the License Areas affected by the expiration or termination; (b) 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 and loss by casualty or other causes beyond Licensee's control excepted; and (c) surrender such License Areas to the City free and clear from any debris, hazards, liens and encumbrances caused by Licensee. Subject to the approval by the City Manager, the City may grant an additional 30 days for Licensee to fulfill its obligations as set forth in this Section 27.1. The obligations under this Section 27.1 will survive this Master License's or any Site License's expiration, revocation or termination.

### 27.2. Abandonment by Licensee

At its option, the City may deem any Equipment to be abandoned that remains on any Vertical Infrastructure, License Area or other City Property for more than one year 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 Laws addressing abandoned property by residential or commercial tenants do not apply to any abandoned Equipment.

### 27.3. Hold Over by Licensee

If Licensee fails to surrender the License Area under a particular Site License as required in this Master License, and the City consents to or later ratifies Licensee's holdover in a signed writing, 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 License Fee shall automatically increase by [*amount*] percent ([*amount*]%)[57] over the then-current License Fee. Any holdover without the City's consent will be a default by Licensee and will entitle the City to exercise any or all rights and remedies.

## 28 MISCELLANEOUS PROVISIONS

### 28.1. Notices

Except as may be specifically provided otherwise in this Master License, all notices,

[57] The typical holdover amount is between 125% and 150% of the then-current License Fee. As an illustration, if the License Fee is $300 per year upon the expiration of the Master License, the annual License Fee in holdover would be between $375 and $450 per year.

demands or other correspondence required to be given in connection with or pursuant to this Master License must be written and delivered through: (i) an established national courier service that maintains delivery records and confirmations; (ii) hand delivery; or (iii) certified or registered U.S. Mail with prepaid postage and return receipt requested, and addressed as follows:

**TO CITY:** City of [*city name*]
Attention:
[*address*]

With a required copy to: City of [*city name*]
Attention: City Attorney
[*address*]

With a required copy to: City of [*city name*]
[*address*]

**TO LICENSEE:** [*licensee name*]
Attention:
[*address*]

With a required copy to: [*recipient name*]
Attention:
[*address*]

All notices, demands or other correspondence in connection with this Master License will be deemed effective upon delivery or refusal of delivery. Telephone, facsimile and email information are provided for convenience and for couriers who may require such information, and 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 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 License Fees, Administrative 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: (i) be limited to the specific default or performance for which the express waiver is granted; (ii) not be deemed to be a continuing waiver; and (iii) 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:

(a) **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.).

(b) **Joint and Several Liability.** If 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.

(c) **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.

(d) **Time.** References in this Master License to "days" mean calendar days, unless specifically provided otherwise. A "business day" means a day other than a Saturday, Sunday or a bank or City holiday. If the last day in any period to give notice, reply to a notice or to undertake any other action occurs on a day that is not a business day, then the last day for giving notice, replying to the notice or undertaking any other action will be the next business day. Except as modified in this Section, time is of the essence with respect to all provisions in this Master License for which a definite time for performance is specified.

(e) **Inclusive Words and/or Phrases.** Inclusive terms and/or phrases, which include 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.

(f) **Prorations**. Any annual amounts payable for less than a full year shall be calculated based on a 360-day year. Any monthly amounts payable for less than a full month will be calculated based on a 30-day month.

### 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. If 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 [*City Name*], County of [*County Name*], State of Oregon. Any action concerning this Master License must be brought and heard in the Oregon Circuit Court for the County of [*County Name*] or the United States District Court of Oregon if federal law applies.

### 28.8. Attorneys' Fees and Other Costs

In the event the City or Licensee prevails in an action to enforce its rights under this Master License or individual Site License, the prevailing shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action. Reasonable attorneys' fees shall be calculated based on rates for independent counsel located in [*County Name*] county, Oregon.

### 28.9. No Recording

Licensee acknowledges and agrees that: (a) this Master License and any Site License affects the City's personal property and therefore cannot be recorded in any official records; (b) 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 (c) 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 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, revocation or termination when, by their sense or context, such provisions,

covenants, conditions or obligations: (a) cannot be observed or performed until this Master License's or any Site License's expiration, revocation or earlier termination; (b) expressly so survive; or (c) reasonably should survive this Master License's or any Site License's expiration, revocation 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, revocation 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 or held by any court with competent jurisdiction to be invalid or unenforceable: (a) such provision or its application to such person, entity or circumstance will be deemed severed from this Master License or any Site License; (b) all other provisions in this Master License, any Site License or their application to any person, entity or circumstance will not be affected; and (c) 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 (1) be manifestly unreasonable or manifestly inequitable under all the circumstances or (2) undermine one or both parties' fundamental purpose in entering this Master License.

### 28.13. Authority to Execute

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

**[END OF MASTER LICENSE – SIGNATURES BEGIN ON NEXT PAGE]**

**THE CITY**

City of [*City Name*],
an Oregon municipal corporation

By: _____
[*signor's name*]
Its: [*signor's title*]

Date: _____

**LICENSEE**

[*licensee name*],
a [*licensee corporate form*]

By: _____
[*signor's name*]
Its: [*signor's title*]

Date: _____

APPROVED AS TO FORM

By: _____
[*city attorney's name*]
Its: City Attorney

Date: _____

APPROVED BY CITY COUNCIL
RESOLUTION NO. [#]

ATTEST

By: _____
[*city clerk's name*]
Its: City Clerk

Date: _____

**[END OF SIGNATURES – EXHIBITS AND SCHEDULES BEGIN ON NEXT PAGE]**

# EXHIBIT A

## FORM OF SITE LICENSE AGREEMENT

[appears behind this cover]

**SITE LICENSE NO. [*INSERT NUMBER IN CONSECUTIVE ORDER*]**

Pursuant to that certain Master License between the **CITY OF** [***CITY NAME***], an Oregon municipal corporation (the "**City**") and [***LICENSEE NAME***], a [*licensee corporate form*] ("**Licensee**"), Licensee submits to the City two partially executed counterparts of this Site License, 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 summarized list that identifies all Vertical Infrastructure covered under this Site License Application;

2. **Exhibit A-2**, which contains detailed construction plans for the proposed installation(s) and an inventory for all proposed Equipment to be installed on the Vertical Infrastructure covered under the Site License Application;

3. a true and correct copy of **Schedule 1** attached to the Master License;

4. a Site License Application Fee equal to $[ _____ ];[58]

5. 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

6. if Staff Augmentation by the City has been approved in writing as provided in 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 the City returns a fully executed copy to Licensee; (2) all terms and conditions in the Master License are incorporated by reference as if fully set out in this Site License, and will remain in effect for the entire Site License Term, even if the Master License expires before the Site License Term; (3) the first Licensee Fee shall be made within 90 days from the Site License Effective Date, and each subsequent License Fee shall be paid annually on [*License Fee Payment Date*];[59] and (4) Licensee will not have the right to access or install Equipment on the License Area until after Licensee has: (a) obtained all Regulatory Approvals required to construct, install and operate the Equipment; and (b) submitted insurance information to the City as specified in **Exhibit B** to the Master License.

This Site License is executed and effective on the last date written below (the "**Site License Effective Date**").

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[58] This amount should be the Site License Application Fee specified in the Master License, multiplied by the number of Vertical Infrastructure covered by the Site License Application. For example, if the Site License Application Fee is $500, and the Licensee submits a Site License Application that covers 10 separate facilities, the amount should be $5,000.

[59] This date should be the same date specified in Master License Section 4.1.

**[END OF SITE LICENSE – SIGNATURES APPEAR ON NEXT PAGE]**

| **THE CITY** | **LICENSEE** |
| --- | --- |
| City of [*City Name*],<br>an Oregon municipal corporation | [*licensee name*],<br>a [*licensee corporate form*] |
| By: _____<br>[*signor's name*]<br>Its: [*signor's title*] | By: _____<br>[*signor's name*]<br>Its: [*signor's title*] |
| Date: _____ | Date: _____ |

**[END OF SIGNATURES – EXHIBITS AND ATTACHMENTS BEGIN ON NEXT PAGE]**

# EXHIBIT A-1

## VERTICAL INFRASTRUCTURE LOCATIONS & LICENSE AREA

**Site License No. [#]**

[Licensee to list all proposed Vertical Infrastructure locations requested in the Site License Application]

# EXHIBIT A-2

## LICENSEE'S PLANS AND SPECIFICATIONS

**Site License No. [#]**

[Licensee to attach all plans and specifications for all Equipment proposed to be installed at all proposed Vertical Infrastructure requested in the Site License Application]

# EXHIBIT B

## INSURANCE REQUIREMENTS[60]

### 1. General.

**A.** Prior to performing work under this Master License, Licensee shall furnish 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 City's consent (to be unreasonably withheld) 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 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 Master License.

**D.** City in no way warrants that the insurance limits contained in this Master License are sufficient to protect Licensee from liabilities that might arise out of the performance of this Master License 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 Master License 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 Master License.

### 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 $3,000,000 per occurrence for bodily injury and property damage and $3,000,000 general aggregate, including premises-operations, products and completed

[60] The model insurance provisions provided here are illustrative and intended to be protective for the local government. Cities should always consult with their risk managers and/or insurance advisors as to whether the policies and limits are sufficient to insure against the potential risks associated with any deployment authorized under a Master License. Cities should also compare these model provisions with any existing insurance requirements for similar undertakings by third parties on city-owned property.

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 $3,000,000 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 Master License.

**C. Pollution Liability Coverage.** Licensee Pollution legal liability self-insurance in the amount of $3,000,000 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 Master License.

**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 $1,000,000 for each accident; $1,000,000 disease for each employee; and $1,000,000 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 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 City, its officers, officials and employees, for losses arising from work performed by Licensee for City.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Master License 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, 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 Master License.

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide 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:

[*notice address*]

**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 Master License, 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 City, its employees, Agents or independent contractors, or where such coverage is prohibited by Law, to claims arising out of the gross negligence of City, its employees, Agents or independent contractors; and (iii) not exceed Licensee's indemnification obligation under this Master License, if any.

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

**A.** 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 self-insure any of the required insurance under the same terms as required by this Master License.

**B.** If Licensee elects to self-insure its obligation under this Master License to include City as an additional insured, the following conditions apply: (i) City shall promptly, and no later than thirty (30) days after notice thereof, provide Licensee with written notice of any claim, demand, lawsuit or the like for which it seeks coverage pursuant to this Master License, 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) City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) City shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like. Within thirty (30) days of receipt of City's written request for same, which request must be accompanied by this Section 4 of Exhibit B (Option to Self-Insure), and not be made by 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 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.

**C.** 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 City, in its sole discretion, otherwise approves of the party seeking to self-insure required coverages.

## SCHEDULE 1

## ANNUAL LICENSE FEE[61]

| Calendar Year | Annual License Fee per Vertical Infrastructure Covered by Site Licenses |
|---|---|
| 2023 | $313.00 |
| 2024 | $322.39 |
| 2025 | $332.07 |
| 2026 | $342.03 |
| 2027 | $352.29 |
| 2028 | $362.86 |
| 2029 | $373.74 |
| 2030 | $384.96 |
| 2031 | $396.50 |
| 2032 | $408.40 |
| 2033 | $420.65 |
| 2034 | $433.27 |
| 2035 | $446.27 |
| 2036 | $459.66 |
| 2037 | $473.45 |
| 2038 | $487.65 |
| 2039 | $502.28 |
| 2040 | $517.35 |
| 2041 | $532.87 |

[61] This fee schedule is intended to provide an easy reference for the License Fee due in any particular year. Even though the term of the Master License is 10 years, each Site License is subject to its own 10-year term. This means that within the initial 10-year term of the Master License, an individual Site License could be issued through 2040. As an illustration, assume that a Site License is issued in 2031 (year 10 of the Master License) The initial License Fee would be the amount provided for 2031 and would increase each year to the amount provided in the table above for the corresponding year.

The fee amount is calculated as the presumptively reasonable fee set by the FCC in 2018, escalated by 3% each year. The FCC authorizes cities to recover the reasonable approximation of their actual, nondiscriminatory costs. Thus, cities may wish to conduct their own cost studies to evaluate the base-line costs associated with each Site License and may wish to apply a different annual escalation if costs rise faster or slower than 3% in their region. Although cities could adjust the fee each year to reflect actual inflation rates, it may be administratively less burdensome on both the city and the licensee to apply a fixed escalation that approximates annual inflation.