

MASTER LICENSE AGREEMENT
COMMUNICATION SITES

between

CITY OF CHULA VISTA, a California municipal corporation and charter city

and

Dish Wireless, L.L.C., a Colorado Limited Liability Company

Effective Date: _____

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MASTER LICENSE AGREEMENT FOR COMMUNICATION SITES

This Master License Agreement for Communications Sites (“**Master License**”) dated _____ (the “**Effective Date**”) is by and between the CITY OF CHULA VISTA, a California municipal corporation and charter city (the “**City**”), and Dish Wireles, L.L.C., a Colorado Limited Liability Company (“**Licensee**”).

BACKGROUND

WHEREAS, the City, in its proprietary capacity as a California municipal corporation and charter city, owns or controls certain real property throughout the City of Chula Vista (the “**Property**”), as more particularly described and depicted on a City approved Schedule of Premises (each a “**Schedule**”), in substantial form as **Exhibit A**, which is attached hereto and incorporated herein, which the parties intend to execute pursuant to and in accordance with this Master License;

WHEREAS, Licensee, or its contractors, employees, or agents, or any of them, construct, install, own, operate and/or maintain wireless communication facilities as its/their business;

WHEREAS, Licensee desires to license from the City certain space on the Property (each a “**License Area**”) for a wireless communication facility, together with certain additional non-exclusive space for access and utilities (the “**Access/Utilities Route**”), all as more particularly on each Schedule; and

WHEREAS, the City, in its proprietary capacity, desires to license the License Area and Access/Utilities Route described in the respective Schedule(s) on the terms and conditions in this Master License and each Schedule.

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

AGREEMENT

1. DEFINITIONS

The abbreviations, phrases, terms, and words used in this Master License and each Schedule will have the following meanings assigned to them unless defined elsewhere in this Master License or a Schedule. Undefined phrases, terms, or words in this Master License or a Schedule will have their ordinary meanings.

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

(2) **“Approved Plans”** means the City-approved plans and specifications attached to a Schedule showing the Equipment, in the approved locations and configurations, to be used to transmit and receive wireless communications signals operated in compliance with the Permitted Use.

(3) **“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 a Schedule.

(4) **“City”** means the City of Chula Vista, California.

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

(6) **“Master License Commencement Date”** means the Effective Date.

(7) **“Environmental Costs”** means any and all damages, fines, costs and fees that arise from: (i) any violation of or material noncompliance with any applicable Environmental Laws; (ii) any violation of or material noncompliance with any environmental provision in this Master License or a Schedule; (iii) immediate response, remediation and restoration actions; (iv) governmental oversight and participation; (v) actual fees and costs for project managers, attorneys, legal assistants, engineers, consultants, accountants and experts, whether employed with the damaged party or not; (vi) any diminution in value, loss or restriction on use of the Property; and (vii) any damages, fines, costs or fees whether taxable as costs or not, incurred before, at or after any administrative or judicial proceeding, appeal or any other judicial review.

(8) **“Environmental Laws”** means any and all Laws which govern materials, substances, regulated wastes, emissions, pollutants, water, storm water, ground water, wellfield and wellhead protection, cultural resources protection, animals or plants, noise or products and relate to protection for health, safety or the environment and natural resources, including land, sediments, water, groundwater and stormwater, including Hazardous Materials as defined in this Master License.

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

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

(11) **"Hazardous Material"** or **"Hazardous Substance"** means any material that, due to its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any local, regional, state or federal body with jurisdiction and responsibility for issuing Regulatory Approvals in accordance with applicable Laws to pose a present or potential hazard to human health, welfare or safety, or to the environment. The term "Hazardous Material" as used in this Master License or any Schedule will be broadly construed, and includes, without limitation, the following: (1) any material or substance defined as a "hazardous substance", or "pollutant" or "contaminant" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified as 42 U.S.C. §§ 9601 *et seq.*) or California Health & Safety Code § 25316; (2) any "hazardous waste" listed California Health & Safety Code § 25140; or (3) any petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(12) **"Indemnified City Party(ies)"** means the City and its Agents, Invitees, elected and appointed officials, employees, contractors, and volunteers.

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

(14) **"Invitee"** means the client, customer, invited guest, tenant, subtenant, licensee, assignee and/or sublicensee of a party in relation to any License Area.

(15) **"Laws"** means all present and future statutes, ordinances, codes, orders, policies, regulations and implementing requirements and restrictions by federal, state, county and/or municipal authorities, whether foreseen or unforeseen, ordinary as well as extraordinary, as adopted or as amended at the time in question.

(16) **"Regulatory Approvals"** means all federal, state, local, or other governmental or regulatory licenses, permits, or other approvals necessary for Licensee to install, operate, use, or maintain any Equipment on any License Area.

(17) **"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, under or about any License Area, the Property, other City property or the environment.

(18) **"RF"** means radio frequency or electromagnetic waves.

(19) **"Schedule Commencement Date"** means the commencement date identified in a City-approved Schedule.

2. LICENSE AREA

2.1. Grant and Scope

Subject to the terms and conditions in this Master License and each Schedule, the City, in its proprietary capacity as the Property owner, licenses to Licensee the License Area, together with a non-exclusive right to use the Access/Utilities Route, for only the Permitted Use (as defined below in Section 3.1) and for no other purpose whatsoever. Licensee acknowledges and agrees that this Master License and each Schedule are not coupled with an interest. This Master License, all Schedules, and all of Licensee's rights and/or privileges to use any License Area or any Access/Utilities Route will remain subject and subordinate to all leases, subleases, licenses, sublicenses, easements, reservations, covenants, conditions, restrictions, and exceptions, whether recorded or unrecorded, that exist prior to the Effective Date.

2.2. License Area Condition

Except as may be specifically and explicitly provided otherwise in this Master License or a Schedule, the City makes no warranties or representations whatsoever about the Property's, any License Area's, or any Access/Utilities Route's condition, fitness, or suitability for Licensee's use. Licensee expressly warrants and represents to City that Licensee or its Agent have inspected the Property, all License Areas and Access/Utilities Routes, and any environmental or other conditions on the Property, License Areas and Access/Utility Routes, and accepts all License Areas and Access/Utilities Routes in its present "**AS-IS**" and "**WITH ALL FAULTS**" condition. Licensee expressly acknowledges and agrees that neither the City nor its Agents made any warranties, representations, or promises to Licensee or its Agents about the Property, any License Areas, or Access/Utilities Routes, whether in whole or in part, or any aspect about the Property, any License Areas, or Access/Utilities Routes, which include, without limitation, any structures or improvements, utilities, or Hazardous Substances.

2.3. Certified Access Specialist Disclosure

Pursuant to California Civil Code § 1938, and to the extent applicable to this Master License or a Schedule, the City expressly advises Licensee, and Licensee expressly acknowledges, that a Certified Access Specialist (as defined in California Civil Code § 55.53) has not inspected any License Area in whole or in part to determine whether it meets all applicable construction-related accessibility requirements.

2.4. Subsurface and Utility Improvement Rights

The City reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, stormwater sewers, pipelines, manholes and connections; water, oil, and gas pipelines; telephone and telegraph power lines, and telecommunications lines; and the appliances and appurtenances necessary or convenient in connection

therewith, in, over, upon, through, across and along any License Area, and any part thereof, and to enter any License Area for any and all such purposes. The City also reserves the right to grant franchises, easements, rights-of-way, and permits in, over, upon, through, across, and along any and all portions of any License Area for the installation, operation, and maintenance of public utilities.

2.5 No Additional Rights or Interests

City's execution of this Master License or any Schedule does not: (i) confer any right or interest on Licensee other than those rights or interests expressly granted to Licensee in this Master License or a Schedule, as such rights or interests are limited and qualified herein; or (ii) create or impose any obligation whatsoever on City with respect to the Licensed Area or Property, except as expressly provided herein.

3. USE; ACCESS; UTILITIES

3.1. Permitted Use; Equipment

On and after the Schedule Commencement Date, Licensee may use the License Area(s) to construct, install, operate, maintain, remove, and repair the Equipment, in the locations and configurations more particularly described in the Approved Plans attached to the Schedule, to transmit and receive wireless communications signals operated in compliance with all applicable Laws (the "**Permitted Use**"), for purposes reasonably necessary to accomplish the Permitted Use, but for no other purpose whatsoever.

3.2. Prohibited Uses

Licensee shall not use any License Area(s) or any areas on the Property (whether in whole or in part) in any unlawful manner or for any illegal purpose. In addition, Licensee shall not use the License Area(s) in whole or in part in any manner that interferes with the maintenance, operation, or future operation of any City municipal function], or that constitutes a nuisance either under applicable Laws or as determined by the City in its sole but reasonable discretion. Licensee shall take reasonable precautions to eliminate any nuisances or hazards in connection with its uses and activities on or about any License Area(s). Licensee acknowledges and agrees that its rights under this Master License do not authorize Licensee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on any License Area(s), except signs that may be required under applicable Laws for site identification and/or public health and safety reasons. Licensee shall not permit any License Area(s) or Access/Utilities Route(s) to be used by any third parties at any time during the Term in a manner that would impair the City's title to or interest in any License Area(s) or Access/Utilities Route(s) or in such a manner as would cause a claim or claims of adverse possession, adverse use, prescription or other similar claims in, to or with respect to any License Area(s) or Access/Utilities Route(s).

3.3. Tests and Surveys

At any time throughout the Schedule Term, Licensee may, with City's prior written consent, conduct necessary tests, surveys and other reasonably necessary inspections (collectively "**Tests**") within a License Area and/or Access/Utilities Route to determine suitability for the Permitted Use; provided that: (1) Licensee has first furnished the City with all up-to-date insurance documentation required in Section 12 (Insurance) under this Master License or any Schedule; (2) Licensee complies with all the City's reasonable rules and regulations necessary to avoid undue interference with other authorized activities or operations on the Property; and (3) Licensee shall promptly return any areas on the Property affected by any Tests to the condition that existed immediately prior to such Tests.

3.4. Access by Licensee

Except as may be specifically provided otherwise in this Master License or a Schedule, Licensee may use a Access/Utilities Route, 24-hours-per-day and seven-days-per-week, for overland vehicular and pedestrian ingress and egress between the License Area and the nearest public access roadway or street for purposes reasonably related to the Permitted Use. The City may impose reasonable rules and regulations on the manner in which Licensee uses the Access/Utilities Route(s), which includes without limitation rules and regulations (1) for the locations in which Licensee, its Agents, Invitees and/or other personnel may park vehicles and equipment on the Access/Utilities Route(s); (2) necessary to secure the Property; and (3) necessary to ensure access to the Property for all users authorized by the City. The City may issue to Licensee, and Licensee shall safeguard and not share with others, any keys or codes necessary to access a License Area via an Access/Utilities Route.

3.5. City's Access to License Area

The City and its Agents may, after reasonable advance written notice and at any time without advance notice in case of emergency (but with notice to Licensee as soon as reasonably practicable) or for any purpose related to protecting the Property, enter onto and inspect a License Area. During the six (6) months before the expiration of the Schedule Term, the City may show a License Area to prospective licensees at times reasonably approved by Licensee and in the presence of Licensee or its Agent. In the event of an emergency, the City may enter on or pass through a License Area. If, under such emergency circumstances, Licensee is not present to open a License Area, the City may enter by any means. The City's actions under this Section 3.5 will not constitute an actual or constructive eviction or relieve Licensee of any obligation with respect to making any repair, replacement, or improvement or complying with any law, order, or requirement of any government or other authority. No provision of this Section 3.5 shall be construed as obligating the City to perform any maintenance, repairs, alterations, or improvements.

3.6. Utilities

Licensee shall be solely responsible to secure its own utilities for its Permitted Use and will not be permitted to submeter from any electrical service provided to the City. Licensee shall timely pay when due all charges for all utilities furnished to the Equipment.

3.7. Construction, Installation and Other Work

3.7.1. Structural Review

Licensee may not commence any construction or installation activities on the Property that involve new structures or increased loading on existing structures without prior written approval from the City Engineer or the City Engineer's designee. Licensee shall submit its written request for approval together with complete engineering plans, specifications and a structural analysis report, all in a form acceptable to the City Engineer. The City Engineer may (but is not obligated to) review all or part of such materials and may reasonably approve, conditionally approve, or reject them for cause.

3.7.2. Performance Standards

Licensee, its Agents, employees, contractors and subcontractors shall perform all work on the Property and all License Area(s) in a good, safe, and workmanlike manner, in strict compliance with the Approved Plans and all applicable Laws. All installed Equipment must be high quality, safe, fire resistant, modern in design and attractive in appearance, all as approved by the City.

3.7.3. Licensee's Contractors

Licensee shall use only qualified and trained persons and appropriately licensed contractors for all work performed on or about a License Area. At least 10 business days before any work commences on or about a License Area that requires the City's prior approval, Licensee shall provide the City with: (1) a schedule with all activities to be performed in connection with the work; and (2) a list with all the names, contractor's license numbers and business addresses for all contractors who will be physically present on the Property.

3.7.4. Labor and Material Costs

Licensee shall be responsible for all direct and indirect costs (labor, materials, and overhead) in connection with designing, purchasing, and installing all Equipment in accordance with the Approved Plans and all applicable Laws. Licensee shall timely pay for all labor, materials, Equipment, and all professional services related to the Permitted Use or furnished to a License Area at Licensee's direction or for Licensee's benefit.

3.7.6. Coordination; Supervision

Licensee must coordinate all its installation, construction, and other work on or about a License Area with the City. Licensee must avoid any interference (physical, electronic or otherwise) with any existing utilities, substructures, facilities, communication transmission, or reception equipment used by others or the City's operations. The City may, but will not be obligated to, supervise any construction or maintenance activities in connection with this Master License or a Schedule. Upon a written demand from the City, Licensee shall reimburse the City for its reasonable cost to supervise such construction activities. Licensee agrees that any License Area will not be activated until the City has inspected and approved final construction of the Equipment, which shall not be unreasonably withheld or delayed.

3.7.7. Staging Area

For no more than 90 continuous days after Licensee commences construction work, or such longer period as mutually agreed to by the parties, Licensee may use, on a temporary and non-exclusive basis, certain space on the Property contiguous with the License Area to the extent reasonably necessary to construct and/or install the Equipment and subject to the City's prior written approval not to be unreasonably withheld ("**Staging Area**"). The City may withhold or revoke its consent to allow Licensee's to use any Staging Area when Licensee's use unreasonably interferes with other persons or entities authorized to use the Property.

3.7.8. As-Built Site Plans

Within 90 days after Licensee completes any subsurface construction, installation, or other work on the Property that requires the City's prior review and approval, Licensee shall furnish the City with as-built site plans that depict all the subsurface Equipment and any improvements in the then-current location and configuration. Licensee shall also provide such as-built site plans in a native or portable document format.

3.8. Modifications to Equipment or the License Area

Except as expressly provided otherwise in this Master License or a Schedule, Licensee may not modify or alter the Equipment or a License Area in any manner other than as shown on the Approved Plans without the City's prior written consent. Any such consent shall be memorialized in an amendment to this Master License or a Schedule that shows all Equipment and other improvements to be built, modified, or altered.

3.9. Routine Maintenance

"Routine maintenance" means ensuring that the Equipment and each License Area is kept in good operating condition, in good aesthetic condition in accordance with the Approved Plans and in safe condition in accordance with all applicable Laws ("**Routine Maintenance**"). Routine Maintenance includes, but is not limited to, inspections, testing

and repairs that are not otherwise modifications or alterations pursuant to Section 3.8 (Modifications to Equipment or the License Area). Routine Maintenance also includes like-for-like Equipment replacements but does not include additional Equipment installations not shown on the Approved Plans or replacement Equipment of different dimensions or weight. Licensee shall notify the City of any Routine Maintenance at least 48 hours in advance of the maintenance by e-mail to PWOps@chulavistaca.gov. Such notice of Routine Maintenance must include (1) a schedule with all activities to be performed in connection with the Routine Maintenance; and (2) a list with all the names, contractor's license numbers and business addresses for all contractors who will be physically present at the Property.

4. TERM

4.1. Initial Term; Renewal Terms

The initial term under this Master License (the "**Initial Term**") will commence on the Commencement Date and automatically expire five years from the Commencement Date on _____, unless earlier terminated in accordance with this Master License. After the Initial Term expires, this Master License will automatically renew for four (4) additional 5-year terms (each a "**Renewal Term**") unless Licensee is in default at the time the Initial Term or Renewal Term, if any, expires or Licensee irrevocably notifies the City that Licensee does not intend to renew this Master License within 90 days before the Initial Term or Renewal Term, if any, expires. The parties refer to the Initial Term and any applicable Renewal Term(s) as the "**Term**".

4.2. Holdover Term

Licensee will have no right or privilege whatsoever to use or occupy a License Area or an Access/Utilities Route in any manner or for any purpose after this Master License expires or terminates. In the event that Licensee continues to use or occupy the License Area or Access/Utilities Route after this Master License expires or terminates, this Master License will automatically convert to a month-to-month license on the same terms and conditions (the "**Holdover Term**"), except that: (1) the License Fee (as defined below in Section 5.1) will be automatically increased to one hundred fifty percent (150%) over the License Fee payable in the immediately previous year (the "**Holdover Fee**"), and will continue to increase in accordance with Section 5.2 (Annual License Fee Adjustments); and (2) either the City or Licensee may terminate such license on 30 days' written notice for any or no reason.

5. LICENSE FEE AND OTHER PAYMENTS

5.1. License Fee

Commencing on the first day of the month following the Commencement Date, Licensee shall pay the City Forty One Thousand Two Hundred Fifty One Dollars (\$41,251) (the "**License Fee**") on or before the first calendar day of each month, in advance, without any

prior demand, setoff, deduction or counterclaim for any reason. The initial License Fee payment shall be due within 30 days after the Commencement Date.

5.2. Annual License Fee Adjustments

On January 1 each year throughout the Term, the License Fee will be automatically increased three percent (3%) over the License Fee payable in the immediately previous year.

5.3. Late Charges

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

5.4. Interest

Any License Fees and all other amounts payable to the City other than late charges will bear interest at ten percent (10%) per annum or the highest rate permitted by applicable Law (whichever is greater) from the due date when not paid within five days after due and payable to the City. Any sums received shall be first applied towards any interest, then to the late charge and lastly to principle amount owed. Any interest or late charge payments will not alone excuse or cure any default by Licensee.

5.5. Administrative Fee

Within 60 days after the parties fully execute this Master License, Licensee shall pay to the City a nonrefundable administrative fee equal to eight thousand and 00/100 Dollars (\$8,000.00) (the "**Administrative Fee**") to cover the City's costs to review and execute this Master License and each Schedule. The Administrative Fee shall not be any offset to any License Fees owed pursuant to Section 5.1 (License Fee) and is fully earned by the City upon the full execution of this Master License.

5.6. Payment Procedures

Licensee shall deliver all payments due under this Master License to the City of Chula Vista, 276 Fourth Avenue, Chula Vista, CA 91910. The designated place of payment may be changed from time-to-time upon written notice. Payments must be made by check payable to the City of Chula Vista. No payment by Licensee or receipt by the City of a lesser amount than payment due will be deemed to be other than a payment made on account for the total payment due, nor will any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction. The City's acceptance of such checks or payment will be without prejudice to the City's right to recover the balance of the amount due or pursue any other remedy in this Master License or a Schedule, in equity, or at law. Upon agreement of the parties, Licensee may

pay License Fees by electronic funds transfer and, in such event, the City agrees to provide to Licensee bank routing information for such purpose upon request of Licensee.

6. GOVERNMENTAL APPROVALS

6.1. Proprietary Capacity Acknowledgement

The City and Licensee expressly acknowledge and agree the City enters this Master License and each Schedule solely in its proprietary capacity as the owner or controller of the Property and not in its capacity as a regulatory agency. Licensee acknowledges and agrees that any federal or state Laws applicable to the City in its regulatory capacity will not be applicable to the City in its proprietary capacity and Licensee will not seek to have such Laws applied to the City or any approval, disapproval, act, or failure to act in connection with this Master License or a Schedule. Licensee further acknowledges and agrees that: (1) only the terms and conditions in this Master License or a Schedule will govern the criteria and timeframes for the City's decisions or actions in its proprietary capacity in response to Licensee's requests for approvals in connection with this Master License or a Schedule; (2) any approval or disapproval the City may issue in its proprietary capacity in connection with this Master License or a Schedule will not be deemed to be an approval or disapproval the City may be required to issue in its regulatory capacity, if any; and (3) any approval or disapproval the City may issue in its proprietary capacity will not give preference to Licensee or Licensee's applications over other persons or applications in any regulatory proceeding solely based on this proprietary relationship.

6.2. Permits and Other Regulatory Approvals

Licensee shall not commence any work at the Property until Licensee obtains all necessary Regulatory Approvals, which includes without limitation a use permit, design review permit, and any other permit obtained through any other City department. Subject to the provisions and limitations in Section 6.1 (Proprietary Capacity Acknowledgment), and only to the extent permissible under applicable Laws, the City will reasonably cooperate with Licensee's efforts to obtain and maintain all necessary Regulatory Approvals.

7. MAINTENANCE

7.1. Licensee's Maintenance Obligations

At all times throughout the Term and any Schedule Term, Licensee shall maintain, repair, and secure its Equipment and all other personal property and improvements brought onto the Property in good, orderly, and safe condition. Licensee shall keep all License Area(s) free of debris, graffiti, and any other dangerous, noxious, or offensive condition which would create a hazard or undue vibration, heat, noise, or interference, and shall correct any such conditions within 48 hours after receipt of written notice.

7.2. City's Maintenance Obligations

The City shall not be responsible for repairs or maintenance in connection with the Equipment, License Area(s) (which includes the Staging Area(s) during Licensee's use), or for any associated costs except to the extent caused by the City or its Agents. The City shall maintain, at its sole expense, Access/Utilities Route(s) in a manner sufficient to allow access, weather and seasonal conditions permitting. Licensee acknowledges that the Access/Utilities Route(s) as currently constructed and maintained, or at the time of any Schedule Commencement Date, are sufficient to provide it with access. The City, under no circumstances, shall be required to expand or enlarge an Access/Utilities Route(s). Access/Utilities Route(s) may be altered in design or location by the City provided that the alteration does not materially impair Licensee's ability to access a License Area. If Licensee causes any damage to an Access/Utilities Route, Licensee shall promptly repair same at its sole expense.

8. INTERFERENCE

8.1. Licensee's Interference Obligations

Licensee shall not operate the Equipment, cause or allow others to operate the Equipment, or use the License Area in a manner that causes interference with other communication transmission or reception equipment lawfully used by the City, its Agents, or any third parties authorized by the City to use the Property. Any such interference will be deemed a default under this Master License and/or a Schedule and, after Licensee receives notice that such interference exists, Licensee will be responsible to promptly eliminate any such interference at no cost to the City. In the event that Licensee does not promptly cure such interference within seventy-two (72) hours following notice, Licensee shall reduce power or cease operations of the interfering equipment until the interference is cured. The parties acknowledge that continued interference with communication transmission or reception equipment lawfully used by the City, its Agents, or any third parties authorized by the City to use the Property may result in irreparable harm and, therefore, the City will have the right, in addition to all other rights provided by contract, in equity, or at law, to bring an action against Licensee to enjoin such interference or terminate this Master License or a Schedule.

8.2. City's Interference Obligations

The City shall not operate commercial communications equipment on the Property, or cause or allow any third parties authorized by the City to use the Property to operate commercial communications equipment on the Property, in a manner that causes unreasonable interference with other communication transmission or reception equipment lawfully used by Licensee, its Agents, or Invitees. Nothing in this Section 8.2 is intended to limit, prohibit, or enjoin the City from entering into any agreements with any third parties for uses on the Property similar to the Permitted Use. Licensee further acknowledges that the City may use communications equipment on the Property in connection with its police, governmental, or public safety communications systems.

Notwithstanding anything in this Master License to the contrary, the City's physical placement and operation of such communications systems that may be in proximity to Licensee's Equipment will not constitute interference as that term is used in this Section 8.

8.3. City's Governmental Communications

Licensee acknowledges that the City may use communications equipment on the Property in connection with its governmental or regulatory functions, that such equipment and/or the frequencies on which such equipment operates may change from time to time, and that communications in connection with the City's governmental or regulatory functions are paramount over Licensee's operations. Notwithstanding anything in this Master License or a Schedule to the contrary, any interference with Licensee's operations or Equipment caused by any communications equipment used by the City in its governmental or regulatory capacity in connection with its governmental or regulatory functions: (1) will not be a default under this Master License or a Schedule; (2) will not entitle Licensee to a cure for such interference; and (3) will not entitle Licensee to bring any judicial action for any injunction. Notwithstanding the foregoing, the City agrees to reasonably cooperate with Licensee's efforts to locate the interference source and make a good faith effort to resolve the interference with Licensee's operations or Equipment in a manner that does not diminish the City's governmental or regulatory functions and use of its communications equipment. The provisions in this Section 8.3 shall not preclude Licensee's right to seek relief from the FCC in accordance with the FCC's rules and regulations.

9. TAXES

9.1. Title to Licensee's Equipment and Improvements

All Equipment and other improvements constructed, installed, or placed on a License Area or Access/Utilities Route by Licensee or at Licensee's request or direction will be and at all times remain Licensee's personal property and will not be deemed fixtures or real property for any purpose, whether such objects would be deemed fixtures or real property under applicable Laws or not.

9.2. Possessory Interest Taxes

Licensee understands and acknowledges that: (1) this Master License or a Schedule, or any improvements placed on the Property may create a possessory interest, as defined in California Revenue and Taxation Code § 107, subject to taxation; (2) Licensee will be required to timely pay any and all such possessory interest taxes; and (3) any transfer, assignment, or sublicense in connection with this Master License or a Schedule, and any options to extend or renew this Master License or a Schedule, may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this Master License or a Schedule. Licensee further acknowledges that Licensee will have no claim for damages against the City for any

possessory interest taxes levied against any License Area(s), Equipment, or improvements because it received actual notice that this Master License or a Schedule may create a possessory interest and that Licensee would be solely liable for any and all taxes levied on such possessory interest.

9.3. Licensee's Tax and Assessment Obligations

Licensee agrees to pay when due and prior to delinquency any and all taxes, assessments, charges, excises, and exactions whatsoever (collectively, "**Impositions**"), which include without limitation any possessory interest taxes, that arise from or in connection with Licensee's uses on a License Area or the Equipment that may be imposed on Licensee under Law. Licensee shall not allow or suffer any lien for any Impositions to be imposed on a License Area or Equipment. In the event that the City receives any Imposition notices on or in connection with a License Area or 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 the Equipment.

9.4. Licensee's Right to Contest Taxes or Assessments

Licensee will have the right to contest any Impositions that Licensee disputes in good faith, so long as no lien attaches to the Property and Licensee complies with any bond, deposit, collateral or other requirements under applicable Law.

10. LIENS

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

11. INDEMNIFICATION

11.1. General Indemnification Obligations

Licensee, for itself and its successors and assigns, shall indemnify, defend, and hold the harmless the City, its Agents, Invitees, and their respective heirs, legal representatives, successors, and assigns (collectively, the "Indemnified City Parties") from and against any and all Claims, incurred in connection with or arising in whole or in part from any act or omission by Licensee or its Agents, licensees, customers, contractors, or invitees in connection with this Master License, any Schedule, or any Equipment, whether any negligence may be attributed to any Indemnified City Parties or not, whether any liability without fault is imposed or sought to be imposed on any Indemnified City Parties or not, but except to the extent that that such Claim is directly and exclusively caused by the City's sole active negligence or willful misconduct. Licensee's obligations under this Section 11 includes, without limitation, all reasonable fees, reasonable costs and expenses for attorneys, consultants and experts, and the City's actual costs to investigate and defend against any Claim. Licensee expressly acknowledges and agrees that: (a) Licensee has an immediate and independent obligation to defend any Indemnified City Parties from any Claim that actually or potentially falls within this Section 11, even when the allegations in the Claim are or appear to be groundless, baseless, fraudulent, or false; and (b) Licensee's obligations arise at the time any Indemnified City Parties tender a Claim to Licensee and continue until such Claim's final, non-appealable resolution. Licensee's obligations under this Section 11 shall survive this Master License's revocation, termination, or expiration.

11.2. Licensee's Indemnification for Personnel Injuries

Licensee acknowledges that (1) the City has delegated to Licensee control over any and all License Area(s); and (2) the City is not a co-employer of any employee of Licensee or any employee of Licensee's Agents, and the City shall not be liable for any Claim by Licensee's or its Agent's employee(s), except to the extent that that such Claim is directly and exclusively caused by the City's sole active negligence or willful misconduct. Licensee agrees to fully indemnify, defend, and hold the City harmless in the same manner and to the same extent as provided in Section 11.1 (General Indemnification Obligations) against any Claim by any employee of Licensee or its Agents that arises in connection with Licensee's or its Agents' access, use, or other activity on or about any License Area, except to the extent that that such Claim is directly and exclusively caused by the City's sole active negligence or willful misconduct.

11.3. Licensee's Defense Obligations

If any Claim is brought against any Indemnified City Parties in connection with any subject matter for which any Indemnified City Parties are to be indemnified by Licensee, or where Licensee is obligated to defend any Indemnified City Parties, under this Master License or a Schedule, 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 City shall not unreasonably withhold or delay its consent to legal counsel selected by Licensee; provided, however, that the City has the absolute right to reject any proposed legal counsel that: (1) has less than 10 years' direct experience representing public agencies in similar actions or proceedings as those brought against the Indemnified City Parties; (2) is not duly licensed to practice law in the State of California by the State Bar of California; (3) has any past or pending disciplinary actions by any United States tribunal or state bar association; or (4) has any actual or potential conflicts of interest with any Indemnified City Parties who would be represented by such proposed legal counsel. 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 Parties' part; or (b) requires any Indemnified City Party to take or refrain from any action, which includes without limitation any change in the City's policies or any monetary payments. Nothing in this Master License or a Schedule shall be construed to limit or preclude any Indemnified City Parties or their respective legal counsel from cooperating with Licensee and/or participating in any judicial, administrative, alternative dispute resolution, or other litigation or proceeding. Licensee's obligations under this Section 11.3 shall survive this Master License's or any Schedule's revocation, termination, or expiration.

12. INSURANCE

Prior to any construction, installation, or other work by Licensee or its contractors or subcontractors in, on, under, or above the Property, Licensee shall comply with all insurance requirements and other obligations contained in **Exhibit D** (Licensee's Insurance Obligations), attached hereto and incorporated herein, and shall provide the City with all required certificates and endorsements shall require its contractors or subcontractors to comply with substantially the same insurance requirements and other obligations contained in **Exhibit D**. To the extent designed to assure protection from and against the kind and extent of risk that may exist under the activities subject to this Master License or a Schedule, the City shall have the right to amend or replace the insurance requirements and other obligations contained in **Exhibit D** on 30 days' prior written notice to Licensee. Any noncompliance with any insurance requirements in this Master License or any Schedule by Licensee or its contractors or subcontractors shall be a material default by Licensee.

13. ASSIGNMENT; SUBLICENSE

13.1. Assignment

Licensee may not assign this Master License or any Schedule at any time without the City's prior written consent. Any assignment that violates this Section 13.1 shall be deemed void and without any legal effect whatsoever, and the City shall have the right (but not the obligation) to terminate this Master License or any Schedule upon written notice to Licensee. This Section 13.1 shall not preclude Licensee's right to enter into a

standard roaming agreement allowing subscribers of other wireless carriers to use the Equipment specifically constructed for Licensee's use.

13.2. Sublicense

Licensee shall not sublicense or in any other manner allow a third party to occupy or use any License Area and/or support structure without the City's prior written consent, which the City, in the City's sole discretion, may withhold or condition. Any act that violates this Section 13.2 shall be deemed to be a material default by Licensee and the City shall have the right (but not the obligation) to exclude any unauthorized third parties from the Property.

13.3. Continuing Obligations after Transfer

No assignment, sublicense, or other transfer, whether with the City's consent or not, will relieve Licensee from any obligation under this Master License or any Schedule unless: (1) the City expressly releases Licensee from such obligations in a written release signed by the City; (2) Licensee's transferee demonstrates the present ability to perform such obligations to the City's satisfaction; and (3) Licensee's transferee expressly and irrevocably assumes such obligations in a writing signed by Licensee's transferee. Any assignment, sublicense, or other transfer that is not in compliance with this Section 13 (Assignment; Sublicense) will be deemed to be a material default by Licensee. Any payment by any third-party person or entity accepted by the City in connection with this Master License or any Schedule will not be deemed to waive any provision or obligation in this Master License or any Schedule or be construed to be consent by the City to any assignment or sublicense.

14. DEFAULT; REMEDIES

14.1. Defaults and Cure Periods

The parties agree that it will be a default under this Master License when either the City or Licensee: (1) fails to tender any sums payable pursuant to this Master License or any Schedule when due, and such failure continues for 10 days after notice from the non-defaulting party; or (2) fails to perform any non-monetary term, provision, covenant, or obligation under this Master License or any Schedule, and such failure continues for 30 days after notice from the non-defaulting party. Notwithstanding the foregoing sentence, said 30-day cure period will be reasonably extended when the default cannot be cured within 30 days and the defaulting party commences to cure within said 30-day cure period and diligently pursues the cure to completion.

14.2. Sums Paid During Default

Neither Licensee's payment nor the City's or its Agents' acceptance of any License Fees or any other sums due to the City or its Agents under this Master License or any Schedule 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.

14.3. No Consequential Damages

Licensee expressly acknowledges and agrees that the License Fee or any other sums payable to the City under this Master License or any Schedule do not consider any potential liabilities for consequential or incidental damages. The City would not willingly enter this Master License or any Schedule without a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages due to the City's or its Agents' acts or omissions, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting Licensee's indemnification obligations or other waivers contained in this Master License or any Schedule and as a material consideration for this Master License and any Schedule, Licensee fully releases, waives, and discharges forever any and all Claims against the City for consequential and/or incidental damages that arise from or in connection with this Master License or any Schedule, which includes without limitation any lost profits from disruption to Equipment, any interference with uses or activities conducted by Licensee under this Master License or any Schedule, from any cause whatsoever, and whether due to the City's or its Agents' active or passive negligence or willful misconduct or not, and covenants not to sue for such damages the City and the City's other departments, and all the City agencies, officers, directors, and employees, and all persons acting by, through, or under them.

14.4. No Personal Liability

No elected or appointive board, agency, member, officer, employee or other Agent of the City will be personally liable to Licensee, its successors, or assigns, in the event of any default or breach by the City or for any amount which may become due to Licensee, its successors, or assigns, or for any obligation of the City under this Master License or any Schedule.

14.5. No Relocation Assistance

This Master License or any Schedule does not create any right in Licensee to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (California Government Code §§ 7260 *et seq.*), 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 for any compensation from the City except as provided in Section 18 (Condemnation).

14.6. Cumulative Remedies

Except as may be specifically provided otherwise in this Master License, any and all rights, benefits and/or remedies provided or afforded to either the City or Licensee under this Master License or any other instrument or document executed pursuant to this Master License are and will be cumulative and not exclusive of any legal or equitable rights, benefits, or remedies available to either the City or Licensee under applicable Laws.

15. TERMINATION

15.1. Grounds for Termination

In addition to any other provision in this Master License or any Schedule that authorizes the City or Licensee to terminate this Master License or any Schedule, this Master License and any Schedule may be terminated as follows:

- (1) by either the City or Licensee upon 30 days' written notice when the other remains in default beyond any applicable cure period, as may be extended;
- (2) by Licensee upon written notice to the City at any time prior to the Commencement Date if any Tests show, in Licensee's opinion, that a License Area is not suitable for the Permitted Use;
- (3) by Licensee upon written notice to the City at any time prior to the Commencement Date if Licensee cannot obtain all Regulatory Approvals required for the Permitted Use after Licensee exhausts in good faith all administrative remedies available to Licensee in connection with an application for such Regulatory Approvals; or
- (4) by Licensee upon one hundred and eighty (180) days' written notice to the City at any time after the Commencement Date for any or no reason; or
- (5) by City upon one hundred and eighty (180) days' written notice to Licensee at any time after the Commencement Date for any or no reason

15.2. Early Termination Fee

If Licensee elects to terminate this Master License or any Schedule pursuant to Section 15.1(4), Licensee shall include with its termination notice a lump sum payable to the City equal to the then-current License Fee multiplied by either 12 or the number of months remaining in the then-current five (5) year term (whichever is less) (the "ETF"). Licensee will not be obligated to pay any ETF if Licensee terminates this Master License prior to the Commencement Date pursuant to Sections 15.1(1), (2) or (3).

16. REMOVAL AND RESTORATION

Licensee shall remove all Equipment at its sole expense upon the expiration or within 90 days of earlier termination of this Master License or any Schedule, including but not limited to facilities used to house Equipment that the City does not elect to retain and provide reasonable advance written notice to Licensee of such election. Licensee shall repair any damage to any and all License Area(s) caused by such removal and shall return all License Area(s) to the condition which existed on the Effective Date, reasonable wear and tear e excepted. Without limiting the generality of the foregoing, Licensee shall remove all footings, foundations, utilities, wiring, and conduits. Licensee shall be deemed in actual possession of all License Area(s) until and unless it completely removes its personal property and restores License Area(s) consistent with this Section 16. City may, but is not obligated to, perform Licensee's above removal and restoration obligations after expiration or earlier termination of the Master License or any Schedule. In addition to any other sums due to City under this Agreement, Licensee shall reimburse City for all costs incurred by City, including staff time at fully burdened hourly rates, to perform such removal and restoration obligations ("Reimbursement Costs"). Licensee agrees to pay City for all Reimbursement Costs by no later than ten (10) calendar days after receipt of a notice of such Reimbursement Costs from the City.

17. ENVIRONMENTAL PROVISIONS

17.1. Licensee's General Environmental Obligations

Licensee, its Agents, and Invitees may use only those Hazardous Substances on or about the Property that are normally associated with the Permitted Use, and only in strict compliance with all applicable Environmental Laws. Licensee shall use reasonable efforts to minimize Hazardous Substance use on the Property and, to the extent commercially reasonable, use non-hazardous alternatives in Licensee's operations. Licensee shall manage and conduct its, its Agents' and Invitees' activities on or in connection with the Property: (1) in compliance with all applicable Environmental Laws and applicable provisions in this Master License and any Schedule; (2) in cooperation with the City and the City's efforts to maintain compliance with all applicable Environmental Laws; and (3) in accordance with all environmental or operational standards or guidelines for common and accepted practices appropriate for the business that Licensee and its Agents or Invitees engage in on the Property and/or such guidelines as have been articulated by pertinent trade associations, professional associations or regulatory agencies applicable to the Equipment and the Permitted Use. Licensee shall manage its, its Agents' and Invitees' activities on or about the Property, and as may be appropriate, secure License Area(s), so as to prevent any noncompliance with any applicable Environmental Law or any applicable environmental provision in this Master License or any Schedule.

17.2. Response to Hazardous Substance Releases

If any actual, threatened, or reasonably suspected Release occurs for which Licensee is responsible under this Master License or any Schedule, Licensee shall immediately

undertake and diligently pursue, at Licensee's sole cost and expense, all action or actions necessary or appropriate to investigate, contain, stop, accomplish source control, remove and perform interim remediation in connection with such Release. Licensee shall promptly send the City written notice after Licensee discovers facts about: (1) an actual or reasonably suspected violation in connection with any Environmental Law related to the Property or this Master License or any Schedule; or (2) an actual or reasonably suspected Release on, under, from, or adjacent to the Property.

17.3. Self Help Remedies

Except in an emergency or pursuant to a governmental order that requires immediate action, in which case the City shall have the rights to perform immediate action, the City shall have the right (but not the obligation) to perform Licensee's environmental obligations under this Section 17 or any applicable Environmental Laws after the City provides Licensee with seven days' written notice and a demand to perform the obligations in issue. The City shall charge Licensee, and Licensee shall promptly reimburse the City upon demand, for any Environmental Costs, which shall bear interest at the statutory rate then in effect from the date the City expends any such funds. However, the City may not perform Licensee's obligations under this Section 17 when, within the seven-day notice period, Licensee promptly notifies the City, begins and continues thereafter to diligently pursue full performance to completion for all obligations stated in the City's notice.

17.4. Licensee's Environmental Indemnifications

If Licensee breaches or fails to perform any environmental obligations contained in this Section 17, or if any act, omission or negligence by Licensee or its Agents or Invitees results in any contamination on or about the Property or the License Area, in whole or in part, or in a Release from, on, about, in or beneath the Property or any License Area(s), in whole or in part, or any Environmental Law violation, then Licensee, for itself and its successors and assigns, shall indemnify, defend and hold harmless the City, including its Agents, and their respective successors and assigns from and against any and all Claims (including damages for decrease in value of the Property or any License Area(s), any loss or restriction on the use of usable space on the Property or any License Area(s) and sums paid to settle any Claims, which include without limitation attorneys' fees, consultants' fees, experts' fees and related costs) that arise during or after the Term and in relation to such Release or violation; provided, however, Licensee shall not be liable for any Claims to the extent such Release or violation was caused by the City's or its Agents' sole negligence or willful misconduct, or any conditions that existed prior to Licensee's Term from any cause. Licensee's indemnification obligation includes costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Substance brought onto the Property or the License Area by Licensee, its Agents, or Invitees and to restore the Property or the License Area to its condition that existed immediately before Licensee introduced such Hazardous Substance or to correct any Environmental Law violation(s). 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 indemnification provision even if the allegations that support the Claim are or may be groundless, fraudulent or false, and which obligation arises at the time such Claim is tendered to Licensee by the Indemnified City Party and continues until the Claim is finally resolved. 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 involving Hazardous Substances.

17.5. Licensee's Cleanup Obligations

Without limiting the indemnification obligations in Section 17.4 (Licensee's Environmental Indemnification Obligations), Licensee will be responsible for all response, remediation, and restoration obligations in connection with any Release and associated Environmental Costs that results from or occurs in connection with Licensee's occupation, possession or use of the Property and/or License Area from the Commencement Date, throughout the Term and after this Master License or any Schedule expires or terminates.

18. CONDEMNATION

18.1. Permanent Takings

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

- (1) Any affected Schedule will automatically terminate on the date the permanent taking or transfer occurs. The City will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Licensee hereby expressly waives any right or claim to any portion thereof, including any claim for loss of business or goodwill. All damages, whether awarded as compensation for diminution in value of the License or to the fee of the License Area, shall belong to the City. Licensee will have no Claim against the City for the value of any unexpired Term of this Master License or any Schedule 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 or other trade fixtures or personal property.
- (2) If the City transfers any License Area (in whole or in part) to any entity with the power to condemn in lieu of eminent domain, the proceeds from such transfer shall be distributed in the same manner as in a condemnation.
- (3) The parties understand, acknowledge and agree that this Section 18.1 is intended to fully govern the parties' rights and obligations in the event of a permanent taking. Licensee and the City each hereby waives and releases

any right to terminate this Master License or any Schedule in whole or in part under California Code of Civil Procedure §§ 1265.120 and 1265.130 and under any similar Laws to the extent applicable to this Master License or any Schedule.

18.2. Temporary Takings

Any taking that affects any License Area in whole or in part for less than 90 days will have no effect on this Master License or any Schedule, except that Licensee will be entitled to a pro-rata abatement in the License Fee to the extent that such temporary taking materially impairs Licensee's use of the License Area. Furthermore, in the event that the City receives an award, if any, in connection with such temporary taking, Licensee will receive the portion from the award that represents compensation for the use or occupancy of the License Area during the Term but not to exceed the License Fees payable by Licensee for the period of the taking, and the City will retain the balance of the award.

19. DESTRUCTION

If any License Area, in whole or in part, becomes damaged or destroyed due to any cause, the City will have no obligation to repair, rebuild, or replace the damaged or destroyed License Area. If any License Area, in whole or in part, becomes so damaged or destroyed that it materially impairs Licensee's Permitted Use, and such damage or destruction resulted from a cause not attributable to Licensee or any other person or entity affiliated with Licensee or under Licensee's direction or control, Licensee may elect to terminate a Schedule affected thereby within 60 days after such damage or destruction occurs.

20. SECURITY DEPOSIT

Before the commencement of any work, Licensee shall maintain and furnish to the City an executed performance bond, letter of credit, or other form of security acceptable to the City (the "**Security**") for the purpose of protecting the City from the costs and expenses associated with Licensee's failure to comply with its material obligations under and throughout the life of this Master License and any Schedule, including but not limited to, (a) the City restoration of any License Area, in whole or in part; (b) the City's removal of any of Licensee's Equipment or associated improvements that are abandoned or not properly maintained or that need to be removed after expiration or termination of this Master License or any Schedule or to protect public health, safety, welfare, or City property; or (c) the City's remediation of environmental and hazardous waste issues caused by Licensee pursuant to Section 17 (Environmental Provisions), after Licensee receives reasonable notice from the City of any of the non-compliance listed above and an opportunity to cure as described within this Master License. The amount of the Security shall be Twenty Five Thousand Dollars (\$25,000). The Security must be in a form approved by the City Attorney. Any acceptable Security instrument having an expiration date earlier than the expiration of the Term of this Master License or any Schedule shall be automatically renewable. In the event the surety or party issuing the Security cancels or decides not to renew or extend the Security, Licensee shall obtain, and provide to the

City for approval, a replacement Security with another surety within 30 days of the date of receipt of the notice that the existing surety intends to cancel or not renew. If Licensee fails to provide the replacement Security within the 30-day period, the City may immediately suspend Licensee from any further performance under this Master License or any Schedule and begin procedures to terminate for default. Licensee's obligations in this Section 20 will survive expiration or earlier termination of this Master License and any Schedule for three (3) years.

21. NOTICES

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

TO CITY: City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attention: Director of Public Works
619-397-6000

TO LICENSEE: Dish Wireless
5701 South Santa Fe Boulevard
Littleton, CO 80120
Attention: Lease Administration

All notices, demands or other correspondence in connection with this Master License or any Schedule will be deemed to have been delivered: (a) two days after deposit if delivered by U.S. certified mail; (b) the date delivery is made by personal delivery or overnight delivery; or (c) the date an attempt to make delivery fails if a party changes its address without proper notice or refuses to accept delivery after an attempt. 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.

22. MISCELLANEOUS PROVISIONS

22.1. Interpretation; Construction

The parties agree as follows:

- (1) The recitals set forth in this Master License are true and correct.
- (2) 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 or any Schedule.
- (3) This Master License has been jointly negotiated and, although formulated at the outset by counsel for the City, the Master License has been reviewed by counsel for Licensee, and each such counsel has participated in the preparation of the final Master License. The language used in this Master License shall be construed as a whole according to its fair meaning and not strictly for or against any party, and it is agreed that no provision hereof shall be construed against any party hereto by virtue of the activities of that party or such party's attorneys.
- (4) Inclusive terms and/or phrases, which includes without limitation the terms and/or phrases "including," "such as" or similar words or phrases that follow any general or specific term, phrase, statement or matter may not be construed to limit the term, phrase, statement or matter to the stated terms, statements or matters, or the listed items that follow the inclusive term or phrase, whether any non-limitation language or disclaimers, such as "including, but not limited to" and/or "including without limitation" are used or not. Rather, the stated term, phrase, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within such term, phrase, statement or matter given its broadest interpretation.
- (5) References in this Master License or any Schedule 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.
- (6) Unless expressly provided otherwise, references in this Master License or any Schedule to codified statutes and regulations will be interpreted to refer to such statutes and regulations as the same may be duly amended, recodified or superseded.

- (7) 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.).

22.2. Unenforceability; Severability

If a court of competent jurisdiction over this Master License or any Schedule holds any provision in this Master License or any Schedule to be invalid or unenforceable with respect to either the City or Licensee, or any third parties to whom this Master License or any Schedule may become applicable or enforceable: (1) such provision or its application to such person, entity, or circumstance will be deemed severed from this Master License or such Schedule; (2) all other provisions in this Master License and each Schedule and their application to any person, entity or circumstance will not be affected; and (3) all other provisions in this Master License and each Schedule and their application to any person, entity, or circumstance will be valid and enforceable to the fullest extent permitted by Law, except to the extent that such enforcement would (a) be manifestly unreasonable or manifestly inequitable under all the circumstances or (b) undermine one or both parties' fundamental purpose in entering this Master License or any Schedule.

22.3. Time for Performance; Force Majeure

Time is of the essence of this Master License and each Schedule. Notwithstanding anything in this Master License or any Schedule to the contrary, the time for performance for any term, provision, covenant, or obligation under this Master License or any Schedule will be deemed extended to account for any time lost due to delays that arise from strikes, civil riots, floods, labor, or material shortages or restrictions, governmental intervention, or any other cause not within the control of the party whose performance is due.

22.4. Integration; Entire Agreement

This Master License contains the entire agreement and understanding between the parties as to the subject matter concerned in this Master License, and this Master License supersedes all prior or contemporaneous agreements, commitments, conditions, discussions, instruments, offers, promises and/or proposals between or among the City and Licensee in connection with any License Area, whether oral or written.

22.5. Successors and Assigns

The parties intend and agree that this Master License will extend to and bind the parties' respective heirs, personal representatives, successors and assigns.

22.6. Amendments and Modifications

All amendments or modifications to this Master License, if any, must be in a written and fully executed agreement signed by both parties.

22.7. 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. Any express waiver by either the City or Licensee in connection with any default or obligation to perform any provision, term, covenant or condition under this Master License will: (1) be limited to the specific default or performance for which the express waiver is granted; (2) not be deemed to be a continuing waiver; and (3) not affect any other default or performance no matter how similar or contemporaneous such other default or performance may be. The City's or Licensee's consent given in any specific instance in connection with or pursuant to this Master License will not relieve the City or Licensee from the obligation to secure the other's consent in any other or future specific instances, no matter how similar or contemporaneous the request for consent may be.

22.8. Governing Law; Venue; Attorneys' Fees

This Master License shall be governed and construed in accordance with the laws of the State of California and the City Charter without regard to conflicts of laws principles. Sole and exclusive venue for any action or claim between the parties that arises from or in connection with this Master License will reside exclusively in the Superior Court of the County of San Diego (the "**Court**"). All parties to this Master License agree to be subject to the Court's jurisdiction and waive all claims whatsoever that would defeat the Court's jurisdiction to hear and adjudicate any action or claim between the parties that arises from or in connection with this Master License. The prevailing party in any final or non-appealable decision on the merits that arises from or in connection with this Master License may be entitled to its reasonable attorneys' fees and costs, which includes without limitation reasonable witness, expert, and consultant fees, at the Court's sole discretion. With respect to any provision in this Master License that provides for payment of attorneys' fees, such fees will be deemed to include reasonable fees incurred through any applicable appeal process and will include, but not be limited to, fees attributable to legal services provided by any in-house counsel and staff to the prevailing or indemnified party. For purposes in this Master License, all services rendered by all attorneys and their staff will be valued at the average rates for independent counsel prevailing in the County of San Diego, California.

22.9. Government Claims Act

Any claim for money damages by Licensee against the City hereunder will be subject to California Government Code §§ 910 *et seq.* (the “**Government Claims Act**”). The claims presentation provisions in the Government Claims Act are hereby modified such that all claims to be presented to the City will be irrevocably waived if not made within six (6) months after Licensee discovers the facts that either give rise to the claim or would prompt an investigation that, with reasonable diligence, would lead Licensee to facts that would give rise to the claim. Neither the City nor its council members, commissioners, elected or appointed officers or officials, administrators, directors, managers, employees, attorneys, Agents, or volunteers will be personally liable to Licensee in the event of any default or breach of the City, or for any amount which may become due to Licensee or any successor in interest, or for any obligations directly or indirectly incurred under this Master License.

Additionally, no suit or arbitration shall be brought arising out of this Master License against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Licensee shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Master License.

22.10 False Claims Act

Licensee agrees that any License claim submitted to the City must be asserted as part of the License process as set forth in this Master License and not in anticipation of litigation or in conjunction with litigation. Licensee acknowledges that if a false claim is submitted to the City by Licensee, it may be considered fraud and Licensee may be subject to criminal prosecution. Licensee acknowledges that the False Claims Act, California Government Code §§ 12650 *et seq.*, applies to this Master License and provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to seek to recover its litigation costs, including attorney’s fees. Licensee acknowledges that the filing of a false claim may subject Licensee to an administrative debarment proceeding as the result of which Licensee may be prevented to bid on any public work or improvement for a period of up to five (5) years.

22.11. Public Records Act Disclosure

Licensee acknowledges that the City is a public entity under the laws of the State of California. Furthermore, the parties acknowledge that this Master License and each Schedule constitutes a public record that the City must publicly disclose under (1) the

California Public Records Act, California Government Code §§ 6250 *et seq.*; (2) Title 17, California Code of Regulations §§ 91000 *et seq.*; (3) Article I, § 3, of the California State Constitution; and (4) any other applicable Law that may require the City to disclose public records.

22.12. Estoppels

The City or Licensee, at any time and from time-to-time, on not less than 30 days' notice from the other party, shall execute, acknowledge and deliver to the City or its designee, an estoppel certificate which states: (1) if the City is the requesting party, that Licensee has accepted a License Area (or, if Licensee has not done so, that Licensee has not accepted all or any part of a License Area and specifying the applicable portions of the License Area and reasons for non-acceptance); (2) the Commencement Date, Effective Date and expiration date for this Master License; (3) that this Master License is unmodified and in full force and effect or, if modified, the manner in which this Master License is modified; (4) whether any defenses then exist against the enforcement of any obligations under this Master License (and if so, specifying the same); (5) whether any obligations under this Master License are outstanding (and if so, identifying any obligations that such party believes that the other party has failed to meet); (6) the dates, if any, to which the License Fees have been paid; (7) if the City is the requesting party, the number and identity of all sublicensees, if any, on the License Area, and the dates on which such sublicensees commenced and terminated their use or occupancy on the License Area; and (8) any other factual information that may be reasonably required by any such persons.

22.13. 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 a claim for a commission or finder's fee based upon any such contact, dealings or communication, Licensee shall indemnify the City from all Claims brought by the Broker. The representations and indemnification obligations in this Section 22.13 will survive expiration or earlier termination of this Master License.

22.14. No Third-Party Beneficiaries

This Master License is not intended to (and shall not be construed to) give any third party, which includes without limitation any authorized sublicensee, Licensee's customers or any other third-party beneficiaries, any right, title, or interest in this Master License or the real or personal property(ies) that may be affected by this Master License.

22.15. Bankruptcy

If Licensee becomes a debtor in any voluntary or involuntary bankruptcy proceeding under the Bankruptcy Code, the City and Licensee expressly intend, acknowledge, and agree that this Master License will be treated as either an unexpired commercial lease or an executory contract for all purposes in connection with Bankruptcy Code § 365 and subject to the provisions of Bankruptcy Code §§ 365(d)(3) and 365(d)(4) as those provisions may be amended or superseded in the future. Any person or entity to which this Master License is assigned pursuant to the Bankruptcy Code will be deemed without any further act to have assumed all Licensee's obligations under this Master License which arose before or may arise after such assignment, and any such assignee shall execute and deliver to the City a written instrument that confirms such assumption promptly upon a written demand from the City. Any monies or other consideration payable or otherwise to be delivered in connection with such assignment will be promptly paid to the City, will be the City's exclusive property and will not constitute Licensee's or its estate's property for the purposes under the Bankruptcy Code. Any such monies or other consideration not paid to the City will be held in trust for the City's benefit and paid to the City as soon as possible.

22.16. Survival

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

22.17. Submission for Inspection; No Offer

Prior to the Effective Date, the parties may submit this Master License to each other for inspection and examination purposes and such submission will not constitute an offer to license the License Area. This Master License will become effective only upon full execution by both the City and Licensee.

22.18. Execution; Counterparts

The parties warrant and represent to each other that the person who executes this Master License on their behalf has the full power and authority to enter this Master License, and that any approvals or authorizations necessary to enter this Master License have been obtained. This Master License may be executed simultaneously or in one or more

counterparts. If the parties elect to execute this Master License in one or more counterparts, Licensee shall execute first, the City shall execute second, each executed counterpart will be deemed to be an original, but all counterparts taken together will constitute one and the same agreement.

[END OF LICENSE – SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Master License on the Effective Date:

CITY

LICENSEE

City of Chula Vista, a California municipal corporation and charter city

Dish Wireless, a Limited Liability Company,

By: _____

By: _____

Maria V. Kachadoorian, City Manager

Dave Mayor, Executive Vice President

Its: _____

Its: _____

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____

Glen R. Googins
City Attorney

Date: _____

[END OF SIGNATURES – EXHIBITS BEGIN ON NEXT PAGE]

EXHIBIT A SAMPLE SCHEDULE OF PREMISES

Schedule of Premises

Each Licensed Area must be described in a Schedule of Premises (Schedule) in substantially the format outlined below and made part of this Exhibit A.

Schedule: **INSERT**

Site No: **INSERT**

Schedule Commencement Date: **INSERT**

Location: **INSERT**

APN: **INSERT**

Description of Installation (Attach Site Plan): **ATTACH AND INSERT IN SUBSTANTIAL FOR AS EXHIBIT C**

Building Permit No: **INSERT**

Conditions of Approval: **INSERT**

Note: Violations of the above conditions, or any term or conditions of the Master License or this Schedule, may result in the termination of this Schedule and any right to use the Licensed Area.

Other: **INSERT**

In addition, except in the event of an emergency, all work shall be scheduled in advance and coordinated with parks operations personnel, onsite recreational staff, City Engineer and Public Works Staff or other City staff as appropriate prior to commencement of the work to minimize the potential for conflicts with recreation and other City programs occurring on the site. The applicant agrees that the site will not be activated until the City has signed off on final construction.

THE SCOPE FOR THE PROPOSED FACILITY WILL CONSIST OF THE FOLLOWING:

AT ANTENNA LEVEL:

- INSTALL NEW T-MOBILE ANTENNAS (4) PER SECTOR, (12) TOTAL
- INSTALL NEW T-MOBILE RRUS (4) PER SECTOR, (12) TOTAL
- INSTALL NEW T-MOBILE FIBER AND POWER HYBRID CABLES (1) PER SECTOR, (3) TOTAL

AT EQUIPMENT LEVEL:

- NEW 14'-0" x 30'-6" EQUIPMENT ENCLOSURE
- INSTALL NEW 35' HIGH MONO-EUCALYPTUS
- INSTALL 5'-0" x 15'-0" CONCRETE EQUIPMENT PAD
- INSTALL (1) NEW T-MOBILE PPC CABINET
- INSTALL (1) NEW T-MOBILE TELCO CABINET
- INSTALL (1) NEW 200A METER

Limitations:

- No more than 2 carriers are permitted to use, maintain, or operate Equipment on the Licensed Area
- Licensee must comply with Chula Vista Municipal Code

CITY

LICENSEE

City of Chula Vista, a California
municipal corporation and charter city

Dish Wireless,
a Colorado Limited Liability Company,

By: _____

By: _____

Maria V. Kachadoorian

Dave Mayo

Its: _____

Its: _____

Date: _____

Date: _____

EXHIBIT C

**SAMPLE APPROVED PLANS FOR EQUIPMENT AND OTHER IMPROVEMENTS TO
BE INCLUDED WITH AND ATTACHED TO SCHEDULE OF PREMISES**

DRAFT

EXHIBIT D

LICENSEE'S INSURANCE OBLIGATIONS

Insurance. Licensee, at its sole cost and expense, shall maintain in full force and effect at all times during the Term of this License (including the period between the expiration hereof and Licensee's removal of the Licensee Improvements or other equipment from the Premises or appurtenant property),

I. Comprehensive General Liability or Commercial General Liability insurance covering bodily injury (including death), personal injury and property damage. Limits shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate if applicable. Such insurance shall name the City, its officers, agents and employees, individually and collectively, as additional insureds with respect to any covered liability arising out of Licensee's performance of work under this License. Throughout the Term of this License, Licensee, at its sole cost and expense, shall also maintain in full force and effect, insurance coverage for bodily injury (including death), and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles/aircraft/watercraft. Additionally, Licensee shall maintain not less than fifty thousand dollars (\$50,000) Fire Legal Liability on all real property being licensed, including improvements and betterments owned by City. Licensee shall also provide fire insurance on all personal property contained within or on the Licensed Premises. The policy shall be written on a standard "all risk" contract, excluding earthquake and flood. The contract shall insure for not less than (90) percent of the actual cash value of the personal property. Coverage shall be provided in accordance with the limits specified and the Provisions indicated herein. Claims-made policies are not acceptable. When an umbrella or excess coverage is in effect, coverage shall be provided in following form. Such insurance shall provide thirty (30) days' advance written notice of cancellation for any reason other than on-payment of premium in which a ten (10) days' notice of cancellation shall apply. Licensee shall be responsible for notifying the City of such change or cancellation.

Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this License, Licensee shall file with the City the required original certificate(s) of insurance with endorsements, subject to the City's prior approval, which shall clearly state all of the following:

- a. Provide on a form approved by the City's Risk Manager, an original plus one (1) copy of a Certificate of Insurance certifying that coverage as required has been obtained and remains in force for the period required by the License.
- b. All policies shall contain a special provision for thirty (30) days prior written notice of any cancellation, except for non-payment of premium in which a ten (10) days' notice shall apply, to be sent to the City's Risk

Manager, 276 Fourth Avenue, Chula Vista, CA 91910, or to the address shown on the Certificate of Insurance; and

- c. That Licensee's insurance is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.
- d. City is an additional insured. The certificate(s) of insurance with endorsements and notices shall be mailed to the City as the address specified in 4.4.1.b. above.

II. Workers' Compensation Insurance. Throughout the Term of this License, Licensee, at its sole cost and expense, shall maintain in full force and effect, insurance coverage for:

- a. Statutory California Workers' Compensation coverage including a broad form all-states endorsement.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence for all employees engaged in services or operations under this License.

III. Automobile Liability Insurance. ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

Insurer Criteria. Any bond or insurance provider of Licensee shall be admitted and authorized to do business in California and shall be rated at least AV in A.M. Best & Company's Insurance Guide. Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

Severability of Interest. Prior to the execution of this License, "Additional insured", "Cross liability," "severability of interest," or "separation of insured" endorsements/clauses shall be made a part of the commercial general liability and commercial automobile liability policies.

Contractors' and Subcontractors' Insurance. Licensee shall require that all contractors and subcontractors obtain insurance meeting the limits set forth herein and shall furnish to the City copies of all certificates evidencing such policies of insurance upon request.

Insurance and Indemnification Obligation. Licensee's compliance with the insurance requirements herein shall not excuse, replace, or otherwise affect Licensee's duty to indemnify and defend the City pursuant to 4.4 of this License.

Waiver of Recovery. Except as may be specifically provided for elsewhere in this License, City and Licensee hereby each mutually waive and all rights of recovery from the other in event of damage to the premises or property of either caused by acts of God, perils of fire, lightning, and extended coverage perils as defined in insurance policies and forms approved for use in the State of California. Each party shall obtain any special endorsements, if required by their insurer, to evidence compliance with the wavier.

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