

WIRELESS INSTALLATION LICENSE AGREEMENT

BETWEEN

THE CITY OF BRYAN, TEXAS AND

[_____]

TABLE OF CONTENTS

WIRELESS INSTALLATION LICENSE AGREEMENT i

RECITALS 1

AGREEMENT 1

1. DEFINITIONS..... 1

2. WIRELESS INSTALLATION AGREEMENT LICENSES AND PROCEDURES..... 6

3. FEES AND CHARGES 9

4. PRIVATE AND REGULATORY COMPLIANCE..... 11

5. LIABILITY AND INDEMNIFICATION 12

6. DUTIES, RESPONSIBILITIES, AND EXCULPATION..... 14

7. INSURANCE..... 16

8. AUTHORIZATION NOT EXCLUSIVE 16

9. ASSIGNMENT..... 16

10. TERM OF WIRELESS INSTALLATION AGREEMENT 17

11. TERMINATION OF WIRELESS INSTALLATION AGREEMENT 17

12. EFFECT OF EXPIRATION OR TERMINATION OF WIRELESS INSTALLATION
AGREEMENT 19

13. AMENDING AGREEMENT AND POLE ATTACHMENT STANDARDS..... 19

14. DISPUTE RESOLUTION 20

15. NOTICES..... 21

16. RECEIVERSHIP, FORECLOSURE, OR ACT OF BANKRUPTCY 22

17. PERFORMANCE BOND OR OTHER SECURITY 23

18. RELOCATION AND REMOVAL OF FACILITIES; REPAIR OF DAMAGES 24

19. MISCELLANEOUS PROVISIONS..... 25

20. INTEREST ON PAST-DUE AMOUNTS..... 27

21. ATTORNEY’S FEES 27

APPENDIX A MINIMUM INSURANCE REQUIREMENTS A-1

APPENDIX B PERFORMANCE BOND B-1

WIRELESS INSTALLATION LICENSE AGREEMENT

This Wireless Installation License Agreement is entered for the purpose of permitting the installation, ownership, lease, license, operation, and/or maintenance of Network Nodes on or supported by City of Bryan Service Poles or other Poles in the Public Rights-of-Way within the City in accordance with the further terms hereof (the “Wireless Installation Agreement”), and is made and entered into on the ___ day of 20___ (the “Effective Date”), by and between the City of Bryan, Texas (“City”) and [Company Name] (“Licensee”) (collectively, the “Parties”):

RECITALS

1. Licensee is a Network Provider and desires to install, own, lease, or operate Network Nodes on or supported by City-owned Service Poles or other Poles in the Public Rights-of-Way in accordance with the terms of this Wireless License Agreement, relevant City ordinances, the Design Manual, the Pole Attachment Standards, City regulations or rules, and state or federal law (the “Further Regulations”), as they may be amended from time to time.
2. Pursuant to the terms and conditions of this Wireless Installation Agreement and the Pole Attachment Standards, as they may be amended from time to time, the City may issue one or more Permits authorizing the placement, installation, or operation of Licensee’s Network Nodes in specified locations, including on Service Poles.

THEREFORE, in consideration of the foregoing recitals and of the mutual covenants, terms, conditions, and remuneration herein provided, and the rights and obligations created hereunder, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

- 1.1 Definitions Particular to the Wireless Installation Agreement. The following words, terms, and phrases, when used in this Wireless Installation Agreement, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

“Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

“Applicable Codes” means, as adopted by the City Council:

(1) Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, including without limitation the National Electric Code and the National Electric Safety Code; and

(2) Local amendments to those codes to the extent not inconsistent with this chapter.

“Applicable Engineering Standards” means all engineering or safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around the City Facilities, including without limitation the City’s (or other relevant authorities’) clearance standards, the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the Texas Health & Safety Code, Chapter 752 (Vernon 1992) and any subsequent amendments that relate to the maintenance of proper clearances and related safety issues, the regulations of the Occupational Safety and Health Act (“OSHA”), applicable regulations of the Federal Communications Commission (“FCC”), the Environmental Protection Agency (“EPA”), or other requirements of the City, including as-yet-unadopted local, state, or national standards that are non-discriminatory to the Licensee as compared to all other similarly situated persons and types of facilities.

“Attaching Entity” shall mean any person authorized under City Code or regulation to place facilities or equipment on City Service Poles or in the Public Right-of-Way of the City, including without limitation a “Network Provider.”

“Attachment” means a Wireless Installation on a City Service Pole.

“BTU” means the municipally owned electric utility system of the City of Bryan, Texas.

“Chapter 284” refers to Chapter 284, Local Government Code.

“City Code” means the relevant provisions of the City of Bryan Code, as it may be amended from time to time.

“City Facilities” means and includes City-owned or managed property of all kinds, including without limitation City-owned Service Poles, the Public Rights-of-Way within the City, and appurtenances the City may place in the Public Rights-of-Way.

"Collocate" and "Collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in a Public Right-of-Way on or adjacent to a Pole.

“Concealment Elements” means physical designs or treatments that minimize adverse aesthetic and visual impacts on the view from land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a Wireless Installation, including a Network Node or Node Support Pole, which shall mean the least visually and physically intrusive facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances.

“Decorative Pole” means a Pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

“Design District” means an area, including an overlay district, that is zoned, or otherwise designated by the City Code, on regulations for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

“Design Manual” means and includes the Design Manual for Right-of-Way Installations adopted by the City Engineer pursuant to Sections 2-673 and 106-107, City Code, as it may be amended from time to time.

“Historic District” means an area that is zoned or otherwise designated as a historical preservation district under municipal, state, or federal law.

“Law” means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

“Macro Tower” means a guyed or self-supported pole or monopole of a height greater than the parameters prescribed by Section 284.103 that supports or is capable of supporting antennas.

“Make-Ready Construction” means all work that is required to accommodate Licensee’s Wireless Installation on a Service Pole in compliance with the Applicable Engineering Standards. Make-Ready Work may include, but is not limited to, engineering design, electrical construction, communications construction, or Wireless Installation construction. Make-Ready Construction in this context also includes the City’s review of a Right-of-Way Work Permit Application and a Wireless Installation Permit Application, where applicable; engineering design documents; pole loading analysis documents; engineering design work; construction work; permitting work; tree trimming (other than tree trimming performed for normal maintenance purposes); Service Pole replacement, where applicable; and a post-construction inspection.

“Micro Network Node” means a Network Node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

“Municipally Owned Utility Pole” means a Utility Pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a Public Right-of-Way, including without limitation BTU.

“Network Node” means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(1) includes:

(A) equipment associated with wireless communications;

(B) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

(C) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(2) does not include:

(A) an electric generator;

(B) a Pole; or

(C) a Macro Tower.

“Network Node Fee” means the charge applicable to a Licensee’s installation or installations of Network Nodes in the Public Rights-of-Way in the City, calculated by multiplying the Network Node Rate times the number of Network Nodes a Network Provider installs or operates.

“Network Node Rate” means the rate applicable to a Licensee’s installation of a Network Node in the Public Rights-of-Way in the City, as it may be adjusted from time to time, pursuant to Section 284.053, Utilities Code.

“Network Provider” means, as provided in Chapter 284, Local Government Code:

- (1) a Wireless Service Provider; or
- (2) a person that does not provide Wireless Service and that is not an electric utility but builds or installs on behalf of a Wireless Service Provider:
 - (A) Network Nodes; or
 - (B) Node Support Poles or any other structure that supports or is capable of supporting a Network Node.

“Node Support Pole” means a pole installed by a Network Provider for the primary purpose of supporting a Network Node.

“Permitted Wireless Installation Space” means locations for Network Nodes and associated equipment the City has specified in a Permit limited to Service Poles in City-specified locations and in accordance with the requirements of the Pole Attachment Standards.

“Pole” means a Service Pole, Municipally Owned Utility Pole, Node Support Pole, or Utility Pole.

“Pole Attachment Standards” means the City Wireless Installation Program and Pole Attachment Standards, made effective August 31, 2017, as they may be amended from time to time pursuant to the procedures set forth in this Wireless Installation License Agreement and the Pole Attachment Standards.

“Private Easement” means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

“Public Right-of-Way” or “Public Rights-of-Way” means the area or areas on, below, or above public roadways, highways, or streets or a public sidewalks, alleys, waterways, or utility easements in which the City has an interest. The term does not include:

- (1) a Private Easement; or
- (2) the airwaves above a Public Right-of-Way with regard to wireless telecommunications.

“Public Rights-of-Way Management Ordinance” means an ordinance that complies with Subchapter C, Chapter 284, Utilities Code, including without limitation, Chapter 106, Bryan City Code.

“Right-of-Way Work Permit” means a written authorization obtained pursuant to an approved Right-of-Way Work Permit Application that must be issued before a Network Provider may collocate a Network Node on a Service Pole or other Pole in the Public Rights-of-Way or install a Node Support Pole and is required from the City before a Network Provider may perform an action in the Public Rights-of-Way within the City or initiate, continue, or complete installation of a Network Node.

“Right-of-Way Work Permit Application” shall mean the City-promulgated form and all supporting documents, together with the appropriate fee, submitted to the City as a condition of

obtaining access to the Public Rights-of-Way for the installation of a Network Node as prescribed by the Design Manual.

“Service Pole” means a Pole, other than a Municipally Owned Utility Pole, owned or operated by the City and located in a Public Right-of-Way, including:

- (1) a Pole that supports traffic control functions;
- (2) a structure for signage;
- (3) a Pole that supports lighting, other than a Decorative Pole; and
- (4) a Pole or similar structure owned or operated by the City and supporting only Network Nodes.

“Service Pole Fee” means the charge applicable to a Licensee for the use of space on the City’s Service Poles for the placement of a Wireless Installation; the term does not include the Network Node Fee under applicable law for use of the Public Rights-of-Way within the City for the installation of Network Nodes or other facilities.

“Transport Facility” or “Transport Facilities” means the transmission path or paths physically within the Public Rights-of-Way, extending with a physical line from a Network Node directly to the network, for the purpose of providing backhaul for Network Nodes.

“Utility Pole” means a Pole that provides:

- (1) Electric distribution with a voltage rating of not more than 34.5 kilovolts phase-to-phase; or
- (2) Services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

“Wireless Installation” means and includes a Network Provider’s installation of a Network Node attached to a City Service Pole or other Pole in the Public Rights-of-Way including, without limitation, a Node Support Pole.

“Wireless Installation Space” means the space the City designates for the installation of a Network Node or Wireless Installation.

“Wireless Installation Permit Application” shall mean the City-promulgated form and all supporting documents, together with the appropriate fee, submitted to the City as a condition of obtaining access to a City Service Pole in the Public Rights-of-Way for the installation of a Network Node as prescribed by the Pole Attachment Standards.

“Wireless Installation Permit” means the City-promulgated permit that is the product of an approved Wireless Installation Permit Application allowing access to a City Service Pole in the Public Rights-of-Way for the installation of a Network Node.

“Wireless Service” means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a Network Node.

“Wireless Service Provider” means a person that provides Wireless Service to the public.

1.2 Capitalized Terms Not Defined Herein. Capitalized terms herein that are not defined in this Section 1 or otherwise within the Wireless License Agreement shall have the meanings defined in the Pole Attachment Standards.

2. WIRELESS INSTALLATION AGREEMENT LICENSES AND PROCEDURES

2.1 Use of Public Rights-of-Way and Service Poles.

2.1.1 Statutory License to Use Public Rights-of-Way. Licensee warrants that it is a Network Provider as defined in Chapter 284, Local Government Code. As a Network Provider, Licensee has a non-exclusive right to use and occupy the Public Rights-of-Way within the City for the purpose of installing, operating, maintaining, or repairing Network Nodes, Node Support Poles, or Transport Facilities, subject to applicable law and the conditions set forth in this Wireless Installation Agreement.

2.1.1.1 Provision of Wireless Service. Pursuant to this Wireless Installation Agreement and the provisions of Chapter 284 and other applicable law, Licensee may access and use the Public Rights-of-Way within the City solely for the purposes of installing, operating, maintaining, or repairing Network Nodes, Node Support Poles, and Transport Facilities for the provision of Wireless Services.

2.1.1.2 Compliance With Applicable Law and Regulations. Licensee shall, at its expense, comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations, including without limitation Laws, ordinances, and regulations relating to health, safety, radio frequency emissions, and radiation, in connection with the installation, operation, maintenance, repair, or use of Network Nodes and related facilities in the Public Rights-of-Way.

2.1.1.3 Obligation to Seek and Obtain Right-of-Way Work Permit. In accordance with Chapter 106, City Code, and the Design Manual, Licensee shall apply for and obtain a Right-of-Way Work Permit for all installation, operation, maintenance, or repair of Network Nodes, Node Support Poles, or Transport Facilities.

2.1.2 Use City Service Poles.

2.1.2.1 License. Subject to the provisions of the Pole Attachment Standards, which are incorporated herein and made effective to Licensee pursuant to this Wireless Installation Agreement, and to the extent allowed by law, the City hereby grants Licensee within the City limits a revocable, nonexclusive license authorizing Licensee to install, own, lease, license, use, or operate permitted Network Nodes in Permitted Wireless Installation Space on City Service Poles, each such Network Node subject to the further requirements of Applicable Codes, City Code, the Design Manual, and the Pole Attachment Standards.

2.1.2.2 Obligation to Seek and Obtain Wireless Installation Permit. Licensee shall apply for and obtain a Wireless Installation Permit for installation, operation, maintenance, or repair of a Network Node on a City Service

Pole.

2.1.3 Installation Only Where Authorized. Licensee's installation, ownership, holding of a leasehold or licensure interest, use, or operation of any Network Node without obtaining a Right-of-Way Work Permit, or in any location other than Permitted Wireless Installation Space on a Service Pole or other Pole in the Public Rights-of-Way within the City pursuant to a Wireless Installation Permit, or otherwise in violation of the Applicable Codes, City Code, the Design Manual, or the Pole Attachment Standards, shall give rise to one or more Unauthorized Wireless Installations.

2.1.4 Bryan Texas Utilities or Other Owner's Poles. To the extent Licensee may seek to make Wireless Installations on Poles owned by Bryan Texas Utilities or other owners of Utility Poles in the Public Rights-of-Way, it shall do so only under a pole license agreement, including any applicable pole attachment standards or regulations, with the Pole owner.

2.2 Applicability of Pole Attachment Standards and Other City Requirements.

2.2.1 The Pole Attachment Standards have been adopted by the City Engineer or his designee pursuant to Sections 2-673 and 106-178, City Code, and may be amended from time to time.

2.2.1.1 The Pole Attachment Standards are applicable to Licensee's activities in installing, owning, leasing, licensing, using, or operating Wireless Installations using City Service Poles. Pursuant to the Pole Attachment Standards and City Code, Licensee must apply for and obtain a Right-of-Way Work Permit and a Wireless Installation Permit, as applicable, for each Wireless Installation.

2.2.1.2 Subject to the provisions of Section 13, Licensee agrees that the City has the right to amend the Pole Attachment Standards from time to time in response to changing conditions in the local market, technological advances, business requirements, policy initiatives, or changes in federal, state, or local Law, and that the amended Pole Attachment Standards will be incorporated into this Wireless Installation Agreement as of their effective date.

2.2.2 In conducting its installation, construction, maintenance, upgrade, and operation of Network Nodes and related facilities, Licensee shall comply with the provisions of City Code, the Design Manual, the Pole Attachment Standards, and other applicable City regulations as they may be amended or revised.

2.3 Licensee's Privilege to Install, Own, Use, or Operate Wireless Installations; Right-of-Way Work Permit.

2.3.1 Licensee shall submit one or more Right-of-Way Work Permit Applications in accordance with the requirements of Chapter 106, City Code, and the Design Manual and one or more Wireless Installation Permit Applications, where the

Network Node is proposed for a City Service Pole, for each Wireless Installation it installs, owns, leases, licenses, uses, or operates.

- 2.3.2 If granted, such Right-of-Way Work Permit or Permits and Wireless Installation Permit or Permits are subject at all times to the terms and conditions of issuance and to the City's right to provide core municipal services, including any and all internal communications service essential to the proper operations of such core City services using its Service Poles or the City's Public Rights-of-Way.
 - 2.3.3 Nothing in this Wireless Installation Agreement, the Pole Attachment Standards, City Code, the Design Manual, a Right-of-Way Work Permit Application, or other authority, other than a properly issued Permit, shall be construed as authorization to install, own, lease, license, use, or operate a Wireless Installation on any specific Service Pole or in the City's Public Rights-of-Way.
- 2.4 No Interest in Property. No use, however lengthy, of City Facilities, and no payment of any fees or charges required under this Wireless Installation Agreement, City Code, the Design Manual, or other authority shall create or vest in Licensee any easement or other ownership or property interest of any nature in any portion of such City Facilities. Neither this Wireless Installation Agreement, the Pole Attachment Standards, City Code, the Design Manual, a Right-of-Way Work Permit Application, a Wireless Installation Permit Application, other authority, nor any Permit granted under the Design Manual or Pole Attachment Standards shall constitute an assignment of any of the City's rights to the City's Facilities. Notwithstanding anything in this Wireless Installation Agreement, the Pole Attachment Standards, City Code, the Design Manual, a Right-of-Way Work Permit Application, a Wireless Installation Permit Application, other authority, or any Permit to the contrary, Licensee shall at all times be and remain a licensee only.
- 2.5 Permitted Uses. Licensee shall only use Wireless Installations to provide Wireless Services for which Licensee has lawful authority and shall not engage in any illegal practices, anticompetitive behavior, or collusion with regard to construction activities related to the installation, operation, maintenance, transfer, relocation, use, lease, license, or removal of its Wireless Installations.
- 2.6 Duty to Cooperate. Licensee shall fully and timely cooperate with the City, other Attaching Entities, and governmental authorities, as prescribed in this Wireless Installation Agreement, the Pole Attachment Standards, City Code, the Design Manual, a Right-of-Way Work Permit Application, a Wireless Installation Permit Application, other authority, or any Permit with regard to the installation, operation, maintenance, repair, transfer, or relocation of Wireless Installations. Licensee shall not prevent or unreasonably delay any other Attaching Entity from installing, transferring, or relocating an Attachment or Wireless Installation or interfere with the quiet enjoyment of any other Attaching Entity's privileges.
- 2.7 Installations in Historical or Design Overlay Districts.
- 2.7.1 General. Licensee shall obtain advance written approval from the City Engineer or his designee before making application to collocate a new Network Node or to install a new Node Support Pole in an area zoned or otherwise designated as a Historic District or Design District overlay.

2.7.1.1 Concealment Elements. If Licensee obtains advance written approval to make application as provided in this section, it shall use all design or concealment measures required for the district in submitting its Right-of-Way Work Permit Application and Wireless Installation Permit Application, if applicable, to install a new Network Node or new Node Support Pole.

2.7.1.2 Design and Aesthetic Standards; Camouflage. If Licensee obtains advance written approval to make application as provided in this section, is granted a Right-of-Way Work Permit and a Wireless Installation Permit, if applicable, Licensee shall comply with the design and aesthetic standards of the Historic District or Design District overlay in which installation is sought and shall use camouflage measures to improve the aesthetics of each new Network Node, new Node Support Pole, and related ground equipment, or any portion of the Network Nodes, Poles, or equipment, and to minimize the impact to the aesthetics in the Historic District or Design District overlay.

2.7.1.3 No Limitations on City Authority. Licensee acknowledges and agrees that nothing in this Wireless Installation Agreement may be construed to limit the City's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. § 300101, *et seq.*), and the Code provisions and regulations adopted to implement those laws.

2.8 No Macro Tower Installations Authorized. Nothing in this Wireless Installation Agreement shall be interpreted to authorize the installation of a Macro Tower, including without limitation a "tower," a "support structure," or a "base station," in Public Rights-of-Way.

2.9 No Rights after Termination. Nothing in this Wireless Installation Agreement shall be construed to require the City to allow Licensee to use any Service Pole after the termination of this Wireless Installation Agreement.

2.10 Parties Bound by Wireless Installation Agreement. Licensee and the City are bound by the duties outlined in this Wireless Installation Agreement.

2.11 Routine Maintenance. Licensee shall not be required to submit a Right-of-Way Work Permit Application or Wireless Installation Permit Application, obtain a corresponding permit, or pay an application fee for routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a Public Right-of-Way or for replacing or upgrading a Network Node or Node Support Pole with a Network Node or Node Support Pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a Public Right-of-Way as provided in Chapter 106, City Code, the Design Manual, or the Pole Attachment Standards as they may be amended.

3. FEES AND CHARGES

3.1 Wireless Installation-Related Fees and Charges.

3.1.1 Pursuant to this Wireless Installation Agreement and the incorporated Pole Attachment Standards, Chapter 106, City Code, and the Design Manual, the City shall assess, and Licensee shall pay, in addition to any other fees or charges under the Wireless Installation Agreement, fees and charges for the privilege of installing, owning, leasing, licensing, using, or operating Wireless Installations on a per-Wireless Installation basis.

3.1.1.1 Licensee shall pay the City on an annual basis \$20 per Network Node collocated on a City Service Pole (“Service Pole Fee”).

3.1.1.2 The Network Node Rate, which is used to calculate the Network Node Fee, shall be \$250 per Network Node installed within the Public Rights-of-Way of the City in 2017 and shall increase each year by one-half of the annual change in the consumer price index as set forth in Section 284.054, Local Government Code. The City will provide each Network Provider notice of the increased Network Node Rate by October 31 of each year.

3.1.1.3 Licensee’s initial payment of the Service Pole Fee or Network Node Fee for any Wireless Installation, as applicable, shall be made on the date Licensee completes installation of the Network Node to which a fee or fees are applicable.

3.1.1.4 Thereafter, for each year Licensee operates under this Wireless Installation Agreement:

3.1.1.4.1 Licensee shall, on or before December 31 of each year, provide the City with a summary statement showing the locations of each Network Node, each Node Support Pole, and each Transport Facility serving a Network Node (“Summary Statement”); and

3.1.1.4.2 Licensee shall, on or before January 31 of each year following delivery of the Summary Statement pay to the City in advance for the then-current year: (a) the Service Pole Fee for each Network Node occupying a City Service Pole for all or any part of the preceding calendar year; and (b) the Network Node Rate multiplied by the number of Network Nodes installed or in place within the Public Rights-of-Way of the City for all or any part of the preceding calendar year (the “Network Node Fee”).

3.1.1.5 Licensee shall pay each month an amount equal to \$28 per installed Network Node specifically for the Transport Facilities serving Network Nodes in the Public Rights-of-Way (“Transport Service Fees”); provided, however, that if Licensee demonstrates to the City’s satisfaction (a) that it self-provides the transport service for the Network Nodes and pays Municipal Fees for the required Transport Facilities that equal or exceed \$28 per month; or (b) that it obtains transport service for the Network Nodes from a third-party provider of transport service that pays the City

Municipal Fees pursuant to (i) Chapter 283, Local Government Code, or (ii) franchise agreement with the City, that equal or exceed \$28 per month per Network Node for which the transport service is provided, shall not be liable for Transport Service Fees for the Network Nodes for which it or its transport service provider pays Municipal Fees.

3.1.1.6 Licensee shall timely: (a) submit the Summary Statement as required in Section 3.1.1.4.1; (b) pay the Service Pole Fee and Network Node Fee as required in Section 3.1.1.3; (c) pay the Service Pole Fee and Network Node Fee as required by Section 3.1.1.4.2; or (d) pay the monthly Transport Service Fees as provided in Section 3.1.1.5, as applicable.

3.1.2 As prescribed in the Pole Attachment Standards; Chapter 106, City Code; and the Design Manual, as they may be amended, Licensee shall pay (a) all applicable Right-of-Way Permit Application and Wireless Installation Permit Application fees to the City at the time of submission; and (b) all Make-Ready Charges in full directly to the City or its contractors, if directed to do so by the City, prior to the commencement of any Make-Ready Construction.

3.2 Penalties for Unauthorized Wireless Installations. In the event that Licensee, its agents, or its contractors installs, owns, leases, licenses, uses, or operates one or more Unauthorized Wireless Installations, Licensee shall, within ten (10) business days of notice (a) pay the City the Unauthorized Wireless Installation Charge prescribed in the Pole Attachment Standards for each Unauthorized Wireless Installation; (b) pay the City any costs or expenses required of Licensee under this Wireless Installation Agreement or the Pole Attachment Standards for the Unauthorized Wireless Installation; and (c) apply for all necessary permits for the Unauthorized Wireless Installation.

3.3 Failure to Correct Unauthorized Wireless Installation. If Licensee fails within ten (10) business days of notice to pay the Unauthorized Wireless Installation Charge, pay all of the City's costs or expenses, and apply for all necessary permits for each Unauthorized Wireless Installation, the Wireless Installation may be removed in accordance with the Pole Attachment Standards at Licensee's sole cost and expense. If Licensee fails to pay the cost of removal within ten (10) days of receipt of demand from the City, the City may reimburse itself the expense by drawing from the Licensee's Security Instrument. If the amount of the Security Instrument is insufficient to reimburse all the costs of removal the City incurs, the City may draw the full amount of the Security Instrument and may pursue any and all other remedies for default available under this Wireless Installation Agreement, at law, or in equity.

4. PRIVATE AND REGULATORY COMPLIANCE

4.1 Necessary Authorizations. Licensee shall be responsible for obtaining from the appropriate public authority or other appropriate persons any required authorization to construct, operate, or maintain Licensee's Wireless Installations on public or private property before it occupies any portion of the City's Service Poles or Public Rights-of-Way within the City.

Licensee must provide the City, as required by the Pole Attachment Standards, a copy of a license, franchise, certificate of authority, or other authorization that grants

Licensee access to Public Rights-of-Way not administered by the City for the purpose of installing Wireless Installations, as applicable. With regard to access to public or private property, other than Public Rights-of-Way, Licensee shall provide the City upon request with evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Section 4 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public or private property and to pay all costs associated therewith, and to maintain such approval for the term of the applicable permit.

- 4.2 Forfeiture of the City's Rights. Any Permit, which on its face covers a Wireless Installation that would result in forfeiture or diminution of the City's rights (as determined by any order, decision, action, or ruling by a court or other governmental authority of competent jurisdiction), shall be deemed invalid as to such Wireless Installation as of the installation date of the Wireless Installation referenced by such order, decision, action, or ruling. Further, if any of Licensee's existing Wireless Installations, whether installed pursuant to valid permits or not, would cause such forfeiture or diminution (as determined by any order, decision, action, or ruling by a court or other governmental authority of competent jurisdiction), Licensee shall promptly remove its Wireless Installations upon receipt of written notice from the City of such order, decision, action, or ruling. If Licensee does not remove its Wireless Installations after the expiration of forty-five (45) calendar days from the City's issuance of the written notice, the City will perform such removal at Licensee's sole cost and expense. If Licensee fails to pay the cost of removal within ten (10) days of receipt of demand from the City, the City may reimburse itself the expense by drawing from the Licensee's Security Instrument. If the amount of the Security Instrument is insufficient to reimburse all the costs of removal the City incurs, the City may draw the full amount of the Security Instrument and may pursue any and all other remedies for default available under this Wireless Installation Agreement, at law, or in equity. If the rights of the City, or other Attaching Entities, to occupy the real property on which the City's Service Poles are located are terminated solely as a result of Licensee's Wireless Installations or the failure to remove Licensee's Wireless Installations within the 45-day period set forth in this Section 4.3, Licensee shall use best efforts to restore the City or other Attaching Entities to their original status before such Wireless Installation was installed.

5. LIABILITY AND INDEMNIFICATION

- 5.1 Liability. The City reserves to itself the right to maintain and operate its Pole system in such manner as will best enable it to fulfill its public health, safety, and welfare service requirements. AS A MATERIAL PART OF THE CONSIDERATION OF THIS WIRELESS INSTALLATION AGREEMENT, LICENSEE TAKES AND ACCEPTS THE CITY'S SERVICE POLES AND OTHER FACILITIES "AS IS" IN THE CONDITION IN WHICH LICENSEE FINDS THEM, WITH ANY AND ALL LATENT AND PATENT DEFECTS AND WITH NO EXPRESS OR IMPLIED WARRANTIES BY THE CITY OF MERCHANTABILITY, FITNESS, SUITABILITY, OR THAT THE SERVICE POLES OR OTHER CITY FACILITIES ARE FIT FOR ANY PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT, OR OTHER

ASSERTION WITH RESPECT TO THE CONDITION OF THE CITY'S SERVICE POLES OR OTHER CITY FACILITIES, BUT IS RELYING UPON ITS OWN EXAMINATION OF THE CITY'S SERVICE POLES OR CITY FACILITIES. Without waiver of any right of immunity that may exist under applicable law, the City shall not be liable to Licensee, its customers, or anyone else for any interruption to service associated with Wireless Installations or any interference with the operation of Wireless Equipment, except where caused by the City's negligence or willful misconduct. With the exception of third-party claims subject to Section 5.2, neither Party shall be liable to the other for any indirect, special, incidental, or consequential damages suffered by the other Party such as, but not limited to, loss of any anticipated profits, claims of customers, loss of revenue, loss of use of Licensee's Wireless Installations, Wireless Services equipment or system, cost of capital, increased expenses or operation of other facilities, or cost of replacement equipment, facilities, or power.

5.2 Indemnification. Licensee shall indemnify and hold the City, its elected officials, officers, employees, directors, volunteers, and representatives ("Indemnitee" or "Indemnitees") harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of Licensee, any agent, officer, director, representative, employee, affiliate, or subcontractor of Licensee, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a Public Right-of-Way, including without limitation Network Nodes or Node Support Poles. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If Licensee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under applicable law and without waiving any defenses of the parties under applicable law. This section is solely for the benefit of the City, its elected officials, officers, employees, directors, volunteers, and representatives and Licensee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

5.3 Procedure for Indemnification.

5.3.1 An Indemnitee shall give prompt notice to Licensee of any claim or threatened claim wherein Indemnitee is seeking indemnification pursuant to Section 5.2, specifying the alleged factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third-party against an Indemnitee, Indemnitee shall give the written notice to Licensee no later than ninety (90) calendar days after Indemnitee receives written notice of the action, suit, or proceeding.

5.3.2 Indemnitee's failure to give the required notice will not relieve Licensee of its obligation to indemnify Indemnitee unless and to the extent Licensee is materially prejudiced by such failure.

- 5.4 Environmental Hazards. Licensee represents and warrants that its use of the City's Service Poles or other City Facilities or the installation or operation of Network Nodes will not generate Hazardous Substances, that it will not store or dispose of Hazardous Substances on or about the City's Service Poles or City Facilities, that it will not transport to the City's Service Poles or City Facilities any Hazardous Substances, and that Licensee's Wireless Installations do not constitute or contain and will not generate any Hazardous Substances, including any such activities in violation of federal, state, or local law now or hereafter in effect, including any amendments. The term "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations, or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, the equipment making up Licensee's Wireless Installations will not release such Hazardous Substances.
- 5.5 Municipal Liability Limits Not Waived. No provision of this Wireless Installation Agreement is intended or shall be construed to be a waiver on the part of the City for any purpose of any applicable limits on municipal liability.
- 5.6 No Limitation. No indemnification provision contained in this Wireless Installation Agreement under which Licensee indemnifies the City or other Indemnitees shall be construed in any way to limit any other indemnification provision contained in any other agreement or under applicable law.
6. DUTIES, RESPONSIBILITIES, AND EXCULPATION
- 6.1 Duty to Inspect. Licensee acknowledges and agrees that the City does not warrant the condition or safety of City Facilities or the premises surrounding City Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Service Poles, City Facilities, or premises surrounding the Service Poles or other City Facilities prior to commencing any work on Service Poles or entering the premises surrounding the Service Poles or other City Facilities.
- 6.2 Knowledge of Work Conditions. By executing this Wireless Installation Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees or contractors and agents with the conditions relating to the work that Licensee will undertake under the Pole Attachment Standards and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 6.3 Duty to Inform and Protect. Licensee further warrants that it understands the imminent dangers, INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION, inherent in the work necessary to mount Wireless Installations on Service Poles or City Facilities by Licensee's employees, servants, agents, contractors or subcontractors, and Licensee accepts as its duty and sole responsibility to notify, inform, and keep informed Licensee's employees, servants, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same. Licensee also warrants that it will implement all precautions, procedures, and measures in the Pole Attachment Standards to protect public safety and the safety of personnel working

close to electrified lines.

- 6.4 Protection of Utility Data. During the term of this Wireless Installation Agreement, Licensee may have access to the City's geodatabase electronic records of Service Pole locations, strand and underground routes, and other pertinent information related to the City's signaling system or other City Facilities. Such electronic records consist of proprietary and confidential City information related to critical infrastructure and shall be treated as confidential by Licensee and protected from public disclosure. Licensee shall implement physical and cybersecurity measures to protect the geodatabase information from public disclosure, theft, and widespread internal distribution, such as the best practices outlined in the Federal Trade Commission's "Start with Security" cybersecurity guidelines.
- 6.5 Licensee's Confidential Information. To the extent that Licensee considers any document or information submitted to the City under the terms of this Agreement or the Pole Attachment Standards to be trade secret, proprietary, or otherwise confidential under law, it shall label or mark the document or information conspicuously with the words "Confidential Information." If any person requests access to Licensee's information submitted to the City as provided herein, the City will treat such information as required under the Texas Public Information Act, Chapter 552, Texas Government Code.
- 6.6 Duty Not to Interfere With Other Facilities.
- 6.6.1 General Non-Interference. Licensee agrees that it will not impede, obstruct, or otherwise interfere with the installation, existence, or operation of any other facility in the Public Rights-of-Way, including sanitary sewers, water mains, storm water drains, gas mains, poles, aerial and underground electrical infrastructure, cable television and telecommunications cables, public safety and City networks, and other telecommunications, utility, or municipal property.
- 6.6.2 Signal Interference with City Infrastructure. In the event that Licensee's Network Nodes interfere with the City's traffic light signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, Licensee will respond to the City's request to address and abate interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving notice.
- 6.6.2.1 Response to Interference. Upon receipt of notice of interference, Licensee shall provide the City Engineer or his designee with a report containing the following information:
- 6.6.2.1.1 A remediation plan to abate or eliminate the interference;
- 6.6.2.1.2 An estimate of the time required to complete the abatement; and
- 6.6.2.1.3 Additional information that may assist the City in conducting its activities pending completion of interference abatement.

If Licensee cannot abate or eliminate the interference with City systems, Licensee shall immediately shut down the Network Node causing the interference and remove or relocate the Network Node to an alternative location

approved according to ordinary City permitting processes that does not cause interference with City systems.

7. INSURANCE

7.1 Insurance Coverage. Licensee shall comply with the insurance coverage and other requirements summarized in Appendix A to this Wireless Installation Agreement and shall be subject to the claims processing and procedures found in the Pole Attachment Standards. Licensee agrees at all times to carry and maintain in full force insurance sufficient to fully protect the City and its directors, officers, employees, and agents (“Covered Persons”) from and against any and all claims or demands for damages, corresponding with Appendix A, including designation of such persons as “additional insureds.”

7.1.1 Licensee shall provide for an endorsement that the “other insurance” clause shall not apply to Covered persons where they are additional insureds on the policy.

7.1.2 Licensee’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by a Covered Person for liability arising out of this Agreement.

7.1.3 The City may in its sole discretion increase required insurance coverage limits or modify coverages where it determines such changes are necessary to provide adequate insurance coverages.

7.2 Annual Proof of Insurance. On or before September 1 of each year in which this Agreement is in effect, and upon written request, Licensee shall obtain and provide to the City proof satisfactory to the City in its sole discretion that Licensee has maintained and is maintaining the insurance coverages required under this Wireless Installation Agreement.

7.3 Insurance Not Limiting. Nothing in this Wireless Installation Agreement, including the amounts or types of insurance required, shall be construed as limiting in any way Licensee’s or its contractors’ responsibility for or obligations with respect to damages arising out of or relating to performance under this agreement.

8. AUTHORIZATION NOT EXCLUSIVE

The City shall have the right to grant, renew, and extend nondiscriminatory rights and privileges to others not party to this Wireless Installation Agreement, by contract or otherwise, to use the City Facilities. Such rights shall not interfere with the privileges granted to Licensee by the specific permits issued pursuant to this Wireless Installation Agreement and the Pole Attachment Standards. Licensee’s privileges under a permit issued pursuant to this Agreement and the Pole Attachment Standards shall not interfere with the privileges of any other Attaching Entity that has been issued a permit. In the event of a conflict between the privileges of Licensee and any other Attaching Entity or other user that cannot be resolved by reference to this Wireless Installation Agreement or Pole Attachment Standards, the City shall resolve the conflict as the Service Pole owner based on non-discriminatory principles.

9. ASSIGNMENT

9.1 Limitations on Assignment. Licensee shall not assign its privileges or obligations under

this Wireless Installation Agreement, nor any part of such privileges or obligations, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

9.2 Obligations of Assignee/Transferee and Licensee. Notwithstanding any provision in this Wireless Installation Agreement to the contrary, Licensee shall have the privilege to assign this Wireless Installation Agreement to any parent, subsidiary, Affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Licensee, or to any entity into which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee that are subject to this Wireless Installation Agreement. No assignment or transfer under this Section 9 shall be allowed, however, until the assignee or transferee becomes a signatory to this Wireless Installation Agreement and assumes all obligations of Licensee arising under this Wireless Installation Agreement. Licensee shall furnish the City with prior written notice of the transfer or assignment, together with the name and address of the putative transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Wireless Installation Agreement for claims that arose during the time period Licensee operated pursuant to the Wireless Installation Agreement, and Licensee shall not be released from those claims, including the obligation to indemnify the City and other Indemnitees.

9.3 Sub-Licensing. Licensee shall not sub-license space on a City Service Pole to any third party, or place a Wireless Installation for the benefit of any third-party, including an Affiliate, without the third-party's execution of an appropriate agreement with the City for the use or operation of the Wireless Installation. If Licensee constructs a Network Node to be owned, leased, or licensed for use by a third party, including without limitation a Wireless Service Provider, Licensee shall provide notice to the City of such arrangement at the time of application for a permit for use of a Service Pole.

10. TERM OF WIRELESS INSTALLATION AGREEMENT

10.1 Initial Term and Renewal. This Wireless Installation Agreement shall become effective on Effective Date, and, shall have an initial term of five (5) years. Following the expiration of the initial term, this Wireless Installation Agreement shall automatically renew for successive one-year terms until such time that this Wireless Installation Agreement is terminated by either Party upon giving the other Party six (6) months' written notice of termination or pursuant to the other terms of this Wireless Installation Agreement.

10.2 Survival of Obligations. Any expiration or termination of Licensee's privileges under this Wireless Installation Agreement shall not relieve Licensee of any obligation, whether indemnity or otherwise, which has accrued prior to such expiration or termination of this Wireless Installation Agreement or removal of Licensee's Wireless Installations.

11. TERMINATION OF WIRELESS INSTALLATION AGREEMENT

11.1 Grounds for Termination. The City shall have the right, pursuant to the procedure set out in Section 11.2, to terminate this Wireless Installation Agreement or any permit issued pursuant to the Pole Attachment Standards, City ordinance, or Design Manual, and to pursue any and all remedies provided in this Wireless Installation Agreement,

whenever Licensee is in default of any term or condition of this Wireless Installation Agreement, including, but not limited to:

- 11.1.1 Construction, operation, maintenance, use, lease, or licensure of Wireless Installations in violation of law or in aid of any unlawful act or undertaking;
- 11.1.2 Construction, operation, maintenance, use, lease, or licensure of Wireless Installations after any authorization required of Licensee has lawfully been denied or revoked by final action of any governmental or private authority;
- 11.1.3 Construction, operation, maintenance, use, lease, or licensure of Wireless Installations without the insurance and/or performance bond coverage required under Sections 7 and 17;
- 11.1.4 Failing to pay in full an invoice for any charge, fee, penalty, or interest as provided in this Wireless Installation Agreement or the Pole Attachment Standards;
- 11.1.5 Failing to promptly and fully perform any other covenant, condition, provision, or agreement contained in this Wireless Installation Agreement or the Pole Attachment Standards; or
- 11.1.6 Sublicensing space or access to a City Service Pole to any third-party for the purpose of installing a Wireless Installation or any other device.

11.2 Notice and Opportunity to Cure; Failure to Cure.

- 11.2.1 The City will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition of default under Section 11.1, above. Licensee shall take immediate corrective action to cure such default within fifteen (15) calendar days, or such longer time mutually agreed to by the Parties not to exceed sixty (60) calendar days. Upon Licensee's prior written request, the City may further extend the time for cure in its sole discretion.
- 11.2.2 Upon correcting the condition of default, but no later than the expiration of the applicable cure period, Licensee shall confirm in writing to the City that the cited condition has ceased or been corrected.
- 11.2.3 If Licensee fails to cure such condition within the time provided, the City may immediately terminate this Wireless Installation Agreement or any permit at its option and provide written notice to Licensee.
- 11.2.4 In the event of termination of this Wireless Installation Agreement or any of Licensee's privileges or authorizations thereunder, Licensee shall remove its Wireless Installations at Licensee's expense pursuant to the procedures set forth in the Pole Attachment Standards.
 - 11.2.4.1 If Licensee fails to remove its Wireless Installations, such installations shall be deemed abandoned, and the City may remove them at Licensee's expense.
 - 11.2.4.2 If Licensee fails to pay the City the cost of removal within ten (10) days of receipt of demand from the City, the City may reimburse itself the expense by drawing from the Licensee's

Security Instrument.

- 11.2.4.3 If the amount of the Security Instrument is insufficient to reimburse all the costs of removal the City incurs, the City may draw the full amount of the Security Instrument and may pursue any and all other remedies for default available under this Wireless Installation Agreement, at law, or in equity.

12. EFFECT OF EXPIRATION OR TERMINATION OF WIRELESS INSTALLATION AGREEMENT

- 12.1 Removal of Wireless Installations Upon Expiration or Termination. Upon expiration or termination of this Wireless Installation Agreement, Licensee shall remove (a) all Network Nodes and related facilities from City Service Poles; (b) all Network Nodes and related facilities located on other Poles in the Public Rights-of-Way; and (c) all Node Support Poles in Public Rights-of-Way.

- 12.2 Plan for Removal. Within thirty (30) days following expiration or termination of this Wireless Installation Agreement, Licensee shall provide the City Engineer or his designee with a written plan for removing its Wireless Installations, including all Network Nodes and Node Support Poles, and shall provide information regarding the sequence of removal, the timing of removal, and the contractors for removal, all in accordance with the requirements of the Pole Attachment Standards.

- 12.3 Completion of Removal Activities; Termination of License. Licensee shall complete its removal of Wireless Installations within one hundred eighty (180) days following expiration or termination of this Wireless License Agreement. Thereafter, Licensee shall have no access to Public Rights-of-Way or Service Poles for the purpose of installing, operating, maintaining, or repairing any Network Nodes or Node Support Poles.

- 12.4 Failure to Remove All Wireless Installations. If Licensee fails to remove any Wireless Installations after the expiration of the time allowed for removal, the City may remove the remaining Network Nodes or Network Node Support Poles at Licensee's sole cost and expense. If Licensee fails to pay the cost of removal within ten (10) days of receipt of demand from the City, the City may reimburse itself the expense by drawing from the Licensee's Security Instrument. If the amount of the Security Instrument is insufficient to reimburse all the costs of removal the City incurs, the City may draw the full amount of the Security Instrument and may pursue any and all other remedies for default available under this Wireless Installation Agreement, at law, or in equity.

13. AMENDING AGREEMENT AND POLE ATTACHMENT STANDARDS

- 13.1 Amendments to Pole Attachment Standards. The City reserves the right to amend the Pole Attachment Standards in accordance with their terms. Any amendment to the Pole Attachment Standards shall apply prospectively, except to the extent required by federal, state, or local law.

- 13.1.1 Acceptance of Amendment. At least thirty (30) calendar days prior to the effective date of an amendment to the Pole Attachment Standards, the City will provide Licensee with notice of an impending amendment ("Standards Amendment Notice"). The Standards Amendment Notice will state the content and the effective date of the amendment and provide a means for Licensee to

acknowledge and accept the amendment by a date certain. Licensee shall return a writing accepting the amendment before the effective date of the amendment.

13.1.2 Failure to Respond or Rejection of Amendment. If Licensee fails to timely return a writing accepting the standards amendment or rejects the amendment in writing, the City will suspend any further processing of Licensee’s Applications. Thereafter, the City will send written notice to Licensee terminating this Wireless License Agreement. The Parties shall meet in the offices of the City Manager or his designee at a date acceptable to the City in its reasonable discretion to discuss the terms for the orderly removal or other disposition of Licensee’s Wireless Installations. Licensee shall remove or otherwise dispose of its Wireless Installations within one hundred and eighty (180) days after notice of termination.

13.2 Amendments Only in Writing. Notwithstanding other provisions of this Wireless Installation Agreement, the terms and conditions of this Wireless Installation Agreement shall not be amended, changed, or altered except in writing signed by authorized representatives of both Parties or upon the City’s adoption of amendments to the Pole Attachment Standards and Licensee’s acceptance thereof in accordance with the terms of this Wireless Installation Agreement.

14. DISPUTE RESOLUTION

14.1 Any disputes related to the day-to-day administration of the permitting process shall be governed by the dispute resolution provisions of the Pole Attachment Standards. In the event a dispute arises between the Parties related to the legal interpretation of any provision of this Wireless Installation Agreement, or any potential conflict between the provisions of this Wireless Installation Agreement and the Pole Attachment Standards, prior to the filing of any suit or administrative proceeding with respect to such a dispute, the Party believing itself aggrieved (the “Invoking Party”) shall give written notice to the other Party. Such a notice will be without prejudice to the Invoking Party’s right to any other remedy permitted by this Wireless Installation Agreement.

14.2 The City and Licensee will use their best efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places in the City, between their negotiators at the following successive management levels, each of which will have a period of allotted time as specified below in which to attempt to resolve the dispute:

| | The City | Licensee |
|--------------|----------------------------|-----------------------------------|
| First Level | City Engineer | [Company Name] General Manager |
| Second Level | City Attorney/City Manager | [Company Name] General Counsel |

14.3 The allotted time for the first level negotiations will begin on the tenth (10th) business day following delivery of the Invoking Party’s notice, unless otherwise agreed by the Parties.

If resolution of the dispute is not achieved in the first level negotiations, then the allotted time for the second level negotiations will begin on the tenth (10th) business day following the end of first level negotiations, unless otherwise agreed by the Parties.

- 14.4 If a resolution of the dispute is not achieved in negotiations at the second management level, then the Parties shall participate in non-binding mediation at a time mutually agreed by both Parties, commencing within thirty (30) days of the conclusion of the second level negotiations. Mediation shall take place in Bryan, Texas. The allotted period for completion of the mediation shall be thirty (30) days from commencement of mediation, unless otherwise agreed in writing by the Parties. The Parties agree to share the cost of mediation equally using a mutually agreed professional mediator from JAMS, a private alternative dispute resolution provider, or similar alternative dispute resolution organization.
- 14.5 If resolution of the dispute is not achieved by mediation within the allotted time, then either Party may file an action to resolve the dispute with a court of competent jurisdiction over the subject matter of the dispute, as provided further herein.

15. NOTICES

- 15.1 Notice. Wherever this Wireless Installation Agreement requires notice to be given by either Party to the other, such notice shall be in writing and shall be effective when personally delivered to or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to the City, at:

Attention: City Engineer
P.O. Box 1000
Bryan, Texas 77805-1000

with a copy to:
City Attorney
P.O. Box 1000
Bryan, Texas 77805-1000

If to Licensee, at:

Attention: [Company Representative]
[Company Name]
[Street Address]
[City, State, Zip Code]

with a copy to:
[Company's] Legal
Department at the same
address

or to such other address as either Party, from time to time, may give the other Party in writing.

15.2 Emergency Contact. Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, at which the City can report damage to Wireless Installations or other situations requiring immediate communications between the Parties. The contact person for Licensee shall be qualified and able to respond to the City's concerns and requests. Failure of Licensee to maintain an emergency contact shall eliminate the City's liability to Licensee for any actions that the City deems reasonably necessary given the specific circumstances of the emergency or other damage to Wireless Installations requiring notice under this Section 15.2.

15.3 Network Operations Center. Licensee shall provide the following contact information, and maintain such information current at all times, for its Network Operations Center that monitors Wireless Installations subject to this Wireless Installation Agreement:

Network Operations Center for [Name of Licensee]

- Telephone Number:
- Email Address:
- NOC Operator:
- Facility Address:

16. RECEIVERSHIP, FORECLOSURE, OR ACT OF BANKRUPTCY

16.1 Licensee shall notify the City in writing not later than thirty (30) days after the filing or imposition of a receivership, reorganization, bankruptcy, or other such action or proceeding by or against Licensee.

16.2 The privileges granted to Licensee hereunder, at the option of the City, shall cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers, or trustee or trustees, or debtor-in-possession to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership, trusteeship, or bankruptcy shall have been vacated or dismissed prior to the expiration of said one hundred twenty (120) days, or unless:

16.2.1 To the extent permitted by law, within one hundred twenty (120) days after their election, appointment, or imposition such receivers, trustees, or debtor-in-possession shall have complied fully with all the terms and provisions of this Wireless Installation Agreement granted pursuant hereto, and the receivers, trustees, or debtor-in-possession within said one hundred twenty (120) days shall have remedied all defaults under the Wireless Installation Agreement, if any; and

16.2.2 To the extent permitted by law, within said one hundred twenty (120) days, such receivers, trustees, or debtor-in-possession shall execute an agreement duly approved by the City, whereby such receivers, trustees, or debtors-in-possession assume and agree to be bound by each and every term, provision, and limitation of this Wireless Installation Agreement.

- 16.3 In the case of foreclosure or other judicial sale of the plant, property, or equipment of Licensee, or any part thereof, including or excluding this Wireless Installation Agreement, the City may provide notice of termination to Licensee, in which event the Wireless Installation Agreement shall immediately terminate and all Licensee's privileges hereunder shall cease, unless:
- 16.3.1 The City shall have approved the transfer of this Wireless Installation Agreement, as and in the manner this Wireless Installation Agreement provides; and
- 16.3.2 Licensee's successor shall: (a) cure any existing defaults in performance of this Wireless Installation Agreement; and (b) agree with the City to assume and be bound by all the terms and conditions of this Wireless Installation Agreement.
17. PERFORMANCE BOND OR OTHER SECURITY
- 17.1 Bond Or Other Security to Be Posted. Prior to making any Wireless Installations and within thirty (30) days of the Effective Date of this Wireless Installation Agreement, Licensee shall provide to the City in a form suitable to the City in its sole discretion: (a) a performance bond; (b) an irrevocable standby letter of credit; or (c) a cash deposit in the amount of one-hundred thousand and 00/100 dollars (\$100,000.00) (the "Security Instrument") corresponding with the requirements of Appendix B.
- 17.1.1 If Licensee chooses to post a bond, the bond shall be executed with a proper surety through a company licensed and qualified to operate in the State of Texas and listed with the U.S. Department of the Treasury as published in the Federal Register. In addition, the bond shall not be for an amount greater than the surety's approved limit as referenced in the current Federal Register and shall be accompanied by a certified power-of-attorney document, all still subject to the final approval of the City.
- 17.1.2 If Licensee chooses to provide an irrevocable standby letter of credit ("LOC"), the LOC shall be satisfactory in form and content in the sole discretion of the City Attorney.
- 17.2 Purpose of the Security Instrument. The purpose of the Security Instrument is to ensure Licensee's performance of all of its obligations under this Wireless Installation Agreement and for the payment by Licensee of any damages, claims, liens, taxes, liquidated damages, penalties, or fees due to the City which arise by reason of the construction, installation, operation, maintenance, transfer, relocation, or removal of Licensee's Wireless Installations on or about the City's Service Poles, including without limitation, claims for damages to the City Facilities caused by Licensee, its contractors, or agents, and for any costs the City incurs relocate Licensee's Wireless Installations or related facilities. The City shall have the right to draw funds from the Security Instrument to recover damages to City Facilities caused by Licensee, its contractors, or agents or for any costs the City incurs relocate Licensee's Wireless Installations or related facilities. Provision shall be made to permit the City to draw against the Security Instrument. Licensee shall not use the Security Instrument for other purposes and shall not assign, pledge, or otherwise use the Security Instrument as security for any other purpose.

- 17.3 Actions after Draw-Down. Within thirty (30) days after notice to Licensee that the City has drawn any amount against the Security Instrument, Licensee shall take action to replenish the Security Instrument to its prior amount.
- 17.4 Cancellation or Replacement. Licensee shall provide the City with thirty (30) days prior written notice of any cancellation or replacement of the Security Instrument. Licensee shall at all times maintain the Security Instrument or a substitute instrument approved by the City throughout the term of the Wireless Installation Agreement, and any failure to do so shall constitute a breach of this Wireless Installation Agreement retroactive to the date of the notice of cancellation of the Security Instrument.
18. RELOCATION AND REMOVAL OF FACILITIES; REPAIR OF DAMAGES
- 18.1 Relocation and Removal at Licensee's Expense. The Parties agree that this Wireless Installation Agreement does not in any way limit the City's right to locate, operate, maintain, and remove City Service Poles, including without limitation traffic light poles, in the manner that best enables the operation of its City systems and to protect public health, safety, and welfare.
- 18.1.1 Licensee shall remove and relocate its Network Nodes at its own expense to an alternative location made available by the City, where available, and acceptable to Licensee, not later than one hundred twenty (120) days after receiving written notice that removal, relocation, or alteration of the Network Node (including poles) is necessary due to:
- 18.1.1.1 Construction, expansion, repair, relocation, or maintenance of a street or other public improvement project; or
- 18.1.1.2 Maintenance, upgrade, expansion, replacement, or relocation of City traffic light poles or traffic signal light system (or other Service Pole); or
- 18.1.1.3 Closure of a street or sale of City property; or
- 18.1.1.4 Projects and programs undertaken to protect or preserve the public health or safety; or
- 18.1.1.5 Activities undertaken to eliminate a public nuisance; or
- 18.1.1.6 Duty otherwise arising from applicable law.
- 18.1.2 Licensee's duty to remove and relocate its Network Nodes at its expense under this Section is not contingent on the availability of an alternative location acceptable for relocation. The City will make reasonable efforts to provide an alternative location on a Service Pole for relocation upon submission of an Application in the ordinary course, but Licensee shall comply with the notice to remove its personal property as instructed, regardless of the disposition of its application.
- 18.2 Cooperation in Relocations. The Licensee and the City shall reasonably cooperate to assure continuity of service during relocation of Network Nodes.
- 18.3 Recovery of Relocation Cost from Third-Parties. Nothing in this section shall be construed to prevent Licensee from recovering the cost of removal or relocation of its

facilities from a nongovernmental third-party causing the need for the removal or relocation.

18.4 Consequences of Failure to Remove and/or Relocate. If Licensee fails to remove or relocate its facilities to the satisfaction of the City Engineer or his designee within 120 days after the date of notice or has not diligently commenced such removal as directed by the City, the City may remove the Network Node and related facilities at the expense of Licensee.

18.5 Duty of Care When Removing and/or Relocating. Any damage to the Public Rights-of-Way or City real or personal property, or the real or personal property Licensee causes in the removal or relocation of Licensee's Network Nodes shall be promptly repaired or replaced at Licensee's sole expense.

18.6 City Repair or Relocation; Reimbursement. If Licensee does not complete or diligently pursue adequate repairs within thirty (30) days of receiving written notice or complete relocation within the time required in this Wireless License Agreement, the City may make all reasonable and necessary repairs or perform any facilities relocation on behalf of Licensee at Licensee's expense.

18.6.1 Licensee shall reimburse the City the costs of repairs or relocation of facilities provided in this Section within thirty (30) days of written notice of or demand for the amounts due.

18.6.2 If Licensee fails to reimburse the City the costs of repairs or relocation of facilities within thirty (30) days of demand, the City may exercise its right to reimbursement under the terms of the Security Instrument required under Section 17.

18.6.3 If after drawing down the Security Instrument, any amount owing remains, Licensee will be charged for the deficiency. Licensee shall remit payment of such deficiency within fifteen (15) days of receipt of the City's notice of or demand for payment of the deficiency.

19. MISCELLANEOUS PROVISIONS

19.1 Governing Law; Jurisdiction and Venue. The validity, performance and all matters relating to the effect of this Wireless Installation Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Texas. All obligations of the parties created hereunder shall be performed in Brazos County, Texas. In the event any cause of action is brought directly or indirectly by reason of this Wireless Installation Agreement, the courts of Brazos County, Texas, shall have exclusive jurisdiction and venue over the dispute.

19.2 Entire Agreement; Non-Waiver of Existing Claims. This Wireless Installation Agreement, together with the incorporated Pole Attachment Standards, supersede all previous oral and written agreements between the City and Licensee regarding the approval, placement, transfer, maintenance, and removal of Licensee's Wireless Installations on the City's Service Poles or in the Public Rights-of-Way within the geographical service area covered by the Wireless Installation Agreement. All provisions, terms, and conditions to this Wireless Installation Agreement are expressed herein. Notwithstanding any contrary provision, term, or condition herein, this Wireless

Installation Agreement shall neither waive nor be interpreted to waive any claims of any nature, any amounts or credits owed, or any obligations or duties arising under a prior agreement between the Parties or the Parties' performance thereunder. Nor shall this Wireless Installation Agreement act as a waiver of any claims for the prior use of the City Service Poles or the Public Rights-of-Way within the City without valid authorization.

- 19.3 Failure to Enforce; Non-Waiver. Failure on the part of the City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement and the Pole Attachment Standards or to give notice or declare this Wireless Installation Agreement or any authorization granted thereunder in default or terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement and the Pole Attachment Standards, but the same shall be and remain at all times in full force and effect until terminated in accordance with their terms.
- 19.4 Severability. The invalidity of one or more clauses, sentences, sections, or articles of this Wireless Installation Agreement shall not affect the validity of the remaining portions of this Wireless Installation Agreement, provided that the material purposes of this Wireless Installation Agreement can be determined and effected. If such invalidation materially affects the terms of this Wireless Installation Agreement, the City and Licensee shall meet and negotiate an amendment that is in compliance with any authority's determination and, unless explicitly prohibited, the amended Wireless Installation Agreement shall provide the City with compensation, protections, and other benefits comparable to those set forth herein.
- 19.5 Incorporation of Recitals, Appendices, and Pole Attachment Standards. The recitals stated above, all appendices to this Wireless Installation Agreement, as they may be amended from time to time, are incorporated into and constitute part of this Wireless Installation Agreement.
- 19.6 Contractors and Agents Bound. Licensee agrees to include in all its contracts and agreements with independent contractors or agents provisions that are consistent with and which will fulfill the requirements of this Wireless Installation Agreement.
- 19.7 No Third-Party Beneficiaries. The terms and provisions of this Wireless Installation Agreement are intended to be for the benefit of the City and Licensee. Except as provided herein, nothing in this Wireless Installation Agreement, express or implied, is intended to confer upon any other person or entity, other than the Parties, any benefits, rights, or remedies under or by reason of this Wireless Installation Agreement.
- 19.8 Compliance with Agreement and Pole Attachment Standards. All Wireless Installations installed on or after the Effective Date of this Wireless Installation Agreement are and shall be authorized by the procedures, requirements, and limitations of this Wireless Installation Agreement, subject to Licensee's compliance with all the terms and conditions of the Pole Attachment Standards and the Design Manual. Licensee's failure to maintain all Wireless Installations in accordance with the Pole Attachment Standards and the Design Manual shall be considered a default, and all Unauthorized Wireless Installations shall be subject to removal at Licensee's expense.

19.9 Singular and Plural; Gender. All references in this Wireless Installation Agreement to the singular shall include the plural where applicable, and all references to gender shall include both genders and the neuter.

20. INTEREST ON PAST-DUE AMOUNTS

In the event Licensee fails to pay an amount due under the terms of this Wireless Installation Agreement within the period of time set forth for payment, interest shall accrue on the unpaid balance at the rate of one and one-half percent (1.50%) per month (or such lesser rate as may be allowed by law) for each month starting from the date the payment is due until such time as payment is received.

21. ATTORNEY'S FEES

If the City or Licensee brings any action at law or in equity to enforce any provision of this Wireless Installation Agreement, including the incorporated Pole Attachment Standards, the prevailing party will be entitled to recover its reasonable costs and attorney's fees in addition to any other relief to which it may be entitled.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

THE CITY OF BRYAN, TEXAS

[COMPANY NAME]

BY: _____

BY: _____

TITLE: CITY MANAGER

TITLE: _____

DATE: _____

DATE: _____

ATTEST:

APPROVED:

CITY CLERK

CITY ATTORNEY

- 1.07 Licensee's workers' compensation, employers' liability, commercial automobile liability, commercial general liability, and excess liability insurance policies shall be endorsed to waive all rights of subrogation in favor of the City and its affiliates, and their shareholders, directors, officers, members, employees and agents.
- 1.08 The City and its employees, officers, directors, owners, advisors, consultants and agents shall be included as additional insureds without limitation on all policies (except workers' compensation), in accordance with ISO endorsement forms "CG 20 10 04 13" and "CG 20 37 04 13," or their equivalent. Further, Licensee represents and warrants that:
 - (a) All such policies will be endorsed to reflect thirty (30) days' notice of cancellation to the City. Licensee shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.
 - (b) Upon request by the City, Licensee shall provide true copies of policy endorsements as required in this Appendix B from issuing insurance company(s).
- 1.09 All Licensee's insurance shall be issued by insurance carriers licensed to do business in Texas at the time the policy is issued and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates listing the City's name and address as a Certificate Holder, and list the name of Project as described in this Agreement and the name and phone number of the broker who prepared the certificate. Certificates of insurance shall be prepared on an Acord form 25-S.
- 1.10 With respect to any coverage maintained on a "claims-made" policy form, Licensee shall maintain such coverage for two (2) years following termination of this Agreement; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the effective date of this Agreement.
- 1.11 Licensee shall not commence the installation of Attachments under this Agreement until Licensee has obtained all required insurance and until such insurance has been received and approved by the City. The City's approval of Licensee's insurance shall not relieve or decrease the liability of Licensee hereunder.
- 1.12 If Licensee fails to obtain or renew the above required insurance and furnish to the City acceptable evidence thereof, the City shall have the right, but not the obligation, to: (1) procure such insurance and reduce the Agreement amount by the cost thereof; or (2) deem as breach of this Agreement the Licensee's failure to do so.
- 1.13 Nothing herein shall reduce or alter any obligation Licensee has to indemnify, defend or hold harmless the Indemnified Parties identified in the Agreement.
- 1.14 In the event Licensee enters into a subcontract with an Independent contractor, the Licensee will require the Independent contractor to procure at a minimum all insurance specified to be carried by the Licensee, in the like form specified herein.
- 1.15 Licensee and, as applicable, its Independent contractors shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by Licensee, Independent contractor and/or the City.

**APPENDIX B
PERFORMANCE BOND**

Bond No. ____

KNOW ALL MEN BY THESE PRESENTS:

That, (name of License), hereinafter called "Principal" and (name of surety company), a surety company licensed to do business in Texas, hereinafter called "Surety", are held and firmly bound unto CITY OF BRYAN, TEXAS, hereinafter called "Obligee," in the amount of One-Hundred Thousand and no/100 dollars (\$100,000), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20[___] to which contract hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if said

Principal shall well and truly perform its obligations, including but not limited the payment by Principal of any claims, liens, taxes, penalties and fees due to Obligee which arise by reason of the construction, installation, operation, maintenance, transfer, relocation or removal of Principal's Wireless Installations on or about Obligee's Service Poles under the aforesaid Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

No extension of time or other waiver or amendment of the terms of the said aforesaid Contract shall relieve the Surety of its obligations hereunder, and the Surety waives notice of any such extension, waiver, amendment, or change. This bond shall be automatically extended in time without formal and separate amendment to cover full and faithful performance of the Contract modifications, regardless of the amount of time involved.

THIS BOND may be cancelled by Surety by giving thirty (30) days written notice to the Obligee by registered mail. Such cancellation shall not affect any liability the Surety may have or incurred under this bond prior to the effective date of termination. Provided that no action, suit or proceeding shall be maintained against the Surety on this bond unless action is brought within twelve (12) months of the cancellation date of this bond.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of __, 20[___].

Executed: (date)

(SEAL)

PRINCIPAL

By:

TITLE

(SEAL) SURETY

By: ____ (Name), Attorney-in-Fact

(Copy of current power of attorney executed by Surety Company showing authority of attorney-in-fact must be attached.)