

COUNCIL POLICY			
Subject: DEVELOPMENT OF TELECOMMUNICATION FACILITIES ON CITY PROPERTY AND INSTALLATION OF ANTENNAS ON CITY FACILITIES.	Policy Number	Effective Date	Number of Pages
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BACKGROUND:

The City has received requests from public agencies and private companies to develop telecommunications facilities on City property and to install antennas on said property for wireless personal communications and other services. The Telecommunications Act of 1996 addresses the proliferation of personal wireless services in the United States, and contains important provisions concerning the placement of towers and other facilities for use in providing these services. Section 704 of the Act governs federal, state, and local government oversight of siting of personal wireless services facilities, and supports the use of publicly owned land and facilities for locating towers and antennas.

PURPOSE:

The purpose of this policy is to establish procedures by which requests from public agencies and private entities to develop telecommunications facilities on City property, and to install antennas on City facilities, will be considered, provide guidance to City staff, and to describe the application process.

DEFINITIONS:

Telecommunication Facility: A stationary exterior facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and any other type of equipment for the transmission or receipt of such signals; telecommunication towers or similar structures supporting said equipment; equipment buildings; parking areas; and other accessory development.

Antenna: Any system of wires, poles, rods, reflecting discs, or similar devices used for transmission or reception of electromagnetic waves when such system is either external or attached to the exterior of a structure. Antennas shall include, but are not limited to, devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be part of the antenna.

City facility: Any building, tower, water reservoir, treatment plant, pump or lift station, street light or traffic signal standard, sports field light, infrastructure, or other real property owned by the City of Santa Rosa or any of its Enterprise Funds.

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Note: Other related definitions or requirements may be found in City Code Chapter 20-44 ~~WIRELESS-TELECOMMUNICATION FACILITIES~~ and City Code Chapter 13-04 STREET ENCROACHMENTS AND ANTENNAS.

POLICY:

Council acknowledges the proliferation of wireless ~~personal~~ and other telecommunication services and the facilities and antenna, as well as the utility -required infrastructure, required for their functioning, and supports the Telecommunications Act of 1996. The citizens of Santa Rosa may be best served by a policy that considers the development of telecommunications facilities on City owned or leased property, and the installation of antennas on said property. This policy stresses public safety, facility compatibility and function, and community aesthetics, allows application from any public agency or private entity, and intends to both cover City expenses and maximize revenue generated from ~~licenses~~ leases associated with developments on City property. Council also desires to manage City properties and facilities with potential for telecommunication developments and antennas installations, including co-location of multiple antennas on single facilities, to maximize the benefits to the citizens of Santa Rosa. In addition, no installation will be permitted upon a City structure when to do so would interfere with routine or emergency maintenance and/or create facility access issues for the City. It is emphasized the primary purpose or function for which a property or facility was intended, to include future and presently unknown City uses, and the structural integrity or security, shall in no way be compromised as a result of any telecommunications development or antenna installation. The City's land use zoning, building permit, encroachment permit and design review policies, as applicable, shall also be fully complied with.

PROCEDURE:

The following procedures shall be followed when a public agency or private entity (Applicant) is interested in developing a telecommunication facility on City property or installing an antenna on a City facility:

- 1) Applicant shall review City Code Chapter 20-44 Telecommunication Facilities to be fully informed about the standards, requirements and regulations for telecommunication facilities in the City of Santa Rosa.
- 2) Applicant shall contact the City Manager or his designated representative, who will coordinate with the ~~Director of Community Development and the~~ department responsible for the property or facility, as determined by the City Manager, to determine if there is sufficient interest in pursuing the request based upon the criteria set forth in ~~this policy~~ Policy section. ~~Responsible City Departments include Utilities for water reservoirs, pumping and lift stations, treatment plants, and a telemetry~~

~~tower, Public Works for street light and traffic signal standards, Recreation and Parks for sports field lights, and Administrative Services for most other buildings and parking lots.~~

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3) Should the City Manager or designee determine there is interest in pursuing the request, the Applicant shall be asked to submit a written Conceptual Proposal (See Exhibit A) to the City for consideration. Review of the Conceptual Proposal by the City is still at a very preliminary level and is meant to identify any prohibitions contained in the zoning code, compatibility with life and safety codes, potentially costly improvements or accommodations associated with the request, compatibility with City facilities and existing uses or major community aesthetic issues that could warrant significant public or environmental review. This information will be shared with the Applicant.

4) Should the City Manager or designee determine the development or installation is potentially feasible after the preliminary Conceptual Review, the Applicant shall be asked to submit an Application (see Exhibit B) with a non-refundable fee of \$2,000 to the City. This fee is to cover costs associated with the preliminary analysis and administrative processing associated with project consideration on City property, site-inspections, possible lease license negotiations, preparations, and credit check, and is in addition to any other applicable building permit fees that may apply be assessed. This fee may be reduced or waived for public agencies at the discretion of the City Manager. The fees for use of City property and/or facilities shall be stipulated in each Master Communications Site License Agreement individual site schedule (see example at Exhibit C).

~~5) After consideration of the Application, the City Manager or designee will render a determination as to the project's feasibility for moving into the form a applicable City P permit Rreview Process within the Community Development Department, and notify the Applicant. (Should the City determine the development or installation is feasible), - - - - -~~

5) For telecommunications projects to be located within the City right of way, such as on street lights, traffic lights or other City right of way facilities, Applicant shall obtain an encroachment permit pursuant to City Code Chapter 13-04. The City may enter into a Master Communications Site License Agreement which will allow negotiations with the Applicant or negotiation of a subsequent site licenses to be approved pursuant to said master license agreement schedule if the Applicant has already entered into a master agreement with the City. For telecommunications projects to be located on City property other than City right of way, Applicant shall obtain a building permit and any other City approvals required pursuant to City Code Chapter 20-44. For such projects, the City may enter into a Master Communications Site License Agreement for each new location. Any license for telecommunications facilities shall be in a form

approved by the City Attorney's Office and shall not be final until such time as Applicant has obtained all necessary City permits for any such project. The City Manager, or designee, shall have the authority to execute site license agreements that comply with this Policy, City Code and any other applicable requirements adopted by Council. negotiations, if entered into, may be substantially complete, but shall not be finalized until all provisions of City Code Chapter 20-44 Telecommunications Facilities have been complied with, and building permit issued.

6) ~~Should a building permit be issued for the development or installation, the City shall finalize Master Communications Site License Agreement negotiations with the Applicant and execute the Agreement.~~ Once Applicant has obtained all necessary permits and has entered into a license agreement with the City for such site, Applicant may then begin the development or installation process.

Exhibit A

Conceptual Proposal Checklist

The Conceptual Proposal shall contain the following information (3 copies):

~~Name of City representative and date contacted.~~

Site address and square footage required or space required.

Reason for project, scope of services that will be provided, (eg. local area
~~cellular telephone services~~), and names of all represented clients.

Detailed project description, as applicable, a plan showing the type and size of antenna or ~~tower~~ to be installed, equipment shelter or cabinets, power requirements, ~~frequency or frequency ranges~~, transmitter output power, antenna gain, and ~~effective radiated power~~. The plan should show the location of all the ~~Applicant's needs and planned installation or construction in relation to any and all existing facilities at the site.~~ Photos or renderings may also be submitted for ~~clarification~~.

Interference analysis if there is existing communication equipment on site.

Access requirements

Testing requirements, if desired.

Name, address, and telephone number of contact individual.

Note: Applicants will provide their own dedicated power sources, telephone lines, and site access whenever possible. The integrity and present or future function of any existing facility, antenna, or system must be protected, and access road use must not be adversely affected. Work within the City's rights of way will require an encroachment permit.

Note: On-site evaluations may require a City Encroachment Permit issued by the Public Works Department.

Exhibit B

Application Checklist

The application shall contain the following information (3 copies):

~~All information requested in the~~ The Conceptual Proposal **and**

Descriptions and/or alternative solutions to mitigate real estate,
~~telecommunications, or any other issues identified as a result of the Conceptual~~
~~Proposal.~~

Desired ~~license~~ term, including any options to extend.

~~Date project would be installed or constructed if approved, proposed construction~~
~~schedule, and estimated time for completion.~~

A non-refundable Application fee.

~~Site plan showing all dimensions. For major telecommunications projects - a site~~
~~plan showing all dimensions, proposed elevations and landscaping and for telecommunications~~
~~projects to be located within the City right of way - a design plan, as determined to be~~
~~appropriate based on actual location and size of the proposed project. Plan must be either reduced~~
~~to a max of 11" x 17", or folded to a max of 8 1/2" x 14" (Will also be required for~~
~~building permit and design review applications).~~

~~Plan showing existing and proposed elevations and landscape. Plan must be~~
~~either reduced to a max of 11" x 17", or folded to a max of 8 1/2" x 14". A photo may~~
~~suffice for existing elevation (Will also be required for building permit and design review~~
~~applications).~~

~~Engineering calculations, if requested by the City, and prepared by an engineer~~
~~approved by the City.~~

A detailed description of the operating maintenance schedule.

~~Approximate cost of project, including construction, permanent improvements to~~
~~site, removable improvements, and required upgrades.~~

~~A rendering or visualization photo of the entire proposed telecommunication~~
~~facility, or existing facility with proposed antenna.~~

Exhibit C

MASTER COMMUNICATION SITE LICENSE AGREEMENT

THIS MASTER COMMUNICATIONS SITE LICENSE AGREEMENT ("License" or License Agreement") dated as of _____, 200____, is between _____ ("Licensee"), and the CITY OF SANTA ROSA, A MUNICIPAL CORPORATION ("Licensor" or "City").

_____ The parties hereto agree as follows:

_____ **1. Premises.** Licensor owns certain real property, and certain street lights located in the public rights of way, as described in each numbered Schedule of Licensed Properties ("Schedule", Attachment I) executed hereunder by the parties (hereinafter the described real property and/or streetlights are collectively referred to as the "Premises"), attached hereto and incorporated herein by reference. Subject to the following terms and conditions, Licensor grants a non-exclusive license to Licensee of that portion of Licensor's property designated as the Premises, or, in the case of street lights located in the public rights of way, a structure license, as depicted in the Schedules attached hereto and incorporated herein. Each Schedule executed hereunder shall be substantially in the form of Attachment I. Both parties agree that Schedules may be added or deleted by administrative action from time to time subject to and in accordance with the provisions of this License. _____

_____ **2. Use.** The Premises may be used by Licensee for any lawful activity in connection with the provisions of mobile/wireless communications services, including without limitation, the transmission and reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications facilities. Licensor agrees, at no expense to Licensor, to cooperate with Licensee in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Licensee's intended use of the Premises for each schedule. Licensor reserves the right to use the premises for its own use or to grant additional licenses to other parties provided that such additional use does not interfere with Licensee's use of the premise as provided in paragraph 7. _____

_____ **3. Conditions Precedent.** Each Schedule under this License is conditioned upon Licensee, or Licensee's assigns, obtaining all federal, state or local governmental permits and approvals enabling Licensee, or its assigns, to construct and operate mobile/wireless communications facilities on the Premises for that Schedule. _____

_____ **4. Term.** The term of the License for each of the Premises ("Term") shall be five (5) years commencing on the first to occur of (a) the date of issuance of a local building permit and/or encroachment permit allowing Licensee to construct its facilities on the Premises, or (b) 12 months after the date first set forth on the Schedule for the Premises in question (the "Commencement Date"). Unless otherwise agreed to in the applicable Schedule, Licensee shall have the right to extend the Term of the License for each of the Premises for five (5) additional terms ("Renewal Term") of five (5) years each. Each Renewal Term shall be on the same terms and conditions as set forth herein. The Term for each of the Premises shall automatically be extended for each successive Renewal Term unless either party notifies the other party in writing of its intention not to extend at least thirty (30) but not more than 180 days prior to the expiration of the first five (5) year Term or any Renewal Term. _____

This License shall not be revoked or terminated during the Term or any Renewal Term except as expressly stated in this license agreement.

~~5. Fee.~~ Upon the Commencement Date, Licensee shall pay Licensor a license fee for use of the Premises, or, in the case of street lights located in the public rights of way, as a structure licensing fee, the sum of money as follows:

~~(a) Prior to July 1, 200__, _____ annually as a fee for collocation use of each street light located in the public rights of way, together with each site for location of related equipment and cabinets/equipment shelters and for utility and transmission lines connecting the same to the antennas.~~

~~(b) Prior to July 1, 200__, _____ annually as a fee for use of Licensor's property to construct facilities that are not collocated on street lights, which fee applies to the initial _____ site(s) under this License; the fee for succeeding sites under this License shall be _____ annually.~~

The first year's fee shall be prorated to the next occurring July 1; Fees shall be payable annually, in advance, on July 1 of each year, to City of Santa Rosa, P. O. Box 1678, Santa Rosa, 95402, Attention: _____.

A late charge equal to One Hundred (\$ 100) dollars shall be added to any annual payment not received by Licensor by the July 22 of the year in which it is due. Any annual fee payment received after the Twenty-second day of July of each year in which it is due will be first credited to payment of the late charge. Said late charge shall be added for each annual payment thereafter until said fee payment and late charge or charges are paid in full. Said late charge or charges shall be considered as part of the fee due Licensor hereunder for use of the Premises.

Licensor shall have the option to terminate a Schedule(s) under this License upon the failure by Licensee to make any payment of fee or any other payment required to be made by Licensee thereunder as and when due, if not fully cured within twenty one (21) days after Licensee has received written notice of such default.

In the event any facilities or equipment of Licensee are subjected to relocation under Section 9 of Attachment II, the fee shall abate for the period commencing on and including the date Licensee ceases to operate at the Premises being relocated to the date Licensee commences normal operations from the Premises to which such facilities or equipment are relocated. The amount abated shall be credited against the next due installment of the fee under any of the schedules until the credit is fully utilized. Licensor shall make every reasonable effort to relocate Licensee in a manner which allows Licensee to stay on air; in the event that Licensee is able to remain on air and conduct normal operations, the fee shall not be abated.

The fees set forth above shall be adjusted annually (the "Adjustment Date"), commencing on July 1, 200__. Adjustments shall be based upon increases, if any, in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers (CPI-U) for San Francisco-Oakland-San Jose (1982-84 = 100) (the "Index"). The Index in publication for the month of April preceding each Adjustment Date shall be the "Comparison Index". The Index in publication for the month of April as it stands twelve months prior to the "Comparison Index" shall be the "Base Index". As of each Adjustment Date, the adjusted Fee payable during the ensuing twelve-month

period shall be determined by increasing the initial or previous Fee by a percentage equal to the percentage increase, if any, in the Comparison Index over the Base Index. The percentage increase, if any, in the Index used to adjust the annual rent shall be rounded to the nearest tenth of a percent. If the Comparison Index for any Adjustment Date is equal to or less than the Comparison Index for the preceding Adjustment Date (or the Base Index, in the case of the first Adjustment Date), the adjusted Fee for the ensuing twelve month period shall remain the amount of the Fee payable during the preceding twelve month period. When the adjusted Fee payable as of each Adjustment Date is determined, Licensor shall promptly give Licensee written notice of such adjusted fee. The Fee as so adjusted from time to time shall be the "Base Fee".

~~————~~ **6. Improvements: Access.**

~~————~~ (a) Licensee shall have the right (but not the obligation) at any time following the full execution of this License and prior to the Commencement Date to enter the Premises for the purpose of making necessary inspections, engineering surveys (and soil tests where applicable) and other reasonably necessary tests (collectively "Tests") to determine the suitability of the Premises for Licensee's Facilities (as defined in Section 6 b below) and for the purpose of preparing for the construction of Licensee's Facilities. Licensor makes no warranties or representation that the premises are suitable for licensee's intended use. During any Tests or pre-construction work, Licensee shall have the insurance coverage set forth in Section 13, Insurance. Licensee will notify Licensor of any proposed Tests or pre-construction work and will coordinate the scheduling of same with Licensor. If Licensee determines that the Premises are unsuitable for Licensee's contemplated use, then Licensee will notify Licensor and the applicable Schedule will terminate. Licensee shall be obligated to restore the premises to the condition they were in prior to such testing and to repair any damage to the premises caused by such testing.

~~————~~ (b) Licensee has the right to construct, maintain and operate on the Premises radio communications facilities, including but not limited to radio frequency transmitting and receiving equipment, batteries, utility lines, transmission lines, radio frequency transmitting and receiving antennas and supporting structures and improvements, but excluding poles located in public rights of way, which poles shall be owned by Licensor ("Licensee's Facilities"). In connection therewith, Licensee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Licensee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers, conditioned upon plan review and approval of Licensor, which approval shall not be unreasonably withheld or delayed. All of Licensee's construction and installation work shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner in accordance with all applicable regulations. Title to Licensee's Facilities and any equipment placed on the Premises by Licensee shall be held solely by Licensee, except that poles located in public rights of way for joint use with Licensor for street lighting as well as antenna support shall be owned by Licensor. All of the Licensee's Facilities shall remain the personal property of Licensee and shall not be treated as real property or become a part of the Premises even though affixed thereto. Licensee has the right to remove all Licensee's Facilities at its sole expense on or before the expiration or termination of the applicable Schedule.

~~————~~ (c) Licensor shall provide to Licensee, Licensee's employees, agents, contractors and subcontractors access to the Premises twenty four (24) hours a day, seven (7) days a week, at no charge to Licensee, subject to the conditions set forth in each Schedule. For some sites, it may be necessary that visits to the site must be accompanied by Licensor's personnel or representative. Licensor represents and warrants that it has full rights of ingress to and egress from the Premises, and

~~hereby grants such rights to Licensee to the extent required to construct, maintain, install and operate Licensee's Facilities on the Premises. Licensee's exercise of such rights shall not cause undue inconvenience to Licensor.~~

~~(d) Licensee shall have the right to install utilities, at Licensee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power), subject to the approval of Licensor, which approval shall not be unreasonably withheld or delayed. Subject to Licensor's approval of the location, which approval shall not be unreasonably withheld or delayed, Licensee shall have the right to place utilities on (or to bring utilities across) Licensor's property in order to service the Premises and Licensee's Facilities. Such right to install utilities shall be subject to the conditions set forth in each Schedule. Licensor shall cooperate with the servicing utility company to provide access for servicing lines over, across or through the Premises as required by such servicing utility company to provide utility services as necessary.~~

~~(e) Licensee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Licensee's Facilities.~~

~~(f) Collocation facilities shall be governed by the additional provisions of Attachment II, Facilities Collocation Requirements, attached hereto and incorporated herein by reference, as well as the terms of this License; and each Schedule shall state whether the Premises is or is not a collocation facility and the provisions of Attachment II shall only apply to collocation facilities. The term "collocation facility" refers only to Premises on which Licensee uses Licensor's street light poles.~~

~~(g) Upon the expiration, cancellation or termination of the applicable Schedule, Licensee shall surrender the Premises to Licensor in good condition, less ordinary wear and tear. In addition to any other rights of Licensor hereunder or at law or equity, if Licensee should default in the removal of its equipment and facilities from Premises within a reasonable time upon termination of this License or any Schedule hereunder, or should default in the performance of any other work which it is obligated to do under this License, Licensor may, after notice to Licensee, elect to do the work at Licensee's sole risk and expense, and Licensee, on demand, shall reimburse Licensor for the entire expense incurred.~~

~~—————(h)————~~ Licensor shall have the right to require Licensee to furnish a bond, or alternative security acceptable to Licensor with respect to each of the Premises to cover the faithful performance by Licensee of its obligation under Section 7(g) to remove its equipment and facilities from the Premises upon termination of the License with respect to such Premises. If a bond is required by Licensor with respect to such Premises, it shall be issued by a commercial bonding company selected by Licensee which is authorized to transact surety insurance business in the State of California and satisfactory to Licensor. The bond for any Premises shall not be subject to termination or cancellation except upon sixty (60) days' prior written notice by certified mail to Licensor; shall be in such form and in such amount, not to exceed \$300,000, as Licensor may specify from time to time; and, subject to termination or cancellation as aforesaid, shall be maintained in full force and effect throughout the initial term for each Scheduled Premises and shall be renewed at the commencement, and as condition to, any renewal term. If the Surety on said bond should give notice of the termination of said bond, and if Licensee should fail to provide a replacement bond or other security acceptable to Licensor prior to the termination of said bond, Licensor may, by a written notice to Licensee, forth with terminate the Schedule as to the Premises with respect to which the bond will terminate. Each bond shall be noncumulative throughout the term of the bond and the bond penalty is the maximum amount that will be paid by the surety.

~~—————7.————~~ **Interference with Communications.** Licensee agrees to install equipment of types and frequencies which will not cause interference to the currently existing communications equipment of Licensor, Licensor's vendors, or other licensees or lessees of the Premises. In the event Licensee's equipment causes such interference, Licensee shall cooperate with Licensor in determining the source and will immediately take all steps necessary to correct and eliminate the interference. If said interference cannot be eliminated within forty eight (48) hours after receipt of notice from Licensor to Licensee of the existence of such interference and Licensor has determined Licensee's equipment to be the source of said interference, Licensee shall discontinue use of the equipment creating said interference. Licensee shall shut down the interfering equipment except for intermittent operation for the purpose of testing after performing any maintenance, repair, modification, replacement or other action for the purpose of correcting such interference. If such interference is not corrected within thirty (30) days after receipt of the aforesaid notice, Licensee shall remove the interfering equipment from the Premises. In the event that the cause of such interference cannot be pinpointed to a particular piece of equipment or system, Licensee shall disconnect the electric power and shut down all of its equipment until such time as the interference problem is corrected. If such interference is not corrected within thirty (30) days after receipt of the aforesaid notice, Licensee shall remove its equipment from the premises within an additional ten (10) day period. The Agreement shall then terminate without further obligations then owing or past due and except as may otherwise be specifically enumerated herein. Licensor shall not be liable to Licensee for any interruption of service of Licensee or for interference with the operation of Licensee's equipment.

Notwithstanding the foregoing, in the event that said interference interferes with Licensor's own equipment and in Licensor's sole judgment, said interference jeopardizes the safe operation of Licensor's operations, Licensee will be responsible for eliminating the interference within twenty-four (24) hours, upon becoming aware of such interference. Licensor reserves the right to disconnect power to the interfering equipment if Licensee is unable to eliminate said interference within twenty-four (24) hours of said notification.

Licensee has satisfied itself and hereby represents and warrants to Licensor that no such interference shall result to the currently existing systems of Licensor or other licensees or lessees at the Premises.

~~Licensee agrees to indemnify, hold harmless and defend Licensor against any claim or damage, including reasonable attorneys' fees, arising out of such interference.~~

~~Licensee shall be responsible for performing all RF engineering studies to ensure that the placement of its equipment at the Premises will not cause interference with any existing equipment placed thereat by Licensor and any other licensees or lessees or Licensor.~~

~~It is emphasized that the primary use of the Premises is intended to include future and presently unknown City uses. The integrity and security shall in no way be compromised by the Licensee. If during the existence of the Agreement, Licensor's present or future operations requires installation of additional telecommunications equipment at the Premises, Licensor agrees to take all reasonable steps necessary not to affect or interfere with Licensee's rights hereunder. If, however, such interference occurs despite the best efforts of both Licensor and Licensee, the City's operational need shall prevail and Licensee shall be required to modify or remove their interfering equipment.~~

~~————— **8. Taxes.** Licensee shall pay personal property taxes, possessory interest taxes and assessments, if any, assessed against Licensee's Facilities and Licensor shall pay when due, if any, all real property taxes and all other taxes, fees and assessments attributable to the Premises and the applicable Schedule.~~

~~9. Termination.~~

~~(a) Any Schedule hereunder may be terminated as follows: (i) by either party upon a default of any covenant, condition or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default; provided that if the period of cure takes longer than 60 days and the party in default commences to cure the default within 30 days after receiving notice of the default, then the party in default shall have such additional time as shall be reasonably necessary to diligently affect a complete cure, (ii) by Licensee for any reason or for no reason, provided the Licensee delivers written notice of termination to the other party prior to the Commencement Date; (iii) by Licensee upon thirty (30) days prior written notice to Licensor, if Licensee is unable to occupy or utilize the Premises due to a ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies, (iv) by Licensee, upon thirty (30) days prior written notice to Licensor, if any Pre-existing Communications facilities, or any communications facilities or other structures or equipment of any kind now or hereafter located on or in the vicinity of the Premises, interfere with Licensee's Facilities and such interference is not eliminated within five (5) days after it arises; (v) by Licensee, immediately upon notice to Licensor, if Licensee's right to use the Premises is revoked or terminated pursuant to Section 4(d) or 10 of Attachment II; (vi) by Licensee, immediately upon notice to Licensor, if Licensor requires Licensee to relocate, replace or renew its equipment or facilities pursuant to Section 9(a) or (b) of Attachment II; and (vii) by Licensee upon thirty (30) days prior written notice to Licensor if Licensee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal interference, provided, however, that the remaining portion of the corresponding annual fee for said Schedule shall not be refundable nor shall it be prorated in the event of termination hereunder; (viii) as provided in Section 4.~~

~~(b) Any Schedule hereunder may be terminated on twelve (12) months prior written notice of termination by Licensor if Licensor determines that the Premises are not appropriate for use by Licensee due to economic, environmental, technological reasons, or the demonstrated need for the Premises to enable Licensor (City) to provide for the health, safety, and welfare of the residents and businesses in the city.~~

~~(c) Upon termination, neither party shall have any further rights, obligations or liabilities to the other respecting the Premises terminated except: (i) with respect to provisions of this License which by their sense and context survive termination; (ii) where termination is by reason of breach or default of the other party; and (iii) with respect to the rights and remedies of the parties, and indemnification and insurance provisions, relating to the period prior to termination.~~

~~(d) All rights to terminate under this Section 9 and elsewhere in this License shall apply only to the particular Premises affected by the event giving rise to the right to terminate. Neither party shall have any right to terminate this License as to Premises not affected by the event. Without limiting the generality of the foregoing, a default by one party respecting a particular Premises may entitle the other party to terminate this License as to such Premises only and this License shall continue in effect as to all other Premises.~~

~~10. **Destruction of Premises.** If the Premises is destroyed or damaged so as in Licensee's judgment to hinder Licensee's normal operation, Licensee may elect to terminate this License or the applicable Schedule as of the date of the damage or destruction by so notifying Licenser in writing no more than sixty (60) days following the date of damage or destruction. In such event, all rights and obligations of the parties which do not survive the termination of this License or the applicable Schedule, shall cease as of the date of the damage or destruction. If the Premises or Licenser's property is damaged or destroyed so as, in Licensee's judgment, to hinder Licensee's normal operations, the requirement to pay installments of the fee shall abate in full from the date such damage occurs until Licensee is able to commence normal operations. The amount abated shall be credited against the next due installments of the fee under any of the Schedules until the credit is fully utilized. If Licensee's normal operations are hindered due to damage or destruction, Licenser shall use reasonable efforts to identify and make available to Licensee, a temporary site on property Licenser owns or controls in the vicinity which in Licensee's judgment is equally suitable for Licensee's requirements, and for which Licensee shall pay Licenser a fee in accordance with the provisions of this License. Licensee shall make all reasonable efforts to commence normal operations in an expeditious manner.~~

~~11. **Condemnation.** If a condemning authority takes all of the Premises, or a portion, which in Licensee's opinion is sufficient to render the Premises unsuitable for Licensee's normal operations, then the applicable Schedule shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation (which for Licensee shall include, the value of Licensee's personal property, moving expenses, prepaid fees, business dislocation expenses, and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain, shall be treated as a taking by a condemning authority.~~

~~12. **Insurance.**~~

~~(a) — Public Liability and Property Damage Insurance: Licensee shall, during the continuance of this agreement and at no expense to Licenser, maintain public liability and property damage insurance including products liability and completed operations, and contractual liability coverage, in the amount of \$5,000,000 per occurrence on account of bodily or personal injuries, including death, or on account of property damage, arising from, or caused, directly or indirectly, by performance of this agreement. This insurance shall be a *PER OCCURRENCE policy. (hazardous substances endorsement)~~

~~Under the public liability and property damage insurance herein required, Licenser, its officers, agents and employees shall be named as additional insureds by endorsement and as to such additional insureds, the insurance herein required shall be primary and the policies shall contain by endorsement a cross liability clause.~~

~~(b) — Business Automobile Insurance: Licensee shall, during the continuance of this Agreement and at no expense to the Licenser, maintain automobile liability insurance, in the amount of \$1,000,000 per occurrence, on account of bodily or personal injuries, including death, or on account of property damage arising from or caused, directly or indirectly, by performance of this agreement. This insurance shall be *PER OCCURRENCE policy.~~

~~* Should the Seller's insurance consist of claims made coverage, the seller will~~

~~be required to furnish evidence that said policy will continue to be in effect and enforceable for two (2) years after the effective termination date of the contract award. If Seller changes insurance carriers after the termination date of the contract, Seller will be required to provide the City of Santa Rosa with evidence of policy trail coverage for the two (2) year period after the license termination date. In addition the seller will be required to notify the City of Santa Rosa immediately in writing should their coverage amount for either Paragraphs A and/or B above fall below the level of coverage specified thereto during the contract and/or tail coverage term.~~

~~————(c)—— Additional Insured Endorsement: Under the public liability, property damage and automobile liability insurance required in Paragraphs A and B above, the Licensor, its officers, agents and employees shall be named as additional insureds by endorsement and as to such additional insureds, the insurance herein required shall be primary and the policies shall contain by endorsement a cross liability clause.~~

~~————(d)—— Worker's Compensation Insurance: Licensee shall, during the term of this Agreement and at no expense to Licensor, maintain worker's compensation insurance, as required by law, for all Licensee's officers and employees.~~

~~————(e)—— Certificates: The insurance required by Paragraphs (a) and (b) and (d) above shall be evidenced by certificate or certificates submitted to Licensor which shall be executed by the insurance company or companies involved and which shall state that the insurance evidenced thereby may not be terminated without 30 days prior written notice thereof being received by Licensor. The certificate(s) shall be submitted to Licensor before or at time Licensee executes this agreement.~~

~~**NOTE: This cancellation language deviates from standard Certificate of Insurance Acord form and should be brought to the attention of the Licensee and his/her insurance agency. The phrases "endeavor to", and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" must be omitted. FAILURE TO COMPLY WITH THIS LANGUAGE WILL CAUSE A DELAY IN THE LICENSE AGREEMENT.**~~

~~Licensee shall file certificates of insurance which shall certify the TOTAL LIMITS of coverage in effect. If such limits are higher than the limits required by the Licensor herein, the higher limits shall be certified and shall apply to the coverage afforded the Licensor.~~

~~————(f)—— Self Insurance Retention: Any deductible or self insurance retention shall be certified on a Certificate of Insurance and approved by the Licensor. Licensor may require, at its option, Licensee to either (1) reduce or eliminate such deductible or self insurance retention as it applies to the Licensor, its officers, agents and employees, or (2) procure a bond guaranteeing payment of losses and all costs associated with investigation, administration and defense of claims and/or lawsuits. The bond shall be in a form acceptable to the City Attorney and in an amount acceptable to CITY's Risk Manager.~~

~~————(g)—— Except as to the active negligence or willful misconduct, of Licensor, its employees or agents, Licensee shall indemnify and hold harmless Licensor and its officers, employees, affiliates, successors and assigns, against and from any and all loss, claims, demands, causes of action, damages, costs (including attorneys' fees), or liabilities, in law or inequity, of every kind and nature whatsoever, directly or proximately resulting from or caused by or claimed to result from or be~~

caused by, or in any way connected with: (i) the installation, maintenance, existence, or use of equipment by Licensee on, about or within the Premises; or (ii) any interruption, discontinuance, or interference with Licensee's service to any of its subscribers or customers occasioned or claimed to have been occasioned by any action of Licensor pursuant to or consistent with this License, notwithstanding the circumstances that Licensor may be alleged or determined to have been contributorily, concurrently, jointly, independently or solely negligent; and Licensee shall, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against Licensor or its officers, employees, affiliates, subsidiaries, successors or assigns, on any claim, demand or cause of action within the scope of the foregoing indemnity; and shall pay and satisfy any judgment or decree which may be rendered against it or its officers, employees, affiliates, subsidiaries, successors or assigns, in any such suit, action, or other legal proceeding and shall reimburse Licensor for any and all reasonable legal expenses, including attorney's fees incurred in connection therewith. The parties expressly agree that any payment, attorney fee, costs or expense City incurs or makes to or on behalf of an injured employee under City's self-administered worker's compensation program is included as a loss, expense or costs for the purpose of this Section, and that this Section shall survive the expiration of early termination of the Contract (License Agreement). This indemnification obligation is not limited in anyway by any limitation on the amount or type of damages or compensation payable to or for Licensee or its agents under workers' compensation acts, disability benefits or other employee benefit acts.

———(h)——— Licensor shall be liable for damage or injury to Licensee's equipment, employees, agents, servants, independent contractors or third parties only to the extent such damage or injury was caused by the active negligence or willful misconduct of Licensor, its agents or employees. ———

———13. Assignment / Sub-license /Transfer

———(a)——— Notwithstanding any provision of this License Agreement to the contrary, and except as provided otherwise in subsection (c) below, Licensee shall not voluntarily assign or sub-license this License Agreement without the prior written approval of Licensor. Licensor shall not unreasonably withhold its approval. ———

———(b)——— If Licensee desires at any time to assign or sublicense the License Agreement, it shall first deliver to Licensor (i) a written request for approval, (ii) the name, address and most recent financial statements of the proposed assignee and (iii) the proposed instrument of assignment or sub-license, which shall include a written assumption by the assignee of all obligations of Licensee under this License Agreement arising from and after the effective date of assignment. Licensor shall approve or disapprove a proposed assignment within 30 days after Licensee delivers such items to Licensor. Any subleasee or assignee who desires to change or alter Licensee facilities in any way shall be required to comply with all applicable regulation including but not limited to the City code chapter 20.09.

———(c)——— Licensee may assign its interest to its parent company, any subsidiary or affiliate of it or its parent company or to any successor in interest or entity acquiring fifty one percent (51 %) or more of its stock or assets, subject to any financing entity's interest, if any, in this Agreement as set forth in Section 19 below. Licensor may assign this License Agreement upon written notice to Licensee, subject to the assignee assuming all of Licensor's obligations herein. Notwithstanding anything to the contrary contained in this Agreement, Licensee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Licensee

(i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

~~————(d)———— In the case of an assignment, sublicense or transfer (hereinafter collectively identified as "transfer") of this License or any schedule hereunder for which Licensor's consent is required and received, Licensor shall be entitled to 90% of any consideration Licensee receives from the transferee for the benefit of this License Agreement or such Schedule in excess of the fee under this License. The parties understand and agree that a bona fide sale by Licensee of business assets comprising this License and/or the Schedule, in addition to business assets other than this License and/or the Schedule, shall not constitute a transfer within the meaning of this Section 13 (d).~~

~~————14. Repairs. Licensee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Licensee, its employees, agents, contractors or subcontractors.~~

~~————15. Environmental.~~

~~————(a)———— Licensee shall indemnify, protect, defend and hold Licensor, its officers, agents, employees, and the Premises, harmless from and against any and all loss of rents/fees and/or damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorneys' and consultants' fees arising out of or involving any use, manufacture, disposal, transportation, spill, release, management, handling, treatment or generation of any Hazardous Substances, including but not limited to electromagnetic fields ("EMF"), electromagnetic energy ("EME"), and radio frequency ("RF") in, on or about the Premises by or for Licensee or under Licensee's control, or any storage tanks brought onto the Premises by or for Licensee or under Licensee's control. Licensee's obligations under this Section shall include, but not be limited to, the effects of any contamination or injury to personal property or the environment created or caused by Licensee, and the cost of investigation (including consultants' and reasonable attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this License or any Schedule herein. No termination, cancellation or release agreement entered into by Licensor and Licensee shall release Licensee from its obligations under this License with respect to Hazardous Substances (including EME, EMF and RF) or storage tanks, unless specifically so agreed by Licensor in writing at the time of such agreement this provision will survive the termination of the License.~~

~~————(b)———— Licensee's obligations under this Section are limited to any Hazardous Substances (including but not limited to EMF, EME, and RF) or storage tanks brought onto the Premises by or for Licensee, or generated by the use of the Premises by Licensee, or under the control of Licensee.~~

~~————(c)———— Licensor shall indemnify, protect, defend and hold Licensee, its officers, agents, employees and the Premises harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorneys' and consultants' fees arising out of or involving any use, manufacture, disposal, transportation, spill, release, management, handling, treatment or generation of any Hazardous Substances in, on or about the Premises by or for Licensor or under Licensor's control or by a third party with Licensor's consent, or any storage tanks brought onto the Premises by or for Licensor or under Licensor's control.~~

~~————16. Miscellaneous.~~

~~———— (a) ——— If any provision of this License is invalid or unenforceable with respect to any party, the remainder of this License or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this License shall be valid and enforceable to the fullest extent permitted by law.~~

~~———— (b) ——— This License shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. If at any time during the Term or any Renewal Term of this License, the interest of Licensor in this License or any Premises should be sold, leased, conveyed or otherwise transferred voluntarily or by operation of law, such sale, lease, conveyance, or transfer, shall not terminate this License, any Schedule or Licensee's rights under this License or any Schedule; and the successor in interest to Licensor shall be obligated to recognize the rights of Licensee from and after the date of such transfer.~~

~~———— (c) ——— Any notice or demand required to be given herein shall be made by certified or registered mail return receipt requested, or reliable overnight mail, or personal delivery to the address of the respective parties set forth below:~~

Licensor: ~~City of Santa Rosa, P. O. Box 1678, Santa Rosa, CA 95402~~

~~Attn:~~ _____

~~_____ and also~~

~~Attn: Public Works Director for schedules involving sites located in the public right of way utilizing street lights.~~

Licensee:

~~Licensor or Licensee may from time to time designate any other address for this purpose by written notice to the other party.~~

~~_____ (d) This License shall be governed and interpreted under the laws of the State of California.~~

~~_____ (e) Terms and conditions of this License which by their sense and context survive the termination, cancellation or expiration of this License will so survive.~~

~~_____ (f) This License, including any Schedules executed hereunder and Attachments I and II, constitutes the entire License and understanding between the parties, and supersedes all offers, negotiations and other licenses concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this License must be in writing and executed by both parties. To the extent of any conflict between this license and any schedule or attachment hereto, the terms of this license shall be controlling.~~

~~_____ **17. NONDISCRIMINATION**~~

~~_____ During the term of the this License, Licensee shall not discriminate on the grounds of race, religious creed, color, natural origin, ancestry, age, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation in the selection and retention of employees and subcontractors and the procurement of materials and equipment. Further, Licensee agrees to conform to the requirements of the Americans with Disabilities Act during the term of this license, if applicable.~~

~~IN WITNESS WHEREOF, the parties have executed this License as of the date first above written.~~

~~**LICENSOR**~~

~~**CITY OF Santa Rosa,**~~

~~A MUNICIPAL CORPORATION~~

~~By:_____~~

~~Name:_____~~

~~Title~~

~~**LICENSEE**~~

~~By:_____~~

~~Name:_____~~

~~Title:_____~~

ATTACHMENT I

Schedule (Site) # 000

SCHEDULE OF LICENSED PROPERTY

This Schedule number 000, effective _____, 200__, is governed by the terms and conditions of the Master Communications Site License Agreement entered into between _____, and the City of Santa Rosa on _____, 200__, and is incorporated herein by this reference. The Premises licensed to Licensee under this Schedule is generally located as depicted on the Master Site Map attached hereto as Exhibit "A" and incorporated herein by reference. The term of the License for the Premises identified in this Schedule is five (5) years subject to Licensee's option to extend the term of this License for five (5) Renewal Terms of five (5) years each as provided in Section 4 of the Master Communication Site License Agreement. The Fee for the Premises shall be _____ annually. Said Fee shall be adjusted annually (the "Adjustment Date"), commencing on July 1, 200_. Adjustments shall be based upon increases, if any, in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers (CPI-U) for San Francisco-Oakland-San Jose (1982-84 = 100), (the "Index"). The Index in publication for the month of April preceding each Adjustment Date shall be the "Comparison Index". The Index in publication for the month of April as it stands twelve months prior to the "Comparison Index" shall be the "Base Index". As of each Adjustment Date, the adjusted Fee payable during the ensuing twelve-month period shall be determined by increasing the initial or previous Fee by a percentage equal to the percentage increase, if any, in the Comparison Index over the Base Index. The percentage increase, if any, in the Index used to adjust the annual rent shall be rounded to the nearest tenth of a percent. If the Comparison Index for any Adjustment Date is equal to or less than the Comparison Index for the preceding Adjustment Date (or the Base Index, in the case of the first Adjustment Date), the adjusted Fee for the ensuing twelve-month period shall remain the amount of the Fee payable during the preceding twelve-month period. When the adjusted Fee payable as of each Adjustment Date is determined, Licensor shall promptly give Licensee written notice of such adjusted fee. The Fee as so adjusted from time to time shall be the "Base Fee".

Licensor warrants that: (i) Licensor owns the Premises in fee simple or has easement rights to use the Premises and has rights of access thereto; and, (ii) Licensor covenants and agrees with Licensee that upon Licensee paying the Fee and observing and performing all the terms, covenants and conditions on Licensee's part to be observed and performed, Licensee may peacefully and quietly enjoy the Premises. Licensor and Licensee warrant that each has full right to make and perform this Agreement.

Description of the Premises, facilities, and general location are attached hereto as Exhibit "B" and incorporated herein by reference. Conditions for access and use of the Premises for each Schedule are attached hereto as Exhibit "C" and incorporated herein by reference.

LICENSOR	LICENSEE
THE CITY OF SANTA ROSA	
A MUNICIPAL CORPORATION	

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

~~EXHIBIT A~~

~~MASTER SITE MAP~~

~~All that real property located in the City of Santa Rosa, County of Sonoma, State of California, as shown on map below.~~

EXHIBIT A-1

SCHEDULE OF SITES

Site No.	Site ID	Site Name	Location	Area Land Use	Proposed Structure	Approx. Height	Comments
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~~SCHEDULE (Site) # 000-00~~

~~EXHIBIT B~~

~~DESCRIPTION OF PREMISES~~

~~———— SCHEDULE (Site) # 000-00~~

~~EXHIBIT C~~

~~INDIVIDUAL SITE REQUIREMENTS AND CONDITIONS~~

ATTACHMENT II

FACILITY COLLOCATION REQUIREMENTS—

The provisions of this Attachment apply to the subject site located in public rights of way, or Public Utilities easements and are hereby incorporated by reference in each Schedule for each such site.

1. Licensee's use of the City's poles, including street light poles or other facilities, all hereinafter called "collocation facilities" shall be confined to supporting those cables, wires, and antennas together with associated appurtenances, all hereinafter called "equipment", which the City has given Licensee prior written permission to install, and said equipment shall be used only for mobile/wireless communications. Any and all of the equipment shall be located only on that portion of the collocation facilities as mutually determined by City and Licensee.

2. Whenever Licensee shall desire to occupy an existing City pole or replace any of the City's poles or other facilities with a pole or facility to be used by Licensee for mobile/wireless communications equipment, Licensee shall make written application for permission to do so, in the number of copies and in the form of Attachment I and shall provide any supplemental information from time to time reasonably prescribed by the City. If said application is approved, permission to install the equipment or replace the pole or other facility shall be granted by the City by one original of said application being signed by the City of Santa Rosa's _____ and the Public Works Director, as appropriate, or other employee designated by the City, in the place provided thereon for that purpose and returning said signed original to Licensee. The City shall not unreasonably deny, condition or withhold approval.

3. Upon receiving the signed original of the application, but not before, and upon payment of the sums required herein, Licensee shall have the right to install, maintain and use its equipment described in the application, provided, however, that before commencing the installation Licensee shall notify the City Public Works Department of the specific time it proposes to do the work sufficiently in advance so Public Works may arrange to have its representative present when the work is performed. Licensee shall not make substantial changes to the position of any equipment attached to any collocation facilities without the City's prior written approval, which shall not be unreasonably withheld.

Licensee shall not have the right to install additional equipment or replace Licensor's poles or facilities without first making application for permission to do so, together with paying the required fees.

4. (a) Licensee shall, at its own risk and expense, install and maintain its equipment (i) in a safe condition and in good repair; (ii) in a manner reasonably satisfactory to the City so as not to conflict or interfere with work on or use of the collocation facilities by the City or others in accordance herewith; and (iii) in conformity with such requirements and specifications as the City may from time to time prescribe and with all laws and regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to overhead and underground line construction, including without limit hereto, General Orders No. 95 and 128 of the Public Utilities Commission of the State of California and any supplements thereto and revisions thereof, and the National Electrical Safety Code.

~~———— (b) ——— Licensee shall furnish all work and materials required for its installations.~~

~~———— (c) ——— For installations involving street light facilities, Licensee shall be responsible for installing new suitable collocation facilities, removing the existing City facilities and returning them to the City. Licensee shall design, operate and maintain the collocation facilities with the exception of the luminaire and street light wiring which shall be the sole responsibility of City Public Works. Maintenance by Lessee shall include partial or complete replacement of the collocation facilities, with the exception of the street lighting facilities, as needed. Licensee shall have the right to control all portions of the collocation facilities designated for Licensee's mobile/wireless communications equipment, including the right to prohibit use of said portions other than as provided herein, subject to the terms hereof. City shall own the collocation facilities. City shall have the right to place and maintain luminaires and street light wiring in mutually acceptable locations on collocation facilities that replace City facilities used as street light poles, subject to General Order 95 and 128 of the California Public Utilities Commission. The city shall notify Licensee prior to performing work on luminaires and wiring to ensure safety. Plans and specifications for the collocation facilities shall be stamped by a California Registered Professional Engineer and submitted to Public Works for approval prior to beginning construction. Should Licensee desire to vacate the collocation facilities, licensee shall remove the collocation facilities and reinstall City's standard street light facilities all at Licensee's expense.~~

~~———— (d) ——— Licensee shall complete the installation of its equipment covered by each approved individual application in a timely manner. If Licensee should fail to complete the installation of its equipment within one hundred eighty (180) days after Licensee's receipt of all City required permits and approvals, the permission granted by the City to place equipment or replace poles shall automatically be revoked and Licensee shall not have the right to place equipment without first reapplying for and receiving permission to do so, all as prescribed hereinabove for initial application.~~

~~———— 5. ——— In order to keep the number of poles on public thoroughfares and on City property to a practical minimum, Licensee shall not erect any pole of its own in any right of way or on any City property where the City is willing to provide a pole adequate to accommodate Licensee's equipment.~~

~~———— 6. ——— Nothing in this License shall create any obligation on the City to grant permission to use any of its poles.~~

~~———— 7. ——— Licensee shall provide a 24 hour emergency repair service throughout the term of this License. Upon approval of first installation, the name of the person or persons responsible for repair and service their telephone numbers must be provided before construction may commence.~~

~~———— 8. ——— The City reserves to itself the right to maintain the collocation facilities and to operate it in such a manner as will best enable the City to fulfill its own service requirements and the City shall not be liable to Licensee for any interruptions to Licensee's service or for any interference with the operation of Licensee's equipment arising in any manner from the use of the collocation facility by the City, except in instances of gross negligence or willful misconduct.~~

~~———— 9. ——— (a) ——— For installations involving Licensee-replaced street lighting facilities, Licensee shall at any time, at its own risk and expense, upon reasonable notice from the City, relocate the collocation facilities to another mutually acceptable location as may be required by the City due to public necessity.~~

~~_____ (b) _____ For other joint facilities, Licensee shall at any time at its own risk and expense, upon reasonable notice from the City, relocate, replace or renew its equipment or transfer it to other poles or perform any other work in connection with said equipment as may be required by the City in the City's sole discretion; provided, however, that in cases of an emergency as may be determined by the City, the City may, at Licensee's sole risk and expense, relocate, replace or renew equipment, or transfer it to other poles or perform any other work in connection with said equipment that may be required in the maintenance, replacement, removal or relocation of said poles and the facilities thereon or which may be placed thereon, or for the service needs of the City, and Licensee, on demand, shall reimburse the City for the entire expense thereby incurred. The City shall endeavor to notify Licensee of such removal as soon as is reasonably practical.~~

~~_____ (c) _____ The City shall allow Licensee to participate in planning and construction of all collocation facilities relocations and reconfiguration and reasonably cooperate with Licensee to ensure that Licensee's communications operations are not disrupted. In the event Licensee's communications operations are likely to be disrupted for over one (1) hour, the City shall allow Licensee to set up a temporary facility at a mutually agreeable location.~~

~~_____ 10. _____ Licensee may at any time remove all or parts of its equipment from the collocation facilities and in each such case, it shall immediately give the City written notice of such removals in the number of copies and in the form from time to time prescribed by the City. Removal of such equipment shall constitute a termination of Licensee's right to use such collocation facilities for the equipment removed.~~

~~_____ 11. _____ Licensee shall exercise special precautions to avoid causing damage to the facilities of the City, and any third party equipment attached thereto, and Licensee shall be fully responsible for any and all loss from damage, including damages for loss of use, caused by negligent acts or omissions of Licensee. Licensee shall make an immediate report of the occurrence of any such damage to the City and shall, on demand, reimburse the City for the entire expense incurred in making repairs.~~

~~_____ 12. _____ The City shall have the right to inspect the installation of Licensee's equipment, upon and in the vicinity of the collocation facilities and to make inspections as often as construction may warrant or Licensee's plant as the City deems necessary. Inspections, whether made or not, shall not relieve Licensee of any responsibility, obligation or liability assumed under this License.~~

~~_____ 13. _____ In furtherance of the purposes of law, rules and regulations relating to security, espionage, sabotage and subversive activities, Licensee agrees as follows:~~

~~_____ (a) _____ To provide suitable identification to each employee, agent and/or contractor of Licensee who will have occasion to perform work on or about the collocation facilities.~~

~~_____ (b) _____ To cause each such employee, agent and contractor to observe faithfully and to comply strictly with all reasonable general security rules which the City reasonably may find necessary or advisable to implement on the Premises.~~

~~_____ (c) _____ Not to assign any work on, about or within the collocation facility to any such employee, agent or contractor who in the reasonable judgment of the City, Licensee or other competent authority is a security risk.~~

~~————— (d) ——— Not to permit any employee, agent or contractor to open or enter any City owned vault, manhole, pullbox or other substructures at any time.~~

~~————— 14. ——— In addition to any other rights of the City hereunder or at law or equity, if Licensee should default in the removal of its equipment from the collocation facility within the time allowed for removal, or should default in the performance of any other work which Lessee is obligated to do under this license, the City may, upon reasonable advance written notice to Licensee, elect to do the work at Licensee's sole risk and expense, and Licensee, on demand, shall reimburse the City for the entire expense incurred.~~

~~————— 15. ——— Nothing herein contained shall be construed as affecting any rights or privileges conferred by the City, by contract or otherwise, to others not parties to this License to use the collocation facilities covered by this Attachment consistent with the terms hereafter; and the City shall have the right to confer, continue or extend such rights or privileges. The privileges herein granted to Licensee shall at all times be subject to any such contracts and arrangements.~~

~~————— 16. ——— Licensee agrees that no contract work done for it by an independent contractor shall be done by any person, firm or corporation, without requiring insurance from said independent contractor as required of Licensee and that the City shall be included in the various insurance policies required therein as an additional insured as specified by the City.~~

~~————— 17. ——— Nothing herein is intended to be either an exercise of Licensee's rights under Section 7901 of the California Public Utilities Code or a derogation of those rights.~~