

**MASTER LICENSE AGREEMENT FOR
SMALL WIRELESS FACILITIES ON CITY FACILITIES**

This **MASTER LICENSE AGREEMENT FOR SMALL WIRELESS FACILITIES ON CITY FACILITIES** hereinafter (“License”) is entered into by and between the City of Bellevue, a municipal corporation of the state of Washington (the “City”), and _____ (the “Company”) (each a “party” and collectively the “parties”).

RECITALS

WHEREAS, the City owns and controls certain City Facilities (defined below) in public rights of way (ROW), and

WHEREAS, the Company is engaged in the operation of communications technology and desires to license from the City, and the City is willing to license the City Facilities (defined below) as authorized in Section 6.06 of the Bellevue City Code (BCC); and

WHEREAS, this License applies only to the installation of Small Wireless Facilities (defined below) on and to City Facilities which at a minimum comply with the requirements of Title 6 of the BCC subject to the terms and conditions of this License.

The parties agree as follows:

1. **Definitions**

- 1.1. “City Facility(ies)” has the same meaning as set forth in BCC 6.02.020, as adopted or hereinafter amended.
- 1.2. “City Poles” has the same meaning as set forth in BCC 6.02.020, as adopted or hereinafter amended.
- 1.3. “Design Standards” has the same meaning as set forth in BCC Chapter 6.08, as adopted or hereinafter amended.
- 1.4. “Laws” means any and all applicable statutes, codes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, court orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this License as such laws may be amended from time to time.
- 1.5. “Make-Ready Work” means the work required on or in a City Facility to create space for the SWF, which may include but is not limited to replacing and/or reinforcing the existing City Facility to accommodate SWF, or rearrangement or transfer of existing SWF and the facilities of other entities, including any necessary fiber connections and electrical power, as further described in Section 12.

- 1.6. “Rent Commencement Date” is the day that both the Company and the City fully execute a Site License Addendum.
- 1.7. “RUA” refers to a Right-of-Way Use Agreement in effect as approved by the City Council.
- 1.8. “Site License Addendum” means the document in the form substantially similar to Exhibit A that, when fully executed by both parties, is subject and subordinate to the provisions of this License and authorizes the Company to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace specific SWF on specific City Poles together with City Facilities (if any) as identified in the specific Site License Addendum subject to the License. Such “Site License Addendum” is also referred to as “Addendum” in Title 6 of the BCC. See BCC 6.02.020.
- 1.9. “Small Wireless Facilities” or “SWF” has the same meaning as set forth in BCC 6.02.020, as adopted or hereinafter amended.

2. City Facilities

- 2.1. The City represents as follows:
 - 2.1.1. It owns, or will own, the City Poles and all appurtenances as of the date that the respective Site License Addendum is fully executed and delivered by the City;
 - 2.1.2. It is fully authorized to enter into this License; and
 - 2.1.3. The individual executing this License is authorized to bind the City to the provisions hereof.
- 2.2. The City hereby licenses to Company a portion of individual City Poles together with other City Facilities (if any) as identified in each fully executed Site License Addendum, incorporated herein by reference, together with non-exclusive access rights to those City Poles together with other City Facilities (if any), sufficient for Company’s use of those City Poles subject to the applicable Site License Addendum.
- 2.3. To the extent permitted under applicable law, the City’s municipal functions or proprietary interests are not subordinated in any way to the Company’s interest under this License or Site License Addendum. If the City determines that the usage of City Facilities is not feasible or not in the best interest of the City due to the City’s municipal obligations or proprietary interests, the City in its sole discretion and decision being final may deny the Licensee’s request to use the City Facilities proposed in a Site License Addendum submitted pursuant to Section 2.5 below.
- 2.4. Prior to any use of the City Facilities by Company, Company must satisfy the requirements set forth in Section 24.1 and both parties must have executed a Site License Addendum in the form substantially similar to Exhibit A. Upon review by the City of materials submitted for a Site License Addendum, the City may deny the installation SWF or require additional

terms and/or conditions to determine whether the proposed SWF will comport with this License, the Design Standards, or to address health, safety, or other aesthetic concerns.

- 2.5. Each City Facility is offered on an “as is” basis, in its present condition.
- 2.6. The authority granted by this License is a limited, non-exclusive authorization to occupy and use designated space on certain City Facilities as identified and approved by a Site License Addendum. All Site License Addendums are subject and subordinate to the terms and conditions of this License. Such use must be in compliance with the Bellevue City Code and all Laws.
- 2.7. No reference to City Facilities shall be deemed to be a representation or guarantee by the City that its interests or other rights to control the use of such property is sufficient to permit its use for the purposes described herein, and Company shall be deemed to gain only those rights to use as are properly held by the City and as City may have the undisputed right and power to give. This License is made subject to all easements, restrictions, conditions, covenants, encumbrances, and claims of title which may affect said City Facilities, and it is understood that Company at its own cost and expense, shall obtain such other permissions, as may be necessary, consistent with any other existing rights.
- 2.8. Nothing contained within this License shall be construed to grant or convey any right, title, or interest in the City Facilities to the Company other than for the purpose of placing and operating the SWF. Further, nothing in this License shall be interpreted to create or vest in Company any easement or other ownership or property interest or other right to any City Facilities, property, or public ROW. This License shall not constitute an assignment of any City’s rights to City Facilities, property, or public ROW.
- 2.9. If any provision of this License or the applicable Site License Addendum conflicts or inconsistencies with the terms, conditions or requirements of the Design Standards, then the stricter term shall have precedence.

3. Allowed Use

- 3.1. Company may attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate, and replace, at Company’s sole responsibility and expense, the SWF subject to this License, the applicable Site License Addendum, and compliance with the Design Standards. Company shall not use the City Facilities for any other purpose whatsoever without the prior written consent of the City.
- 3.2. Licensee is solely responsible for procuring electricity for its SWF and directly paying its chosen electricity provider for such services. The City is not responsible for managing Licensee’s electricity needs, payments, or for supplying electricity to the SWF. Where possible when deploying, Licensee shall procure unmetered electricity services.
- 3.3. Company represents, warrants and covenants that SWF installed pursuant to this License will be utilized solely for providing data/telecommunications services (per Bellevue City

Code including 6.02.020 and 6.04.010), and Company is not authorized to and shall not use its SWF to offer or provide any other services not specified herein without prior written permission or agreement from the City.

- 3.4. Company, in the performance and exercise of its rights and obligations under this License, shall not interfere in any manner with the existence and operation of any and all existing and future public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities which are pre-existing at that location, electroliers, cable television, location monitoring services, public safety and other then existing telecommunications equipment, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this License.
- 3.5. In no event shall Company install, operate, modify, maintain or remove any SWF on any City Facilities except in compliance with the terms of this License and the applicable Site License Addendum. Company's violation of the provisions of this Section beyond applicable notice and cure periods is an event of default and grounds for termination in accordance with Section 26 of this License or the Site License Addendum.

4. **Effective Date.**

All references in this License to the "Effective Date", "the date hereof", or similar references shall refer to the date that the License was fully executed by both Parties.

5. **Term**

The term of this License shall commence on the Effective Date and shall expire Ten (10) years from Effective Date (the "Term"). Following the Term, this License shall be automatically renewed for successive one (1) year terms ("Renewal Term"), unless either party gives the other party written notice of its intent not to renew this License at least six (6) months prior to the expiration of the Renewal Term. All terms and conditions of this License shall remain in full force and effect for any subsequent Renewal Term. The Site License Addendums shall not extend this License. All Site License Addendums terminate with the expiration or termination of this License.

6. **Compensation**

- 6.1 **One-Time Fees.** The City activities described in Sections 6.1.1 and 6.1.2 below are "One-Time Fees". The City shall track its time spent reviewing the Company submittals for Site License Addendums and associated permit activities described in Subsections 6.1.1 and 6.1.2 below, and charge its hourly rate for each hour spent. The hourly rate for One-Time Fees shall be assessed and administered consistent with standard City practice and fee schedule(s) as currently adopted and subsequently amended or replaced, in a manner consistent with applicable law.

- 6.1.1. License Fee. Company shall be responsible for paying all costs associated with City review and processing of this License and Site License Addendums (or any

amendment thereto) and/or the other administrative review, consultation and inspection described in this License, including review of Company submittals (the "License Fees"). Company shall have the right to amend the Site License Addendum to correct errors or provide additional information.

- 6.1.2. Permits Fees: Company shall be responsible for paying all costs associated with City review, processing and inspection as part of all permit applications filed for the installation, modification, maintenance and removal of SWF.

6.2 Recurring Fee:

- 6.2.1. Rent. Company acknowledges that the FCC has adopted a Declaratory Ruling (FCC 18-133) that relates to the rent but that Declaratory Ruling is currently the subject of litigation and is not yet in effect. Paragraphs 6.2.2 and 6.2.3 govern the payment of rent and how it may be impacted by the coming into effect of the Declaratory Ruling and the resolution of related litigation during the Term and any Renewal Terms.
- 6.2.2. Upon the effective date of the FCC Declaratory Ruling (FCC 18-133), and during any period in which the Alternate Rent provisions in paragraph 6.2.3 are not applicable, the Company shall pay Rent as described in this paragraph. For Site License Addendums executed by both parties in 2018 and 2019, Company shall pay to the City the base amount of two hundred and seventy dollars (\$270.00) per calendar year for each City Pole covered by a Site License Addendum (i.e. Site License Addendums may include more than one City Pole), and such base amount shall be increased on January 1 of each calendar year after 2019 by the Average CPI Increase, defined below (the "Rent"). For Site License Addendums executed by both parties in 2020 and subsequent years, the base amount of rent shall commence at the Rent, as adjusted annually by the Average CPI Increase, to reflect the then-current rate. Rent for the first calendar year of a Site License Addendum for each individual City Pole shall be pro-rated based on the number of days covered from the Rent Commencement Date to December 31. The first payment of Rent shall be paid on the Rent Commencement Date. Every payment of Rent, after the first payment, shall be due and payable in advance on January 1 of each calendar year throughout the term of each such Site License Addendum. There shall be no refunds of Rent paid due to the termination or expiration of the License for any reason.
- 6.2.3. Alternate Rent. Until the FCC Declaratory Ruling (FCC 18-133) becomes effective, or automatically in the event the relevant provisions of the FCC Declaratory Ruling cease to be effective, (for example, because they are stayed after having gone into effect, or they are vacated or invalidated and have not been replaced by the FCC with an alternative provision setting a specific amount as Rent), the Company shall pay Alternate Rent as described in this paragraph following written notice from the City. For Site License Addendums executed by the parties in 2018 and 2019, Company shall pay to the City alternate rent in the

base amount of one thousand five hundred dollars (\$1,500.00) per calendar year for each City Pole covered by a Site License Addendum, and such base amount shall be increased on January 1 of each calendar year by the Average CPI Increase (“Alternate Rent”). For Site License Addendums executed by both parties in 2020 and subsequent years, the base amount of rent shall commence at the Alternate Rent, as adjusted annually by the Average CPI Increase, to reflect the then-current rate. Alternate Rent for the first calendar year of a Site License Addendum for each individual City Pole shall be pro-rated based on the number of days covered from the Rent Commencement Date to December 31. The first payment of Alternate Rent shall be paid on the Rent Commencement Date. Every payment of Alternate Rent, after the first payment, shall be due and payable in advance on January 1 of each calendar year throughout the term of each such Site License Addendum. There shall be no refunds of Alternate Rent paid due to the termination or expiration of the License for any reason.

- 6.2.4. The City agrees that, irrespective of whether the relevant provisions of the FCC Declaratory Ruling (FCC 18-133) go into effect and then cease to be effective, no Alternate Rent shall be due for any periods during which the relevant provisions of the FCC Declaratory Ruling were in effect. However, if Company has paid Rent pursuant to the provisions of Section 6.2.2 above for a calendar year, and the relevant provisions of the FCC Declaratory Ruling subsequently cease to be effective during the same calendar year, the Company shall pay the difference between the Rent and the Alternate Rent for the period from the date the relevant provisions of the FCC Declaratory Ruling ceased to be effective, until December 31 of that year (“Rent Adjustment”). Such Rent Adjustment shall be paid to City on January 1 of the following year.
- 6.2.5. “Average CPI Increase” means the rolling five (5) year average annual percentage increase in the Consumer Price Index for All Urban Consumers (Seattle-Tacoma-Bellevue, WA) (CPI-U) preceding the January 1 when the increase is being applied to the Rent and the Alternate Rent, calculated by adding the annual percentage increases reported by the U.S. Bureau of Labor Statistics as of October of the relevant years, dividing by five, and rounding to the nearest tenth of a percent. For example, the Average CPI Increase calculated for adjusting Rent/Alternate Rent on January 1, 2019 is 2.4% (based on the average of the following annual increases: October 2018 at 3.1%; October 2017 at 3.0%; October 2016 at 2.4%; October 2015 at 1.2%; and October 2014 at 2.1%, yielding 2.36%).
- 6.2.6. Rent or Alternate Rent shall be delivered or mailed to the Bellevue City Treasurer located at: PO Box 90012, Bellevue, WA 98009-9012. Rent payment must reference the City Pole Identifier (pole number and GIS location) Company’s site ID# and Site License Addendum Number.
- 6.2.7. Receipt of any Rent or Alternate Rent by the City, with knowledge of any breach of this License by Company, or of any default on the part of Company in the observance or performance of any of the conditions or covenants of this License,

shall not be deemed a waiver of any provision of this License.

- 6.2.8. If any sums payable to City under this License are not received by the City on or before the tenth (10th) day following its due date, Company agrees to pay a late fee of five percent (5%) of the unpaid Rent or Alternate Rent for all Site License Addendums for which payment was not received. Where a check is returned to the City by a bank or other financial institution with the indication that the check cannot be honored, there shall be a fee assessed to Company based on the current statutory maximum allowed. City and Company agree that such charges represent a fair and reasonable estimate of the costs incurred by City by reason of late payments and uncollectible checks, and the failure by Company to pay any such charges by no later than thirty (30) days after Company's receipt of written demand therefore by City shall be a default under this License. City's acceptance of less than the full amount of any payment due from Company shall not be deemed an accord and satisfaction, waiver, or compromise of such payment unless specifically agreed to in writing by City.

7. Taxes, Assessments & Utilities

In addition to the Rent, Company shall pay when due directly to the applicable authority all applicable taxes arising with respect to Company's activities and business under this License including, without limitation, paying annually in advance to the City the utility occupation tax (BCC 4.10), and the applicable leasehold excise tax (the leasehold excise tax rate, as of 1/1/2018, is 12.84%), unless the Company is centrally assessed by the State of Washington and provides documentation, that is acceptable to the City, of its central assessment, which evidence shall then be attached to this License as Exhibit B. If Company is centrally assessed by the State of Washington and Company provides satisfactory evidence of its central assessment to City, then for any and all periods that Company reports the leased/licenses property as operating property, as defined in RCW 84.12.200, Company will not be required to pay leasehold excise tax to City. Should the City collect from Company and pay to the Department of Revenue leasehold excise tax which is subsequently determined to be a duplicate payment or over-payment of tax by Company, Company shall not have any claim against the City, but shall look directly to the Department of Revenue for reimbursement.

8. Permits

- 8.1. Prior to performing any construction, maintenance or repair work on the City Facilities, the Company shall secure all necessary federal (including any FCC or FAA requirements), state and local licenses, permits and approvals, including but not limited to, a RUA, land use permits/approvals as required, ROW Use permits, traffic control plans, proof of agency and permits for the construction and operation of the SWF or installation of a replacement pole (collectively referred to hereinafter as "Government Approvals") at its sole expense. No Government Approval shall be considered a substitute for a City approval required by this License, and no approval granted under this License shall be considered a Government Approval.
- 8.2. Company must obtain Governmental Approvals for each Site License Addendum prior to

the commencement of any build-out of the SWF and within twelve (12) months after the effective date of the Site License Addendum. The Site License Addendum shall automatically terminate on the expiration of such twelve (12) month period if the necessary Government Approvals are not obtained; provided, however that such twelve (12) month period may be extended upon approval by the City, which approval shall not be unreasonably withheld, delayed or conditioned.

9. Non-Interference with City Facilities

- 9.1. Outside the use of the City Facilities for City's primary service obligations and historic uses, and as required for public health and safety, the City shall not use the City Facilities, or authorize any third party to use the City Facilities, that are subject to any Site License Addendum in any way which materially interferes with the operations of Company authorized by such Site License Addendum. Such interference shall be terminated within seventy-two (72) hours of written notice. Notwithstanding the foregoing nothing in this Section shall be construed to imply that Company is seeking or entitled to a license with the City which will interfere with the primary service obligations and historical or planned uses of the City Facilities by the City.
- 9.2. To the extent any SWF interferes or disturbs equipment owned by any third party, Company shall notify such third party directly and shall make good faith efforts to resolve the matter with such third party prior to involving the City.

10. Interference

- 10.1. Company shall not place SWF in any manner or in any location which would cause degradation in the operation or use of communications systems, data/telemetry, or street lighting at the City Facilities which serve the City or other pre-existing users, including but not limited to Puget Sound Emergency Response Network (PSERN) or its successor entity. This would include but not be limited to impacting the received or transmitted signal strength or patterns of any systems at the site serving the needs of the City. If such interference has not been corrected within thirty (30) days of Company's receipt of the initial notice from City, Company or City may terminate the applicable Site License Addendum, or terminate the Site License Addendum to the extent applicable to the interfering SWF, upon thirty (30) days' notice to the other party and neither party shall have any further obligations or responsibilities under the Site License Addendum. Notwithstanding anything else in this Section, if at any time the operation of SWF interferes with the reception or transmission of public safety communications, Company shall immediately cease operation of the interfering SWF until such time as the interference is corrected.
- 10.2. In the event of an emergency or to protect the public health or safety, prior to the City accessing or performing any work on a City Facility on which Company has installed SWF, City may require Company to deactivate such SWF if any of City's employees or agents must move closer to the SWF than the Federal Communication Commission ("FCC") recommended minimum distance. In such case, City will contact Company at

_____ to request immediate deactivation. Company's SWF shall include an emergency override switch for use by the City that would turn off the system in case of a public safety emergency that presents the threat of immediate and irreparable harm, such that notification to Licensee is not feasible or practical. Once the work has been completed and worker(s) have departed the exposure area, the party who accomplished the power-down shall cause power to be restored and inform the Company as soon as reasonably possible that power has been restored.

11. **Compliance with Laws; Hazardous Materials**

- 11.1. Company shall, at all times and at its sole responsibility and expense, comply with all applicable Laws relating to the installation, operation, maintenance, repair and/or removal of the SWF, including FCC regulations for compliance with limits on human exposure to radio frequency (RF) emissions. Company shall defend, indemnify and hold harmless the City and its employees and agents against any claims arising from any violations by Company, its agents or employees, of any such Laws. The indemnity provision of this paragraph shall survive the termination or expiration of this License.
- 11.2. RF Exposure Compliance. Company's SWFs must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate exposure to radio frequency (RF) emissions. Company or its representative shall include in any application for a Site License Addendum certification that the SWF(s) will comply with applicable RF emissions limits, and at the City's written request, must conduct on-site post-installation RF emissions testing in accordance with applicable rules, and certify actual compliance with the applicable RF emissions limits for general population/uncontrolled RF exposure, and provide a copy of such post-installation compliance report to City.
- 11.3. Company shall not use the City Facilities for any illegal purposes nor violate any applicable law, nor cause or permit any nuisance, nor trespass, nor do any act on the City Facilities which would increase the rate of insurance thereon; nor deface, damage or overload the structural components of any structures City Facilities.
- 11.4. Company shall not cause or permit any Hazardous Materials (defined below) to be brought upon, stored, used, released or disposed of on the City Facilities that would cause the City Facilities to be in violation of any applicable Laws or which would require remediation or correction to the City Facilities.
- 11.5. "Hazardous Materials" means any dangerous, toxic or harmful substance, material or waste that is or becomes regulated by any local government authority, the State of Washington, or the United States Government due to its potential harm to the health, safety or welfare of humans or the environment. Company shall be responsible for all spills or other releases of any Hazardous Materials that may occur on the City Facilities arising out of Company's activities or caused by the Company, its employees, contractors, subcontractors, or invitees; and, at Company's cost, shall promptly conduct any investigation and remediation as required by any applicable Laws, at Company's sole cost.

- 11.6. Company shall indemnify, defend and hold harmless the City from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including without limitation, diminution in the value of the City Facilities, damages for loss or restriction of use of the City Facilities, and sums paid in settlement of claims, reasonable attorneys' fees, consultant and expert fees, investigation, clean-up, remediation or other costs incurred or suffered by the City, arising out of any use, storage, release or disposal of Hazardous Materials by Company, its employees, contractors, subcontractors, or invitees. This indemnification shall survive the termination or expiration of this License.

12. Make Ready

- 12.1. Company shall bear all costs for all Make-Ready work, including installing SWF, replacing or retrofitting existing City Facilities. Such costs shall include, but are not limited to, costs for dismantling or removal of the existing City Poles and appurtenances in compliance with the Bellevue City Code, removal and replacement of foundation, replacement streetlight, replacement of junction boxes to non-skid boxes, additional conduit if needed, and geotechnical analysis (as appropriate for soil and foundation stability, etc.), replacement of hardscape, vegetation or other existing urban design features impacted by the work. Any such replacement shall be subject to prior approval by the City and approved as part of the Site License Addendum. If Company or a Person other than City or Company acting on Company's behalf would have to rearrange or adjust any of its facilities in order to accommodate SWF, Company shall be responsible, at Company's sole expense, to coordinate such activity. Company shall be responsible for directly paying such other Person for its charges for the same.
- 12.2. The SWF shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with NESC, and with City's regulatory rules and engineering and plan standards. If Company is requested by another Person, in comparable circumstances, to relocate or adjust any SWF to accommodate that Person's facilities, subject to City's written approval of such relocation, Company shall reasonably cooperate with such request.
- 12.3. Within twenty (20) business days of completing Make Ready, Company shall notify City of such completion.
- 12.4. Upon inspection and acceptance by the City, the Company agrees to assign ownership of any replacement pole (together with the foundation and related access conduits, handholds, etc) to the City, and prepare any ancillary documentation or agreement. City may require Company to deliver written evidence (reasonably acceptable to the City) of the deed of dedication of the replacement pole (together with the foundation and related access conduits, handholds, etc), along with the assignment of any warranties applicable to the replacement pole, including, without limitation, manufacturer's, installation, and other service provider warranties.
- 12.5. Where City approves the installation of a replacement pole, the pre-existing pole and

foundation must be removed, to the extent required by the City, by Company within ten (10) business days after the installation of the replacement pole and restored to a condition equal to or better than existed prior to such removal.

13. Company Maintenance

- 13.1. Company shall, at its sole cost and expense and to the reasonable satisfaction of the City:
 - (a) remove, repair or replace any of its SWF that is damaged or becomes detached; and/or
 - (b) repair any damage to the ROW, City Facilities, or other property, whether public or private, caused by Company, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of SWF. Company shall complete such removal, repair, or replacement within thirty (30) days of the City's written notice.

- 13.2. Company shall perform any SWF normal/regular maintenance consistent with the terms of its programmatic ROW Use Permit during such hours that will minimally interfere with the City's primary use of the City Facilities; provided further that Company shall be permitted access to the SWF without being required to give notice in the event of an emergency, provided that the Company shall submit to the City, no later than fifteen (15) days after the emergency, a written report describing the emergency and the reason(s) why immediate access to the City Facilities was required. In the event of (i) a public emergency, such as, but not limited to, road failure, evacuation, natural disasters, hazardous substance spills, fatal accidents, and/or (ii) during City use at the City Facilities, Company's access may, at the reasonable discretion of the City, be temporarily limited or restricted; provided, that any temporary limitation or restriction in Company's access shall be restored as soon as the circumstances shall allow, as determined by the City, in its sole discretion.
 - 13.2.1. Company shall designate a Network Operations Center (NOC), and a secondary contact person to serve as the primary point of contact for the City with regard to SWF maintenance and access. The contact information for such contact is attached hereto as Exhibit C. Company may designate a NOC or secondary contact person by providing notice to the City pursuant to Section 31.4. Company shall communicate and provide notice to the City staff designated on Exhibit C for all maintenance and access requirements.
 - 13.2.2. Company shall meet with the City, and other telecommunications operators if necessary, upon request, to schedule and coordinate construction and maintenance of the City Facilities, site equipment and use of the ROW.
 - 13.2.3. Outside the City's regular business hours, Company shall be required to contact the on-call staff detailed on Exhibit C to make arrangements for City staff to provide access. Company shall be responsible for any reasonable costs incurred for the on-call time to respond to the after-hours access. Payment is due sixty (60) days after receipt of invoice.

- 13.3. If Company does not remove, repair, replace, or otherwise remediate such damage to its SWF as required in this Section 13, the City shall have the option to perform or cause to

be performed such removal, repair, or replacement on behalf of Company and shall charge Company for the time and actual and reasonable costs incurred by the City. If such damage causes a public health or safety emergency, as reasonably determined by the City, the City may immediately and without notice perform reasonable and necessary repair or removal work on behalf of Company and will notify Company as soon as practicable; provided, such repair shall not include any technical work on the SWF.

- 13.4. Upon the receipt of a demand for payment by the City pursuant to this Section 13, Company shall within thirty (30) days of such receipt reimburse the City for such costs.
- 13.5. The terms of this Section 13 shall survive the expiration, completion or earlier termination of this License.

14. Repairs by City; Increased Maintenance Costs; Emergency Situations

- 14.1. Notwithstanding Sections 12 and 13, City reserves the right to make alterations, repairs, additions, removals and improvements to all or any part of the City Facilities for any operational purpose. City shall make a good faith effort to give Company twenty-four (24) hours prior notice of any City work if such work will impair the operation of the SWF. Such notice shall be given to the Company pursuant to Section 31.5. Further, City shall allow a representative of Company to observe the work and City shall take reasonable steps not to disturb Company's normal use of the SWF. Company's use of the City Facilities may not impede or delay City's authority and ability to make any changes to the City Facilities necessary to maintain street lighting or to continue with the historic purpose of the City Facilities.
- 14.2. City shall have no duty to Company to make any repairs or improvements to the City Facilities. City is not responsible for any third-party damage to SWF.
- 14.3. The City retains the right and privilege to take proper emergency measures, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If the City becomes aware of an emergency before the Company, then the City shall notify Company by telephone or e-mail promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Company's operations.
- 14.4. The City will not be liable in any manner, and Company hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the City's access to the SWF, including the removal of SWF from a City Facility in an emergency, except damage resulting directly and exclusively from the gross negligence or willful misconduct of the City or its agents and not contributed to by the acts, omissions, or negligence of Company, its agents, or contractors.
- 14.5. Company will turn antennas and other SWF producing radio frequency off, or authorize the City to do so, when the City performs any work on the City Facility. The City will endeavor to provide Company 48-hours advanced oral notice to Company of maintenance

and installation work with estimated outage time and required power-down of the SWF. If the Company fails to turn off the SWF producing radio frequency, the City may take reasonable steps to turn them off.

- 14.6. City shall not be liable for any damages to any person or property, nor shall Company be relieved from any of its obligations under this License, as a direct or indirect result of temporary interruption in the electrical power provided to the City Facilities. Under no circumstances shall City be liable for indirect, special, incidental, or consequential damages resulting from such an interruption.
- 14.7. If City while making any repairs or improvements to City Facilities as described by this section, or conducting such emergency work as described by this Section, should incur any extra costs derived from the presence of SWF, then Company shall reimburse City for all reasonable costs associated therewith within thirty (30) days of receipt of an invoice detailing costs.

15. Sub-licensing, Subleasing & Assignment by Company

- 15.1. The rights and privileges granted to Company as provided in this License may not be assigned or transferred to any other entity without written approval of the City, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that upon written notice to the City, Company may assign or transfer the rights and privileges granted herein to any parent or subsidiary of Company, to an entity with or into which Company may merge or consolidate, to an entity which controls, is controlled by, or is under common control with such entity or to any purchaser of all or substantially all of the assets of Company in the market defined by the FCC in which the City Facilities are located without the requirement for City approval, so long as the successor provides written notice to the City that it is then fully liable to the City for compliance with all terms and conditions of this License. The Company shall reimburse the City for all reasonable costs and expenses reasonably incurred by the City in considering a request to transfer or assign this License.
- 15.2. Company may assign this License in whole or in part for collateral security purposes. The Company shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent (which City may withhold in its discretion) shall not be required unless and until the secured party elects to realize upon the collateral. In no event shall City be required to obtain lender consent or to notify any lender to access the equipment or exercise any of its remedies in event of default.
- 15.3. Company need not own all components of SWF subject to this License, and may permit its customers to maintain ownership of disparate SWF components. However, (1) all SWF must be wholly under the control and management of Company; and Company shall be liable for all acts or omissions, and all harms associated with the SWF whether the same are its acts or omissions, or the acts or omissions of the owner of the SWF; (2) Company acknowledges and agrees that no rights of ownership in SWF by Company's customers shall permit any such customer to enter upon, or use any portion of the City's Facilities or

the SWF, in any other manner or at any other place, including to add to, or modify or install SWF, which shall be Company's sole responsibility; and (3) in no event shall the City be required to obtain the consent or approval, or to provide any notice to any person or entity other than the Company related to this License.

16. Sub-Licensing & Assignment by City

- 16.1. Should the City sell, lease, license, transfer, or otherwise convey all or any part of the City Facilities that is the subject of this License to any transferee other than Company, such transfer shall be subject to this License.
- 16.2. The City retains the right to license or enter into any type of agreement for any portion of the City Facilities for any reason, including but not limited to, co-locating wireless facilities, if it will not unreasonably interfere with the Company's use of the City Poles.
- 16.3. The City may transfer and assign its rights and obligations hereunder and no further liability or obligation shall thereafter accrue against the City hereunder, provided that the assignee or transferee assumes, in writing, all of the City's obligations under this License, which shall remain in full force and effect.

17. Improvements, Fixtures and Personal Property; Inspection by City

- 17.1. The Parties agree that, notwithstanding any provision of statutory or common law, the SWF shall not become affixed to or a part of the City Facilities or any structure on the City Facilities, but shall remain the exclusive property of the Company.
- 17.2. Prior to installing any new SWF or other improvements on the City Facilities after the Effective Date or the effective date of any Site License Addenda, Company shall submit to the City for approval such information regarding the proposed work as the City may request, including, without limitation, plans and specifications of the planned modifications and Company's proposed schedule, for the City's written approval, these plans shall include the results of the RF emissions tests consistent with the requirements of this License.
- 17.3. Prior to commencing any construction activities on the City Facilities, Company shall secure approval of the modifications and work schedule by the City. During any construction activities by Company on the City Facilities, representatives of the City shall have the right to inspect any and all improvements and to require reasonable revisions to the Company's improvements to ensure that the respective uses of the City Facilities are compatible.
- 17.4. Any revisions to equipment after initial installation shall require an amendment to the Site License Addendum and payment of an Administrative Fee based on the hourly rates then in effect pursuant to the adopted fee schedule. Payment of this fee shall be due thirty (30) days after receipt of invoice. Approval of the City under this License to such modifications does not relieve Company from obtaining permits and/or Governmental Approvals as

necessary to commence such modifications. Replacement of like parts or modification during maintenance and repair is acceptable without specific approval under this License provided that: (a) such like-for-like replacement or modification does not change the visual appearance or size, or increase weight or noise of the SWF, and (b) Company provides written notice explaining in reasonable detail the nature of the parts replacement and/or other modifications within ten (10) days of occurrence, including certification that the level of RF emissions exposure from the SWF remains within the limits for general population/uncontrolled population exposure. At the City's written request, Company must conduct a new on-site RF emissions testing in accordance with applicable rules, and certify actual compliance with the applicable RF emissions limits for general population/uncontrolled RF exposure, and provide a copy of such updated compliance report to City.

- 17.5. The City may from time-to-time access the City Facilities to inspect any work done by Company to insure compliance with the approved plans and specifications, to require reasonable revisions to ensure that the respective uses of the City Facilities are compatible. This right shall not impose any obligation upon the City to make inspections to ascertain the safety of Company's improvements, SWF, or the condition of the City Facilities.

18. Destruction of or Damage to the City Facilities

- 18.1. If the City Facilities or any structure on the City Facilities is destroyed or damaged by fire or casualty so as to render the City Facilities and/or SWF unfit for use by the Company, and if in the reasonable judgment of the City, the damage cannot be repaired within ninety (90) days following the date of such damage, either party may terminate the applicable Site License Addendum upon written notice to the other party, whereupon the Site License Addendum shall terminate on the date of such notice and Company shall surrender the effected City Facilities to the City within ninety (90) days. Within fifteen (15) days after such damage, City shall notify Company as to whether the City expects to complete such repair within ninety (90) days. If the City Facilities are damaged by fire or casualty, but not rendered wholly unfit for use, Company may elect promptly to repair such damage to its SWF. City shall not be liable to Company for any direct or indirect or consequential damages including but not limited to inconvenience, annoyance, or loss of profits, nor for any expenses, or any other damage resulting from the repair of such damage. Further, City shall not be responsible for any repair, modification, arranging, or rearranging of any portion of the City Facilities or for the termination of the Site License Addendum as provided herein, unless the damage was caused by the willful misconduct or gross negligence of the City.
- 18.2. In the event the City Facilities are rebuilt and/or repaired as outlined above, the City shall consider other temporary locations on the City Facilities at the City's sole discretion. If an area is approved by both the City and Company, Company may construct, operate and maintain its SWF until the City Facilities are fully restored and operational. During the use of the temporary location, Rent shall continue and be payable to the City.

19. Condemnation

If all or any portion of the City Facilities is needed, taken, vacated, conveyed, or condemned for any public purpose such that the Company cannot use its SWF on the City Facilities, either party may terminate the applicable Site License Addendum. All proceeds from any taking or condemnation of the Site or City Facilities shall belong and be paid to the City. Company shall have all rights to its SWF, which shall not be included in any taking or condemnation.

20. Insurance

- 20.1. At Company's sole cost and expense, Company shall maintain throughout the term of this License insurance as set forth in Exhibit D, attached hereto and incorporated herein.
- 20.2. No more than once per rolling 12 month period, the City may require increases in said coverage by written notice to Company, as the City deems reasonably necessary generally consistent with industry standards.
- 20.3. Company's maintenance of insurance as required by this Section 20 shall not be construed to limit the liability of Company to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Company's maintenance of insurance policies required by this License shall not be construed to excuse unfaithful performance by Company.

21. Hold Harmless

- 21.1. The City and its employees and agents shall not be liable for injury or damage to any persons or property, including City Facilities, resulting from the installation, operation or maintenance of the SWF on the City Facilities.
- 21.2. Company releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Company, its agents, servants, officers, employees and contractors in the performance of this License and any rights granted within this License, or the presence of the SWF itself.
- 21.3. Inspection or acceptance by the City of any work performed by Company at the time of completion of construction shall not be grounds for avoidance by Company of any of its obligations under this Section 1. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised.
- 21.4. The City shall promptly notify Company of any claim or suit and request in writing that Company indemnify the City. City's failure to so notify and request indemnification shall not relieve Company of any liability that Company might have, except to the extent that such failure prejudices Company's ability to defend such claim or suit.

- 21.5. Company may choose counsel to defend the City at Company's sole expense subject to this Section 21, provided the City consents to the Company's choice of counsel, which consent shall not be unreasonably withheld. In the event that Company refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this License, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Company, Company shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Company and approved by the City to represent the City, then upon the prior written approval and consent of Company, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Company shall pay the reasonable fees and expenses of such separate counsel. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City (including the use of in-house counsel). Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.
- 21.6. The parties acknowledge that this License is subject to RCW 4.24.115. Accordingly, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Company and the City, its officers, officials, employees, and volunteers, Company's liability shall be only to the extent of Company's negligence. It is further specifically and expressly understood that the indemnification provided constitutes Company's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.
- 21.7. Company acknowledges and agrees that Company bears all risks of loss or damage or relocation or replacement of its SWF from any cause, and the City shall not be liable for any cost of replacement or of repair to damaged SWF, including, without limitation, damage caused by the City's removal of the SWF, loss of line of sight path, activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, or contractors, except to the extent any such damage or destruction is caused by or arises from any grossly negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Company releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.
- 21.8. Company shall indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, consequential, special, indirect, business

interruption damages and lost profits, brought by or under users of the SWF as the result of any interruption of service due to damage or destruction of the SWF caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, or any third parties, except to the extent any such damage or destruction is caused by or arises from the gross negligence, willful misconduct, or criminal actions on the part of the City, its officers, employees, or elected or appointed officials. This limitation of liability shall apply even if City is advised of the possibility thereof, whether such damages arise out of breach of contract, breach of warranty, negligence, strict liability or any other theory of liability and whether such damages were foreseeable or not at the time this License was executed.

- 21.9. Neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.
- 21.10. The provisions of this Section 21 shall survive the expiration, revocation, or termination of this License.

22. Performance Bond

22.1.1. Company shall furnish a surety bond or bonds, in form reasonably acceptable to City, covering faithful performance of this License and payment of all obligations arising thereunder, including but not limited to proper construction, long-term facility maintenance, rent, timely removal of equipment and restoration. The bond shall be in force during the entire term or subsequent extensions or month to month tenancies. The performance bond for this License shall not only indemnify City for the usual performance provisions of this License, but in addition shall be a bond to guarantee payment of any and all tax liability of any type, kind, nature or description due as a result of this License. Said performance bond shall be issued to City prior to the issuance of any approvals for the construction of its SWF on the City Facilities. If City so uses or applies any portion of the performance bond, Company shall, upon notice, restore the performance bond to the full amount above specified, and Company's failure to do so shall constitute a material breach of this License. This performance bond shall be in addition to any construction or maintenance bonds imposed by the City as part of its permitting process. This performance bond shall remain in place until all of Company's SWF has been removed by Company unless otherwise permitted to remain by City. The amount of the bond shall be dependent on the number of City Poles used by the Company as follows:

- 22.1.1. \$25,000 bond for authorization to use 1-10 City Poles;
- 22.1.2. \$125,000 bond for authorization to use 11-50 City Poles; and
- 22.1.3. \$250,000 bond for authorization to use 50 or more City Poles.

22.1.2. Company may elect to combine the bond required by the Company's RUA together with the bond required by this License provided: (i) the combined bond meets all requirements for the performance bond outlined in this License and also meets all of the requirements of the RUA; and (ii) City approves the combining of bonds, such approval not to be unreasonably withheld.

23. Nondiscrimination

Company, for itself, its successors, and assigns as a part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of Laws applicable to the City Facilities, including, without limitation, Chapter 49.60 RCW and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the U.S. Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the City shall have the right to terminate the License and to re-enter and repossess the City Facilities, and hold the same as if said License had never been made or issued.

24. Site License Addendum Application and Inspection Process

- 24.1. Prior to installation of any SWF on a City Facility, the Company shall first obtain a Site License Addendum executed by City. To request a Site License Addendum, Company shall submit the Site License Addendum in the form attached as Exhibit A, executed by Company and accompanied by all of the submittal requirements specified by the City of Bellevue Transportation Department. The Site License Addendum must include Company's certification that the plans submitted comply with the Design Requirements.
- 24.2. As appropriate, City may in its discretion require Company to make design modifications in order to comply with the Design Requirements, to address safety concerns, or applicable contractual, regulatory, or legal requirements or may ask additional questions as necessary to determine feasibility of use of the City Facilities.
- 24.3. The Site License Addendum and all attachments which are required to be submitted in conjunction therewith shall be provided in digital format.
- 24.4. If the City receives more than one Site License Addendum for the same City Pole, then the City Pole shall be awarded to the first Site License Addendum signed by both parties and for which the Company has submitted the first payment of Rent or Alternate Rent.

25. Default; City Remedies

25.1. Default

The following occurrences shall each be deemed an "Event of Default" by Company, if any such occurrence continues beyond the applicable notice and cure period set forth in Section 27 below:

- 25.1.1. **Failure to Pay.** Company fails to pay any sum, including Rent or taxes, due under this License upon the due date.
- 25.1.2. **Abandonment.** Company's failure to remove SWF as further described in Section 29.3.
- 25.1.3. **Insolvency.** Immediately, upon written notice, if a receiver is appointed to take possession of Company's assets, Company makes a general assignment for the benefit of creditors, or Company becomes insolvent or takes a suffers action under the Bankruptcy Act. Waiver or acceptance by the City of any default of the terms of this License by Company shall not operate as a release of Company's responsibility for any prior or subsequent default.
- 25.1.4. **Lapsed Governmental Approvals.** Company fails to maintain or obtain any Governmental Approvals required to install and operate SWF.
- 25.1.5. **Failure to Maintain Insurance.** Company fails to maintain appropriate insurance as required pursuant to Exhibit D.
- 25.1.6. **Prohibited Assignment.** Company assigns this License in violation of Section 15.
- 25.1.7. **Interference.** Company operates or maintains its SWF in a manner contrary to the interference obligations in Sections 9 and 10.
- 25.1.8. **Improper Construction.** Company constructs or installs SWF without first obtaining a Site License Addendum.
- 25.1.9. **Failure to Construct or Install Per Approved Design.** Company constructs, installs or modifies any SWF in any manner which does not comply with the requirements of the applicable Site License Addendum.
- 25.1.10. **Ceases to Provide Telecommunications Services.** That Company ceases to operate as a provider of telecommunications services under federal law.
- 25.1.11. **Other Defaults.** Company violates any material agreement, term or covenant of this License.
- 25.1.12. **City Remedies.** Subject to the cure period described in Section 27 below, the City shall have the following remedies upon an Event of Default. The City's rights and remedies under this License shall be cumulative, and none shall exclude any other right or remedy allowed by law.
- 25.1.13. **Continuation of License.** Without prejudice to its right to other remedies, the City may continue this License and applicable Site License Addendums in effect, with the right to enforce all of its rights and remedies, including the right to

payment of Rent and other charges as they become due for the remainder of the then-existing term. City may elect, in its discretion, upon written notice to Company, to suspend processing or response of any/all Company requests, or granting of any/all approvals required of the City, with respect to any matter (or requested matter) pursuant to this License.

- 25.1.14. **Termination of License.** If Company's default is of such a serious nature in the City's sole judgment that the default materially affects the purposes of this License, the City may terminate this License. Termination of this License will affect the termination of all Site License Addendums issued under it automatically and without the need for any further action by the City. The City will have the right to make any terminated portion of the City Facilities available for use to other parties as of the effective date of the termination, even if SWF is still on the City Facilities. Upon termination of this License, Company will remain liable to City for damages in an amount equal to the Rent and other sums that would have been owed by Company under this License for the balance of the Initial Term or Renewal Term (as the case may be).
- 25.1.15. **Termination of Site License Addendums.** If an Event of Default specific to one or more Site License Addendums is not cured by Company within the applicable cure period, City may terminate such specific Site License Addendum(s).
- 25.1.16. **Interest and Collection Costs on Past Due Monetary Obligations.** If Company fails or refuses to pay any of its payment obligations due under this License (including without limitation any Site License Addendum) on the due date then Company is obligated to pay and shall immediately pay interest on amount due calculated at the lesser of ten percent (10%) per annum or the highest rate of interest allowed under applicable law. Interest shall be calculated on a per day basis commencing on the due date and continuing until paid in full. If Company fails or refuses to pay any or all amounts due upon written demand then Company shall be liable to pay all collection costs and reasonable attorney's fees incurred with respect thereto. Notwithstanding any other provision of this agreement, the accrual of interest on past due monetary obligations is automatic and does not require the giving of notice.

26. Termination of Site License Addendum.

In addition to City's rights contained in Section 25 (upon the occurrence of an Event of Default), City has the additional termination rights contained in this Section 26.

- 26.1. **City's Termination Rights.** Subject to the cure provision of Section 27, the City has the right to terminate any Site License Addendum if the City determines that Company's exercise of its rights under this License:
- 26.1.1. Interferes with the City's use of the City Facilities and/or the structures on the City Facilities for the municipal purposes for which the City owns and

administers such structures/site, which may include the necessity to widen a street or for other municipal projects that result in removing the streetlight;

- 26.1.2. Poses a threat to public health or safety, constitutes a public nuisance.
- 26.1.3. Unreasonably interferes with the use of the City Facilities or structures thereon by a governmental agency with which the City has an agreement to provide services to the City, e.g. PSERN or its successor entity; or
- 26.1.4. That Company ceases to operate as a provider of telecommunications services under federal law. In such a situation the City shall have the option, in its sole discretion and upon six (6) months' written notice to Company, to terminate this License and to require the removal of the SWF from the City Facilities, pursuant to Section 29, including the cost of any site remediation, at no cost to the City.
- 26.1.5. Notwithstanding the above and not subject to the Cure provisions listed under Section 27, the City shall have the following additional termination rights:
 - a. **Immediate Removal.** Notwithstanding the above, the City, may in its sole discretion, determine that exigent circumstances require immediate removal of SWF from a City Facility. Such exigent circumstances may only include reasons of public health, safety or the need to provide street lighting. Company shall remove its SWF within forty-eight (48) hours notice, unless such longer period is provided by the City. The applicable Site License Addendum will terminate upon the removal of the SWF.
 - b. **Immediate Deactivation.** Notwithstanding the above, if the Company attaches, installs, constructs or modifies SWF in any manner which exceeds the requirements of the Design Standards, the City may require the Company to deactivate the noncompliant Equipment upon forty-eight (48) hours notice, unless such longer period is provided by the City.
 - c. **Pole Removal.** The City has the right to remove any City Facilities that it determines in its sole judgment is unnecessary for its municipal purposes (for example street light operations and any of the circumstances listed in Section 28.1). If the City decides to remove a City Facility, it shall provide Company with at least sixty (60) days written notice to remove its SWF from the City Facility. The applicable Site License Addendum will terminate upon the removal of the SWF.
 - d. **Pole Replacement.** The City has the right to replace any City Facilities that it determines in its sole judgment is necessary for its municipal operations. If the City decides to replace a City Facility, it shall provide Company with at least sixty (60) days written notice to remove its SWF from the City Facility. At City's option the applicable Site License Addendum will

terminate upon the removal of the SWF or City may allow Company, at Company's sole cost and expense, to relocate its SWF on the replacement pole.

- 26.1.6. **No Further Obligation.** Upon termination under this Section 26, neither party will owe any further obligation to the other party provided that Company is not in arrears in making its Rent or other required payments; provided however that Company shall, at Company's sole cost, remove its SWF and restore the site, and provided that, if the City terminates this License pursuant to Section 26, the City shall, at Company's option, attempt to find alternative sites on other City property in order to allow Company to continue to provide service within the City Facilities as further described in Section 28. Further, to the extent that City received any pre-paid Rent related to the terminated Site License Addendums, City shall refund such pre-payments to Company.
- 26.1.7. **Termination by Company.** The Company has the right to terminate any Site License Addendum upon ninety (90) days' notice in the event Company determines in its sole discretion that it desires to discontinue use of the City Facilities for any reason whatsoever provided Company terminates according to this Section.

27. Cure

Neither party shall be in default under this License until thirty (30) days after receipt of written notice of default from the other; provided, however, where such default cannot reasonably be cured within thirty (30) days, the defaulting party shall not be in default if it commences to cure such default within said thirty (30) day period and diligently pursues cure to completion.

28. Relocation

- 28.1. Company understands and acknowledges that City may require Company to relocate, temporarily or permanently, one or more of its SWF installations. Company shall at City's direction and upon sixty (60) days prior written notice to Company, relocate such SWF at Company's sole cost and expense whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a City or other public agency project; (b) because the SWF is interfering with or adversely affecting proper operation of City owned poles, traffic signals, communications, or other City Facilities; (c) to protect or preserve the public health or safety; or (d) as described in Section 6. In any such case, City shall use reasonable efforts to afford Company a reasonably equivalent alternate location. If Company shall fail to relocate any SWF as requested by the City in accordance with the foregoing provision, City shall be entitled to remove or relocate the SWF at Company's sole cost and expense, without further notice to Company. Company shall pay to the City actual and reasonable costs and expenses incurred by the City in performing any removal work and any storage of Company's property after removal within thirty (30) days of the date of a written demand for this payment from the City. The City

will promptly inform Company of the displacement or removal of any City Facility on which any SWF is located.

- 28.2. In the event Company desires to relocate any SWF from one City Facility to another, Company shall so advise City and shall submit a Site License Addendum consistent with Section 24 for approval by City.
- 28.3. Company acknowledges that the signing of this License does not entitle the Company to assistance under the Uniform Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).

29. Removal of SWF Upon Termination

- 29.1. Within sixty (60) days after the expiration or earlier termination of a Site License Addendum or this License, unless a shorter window of time applies under this License, Company shall promptly, safely and carefully remove the SWF from applicable City Facilities and shall restore the City Facilities as instructed by the City. In the event that the Company replaced any City Pole with a “purpose-built” replacement pole then upon expiration or termination of a Site License Addendum or this License, and upon request by the City, the Company shall, at Company’s sole expense, replace the purpose built pole with a replacement pole meeting the standard design and construction criteria of the City. Rent shall continue to accrue during any time period in which Company continues to have SWF on the City Facilities. Such obligation of Company shall survive the expiration or earlier termination of this License. If Company fails to complete this removal work pursuant to this Section 29, then the City, upon written notice to Company, shall have the right at the City’s sole election, but not the obligation, to perform this removal work and charge Company for the actual and documented costs and expenses, including, without limitation, reasonable administrative costs. Company shall pay to the City actual and documented costs and expenses incurred by the City in performing any removal work and any storage of Company’s property after removal within forty-five (45) days of the date of a written demand for this payment from the City. After the City receives the reimbursement payment from Company for the removal work performed by the City, the City shall promptly make available to Company the property belonging to Company and removed by the City pursuant to this Section 29 at no liability to the City.
- 29.2. If the City does not receive reimbursement payment from Company within such forty-five (45) days, or if City does not elect to remove such items at the City’s cost after Company’s failure to remove pursuant to this Section, or if Company does not remove Company’s property within forty-five (45) days of such property having been made available by the City after Company’s payment of removal reimbursement as described above, any items of Company’s property remaining on or about the ROW, City Facilities, or stored by the City after the City’s removal thereof may, at the City’s option, be deemed abandoned and the City may dispose of such property in any manner by law. Alternatively, the City may elect to take title to abandoned property, provided that Company shall submit to the City an instrument satisfactory to the City transferring to the City the ownership of such property. Provided, however, that nothing contained within this Section 29 shall prevent

the City from compelling Company to remove any such SWF through judicial action when the City has not permitted Company to abandon said SWF in place.

- 29.3. The SWF, in whole or in part, may not be abandoned by Company without written approval by the City. Any plan for abandonment or removal of SWF must be first approved by the City, and all necessary permits must be obtained prior to such work. Notwithstanding the above, the City may permit SWF to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, Company shall execute such necessary documents to transfer title to City.
- 29.4. Prior to removal of its SWF, Company shall notify the City in writing when the SWF has been removed, and comply with any other requirements under Law.
- 29.5. The provisions of this Section 29 shall survive the expiration, revocation, or termination of this License.

30. Records; Audits

- 30.1. The City may require such information, records, and documents from Company from time to time as are appropriate to reasonably monitor compliance with the terms of this License.
- 30.2. Company shall provide such records within thirty (30) days of a request by the City for production of the same unless additional time is reasonably needed by Company, in which case, Company shall have such reasonable time as needed for the production of the same, but no longer than sixty (60) days. If any person other than Company maintains records on Company's behalf, Company shall be responsible for making such records available to the City.
- 30.3. Company shall be responsible for clearly and conspicuously identifying any records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Company has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure request pursuant to City's City Clerk's rules so that Company can take appropriate steps to obtain injunctive relief to prevent disclosure of claimed confidential records. Nothing in this Section prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records. City shall not be liable to Company for its good faith acts in determining release of records, including confidential records, is in compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Company and not stayed that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Company shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

31. Miscellaneous

- 31.1. **Modifications.** This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto. No failure on the part of either party to enforce any covenant or provision herein contained, nor any waiver of any right hereunder, unless in writing signed by the waiving party, shall discharge or invalidate such covenant or provision or affect the right of either party to enforce the same in the event of any subsequent breach or default.
- 31.2. **Broker's Fee.** If Company is represented by a real estate broker or other agency in this transaction, Company shall be fully responsible for any fee due such broker, and shall hold the City and its employees and agents, harmless from any claims for a commission by such broker or agency.
- 31.3. **Cooperation in Execution of Subsequent Documents.** The City and Company agree to cooperate in executing any documents necessary to protect the rights of the parties granted by this License.
- 31.4. **Headings.** The headings to paragraphs or sections of this License are for convenience only, and shall have no effect on the construction or interpretation of any paragraph hereof.
- 31.5. **Notices.** Except as otherwise designated in this License, any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth in Exhibit C. Each party may by notice in writing change its address for the purpose of this License, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States registered or certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this License.
- 31.6. **Entire Agreement.** This License and any attached exhibits constitute the entire agreement between the City and the Company; no prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding except that any subsequently adopted City policies and procedures for telecommunications/communications license agreements, Site License Addendums and final applicable permits shall be binding on the parties.
- 31.7. **Executed in Counterparts.** This License may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one

instrument.

- 31.8. **Governed by Laws of the State of Washington.** This License shall be governed and construed by and in accordance with the laws of the State of Washington, without reference to its conflicts of law principles.
- 31.9. **Venue.** Company agrees that the venue of any action or suit concerning this License shall be in the State and Federal Courts located in King County, and all actions or suits thereon shall be brought therein.
- 31.10. **Legal Fees.** In any lawsuit between the parties with respect to the matters covered by the License, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any other relief it may be awarded.
- 31.11. **Binding on Successors.** This License shall be binding upon and inure to the benefits of the heirs, executors, administrators, successors and assigns of the parties.
- 31.12. **Failure to Insist upon Strict Performance.** The failure of either party to insist upon strict performance of any of the terms or conditions of this License shall not constitute a waiver thereof.
- 31.13. **No Recording.** Company shall not record any documents (such as, for example, a memorandum, lien, assignment or security interest) against City's title without City's express prior written approval which it may withhold in its sole discretion.
- 31.14. **Business License.** Prior to constructing any SWF or providing services within the City, Company shall obtain a business and/or utility license from the City.
- 31.15. **Severability.** The provisions of this License shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this License shall be effective and binding upon the parties.
- 31.16. **No Third Party Beneficiaries.** It is not intended by any of the provisions of this License to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this License.
- 31.17. **Survival.** All of the provisions, conditions and requirements of Sections 11, 21, 25.1.16, 29, and 30 shall survive the expiration or termination of this License.

IN WITNESS WHEREOF, the parties hereto have executed this License on the respective dates below indicated.

CITY:

CITY OF BELLEVUE

BY: _____

Name:

Title:

Date:

City Resolution #:

City Clerk Receiving #:

COMPANY:

[COMPANY NAME]

BY: _____

Name:

Title:

Date:

Approved as to form:

BY: _____

Name:

Assistant City Attorney

STATE OF WASHINGTON
COUNTY OF KING

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that (he/she) signed this
instrument, on oath stated that (he/she) was authorized to execute the instrument and
acknowledged it as the _____ of _____
to be the free and voluntary act of such party for the uses and purposes mentioned in the
instrument.

DATED this ____ day of _____, 20 ____.

(SEAL) _____

Exhibit A
Site License Addendum

This *Site License Addendum* (“Addendum”), dated _____ between the City of Bellevue, hereinafter designated the “City” and _____, hereinafter designated “Company”:

1. **Addendum.** This is a Site License Addendum as referenced in that certain Master License Agreement between The City and Company, dated _____ (“License”). The purpose of the Site License Addendum is for the Company to reserve one or more City Facilities. This Addendum is subject and subordinate to the terms and conditions of the License. In the event of a contradiction, modification or inconsistency between the terms of the License and this Addendum, the terms of the License shall govern. Capitalized terms used in this Addendum shall have the same meaning described for them in the License unless otherwise indicated herein.

2. **Term.** The term of this Addendum shall commence on the Rent Commencement Date and shall terminate upon the License termination unless earlier terminated by a party consistent with the License. Upon termination of the License and, consequently, this Addendum, Company shall comply with all applicable License terms and conditions.

3. **Fees/Payments Due.**

- A. **Administrative Fees.** Company understands it is required to timely pay any Administrative Fees due and payable for this Site License Addendum in accordance with the terms and conditions of the License.
- B. **Rent.** Company shall pay Rent for SWF to be installed on each City Pole pursuant to this Site License Addendum in accordance with the License.
- C. In addition, Company pay such additional fees and charges such as are required pursuant to the terms of the License.

This Addendum is not valid or enforceable except when fully executed by authorized representatives of both parties.

CITY:

CITY OF BELLEVUE

BY: _____

Name:

Title:

Date:

City Clerk Receiving #:

Approved as to form:

BY: _____

Name:

Assistant City Attorney

COMPANY:

[COMPANY NAME]

BY: _____

Name:

Title:

Date:

DRAFT

Exhibit B
Leasehold Excise Tax Exemption

To be inserted, if applicable

DRAFT

Exhibit C
Contact Information/Notices

<u>If to City:</u>	<u>If to Company:</u>
City of Bellevue 450 110th Avenue NE Bellevue, WA 98004 ATTN: Transportation Director	_____ _____ _____ _____ ATTN: _____
With copies to: City of Bellevue 450 110th Avenue NE Bellevue, WA 98004 ATTN: City Attorney City of Bellevue 450 110th Avenue NE Bellevue, WA 98004 ATTN: Transportation Franchise Manager	With copies to: _____ _____ _____ _____ ATTN: _____
<i>For Emergencies:</i> City of Bellevue 450 110th Avenue NE Bellevue, WA 98004 City shall notify Company via email with names, address, phone, email of person(s) to contact in case of emergency	<i>For Emergencies:</i> _____ _____ _____ _____ ATTN: _____
	<i>NOC (Sec. 11.3):</i> _____ _____ _____ _____ ATTN: _____

Exhibit D

Insurance Requirements

The Company shall procure and maintain for the duration of this License insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Company, or its agents, representatives, employees or subcontractors. Such insurance certificates and endorsements evidencing the insurance required below shall be provided to the City upon execution of this License. The cost of such insurance shall be paid by the Company. Insurance shall meet or exceed the following limits and shall be maintained for the Term and so long as Company has SWF on any City Facilities.

A. Minimum Insurance.

1. Commercial General Liability coverage with limits not less than \$2,000,000 per occurrence / \$5,000,000 annual aggregate.
2. Stop Gap/Employers Liability coverage with limits not less than \$1,000,000 per accident/disease policy limit.
3. Commercial Automobile Liability coverage with combined single limits not less than \$1,000,000 per each accident for bodily injury and property damage covering all owned, non-owned, and hired vehicles.
4. Worker's Compensation coverage or qualified self-insurance as required by the Industrial Insurance Laws of the State of Washington.
5. Umbrella Excess Liability with limits not less than \$10,000,000 per occurrence and in the aggregate. The Company may use any combination of primary and excess to meet required limits.

B. Other Provisions. Required Commercial General Liability and the Umbrella Liability policies shall:

1. Be endorsed to include the City, its officials, employees and volunteers as additional insureds as their interests may appear under the Agreement. A blanket insurance additional insured endorsement is acceptable;
2. State the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
3. Provide that Company's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance;
4. That Company's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City; and
5. Provide that coverage shall not be canceled except after thirty (30) days' written notice has been given to the City. Further, within five (5) days prior to send cancellation or intent not to renew, Company shall obtain and furnish to City replacement insurance policies meeting the above requirements. Company shall

provide at least thirty (30) days written notice of cancellation or nonrenewal of any required coverage that is not replaced.

C. Acceptability of Insurers. Insurance shall be placed with insurers with a rating of *A.M. Best & Company's Key Rating Guide* of A Overall and a Financial Size Category of "VII."

D. Verification of Coverage. Company shall furnish the City with certificates of insurance required by this License. The certificates are to be received by the City before work commences. The City reserves the right to review complete, copies of all required insurance policies upon request at a mutually agreeable location within 100 miles of the City of Bellevue.

E. Subcontractors. Subcontractors are to provide coverage which complies with the requirements with reasonable and prudent limits and practices of the City for the issuance of right of way use permits.

F. Policy Limit Escalation. No more than once per rolling 12 month period, by written notice to Company, the City may elect to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that the City reasonably determines to affect the reasonable amount of insurance to be provided.

G. Self-Insurance. As of the effective date of this License and the use granted herein, Company is not self-insured for any coverage other than worker's compensation (if applicable). Should Company wish to become self-insured for any other coverage at the levels outlined in this License at a later date, Company must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, Company shall comply with the following: (i) Company or its parent company shall maintain throughout the term of this License a net worth of at least \$250,000,000; (ii) Company shall provide the City, upon written request, a letter outlining the current equity balance of Company (or parent entity); (iii) Company is responsible for all payments within the self-insured retention, if any; and (iv) Company assumes all defense and indemnity obligations as outlined in Section 20 of this License.