

EXHIBIT F

SMALL WIRELESS FACILITY LICENSE AGREEMENT FOR FACILITIES IN THE PUBLIC RIGHT-OF-WAY

This Small Wireless Facility License Agreement (“License”) is entered into on this ____ of ____ between the City of Commerce, California, a municipal corporation (“City”) and ____, a California Corporation/LLC (“Licensee”). The City and the Licensee hereinafter may also be referred to individually as “Party” and collectively as “Parties.”

RECITALS

This License is made and entered into with respect to the following facts, which are incorporated herein by this reference:

- A. **WHEREAS**, the City is the owner of certain infrastructure, such as streetlights and poles (“Infrastructure”), located in the public right-of-way in the City of Commerce, California;
- B. **WHEREAS**, the Licensee, constructs, operates, and maintains wireless communications facilities, and desires to license Infrastructure from City in the City of Commerce;
- C. **WHEREAS**, the Telecommunications Act of 1996 (“Telecom Act”) Section 253, Pub. L. No. 104-104, 110 Stat.56, codified as 47 U.S.C. § 253, allows for the fair and reasonable compensation from telecommunications providers use of the public rights-of way, however such compensation must be competitively neutral, non-discriminatory, and publicly disclosed by the government;
- D. **WHEREAS**, the Telecom Act Section 253 also prohibits a State or local statute, regulation, or legal requirement from prohibiting or having the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service;
- E. **WHEREAS**, the Telecom Act Section 332(c)(7) preserves a local governments authority over the placement, construction, and modification of personal wireless service facilities, as long as the regulation of such does not “unreasonably discriminate among providers of functionally equivalent services” and does not have the effect of “prohibiting the provision of personal wireless services.”
- F. **WHEREAS**, California Public Utilities Code (“CPUC Code”) §§ 7901 and 7901.1 authorizes telephone corporations to construct “telephone lines along and upon any public road or highway” within California and “erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway” subject to the City’s reasonable time, place and manner controls which apply to all entities in an equivalent manner.

- G. **WHEREAS**, on February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409"), which mandated that state and local governments approve certain modifications and collocations to existing wireless communications facilities known as eligible facilities requests.
- H. **WHEREAS**, on October 17, 2014 the FCC adopted the Report and Order In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, which, among other provisions, interpreted provisions of Section 6409 to include definitions of "substantial increase" and set forth shot clock requirements for wireless facility applications.
- I. **WHEREAS**, on September 26, 2018 the FCC adopted the Declaratory Ruling and Third Report and Order (FCC 18-133) in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment ("FCC Third Order"). The FCC Third Order, Section 32 advises that "fees are only permitted to the extent that they represent a reasonable approximation of the local government's objectively reasonable costs and are non-discriminatory." In Section 50, the FCC further concludes that "ROW (Right Of Way) access fees, and fees for the use of government property in the ROW...as well as application or review fees...inside and outside the ROW" violate the Telecom Act Section 253 and 332(c)(7) unless the fees are an objectively reasonable approximation of costs and no higher than the fees charged to "similarly-situated competitors in similar situations." Section 52 also requires that the fees be published in advance.
- J. **WHEREAS**, City desires to license its Infrastructure to wireless communications providers and has a duty to derive appropriate value from the City's property assets for the public good. However, due to the applicable shot clock time constraints for negotiating license agreements and processing all necessary applications and permits, City is compelled to require a form agreement, to which no substantive changes may be made, in lieu of negotiating individual agreements to meet any applicable shot clock deadlines.
- K. **WHEREAS**, the City does not intend this License to grant any exclusive right to use or occupy the public rights-of-way within the City of Commerce, and Licensee expressly acknowledges that the City may, in its sole discretion, enter into similar or identical agreements with other entities, including Licensee's competitors;
- L. **WHEREAS**, On ___, 2020, the City Council of the City of Commerce adopted Resolution No._____, which approved the form and material terms for this License to be used in connection with the licensing of City owned Infrastructure for wireless facilities, and further delegated authority to the City Manager to enter into such agreements that substantially conform to the form agreement.

NOW, THEREFORE, in consideration of the foregoing, and the Parties agree upon the following terms and conditions:

1. **LICENSED PREMISES.** City hereby licenses to Licensee, the Infrastructure located near/at _____, as further described in Exhibit A (the “Premises”) subject to the terms and conditions set forth herein.
2. **LIMITED RIGHTS CREATED.** This License grants Licensee a non-possessory, non-exclusive and revocable license to enter and use the Premises for the Permitted Use described in Section 5 in accordance with the terms and conditions in this License. Licensee expressly acknowledges and agrees that: (1) this License provides no other interests or property rights, express or implied, in any other City owned property; (2) this License is not and shall not be deemed to be coupled with an interest; (2) the City retains legal possession and control over the Infrastructure for the City’s municipal functions, which will be superior to Licensee’s rights and interest in the Infrastructure, if any, at all times; (3) subject to the terms and conditions in this License, the City may terminate this License in whole or in part at any time; (4) except as specifically provided otherwise in this License, the City may enter into any agreement with third parties to use and/or occupy the Infrastructure and/or other City Premises; and (5) this License does not create and will not be deemed to create any partnership or joint venture between the City and Licensee.

1. **TERM.**

a. The term of this License shall be for a period of ten (10) years (“Term”) commencing on the 1st day of the month following the full execution of this License, (the “Commencement Date”). This License shall automatically expire at the end of the Term. No extension terms shall be granted under this License, but Licensee may apply for a new license no sooner than sixty (60) days prior to expiration of Term.

b. **Holdover.** If Licensee’s equipment remains on the Premises after the Term of this License without a new License in effect, Licensee shall be subject to the provisions of Section 24(c) of this Agreement.

2. **FEES.**

a. Licensee shall pay to the City an Annual License Fee of _____ in accordance with the most recent version of the City of Commerce, CA Small Wireless Facility Fee Schedule (“Fee Schedule”) attached hereto as Exhibit B. The first payment shall be due within thirty (30) days of the Commencement Date of this License, and on the anniversary of the Commencement Date each year thereafter, for the duration of the Term, or earlier expiration or termination thereof. Payment shall be mailed to:

City of Commerce
Attention: Finance Director
2535 Commerce Way
Commerce, CA 90040

b. Beginning on the anniversary of the Commencement Date, and each year thereafter, the Annual License Fee shall increase by 3% per year over the fee rate in effect at that time.

c. Licensee expressly acknowledges that (a) the City is required by the FCC Third Order to limit any annual recurring fees to cost-based estimates; (b) Upon completion of a cost study analysis to determine the actual costs borne by the City associated with this License and corresponding permit, City may increase the Annual License Fee in accordance with such study; (c) if not for such restrictions imposed by the FCC Third Order or any other applicable laws restricting annual fee amounts, City's annual fees would be based on market rates to obtain a reasonable return on investment on the hiring of its Premises; (d) if not for such restrictions, City would not enter into this agreement with Licensee. If, at any time during the Term, or prior to the Commencement Date, the fee restriction portion of the FCC Third Order, or the FCC Third Order as a whole is invalidated, repealed, or any other applicable laws no longer restricts market-based annual fees, the Annual License Fee shall automatically be replaced by the Estimated Market Rate License Fee in the Fee Schedule. At any time throughout the Term, City may have the option, but shall not be obligated to, increase the Annual License Fee in accordance with any study conducted to determine the actual reasonable costs, or the current applicable market rate, associated with the Annual License Fee to the extent permitted by law. Any increase in the Annual License Fee per this subsection 4(c) shall not supersede, nor limit in any way, any standard annual fee increases included in subsection 4(b). City shall also be entitled to recover from Licensee any reasonable cost or expense incurred in the administration of this License, or for any ongoing monitoring of compliance with this License, or for any proportional impacts on the maintenance and repair of any City's property affected by the Licensee's related activities under this License, that has not been included, or to the extent not included in the cost-based Annual License Fee mandated by the FCC Third Order. City shall be reimbursed by Licensee within thirty (30) days of written demand for reimbursement of such expenses. This section shall survive the expiration or termination of this License.

d. Licensee also acknowledges that the late payment of the Annual License Fee will cause City to incur accounting and other processing costs not contemplated by this License, the exact amount of which is extremely difficult to accurately estimate. Therefore, if any installment of Annual License Fee due from Licensee is not received by City on or before the date such Annual License Fee becomes due, Licensee shall be charged an additional one-hundred fifty dollars (\$150.00) to compensate for the additional cost and inconvenience associated with handling the past due Annual License Fee. City and Licensee agree that this late charge represents a fair and reasonable estimate of costs that City will incur by reason of the late payment by Licensee. Acceptance of any such late charge shall not constitute a waiver of Licensee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to it by reason of such default

3. Permitted Use

a. The Premises shall be used for the construction, installation, operation, and maintenance of a Small Wireless Facility ("SWF"), as defined by the FCC under 47 C.F.R. § 1.6002(l), to transmit and receive wireless communication signals within FCC recommended emissions guidelines ("Permitted Use"). The City does not warrant or represent that the Premises is safe, helpful, fit, or suitable for the purposes for which they are permitted to be used under the terms of this License.

b. Licensee shall at all times observe and comply with all applicable laws, statutes, ordinances, conditions, codes and regulations, including the City of Commerce Design Standards and Guidelines for Small Wireless Facilities in the Public Right-of-Way (“Design Standards”), which pertain to or apply to the Permitted Use, now or subsequently imposed, whether federal, state or local, including all applicable CPUC General Orders (ex. GO95), building codes, FCC RF emissions standards, and prevailing wage requirements. Any violation of this provision shall constitute a default under this License.

c. Licensee shall also obtain all necessary permits, licenses, and approvals required for the Permitted Use. If Licensee is unable to obtain all such permits, licenses, and approvals, within six (6) months after the Commencement Date, City or Licensee shall have the option to terminate the License by providing 30 days written notice to the other party.

d. Upon completion of installation of the SWF, Licensee shall provide an accurate copy of as-built drawings to the Department of Public Works within sixty (60) days after completion of the installation.

e. If Licensee desires to modify the use of the Premises in manner that is not currently authorized under this agreement, Licensee shall submit a written request to City for the modified use. City may, in its sole discretion, approve, approve with conditions, or reject the request to modify the Permitted Use covered in this agreement, and a written amendment to this License shall be required for any changes to this agreement. Any other approvals for modifications granted by the City, or that the City is compelled to approve by law in their regulatory capacity, shall not be deemed to approve any modification under this License in City’s proprietary capacity. If City does not approve, approve with conditions, or reject the request within six (6) months of receipt of the request, the requested shall be deemed rejected.

f. If the use of the Premises exceeds, materially modifies, ceases to conform to the Permitted Use described herein, exceeds FCC emissions guidelines, or fails to conform to the plans approved by the City including any modifications approved under subsection (d), such change shall constitute a default of this License.

g. Licensee acknowledges and agrees that this License does not authorize Licensee to display signage or advertisements on the Premises other than those signs that are specifically required by law. Any barriers or painting to indicate areas that exceed FCC RF emissions guidelines shall not be allowed on or in the public right of way. Any Facility that exceeds FCC RF emissions guidelines, does not meet the definition of a SWF, and shall not be allowed in the public right of way.

h. Licensee shall not be allowed to interfere, incommode or inhibit the public use of the right of way or the City’s use of its property, including any future government projects. Licensee acknowledges and agrees to relocate or remove the facility at no cost to City in such instances.

4. INTERFERENCE

a. Licensee shall not interfere with any current or future public uses, or any pre-

existing private uses. In the event that Licensee's SWF interferes with any such current or future public uses or pre-existing private uses, Licensee must mitigate such interference within seven (7) days of becoming aware of the interference, or be required to power down the SWF until such time as the interference can be completely cured. If the interference cannot be completely cured, City, in its sole discretion, may require that the facility be removed or relocated at no cost to the City. If the facility is removed, the License shall terminate immediately, and any prorated portion of the Annual License fee shall be refunded for the period starting from when all of the equipment required by Section 9(d) is removed to the end of the current Annual License Fee period. If the Facility is required to be relocated, City, in its sole discretion, may require either (i) the termination of this License and a new License agreement for the relocated Facility; or (ii) the transfer of this License to the new location to be memorialized in an amendment. The Annual License Fee shall abate from the time the old Facility is removed until payment for the new facility becomes due. In the event payment under the new facility becomes due prior to the old Facility being removed, no abatement shall occur for either Facility. It shall be the duty of Licensee to inspect the Premises prior to execution of this License agreement to ensure that no pre-existing uses will interfere with the proposed design. In the event that any such interference is adequately addressed by any State or Federal laws or regulations intended to preempt local laws or agreements, then this section shall not apply to the extent of such preemption. This License shall not create any right in Licensee to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (California Government Code §§ 7260 et seq.), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 et seq.), as either may be amended or superseded, or any similar Laws upon or after any termination. To the extent that any such Laws may apply, Licensee waives, releases and relinquishes forever any and all Claims that it may have against the City for any compensation from the City except as provided in Section 22 (Condemnation).

5. UTILITIES AND OPERATING COSTS

a. Licensee shall be responsible for all costs and expenses associated with Licensee's use of the Premises ("Operating Costs"), such as, but not limited to: Insurance; Property or Possessory Interest tax, if applicable; security system; landscaping; utilities, including but not limited to, gas, electricity, cable service, telephone, internet service, and other utilities necessary or discretionary related to the use of the Premises; repairs, maintenance, replacements, painting, redecorating, and improvements; wages and salaries for all persons engaged in the operation, maintenance, and repair of the Premises, including fringe benefits and social security taxes; and all other costs incurred or caused to be incurred by Licensee relating to Licensee's use and operation of the Premises.

b. In accordance with California Government Code Sections 4215 et seq., owners of subsurface installations must join a regional notification center (e.g. Underground Service Alert ["USA"]) or 811, which requires contractors to contact such a regional notification center prior to excavation, facility owners to mark their underground subsurface installations when notified, and sets civil penalties for failure to comply therewith. Prior to construction, Permittee shall contact USA to verify the location of existing subsurface installations.

6. REPAIRS AND MAINTENANCE.

a. Licensee shall maintain the Premises in a clean, safe and sanitary condition at all

times. Licensee shall remediate any vandalism or graffiti within 48 hours of receiving notice.

b. By taking possession of the Premises, Licensee accepts the condition of the Premises “as is”, and during the Term of this License, City shall not be required or be under any obligation to maintain, or make any repairs, improvements, or replacements of any nature to the Premises or the improvements thereon. Licensee hereby accepts responsibility and agrees to bear the cost of any such repairs or improvements, including any required by any statute or law in effect at the time of execution of this License, or which may hereafter be enacted during the duration of the License. Any repairs, maintenance or construction must be completed by qualified, trained, experienced, licensed contractors or other qualified personnel.

c. Licensee shall, at its sole cost and expense, repair all pavement, surfaces, and landscaping damaged in constructing, operating, or maintaining the Premises.

d. If required, Licensee shall apply for and receive all necessary permits and approvals prior to making repairs or conducting maintenance on the Premises, and such permits and approvals will be at the Licensee’s sole cost and expense. Nothing in this License shall be construed as the applicable jurisdiction’s approval of any required permits or approvals for repairs or maintenance on the Premises.

e. City shall not be required to furnish any services or facilities or make any repairs or conduct any maintenance of any kind to the Premises. City may, but shall not be obligated to repair the streetlight portion of any replacement streetlight pole. City may also, but shall not be obligated to perform, any of Licensee’s obligations under this Section after Licensee’s failure or refusal to do so, following City’s fifteen (15) days’ written notice to Licensee, or in the event of an emergency situation where imminent harm to persons or Premises may occur, City may proceed immediately and to the extent necessary to prevent harm from occurring. Such an election by City to perform any of Licensee’s obligations under this Section shall not constitute a waiver of any right or remedy for Licensee’s default, entitle Licensee to any damages or abatements of financial obligations, nor shall it be deemed a constructive eviction or termination hereunder. Licensee shall reimburse City within thirty (30) days of invoice by the City for all reasonable expenditures incurred by City in performing Licensee’s obligations, together with reasonable interest thereon, from the date of invoice by City until the date of repayment by Licensee, with such reimbursement and interest in any event not to exceed any statutory maximum during the Term of this License.

7. IMPROVEMENTS.

a. Licensee shall not make, or allow to be made, any modifications, alterations, physical additions, improvements (“Improvements”) to the Premises without obtaining the prior written consent of City, in its sole discretion. Any such Improvements that affect the physical dimensions, appearance, or size of the Premises shall require a written amendment to this License. City shall have the right to review all plans, drawings, specifications, permits, and license and prior to issuing written consent or executing an amendment. Any authorizations issued by City as owner of the Infrastructure for the purpose of applying for entitlements for the Improvements shall not be considered City’s written consent for the Improvements, nor shall any consent by City serve as approval of any permit application or required approval by the City is its regulatory capacity. All costs associated with installing the Improvements referred to in this

section shall be borne by the Licensee, including any Improvements necessary for compliance with all applicable laws and regulations (including, without limitation, the Americans with Disabilities Act).

b. Should the City decide to make any significant changes to the Premises, including but not limited to, changing any street grade, width, utility or storm drain route, relocating infrastructure or any other work or project deemed beneficial by the City, in its sole discretion, City will give Licensee notice of any proposed changes at least three (3) months in advance. If, under City's reasonable discretion, it becomes necessary for Licensee to permanently relocate, temporarily relocate, suspend business operations, or terminate this License, City will not be liable for any costs, expenses, or lost profits associated with the relocation, suspension of business operations or termination. Licensee's Annual License Fee obligation during such prorated period shall not be abated. Should Infrastructure damaged or destroyed due to an accident or other reasons beyond City's control Licensee shall be responsible for any and all costs associated with removal and/or reinstallation of its facilities subject to applicable provision of the License Agreement at its sole expense.

c. The Licensee shall obtain all necessary applicable permits and approvals prior to making any alterations or additions to the Premises, and such permits and approvals will be at the Licensee's sole cost. Nothing in this License shall be construed as the City's approval of any required local permits for improvements on the Premises.

d. Upon termination of this License, or upon the expiration of the term, use, possession and enjoyment of the Premises, all telecommunications equipment shall remain the personal property of the Licensee, and all Infrastructure, replacement Infrastructure, or structural improvements shall remain or become the property of City. Licensee shall remove all such telecommunications equipment from the Premises prior to expiration of Term or earlier termination thereof, unless a new License for the SWF has been fully executed. However, the City, in its sole discretion, may request certain improvements or fixtures that would otherwise transfer title to City, be removed prior to expiration of Term or earlier termination thereof, and Licensee shall, prior to the end of Term, remove such improvements or fixtures. City must provide the request to remove certain improvements or fixtures in writing and at least thirty (30) days prior to the end of Term. If any of the requested improvements or fixtures are left on the Premises after the end of Term, they shall be considered abandoned. City may elect to remove all or a portion of the abandoned equipment and Licensee shall reimburse City of the cost of removal and restoration within thirty (30) day of invoice by the City.

e. Licensee acknowledges that City has made no representations as to whether any persons associated with construction of improvements on the Premises must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720 et seq. City and Licensee acknowledge that Licensee shall be solely responsible for determining whether persons associated with construction of improvements on the Premises undertaken by Licensee must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720 et seq. City shall not be under any duty or obligation to monitor or ensure the compliance of Licensee with any State of California labor laws, including, without limitation, prevailing wage laws. Licensee shall indemnify City against any claims pursuant to California Labor Code Section 1781 arising from Licensee's construction of any improvements,

work or alterations on the Premises.

8. ENTRY AND INSPECTION

a. City and City's agents and representatives, shall have the right, but not the obligation, to enter and inspect the Premises to (i) clean; (ii) make repairs; (iii) install improvements or other alterations to the Premises per Section 8(e); (iv) to post any notices required or permitted by law; (v) to allow City or any third party to inspect the Premises as a City may deem necessary or beneficial to City's interests; (vi) to determine if Licensee is in compliance with all laws and regulations, permits, and any provisions of this License; or (vii) any other lawful purpose. Unless otherwise provided for in this agreement, City shall provide reasonable notice to Licensee prior to entering the Premises under the authority provided for in this Section. City shall use reasonable efforts not to unreasonably interfere with Licensee's business operations. Licensee shall not be entitled to any abatement of the Annual License Fee by reason of the exercise of any such right of entry. Licensee waives any claim for damages for any injury or inconvenience to or interference with Licensee's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. The City shall have the right to use any and all means that it may deem proper to obtain entry into the Premises in emergencies. Any entry into the Premises by the City by any means whatsoever shall not be construed to be a forcible or unlawful entry, or a detainer of the Premises, or an actual or constructive eviction of Licensee from the Premises or portion thereof.

9. INSURANCE.

a. Licensee shall secure and maintain for the duration of the License the following:

i. A Commercial General Liability Insurance policy per ISO form CG 00 01 or its equivalent in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence, and Four Million Dollars (\$4,000,000) general aggregate, in which the City is named as additional insured, for claims for bodily injury (including accidental death) and property damage, arising out of any use or condition of the Premises.

ii. An Automobile Liability Insurance with a combined single limit of at least Two Million Dollars (\$2,000,000.00) per occurrence.

iii. A Workers' Compensation and Employer Liability Insurance policy with limits greater than or equal to the statutory minimums required by state and federal laws, and employer's liability insurance coverage of at least One Million Dollars (\$1,000,000.00) per accident for all covered losses.

iv. A Property Insurance policy including standard form fire, extended coverage, vandalism and malicious mischief insurance insuring all of the Licensee's personal property and trade fixtures located at the Premises, and all fixtures and other improvements installed at the expense of Licensee in the full amount of the value thereof. Said policy shall specifically name the City of Commerce (including employees, agents and representatives) as an additional insured, provide that the coverage is primary and any coverage that the City may maintain shall be in excess thereto, provide that all proceeds shall be made as required by the comparative interests of the City and the Licensee.

b. The aforementioned minimum limits of policies shall not, however, limit the liability of Licensee hereunder. Licensee shall furnish certificates of such insurance to the City, and the form thereof shall be subject to the reasonable approval of City. Said policy shall include a separate endorsement, in a form reasonably satisfactory to the City Attorney, naming the City of Commerce and its officers and employees as additional insureds.

c. The insurance policies obtained by Licensee shall specifically insure performance by Licensee of the indemnity set forth in this agreement, provided that the coverage is primary and any coverage that the City may maintain shall be in excess thereto, include a cross-liability or severability of interest endorsement. The liability limits of the above-described insurance policies shall in no manner limit the liability of Licensee under the terms of the indemnification set forth in the immediately preceding paragraph.

d. Except as otherwise provided for in this agreement, in no event shall City be liable for consequential, incidental, punitive, exemplary, or indirect damages that may arise in connection with this License or Licensee's use of the Premises, including lost profits, except to the extent proximately caused by the City's sole negligence or willful misconduct.

e. Within fifteen (15) days from the Commencement Date, Licensee shall deliver to the City a certificate for each policy certifying that Licensee has obtained the insurance required by this License. Licensee further agrees to deliver to the City a renewal binder for each policy no later than fifteen (15) days before expiration of the policy and/or this License. If Licensee fails to maintain any required policy of insurance, the City may obtain said policy and Licensee shall promptly upon demand pay to the City the reasonable costs and expenses incurred by the City in acquiring such policy.

f. The provisions of this section shall survive the termination of this License.

10. INDEMNITY

a. Licensee shall indemnify, defend (with legal counsel acceptable to City), protect, and hold harmless the City and City's officials, officers, directors, employees, representatives, agents, advisors, attorneys, contractors, volunteers, successors and assigns ("City Parties") from any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all court costs and attorneys' fees, arising out of or related to (i) default in the performance of any obligation on Licensee's part to be performed under the terms of this License, or (ii) Licensee's use of the Premises, (iii) acts or omissions of Licensee, or Licensee's employees, agents, customers, visitors, invitees, licensees, contractors, assignees or sub-licensees (individually, a "Licensee Party" and collectively, "Licensee's Parties") in or about the Premises, except for and to the extent directly caused by City's sole negligence or willful misconduct.

b. City shall not be liable for consequential, punitive or exemplary damages, loss of income, or business interruptions in connection with this License. City shall not be liable to Licensee Parties for any damage, loss, or injury caused by the condition or design of, or any defect in, the Premises, and Licensee hereby waives any claims against City, unless the loss, damage, or injury is the result of the gross negligence or willful misconduct of the City after the Licensee took possession of the Premises. Licensee agrees that it accepts the condition of Premises "as is" in accordance with Section 17 of this License.

c. Licensee's indemnity is not intended to nor shall it relieve any insurance carrier of its obligations under policies required to be carried by Licensee pursuant to the provisions of this License to the extent such policies cover the results of negligent acts or omissions of City, its employees, agents, contractors, council members, board members and officers or the failure of City to perform any of its obligations under this License.

d. The extent of any liability on the part of the City shall be limited to City's interest in the Premises and shall not extend to any other resources within the City of Commerce's control.

e. Licensee shall, within forty-eight (48) hours after occurrence, report to City any accident causing property damage or any serious injury to persons resulting from any of Licensee's activities under this Agreement. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

f. The provisions of this section shall survive the termination of this License.

11. HAZARDOUS MATERIALS.

a. Definition. As used in this License, the term "Hazardous Material" shall mean any substance, water, or material which has been determined by any state, federal, or local government authority to be capable of posing a risk of injury to health, safety, and Premises, including but not limited to, all of those materials, wastes and substances designated as Hazardous or Toxic by the U.S. Environmental Protection Agency, the U.S. Department of Labor, the U.S. Department of Transportation and/or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

b. Prohibited Without Consent. Licensee shall not cause or permit any Hazardous Materials to be brought onto, stored, used, generated, recycled, or disposed of in, on, under or about the Premises by Licensee, its agents, employees, contractors, licensees, sub-licensees or invitees, without the prior written consent of City, in its sole discretion. No generators shall be allowed for any SWF in the right-of-way., however, an above ground generator port may be installed for emergency situations, so long as the port is integrated into the base of the pole, and generator may be connected for as long as the emergency situation exists. Licensee shall ensure that all such Hazardous Materials are stored, used, handled and disposed of in compliance with all Environmental Laws. Licensee shall demonstrate that such Hazardous Materials are necessary or useful by submitting information to City in accordance with this paragraph.

c. Indemnity. Licensee shall be solely responsible for and shall indemnify, protect, hold harmless and defend City's Parties from and against any and all liabilities arising from or in any way relating to the use of Hazardous Materials on the Premises, or the presence of Hazardous Materials in or originating from the soil, subsoil, or groundwater located in, on or under the Premises, provided that the liabilities are or are reasonably likely to be a result of or related to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, on, under or about the Premises at any time after the date of this License but not before the date of Licensee's first possession of the Premises. The indemnification by Licensee under this Section shall survive the termination of this License.

d. Timing for Clean-up/Emergencies. In the event contamination of the Premises is caused by Licensee Parties, Licensee agrees and warrants and guarantees to City that Licensee shall remediate such contamination, at no cost to City, upon discovery of such contamination to the extent required by applicable laws. If Licensee fails to initiate clean-up of the contamination (i) within 48 hours after discovery, or (ii) if the contamination poses an imminent hazard to Licensee's employees, agents, invitees, the public, the Premises, adjacent or other properties and/or the environment; City or City Parties may enter the Premises for the purposes of cleaning up and remediating the effects of the contamination. Licensee shall be responsible for reimbursing City for such costs within thirty (30) days of invoice by the City. In the event Licensee fails to begin cleanup of the contamination within the time period set forth above considering the extent of the contamination and the hazard posed, City may, at City's sole option, declare the Licensee in default under this License.

e. Notice. If at any time during the term of this License, Hazardous Materials are discovered by either party to be on the Premises, said party shall immediately notify the other party in writing of such occurrence. City and Licensee each further agree to promptly notify the other of any communication received from any governmental entity concerning Hazardous Materials or the violation of any law or regulation that related to such substances.

12. TAXES.

a. Licensee shall pay all taxes of every description which during the term of this License may be levied upon or assessed against the Premises, any interest therein and other property thereon belonging to the City or Licensee, or possessory interest pertaining thereto. Licensee agrees to protect and hold harmless the City and the Premises and all interest therein and improvements thereof from any and all such taxes, assessments, or liens, including any interest, penalties and other expenses to enforce payment thereof. The preceding sentence shall survive expiration or termination of this License. Notwithstanding the foregoing, the City hereby acknowledges that, as of the date of this License, no property taxes or possessory interest taxes are being assessed against the Premises.

b. Licensee acknowledges that (i) the Premises may be subject to possessory interest tax as a result of this License; and (ii) the Licensee shall pay the property tax or possessory interest tax levied on the Licensee's interest in the Licensed Premises.

13. ASSIGNMENT AND SUB-LICENSE.

a. Licensee shall not voluntarily, or by operation of law, assign, sub-license, transfer, mortgage, or otherwise transfer or encumber all or any part of Licensee's interest in this License or in the Premises, or sub-license said Premises or any part thereof, without the prior written consent of the City, in its sole discretion. Any attempted assignment, transfer, sub-license, encumbering or renting without such consent shall be void and constitute a breach of this License. In the event a receiver, trustee or conservator is appointed to take possession of the assets of Licensee, or the possession of the Premises, or a general assignment is made by Licensee for the benefit of creditors, or any action is taken by or against Licensee under any insolvency law or bankruptcy act, the City, at its option, may forthwith terminate this License.

b. Any consent by the City to the assignment or other transfer of rights hereunder by the Licensee shall not release the Licensee from any obligations under this License, including Licensee remaining the primary obligor for paying the Annual License Fee, and the City's consent, unless expressly provided therein, shall not include consent to any subsequent assignment or transfer by the Licensee or the Licensee's heirs, successors or assigns. City's collection of the Annual License Fee from any assignee, sub-licensee or successor in interest to Licensee's interest, shall not be considered a waiver of this provision. Additionally, all the terms, conditions and covenants of this License shall inure to the benefit of and be binding upon the lawful successors and assigns of the Parties hereto.

14. NO DISCRIMINATION. The Licensee herein covenants by and for itself, its successors, and assigns, and all persons claiming under or through it, and this Premises is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises herein Licensed. Nor shall the Licensee itself, or any person claiming under or through Licensee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of Licensees, lessees, sub-licensees, or sublessees or vendees in the Premises herein Licensed.

15. CONDITION OF PREMISES. Licensee acknowledges that it has had the opportunity to inspect the Premises and by executing this License, expressly accepts the Premises in the existing condition, "as is," and further acknowledges that the City makes no representation as to the condition of the Premises or the suitability thereof for Licensee's use. The Premises is Licensed from City to Licensee on an "as is" condition and basis with all faults and Licensee agrees that City has no obligation to make modifications, replacements or improvements thereto. Except as expressly and specifically provided in this License, Licensee and anyone claiming by, through or under Licensee hereby waives its right to recover from and fully and irrevocably releases City and City Parties, and all persons, firms, corporations and organizations acting on City's behalf (collectively, the "Released Parties") from any and all claims, responsibility and/or liability that Licensee may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to the matters pertaining to the Premises described in this Section. This release includes claims of which Licensee is presently unaware or which Licensee does not presently suspect to exist which, if known by Licensee, would materially affect Licensee's release of the Released Parties. If the Premises is not in a condition suitable for the intended use or uses, then it is the sole responsibility and obligation of Licensee to take such action as may be necessary to place the Premises in a condition suitable for development thereon. Except as otherwise expressly and specifically provided in this License and without limiting the generality of the foregoing, City makes no representation or warranty as to (i) the value of the Premises; (ii) the income to be derived from the Premises; (iii) the habitability, marketability, profitability, merchantability or fitness for particular use of the Premises; (iv) the manner, Quality, state of repair or condition of the Premises; (v) the compliance of or by the Premises of its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (vi) compliance with any environmental protection or pollution laws, rules, regulations, orders or requirements; (vii) the presence or absence of hazardous materials at, on, under or adjacent to the Premises; (viii) the fact that all or a portion of the Premises may be located on or near an earthquake fault line; and (ix) with respect to any other matter, Licensee further acknowledges and agrees that

having been given the opportunity to inspect the Premises and review information and documentation affecting the Premises, Licensee is relying solely on its own investigation of the Premises and review of such information and documentation and not on any information provided or to be provided by City.

Licensee hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

By initialing below, Licensee hereby waives the provisions of Section 1542 solely in connection with the matters which are the subject of the foregoing waivers and release.

Licensee's Initials

The waivers and release by Licensee herein contained shall survive the expiration of the Term of this License.

16. DEFAULT.

Each of the following events shall be deemed a default by Licensee hereunder and a material breach of this License:

- a. If Licensee shall fail to pay the Annual License Fee upon becoming due in accordance with Section 4 of this License, subject to all applicable notice requirements; or
- b. If Licensee shall use the Premises for any purpose that does not conform to the uses authorized by the provisions of this License; or
- c. If Licensee exceeds FCC RF Emissions guidelines, or creates a nuisance or hazard; or
- d. If Licensee shall fail to maintain the Premises in a clean, safe, sanitary, and usable condition during the term of this License; or
- e. If the Facility exceeds the size of the Facility in the current set of approved plans or exceeds the size parameters set forth in the definitions of a Small Wireless Facilities under section 1.6002(l) of Subpart U, of Part 1, of Title 47 of the Code of Federal Regulations; or
- f. If Licensee shall make improvements to the Premises that are not authorized under the provisions of this License; or

g. If Licensee abandons or otherwise fails to use the Premises for a period of three (3) months or longer; or

h. If Licensee shall fail to duly keep, perform and observe any other covenant, condition or agreement in this License.

17. REMEDIES

a. Termination

Upon Licensee's default of this License, City shall have the right, subject to all statutory requirements, to terminate this License upon written notice to Licensee specifying the date the License will terminate. City, in its sole discretion, may also designate a cure period for Licensee to correct any defaults in such notice letter, but City is under no obligation to do so, and may terminate the License and have the right to enter upon and retake possession of the Premises without prejudice to any of the remedies that City may have under this License, or at laws or equity by any reason of Licensee's default, or such termination, after satisfying all applicable statutory requirements.

b. Continuation After Default

Even though an event of default may have occurred, this License shall continue in effect for so long as City does not terminate Lessee's right to possession under this section. Accordingly, if City does not elect to terminate this License on account of any event of default by Lessee, City may enforce all of its rights and remedies under this License, including the right to recover The Annual License Fee as it becomes due. Acts of maintenance, preservation or efforts to License the Premises or the appointment of a receiver under application of City to protect City's interest under this License or other entry by City upon the Premises shall not constitute an election to terminate Lessor's right to possession.

c. Mitigation

Upon termination of this License due to Licensee's default, City shall have the right to retake possession of the Premises and relicense such Premises to mitigate any damages caused by Licensee's default. City shall not be required to relicense the Premises for less than the current fair market value, and Licensee shall be responsible for any deficiency in the Annual License Fee for the remainder of the License Term. Licensee shall also be responsible for any reasonable expenses incurred by City to make the Premises available to relicense and any reasonable expenses associated with finding a replacement Licensee. City shall not be obligated to relicense the Premises to anyone that does not have sufficient financial resources to maintain the rent obligations for the duration of the remaining License term. This provision shall not limit any other rights or remedies that City may be entitled to under applicable law or equity.

d. Replacement of Statutory Notice Requirements.

When this License requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notice required by California

Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this License) in the manner required by this Section 28 shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

18. FORCE MAJURE

If, by reason of Force Majeure, it becomes impossible for one of the Parties to perform or observe any obligation, agreement, term or condition hereof; performance by that party for a period equal to the period of that prevention, delay, or stoppage is excused. Licensee's obligation to pay the Annual License Fee, however, is not excused by this provision. Either party shall have the right to terminate this License in the event of Force Majeure for a consecutive twelve (12)-month period. The term "Force Majeure" shall mean, without limitation, the following:

a. Acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; order or restraints of any kind of the government of the United States of America or of the State of California or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; falling space debris; droughts; floods; killer bees; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or

b. Any cause, circumstance or event not reasonably within the control of, or that cannot be reasonably avoided by, the non-performing party.

19. CASUALTY. If the Premises should be damaged or destroyed by fire, flood, earthquake, tornado, or other casualty (collectively, "Casualty"), Licensee shall give immediate written notice thereof to City. Within thirty (30) days after City's receipt of such notice, City shall notify Licensee whether in City's estimation material restoration of the Premises is commercially reasonable. City's determination shall be binding on Licensee. If City determines that it is not commercially reasonable to restore the Premises or building, then either Party shall have the right to terminate the License. However, if the damage caused by the Casualty arises out of any act or omission, negligence, or breach of the License by Licensee or Licensee's Parties, Licensee shall be liable for the cost of repair and restoration of the City owned portion of the Premises. City shall not be liable to the Licensee for any personal property damaged or destroyed by the Casualty. This section shall be Licensee's sole and exclusive remedy in the event of damage or destruction to the Premises or the Building. As a material inducement to City entering into this License, Licensee hereby waives any rights it may have under Sections 1932, 1933(4) of the Civil Code of California or any similar laws, with respect to any destruction of the Premises, City's obligation condition of the Premises and Licensee's right to make repairs and deduct the expenses of such repairs, or under any similar law, statute or ordinance now or hereafter in effect.

20. CONDEMNATION.

a. If a portion, or the entirety of the Premises are taken or condemned for public use by eminent domain, any regulation, or by private purchase, which would materially inhibit or interfere with the authorized Use of the Premises in City's sole reasonable discretion, City may terminate the License upon written notice to Licensee. Licensee's obligation to pay the Annual License Fee, and such termination shall be effective as of the date when the possession of the Premises is taken by the condemning authority.

b. City shall be entitled to (and Licensee shall assign to City) any and all payment, income, rent, award or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance and Licensee shall have no claim against City or otherwise for any sums paid by virtue of such proceedings, whether or not attributable to the value of any unexpired portion of this License, except as expressly provided in this License. Notwithstanding the foregoing, any compensation specifically and separately awarded Licensee for Licensee's personal property and moving costs, shall be and remain the property of Licensee.

21. TERMINATION BY CITY

a. If Licensee has not commenced business operations by the date that is twelve (12) months after the Commencement Date, then the City may terminate this License by giving thirty (30) days prior written notice to Licensee.

b. Notwithstanding any other provision of this License, Upon Licensee's commencement of business operations, the City may at any time terminate this License by giving at least twelve (12) months prior written notice to Licensee.

22. SURRENDER OF PREMISES.

a. Upon termination of this License, if applicable, Licensee without further notice, shall deliver all of the keys to the Premises to the Public Works Department.

b. Licensee shall, at Licensee's sole expense, remove all removable trade fixtures and non-structurally relied upon equipment installed by Licensee, at the termination of this License, unless otherwise agreed upon in writing by the Parties. City, in its sole discretion, may require Licensee to remove the pole and any other improvements and return the Premises to its original condition. All such removal shall be accomplished at a time specified by the City and in a good workmanlike manner so as not to damage any part of the Premises.

c. Unless otherwise provided for in this agreement, if Licensee's equipment remains on the Premises after the expiration or early termination of the License, Licensee's presence shall not be construed to create a renewal or extension of this License, nor tenancy of any kind, and shall not give Licensee any rights in or to the Premises except as expressly provided in this License. Any Holdover Licensee shall be subject to a penalty of Two Hundred Dollars (\$200.00) per day for each day that Licensee's equipment remains on the Premises.

d. Upon termination of this License, Licensee shall leave the Premises in substantially the same order and condition as of Licensee's first date of possession under this License, except for reasonable wear and tear, subject to any improvements made in accordance with Section 9 of this License, or with City's written consent prior to the termination of this License,

unless removal is required under Section 9(d).

23. ATTORNEY'S FEES. In the event suit should be brought for recovery of the Premises or for any sum due hereunder, or to interpret or enforce any provision of this License, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.

24. EASEMENTS AND RESERVATION OF RIGHTS. City reserves the right to grant nonexclusive easements, licenses, rights-of-way and other rights or privileges in the nature of easements to others over, under, through, across or on the Premises; provided, however, that such grant and any use permitted thereby does not materially affect or prevent the pre-existing use or operation of this License or to any other uses permitted hereunder.

25. WASTE AND NUISANCE. Licensee shall not commit nor allow to be committed any waste on the Premises, nor maintain or allow to be maintained any nuisance thereon.

26. CHOICE OF LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

27. WAIVER OF BREACH. Waiver by the City of any breach of any term, covenant or condition contained in this License shall not be deemed to be a waiver of any subsequent breach of the same or of any other term, covenant or condition contained in the License. The City's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of the City's consent to or approval of any subsequent act by any Licensee nor constitute a waiver of any individual term or covenant.

28. GENDER AND NUMBER. Words used in the masculine gender shall include the feminine or neuter, and the singular shall include the plural, when appropriate.

29. NOTICES. Any notice required or desired to be given hereunder may be served personally or by registered mail, return receipt requested, postage prepaid, addressed as follows:

If to City: City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: City Manager

With a copy to: City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: Director of Public Works

If to Licensee: _____

30. LIENS. During the Term of this License, Licensee shall keep the Licensed Premises and every part thereof free and clear of all mechanics' liens, materialmen's liens, and other liens for any work or labor done, services performed, or materials and appliances used or furnished for or in connection with any operation of Licensee, any repair, alteration, or addition which Licensee may make or permit or cause to be made, or any work or construction by, for, or permitted by Licensee on or about the Premises. Licensee shall at all times promptly and fully pay and discharge any and all claims on which any such liens may or could be based, and shall indemnify City against all such liens, claims of liens, and suits or other procedures pertaining thereto. Licensee agrees to provide City with a notice of any repair, alteration, or addition to the Licensed Premises, including any of the improvements now or hereafter located on the Premises, at least five days in advance of the commencement of work upon such repair, alteration, or addition in order that City may post appropriate notices of non-responsibility. Licensee shall not remove any such notices without City's consent, and not before completion of any work which could give rise to such liens.

31. ENTIRE LICENSE. This License constitutes the entire License of the Parties hereto relating to the Premises and shall supersede all prior written or oral negotiations or Licenses of the Parties relating to the Premises.

32. MODIFICATION. This License shall not be modified except by written amendment duly executed by the Parties.

33. SEVERABILITY. If any term, condition or covenant of this License is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this License shall remain valid and binding.

34. RELATIONSHIP OF PARTIES. Nothing herein contained shall be deemed to create a partnership or joint venture, nor shall the relationship between the Parties be construed as principal and agent, or other than City and Licensee.

35. ADDITIONAL DEFINITIONS

Annual License Fee – The Annual License Fee shall be the amount listed on the City of Commerce Annual License Fee Schedule.

CPUC – California Public Utilities Commission.

FCC – Federal Communications Commission of the United States.

Public Works Department – The Public Works Department of City of Commerce.

Small Wireless Facility – As defined a Facilities under section 1.6002(l) of Subpart U, of Part 1, of Title 47 of the Code of Federal Regulations.

Infrastructure – Certain Poles, Streetlights, or other structures in the public right-of-way that are owned or controlled by the City of Commerce.

[Signatures on the following page]

IN WITNESS WHEREOF, the Parties hereto have caused this License to be executed by their respective officers, thereto duly authorized, as of the dates set forth below.

THE CITY OF COMMERCE, a municipal corporation (the “City”)

By: _____
Lena Shumway, City Clerk

By: _____
Edgar P. Cisneros, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

_____, a _____ corporation
(the “Licensee”)

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

EXHIBIT “A”

DRAFT

EXHIBIT “B”

DRAFT