JRP
06/18/2015
Item No. 47

AN ORDINANCE 2015-06-18-0573

APPROVING A MASTER LICENSE AGREEMENT WITH VERIZON WIRELESS FOR THE USE OF CITY-RIGHT-OF-WAY FOR THE INSTALLATION OF SMALL CELL EQUIPMENT ON UTILITY AND TRAFFIC POLES.

* * * * *

WHEREAS, Verizon Wireless ("Verizon") desires to deploy small cell antenna technology as a less intrusive way to address network gaps and improve broadband capacity for its customers throughout San Antonio; and

WHEREAS, City staff has worked with Verizon and has developed an agreement to allow Verizon to deploy its small cells throughout the City; and

WHEREAS, under the terms of the Master License Agreement Verizon will pay the City an annual license fee of $1,500.00 for every small cell deployed in the City's Right-of-way ("ROW") with an annual escalation fee of 3%; and

WHEREAS, under the terms of the agreement, Verizon will have a 25 year lease term subject to renegotiations every five years; and

WHEREAS, every small cell deployed will also be subject to a supplemental license that covers a 36 square foot area and is subject to termination based on the needs of the City and subject to the 25 year term of the Master License Agreement; and

WHEREAS, Verizon will have access to the City's Right-of-way and in particular all City traffic poles and CPS Energy utility poles by separate agreement to attach small cells; and

WHEREAS, small cell antennas deployed will be subject to an application review process in which Verizon will pay $700 per application; and

WHEREAS, the application fees consistent with the FY 2015 budget will be deposited to benefit Information Technology Services Department ("ITSD") to cover the administrative costs of personnel time required to review technical engineering design documents, development of an online application processing tool, and general contract administration; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Master License Agreement with Verizon Wireless are approved. A copy of the Master License Agreement in substantially final form is attached to this Ordinance as **Exhibit A**. A copy of the fully executed agreement will be substituted for Exhibit A upon receipt of all signatures.

SECTION 2. The City's Chief Technology Officer or his designee is authorized to execute the attached Master License Agreement, in substantial form, incorporated into this Ordinance for all purposes.

SECTION 3. The City's Chief Technology Officer or his designee is authorized to execute any documents approved by the City Attorney's Office and necessary to carry out the intent of this Ordinance.

SECTION 4. Revenue generated from the annual license fees and application fees will be deposited into the Information Technology Fund.

SECTION 5. This Ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council. If less than eight (8) affirmative votes are received, then this Ordinance shall be effective ten (10) days after passage.

PASSED AND APPROVED this 18th day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**47**
Date:	06/18/2015
Time:	10:13:04 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving the Master License Agreement with Verizon Wireless for the use of City rights-of-way for the installation of small cell equipment on utility and traffic light poles. [Ben Gorzell, Chief Financial Officer; Hugh Miller, Director, Information Technology Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit A

MASTER LICENSE AGREEMENT BETWEEN THE
CITY OF SAN ANTONIO AND SAN ANTONIO MTA, L.P. D/B/A VERIZON WIRELESS
FOR THE USE OF PUBLIC RIGHTS-OF-WAY

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MASTER LICENSE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND SAN ANTONIO MTA, L.P. D/B/A VERIZON WIRELESS FOR USE OF PUBLIC RIGHTS-OF-WAY

This MASTER LICENSE AGREEMENT FOR THE USE OF PUBLIC RIGHTS OF WAY (License Agreement) is made and entered into by and between the City of San Antonio, a Texas Municipal Corporation and Home-Rule Municipality, acting herein through its City Manager, or designee, pursuant to Ordinance No. _____, passed and approved on _____, 2015 as Licensor, and San Antonio MTA, L.P., a Delaware limited partnership, d/b/a Verizon Wireless ("Verizon Wireless"), as Licensee (hereafter Licensor and Licensee may be individually referred to as "Party" or collectively as "Parties").

WHEREAS, Licensee desires the use of public rights-of-way within the City of San Antonio for the purpose of installing, maintaining and operating small cell antenna equipment ("small cell installations") as defined by this License Agreement and in order to provide Personal Communications Service pursuant to federal laws; and

WHEREAS, Licensee also desires to use Licensor's traffic poles for the purpose of deploying small cell installations throughout the City; and

WHEREAS, the installation, maintenance, and operation of Licensee's small cell installations on public rights-of-way will be done in a manner consistent with the City's rights-of-way management regulations and Utility Excavation Criteria Manual, and all other applicable local, state and federal regulations; and

WHEREAS, Licensee has entered, or intends to enter, into a Pole Attachment Agreement with CPS Energy for the purpose of attaching small cell installations on CPS Energy poles erected on public rights-of-way; and

NOW THEREFORE, IN RECOGNITION OF MUTUAL CONSIDERATION, THE ABOVE PARTIES AGREE TO THE FOLLOWING:

SECTION 1. DEFINITIONS

For purposes of this License Agreement the following terms shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

(a) "Annual License Fee" means the rental amount and annual rate described in section 5 of this License Agreement.

(b) "Administrative Fee" means the administrative fee assessed pursuant to Section 5 of this License Agreement for City staff review of a Small Cell Site Application.

(c) "City" means the City of San Antonio, Texas, a home-rule municipality.

(d) "Chief Technology Officer" means the City's Chief Technology Officer in his capacity as the head executive officer over the Information Technology Services Department (ITSD).

(e) "Downtown" means the San Antonio Central Business District as defined in Section 37-6 of the San Antonio City Code.

(f) "Effective Date" means the latest date on which this License Agreement is signed by both parties following approval of the License Agreement by an ordinance of the San Antonio City Council.

(g) "Excavation Manual" means the Utility Excavation Criteria Manual approved on April 2, 2001 (as amended from time to time) pursuant to the authority granted by the Right-of-Way Management Ordinance, Ordinance No. 93319 (January 25, 2001) and referenced in Section 29-107 of the San Antonio City Code.

(h) "Inventory of Small Cell Sites" means an accurate and current inventory of all Small Cell Sites approved by Licensor pursuant to this License Agreement, including sites that become inactive for any reason.

(i) "Landline Broadband Backhaul Transport Service" means fiber or other high-speed landline communications transport service contracted by Licensee from a third-party provider that interconnects with the Small Cell Equipment at the Point-of-Demarcation and provides transport service back to Licensee's network. See Exhibit C for diagram of landline backhaul transport solution.

(j) "Licensee" means San Antonio MTA, L.P. d/b/a Verizon Wireless.

(k) "Personal Communications Service" means a type of 'commercial mobile radio service' (as that term is defined at 47 CFR § 20.3) as listed at 47 CFR § 20.9(a)(11) and as defined at 47 CFR § 24.5, and provided by the use of 'personal wireless service facilities' (as such phrase is defined in §704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), partially codified at 47 U.S.C. § 332(c)(7)(C)(ii)).

(l) "Point of Demarcation" means the point of where the Transmission Media of Small Cell Equipment terminates and interconnects with broadband backhaul transmission facilities, whether provided by landline or wireless communications infrastructure. Exhibit B provides an engineering diagram depicting the location of the Point of Demarcation at a Small Cell Equipment installation.

(m) "Rights-of-Way" or "Public Rights-of-Way" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter-held by the City or over which the City exercises any rights of management control.

(n) "Right-of-Way Management Ordinance" means the San Antonio Right-of-Way Management Ordinance passes by the San Antonio City Council on January 25, 2001 as Ordinance No. 93319 and codified in Chapter 29, Article IV, Divisions 1 to 10 of the San Antonio City Code.

(o) "Right-of-Way Manager" means the Manager of the Right-of-Way Management Division of the City department that oversees the Public Rights of Way (currently Transportation and Capital Improvements Department).

(p) "Transportation and Capital Improvement Department or TCI" means the current City department that oversees the City's Rights–of-Way and or any future City department that may oversee the City's Rights-of-Way.

(q) "Information Technology Services Department or ITSD" means the the current City department that oversees the City's technology services, wireless antennas, or wireless towers and or any future City Department that may oversee the City's technology services, wireless antennas, or wireless towers.

(r) "Small Cell Equipment" means Wireless Facilities and Transmission Media attached, mounted, or installed on a proprietary or leased pole located in Public Right-of-Way and used to provide Personal Communications Service. See Exhibit A for design drawings of Small Cell Equipment installation options.

(s) "Small Cell Site" means a location on Public Right-of-Way selected for Licensee's deployment of Small Cell Equipment, which shall be installed within the footprint of an area of thirty-six (36) square feet.

(t) "Small Cell Site Application" means the form attached as Exhibit E which shall identify the location of the proposed Small Cell Site, describe the characteristics of the proposed Small Cell Equipment installation, and be accompanied by relevant documents to support approval of the proposed installation.

(u) "Supplemental License" means the form of document attached as Exhibit G. Each Small Cell Site installation will be subject to a Supplemental License.

(v) "Transmission Media" means all of the Licensee's radios, antennas, transmitters, wires, fiber optic cables, and other wireless transmission devices which are part of the Small Cell Equipment located within an area of approximately thirty-six (36) square feet at each Small Cell Site.

(w) "Unauthorized Small Cell Site" means use of Public Right-of-Way for the installation of Small Cell Equipment on City traffic light poles or utility poles owned by CPS Energy or another party, or for the installation of poles or any other facilities, for which Licensee did not receive approval under this License Agreement.

(x) "Unauthorized Installation Charge" means the license fee payable by Licensee to Licensor under this License Agreement for an Unauthorized Small Cell Site.

(y) "Wireless Backhaul Transmission Equipment" means wireless microwave or other wireless broadband transmission equipment owned by Licensee that interconnects with the Small Cell Equipment at the Point-of-Demarcation and provides wireless transport service back to Licensee's network. See Exhibit C for conceptual diagram of wireless backhaul transport solution.

(z) "Wireless Facilities" means the Transmission Media, in addition to control boxes, cables, conduit, power sources, and other equipment, structures, plant, and appurtenances which are part of the Small Cell Equipment located within an area of approximately thirty-six (36) square feet at each Small Cell Site.

SECTION 2. GRANTING CLAUSE

(a) **License to Use Rights-of-Way** – Licensor hereby grants Licensee, a non-exclusive license to use and occupy Rights-of-Way throughout the corporate boundaries of the City of San Antonio, as these boundaries may be adjusted from time-to-time due to annexations, for the purpose of selecting Small Cell Sites and installing Small Cell Equipment, including the right to attach, operate, maintain, and replace Wireless Facilities, Transmission Media, and Wireless Backhaul Transmission Equipment on eligible poles, and no other structures, subject to the conditions outlined in this License Agreement. Licensee shall install its Small Cell Equipment consistent with the City's Right-of-Way Management Ordinance and Excavation Manual.

(b) **License to Use Traffic Light Poles** – Licensor also grants Licensee the right to use City traffic light poles for the purpose of attaching Small Cell Equipment based on the inventory of traffic light structures illustrated in Exhibit D, which may be updated from time to time. Access to individual City traffic light poles will be determined on a case-by-case basis pursuant to the provisions of this License Agreement.

(c) **Non-Exclusive License** – The Licensee's right to use and occupy the Public Rights-of-Way and attach to City traffic light poles shall not be exclusive as the City reserves the right to grant a similar use of same to itself or any person or entity at any time during the Term of this License Agreement.

(d) **Waiver of Claims** – In consideration for the rights granted under this License Agreement, Licensee waives all claims, demands, causes of action, and rights it may assert against the City and City officials, personnel, agents, and representative because of any loss, damage, or injury to any Small Cell Equipment or any loss or degradation of Personal Communications Service resulting from the installation, operation, maintenance, or malfunction of Small Cell Equipment regardless of cause, except as provided in Section 14.

SECTION 3. PERMITTED USE OF RIGHTS-OF-WAY

(a) **Provision of Personal Communications Service** – Public Rights-of-Way may be used by Licensee, seven (7) days a week, twenty-four (24) hours a day, only for

the selection of Small Cell Sites and installation of Small Cell Equipment for the transmission and reception of radio communication signals, and only for the provision of Personal Communications Service and not for any other purpose. It is understood that the purpose for installing Small Cell Equipment at designated Small Cell Sites is to augment Licensee's network capacity otherwise provided through the installation of "personal wireless service facilities," such as traditional tower structures. This License Agreement shall include new types of Small Cell Equipment that may evolve or be adopted using wireless technologies. Licensee shall, at its expense, comply with all applicable present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use of (and installation, operation, maintenance, and replacement of Small Cell Equipment on) Public Rights-of-Way.

(b) **Installations on Poles** – Wireless Facilities, Transmission Media, and Wireless Backhaul Transmission Equipment owned by Licensee and which are part of the Small Cell Equipment may only be installed on Licensor's traffic light poles under the terms of this License Agreement, on utility poles under the terms of a fully executed pole attachment agreement with the owner of such poles, or on Licensee's proprietary poles. All Small Cell Equipment shall be installed on the pole selected as a Small Cell Site. No Small Cell Equipment shall be installed on a pole at a height in excess of 30 feet. No equipment shelters or cabinets, nor electrical distribution panels may be installed at ground level, except after all reasonable alternative pole locations have been explored and found unavailable or lacking in some substantial way and only with prior City approval upon a good faith showing of necessity. The City shall weigh such requests against historic preservation policies (Office of Historic Preservation), downtown aesthetic considerations (Center City Development and Operations Department and Planning and Community Development Department), pedestrian and disabled person access to sidewalks (Right-of-Way Management Office), public safety concerns (Transportation and Capital Improvements Department), technical installation conflicts (Chief Technology Officer), and compliance with applicable City ordinances. The permitted use of Public Rights-of-Way shall include the installation, on a set alone basis, of Wireless Backhaul Transmission Equipment owned by Licensee on any eligible pole as necessary for the operation of Small Cell Equipment.

(c) **No Federal Regulations Govern Small Cell Sites** – For the purpose of this License Agreement, any and all poles selected for the installation of Small Cell Equipment shall not be considered "personal wireless service facilities" as that term in defined at 47 U.S.C. § 332(c)(7)(C)(ii), or a "base station" as that term is defined at 47 CFR § 24.5. The limitations applicable to local governments with regard to the placement, construction, and modification of "personal wireless service facilities" under 47 U.S.C. § 332(c)(7)(B) shall not apply to Licensor with regard to poles selected as Small Cell Sites. Nor shall any federal regulations limiting the authority of local governments with regard to the placement, construction, and modification of "base stations" apply to Licensor with regard to poles selected as Small Cell Sites.

(d) **No Macro Cell Installations Authorized** – Nothing in this License Agreement shall be interpreted to authorize the installation of "personal wireless service facilities" or "base stations" on Public Rights-of-Way as those terms are generally understood to refer to traditional macro wireless towers, equipment, and facilities, nor the installation on poles of wireless equipments and facilities designed for macro wireless towers.

(e) **Landline Broadband Backhaul Transmission Service Not Authorized** – The use of Rights-of-Way under this License Agreement does not include a license to install and operate wires and facilities to provide Landline Broadband Backhaul Transmission Service, whether provided by a third-party provider, Licensee, or a corporate affiliate of Licensee. Any entity that provides Landline Broadband Backhaul Transmission Service must have independent legal authorization to use Public Rights-of-Way outside this License Agreement.

(f) **No Collocation on Traffic Light Poles** – This License Agreement does not authorize the collocation of Small Cell Equipment on any of Licensor's traffic light poles. To the extent that there is interest by multiple wireless providers to install Small Cell Equipment on any given traffic light pole, access to City traffic light poles will be determined on a first-come first-serve basis. An exception may be granted by the Chief Technology Officer or his designee based on Licensee's network demand considerations and the unavailability of alternative suitable Small Cell Site locations.

(g) **No Interest in City Property or Rights-of-Way** – Nothing under this License Agreement shall be interpreted to create or vest in Licensee any easement or other ownership or property interest to any City property or Rights-of-Way. Neither this License Agreement, nor any Supplemental License granted under this License Agreement, shall constitute an assignment of any Licensor's rights to City property or Rights-of-Way. Licensee shall, at all times, be and remain a licensee only.

(h) **No Illegal Activity Permitted** – Licensee shall not use or permit the Small Cell Sites and City traffic light poles to be used for any activity violating any applicable local, state, or federal laws, rules, or regulations.

SECTION 4. TERM AND AMENDMENTS

(a) **Term of License Agreement** – The term of the Lease Agreement shall be for twenty-five (25) years commencing on the Effective Date and ending at midnight on the last day of the term (the "Term").

(b) **Intentionally Deleted**

(c) **Supplemental Licenses** – Each Small Cell Site will be subject to a Supplemental License under the same terms and conditions as this License Agreement as it may be amended by mutual agreement of the Parties pursuant to subsection 4(f). The term of each Supplemental License shall run until the end of the Term commencing on the date the corresponding Small Cell Site Application is approved as provided in subsection 6(b)(6) herein. Each such Supplemental License will run during the

Term of this License Agreement unless Licensee chooses to terminate any such Supplemental License pursuant to subsection 4(d). Supplemental Licenses shall not exceed the maximum 25-year Term of the License Agreement. At any time during the last five (5) years of the Term of this License Agreement, should Licensee wish to continue to deploy Small Cell Equipment on Public Rights-of-Way, the Parties may enter into negotiations to (i) extent the Term of the License Agreement beyond twenty-five (25) years under existing or amended conditions; or (ii) negotiate a successor agreement for the purpose of Licensee accessing Rights-of-Way for the installation of additional Small Cell Equipment and to transfer all existing Supplemental Licenses under the authority of such successor agreement.

(d) **Termination of Supplemental Licenses** – In the event that (i) any applications for any governmental approvals should be finally rejected; (ii) any governmental approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; or (iii) Licensee determines that such governmental approvals may not be obtained in a timely manner, Licensee shall have the right to terminate the applicable Supplemental License. Notice of Licensee's exercise of its right to terminate under this subsection 4(d) shall be given to Licensor in accordance with the notice provisions set forth herein and shall be effective upon the mailing of such notice by Licensee, or upon such later date as designated by Licensee. All Annual License Fees paid to said termination date shall be retained by Licensor. Upon such termination, the applicable Supplemental License shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder, and as provided in this subsection 4(d). Otherwise, Licensee shall have no further obligations for the payment of Annual License Fees to Licensor for the terminated Supplemental License, provided the Small Cell Equipment associated with said Supplemental License and any related facilities owned by Licensee have been removed from the Right-of-Way. Notwithstanding anything to the contrary contained herein, and provided Licensee is not in default hereunder beyond applicable notice and cure periods, Licensee shall have the right to terminate each Supplemental License upon the annual anniversary of the commencement date of such Supplemental License provided that three (3) months prior notice is given to Licensor. Thereafter, Licensee shall have no obligation for the payment of Annual License Fees to Licensor for the terminated Supplemental License, provided the Small Cell Equipment associated with said Supplemental License and any related facilities owned by Licensee have been removed from any affected City traffic lights pole and the Right-of-Way by the termination date. Should the Small Cell Equipment remain in place after the termination date of the Supplemental License, Licensee shall continue to be liable to Licensor for the Annual License Fee prorated for every month that the Small Cell Equipment remains in the Right-of-Way.

(e) **Effect of Expiration of License Agreement** – Upon expiration of the License Agreement, Licensee shall have up to two hundred forty (240) days following expiration in which to remove all Small Cell Equipment and related facilities from City traffic light poles and Public Rights-of-Way, except as otherwise provided in subsection 4(c). Within thirty (30) days following expiration, Licensee shall provide the Chief Technology Officer with a schedule and timeline for removing the Small Cell Equipment. Thereafter, Licensee shall have no access to Rights-of-Way for the purpose of installing any Small Cell Equipment. Should any

Small Cell Equipment remain in place thereafter, Licensee shall be liable to Licensor for the payment of monthly prorated Annual License Fees for the Small Cell Equipment that remains in the Rights-of-Way.

(f) **Amendment of License Agreement** – Either Party shall have the right to request an amendment of this License Agreement on the fifth (5th) anniversary of the Effective Date and each five (5) year period of the Term thereafter, provided notice to amend is sent to the other Party no later than ninety (90) days from the end of such five (5) year period. In the event Licensor requests amendments to the Annual License Fee, such Annual License Fee may be increased based on comparable licensing fees paid by Licensee in other Texas cities or based on local fair market value conditions, but such increase shall be limited to no more than twenty percent (20%) during any given five year period. The Annual License Fee shall not be decreased at any time during the Term of this License Agreement. The Parties may agree to amend other substantive provisions of this License Agreement. Any contractual amendments shall be approved by an ordinance of the City Council. If the Parties have not reached agreement on contractual amendments by the end of the then existing Term, the Parties may agree in writing to a temporary extension of the License Agreement as appropriate and necessary to complete negotiations on proposed contractual amendments, which may include mediation under Section 23. If following negotiations, the Parties cannot reach agreement on contractual amendments, the City shall have the right to terminate this License Agreement at the end of the agreed upon temporary extension period by providing written notice thereof to Licensee. In no event shall the City have the right to terminate this License Agreement prior to the expiration of the Term due solely to the Parties failing to reach an agreement on an amendment to the License Agreement requested by the City.

SECTION 5. LICENSE-AND ADMINISTRATIVE FEES

(a) **Annual License Fee and Escalation** – The Annual License Fee per Small Cell shall be $1,500, which shall increase and compound annually at a rate of three percent (3%).

(b) **Annual License Fee Applicable to Every Small Cell Site** – Licensee shall pay Licensor an Annual License Fee for every Small Cell Site approved by Licensor regardless of whether Licensee attaches its Small Cell Equipment to a traffic light pole owned by Licensor, utility pole owned by a third-party, or pole owned by Licensee. Any pole installation of Wireless Backhaul Transmission Equipment on a stand-alone basis shall be considered a Small Cell Site to which the Annual License Fee shall apply (unless such installation is subject to a separate agreement between Licensor and Licensee). Except as otherwise approved by the Chief Technology Officer, Licensee shall not make multiple Wireless Backhaul Transmission Equipment installations on a single pole.

(c) **Timing of License Fee Payments** – Licensee shall pay in advance to Licensor the Annual License Fee for the coming year for each Small Cell Site. The Annual License Fee for all Small Cell Sites approved on any given month will be due on the first day of the following month. Thereafter, on the annual anniversary of that

month, Licensee shall pay Licensor the Annual License Fees (including the 3% annual interest rate) for the next year for every applicable Small Cell Site.

(d) **Late Payment Interest** – Any Annual License Fees not paid within ten (10) days of the due date shall be assessed a rate of 18% per annum from that date.

(e) **Administrative Fees.** In addition to Annual License Fees, Licensee shall be responsible for paying Administrative Fees for the processing of Small Cell Site Applications by City staff as prescribed in Section 6. Starting on the Effective Date, Licensee shall pay a non-refundable $700.00 Administrative Fee to Licensor for each Small Cell Site Application submitted for review and approval. The Administrative Fee shall be submitted with every Small Cell Site Application as a prerequisite to begin review of the Small Cell Site Application. Licensee shall have the right to amend the Small Cell Site Application to correct errors or provide additional information without having to pay a second Administrative Fee.

(f) **Advance Payment** – As partial consideration under this License Agreement, Licensee shall pay Licensor within thirty (30) days of the Effective Date of the License Agreement an advance payment of $70,000.00. Such payment shall be used as a credit against Annual License Fees and Administrative Fees incurred by Licensee until such date on which such advance payment has been fully depleted.

(g) **Annual License Fees and Administrative Fees to Licensor** – Licensee shall pay Licensor the Annual License Fees and Administrative Fees as specified in subsections 5(a) – (f) in the form of a money transfer or a check made out to the order of the City of San Antonio and sent to:

City of San Antonio
Information Technology Services Department
Attn: ITSD Fiscal Administrator
515 Frio Street
San Antonio, TX 78283

SECTION 6. APPROVAL OF SMALL CELL SITES

(a) **Small Cell Site Application** – Licensee shall file with the Chief Technology Officer a Small Cell Site Application for every proposed Small Cell Site as prescribed in Exhibit E. Said application form may be modified from time-to-time by the Chief Technology Officer as deemed necessary in order to more efficiently process applications from Licensee.

(b) **Small Cell Site Approval Process** – Upon filing of a Small Cell Site Application as provided in Exhibit E, the Chief Technology Officer shall process the Small Cell Site Application within thirty (30) business days in accordance with the process flow chart set out in Exhibit F. A request by ITSD staff for additional information will toll the time period for approval of the Small Cell Site Application on a day-by-day basis. The Chief Technology Officer may designate one or more staff personnel to review and approve Small Cell Site Applications, and shall have the authority to develop regulations for the efficient process of such applications.

(1) **Right-of-Way Determination** – The Licensor will determine whether the location (and any existing pole) identified by Licensee as a Small Cell Site is within City Right-of-Way. If it is not, the request would be outside the scope of the License Agreement as Licensor would not have authority to approve the Small Cell Site Application.

(2) **Ownership of Pole** – The Licensor will determine the ownership of the pole identified for installation of Small Cell Equipment. As the process flow chart at Exhibit F provides, the pole may be a City traffic light pole, a new pole to be installed by Licensee, or a utility pole owned by CPS Energy. Exhibit F outlines a review process applicable for each category of pole. The application review process applicable for a utility pole owned by CPS Energy shall also apply to a pole owned by any other third-party which Licensee uses to attach Small Cell Equipment and which is located on Public Right-of-Way.

(3) **Site Eligibility** – Licensor shall determine whether a requested City traffic light pole or the location for the installation for a new pole is eligible as a Small Cell Site based on space availability or other considerations. In addition, Licensor must determine whether public safety considerations prevent eligibility of a traffic light pole as a Small Cell Site. Concerning a request to install a new pole, Licensor shall determine whether City policies and availability of Right-of-Way prevent the pole installation at the requested location.

(4) **Review Criteria** – All Small Cell Site Applications requesting access to a City traffic light pole must include a load bearing study to determine whether the attachment of Small Cell Equipment may proceed without pole modification or whether the installation will require pole re-enforcement or replacement. If pole re-enforcement or replacement is necessary, Licensor shall provide engineering design and specification drawings demonstrating the proposed alteration to the pole. Moreover, all Small Cell Site Applications requesting the installation of a new pole shall include engineering design and specification drawings demonstrating compliance with the Americans with Disabilities Act. For each Small Cell Site Application, the Chief Technology Officer or his designee shall:

a. Verify that the Small Cell Site Application is complete and the appropriate Administrative Fee has been submitted.

b. Review engineering design documents to determine:

i. compliance with contractual requirements under this License Agreement;

ii. no interference with City public safety radio system, traffic signal light system, or other communications components;

iii. inclusion of appropriate design of stealth components necessary to comply with historic preservation requirements or aesthetic design elements for downtown attachments; and

iv. compliance with City pole attachment regulations for traffic light poles, including replacement of CPS Energy electric meter with dual meters.

c. Determine compliance with any other applicable requirements.

As appropriate, the Chief Technology Officer or his designee shall require Licensee to make design modifications in order to comply with applicable contractual, regulatory, or legal requirements. Failure to make the requested design modifications shall result in an incomplete Small Cell Site Application which may not be processed under this License Agreement.

Concerning Small Cell Site Applications for attachment to a CPS Energy pole, or the pole owned by any other third-party, the Chief Technology Officer or his designee shall follow the same review process as outlined in subsections 6(4)(a)-(c) as applicable.

(5) **Approval of Application** – Upon finding that the Small Cell Site Application is complete and in compliance with all applicable requirements as outlined above, the Chief Technology Officer or his designee shall approve such Small Cell Site application. The approval of the Small Cell Site Application requesting to attach to a City traffic light pole, or to install a new pole, shall authorize Licensee to proceed to obtain a Right-of-Way permit (ROW Permit) from the City's Right-of-Way Management Office. Licensee shall comply with the requirements of the Right-of-Way Management Ordinance and Excavation Manual. Licensee shall pay all appropriate Texas standard promulgated ROW Permit fees. Upon obtaining a ROW Permit, Licensee may proceed to install the Small Cell Equipment in coordination with any affected City departments. Approval of a Small Cell Site Application related to the use of a CPS Energy utility pole, or a pole owned by any other third-party, shall authorize Licensee to proceed with attachment process applicable to the pole owner and in accordance with the pole owner's regulations proceed to obtain a ROW Permit. Again, Licensee shall proceed with the Small Cell Equipment installation in coordination with any affected City departments. Upon completion of the installation, Licensee shall notify the Chief Technology Officer, or his designee, in writing and provide a picture of said installation to be included in the Small Cell Site Application records.

(6) **Execution of Supplemental License** – Upon approval of the Small Cell Site Application, the Parties shall execute a Supplemental License in the form provided in Exhibit G, which shall be effective as of the date of application approval.

(7) **Inventory of Small Cell Sites** – Licensee shall maintain a current Inventory of Small Cell Sites throughout the Term of this License Agreement. Licensee shall provide to Licensor a copy of the Inventory of Small Cell Sites one hundred and eighty (180) days prior to the fifth (5th) anniversary of the License Agreement and any five (5) year period thereafter until the end of the Term. The Inventory

of Small Cell Sites shall include GIS coordinates, date of installation, Company Site ID #, type of pole used for installation, pole owner, and description/type of installation for each Small Cell Equipment installation. Concerning Small Cell Sites that become inactive, the Inventory of Small Cell Sites shall include the same information as active installations in addition to the date the Small Cell Site was deactivated and the date the Small Cell Equipment was removed from the Right-of-Way. Licensor shall compare the Inventory of Small Cell Sites to its records to identify any discrepancies.

(8) **Unauthorized Installations** – Any Unauthorized Small Cell Sites that are identified by the City as a result of comparing the Inventory of Small Cell Sites to internal records or through any other means will be subject to the payment of Unauthorized Installation Charges by Licensee. Licensor shall provide written notice to Licensee of any Unauthorized Small Cell Site identified by City staff and Licensee shall have thirty (30) days thereafter in which to submit a preexisting Supplemental License for said site. Failure to produce a Supplemental License corresponding with the Unauthorized Small Cell Site will result in the imposition of an Unauthorized Installation Charge, which shall be calculated by applying the Annual License Fee formula set out in Section 5 to the period spanning from the original date of installation of the Unauthorized Small Cell Site to the date of the written notice sent by Licensor. The total amount resulting from this calculation shall be assessed an interest rate of twelve (12) percent to constitute the applicable Unauthorized Installation Charge. Thereafter, Licensee shall submit a Small Cell Site Application and applicable Administrative Fee for the Unauthorized Small Cell Site and if approved by the Chief Technology Officer, a Supplemental License shall be executed and Licensee shall become liable for paying Annual License Fees going forward. If the Small Cell Site Application for the Unauthorized Small Cell Site is not approved based on applicable considerations under this License Agreement, Licensee shall remove the Small Cell Site Equipment and any related facilities from the Right-of-Way within thirty (30) days.

SECTION 7. CONSTRUCTION WORK-REGULATION BY CITY

(a) **Compliance with Law Required** – The work done by Licensee in connection with the installation, construction, maintenance, repair, and operation of Small Cell Equipment on poles within the Public Rights-of-Way shall be subject to and governed by all pertinent local and state laws, rules, regulations, including the City's Right-of-Way Management Ordinance, that are applicable to insuring the work done does not unduly inconvenience the public in the use of the surface of the streets and sidewalks.

(b) **Duty to Minimize Interference** – All pole excavations, construction activities, and aerial installations on poles in the Rights-of-Way shall be carried on as to minimize interference with the use of City's Rights-of-Way and with the use of private property, in accordance with all regulations of the City necessary to provide for public health, safety and convenience.

SECTION 8. CONSTRUCTION, RESTORATION AND MAINTENANCE ACTIVITIES

(a) **Eligibility of City Traffic Light Pole** – Prior to submitting a Small Cell Site Application related to the use of a City traffic light pole, Licensee shall verify with the City's Transportation and Capital Improvements ("TCI") Department the eligibility of the specified traffic light pole for attachment of Small Cell Equipment. In addition, Licensee shall conduct an engineering load bearing study to determine whether the pole can withstand the added weight of the Small Cell Equipment. If the proposed installation will require pole re-enforcement or replacement, the engineering design documents included with the Small Cell Site application shall include specifications relating to the proposed pole re-enforcement or replacement. Construction activities involving pole re-enforcement or replacement shall be coordinated with applicable TCI Department personnel and the Right-of-Way Manager.

(b) **Compliance with Right-of-Way Regulations** – In the installation, construction, maintenance, upgrade, and operation of Small Cell Equipment, Licensee shall comply with the provisions of the Right-of-Way Management Ordinance and Excavation Manual (which is applicable to all utilities operating within the San Antonio), including but not limited to provisions pertaining to the following activities:

(1) construction activities related to the installation, maintenance, repair, upgrade, and removal of Small Cell Equipment on existing poles in the Rights-of-Way;

(2) installation of new poles in the Rights-of-Way;

(3) cut or otherwise disturb the surfaces of the Rights-of-Way;

(4) disruption of vehicular and pedestrian traffic on Rights-of-Way to a minimum as reasonably necessary to execute the required work;

(5) applicable excavation and restoration standards; and

(6) pavement repairs.

(c) **Submission of Engineering Plans** – Prior to installation, Licensee shall submit engineering plans to the Right-of-Way Manager for review and approval in accordance with the Right-of-Way Management Ordinance.

(d) **Identification of Utility Lines** – Prior to beginning any excavation or boring project on Public Rights-of-Way, Licensee shall comply with the provisions of the Texas One Call utility locator service at least forty-eight (48) hours in advance. Licensee has the responsibility to protect and support the various utility facilities of other providers while conducting construction, installation, and maintenance operations.

(e) **Installation, Maintenance, and Repair of Small Cell Equipment** – Licensee and its designated contractors shall have the sole responsibility to install state-of-the-art Small Cell Equipment on City traffic light poles, including the responsibility for providing electricity service and an electric meter. Licensee shall keep and maintain all Small Cell Equipment installed on Public Rights-of-Way in commercially reasonable condition and repair throughout the Term of this License Agreement, normal wear and tear and casualty excepted. Licensee shall have the right to conduct testing and maintenance activities, and repair and replace damaged or malfunctioning Small Cell Equipment at any time during the Term.

(f) **Upgrade of Small Cell Equipment** – Licensee shall have the right to upgrade the Small Cell Equipment with next-generation equipment and innovative new technologies. Prior to making any such equipment or technology upgrade, Licensee shall file a Small Cell Equipment Application with the Chief Technology Officer or his designee, who shall review the application for compliance with the permitted use under this License Agreement and to verify that the new installation will not cause any interference with City's public safety communications system, traffic light signal system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate. Licensee will address any interference issues prior to approval of such application.

(g) **Coordination of Maintenance and Equipment Upgrade Activities** – Prior to Licensee engaging in planned or routine maintenance activities, or equipment upgrades concerning Small Cell Equipment attached to a City traffic light pole, Licensee shall provide twenty (20) days advance notice to the TCI Department in order to coordinate such maintenance activities with City operations of the traffic light system or other public safety functions. Licensee shall obtain a ROW Permit prior to engaging in any maintenance or equipment upgrade activities in the Right-of-Way regardless of pole ownership. Such twenty (20) day advance notice shall not be required in the case of an emergency.

(h) **Removal of Non-Compliant Installations** – The City shall have the authority at any time to order and require Licensee to remove and abate any Small Cell Equipment or other structure that is in violation of the City Code of Ordinances. In case Licensee, after receipt of written notice and thirty (30) days opportunity to cure, fails or refuses to comply, the City shall have the authority to remove the same at the expense of Licensee, all without compensation or liability for damages to Licensee.

(i) **Reservation of Rights** – The City reserves the right to install, and permit others to install utility facilities in the Rights-of-Way. In permitting such work to be done by others, the City shall not be liable to Licensee for any damage caused by those persons or entities.

(j) **No Limitation in City's Operation of Traffic Light Signal System** – The Parties agree that this License Agreement does not in any way limit Licensor's right to locate, operate, maintain, and remove City traffic light poles in the manner that best enables the operation of its traffic light signal system and protect public

safety. The TCI Department may deny access to City traffic light poles due to operational conditions at the requested site, limited space availability, public safety concerns, future traffic signal system planning, or other operational considerations. Further, nothing in this License Agreement shall be construed as granting Licensee any attachment right to install Small Cell Equipment to any specific traffic light pole, other than an approved Small Cell Site Application and execution of the corresponding Supplemental License under the terms of this License Agreement.

(k) **Coordination of Traffic Light Maintenance Activities and Emergency Response** – Prior to conducting planned or routine maintenance on specific components of the traffic light signal system mounted on poles where Small Cell Equipment has been installed, the TCI Department shall provide Licensee twenty (20) days advance notice of such maintenance activities. In advance of such maintenance activities, Licensee shall temporarily cut-off electricity to its Small Cell Equipment for the safety of maintenance personnel. In the event of failure of components of the traffic light signal system for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks, Licensor will respond to restore traffic light signal operations as a matter of public safety under the emergency provisions outlined in Section 13. Should the events that results in damage or failure of the traffic light signal system also affect Small Cell Equipment, Licensee shall have the sole responsibility to repair or replace its Small Cell Equipment and shall coordinate its own emergency efforts with the TCI Department.

SECTION 9. SUPERVISION BY CITY OF LOCATION OF POLES

(a) **Supervision by Right-of-Way Manager** – In the event Licensee finds it necessary to install poles on Public Rights-of-Way in order to install Small Cell Equipment at a selected Small Cell Site, such poles shall be of metal or other material of similar strength and straight in construction, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location of all Licensee's personal property, poles, , and electrical connections placed and constructed by the Licensee in the installation, construction, and maintenance of Small Cell Equipment shall be subject to the lawful, reasonable and proper control, direction and/or approval of the Right-of-Way Manager.

(b) **Pre-Approval by Right-of-Way Manager** – Prior to submitting a Small Cell Site Application covering the installation of a new pole, Licensee shall verify with the Right-of-Way Manager the eligibility of the Right-of-Way location for the proposed pole installation. Licensee shall include in the Small Cell Site Application documentation from the Right-of-Way Manager approving the proposed pole location in the Right-of-Way.

SECTION 10. INTERFERENCE WITH OTHER FACILITIES PROHIBITED

(a) **Interference with Rights of Others Prohibited** – Licensee shall not impede, obstruct or otherwise interfere with the installation, existence and operation of any other facility in the Rights-of-Way, including sanitary sewers, water mains,

storm water drains, gas mains, poles, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and City networks, and other telecommunications, utility, or municipal property.

(b) **Signal Interference with City's Communications Infrastructure Prohibited** – In the event that Licensee's Small Cell Equipment interferes with the City's traffic light signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, Licensee will respond to the Licensor's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving notice, pursuant to protocol outlined in subsection 10(c) below and shall follow the escalation process outlined in Section 13 of this License Agreement.

(c) **Protocol for Responding to Event of Interference** – The protocol for responding to events of interference will require Licensee to provide the Chief Technology Officer an Interference Remediation Report that includes the following items:

(1) **Remediation Plan.** Devise a remediation plan to stop the event of inference;

(2) **Time Frame for Execution.** Provide the expected time frame for execution of the remediation plan; and

(3) **Additional Information.** Include any additional information relevant to the execution of the remediation plan.

In the event that interference with City facilities cannot be eliminated, Licensee shall shut down the Small Cell Equipment and pursuant to Section 12 remove or relocate the Small Cell Equipment that is the source of the interference as soon as possible to a suitable alternative location made available by Licensor.

SECTION 11. COMPLIANCE WITH UTILITY, HEIGHT AND HISTORIC PRESERVATION REGULATIONS

(a) **Compliance with Local Regulations** – Licensee shall comply with all applicable local design and historic preservation regulations, including the following:

(1) **Utility Installations.** Licensee shall comply with all relevant legal requirements for connecting the Small Cell Equipment to electricity and telecommunications service. City is not responsible for providing electricity or transport connectivity to Licensee.

(2) **Height Restrictions.** All Small Cell Equipment installations shall be in compliance with height restrictions applicable to poles and other structures in certain overlay zoning districts. In all other zoning areas, Small Cell Equipment shall not be installed at a height exceeding thirty (30) feet.

(3) **Downtown Aesthetics.** The design plans for all Small Cell Site installations Downtown shall be compatible with the character and aesthetics of the neighborhoods, plazas, boulevards, parks, public spaces, and commercial districts located in whole or in part within Downtown. In coordination with City's Office of Historic Preservation, Planning and Community Development Department, Licensee shall implement design concepts and the use of camouflage or stealth materials, as necessary to blend its installations with the overall character of downtown locations selected as Small Cell Sites. Prior to submitting a Small Cell Site Application covering Downtown, Licensee shall meet with these City departments to discuss proposed Small Cell Site installations and request input on potential design modifications appropriate for the installation. Licensee shall comply with the City of San Antonio Downtown Design Guide and with all other City regulations applicable to Downtown.

(4) **Historic Preservation.** All Small Cell Site installations within a historic district shall be stealth installations subject to the review of the City's Office of Historic Preservation in order to satisfy that the installations are compatible with the regulations applicable to the historic district. Licensee shall implement design concepts, and the use of camouflage or stealth materials, as necessary in order to achieve compliance with historic preservation review, including following the City of San Antonio Historic Design Guidelines and other applicable regulations as amended. Further, Licensee acknowledges that under City regulations, all installations on Public Rights-of-Way are subject to review by the Office of Historic Preservation. Prior to submitting a Small Cell Site Application, Licensee shall meet with the Office of Historic Preservation to discuss any potential design modifications appropriate for the installation.

(5) **Expenses.** Licensee exclusively bears the cost and expense necessary to comply with subsections (1) through (4) above.

SECTION 12. RELOCATION AND REMOVAL OF FACILITIES

(a) **Relocation and Removal at Licensee's Expense** – Licensee shall remove and relocate its Small Cell Equipment at its own expense to an alternative location made available by Licensor and acceptable to Licensee not later than one hundred twenty (120) days after receiving written notice that removal, relocation, and/or alteration of the Small Cell Equipment (including poles) is necessary due to:

(1) construction, expansion, repair, relocation, or maintenance of a street or other public improvement project; or

(2) maintenance, upgrade, expansion, replacement, or relocation of City traffic light poles and/or traffic signal light system; or

(3) closure of a street or sell of City property; or

(4) projects and programs undertaken to protect or preserve the public health or safety; or

(5) activities undertaken to eliminate a public nuisance; or

(6) duty otherwise arising from applicable law.

Licensee's duty to remove and relocate its Small Cell Equipment at its expense under this subsection 12(a) is not contingent on the availability of an alternative location acceptable for relocation. Licensor will make reasonable efforts to provide an alternative location on Right-of-Way for relocation, but regardless of the availability of an alternative site acceptable to Licensee, Licensee shall comply with the notice to remove its personal property as instructed.

(b) **Cooperation in Relocations** – The Licensee and Licensor shall cooperate to the extent possible to assure continuity of service during relocation of Small Cell Equipment.

(c) **Recovery of Relocation Cost from Third-Parties** – Nothing in this section shall be construed as preventing Licensee from recovering the cost of removal and/or relocation of its facilities from a nongovernmental third-party responsible for the removal and/or relocation.

(d) **Consequences of Failure to Remove and/or Relocate** – If Licensee fails to remove and/or relocate its facilities to the satisfaction of the Chief Technology Officer or his designee by the 60th day after the date of notice or has not diligently commenced such removal as directed by Licensor, the Licensor may remove the Small Cell Equipment at the expense of Licensee.

(e) **Duty of Care when Removing and/or Relocating** – Any damage to the Public Rights-of-Way or adjacent property caused by Licensee that occurs during the removal and/or relocation of Licensee's Small Cell Equipment shall be promptly repaired or replaced at Licensee's sole expense. Should Licensee not make nor diligently pursue adequate repairs within thirty (30) days of receiving written notice, Licensor may make all reasonable and necessary repairs on behalf of Licensee, and reimburse itself from proceeds from the surety bond required under Section 16. Any remaining amount will be charged to Licensee. Licensee shall promptly remit payment of such costs when invoiced by the Licensor.

SECTION 13. EMERGENCY CONTACTS

(a) **Coordination of Emergency Events** – In case of an emergency due to interference, failure of traffic light signal system, or any unforeseen events, Licensor will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this License Agreement. Licensor will make every reasonable effort to coordinate its emergency response with the Licensee. To that end, the Licensor will use the following emergency contacts:

(1) Level One Contact: The Licensee's network operations center may be reached 24/7 at: (800) 264-6620 and email: N/A.

(2) Level Two Contact: In the event, the Licensee's network operations center cannot be reached, or the network operations center staff cannot address the emergency situation, Licensor may contact:

Don Bourque
Manager, Operations
Phone: (361) 851-9394
Email: Donald.bourque@verizonwireless.com

Or

Tony Smith
Manager, Operations
Phone: (210) 339-2669
Email: Tony.smith@verizonwireless.com

(3) Level Three Contact: In the event the emergency situation calls for a coordinated effort between Licensor's and Licensee's management team, Licensor may contact:

Randy Richter
Dir – Ntwk Eng & Ops
Phone: (210) 339-2603
Email: Randy.richter@verizonwireless.com

(b) **Licensee's Duty to Maintain Current Emergency Contacts** – Licensee will maintain the emergency contact information current at all times with the Chief Technology Officer and ROW Management Office.

(c) **Licensee's Response to Network Emergency** - In case of a network emergency due to any unforeseen event, Licensee may access its Small Cell Equipment without first obtaining a ROW Permit provided Licensee has conducted network trouble-shooting and diagnostic tests and has reasonably identified the point or points of network failure or malfunction. While acting under this provision to address a network emergency, Licensee shall conduct its activities within the Right-of-Way in such a manner as to protect public and private property. Licensee will make every reasonable effort to coordinate its emergency response with the Licensor. To that end, prior to entering the Right-of-Way, Licensee will use the following emergency contacts to give notice to Licensor of the network emergency and an estimated time period to address the situation:

(1) Level One Contact: The City's ROW Management Office may be reached 24/7 at: _____. In addition, Licensee shall notify the City's Network Operations Center, which is available 24/7, and alert the ITSD Senior IT Manager.

(2) Level Two Contact: In the event the City's Network Operations Center cannot be reached, or the Network Operations Center staff cannot address the emergency situation, Licensee shall contact the ITSD Assistant Director for Infrastructure.

(3) Level Three Contact: In the event the emergency situation calls for a coordinated effort between Licensor's and Licensee's network and/or management teams, Licensee shall contact the Chief Technology Officer.

(d) **Licensor's Duty to Maintain Emergency Contacts** – Licensor will maintain the emergency contact information current at all times with Licensee.

SECTION 14. INDEMNITY

(a) **General Indemnity Clause – Licensee covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Licensee's activities under this License Agreement, including any acts or omissions of Licensee, any agent, officer, director, representative, employee, consultant or subcontractor of Licensee, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this License Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in the instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

(b) **Licensee's Liability for Its Acts and Omissions** – Licensee shall be liable for the acts and omissions of its own employees, officers, directors, and any contractors, subcontractors, representatives, agents, or any parties involved directly or indirectly in the construction, installation, maintenance, or operation of Licensee's Small Cell Equipment and proprietary poles. Any act or omission of non-employees, officers, and directors shall be considered an act or omission of the Licensee.

(c) **Duty to Indemnify Licensor Against Claims Arising from License Agreement** – Licensee shall defend, indemnify and hold the City and its officers, employees, and appointed and elected officials harmless against all damages, cost, loss or expense arising out of, incident to, directly or proximately resulting from the negligence or willful misconduct of Licensee, its employees, officers, directors,

contractors, subcontractors, agents, or representatives in the performance of activities under this License Agreement for:

(1) the repair, replacement, or restoration of City property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective;

(2) damage to or loss of the property of any person including, but not limited to Licensee, its agents, officers, employees and subcontractors, the City's agents, officers and employees, and third-parties; and

(3) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person no matter how, or to whom, the loss may occur.

(d) **Licensor's Duty to Notify Licensee of Claims** – The City shall give prompt written notice to Licensee of any claim for which the City seeks indemnification. Licensee shall have the right to investigate, defend, and compromise these claims subject to the City Attorney's prior approval. Said approval shall not be unreasonably withheld, delayed or conditioned.

(e) **Licensor's Consent to Settle Claims** – Licensee may not settle any claim subject to this Section 14 without the consent of City, unless (i) the settlement will be fully funded by Licensee, and (ii) the proposed settlement does not contain an admission of liability or wrongdoing by any elected officials, employees, officers, directors, volunteers or representatives of City. The City's withholding its consent as allowed in the preceding sentence does not release or impair Licensee of any obligations under this Section 14. Licensee must give City at least twenty (20) days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind City must first be approved by City Council.

(f) **Licensor Not Liable to Licensee** – Licensor shall not be liable to Licensee, or its customers, agents, representatives, or employees for any claims arising from this License Agreement for lost revenue, lost profits, loss of equipment, interruption or loss of service, loss of data; or for incidental, indirect, special, consequential, or punitive damages, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

SECTION 15. INSURANCE REQUIREMENTS

(a) Prior to the commencement of any work under this License Agreement, the Licensee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Information Technology Services Department, which shall be clearly labeled "*Verizon Wireless Master License Agreement for Use of Public Rights-of-Way*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's

original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this License Agreement until such certificate and endorsements have been received and approved by the City's Information Technology Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

(b) City reserves the right to review the insurance requirements of this Section during the effective period of this License Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereupon the City may incur increased risk. Such review and modification shall not occur more frequently than every five (5) years.

(c) The Licensee's financial integrity is of interest to the City; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this License Agreement, and any extension hereof, at the Licensee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

Type of Coverage	Amounts
1. Professional Liability (Claims Made Form)	$1,000,000 per claim and aggregate to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
2. Workers' Compensation	Statutory
3. Employers' Liability	$1,000,000/$1,000,000/$1,000,000
4. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/complete operations d. Personal and Advertising Injury e. Contractual liability f. Property damage, to include Fire Legal Liability	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence and General Aggregate limit of $2,000,000 Property damage, minimum of $50,000
5. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

(e) The Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

- Upon receipt of notice from its insurer, Licensee will provide Licensor with thirty (30) days prior written notice of cancellation.

(f) Within thirty (30) calendar days of a suspension, cancellation or non-renewal of coverage, the Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to the City. The City shall have the option to suspend the Licensee's performance should there be a lapse in coverage at any time during this License Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this License Agreement.

(g) In addition to any other remedies the City may have upon the Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order the Licensee to stop work hereunder, and/or withhold any payment(s) which become due to the Licensee hereunder until the Licensee demonstrates compliance with the requirements hereof.

(h) Nothing herein contained shall be construed as limiting in any way the extent to which the Licensee may be held responsible for payments of damages to persons or property resulting from the Licensee's or its subcontractors' performance of the work covered under this Licensee Agreement.

(i) It is agreed that the Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this License Agreement.

(j) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License Agreement.

(k) The Licensee and any subcontractors are responsible for all damage to their own equipment and/or property.

SECTION 16. SURETY BOND

(a) **Duty to Obtain Bond** – Licensee shall obtain and maintain at its sole cost a corporate surety bond securing performance of its obligations and guaranteeing faithful adherence to the requirements of the License Agreement. The surety bond must be:

(1) in an amount not less than $100,000.00;

(2) issued by a surety company license to do business in the State of Texas; and

(3) under terms and conditions acceptable to the City Attorney.

(b) **Time Period to Obtain Bond** – Licensee shall obtain this bond no later than the 30th day after the effective date of this License Agreement.

(c) **Bond Does Not Limit Other Rights and Remedies** – The rights reserved to the Licensor under the bond are in addition to all other rights. No action, proceeding or exercise of a right regarding the bond shall affect the Licensor's rights to demand full and faithful performance under this License Agreement or limit the Licensee's liability for damages.

SECTION 17. ADMINISTRATION OF LICENSE

(a) **Administration of License by City Officials** – The Chief Technology Officer or his designee is the principal City officer responsible for the administration of this License Agreement. The Right-of-Way Manager shall review the operations of Licensee in the Rights-of-Way under this License Agreement and the Right-of-Way Management Ordinance.

(b) **Licensee's Duty to Communicate with City Officials** – Licensee shall communicate with the Right-of-Way Manager all matters in connection with or affecting the installation, construction, reconstruction, maintenance and repair of Licensee's Small Cell Equipment in the Rights-of-Way and provide periodic deployment plans to the Right-of-Way Manager and the Chief Technology Officer.

(c) **Notice** – Notices required by this License Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to City shall be delivered as follows:

Chief Technology Officer
Information Technology Services Department
City of San Antonio
P.O. Box 839966
515 S. Frio Street
San Antonio, Texas 78283
(210) 207-8140

City Clerk's Office
City of San Antonio
P.O. Box 839933
San Antonio, Texas 78283-3933
(210) 207-7253

Until any such change is made, notices to Licensee shall be delivered as follows:

San Antonio MTA, L.P.
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

SECTION 18. RECORDS

(a) **Licensee's Duty to Keep Records** – Licensee shall keep complete and accurate GIS and mapping information, deployment plans, equipment inventories, and other relevant records of its Small Cell Equipment deployments on Public Rights-of-Way.

(b) **Licensor's Right to Examine Records** – Licensor may, at reasonable times and for reasonable purposes, examine, verify and review the maps, plans, equipment inventories, and other records of Licensee pertaining to Small Cell Equipment installed in the Rights-of-Way. Licensee shall make the above records available to the Licensor for review within ten (10) business days after requested by the Chief Technology Officer or Right-of-Way Manager.

SECTION 19. RIGHT TO AUDIT

(a) **Licensor's Right to Audit** – Licensor, or its designees, shall have the right to audit, examine or inspect, at the Licensor's election and at Licensor's expense, all of the Licensee records at any and all Licensee's locations relating to Small Cell Equipment deployments under this License Agreement ("Licensee's Records") during the Term of the License Agreement and retention period herein. The audit, examination or inspection may be performed by Licensor's designee, which may include internal City auditors or outside representatives engaged by Licensor The Licensee agrees to retain the Licensee's Records for a minimum of four (4) years following termination or expiration of the License Agreement or a successor agreement, unless there is an ongoing dispute under the License Agreement or successor agreement, then, such retention period shall extend until final resolution of the dispute beyond the four (4) year retention period.

(b) **Licensee's Duty to Make Records Available** – Licensee's Records shall be made available at the Licensor's designated offices within thirty (30) calendar days of the Licensor's request and shall include any and all information, materials and digital data of every kind and character generated as a result of this License

Agreement. Examples of Licensee's Records include but are not limited to copies of Inventory of Small Cell Sites, Small Cell Site Applications, Supplemental Licenses, ROW Permits, CPS Energy Attachment Permits, payment records for Annual License Fees and Administrative Fees, equipment invoices, subcontractor invoices, engineering documents, vendor contracts, network diagrams, internal network reports, and other documents related to installation of Small Cell Equipment at Small Cell Sites. The Licensee bears the cost of producing, but not reproducing any and all requested business records.

(c) **Inspection of Certain Records at Licensee's Place of Business** – Licensor agrees that it will exercise the right to audit, examine or inspect Licensee's Records that cannot be replicated at Licensee's place of business in Bexar County or closest location within the state of Texas only during regular business hours. Licensee agrees to allow the Licensor's designee(s) access to all of the Licensee's Records, facilities, deemed necessary by Licensor or its designee(s), to perform such audit, inspection or examination. Licensee also agrees to provide adequate and appropriate work space necessary for Licensor's designee(s) to conduct such audits, inspections or examinations if required.

(d) **Licensee's Duty to Remit Underpayment** – If an audit inspection or examination discloses that Licensee's Annual License Fee payments to Licensor as previously remitted for the period audited were underpaid, Licensee shall pay within 30 days to City the underpaid amount for the audited period together with interest at the Interest Rate of twelve percent (12%) from the date(s) such amount was originally due.

(e) **Licensee's Duty to Comply with Audit Requests** – Failure by the Licensee to comply with the provisions of this audit clause may result in termination of this License Agreement at Licensor's option. In the event of termination, Licensee shall be responsible for the cost of termination and agrees to hold the Licensor harmless for any and all claims resulting from termination due to the Licensee's failure to comply with the audit clause.

SECTION 20. ASSIGNMENT OF LICENSE

(a) **Limited Right of Assignment** – This License Agreement and each Supplemental License under it may be sold, assigned or transferred by Licensee without any approval or consent of the Licensor to Licensee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Licensee's assets in the market defined by the FCC in which the Right of Way is located by reason of a merger, acquisition or other business reorganization provided that such acquiring entity is bound by all of the terms and conditions of this License Agreement. As to other parties, this License Agreement and each Supplemental License may not be sold, assigned or transferred without the written consent of the Licensor. Licensee shall provide the Chief Technology Officer notice of any such merger, acquisition or other business reorganization with a principal, Affiliate or subsidiary of Licensee within a reasonable period of time after the consummation thereof. No change of stock ownership, partnership interest or control of Licensee or transfer upon partnership or corporate dissolution of Licensee shall constitute an assignment hereunder.

(b) **Licensee's Right to Grant Security Interest in License** – Additionally, Licensee may mortgage or grant a security interest in this License Agreement and the Small Cell Equipment, and may assign this License Agreement and Small Cell Equipment to any mortgagees or holders of security interest, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees' interests in this License Agreement are subject to all of the terms and provisions of this License Agreement. In such event, City shall execute such consent to financing as may reasonably be required by Mortgagees.

(c) **Sub-Licenses Prohibited** – Licensee shall not sub-license to any third-parties, or place any facilities for the benefit of such third-parties in City Rights-of-Way or on City traffic light poles to which Licensee is granted access under this License Agreement. Any such action shall constitute a material breach of the License Agreement. The installation of Distributed Antenna System (DAS) components or other small cell facilities in the Rights-of-Way that provide collocation space for the benefit of a third-party shall be considered a prohibited sub-license under this License Agreement.

SECTION 21. FUTURE CONTINGENCY

(a) **Renegotiation for Incapacity of Contract** – Notwithstanding anything contained in this License Agreement to the contrary, in the event that this License Agreement, in whole or in part, is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful, or otherwise inapplicable, the Licensee and Licensor shall meet and negotiate an amended License Agreement that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the amended License Agreement shall provide the City with a level of compensation comparable to that set forth in this License Agreement.

(b) **No Forfeiture of City Rights** – Any City approval, including a Supplemental License, covering specific Small Cell Equipment that would result in forfeiture of City property or the right to receive licensing fees for the use of Right-of-Way (as determined by any order, decision, action, or ruling by a court or other governmental authority of competent jurisdiction), shall be deemed invalid as to such Small Cell Equipment as of the date Licensor provides Licensee written notice of such order, decision, action, or ruling. In addition, if any of Licensee's Small Cell Equipment, whether installed pursuant to a Supplemental License or not, would cause such forfeiture (as determined by any order, decision, action, or ruling by a court or other governmental authority of competent jurisdiction), Licensee shall promptly remove such Small Cell Equipment from any City traffic light pole(s) and Rights-of-Way upon written notice from Licensor of such order, decision, action, or ruling. If Licensee fails to remove the Small Cell Equipment within thirty (30) days of the written notice, Licensor shall have the right to remove said Small Cell Equipment at Licensee's expense.

SECTION 22. LICENSE AGREEMENT VIOLATIONS LEADING TO TERMINATION

(a) **Events of Termination** – The Chief Technology Officer shall have the right to declare this License Agreement terminated at any time for failure of Licensee to comply with any term, condition, or provision of the License Agreement as follows:

(1) For material breaches of this License Agreement, Licensee shall have an opportunity to cure following receipt of written notice from City. If Licensee fails to cure, or fails to diligently pursue a cure of a violation within ninety (90) days after receiving written notice, then City may pursue termination of this License Agreement.

(2) Any termination of this License Agreement shall be declared in writing by the Chief Technology Officer following an opportunity to cure a violation of the License Agreement, and following a public hearing before City Council during which Licensee may present evidence and testimony of witnesses.

(3) Licensee shall not be excused from complying with any of the terms and conditions of this License Agreement by the previous failure of the City to insist upon or seek compliance with such terms and conditions.

(b) **No Waiver of Duties** – Termination of this License Agreement does not relieve Licensee from the obligation to pay (i) Annual License Fees owing to Licensor under the License Agreement at the time of termination, or (ii) any claim for damages against Licensee under this License Agreement. Termination does not prevent Licensor from enforcing payment by any remedy provided for by law or from recovering from Licensee for any default. Licensor's rights, options, and remedies under this License Agreement are cumulative, and no one of them is exclusive of the other. Licensor may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this License Agreement. No waiver by Licensor of a breach of any covenant or condition of this License Agreement is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this License Agreement.

SECTION 23. NON-BINDING MEDIATION

(a) **Duty to Mediate** – Prior to filing suit, the parties to this License Agreement shall use non-binding mediation to resolve any controversy, claim or dispute arising under the License Agreement, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this License Agreement or the preemptive effect of federal law.

(b) **Process to Initiate Mediation** – To initiate non-binding mediation, a Party shall give written notice to the other Party. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties. If the Parties cannot agree on a mediator, a mediator

shall be designated by JAMS/Endispute at the request of a party. Any mediator so designated must be acceptable to all party.

(c) **Duty of Good Faith Negotiations** – The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any finding by the mediator shall be a non-binding determination.

(d) **Confidentially of Mediation Proceedings** – The mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Tex. Civ. Prac. & Rem. Code § 154.073. The mediator may not testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(e) **Cost of Mediation** – Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties.

SECTION 24. GOVERNING LAW, JURISDICTION AND VENUE

(a) **Governing Law** – This License Agreement is passed in accordance with the constitutions, statutes, ordinances, and regulations of the United States, the State of Texas, and the City of San Antonio in effect on the date this License Agreement is approved by City ordinance, and as such local, state, and federal laws may be subsequently amended.

(b) **Compliance with Local Ordinances** – Nothing in this License Agreement shall be interpreted to limit the authority of the City Council to adopt, from time to time, ordinances, rules and regulations it may deem necessary in the exercise of City's governmental powers. Licensee shall abide by any laws of the City that do not conflict or are otherwise preempted by state of federal law.

(c) **Enforcement of Local Regulations** – Licensor expressly reserves the right to enforce reasonable regulations concerning Licensee's access to or use of Public Rights-of-Way or public facilities, including requirements for ministerial issuance of ROW Permits. It is understood and agreed that Licensee is responsible for obtaining all necessary municipal permits and other licenses necessary to install, maintain and operate its Small Cell Equipment.

(d) **Jurisdiction and Venue in Bexar County** – THE PROVISIONS OF THE LICENSE AGREEMENT SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER SHALL BE PERFORMED IN BEXAR COUNTY, TEXAS. THEREFORE, IN THE EVENT ANY COURT ACTION IS BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS LICENSE AGREEMENT, THE COURTS OF BEXAR COUNTY SHALL HAVE JURISDICTION OVER THE DISPUTE AND VENUE SHALL BE IN BEXAR COUNTY, TEXAS.

SECTION 25. PROHIBITED INTEREST IN CONTRACTS

(a) **Prohibited Interest** – The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(1) a City officer or employee;

(2) his parent, child or spouse;

(3) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(4) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

(b) **Licensee's Warranties** – Licensee warrants and certifies as follows:

(1) Licensee and its officers, employees and agents are neither officers nor employees of the City.

(2) Licensee has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

(c) **City's Reliance Is Reasonable** – Licensee acknowledges that City's reliance on the above warranties and certifications is reasonable.

SECTION 26. NON-DISCRIMINATION

(a) Non-Discrimination – Licensee understand and agrees to comply with the "Non-Discrimination Policy" of the City contained in Chapter 2, Article X of the City Code, and agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, unless exempted by state or federal law. In the event non-compliance occurs with this Section 26 occurs, Licensee, upon written notification by City, shall commence compliance procedures within thirty (30) days.

SECTION 27. MISCELLANEOUS PROVISIONS

(a) **Waiver** – None of the material provisions of this License Agreement may be waived or modified except expressly in writing signed by the Licensee and Licensor, as authorized by City Council by passage of an ordinance. Failure of either Party to require the performance of any term in this License Agreement or the waiver by either Party of any breach thereof shall not prevent subsequent enforcement of this term and shall not be deemed a waiver of any subsequent breach.

(b) **Severability** – If any clause or provision of the License Agreement is illegal, invalid, or unenforceable under present or future laws effective during the Term of this License Agreement, then and in that event it is the intention of the Parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this License Agreement that is illegal, invalid, or unenforceable, there be added as part of this License Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

(c) **Captions** – The captions contained in this License Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License Agreement.

(d) **Extent of Agreement** – This License Agreement, together with its attached exhibits and the authorizing ordinance, embodies the complete agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties and relating to this License Agreement.

(e) **Authority** – The signer of this License Agreement for the Licensee and the City hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of the Licensee or the City respectively.

(f) **Non-Waiver of Rights** – By entering this License Agreement, neither Licensor nor Licensee has waived any rights either Party may have under applicable state and federal law pertaining to the provision of Personal Communications Service, City zoning authority over Small Cell Equipment, pole attachment fees, license fees for the use of Right-of-Way, or City management of Licensee's activities on Rights-of-Way.

(g) **Force Majeure** – In the event Licensee's performance of any of the terms, conditions, obligations or requirements of this License Agreement is prevented or impaired due to a force majeure event beyond Licensee's reasonable control, such inability to perform will be deemed to be excused and no penalties or sanctions will be imposed as a result thereof, provided Licensee took steps to mitigate damages and accepts responsibility to cure the performance breach. However, Licensee's obligation to pay Annual License Fees to the City in a timely manner is absolute and shall not be subject to force majeure provisions. For purposes of this section, "force majeure" means an act of God, a natural disaster or an act of war (including terrorism), civil emergencies and labor unrest or strikes, untimely

delivery of equipment, pole hits, and unavailability of essential equipment, and/or materials. It also includes an explosion, fire or other casualty or accident, which is not the result of gross negligence, an intentional act or misconduct on the part of the Licensee. In addition to relief expressly granted in this License Agreement, City may grant relief from performance of this License Agreement if Licensee is unable to comply or perform due to an event of force majeure. The burden of proof for the need for such relief shall rest upon the Licensee. To obtain release based upon this section, Licensee must file a written request with the City's Information Technology Services Department for consideration and approval by the Chief Technology Officer, which approval shall not be unreasonably denied.

(h) **Technical Amendments** – Other than proposed substantive contractual amendments requested under Section 4, the Parties may mutually agree to make technical amendments to the License Agreement and its exhibits without the approval of City Council that would not alter the obligations and responsibilities of the Parties under the License Agreement, in order to address advances and/or innovations in wireless technologies and equipment.

(i) **No Partnership or Joint Venture** – The relationship between Licensor and Licensee is at all times solely that of licensor and licensee, not that of partners or joint venturers.

(j) **Effect of Bankruptcy** – Bankruptcy, insolvency, assignment for the benefit of creditors, or the appointment of a receiver is an event of default.

(k) **No Third-Party Beneficiaries** – This License Agreement benefits only the Parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.

(l) **Counterparts** – This License Agreement may be executed in multiple counterparts, each of which is an original. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

(m) **Further Assurances** – The Parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the Parties as contained in this License Agreement.

(n) **Public Disclosure** – Licensee acknowledges that this instrument is public record within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

EXECUTED and **AGREED.**

CITY OF SAN ANTONIO

_____
(Signature)

Printed Name: **Hugh Miller**
Title: **Chief Technology Officer**
Date: _____

SAN ANTONIO MTA, L.P. D/B/A VERIZON WIRELESS

By: Verizon Wireless Texas, LLC, its general partner

By: _____

_____
(Signature)

Printed Name: **Aparna Khurjekar**
Title: **Area Vice President Network**
Date: _____

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

Design Drawings of Small Cell Equipment Installation Options

EXHIBIT A

Design Drawings of Small Cell Equipment Installation Options

Type of Small Cell Equipment Installation:

_____ **Pole Mount Equipment – see details of equipment on Exhibit A-1:**

_____ **Without Cabinet**

_____ **With Cabinet:**

_____ **Small Cabinet** size 13" H x 16"W x 11"D

Weight is approximately 75 lbs.

_____ **Medium Cabinet** size 30"H x 22"W x 20" D

Weight is approximately 170 lbs.

_____ **Large Cabinet** size 55"H x 22"W x 20" D

Weight is approximately 400 lbs.

_____ **Roof Mount Equipment – see details of equipment on Exhibit A-2:**

_____ **Without Cabinet**

_____ **With Cabinet:**

_____ **Small Cabinet** size 13" H x 16"W x 11"D

Weight is approximately 75 lbs.

_____ **Medium Cabinet** size 30"H x 22"W x 20" D

Weight is approximately 170 lbs.

_____ **Large Cabinet** size 55"H x 22"W x 20" D

Weight is approximately 400 lbs.

Stealth Equipment – see details of equipment on **Exhibit A-3:**

_____ **Pole Installation**

_____ **Decorative Light Pole**

_____ **Future Option 1**

_____ **Future Option 2**

EXHIBIT A

Design Drawings of Small Cell Equipment Installation Options

Antenna(s) Equipment – see details of equipment on **Exhibit A-4:**

_____ **Small Omni antenna 20" x 3" approximately 2 lbs**

_____ **Small Pole Top Omni antenna 24" x 16" approximately 45 lbs**

_____ **Small Square antenna 12"x 12" x 5" approximately 17.2 lbs**

_____ **Small Panel antenna 23.3" x 10.6"x 6.2" approximately 20.3 lbs**

EXHIBIT A-1

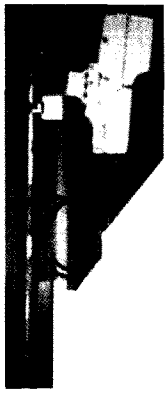
Design Drawings of Small Cell Equipment Installation Options

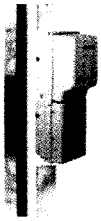
Pictures and Drawings are for illustrative purposes only and illustrate equipment that is available for use to Verizon Wireless as of January 2015; specific details will be provided in the supplement submitted for each individual small cell site location.

Type of Small Cell Equipment Installation:

Pole Mount Equipment – details of equipment as designated on Exhibit A:

Without Cabinet:





With Cabinet:

Small Cabinet size 13" H x 16"W x 11"D

Weight is approximately 75 lbs.

Medium Cabinet size 30"H x 22"W x 20" D

Weight is approximately 170 lbs.

Large Cabinet size 55"H x 22"W x 20" D

Weight is approximately 400 lbs.

EXHIBIT A-2

Design Drawings of Small Cell Equipment Installation Options

Pictures and Drawings are for illustrative purposes only and illustrate equipment that is available for use to Verizon Wireless as of January 2015; specific details will be provided in the supplement submitted for each individual small cell site location.

<u>Type of Small Cell Equipment Installation</u>:

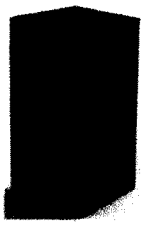
Roof Mount Equipment – details of equipment as designated on Exhibit A:

<u>Without Cabinet</u>:

<u>With Cabinet</u>:

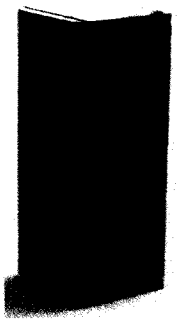
Small Cabinet size 13" H x 16"W x 11"D

Weight is approximately 75 lbs.



Medium Cabinet size 30"H x 22"W x 20" D

Weight is approximately 170 lbs.



Large Cabinet size 55"H x 22"W x 20" D

Weight is approximately 400 lbs.

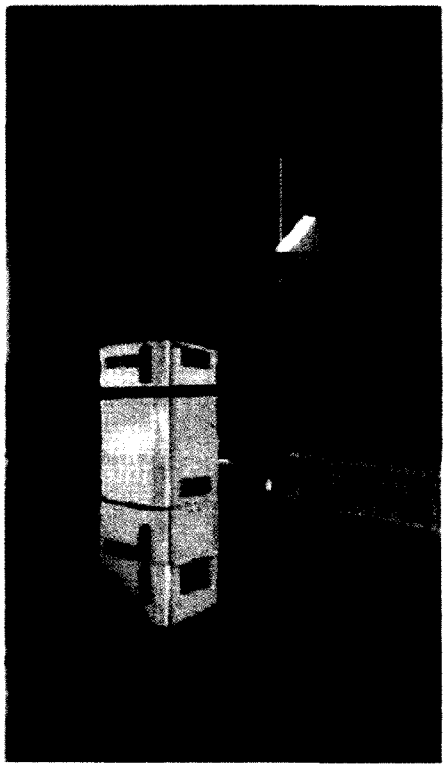


EXHIBIT A-3

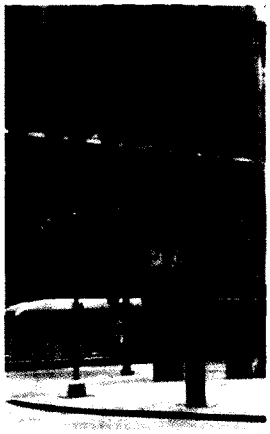
Design Drawings of Small Cell Equipment Installation Options

Pictures and Drawings are for illustrative purposes only and illustrate equipment that is available for use to Verizon Wireless as of January 2015; specific details will be provided in the supplement submitted for each individual small cell site location.

<u>Type of Small Cell Equipment Installation</u>:

Stealth Equipment – details of equipment as designated on Exhibit A:

- **Pole Installation(s):**



Decorative Light / Signage Pole(s):

- **Future Option 1** ***intentionally left blank.***
- **Future Option 2** ***intentionally left blank.***

EXHIBIT B

Engineering Diagram of Point of Demarcation at Small Cell Site

EXHIBIT B

Engineering Diagram of Point of Demarcation

Pictures and Drawings are for illustrative purposes only and illustrate equipment that is available for use to Verizon Wireless as of January 2015; specific details will be provided in the supplement submitted for each individual small cell site location.

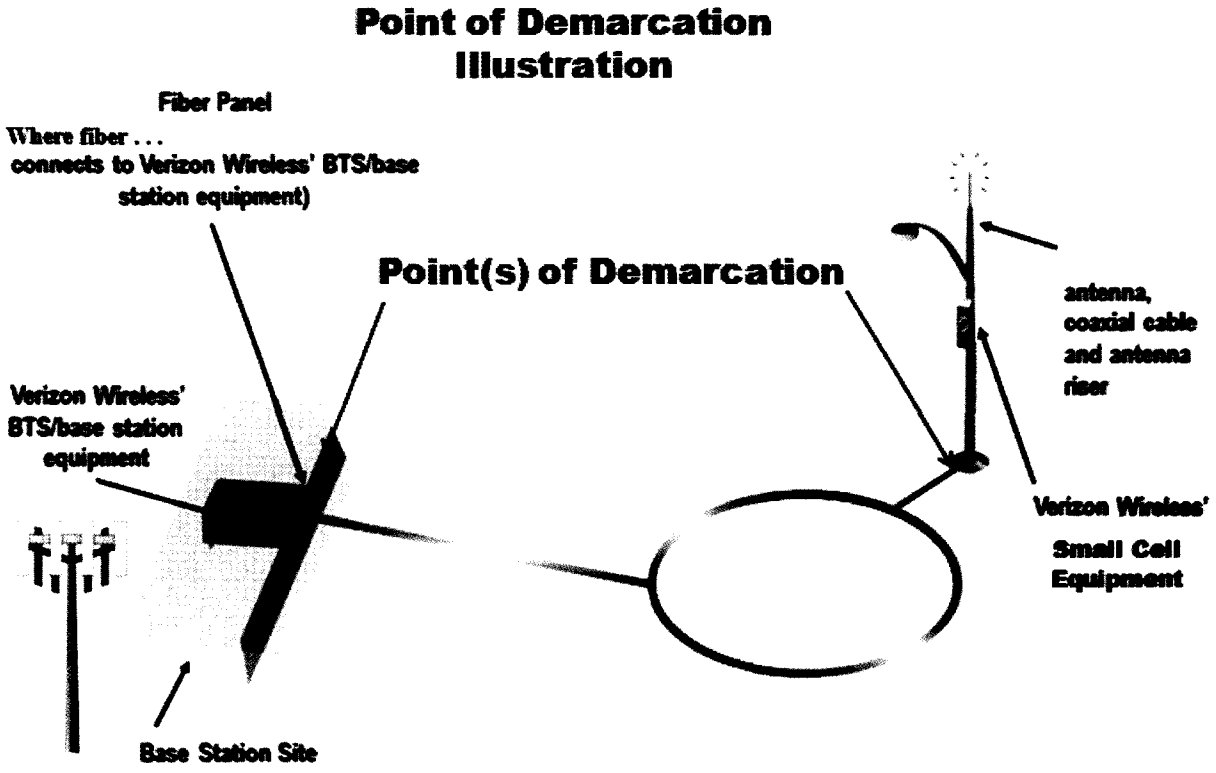


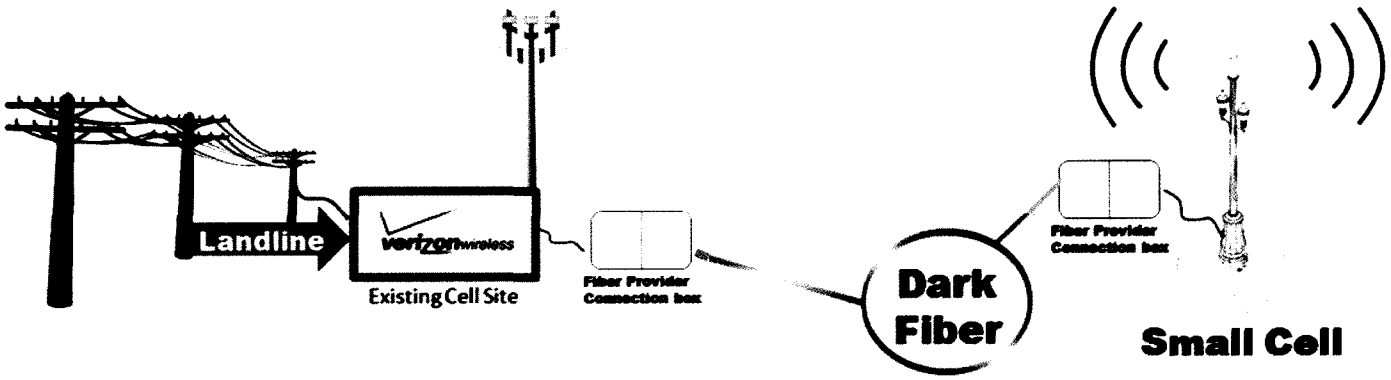
EXHIBIT C

Conceptual Diagram of Landline and Wireless Backhaul Transport Solutions

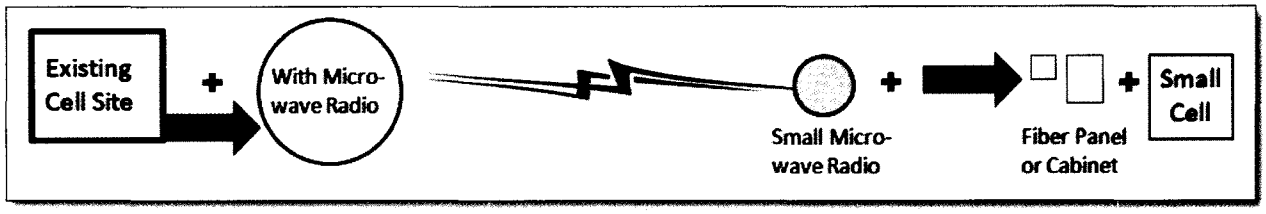
EXHIBIT C

Conceptual Diagram of Landline and Wireless Backhaul Transport Solutions

Landline Illustration



Wireless (microwave) Illustration:



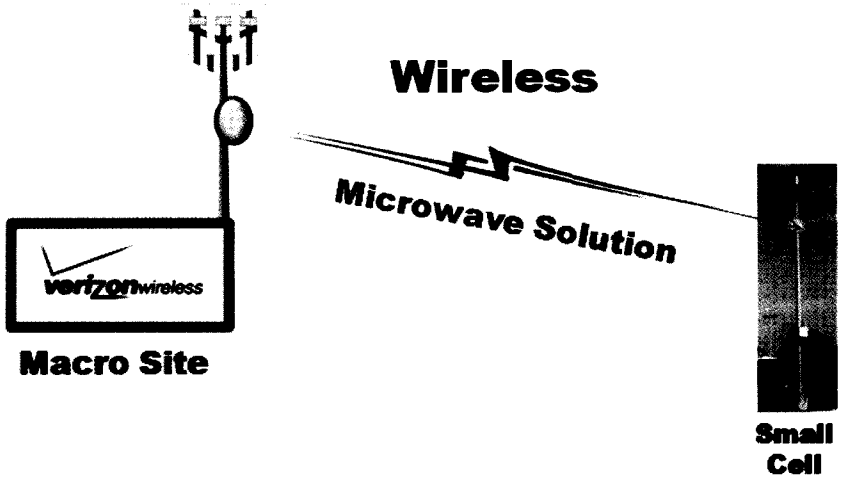


EXHIBIT D

City Map Identifying Location of City Traffic Light Pole Infrastructure

*** CONFIDENTIAL DOCUMENT – NOT FOR PUBLIC DISCLOSURE ***
*** Will be provided to Verizon upon execution of License Agreement***

EXHIBIT E

SMALL CELL SITE APPLICATION

Applicant: _____ Date: _____

License Ordinance #: _____ Application #: _____

Company Site ID #: _____ Zoning Area: _____

Supplemental License #: _____ City Council District: _____

Pole Site GIS Coordinates: _____ Historical District: _____

Type of Installation (Choose One):
☐ Small Cell Equipment with Wireless Backhaul Solution
☐ Small Cell Equipment with Landline Backhaul Solution
☐ Small Cell Equipment with Landline Backhaul Solution & Temporary Wireless Backhaul
☐ Wireless Backhaul Transmission Equipment Only

Attachment Height (ft): _____ Weight of Equipment: _____

Number of Antennas: _____ Antenna Dimensions: _____

Pole Type:
☐ City Traffic Light Pole
☐ CPS Energy Pole
☐ Proprietary Pole
☐ Other

Pole Alteration:
☐ Pole Re-enforcement
☐ Pole Replacement – Standard Pole
☐ Pole Replacement – Smart Pole
☐ New Pole – Standard Pole
☐ New Pole – Smart Pole
☐ Stealth Design
☐ None

Backhaul Solution:
☐ Leased Landline Transport Service
Name of Provider: _____
☐ Wireless Transmission Equipment
Type of Equipment: _____

Location of Equipment Shelter:
☐ Installed on Pole
☐ Installed in Ground (Vault)
☐ Other Location (Requires CTO Approval)

FCC License No. /Permit No.: _____

APPLICANT SHALL PROVIDE THE FOLLOWING IF APPLICABLE:

- Site plan and engineering design and specifications for installation of Small Cell Equipment, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, and electrical conduit and cabling. The design documents should include photo(s) of the existing pole, and photo simulation of pole with attached equipment. Where applicable, the design documents should include specifications on stealth design, pole modification, and ADA compliance.
- For City traffic light poles, include documentation from the City's Transportation and Capital Improvements (TCI) Department verifying that the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires re-enforcement or replacement in order to accommodate attachment of Small Cell Equipment. If pole re-enforcement or replacement is warranted, the design documents should include the proposed pole modification.
- For new pole installations, include documentation from the Right-of-Way (ROW) Management Office verifying that the pole location in the ROW is eligible for installation. The design documents for the pole installation must demonstrate compliance with the Americans with Disabilities Act (ADA) if applicable.
- Copy of the manufacturer's detailed specifications for Small Cell Equipment, including photographs or illustrations and a complete description of all pertinent physical and electrical characteristics.
- Documentation of applicable design standards or criteria for installations inside the boundaries of a Historic District, River Overlay (RIO) District, or Downtown District and installations within 250 feet of the boundary of such districts.
- If stealth modifications are required in order to comply with the design standards or criteria for installations inside the boundaries of a Historic District, RIO District or Downtown District and installations within 250 feet of the boundary of such districts, provide applicable design and specification drawings.
- If the proposed installation requires a new pole, provide design and specification drawings for the new pole, including smart poles.
- If the proposed installation will require re-enforcement or replacement of an existing pole, provide applicable design and specification drawings.
- The number, size, type and proximity to the facilities of all communications conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed.
- Description of interference restrictions associated with other wireless providers.
- All permits and letters of authorization from all affected parties.
- Valid FCC license or other appropriate certificates or permits as required.
- General description of the services to be provided.
- List of the contractors and subcontractors, and their contact information, authorized to work on the project.

ATTACH CHECK OR MONEY ORDER IN AMOUNT OF APPROPRIATE APPLICATION FEE. THIS PROCESSING FEE IS NON-REFUNDABLE AND NON-TRANSFERABLE.

ITSD WILL PROCESS THIS APPLICATION WITHIN 30 DAYS OF RECEIPT DATE AND WILL EXPIRE 120 DAYS FROM THE APPROVAL DATE, UNLESS AN AGREEMENT IS EXECUTED BY APPLICANT AND ITSD TO EXTEND THE APPROVAL DATE.

This is a public record subject to disclosure under the Texas Public Information Act.

APPLICANT REPRESENTATIVE: _____

PRINT NAME: _____
TITLE: _____

---------- **FOR CITY USE ONLY** ----------

RECEIPT DATE: _____ APPLICATION NO.: _____

APPROVED BY: _____

PRINT NAME: _____

TITLE:_____

APPROVAL DATE: _____

EXHIBIT F

Small Cell Site Application Process Flow Chart

Small Cell Site Application Process

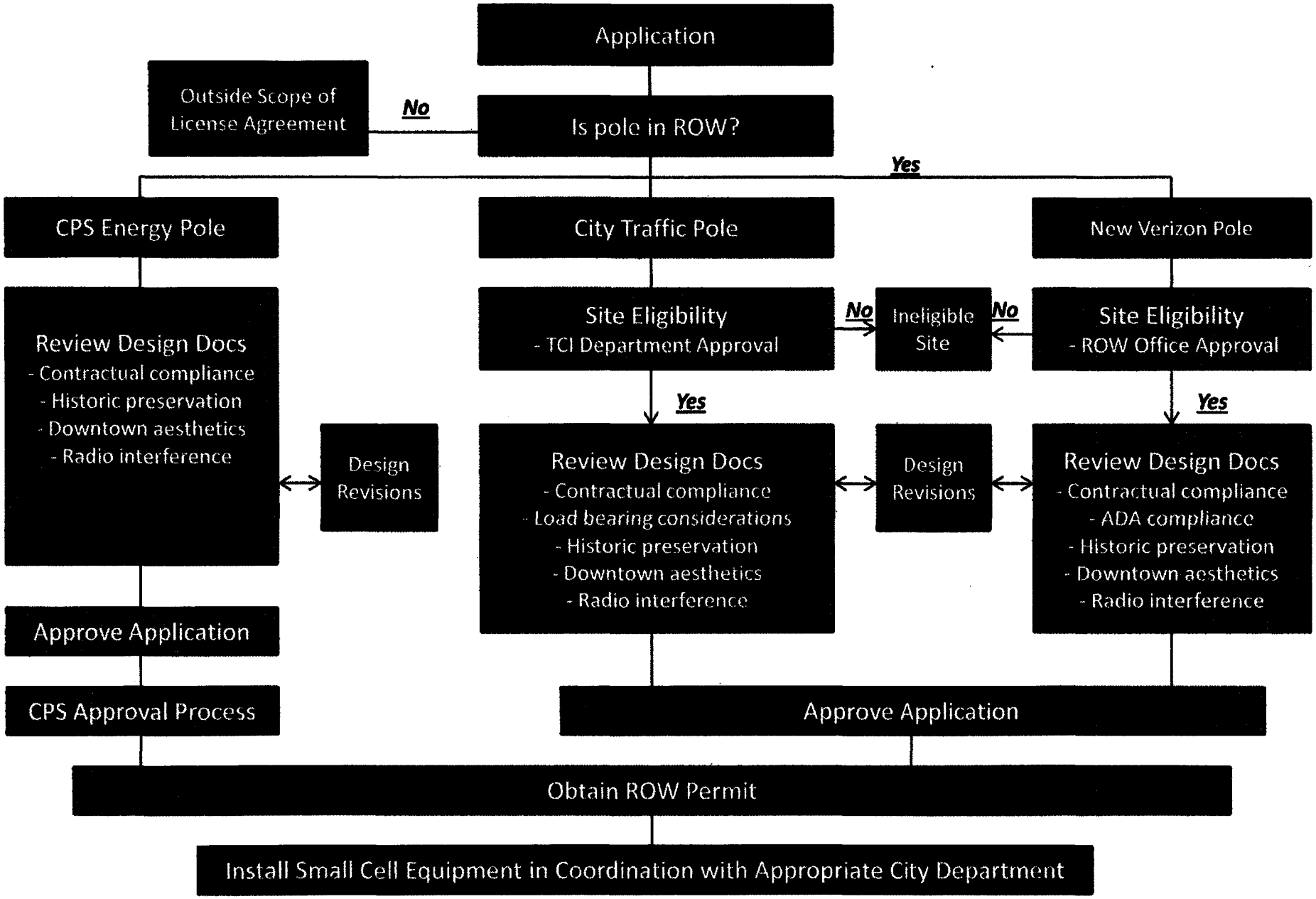


EXHIBIT G
Supplemental License Form

Supplemental License No. _____
For Small Cell Equipment Installation

This Supplemental License is entered on this ___ day of _____, ____, between the City of San Antonio, a Texas municipal corporation and home-rule city, acting through its Chief Technology Officer, or his designee, as Licensor, and San Antonio MTA, L.P., a Delaware limited partnership, d/b/a Verizon Wireless ("Verizon Wireless") as Licensee.

1. **Overview of Supplemental License** – This Supplemental License applies to the Small Cell Site described below.

Authorizing Ordinance:

License: Master License Agreement for Use of Use of City Rights-of-Way for Small Cell Equipment Installations

Purpose: Installation of Small Cell Equipment on:
☐ City Right-of-Way
☐ City Traffic Light Pole
☐ Third-Party Pole

Licensor: City of San Antonio

Licensee: San Antonio MTA, L.P. d/b/a Verizon Wireless

Site Information: GIS Coordinates: _____
Company Site ID No.: _____
Zoning District: _____
Name of Historic District: _____
Name of Pole Owner: _____

Installation Information Number of Antennas: _____
Height of Attachment: _____
Location of Equipment Shelter: _____
Stealth Installation: _____
Backhaul Solution: _____
Operating Frequencies: _____
FCC License/Permit No.: _____

Initial License Fee: Annual License Fee:_____
Note: Fees escalate at 3% annually

Commencement Date:

Term: Term of up to 25 years not to exceed the 25-year term of Master License Agreement except as provided in subsection 4(c) of the Master License Agreement.

2. **Source of Authority** – This Supplemental License is authorized and executed pursuant to the terms and conditions of the "Master License Agreement between the City of San Antonio and San Antonio MTA, L.P. d/b/a Verizon Wireless for the Use of Public Rights-of-Way," approved by the San Antonio City Council by Ordinance No. _____ passed on _____, as it may be amended by the Parties during its Term ("Master License Agreement"). All of the terms and conditions of the

Master License Agreement, including any future amendments, are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Master License Agreement. Capitalized terms used in this Supplemental License shall have the same definitions and meanings ascribe to them in the Master License Agreement, unless otherwise indicated herein.

3. **Approval Process** – This Supplemental License arises from and is part of the approval process associated with the Small Cell Site Application approved by the Chief Technology Officer on _____. The Small Cell Site Application, including all attachments, is incorporated as Exhibit 1 and made a part hereto.

4. **Scope of License** – This Supplemental License is limited to the Small Cell Equipment installation referenced in the Small Cell Site Application attached as Exhibit 1, as described in Section 1 above.

5. **Conflict in Interpretation** – Nothing in this Supplemental License is intended to grant Licensee any rights or privileges beyond those addressed in the Master License Agreement. In the event of any conflict in contractual interpretation between this Supplemental License and the Master License Agreement, the terms and conditions of the Master License Agreement shall govern. Any future amendments or modifications to the Master License Agreement shall simultaneously apply and serve to amend or modify this Supplemental License without the need by either Party to provide notice of such to the other.

6. **Site Specific Conditions** – All site specific conditions shall be addressed in the Small Cell Site Application associated with this Supplemental License, which is attached as Exhibit 1.

7. **Site Modifications** – Prior to making any future modifications to the Small Cell Site described in Section 1 above, other than maintenance and repair of site specific Small Cell Equipment as provided in the Master License Agreement, Licensee shall file a Small Cell Site Application with the Chief Technology Officer describing the proposed modifications. The Chief Technology Officer, or his designee, shall review the Small Cell Site Application pursuant to the terms and conditions in the Master License Agreement, and if approved such Small Cell Site Application shall be attached as Exhibit 2 and made a part hereto. Any additional site modifications shall be incorporated hereto in the same manner.

8. **License Fee** – The Annual License Fee applicable to this Supplemental License, as summarized in Section 1 above, is set forth in the Master License Agreement, payable by Licensee as provided therein.

9. **Commencement Date** – The Commencement Date for this Supplemental License shall be the same date that the Small Cell Site Application, which is attached as Exhibit 1, was approved by the Chief Technology Officer.
10. **Term** – The term for this Supplemental License, as described in Section 1 above, is set forth in the Master License Agreement.

NOW THEREFORE, the Parties hereto by the signature of their respective representatives hereby agree to enter into this Supplemental License.

LICENSOR

CITY OF SAN ANTONIO

_____

Printed Name: Hugh Miller
Title: Chief Technology Officer

Date: _____

LICENSEE

SAN ANTONIO MTA, L.P. D/B/A
VERIZON WIRELESS

By: Verizon Wireless Texas, LLC,
its general partner

By: _____
Printed Name: Aparna Khurjekar,
Title: Area Vice President Network

Date: _____