

**LICENSE AGREEMENT FOR SMALL  
WIRELESS FACILITIES ON CITY STREET LIGHTS AND POLES**

This License Agreement For Wireless Installations on Public Structures (“Agreement”) is made and entered into as of the Effective Date by and between City of Santa Barbara (hereinafter referred to interchangeably as either “City” or “Licensor”) and \_\_\_\_\_, limited liability company (“Licensee”).

**RECITALS**

**WHEREAS**, the City owns or controls certain streetlight and traffic poles and/or other improvements and facilities (hereinafter “City Property”); and

**WHEREAS**, Licensee is duly authorized under federal and state law to provide wireless communication services in Santa Barbara, California; and

**WHEREAS**, Licensee desires to install, maintain and operate wireless communication facilities known as small cells or distributed antenna systems (hereinafter “Facilities”) in and/or upon certain City assets, some of which may be located in the public rights-of-way; and

**WHEREAS**, this Agreement is for a non-exclusive license and shall not be construed as a lease or create any ownership rights or easements on City facilities; and

**WHEREAS**, the Parties desire to enter into this Agreement to define the general terms and conditions that govern their relationship with respect to the installation, maintenance, and operation of Licensee’s Facilities on City Property as herein set forth: and

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**1. GRANT OF LICENSE**

1.1 Grant of License. Licensor hereby grants a non-exclusive, revocable license to install, attach, replace, operate, and maintain Licensee Facilities on City Property, as further identified pursuant to specific site licenses issued pursuant to section 4 of this Agreement, subject to all the terms and conditions of this Agreement. No use of City Property under this Agreement shall create or vest in Licensee any ownership or property rights in such structures or infrastructure.

**2. TERM**

2.1 Agreement Term. This Agreement shall be for a term of ten (10) years commencing upon the execution hereof by both Parties.

2.3 Removal at End of Term.

A. Licensee shall, upon termination of this Agreement, or within sixty (60) days after any earlier termination of this Agreement, remove its facilities and restore the City’s Property to its original condition, reasonable wear and tear and casualty damage excepted. If such time for removal causes Licensee’s facilities to remain

on the City's Property after termination of the Agreement, Licensee shall pay fees at the then existing rate at pro-rata basis, until such time as the removal of the fixtures and/or facilities is completed.

- 2.4 Use. Licensee shall use the City Property for the purpose of installing, attaching, maintaining, repairing and operating their facilities and uses incidental thereto. Licensee's facilities shall be installed, attached, maintained and operated in a workmanlike manner and accordance with all applicable local, state and federal laws, regulations, and specifications, including but not limited, the Licensor's specifications and standards, all applicable orders, rules, and/or regulations issued by the California Public Utilities Commission (CPUC) and Federal Communications Commission (FCC); and the National Electric Code. Licensee shall confine activities on property to strictly those necessary for the exercise of the privilege and activities hereby licensed and shall collaborate and cooperate with Licensor so as not to interfere with the transaction of City business and the convenience of the public, or jeopardize the safety of persons or property. Licensee shall promptly comply with such further conditions and requirements as Licensor may hereafter prescribe.
- 2.5 Governmental Approvals. It is understood and agreed that Licensee's ability to use the City Property is contingent upon its obtaining after the execution date of each Supplement all of the certificates, permits and other approvals that may be required by any federal, state or local authorities as well as a satisfactory utility pole structural analysis which will permit Licensee use of the City Property.

### **3. CHARGES, BILLING AND PAYMENT**

3.1 Annual Fee.

(a) Licensee shall pay Licensor a Fee of Two Hundred Seventy and No/100 Dollars (\$270.00) per Wireless Installation located in Licensor's right-of-way for each year. The Fee is per Wireless Installation, and includes all structure, infrastructure, appurtenant equipment and facilities used in connection with each Wireless Installation. Except in the event of a voluntary termination of a Site License pursuant to Section 13.4(b) below, the Fee will be prorated for any partial year based on a 360-day calculation.

(b) The Fee may be revised once per calendar year to an amount that is calculated pursuant to the terms and conditions of the FCC 2018 Order, calculated pursuant to a cost study which has been reviewed, adopted and approved by City Council and is not subject to further appeals or subject to a complaint before a competent regulatory agency or court. After the revised Fee is final as described in the preceding sentence, Licensor shall provide Notice to Licensee of the Fee in accordance with the notice requirements of this Agreement. The Fee payable under this Agreement will adjust to Licensor's cost starting with Fee payments that are due at least 90 days after the date of such notice.

- 3.2 Timing of Payment. Licensee shall make the first payment of the Fee under any Site License within ninety (90) days of the full execution of the Acknowledgment. Thereafter, the Fee shall be paid on or before each July 1<sup>st</sup> (City's fiscal year) after the Commencement Date during the Site License Term.
- 3.3 Billing and Payment Generally. All bills and other requests for payment to Licensor under this Agreement (other than the payment of the Fee) shall be presented in writing to Licensee and accompanied with reasonable substantiation of the costs incurred by Licensor. Properly presented invoices shall be paid by Licensee within ninety (90) days of receipt of invoice accompanied by such substantiation. All charges payable under this Agreement shall be billed by Licensor within one (1) year from the end of the calendar year in which the charges were incurred. Any charges beyond such period shall not be billed by Licensor, and shall not be payable by Licensee.

#### **4. REPRESENTATION AND WARRANTIES**

Licensee represents and warrants, as of the Effective Date of this Agreement and execution thereof, the following:

- 4.1 Licensee is either: (a) a personal wireless service provider authorized, certificated or licensed by the FCC or other agency, (b) an operator of a distributed antenna system network authorized, certified or licensed by the FCC, the CPUC or other agency, (c) a wireline provider of Telecommunications Service authorized, certified or licensed by the CPUC.
- 4.2 Licensee is authorized to provide communications services, is otherwise qualified to do business in California, and has obtained all necessary authorizations, certifications, or licenses from the FCC, the CPUC or other agency; and that a copy of the Licensee's Certificate of Public Convenience and Necessity, if applicable, shall be submitted to City prior to execution of this Agreement.

#### **5. SITE LICENSE PROCESS**

Before installing any new or additional Wireless Installation onto any Structure or utilizing any Infrastructure, Licensee is required to follow the City's review and permitting process managed by the City's Public Works and Community Development Departments.

#### **6. LICENSOR'S WORK FOR STRUCTURES AND INFRASTRUCTURE**

- 6.1 Costs To Rearrange/Adjust Facilities of Others. If a Person, other than Licensor, must rearrange or adjust any of its facilities to accommodate a new Wireless Installation, Licensee shall coordinate such activity at Licensee's sole expense; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant with Laws.

## 7. GENERAL LICENSEE OBLIGATIONS

- 7.1 Technical Requirements and Specifications. At its own expense, Licensee shall erect, install, repair and maintain its Wireless Installations in safe condition and good repair in accordance with (a) the requirements and specifications of Safety Codes; (b) Licensor's reasonable standards, and (c) any current or future rules or orders of the FCC, the State public utility commission, or any other federal, state or local authority having jurisdiction. Changes to the requirements, specifications, standards, rules and orders in subsections (a), (b) and (c) shall not apply retroactively unless required by Laws, and Licensor shall give at least sixty (60) days' written notice of changes to the standards in subsection (c).
- 7.2 No Liens. Licensee will not allow to exist any lien with respect to any Structure or Infrastructure or other Licensor property or facility resulting from any work performed by or on behalf of Licensee pursuant to this Agreement, or any act or claim against Licensee or any of its contractors, agents, or customers. Licensee will, at its sole expense, promptly bond or otherwise discharge any such lien within thirty (30) days of receipt of written notice from Licensor of the existence of such lien.
- 7.3 Worker Qualifications; Responsibility for Agents and Contractors. Each Party shall ensure that its employees, agents or contractors which perform work in furtherance of this Agreement are adequately trained and skilled to access Structures and Infrastructure in accordance with all applicable industry and governmental standards and regulations.

## 8. UTILITIES

Licensee shall be solely responsible for arrangement and payment for electric service necessary in connection with Wireless Installations.

## 9. OPERATION AND MAINTENANCE

- 9.1. RF Emissions. Licensee's operation of its Wireless Installations will comply with all FCC regulations regarding RF emissions and exposure limitations. Licensee is allowed to install signage and other mitigation, such as a power cut-off switch on Structures, to allow workers and third parties to avoid excess exposure to RF emissions. Except in an Emergency, Licensor's authorized field personnel will contact Licensee's designated point of contact with reasonable advance notice, but in no event less than one (1) business day in advance, to inform Licensee of the need for a temporary power-shut-down. In the event of an unplanned outage or cut-off of power or an Emergency, the power-down will be performed with such advance notice as practicable. Once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Licensee as soon as possible that power has been restored. The Parties acknowledge that they understand the vital nature of Licensee's Wireless Installations and agree to limit the frequency of power-downs and to restore power as promptly as much as reasonably possible.

- 9.2 Interference. Licensee agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of City or other Licensee's of the Property which existed on the City's Property prior to the date this Agreement is executed by the Parties. In the event any after-installed Licensee's equipment causes such interference, and after City has notified Licensee in writing of such interference, Licensee will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Licensee's option, powering down such equipment and later powering up such equipment for intermittent testing. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

## 10. RELOCATION AND ABANDONMENT

- 10.1 Relocation for Public Improvement Projects. In the event Licensor desires to replace, relocate, modify, demolish, or in any way alter the Structure and/or Infrastructure in connection with a Public Improvement Project in a manner likely to cause Interference with Licensee's Wireless Installation, Licensor shall have the right to cause Licensee to relocate the Wireless Installation subject to the terms and conditions set forth herein; provided, however, Licensor shall use reasonable efforts to fully accommodate Licensee's continuing use of the Structure and/or Infrastructure, as the case may be, without relocation if it is reasonably possible to do so.

(a) Relocation. If Licensor's Public Improvement Project requires Licensee to relocate its Wireless Installation from all or any portion of the Structure and/or Infrastructure, Licensor shall have the right to require Licensee to relocate the Licensed Site upon the following terms and conditions: (i) Licensor shall deliver to Licensee a Relocation Notice to relocate the Wireless Installation; (ii) Licensor shall identify a suitable Relocation Licensed Space to ensure that the Relocation Licensed Space provides substantially similar signal coverage for the Wireless Installation as that of the Licensed Site being relocated; (iii) such relocation will be performed exclusively by Licensee at no cost to the Licensor; (iv) Licensee must follow the City's review and permitting before installing at a new space or site if necessary; and (v) the Licensee Fee applicable to such Licensed Site shall abate until the Wireless Installation achieves full on-air operation in the ordinary course of Licensee's business in the Relocation Licensed Space. Licensee shall not be required to pay any additional application, review or other Licensor fees in connection with any relocation initiated by Licensor. If in Licensee's reasonable judgment no suitable Relocation Licensed Space can be found, then Licensee shall have the right to terminate the applicable Site License for which Licensor is requiring relocation upon written notice to Licensor, and without penalty or further obligation.

(b) Relocation In The Event of An Emergency. Notwithstanding Section 10.1(a) above, in the event of an Emergency, Licensor will endeavor to provide as much notice to Licensee for the relocation of the Wireless Installation as warranted by the circumstances pertaining to the Emergency.

- 10.2 Abandonment. If the City determines to abandon any structure and/or then City shall give Licensee ninety (90) days' prior written notice of City's intent to abandon the structure and Licensee must remove its Wireless Installations at which time the site license shall automatically terminate without further liability to Licensee and Licensee will be reimbursed for any prepaid Fee on a pro rata basis.

## **11. DAMAGE TO CITY PROPERTY AND REPAIRS**

- 11.1 Licensee shall assume all responsibility for, and promptly reimburse, City, in full, for any costs associated with damages caused directly or indirectly by the Licensee, its employees, agents, and/or contractors to City Property, including but not limited to repairs, staff time and equipment replacement. Licensee shall immediately notify City upon the occurrence of any such damages.
- 11.2 Licensee shall provide City and maintain a current contact name and phone number to which any emergency repairs or incidents shall be reported to. Licensee and contractors performing work for Licensee shall not be required to pay any fee in order to perform work on Licensee's communications equipment, or park within the streets and other public rights-of-way when responding to an emergency repair request from City. Emergency repair shall mean any repair needed to be completed within less than 48 hours in order to continue the normal operations of City or Licensee facilities or equipment.

## **12. INSURANCE**

- 12.1 Certificate of Insurance. Licensee shall at its sole expense maintain the insurance coverage and limits required by this Section during the Term of this Agreement. Licensee agrees to procure the required insurance from an insurance company having and maintaining an A.M. Best rating of at least A VII and deliver to a Licensor a Certificate of Insurance evidencing the types of insurance and policy limits required.
- 12.2 Required Insurance.
- (a) Workers' Compensation and Employer's Liability insurance, as required by statute, with Employer's Liability limits of \$500,000 each accident, \$500,000 by disease policy limits, and \$500,000 by disease each employee. To the extent allowed by Laws, the policy must include a blanket waiver of subrogation in favor of Licensor.
- (b) Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, with limits of:

- \$2,000,000 General Aggregate Limit
- \$1,000,000 Each Occurrence
- \$1,000,000 Each Occurrence - Personal Injury and Advertising Injury
- \$2,000,000 Products/Completed Operations Aggregate Limit

The required Commercial General Liability policy must include Licensor as an additional insured on a primary and non-contributory basis and a waiver of subrogation in favor of Licensor.

(c) Business Automobile Liability insurance with limits of \$1,000,000 Combined Single Limit for each Accident for Bodily Injury and Property Damage, extending to all company owned, leased, and non-owned vehicles.

- 12.3 Notice of Cancellation. Licensee may meet the required insurance coverage and limits with any combination of primary and umbrella/excess liability insurance. Licensee shall provide at least thirty (30) days advance written notice of cancellation or non-renewal of any required insurance that is not replaced. Notwithstanding the foregoing, Licensee may self-insure the required insurance under the same terms and conditions as outlined above.

### 13. INDEMNIFICATION

To the fullest extent permitted by law, the Licensee shall (1) immediately defend and (2) indemnify the City, its governing body, officers, and employees from and against all liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Licensor, or its employees, agents, or subcontractors.

Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Licensor's obligations to both defend and indemnify apply unless it is finally adjudicated that the liability or liabilities, in whole or in part, do not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Licensor its employees, agents, or subcontractors.

The duty to defend is a separate and distinct obligation from the Licensee's duty to indemnify. The Licensee shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the City and its directors, officers, and employees, immediately upon submittal to the Licensee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Licensee from its separate and distinct obligation to defend City.

The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Licensee asserts that liability is caused in whole or in part by the negligence or

willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole negligence, active negligence, or willful misconduct of an indemnified party, Licensee may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

#### 14. CASUALTY

In the event of damage to a Structure and/or Infrastructure due to a Casualty Event that cannot reasonably be expected to be repaired within forty-five (45) days following such Casualty Event or which Licensor elects not to repair, or if such Casualty Event is reasonably be expected to disrupt Licensee's operations on the Structure and/or Infrastructure for more than forty-five (45) days, then Licensee may terminate the applicable Site License or affected portion thereof upon fifteen (15) days' written notice to Licensor and If Licensee elects to terminate the Site License Agreement. Licensee will be reimbursed for any prepaid Fee on a pro rata basis.

#### 15. NOTICES

All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the Parties as follows:

If to Licensee (including invoices):

**If to Licensor:**  
City of Santa Barbara  
Public Works Department

Attention: City Engineer  
c/o Land Development  
630 Garden Street  
Santa Barbara, CA 93101

With a copy to the \_\_\_\_ Legal Department:

*with a copy to:*

City of Santa Barbara  
City Attorney's Office  
P.O. Box 1990  
Santa Barbara, CA 93102-1990

Any Party may change its address or other contact information at any time by giving the other Party, and Persons named above, written notice of said change.

**17. APPLICABLE LAWS**

This Agreement shall be subject to the Santa Barbara City Charter, and the laws, rules, regulations and ordinances in effect within the City of Santa Barbara, County of Santa Barbara, California, and any interpretation of the law that may be necessary shall be pursuant to the laws applicable within that jurisdiction.

**18. MISCELLANEOUS**

- 18.1 Entire Agreement. This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Licensee and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
  
- 18.2 Amendments. This Agreement may not be amended or varied except in a writing signed by all Parties.
  
- 18.3 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date stated in the introductory clause.

CITY OF SANTA BARBARA,  
a municipal corporation

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Rebecca J. Bjork  
Public Works Director

APPROVED AS TO CONTENT:

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Brian D'Amour, P.E.  
City Engineer

APPROVED AS TO FORM:  
Ariel Pierre Calonne, City Attorney

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John S. Doimas  
Assistant City Attorney

APPROVED AS TO INSURANCE:

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Mark Howard  
Risk Manager

ATTEST:

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Sarah Gorman  
City Clerk Services Manager

**SITE LICENSE**

Licensor: City of Santa Barbara

Licensee: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Location: \_\_\_\_\_

1. Site License for Wireless Installations on City Street Lights. This Site License is issued pursuant to the License Agreement for Wireless Installations on City Street Lights between Licensor and Licensee dated \_\_\_\_\_, 20\_\_\_\_ ("Agreement"). All of the terms and conditions of this Site License are contained in the Agreement.
  
2. Project Description and Locations Licensee shall have the right to install and attach Wireless Installations on, under, and above the public right of way owned or controlled by Licensor, on, in and adjacent to the specific Structure and Infrastructure as identified and described in Exhibit 1 attached hereto (collectively the "Licensed Site").
  
3. Fee. Two Hundred Seventy and No/100 Dollars (\$270.00) per Wireless Installation located in Licensor's right-of-way for each year.
  
4. Special Provisions, **If Any (Specific to the Licensed Site)**

[SIGNATURES APPEAR ON FOLLOWING PAGE]

LICENSOR:

[FULL NAME OF LICENSOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LICENSEE:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBITS

- 1 Licensed Site, Wireless Installation Equipment List and Plans

## EXHIBIT 1 TO SITE LICENSE AGREEMENT

### Licensed Site, Wireless Installation Equipment List and Plans

Licensee Wireless Installation Reference: [LICENSEE TO COMPLETE]

FA / USID: [LICENSEE TO COMPLETE]

Site Name: [LICENSEE TO COMPLETE]

PTN / PACE: [LICENSEE TO COMPLETE]

Structure pole number: [LICENSOR TO COMPLETE]

Structure Latitude and Longitude (Approximate): [LICENSEE TO COMPLETE]

Wireless Installation Equipment List: [LICENSEE TO COMPLETE]

Wireless Installation Plans: See the attached plan set dated [REDACTED] 20[REDACTED] prepared by [REDACTED] consisting of ([REDACTED]) page(s).