

MUNICIPAL FACILITY LICENSE AGREEMENT

THIS MUNICIPAL FACILITY LICENSE AGREEMENT (the “Agreement”) is dated as of _____, 20__ (referred to herein as “Effective Date”), and entered into by and between the City of Roseville, a California municipal corporation (the “Licensor”), and _____, a _____ (“Licensee”). Licensor and Licensee are referred to herein collectively as the “Parties” or individually as a “Party.”

Recitals

A. WHEREAS, the Licensor is the owner of certain Municipal Facilities (as defined below) located in the Rights-of-Way (as defined below) of the City of Roseville (“City”); and

B. WHEREAS, Licensee is authorized to conduct business as a telephone corporation in the State of California; and

C. WHEREAS, Licensee desires to use space on certain of the Licensor’s Municipal Facilities in the Rights-of-Way to construct, attach, install, operate, and maintain its Equipment (as defined below); and

D. WHEREAS, Licensor is willing to allow Licensee to use and physically occupy portions of the Municipal Facilities in the Rights-of-Way subject to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. DEFINITIONS. The following definitions shall apply generally to the provisions of this Agreement:

1.1 “Equipment” means the equipment cabinets, antennas, utilities, and fiber optic cables, wires, and related equipment, whether referred to individually or collectively, to be installed on a Municipal Facility and operated by Licensee under a particular Supplement.

1.2 “Hazardous Substance” means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including, but not limited to, petroleum products and asbestos.

1.3 “Laws” means any and all applicable statutes, codes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, court orders, or other requirements of the Licensor or other governmental agency having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

1.4 “License Fee” means the compensation paid under any Supplement for use of the Municipal Facilities.

1.5 “Make-Ready Work” means the work required on or in a Municipal Facility to create space for the Equipment, and/or replacing and/or reinforcing the existing Municipal Facility to accommodate Equipment including, but not limited to, rearrangement or transfer of existing Equipment and the facilities of other entities, and Municipal Facility relocation and replacement if applicable.

1.6 “Municipal Facilities” means Licensor-owned structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic signal poles, banners, street furniture, bus stops, billboards, utility or other poles, lighting fixtures, or electroliers located within the ROW, and may refer to such facilities in the singular or plural, as appropriate to the context in which used. The term includes Replacement Facilities referred to in Section 4.1.3. “Municipal Facilities” shall not include electric poles, electrical substation properties and their associated equipment, power poles that are of 50,000 volts or greater, power poles that do not have any existing secondary conductors, and steel power poles. Also excluded from the definition of “Municipal Facilities” are any street light poles that have an existing small cell, reader, collector, or similar equipment or that have been previously reserved for the installation of such equipment by Licensor itself or by another provider of Services.

1.7 “Person” means and includes any individual, partnership of any kind, corporation, limited liability company, association, joint venture, or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns, or any combination of such persons.

1.8 “PUC” means the California Public Utilities Commission.

1.9 “Replacement Facility” means a facility approved by Licensor to replace an existing Municipal Facility for the purpose of accommodating the installation of Licensee’s Equipment and facilities. “Replacement Facility” excludes Licensee’s Equipment. As further provided for in this Agreement, Replacement Facilities shall be approved by Licensor prior to removal of an existing Municipal Facility. After installation, Replacement Facilities shall be approved by Licensor and dedicated to Licensor free of liens and encumbrances, except for this License Agreement. Thereafter, a Replacement Facility shall be a Municipal Facility and subject to the same rules regulations and license provisions as other Municipal Facilities.

1.10 “Right(s)-of-Way” or “ROW” means the improved or unimproved surface or subsurface of any public street, or similar public way of any nature, including the air space above such areas, dedicated or improved for vehicular, on-street bicycle, and/or pedestrian related use. Right-of-Way includes public streets, roads, lanes, alleys, sidewalks, medians, public utility easements, and landscaped lots. The Public Right-of-Way does not include private streets, county, state or federal rights-of-way, property owned by any person other than the Licensor, and service entrances or driveways leading from the road or street onto adjoining property, unless Licensor has been granted an easement or other right-of-way which allows Equipment or utility facilities to be installed on, above, or below such property.

1.11 “Services” means the transmission and reception of communications signals for the provision of personal wireless services, telecommunications services and mobile data services as defined in federal law.

1.12 “Supplement” shall mean each separate authorization, granted by Licensor to Licensee with regard to a specific Equipment installation, the form of which is attached hereto as Exhibit A, each and every of which shall be subject to the terms and conditions of this Agreement.

1.13 “Transfer” means any transaction in which the rights and/or obligations held by Licensee under this Agreement or a Supplement are transferred, directly or indirectly, in whole or in part to a party other than Licensee.

2. TERM; SUPPLEMENT TERM.

2.1 Term. The initial term of this Agreement shall be for a period of ten (10) years (the “Initial Term”), commencing on the Effective Date and ending on the tenth (10th) anniversary thereof, unless sooner terminated as stated herein. Provided that Licensee is not in default of the Agreement or any Supplement following written notice and the expiration of any applicable cure period, this Agreement shall be automatically renewed for two (2) successive five (5) year renewal terms (each, a “Renewal Term”), unless either Party gives the other Party written notice of the intent not to renew this Agreement at least six (6) months prior to the expiration of the Initial Term or any Renewal Term, as applicable. The Initial Term and all Renewal Terms shall be collectively referred to herein as the “Term.” Any holding over after the termination or expiration of the Term shall constitute a default by Licensee, notwithstanding that Licensor may elect to accept one or more payments of fees from Licensee after such default occurs.

2.2 Supplement Term. Unless otherwise specified in a Supplement, the initial term for each particular Supplement shall begin on its effective date (“Supplement Effective Date”) and shall end upon the expiration of the Term, unless such individual Supplement is earlier terminated or this Agreement is extended or terminated, as provided for herein (the “Supplement Term”). If a Supplement is added after the Initial Term of this Agreement, the Supplement shall set forth whether the Supplement may be extended beyond the Renewal Terms provided for in this Agreement, as set forth in Section 2.1, and, if so, for what terms. All of the provisions of this Agreement shall be in effect during the Supplement Term. The expiration or termination of the Agreement shall immediately terminate all Supplements unless the Supplements provide otherwise. Any holding over after the expiration of the Supplement Term shall not be considered as a renewal or extension of the Supplement Term but shall be an extension of the terms and conditions of the Supplement for one (1) year terms thereafter until terminated by either Party by giving written notice to the other party of its intention to terminate the Supplement at least six (6) months prior to the end of such one-year term. The License Fee during such one-year term shall be equal to the License Fee paid during the last year of the final Supplement renewal term, increased annually as described in Section 5.2.

3. REPRESENTATION CONCERNING SERVICES; NO AUTHORIZATION TO PROVIDE OTHER SERVICES. Licensee represents, warrants, and covenants that its Equipment installed pursuant to this Agreement and each Supplement will be utilized solely for providing the Services, and Licensee is not authorized to and shall not use its Equipment installed on Municipal Facilities to

offer or provide any other services not specified herein without Licensor consent. At any time that Licensee ceases to operate as a provider of Services under federal or state law, it shall provide written notice of the same to Licensor within sixty (60) calendar days of such cessation, at which time the Licensor shall have the option, in its sole discretion and upon six (6) months' written notice to Licensee, to terminate this Agreement and to require the removal of Licensee's Equipment from the ROW and from Municipal Facilities, including the cost of any site remediation, at no cost to the Licensor, without any liability to Licensee related directly or indirectly to such termination, unless Licensee resumes operation as a provider of Services under federal or state law within such six (6) month period.

4. SCOPE OF AGREEMENT. Licensee may only use Municipal Facilities pursuant to an approved Supplement. Any and all rights expressly granted to Licensee under this Agreement shall be exercised at Licensee's sole cost and expense, and shall be subject to the restrictions set forth herein.

4.1 Attachment to Municipal Facilities. Subject to the conditions herein, Licensor hereby authorizes and permits Licensee to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment on identified Municipal Facilities located in the ROW for the purpose of providing Services, and to structurally modify and replace Municipal Facilities with Replacement Facilities and perform other Make-Ready Work.

4.1.1 Licensee will submit an application using Licensor's standard application form or on-line permitting system. One application is required per Municipal Facility. Multiple applications can be submitted at the same time. Any and all proposed changes or modifications to the Municipal Facility, including but not limited to any structural modifications, shall be included in the plans submitted by Licensee and shall be approved by Licensor prior to any work on the Municipal Facility.

4.1.2 Licensor may approve, approve with conditions, or disapprove an application in its sole discretion; provided however, that Licensor shall not unreasonably delay its decision. Licensor shall make its determination(s) within the periods of any shot clock applicable to the application or any extensions thereof. Any approved Equipment shall be included as part of the applicable Supplement.

4.1.3 If Licensee submits an application to use a Municipal Facility that is structurally inadequate to accommodate its proposed Equipment, Licensor may (i) permit the replacement of the Municipal Facility (a "Replacement Facility") with one that is acceptable to and approved by the Licensor as part of the applicable Supplement, or (ii) perform structural modifications to the Municipal Facility. Any Replacement Facility shall be installed and maintained in accordance with Section 6 of this Agreement.

4.1.4 Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to the Equipment, including, but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary. Where commercially feasible and available, Licensee shall secure unmetered electricity services.

4.2 Additional Authority. Nothing in this Agreement shall limit in any way Licensee's obligation to obtain any additional required regulatory approvals or permits from any City department, board, commission, or other governmental agency that has regulatory authority over the Licensee's proposed activities involving use of the Municipal Facilities in the ROW.

4.3 No Interference. Licensee acknowledges and agrees that the primary purpose of the Municipal Facilities is to serve the Licensor and the public. In the performance and exercise of its rights and obligations under this Agreement, Licensee shall not interfere in any manner with Licensor's own services or the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the Licensor, electroliers, cable television, location monitoring services, public safety and other then existing telecommunications equipment, utilities, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement. If such interference should occur, Licensor shall notify the Licensee and Licensee shall discontinue using the Equipment, methodology, or technology that causes the interference until such time as Licensee takes corrective measures to eliminate such interference. In the event that such interference does not cease within forty-eight (48) hours after Licensee receives written notice from Licensor, Licensee acknowledges that continuing interference may cause irreparable injury and harm, and therefore, in addition to any other remedies, and without limitation of any other remedy, Licensor shall be entitled to seek temporary and permanent injunctions against the breach of this Subsection. Further, Licensor will not, nor will Licensor permit its employees, tenants, licensees, invitees, agents, or independent contractors to cause interference with Licensee's existing Equipment, Licensee's use of the Municipal Facility, or Licensee's ability to comply with the terms and conditions of this Agreement. If Licensee reasonably determines that interference is occurring, then Licensor will meet and confer with Licensee within five (5) business days of Licensor's receipt of notice of interference from Licensee. Notwithstanding the foregoing, Licensor and Licensee agree to work in good faith with each other and any other affected party to resolve any interference to or by Licensee.

4.4 Permits; Default. In addition to any other remedies available hereunder, whenever Licensee is in default of this Agreement or an applicable Supplement, after notice and applicable cure periods, Licensor may deny further encroachment, excavation, or similar permits for work in connection with installations under this Agreement until such time as Licensee cures all of its defaults.

4.5 Compliance with Laws. Licensee shall comply with all Laws in the exercise and performance of its rights and obligations under this Agreement. Licensor shall maintain the Municipal Facilities in accordance with applicable Laws.

4.6 Non-Exclusive Use Rights. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Licensee under this Agreement shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the Licensor to use, and, subject to the terms of this Agreement, to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities, exclusively or concurrently with any other person or persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title

(collectively, “Encumbrances”) which may affect the ROW or Municipal Facilities now or at any time during the term of this Agreement, including, without limitation any Encumbrances granted, created, or allowed by the Licensor at any time.

5. COMPENSATION. Licensee shall be solely responsible for the payment of all fees in connection with Licensee’s performance under this Agreement, including, but not limited to, those set forth below.

5.1 License Fee. License shall pay the License fee as set forth herein.

5.1.1 Except as provided in Section 5.1.2, in order to compensate Licensor for Licensee’s deployment of Equipment on Municipal Facilities within the ROW, Licensee shall pay the following license fee to Licensor for each Municipal Facility used by Licensee, on an annual basis on the Effective Date, in an amount equal to two hundred and seventy dollars (\$270.00) (the “License Fee”). The License Fee under all Supplements shall be subject to an annual adjustment of three percent (3%) applied on each anniversary of the Effective Date. Any new Supplements entered into during a given year shall commence at the License Fee, as adjusted by this Section 5.1, to reflect the then-current rate. Licensee shall not be entitled to a refund (partial or whole) of any License Fee paid hereunder.

5.1.2 FCC Order. The License Fee together with any applicable Application Fee constitute the “Compensation Terms”. Licensee acknowledges that the FCC has adopted an order (FCC 18-133) (the “FCC Order”) that relates to the Compensation Terms but that order is currently the subject of litigation. As of the date of this Agreement, Licensor is accepting a minimum payment of two hundred and seventy dollars (\$270.00) plus the annual adjustment as set forth in Section 5.1.1 for each Municipal Facility used by Licensee, on an annual basis on the Effective Date, while litigation surrounding the FCC Order is ongoing. Once that litigation surrounding the FCC Order is finally resolved, if relevant provisions of the FCC Order are vacated or invalidated, or state or federal laws or regulations that modify the FCC Order compensation provisions are adopted, then on a going forward basis starting on the next anniversary of the Effective Date, Licensee shall have the obligation to pay and Licensor shall have the right to collect from Licensee, upon thirty (30) calendar days’ notice, the amount that is required pursuant to such state or federal laws or regulations, to include a three percent (3%) annual adjustment. In the absence of any new state or federal laws or regulations, Licensee shall pay the then current compensation as determined by the City Council, provided, in no event shall the compensation exceed one thousand eight hundred dollars (\$1,800.00) per pole per year with a three percent (3%) annual adjustment.

5.2 One-Time Fees. The Licensor activities described in Sections 5.2.1 and 5.2.2 below are “One-Time Fees” that reimburse the City for its costs associated with reviewing and approving applications to attach Equipment on identified Municipal Facilities located in the ROW, this Agreement and Supplements to this Agreement for additional locations. The City Council has adopted permit application fees and may in the future adopt application fees in a manner consistent with applicable Law. The fee amounts shall be assessed and administered consistent with this Agreement and standard Licensor practice and fee schedule(s) as currently adopted and subsequently amended or replaced, in a manner consistent with applicable Law.

5.2.1 Permit Fees. Licensee shall be responsible for paying the Permit Fees in effect at the time Licensee applies for permits. These permit fees are based on the costs associated with City review, processing and inspection as part of all permit applications filed for the installation, modification, maintenance and removal of Equipment on identified Municipal Facilities located in the ROW.

5.2.2 Supplement Application Fees. Licensee shall be responsible for paying Supplement Application Fees in effect at the time that Licensee submits applications for these items. These application fees are based on the costs associated with City review and processing of this Agreement and any Supplements thereto (or any amendment thereto) and/or the other administrative review, consultation and inspection described in this Agreement, including review of Licensee submittals.

5.3 Payment.

5.3.1 Licensee shall make the first payment of the License Fee under any Supplement within forty-five (45) calendar days of the Supplement Effective Date (as defined therein). The amount of the first payment of the License Fee for any Supplement shall be prorated to cover the period from the Supplement Effective Date of the applicable Supplement to the next anniversary of the Effective Date of this Agreement. Thereafter, the License Fee shall be paid in advance for each Municipal Facility used on or before each anniversary of the Effective Date. Acceptance by Licensor of any payment of the License Fee shall not be deemed a waiver by Licensor of any breach of this Agreement occurring prior thereto, nor will the acceptance by Licensor of any such payment preclude Licensor from later establishing that a greater amount was actually due or from collecting any balance that is due. As a prerequisite to the payment of License Fee, Licensor hereby agrees to provide to Licensee certain documentation (the "License Documentation") evidencing Licensor's interest in, and right to receive payments under, this Agreement, including without limitation: (i) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to Licensee, for any party to whom License Fee payments are to be made pursuant to this Agreement; and (ii) other documentation requested by Licensee in Licensee's reasonable discretion. From time to time during the Term of this Agreement and within thirty (30) calendar days of a written request from Licensee, Licensor agrees to provide updated License Documentation in a form reasonably acceptable to Licensee.

5.3.2 The License Fee shall be paid by check made payable to the City and mailed or delivered to the Finance Department, at 311 Vernon Street, Roseville, CA 95678. The place and time of payment may be changed at any time by Licensor upon thirty (30) calendar days' written notice to Licensee. Mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt. Licensee assumes all risk of loss and responsibility for late payment charges if payments are made by mail. Notwithstanding the foregoing, upon agreement of the parties, Licensee may pay the License Fee by electronic funds transfer, and if agreed, the Licensor will provide to Licensee bank routing information for such purpose upon request of Licensee.

5.4 Delinquent Payment. A five percent (5%) late fee shall be added to the License Fee if not received by Licensor within fifteen (15) calendar days after Licensee's receipt of written

notice of the past due amount. In addition, all unpaid fees that are not paid within such fifteen (15) calendar day period shall accrue interest on the amount due at the rate of one and one-half percent (1.5%) until paid in full. All late fees and interest payments shall be treated as part of, and subject to the same terms as, the License Fee under this Agreement.

5.5 Additional Remedies. The late fee set forth in Section 5.6 above is not exclusive, and does not preclude the Licensor from pursuing any other or additional remedies in the event that payments become overdue by more than thirty (30) calendar days.

6. CONSTRUCTION. Licensee shall comply with all applicable federal, state, and local codes related to the construction, installation, operation, maintenance, and control of Licensee's Equipment installed on Municipal Facilities. Subject to Section 6.9 below, Licensee shall not attach, install, maintain, or operate any Equipment on Municipal Facilities without the prior written approval of an authorized representative of the Licensor for each location as evidenced in a signed Supplement. Licensee shall keep the Municipal Facilities free and clear from any liens arising out of any work performed, material furnished, or obligations incurred by or for Licensee.

6.1 Installation and Operation. Upon request by Licensor, Licensee shall promptly furnish to Licensor a current list and map that identifies the exact location of the Equipment in or on the Municipal Facilities. That information must be provided in a format that is compatible with Licensor's information technology, including but not limited to ESRI compatible GIS shapefiles, which Licensor shall provide to Licensee upon request.

6.2 Design Standards. The Equipment and any Replacement Facility shall comply with Licensor's current design standards as published on Licensor's web site, www.roseville.ca.us. Licensor, in its sole discretion, may from time to time update the standards. New or updated design standards shall apply to all new installations and major changes, including changes in antennas and Equipment, made after the effective date of the new or updated design standards. All future Supplements and modifications to existing Equipment shall be subject to such new or updated standards. By entering into this Agreement, Licensee agrees that the design standards adopted as of the Effective Date are technically feasible and reasonably directed at accomplishing the aesthetic goals of Licensor.

6.3 Obtaining Required Permits. Licensee acknowledges that in addition to a signed Supplement, each installation of Equipment and maintenance thereof shall also be subject to then-current City permitting requirements as set out in the City's Municipal Code. Licensee agrees to comply with the current applicable ordinances regarding such installations and maintenance as well as any future regulations that may be adopted by the City related to such installations and maintenance. Licensee shall apply for the appropriate permits and pay any standard and customary permit fees.

6.4 Relocation and Displacement of Equipment.

6.4.1 This Agreement creates no right for Licensee to receive any relocation assistance or payment for any reason under the Relocation Assistance Act, the Uniform Relocation Assistance Act, or under any existing or future Law upon any termination of tenancy.

6.4.2 Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Equipment installations. Licensee shall at Licensor's direction and upon ninety (90) calendar days' prior written notice to Licensee, relocate such Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (b) because the Equipment is interfering with or adversely affecting proper operation of Licensor-owned Municipal Facilities; or (c) to protect or preserve the public health or safety, including, but not limited to, the safe or efficient use of rights-of-way. For purposes of this paragraph, the "efficient use of rights-of-way" shall mean the continued use of rights-of-way by Licensor for public purposes. In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate any Equipment as requested by the Licensor within the prescribed time, Licensor shall be entitled to remove or relocate the Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within sixty (60) calendar days of Licensee's receipt of a written demand for this payment from the Licensor accompanied by reasonable supporting documentation. Licensee shall have the right to operate a temporary cell site if feasible in a mutually agreeable location in the vicinity of the Municipal Facility during such relocation with no additional fee due to Licensor. Licensee shall not be required to pay any additional application, review or other Licensor fees in connection with any relocation initiated by Licensor.

6.4.3 To the extent the Licensor has actual knowledge thereof, the Licensor will attempt promptly to inform Licensee of the displacement or removal of any Municipal Facility on which any Equipment is located.

6.5 Relocations at Licensee's Request. In the event Licensee desires to relocate any Equipment from one Municipal Facility to another, Licensee shall so advise Licensor. Licensor will use reasonable efforts to accommodate Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement. Licensor may require Licensee to submit an application and/or enter into a new Supplement for the prospective relocation site. Licensee shall be liable for all costs of relocation, including any costs which Licensor may incur.

6.6 Make Ready.

6.6.1 Make Ready Work and Costs.

(a) Licensee shall bear responsibility for all Make-Ready Work. If a Person other than Licensee or Licensor would have to rearrange or adjust any of its facilities in order to accommodate new Equipment, Licensee shall be responsible, at Licensee's sole expense, to coordinate such activity. Licensee shall be responsible for directly paying such other Person for its charges for the same. If Licensee is requested by another Person, in comparable circumstances, to relocate or adjust any Equipment to accommodate that Person's facilities, subject to Licensor's written approval of such relocation, Licensee shall reasonably cooperate with such request and

such Person shall be responsible, at such Person's sole expense, to coordinate such activity and for directly paying Licensee for Licensee's charges for the same.

(b) Construction, installation, and operation of the Equipment shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with the National Electrical Safety Code ("NESC"), the latest version of the California Electrical Code adopted by Licensor, and California Public Utilities Commission General Orders 95 and 128, and with Licensor's regulatory rules and engineering standards; 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 Licensor's regulatory rules and engineering standards.

(c) As part of the Make-Ready Work, Licensee shall install a disconnect device at each Municipal Facility on which it installs Equipment pursuant to a Supplement, so that in case of emergency, Licensor may disconnect such Equipment from its power source and safely shut it down in the event there is not sufficient time to contact Licensee to request shut down, provided however, Licensor shall attempt to notify Licensee's Network Operations Center at _____ prior to the disconnection but in all cases within twenty-four (24) hours thereafter.

6.6.2 Notification of Completion of Installation. Within twenty (20) business days of completing the installation of Equipment on each Municipal Facility, Licensee shall notify Licensor of such completion. Completion means the last City inspection sign off prior to electrifying or starting the Equipment, unless the Parties agree to a different time in writing.

6.7 Replacement Facilities.

6.7.1 Ownership of Replacement Facilities. Licensor shall own any approved Replacement Facility. Where needed, Licensee shall cooperate with Licensor to transfer ownership and any associated manufacturer warranties of any Replacement Facility from Licensee to Licensor without charge to Licensor.

6.7.2 Replacement Facility Installation. Licensee shall be responsible for providing and installing any approved Replacement Facility. Licensor shall approve the plans for the Replacement Facility prior to installation and shall inspect and approve the Replacement Facility after installation and/or construction.

6.8 Damage, Maintenance & Repair.

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

6.8.2 Prior to commencing the work required by this Section 6.8, Licensee will notify Licensor at 916-746-1760 or SignalTechNon-EmergencyRequest@roseville.ca.us for

traffic signal poles and 916-797-6937 or rosevilleelectric@roseville.ca.us for street lights and lighting fixtures.

6.8.3 If Licensee does not remove, repair, replace, or otherwise remediate such damage to its Equipment, a Replacement Facility, or to the ROW, Municipal Facilities or other property as required in this Section 6.8 and within the timeframe set forth herein, the Licensor shall have the option to perform or cause to be performed such removal, repair, or replacement on behalf of Licensee and shall charge Licensee for the actual costs incurred by the Licensor. If such damage causes a public health or safety emergency, as reasonably determined by Licensor, Licensor may immediately perform reasonable and necessary repair or removal work on behalf of Licensee including installation of a temporary Municipal Facility, without first notifying the Licensee or providing any notice to Licensee and Licensor will notify Licensee as soon as practicable; provided, however, that such repair work shall not include any technical work on Licensee's Equipment. Licensor shall have no obligation to maintain or safeguard the Equipment.

6.8.4 Upon the receipt of a demand for payment by the Licensor pursuant to this Section 6.8 accompanied by reasonable supporting documentation, Licensee shall within thirty (30) calendar days of such receipt reimburse the Licensor for such costs.

6.8.5 The terms of this Section 6.8 shall survive the expiration termination of this Agreement.

6.9 Change in Equipment. If Licensee desires to install Equipment which is different in any material way from the then-existing and approved Equipment, then Licensee shall first obtain the written approval for the use and installation of such Equipment from an authorized representative of the Licensor. Any such approval shall take the form of an amendment to the applicable Supplement. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide "load" (structural) calculations for all Equipment changes. In addition to the foregoing, Licensee shall comply with any other applicable City permitting or approval process for the Equipment change. Notwithstanding the foregoing, a Supplement shall not be required in connection with non-material changes consisting of "like-kind" equipment which is substantially similar in appearance, dimensions, and weight. However, Licensee shall comply with any other applicable City permitting or approval process for non-material changes.

6.10 Unauthorized Equipment. If Licensor discovers any Equipment has been installed on Municipal Facilities without authorization pursuant to a Supplement, Licensor may send an invoice to Licensee for a sum equal to three (3) times the then-current License Fee as compensation for the unauthorized attachments, and, within sixty (60) calendar days from the date of such invoice, Licensee shall (i) pay the invoiced amount to Licensor and submit an application for the unauthorized Equipment, or (ii) produce documentation showing Licensor's prior approval of the Equipment identified in the invoice. If, in accordance with this Section, Licensee fails to pay all fees and submit the application or submit documentation satisfactorily showing Licensor's prior approval within sixty (60) calendar days of Licensee's receipt of Licensor's invoice, Licensor may remove the unauthorized Equipment at Licensee's expense. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) calendar days of Licensee's receipt of a written demand for this payment from the Licensor accompanied by reasonable

supporting documentation. If Licensor removes such unauthorized Equipment, such Equipment shall become the property of Licensor if Licensee fails to reclaim the property within thirty (30) calendar days of Licensor's notification of removal, and Licensor shall have sole rights over such Equipment's disposition. Licensor's removal of unauthorized Equipment shall not release Licensee from its obligation to pay those invoiced fees accruing pursuant to this Section.

6.11 Termination of a Supplement.

6.11.1 Licensee shall have the right to terminate any Supplement on thirty (30) calendar days' notice to Licensor. In the event of such termination, removal of Equipment associated with the terminated Supplement shall be governed by Section 6.12 below and Licensor shall retain any License Fee paid, without refund or setoff.

6.11.2 Licensor shall have the right to terminate any Supplement in any of the following circumstances: if Licensor determines the covered Equipment has been inoperative, or abandoned, for ninety (90) consecutive calendar days excluding maintenance or force majeure events, and demonstrates the same to Licensee by a preponderance of the evidence; if Licensee's operation under a particular Supplement is deemed by Licensor to endanger or pose a threat to the public health, safety, or welfare or interfere with the normal day-to-day operation of any Licensor department or service; or Licensor is mandated by Law, a court order or decision, or the federal, state, or local government to take certain actions that will cause or require the removal of an Equipment. Licensor shall provide written notice to Licensee regarding its intent to terminate the applicable Supplement pursuant to this Section, after which Licensee shall have thirty (30) calendar days to cure. If Licensee does not cure within thirty (30) calendar days following notice, Licensor may then terminate the applicable Supplement upon written notice to Licensee.

6.12 Removal of Equipment. Within ninety (90) calendar days after the expiration or earlier termination of a Supplement, Licensee shall promptly, safely, and carefully remove the Equipment covered by the terminated or expired Supplement from the applicable Municipal Facility and ROW. Within ninety (90) calendar days after the expiration or earlier termination of this Agreement, Licensee shall promptly, safely, and carefully remove all Equipment from all applicable Municipal Facilities and ROW. If Licensee fails to complete removal work pursuant to this Section, then the Licensor, upon written notice to Licensee, shall have the right at the Licensor's sole election, but not the obligation, to perform this removal work and charge Licensee for the actual costs and expenses, including, without limitation, reasonable administrative costs. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) calendar days of Licensee's receipt of written demand for this payment from the Licensor accompanied by reasonable supporting documentation. After the Licensor receives the reimbursement payment from Licensee for the removal work performed by the Licensor, the Licensor shall promptly make available to Licensee the property belonging to Licensee and removed by the Licensor pursuant to this Section at no additional liability to the Licensor. If the Licensor does not receive reimbursement payment from Licensee within such thirty (30) calendar days, or if Licensor does not elect to remove such items at the Licensor's cost after Licensee's failure to so remove pursuant to this Section, or if Licensee does not remove Licensee's property within thirty (30) calendar days of such property having been made available by the Licensor after Licensee's payment of removal reimbursement as described above, any items of Licensee's property remaining on or about the

ROW, Municipal Facilities, or stored by the Licensor after the Licensor's removal thereof may, at the Licensor's option, be deemed abandoned and the Licensor may dispose of such property in any manner allowed for by Law. Alternatively, the Licensor may elect to take title to the abandoned property, and Licensee shall submit to the Licensor an instrument satisfactory to the Licensor transferring to the Licensor the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.13 Risk of Loss. Licensee acknowledges and agrees that Licensee, subject to the terms of this Agreement, bears all risks of loss, damage, relocation, or replacement of its Equipment and materials installed in the ROW or on Municipal Facilities pursuant to this Agreement from any cause, and Licensor shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the Licensor's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or gross negligence of the Licensor, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Section 7.3 below.

6.14 Hazardous Substances. Licensee agrees that Licensee, its contractors, subcontractors, and agents, will not use, generate, store, produce, transport, or dispose any Hazardous Substance on, under, about or within the area of a ROW or Municipal Facility in violation of any Law. Except to the extent of the gross negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend, and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. Notwithstanding the foregoing, Licensee shall not be liable for or responsible for addressing environmental conditions that existed on a Municipal Facility, ROW, or other Licensor property before the execution of this Agreement, or that otherwise do not result from the activities of Licensee.

6.15 Inspections. Licensor may conduct inspections of its Municipal Facilities which may result in a visual inspection of Licensee's Equipment. In the event Licensor discovers any potential safety or contractual violations related to the Equipment, Licensor shall notify Licensee as soon as practicable after the completion of the inspection.

6.16 Access. Licensee shall have access to its Equipment twenty-four (24) hours a day, seven (7) days a week. Prior to Licensee accessing its Equipment for non-emergency purposes, Licensee shall provide email notice, at least twenty-four (24) hours in advance, to the Licensor at the following email address: SignalTechNon-EmergencyRequest@roseville.ca.us for traffic signal poles and elec_dispatch@roseville.ca.us for street lights and lighting fixtures. In the event of an emergency at any time, Licensee will, if time permits, attempt to provide prior telephonic notice to the Licensor at the following telephone numbers: 916-746-1760 for traffic signal poles and 916-774-5620 for street lights and lighting fixtures.

7. INDEMNIFICATION AND WAIVER. Licensee agrees to indemnify, defend, protect, and hold harmless the Licensor, its council members, officers, employees, agents, and contractors from and

against any and all claims, demands, losses, including pole warranty invalidation, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney’s fees and costs of defense (collectively, the “Losses”) to the extent arising from, resulting from, or caused by Licensee’s activities undertaken pursuant to this Agreement, including, without limitation, the construction, design, use, or operation of the Equipment or provision of the Services, except to the extent arising from or caused by the gross negligence or willful misconduct of the Licensor, its council members, officers, employees, agents, or contractors.

7.1 Waiver of Claims. Licensee waives any and all claims, demands, causes of action, and rights it may assert against the Licensor on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the control of the Licensor.

7.2 Waiver of Subrogation. Licensee hereby waives and releases any and all rights of action for negligence against Licensor which may hereafter arise on account of damage to Equipment, Municipal Facilities, or to the ROW, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Licensee. This waiver and release shall apply between the parties and shall also apply to any claims under or through either party as a result of any asserted right of subrogation. All such policies of insurance obtained by Licensee concerning the Municipal Facilities, Equipment, or the ROW shall waive the insurer’s right of subrogation against the Licensor.

7.3 Limitation on Consequential Damages. Neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

8. PERFORMANCE BOND. In order to secure the performance of its obligations under this Agreement, Licensee will provide the following security instrument to the Licensor.

8.1 Performance Bond. Prior to the commencement of any work under this Agreement, Licensee must provide a performance bond running to the Licensor according to this Section. The amount of the bond shall be based on the number of attachments in the following amounts:

Number of Municipal Facilities	Required Security
1-50	\$15,000
51-100	\$30,000
101-300	\$90,000
Greater than 310	\$105,000

The performance bond is conditioned upon the faithful performance by Licensee of all the terms and conditions of this Agreement and upon the further condition that, if Licensee fails to comply

with any terms or conditions governing this Agreement beyond applicable notice and cure periods, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the Licensor as a result, including, without limitation, the full amount of any compensation, indemnification, or costs of removal or abandonment of Licensee's property, plus costs and reasonable attorneys' fees up to the full amount of the performance bond. Licensee shall keep the performance bond in place for the amount specified above during the term of this Agreement and any Supplement. However, Licensor reserves the right to increase the amount of the required security for any Renewal Term to account for an increase in Licensor's labor costs.

8.2 Assessment of the Bond. The performance bond may be assessed by the Licensor for any failure by Licensee to pay Licensor an amount owed under this Agreement, including, but not limited to:

(a) Reimbursement of costs borne by the Licensor to correct violations of the Agreement not corrected by Licensee, after Licensor provides notice and a reasonable opportunity to cure such violations. This shall include, without limitation, removal of Equipment.

(b) Providing monetary remedies or satisfying damages assessed against Licensee due to a material breach of this Agreement.

8.3 Restoration of the Bond. Licensee must deposit a sum of money or a replacement instrument sufficient to restore the performance bond to its original amount within thirty (30) calendar days after Licensee's receipt of written notice from the Licensor that any amount has been recovered from the performance bond and the reason for the recovery. Failure to restore the bond to its full amount within thirty (30) calendar days will constitute a material breach of this Agreement. Licensee will be relieved of the foregoing requirement to replenish the bond during the pendency of an appeal from the Licensor's decision to draw on the performance bond. Following termination or expiration of a Supplement and completion of Licensee's removal obligations for the Supplement, Licensee may terminate the bond if there are no other Supplements in effect or reduce the amount of the bond in proportion to the number of Municipal Facilities in the terminated or expired Supplement, as applicable, and Licensor shall cooperate with Licensee in connection with such termination or reduction.

8.4 Required Endorsement. The performance bond is subject to the approval of the Licensor and must contain the following endorsement:

"This bond may not be canceled until sixty (60) days after receipt by the City of Roseville, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

8.5 Reservation of Licensor Rights. The rights reserved by Licensor with respect to the performance bond are in addition to all other rights and remedies Licensor may have under this Agreement or any other Law.

8.6 Admitted Surety Insurer. The surety supplying the bond shall be an "admitted surety insurer", as defined in California Code of Civil Procedure Section 995.120 and authorized to do business in the State of California.

8.7 Cash Deposit. In lieu of obtaining a performance bond, Licensee shall have the right to instead deposit a cash deposit with Licensor securing Licensee’s obligations under this Agreement. However, as a condition of depositing cash, Licensee shall execute Licensor’s standard “Agreement for Cash Deposit with City in Lieu of Bond.”

9. INSURANCE. Licensee agrees to continuously maintain, in full force and effect, the following policies of insurance during the term of this Agreement.

COVERAGE	LIMITS OF LIABILITY
Workers’ Compensation	Statutory
Commercial General Liability	\$2,000,000 each occurrence \$4,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit

9.1 Form. Licensee shall submit a certificate evidencing such coverage for the period covered by this Agreement on the ACORD 25 or equivalent form or in a form reasonably satisfactory to Risk Management and the City Attorney, prior to undertaking any work hereunder.

9.2 Additional Insureds. Licensee shall also provide an additional insured endorsement or its equivalent (such as a blanket endorsement) including Licensor, its officers, employees, and volunteers as additional insureds for each type of coverage, except for Workers’ Compensation and Employer’s Liability. Such insurance shall cover the contractual liability of Licensee. The additional insured coverage under the Licensee’s policy shall be primary and noncontributory and shall not seek contribution from Licensor’s insurance or self-insurance.

9.3 Cancellation/Modification. Upon receipt of notice from its insurer(s), Licensee shall provide Licensor with thirty (30) calendar days prior written notice of cancellation or nonrenewal of any insurance required by this Agreement that is not otherwise replaced with coverage required by this Agreement. Licensee’s insurance carrier may provide this notification in lieu of Licensee.

9.4 Submission Requirements. The certificate(s) of insurance with an additional insured endorsement or its equivalent and the notices required by this Section shall be e-mailed to roseville@ebix.com.

9.5 Umbrella/Excess Insurance. The limits of insurance required in this Agreement may be satisfied by a combination of primary and excess insurance. Any excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of Licensor (if agreed to in a written contract) before Licensor’s own insurance shall be called upon to protect it as a named insured.

9.6 Subcontractors. Licensee shall require any contractors, subcontractors or sub-subcontractors to obtain and maintain substantially the same coverage with substantially the same limits as required of Licensee. Furthermore, Licensee shall require its subcontractors to

agree to be bound to Licensee and Licensor in the same manner and to the same extent as Licensee is bound to Licensor under this Agreement.

9.7 Waiver of Subrogation. Licensee hereby agrees to waive subrogation which any insurer of Licensee may acquire from Licensee by virtue of the payment of any loss under a Workers Compensation, Commercial General Liability or Automobile Liability policy. To the extent allowed by law, all Workers Compensation, Commercial General Liability and Automobile Liability policies shall be endorsed with a waiver of subrogation in favor of Licensor, its officers, employees and volunteers for all worked performed by Licensee, its employees, agents and subcontractors.

9.8 Liability/Remedies. Insurance coverage in the amounts set forth herein shall not be construed to relieve Licensee of liability in excess of such coverage, nor shall it preclude Licensor from taking such other actions as are available to it under any other provisions of this Agreement or Law. Licensee's indemnity and other obligations shall not be limited by the foregoing insurance requirements. If Licensee fails, for any reason, to obtain or maintain insurance coverage required by this Agreement or fails to furnish certificates of insurance, such failure shall be deemed a material breach of this Agreement, giving Licensor, in its discretion, the option to terminate this Agreement and obtain damages therefor.

9.9 Severability of Interest. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability policy.

9.10 Self-Insurance. Notwithstanding the forgoing, Licensee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Licensee elects to self-insure its obligation under this Agreement to include Licensor as an additional insured, the following conditions apply: (i) Licensor shall promptly and no later than thirty (30) calendar days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Licensor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.

10. NOTICES.

10.1 Method and Delivery of Notices. All notices pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:

If to the Licensor: *City of Roseville*
Attn: City Manager
311 Vernon Street
Roseville, CA 95678
Email: citymanager@roseville.ca.us

in connection solely with such Supplement, in addition to any rights and/or remedies provided under this Agreement or by Law. If the nature of the violation is such that it cannot be fully cured within thirty (30) calendar days due to circumstances not under Licensor's control, the period of time in which Licensor must cure the violation shall be extended for such additional time reasonably necessary to complete the cure, provided that: (a) Licensor has promptly begun to cure; and (b) Licensor is diligently pursuing its efforts to cure. Licensee may not maintain any action or effect any remedies for default against Licensor, unless and until Licensor has failed to cure the breach within the time periods provided in this Section 11.3.

12. ASSIGNMENT AND CUSTOMER EQUIPMENT. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties.

12.1 Licensee shall not assign this Agreement or its rights or obligations to any firm, corporation, individual, or other entity, without the prior written consent of Licensor, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, upon thirty (30) calendar days' written notice, Licensee may assign this Agreement or transfer its rights, privileges or obligations to (a) any entity that it controls, to any parent or subsidiary of Licensee, to an entity with or into which Licensee may merge or consolidate, to an entity which Licensee is controlled by, which Licensee controls, or is under common control with Licensee; or (b) in connection with the sale or other transfer of such entity or to any purchaser of all or substantially all of Licensee's assets in the FCC market area where the Equipment is located with prior notice to Licensor but without the requirement for Licensor approval, so long as the successor provides written confirmation to Licensor that it is then fully liable to the Licensor for compliance with all terms and conditions of this Agreement. The Licensee shall reimburse the Licensor for all direct and indirect costs and expenses reasonably incurred by the Licensor in considering a request to transfer or assign this Agreement, provided such costs and expenses do not collectively exceed two thousand dollars (\$2,000) per request.

12.2 Licensee need not own all components of Equipment subject to this Agreement, and may permit its customers to maintain ownership of Equipment components. However, (1) all Equipment must be wholly under the control and management of Licensee; and Licensee shall be liable for all acts or omissions, and all harms associated with the Equipment whether the same are its acts or omissions, or the acts or omissions of the owner of the Equipment; and (2) Licensee acknowledges and agrees that no rights of ownership in Equipment by Licensee's customers shall permit any such customer to enter upon, or use any portion of the Municipal Facilities or the Equipment, in any other manner or at any other place, including to add to, or modify or install Equipment, which shall be Licensee's sole responsibility. Further, Licensee may not install Equipment it does not own on Municipal Facilities, unless the entity for on whose behalf the Equipment has been installed acknowledges and agrees, in a form acceptable to the Licensor, that the Licensor has not granted it a consent to be in the ROW for any purpose; that it is bound by Licensee's representations, obligations and duties hereunder; that it shall have no rights or claims against the Licensor of any sort related to the Equipment or Municipal Facilities; that its Equipment may be subject to taxes, fees or assessments as provided in the Laws or the Agreement, and that Licensor may treat any Equipment owned by such entity as if it were owned by Licensee for all purposes (including, but not limited to, removal and relocation); and the Equipment may only be used for the purposes and uses permitted herein. Such acknowledgement may be provided for all Equipment on Municipal Facilities, and need not be provided separately, site by site. As used in

this Section, "Equipment" means all equipment located in or on the Municipal Facility but does not include fiber located off the Municipal Facility, such as fiber located in the Rights-of-Way that provide transport, after the connection point or the fiber in the Municipal Facility to such fiber. Each Supplement shall demark the location of the component parts subject to this Agreement.

13. RECORDS; AUDITS.

13.1 Records Required by Code. Licensee will maintain complete records pursuant to all applicable Laws.

13.2 Additional Records. The Licensor may require such additional reasonable non-confidential and non-proprietary information, records, and documents pertaining to this Agreement from Licensee from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Agreement.

13.3 Production of Records. Licensee shall provide such records within thirty (30) business days of a request by the Licensor for production of the same, unless additional time is reasonably needed by Licensee, in which case, Licensee shall have such reasonable time as needed for the production of the same. If any person other than Licensee maintains records on Licensee's behalf, Licensee shall be responsible for making such records available to the Licensor for auditing purposes pursuant to this Section.

13.4 Public Records. Notwithstanding Section 13.3, Licensee acknowledges that information submitted to Licensor or maintained by Licensee may be open to public inspection and copying under the Law. Upon Licensor's request, Licensee shall provide records determined to be public by Licensor within five (5) calendar days of a request by the Licensor for production of the same.

14. MISCELLANEOUS PROVISIONS. The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

14.1 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

14.2 Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

14.3 Contacting Licensee. Licensee shall be available to the staff employees of any Licensor department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The Licensor may contact by telephone the Licensee's network control center operator at telephone number _____.

14.4 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Placer County, California or in the United States District Court for the Eastern District of California.

14.5 Change of Law. During the Initial Term, in the event that any legislative, regulatory, judicial, or other action (“New Law”) affects the rights or obligations of the Parties or any term of the Agreement, the Parties agree that the Agreement shall nonetheless remain in effect until the end of the Initial Term unless mutually agreed to in writing by the Parties.

14.6 Force Majeure. Except for payment of amounts due, neither Party shall have any liability for its delays or its failure of performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes reasonably beyond its control, whether or not similar to the foregoing.

14.7 Attorneys’ Fees. Should any dispute arising out of this Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys’ fees.

14.8 “AS IS” condition of Municipal Facilities. Municipal Facilities licensed to Licensee pursuant to this Agreement are licensed to and accepted by Licensee “as is” and with all faults. The Licensor makes no representation or warranty of any kind as to the present or future condition of or suitability of the Municipal Facilities for Licensee’s use and disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Municipal Facilities and their merchantability or fitness for a particular purpose. Licensee is solely responsible for investigation and determination of the condition and suitability of any Municipal Facility for Licensee’s intended use.

14.9 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party’s respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in Section 4.2 above. This Agreement shall not be revocable or terminable except as expressly permitted herein.

14.10 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.11 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. In witness whereof, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

14.12 Non-Exclusive Remedies. No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

14.13 No Third-Party Beneficiaries. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Licensor with respect to third parties shall remain as imposed by state law.

14.14 Construction of Agreement. The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

14.15 Effect of Acceptance. The Parties (a) accept and agree to comply with this Agreement and all Laws; (b) agree that this Agreement was entered into pursuant to processes and procedures consistent with Law; and (c) agree that they will not raise any claim to the contrary or allege in any claim or proceeding against the other Party that at the time of acceptance of this Agreement any provision, condition or term of this Agreement was unreasonable or arbitrary, or that at the time of the acceptance of this Agreement any such provision, condition or term was void or unlawful or that the other Party had no power or authority to make or enforce any such provision, condition, or term.

14.16 Time is of the Essence. Time is of the essence with regard to the performance of all of Licensee's obligations under this Agreement.

14.17 Taxes. Licensee shall be responsible for payment of all fees and taxes charged in connection with the right, title, and interest in and construction, installation, maintenance, and operation of Equipment for the purposes set forth herein.

14.18 Tax Notice. Licensor hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Licensee acknowledges, that this Agreement may create a possessory interest and Licensee may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107.6. Licensee shall pay directly to the appropriate authority, when due, all real and personal property taxes, fees, and assessments, assessed against the area licensed and the Equipment.

14.19 Counterparts. This Agreement (and any Supplement) may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.

14.20 Governing Agreements. In the event of any conflict between this Agreement and its exhibit, the provisions of this Agreement shall govern.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ___ day of _____, 20__, and LICENSEE has caused this Agreement to be executed.

LICENSOR:

LICENSEE:

CITY OF ROSEVILLE, a
municipal corporation

BY: _____
DOMINICK CASEY
City Manager

BY: _____
its: _____

and

ATTEST:

BY: _____
its: _____

BY: _____
SONIA OROZCO
City Clerk

APPROVED AS TO FORM:

BY: _____
ROBERT R. SCHMITT
City Attorney

EXHIBIT A
FORM OF SUPPLEMENT
SUPPLEMENT

This Supplement (“Supplement”), is approved by Licensor this _____ day of _____, 20____ (the date executed by all parties, referred herein as “Supplement Effective Date”).

1. Supplement. Licensee has submitted an application for approval to use a Municipal Facility pursuant to that certain Municipal Facility License Agreement between the City of Roseville as Licensor and _____ as Licensee dated _____, 20__ (“Agreement”). Licensor has reviewed the application to use the Municipal Facility and grants approval subject to the terms of this Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification, or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein. **IF THE SUPPLEMENT IS NOT COUNTER-SIGNED BY LICENSEE AND RETURNED TO LICENSOR WITHIN SIXTY (60) CALENDAR DAYS AFTER LICENSOR HAS GRANTED APPROVAL, THE SUPPLEMENT SHALL BE VOID AND OF NO LEGAL EFFECT. IF LICENSEE STILL WANTS TO USE THE MUNICIPAL FACILITY, LICENSEE WILL BE REQUIRED TO SUBMIT A NEW APPLICATION AND ASSOCIATED FEES.**
2. Licensed Area Description and Location. Licensee shall have the right to use the space on the specific Municipal Facilities and/or replace or structurally reinforce the Municipal Facilities (the “Licensed Area”) depicted in Attachment 1 attached hereto, and to install the Equipment as further listed in Attachment 2 attached hereto.
3. Equipment. The Equipment to be installed at the Licensed Area is described in Attachment 2 and depicted in Attachment 1.
4. Term. The term of this Supplement shall commence on the Supplement Effective Date and continue for the Term of the Agreement or until _____.
5. License Fee. The initial License Fee for this Supplement shall be as follows per year: two hundred and seventy dollars (\$270.00) plus the annual adjustment as set forth in Section 5.1.1 of the Agreement for each Municipal Facility. The License Fee is payable in accordance with Section 5 of the Agreement.
6. Performance Bond. The amount of the Performance Bond shall be _____.
7. Miscellaneous._____.

IN WITNESS THEREOF, the parties hereto have caused this Supplement to be legally executed in duplicate, effective upon execution by both parties.

Licensor:

City of Roseville, a municipal corporation

By: _____

Dominick Casey
City Manager

Date: _____

Licensee:

By: _____

Print Name: _____

Title: _____

Date: _____

Attachments:

Attachment 1 – Licensed Area

Attachment 2 – Equipment List and Description

Attachment 1

Licensed Area

[site plan showing licensed area of applicable Municipal Facility and showing proposed
Equipment installation]

Attachment 2

Equipment List and Description