**MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON VERTICAL INFRASTRUCTURE IN THE PUBLIC RIGHTS-OF-WAY**

between

**COUNTY OF ORANGE**, a political subdivision of the State of California,

and

**[*insert full licensee name*]**, a [*insert licensee corporate form*]

**EFFECTIVE DATE: [*insert effective date*]**

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**MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES ON VERTICAL INFRASTRUCTURE IN THE PUBLIC RIGHTS-OF-WAY**

This Master License Agreement for Wireless Facilities on Vertical Infrastructure in the Public Rights-of-Way (this “**Master License**”) dated [*insert effective date*] (the “**Effective Date**”) is between the **COUNTY OF ORANGE**, a political subdivision of the State of California (the “**County**”), and **[*insert full licensee name*]**, a [*insert licensee corporate form*] (“**Licensee**”). The County and Licensee may herein be referred to individually as a “**Party**” or collectively as the “**Parties**.”

**RECITALS**

**WHEREAS,** technological developments in wireless communications, new and reallocated electromagnetic spectrum band licenses and consumer demand for high-speed mobile broadband and other information services have caused wireless service providers to invest in distributed antenna system (“**DAS**”), distributed network systems (“**DNS**”) and so-called “small cell” deployments that typically utilize smaller equipment placed on existing infrastructure in the public rights-of-way that serve a smaller physical area than as compared to traditional “macro cell” deployments on freestanding towers or rooftops; and

**WHEREAS,** the County owns, as its personal property, certain Vertical Infrastructure in or on the public rights-of-way within the County’s jurisdictional boundaries that may be suitable or useful as support structures for Licensee’s Equipment; and

**WHEREAS,** Licensee installs, maintains and operates wireless facilities as its principal business, and represents to County that Licensee holds all Regulatory Approvals to provide wireless broadband services within the geographic area that encompasses the County’s jurisdictional boundaries; and

**WHEREAS,** Licensee desires to install, maintain and operate wireless facilities on the County’s Vertical Infrastructure; and

**WHEREAS,** the Parties desire to enter into this Master License to establish a process by which Licensee may request to license from the County individual locations on or in the County’s Vertical Infrastructure, and also to establish the rates, terms and conditions that will be generally applicable to all Vertical Infrastructure licensed to Licensee by the County; and

**WHEREAS,** consistent with California law, the County intends, and Licensee acknowledges, that this Master License will be applicable to only the County’s Vertical Infrastructure, and that the County does not intend this Master License or any Site License to require or be construed to require any revenue-generating consideration to the County as a precondition to access to the public rights-of-way for any telephone corporation, as that term is defined in the California Public Utilities Code; and

**WHEREAS,** consistent with federal and California law, the County does not intend this Master License to grant the Licensee any exclusive right to use or occupy the public rights-of-way within the County’s territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the County may in its sole discretion enter into similar or identical agreements with other entities, which include without limitation Licensee’s competitors; and

**WHEREAS,** on [*insert date*], the Board of Supervisors of the County of Orange adopted Resolution No. [*insert*], which approved the form and material terms for this Master License to be used in connection with the licensing of Vertical Infrastructure for wireless facilities, and further delegated authority to the Chief Real Estate Officer of the County of Orange, or his or her designee, to enter into such agreements.

**NOW, THEREFORE,** for good, valuable and sufficient consideration received and acknowledged by the County and Licensee, the County and Licensee agree as follows:

**AGREEMENT**

# 1. General Definitions

1.1 “**Acknowledgment Letter**” means the letter that Licensee submits to the County that indicates the Licensee has obtained all Regulatory Approvals and other requirements more particularly described in Exhibit A-3 (Form of Acknowledgment Letter), and that serves as Licensee’s notice to proceed with the installation after the County countersigns the Acknowledgment Letter and tenders it to Licensee.

1.2 “**Additional Fees**” means, collectively, any sums payable by Licensee to the County in its proprietary capacity as the licensor hereunder, which includes without limitation any late charges, default interest, costs in connection with a request for the County’s consent to an assignment or other transfer under Section 20 (Assignment and Other Transfers) and Default Fees under Section 18.3.4; provided, however, that the term Additional Fees excludes any: (1) License Fees; (2) Administrative Fees; (3) any other amounts payable to the County by Licensee in connection with reviewing Site License Applications or coordinating and inspecting Equipment installed on the License Area; and (4) any other payments to the County in its regulatory capacity, which includes without limitation cost-based fees for permit issuance.

1.3 “**Administrative Fees**” means, collectively, the Master License Administrative Fee (as defined in Section 4.2.1) and any Site License Administrative Fees (as defined in Section 4.2.2).

1.4 “**Affiliate**” means an entity that directly or indirectly Controls, is Controlled by or is under Common Control with Licensee.

1.5 “**Agent**” means a Party’s agent, employee, director, officer, contractor, subcontractor or representative in relation to this Master License, any Site License or the License Area.

1.6 “**Approved Plans**” means the detailed plans and equipment specifications, which include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed by Licensee and approved by the County as part of the Site License Application Process, in connection with the License Area, as such Approved Plans are more particularly described in Exhibit A-2 (Licensee’s Plans and Specifications) to any approved Site License.

1.7 “**Board of Supervisors**” means the Board of Supervisors of the County of Orange, a political subdivision of the State of California, the governing board of the County.

1.8 “**Broker**” means any licensed real estate broker or other person who could claim a right to a commission or “finder’s fee” in connection with the Site License(s) or other real estate rights contemplated or conveyed in this Master License.

1.9 “**Chief Real Estate Officer**” means the Chief Real Estate Officer, County Executive Office, of the County of Orange, a political subdivision of the State of California, or his or her designee.

1.10 “**Claim**” means any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, whether direct or indirect.

1.11 “**Commencement Date**” means the date on which a Site License commences, which is defined as the first day of the month after Licensee obtains all Regulatory Approvals necessary for the Permitted Use on the License Area covered by such Site License.

1.12 “**Common Control**” means two or more entities that are Controlled by a same third entity.

1.13 “**Control**” means (1) as to a corporation, stock ownership with the right to exercise more than fifty percent (50%) of the total combined voting power of all classes of stock, issued and outstanding, of the controlled corporation; or (2) as to partnerships and other business association forms, more than fifty percent (50%) ownership of the beneficial interest and voting control of such association.

1.14 “**County Counsel**” means the County Counsel of the County of Orange, a political subdivision of the State of California, or his or her designee.

1.15 “**County Facility(ies)**” means any conduits, chases, risers, trays, pipes, vaults, pull boxes, hand holes, as may occupied by the Equipment and licensed to Licensee.

1.16 ‘”**County Party(ies)**” means the County and its elected and appointed officials, its Agents, Invitees, and, volunteers.

1.17 “**County Property**” means any real property of the County in proximity to the License Area.

1.18 “**CPUC**” means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or the CPUC’s duly appointed successor agency.

1.19 “**Default Fee**” means the same as that term is defined in Section 18.3.4 (Default Fees).

1.20 “**Environmental Laws**” means any Law in relation or connection to industrial hygiene, environmental conditions or Hazardous Materials (as defined in this Master License).

1.21 “**Equipment**” means antennas, radios and any and all associated utility or equipment box, and battery backup, transmitters, receivers, amplifiers, ancillary fiber-optic cables and/or wiring, and ancillary equipment used for radio communication (voice, data or otherwise) transmission and/or reception, which includes without limitation the means, devices and apparatus used to attach any Equipment to any licensed Vertical Infrastructure, and any ancillary equipment such as wiring, cabling, power feeds or an similar things, and any signage attached to such Equipment that may be approved by the County or required by Law.

1.22 “**Expiration Date**” means [*insert date*], the date on which this Master License and all Site Licenses will automatically expire.

1.23 “**FCC**” means the Federal Communications Commission or its duly appointed successor agency.

1.24 “**Hazardous Material**” means any material that, due to its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any local, regional, state or federal body with jurisdiction and responsibility for issuing Regulatory Approvals in accordance with applicable Laws to pose a present or potential hazard to human health, welfare or safety, or to the environment. The term “Hazardous Material” as used in this Master License or any Site License will be broadly construed, and includes, without limitation, the following: (1) any material or substance defined as a “hazardous substance”, or “pollutant” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified as 42 U.S.C. §§ 9601 *et seq.*) or section 25316 of the California Health & Safety Code; (2) any “hazardous waste” listed California Health & Safety Code § 25140; or (3) any petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

1.25 “**Investigate and Remediate**” means the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the License Area or that has been, is being, or is in danger of being Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

1.26 “**Invitee**” means the client, customer, invitee, guest, tenant, subtenant, licensee, assignee and/or sublicensee of a Party in relation to the License Area.

1.27 “**Laws**” means all present and future statutes, ordinances, codes, including without limitation, state and local building and electrical codes, orders, policies, regulations, permits, and implementing requirements and restrictions by federal, state, county and/or governmental authorities, whether foreseen or unforeseen, ordinary as well as extraordinary, as adopted or as amended at the time in question.

1.28 “**License Area**” means those certain spaces on the County’s Vertical Infrastructure and other County Facilities identified on the Approved Plans as occupied by the Equipment and licensed to Licensee. The Parties may use the term “License Area” to refer to those spaces licensed to Licensee under an individual Site License or to refer to all spaces collectively licensed to Licensee under all Site Licenses in connection with this Master License.

1.29 “**License Fee**” means the annual fee for each licensed Vertical Infrastructure authorized under any Site License, as specified in **Schedule 1 (License Fee Schedule)**.

1.30 “**License Year**” means any 12-month period that begins on the Commencement Date for each Site License.

1.31 “**Licensee’s On-Call Representative**” mean the person(s) assigned by Licensee to be on-call and available to the County regarding the operation of Licensee’s Equipment. Such person(s) shall be qualified and experienced in the operation of Equipment and shall be authorized to act on behalf of Licensee in any emergency in and in day-to-day operations of the Equipment.

1.32 “**NESC**” means the National Electrical Safety Code, as may be amended or superseded, published by the Institute of Electrical and Electronics Engineers.

1.33 “**OSHA**” means the Occupational Safety and Health Administration of the United States Department of Labor, or OSHA’s duly appointed successor agency.

1.34 “**Public Works Department**” means the OC Public Works Department of the County of Orange or its successor department.

1.35 “**Regulatory Approvals**” means licenses, permits including building, encroachment, excavation and electrical permits, and other approvals necessary for Licensee to install, operate and maintain Equipment on the License Area.

1.36 “**Release**” when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing on, under or about the License Area, other County Property or the environment.

1.37 “**RF**” means radio frequency or electromagnetic waves.

1.38 “**Risk Manager**” means the Manager of the County Executive Office, Risk Management, or his or her designee.

1.39 “**Site License**” means the document in the form of **Exhibit A (Form of Site License Agreement)** that, when fully executed, incorporates the provisions of this Master License and authorizes Licensee to install, operate and maintain Equipment for the Permitted Use on Vertical Infrastructure identified in the Site License.

1.40 “**Site License Application**” means the same as that term is defined in Section 6.2 (Site License Application).

1.41 “**Site License Effective Date**” means the first day of the month after both the County and License fully execute a Site License. As an illustration, and not a limitation, if the last Party to execute signs a Site License on August 2, 2017, the Site License Effective Date would be September 1, 2017.

1.42 “**Term**” means the term of this Master License, as defined in Section 3.1 (Master License Term).

1.43 “**Vertical Infrastructure**” means all poles or similar facilities owned or controlled by the County that in the public rights-of-way or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control or similar functions.

# 2. Scope of License

##  2.1. Site License Issuance and Effect

Pursuant and subject to the terms and conditions in this Master License, the County, in its proprietary capacity as the Vertical Infrastructure owner, will issue one or more Site Licenses, which will grant Licensee a contractual privilege to use and occupy certain space on the Vertical Infrastructure covered by such Site License(s) for the Permitted Use and to install, maintain and operate the Equipment as shown in the Approved Plans attached to such Site License(s), all as more fully set forth in the individual Site License. After the County issues a Site License to Licensee, the County shall not grant any third parties any present possessory rights or privileges to use or occupy the same space used or occupied by Licensee as shown in the Approved Plans; provided, however, the Chief Real Estate Officer may grant rights or privileges to use other spaces on the same Vertical Infrastructure for any other purpose except to the extent expressly provided otherwise in this Master License.

##  2.2. License Area

###  2.2.1. Limitations on License Areas

This Master License applies to only Vertical Infrastructure identified in final and fully executed Site Licenses. This Master License does not authorize Licensee or any other persons or entities to enter on to or use any other County Property, except the License Areas specified in any fully executed Site Licenses. Licensee expressly acknowledges and agrees that the County will not be obligated to issue any Site License or other license to Licensee for any purpose related to any decorative pole, which includes any Vertical Infrastructure or light standard with ornate features or characteristics designed or intended to enhance the appearance of the pole, light standard or other Vertical Infrastructure.

###  2.2.2. License Area Condition

Licensee expressly acknowledges and agrees to enter on to and use the License Area in it’s “**as-is, where-is, and with all faults**” condition. The County makes no representations or warranties whatsoever, whether express or implied, as to the License Area’s condition or suitability for Licensee’s use. Licensee expressly acknowledges and agrees that neither the County nor its Agents have made, and the County expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the License Area’s physical, structural or environmental condition, the License Area’s present or future suitability for the Permitted Use or any other matter related to the License Area.

###  2.2.3. Licensee’s Due Diligence

Licensee expressly represents and warrants to the County that Licensee has conducted a reasonably diligent and independent investigation, either for itself or through an Agent selected by Licensee, into the License Area’s condition and suitability for Licensee’s intended use, and that Licensee relies solely on its due diligence for such determination. Licensee further expressly represents and warrants to the County that Licensee’s intended use is the Permitted Use as defined in Section 5 in this Master License.

###  2.2.4. Certified Access Specialist Disclosure

Pursuant to California Civil Code § 1938, as may be amended or superseded, and to the extent applicable to this Master License, the County expressly advises Licensee, and Licensee expressly acknowledges, that a Certified Access Specialist (as defined in California Civil Code § 55.53) has not inspected any License Area in whole or in part to determine whether it meets all applicable construction-related accessibility requirements.

##  2.3. Limitations on Licensee’s Interests

###  2.3.1. Limited Interest Created

Licensee expressly acknowledges and agrees that: (1) Licensee does not have any rights to use or interest in any Vertical Infrastructure or other County Facility for any purpose whatsoever until and unless the County issues a Site License that covers such Vertical Infrastructure or other County Facility; and (2) neither this Master License nor any Site License issued pursuant to this Master License creates or will be deemed to create any leasehold, easement, franchise or any other possessory interest (whether present, future, contingent or otherwise) or real property interest whatsoever in the License Area.

###  2.3.2. Limited Rights Created

Any Site License the County approves pursuant to this Master License grants Licensee only a non-possessory, non-exclusive and revocable license to enter on to and use the License Area for the Permitted Use in accordance with the terms and conditions in this Master License and the applicable Site License. Licensee expressly acknowledges and agrees that: (1) neither this Master License or any Site License will be coupled with an interest; (2) the County retains legal possession and control over all Vertical Infrastructure for the County’s governmental functions, which will be superior to Licensee’s rights and interest in the Vertical Infrastructure, if any, at all times; (3) subject to the terms and conditions in this Master License, the County may terminate a Site License in whole or in part at any time; (4) except as specifically provided otherwise in this Master License, the County may enter into any agreement with third parties to use and/or occupy any Vertical Infrastructure and/or other County Facility; and (5) neither this Master License nor any Site License creates or will be deemed to create any partnership or joint venture between the County and Licensee.

###  2.3.3. No Impediment or Limitations on County’s Governmental Functions

Except as specifically provided otherwise in this Master License, neither this Master License nor any Site License will limit, alter or waive the County’s absolute right to use any License Area, in whole or in part, as infrastructure established and maintained for the County’s and the public’s benefit.

###  2.3.4. Diminutions in Light, Air or Signal Transmission or Reception

In the event that any existing or future structure diminishes any light, air or signal propagation, transmission or reception, whether erected by the County or not, Licensee shall not be entitled to any reduction in any License Fee, Additional Fees or any other sums payable to the County under this Master License or any Site License, the County shall have no liability to Licensee whatsoever and such diminution will not affect this Master License, any Site License or Licensee’s obligations except as may be expressly provided in this Master License.

# 3. Term

##  3.1. Master License Term

The Term of this Master License will commence on the Effective Date and automatically expire ten (10) years from the Effective Date on Expiration Date, unless earlier terminated in accordance with this Master License.

##  3.2. Site License Term

Each Site License will commence on the Commencement Date and will automatically expire on the Expiration Date, unless earlier terminated in accordance with this Master License.

# 4. License Fee and Other Payments

##  4.1. License Fee

###  4.1.1. License Fee Amount

Licensee shall pay an annual License Fee as specified in **Schedule 1** to this Master License for each licensed Vertical Infrastructure authorized under any Site License. Each year throughout the Term on the Adjustment Date, the License Fee for each licensed Vertical Infrastructure will be increased by four percent (4%) over the License Fee payable in the immediately previous year. **Schedule 1** contains the applicable License Fee per licensed Vertical Infrastructure in any given year throughout the Term.

###  4.1.2. License Fee Payment

Licensee shall tender the first License Fee payment, without any deduction or setoff for any reason, at the time Licensee delivers the Acknowledgment Letter to the County. After the first License Fee payment, on or before the Commencement Date anniversary, Licensee shall pay each annual License Fee in advance without any prior demand, deduction, setoff or counterclaim for any reason, except to account for a partial year in the event this Master License expires or terminates or any abatement rights expressly granted in this Master License. Any amounts for less than a full year will be calculated based on a 360-day year.

##  4.2. Administrative Fees

###  4.2.1. Master License Administrative Fee

At the time Licensee delivers to the County a partially executed counterpart to this Master License, Licensee shall pay to the County a nonrefundable administrative fee equal to **[*amount*] and 00/100 Dollars** (**$[*amount*].00**) (the “**Master License Administrative Fee**”) to cover the County’s costs to review and execute this Master License. The County will not review or execute any Master License prior to receipt of the Master License Administrative Fee.

###  4.2.2. Site License Administrative Fee

At the time Licensee delivers to the County a Site License Application, Licensee shall pay to the County a nonrefundable administrative fee equal to **[*amount*] and 00/100 Dollars** (**$[*amount*].00**) per proposed Vertical Infrastructure (the “**Site License Administrative Fee**”). The County will not be obligated to commence its review for any Site License Application until the County receives the Site License Administrative Fee.

##  4.3. Late Charges

In the event that Licensee fails to pay any License Fee, Additional Fee, Administrative Fees or any other amount payable to the County within 10 days after the County notifies that such amounts are due and unpaid, such amounts will be subject to a late charge equal to six percent (6%) of unpaid amounts.

##  4.4. Default Interest

Any License Fees, Additional Fees, Administrative Fees and all other amounts payable to the County other than late charges will bear interest at ten percent (10%) per annum from the due date when not paid within 10 days after due and payable to the County. Any sums received shall be first applied towards any interest, then to the late charge and lastly to principle amount owed. Any interest or late charge payments will not alone excuse or cure any default by Licensee.

##  4.5. Liquidated Charges and Fees

The Parties agree that the Additional Fees payable under this Master License represent a fair and reasonable estimate of the administrative costs that the County will incur in connection with the matters for which they are imposed and that the County’s right to impose the Additional Fees is in addition to, and not in lieu of, any other rights it may have under this Master License. Furthermore:

THE PARTIES ACKNOWLEDGE AND AGREE THAT THE COUNTY’S ACTUAL ADMINISTRATIVE COSTS AND OTHER DETRIMENT ARISING FROM LICENSEE DEFAULTS AND OTHER ADMINISTRATIVE MATTERS UNDER THIS MASTER LICENSE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. BY PLACING THEIR INITIALS BELOW, EACH PARTY’S AUTHORIZED REPRESENTATIVE ACKNOWLEDGES THAT THE PARTIES HAVE AGREED, AFTER A NEGOTIATION, ON THE AMOUNT OF THE ADDITIONAL FEES AS REASONABLE ESTIMATES OF THE COUNTY’S ADDITIONAL ADMINISTRATIVE COSTS AND OTHER DETRIMENT.

Licensee \_\_\_\_\_\_\_\_\_\_\_ County \_\_\_\_\_\_\_\_\_\_\_

##  4.6. County’s Payment Address

 All License Fees and other payments due under this License shall be delivered to the Orange County Treasurer-Tax Collector, Revenue Recovery/Accounts Receivable Unit, P.O. Box 4005, Santa Ana, CA 92702-4005 (or may be delivered to 625 N. Ross Street, Bldg. 11, Room G58, Santa Ana, CA 92701-4005). The designated place of payment may be changed at any time by the Chief Real Estate Officer upon ten (10) days’ written notice to Licensee. Payments made by check are to be made payable to the County of Orange. Licensee assumes all risk of loss if payments are made by mail.

All sums due under this License shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Licensee or receipt by County of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and County shall accept such check or payment without prejudice to County’s right to recover the balance of the amount due or pursue any other remedy in this License.

# 5. Use

##  5.1. Permitted Use

Licensee may use the License Area solely for the installation, operation and maintenance of Equipment for transmission and reception of wireless communications signals (the “**Permitted Use**”) in compliance with all applicable Laws and any conditions in any Regulatory Approvals and for no other use whatsoever without the Chief Real Estate Officer’s prior written consent, which the Chief Real Estate Officer may withhold in his or her sole and absolute discretion for any or no reason.

##  5.2 Rules and Regulations

At all times throughout the Term of this Master License or any Site License, Licensee shall fully and faithfully comply with any and all reasonable rules, regulations, permits, and instructions that the Chief Real Estate Officer or the Public Works Department may from time-to-time establish and/or amend with respect to the License Area.

##  5.3. Prohibition on “Macro Cell” Uses

The County and Licensee intend this Master License and any Site License to cover only “small cell” and/or distributed antenna system installations, as those terms are commonly understood to mean small, unobtrusive wireless facilities intended to cover relatively small geographic areas. Licensee expressly acknowledges and agrees that the Permitted Use under this Master License does not include the right to use any Vertical Infrastructure as a support structure for a “macro cell” or a traditional wireless tower typically constructed on private property.

##  5.4. Prohibition on Nuisances and Illegal Uses

Licensee shall not use the License Area in whole or in part in any unlawful manner or for any illegal purpose. In addition, Licensee shall not use the License Area in whole or in part in any manner that constitutes a nuisance as determined by the Chief Real Estate Officer in the Chief Real Estate Officer’s reasonable judgment. Licensee shall take all precautions to eliminate any nuisances or hazards in connection with its uses and activities on or about the License Area.

##  5.5. Signs or Advertisements

Licensee acknowledges and agrees that its rights under this Master License and any Site License do not authorize Licensee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on the License Area, except as may be specifically authorized under this Master License, any Site License, or as may be required for compliance with any applicable Laws.

# 6. Site Licenses

##  6.1. County Approval Required

Licensee shall not have any right to use the License Area in whole or in part for any purpose until and unless the Chief Real Estate Officer approves a Site License that covers the License Area. Licensee may obtain a Site License only after the Chief Real Estate Officer approves a Site License Application as provided in this Section 6. Subject to any express limitations in this Master License, the County will not be obligated to subordinate its governmental functions or proprietary interest in any manner whatsoever to Licensee’s interest under any Site License. When the Chief Real Estate Officer considers whether to approve or disapprove any Site License Application, the Chief Real Estate Officer may consider any matter that affects County’s governmental functions or proprietary interests, which include without limitation: (1) Licensee’s proposed plans and Equipment specifications; (2) compliance with any applicable Laws; (3) impacts on the County’s street light, traffic control or other governmental operations; (4) any potential hazards or unsafe conditions that could result from Licensee’s installation, operation or maintenance; (5) any potential visual or aesthetic impacts, provided the proposed Equipment is not in conformance with objective design standards adopted by the County; (6) the additional load on the Vertical Infrastructure the proposed Equipment would create; and (7) any governmental plans for the Vertical Infrastructure, other County Facility or the public right-of-way in proximity to the subject Vertical Infrastructure.

##  6.2. Site License Application

A complete Site License Application must include the following: (1) two partially executed duplicate counter parts of a Site License in the form attached as **Exhibit A** to this Master License, together with: (a) a fully completed **Exhibit A-1**, which shall contain a summarized list that identifies all Vertical Infrastructure covered under the Site License Application; (b) a fully completed **Exhibit A-2**, which shall contain detailed construction plans for the proposed installation(s) and an inventory for all proposed Equipment to be installed on the Vertical Infrastructure covered under the Site License Application; and (c) a true and correct copy of **Schedule 1** attached to this Master License; (2) the Site License Administrative Fee; (3) all other information and materials required for a complete application for all Regulatory Approvals issued by the County’s departments, which the County may update from time-to-time in accordance with applicable Laws;. The Site License Application is to be submitted to the County via the County’s Property Permit application process available at <http://www.ocgov.com/gov/pw/cd/building/plan/forms.asp>.

##  6.3. Site License Application Review Procedures

###  6.3.1. Site License Application Priority

Licensee expressly acknowledges that the County either already has or may in the future enter into similar master license agreements for its Vertical Infrastructure with other persons or entities, and that Licensee and such third parties may from time-to-time desire to license the same Vertical Infrastructure from the County. To promote a fair and competitively neutral process, the County shall implement a first-in-time prioritization process as provided in this Section 6.3.1. The Chief Real Estate Officer shall review each Site License Application, which includes without limitation any Site License Applications submitted by other licensees, in the order received. Each Site License Application will be date and time stamped when received by the County, and such stamp shall control the Site License Application’s priority relative to other Site License Applications. In the event that the County receives two Site License Applications for the same Vertical Infrastructure, the applications with lower priority will be held in abeyance until the higher-priority application is approved, withdrawn, denied or timed-out as provided in this Master License, at which time the Chief Real Estate Officer will commence to review the next-highest priority Site License Application for that Vertical Infrastructure.

###  6.3.2. Timeframe for County’s Review

The Chief Real Estate Officer will review each complete Site License Application within the applicable timeframes under applicable Laws, taking into account any tolling periods for such timeframes as provided in applicable Laws, and as modified in this Master License. Licensee shall provide the County with at least sixty (60) days’ prior notice for any Site License Application that covers more than five proposed installations on Vertical Infrastructure to allow the County sufficient time to augment its staff as provided in Section 6.3.3 (County Staff Augmentation). Licensee shall use best efforts not to submit successive Site License Applications that would effectively thwart the County’s right to the 60-day advance notice provided in this Section 6.3.2. In the event that Licensee fails to provide the notice required in this Section or submits successive Site License Applications that exceed the five-installation threshold within any 30-day period, the Parties shall enter into a written agreement to extend the applicable timeframes under applicable Laws for at least an additional 60 days, unless the Chief Real Estate Officer, in his or her sole discretion, agrees to a shorter extension.

###  6.3.3. County Staff Augmentation

To assist in the review and processing of the Site License Applications in a timely manner, the Chief Real Estate Officer shall have the right to select and retain temporary staff members, consultants and/or other independent contractors with qualifications and expertise acceptable to the Chief Real Estate Officer (“**Staff Augmentation**”). Licensee shall be responsible for all costs incurred by the County in connection with Staff Augmentation. Upon the Chief Real Estate Officer’s request, Licensee shall furnish the County with a deposit in an amount reasonably estimated by the Chief Real Estate Officer to cover the Staff Augmentation costs for a particular Site License Application. The Chief Real Estate Officer may withdraw funds from the deposit during the review process only: (1) as needed to pay invoices in connection with Staff Augmentation before such invoices become past-due, and (2) upon notice to Licensee that includes copies of such invoices or other documentation to evidence Staff Augmentation costs incurred by the County. If the deposit is insufficient to cover the County’s costs, Licensee shall reimburse the County for the difference between the deposited amount and the total Staff Augmentation costs within fifteen (15) days after Licensee receives the Chief Real Estate Officer’s demand for reimbursement, together with copies of invoices or other documentation to evidence the County’s costs.

###  6.3.4. Amendments to Site License Applications

In the event that the Chief Real Estate Officer determines for any reason that the Site License Application is incomplete or the Permitted Use at any particular proposed License Area would impede the County’s governmental functions or otherwise negatively affects its proprietary interests, the Chief Real Estate Officer will provide notice of such deficient application to Licensee as soon as reasonably practicable. Licensee will have fourteen (14) days following issuance of such notice to amend its Site License Application without any impact on the Site License Application’s priority relative to any other applications then under review or later received by the County. Any amendments received after the fourteen (14) day period or any other changes Licensee may make to the Site License Application will cause the date and time on which the application was submitted or deemed submitted to be changed to the date and time on which Licensee submitted the proposed changes.

###  6.3.5. Site License Application Approvals

In the event that the Chief Real Estate Officer approves a Site License Application, the Chief Real Estate Officer will return one fully executed Site License to Licensee. Such approval may occur before or simultaneous with any approvals or denials for any Regulatory Approvals issued by the County in its regulatory capacity. Licensee acknowledges and agrees that the Chief Real Estate Officer’s decision to approve or disapprove any Site License Application is not, and will not be deemed to be, a regulatory determination subject to any administrative appeal, but is an exercise of the County’s proprietary authority over its Vertical Infrastructure as its personal property. In the event that Licensee fails to commence construction pursuant to the Site License within one hundred eighty (180) days from the date the Chief Real Estate Officer executes the Acknowledgment Letter, the Site License shall automatically expire unless the Chief Real Estate Officer grants a written extension that may not exceed an additional one hundred eighty (180) days. Licensee shall not be entitled to any refund for any fees, which include without limitation the License Fee, paid in connection with a Site License that expires pursuant to this Section 6.3.6. Nothing in this Section 6.3.6 is intended to prohibit or prevent Licensee from submitting a new Site License Application and applicable fee for the same or substantially the same Vertical Infrastructure as those covered under a Site License that expired pursuant to this Section 6.3.6.

###  6.3.6. Site License Application Denials

Licensee acknowledges that the Chief Real Estate Officer reserves the absolute right to disapprove any Site License Application in whole or in part when the Chief Real Estate Officer determines in its sole judgment that the proposed Equipment would unreasonably interfere with the County’s governmental functions, public purpose or proprietary interests or create a hazardous or unsafe condition. The Chief Real Estate Officer shall provide Licensee with a written denial that states the basis for the denial.

###  6.3.7. Licensee’s Waiver of Certain Federal or State Rights

Despite any potential future change in any applicable Laws during the Term under this Master License, Licensee expressly and irrevocably waives any state or federal rights to challenge: (1) the fees paid to the County pursuant to this Master License and any Site License; (2) the timeframes established in this Master License by which Site License Applications, including any notices, tolling or extensions required under this Master License or any Site License are to be reviewed and processed by or on behalf of the County; and (3) the right to claim that new facilities installed pursuant to this Master License or any Site License are eligible for mandatory collocations or modifications Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, or any similar Laws.

##  6.4. Replacement Vertical Infrastructure

In the event that Licensee desires to replace any existing Vertical Infrastructure, or in the event that the Chief Real Estate Officer requires Licensee to replace any existing Vertical Infrastructure as a condition of approval for a Site License, Licensee shall: (1) design and/or procure the replacement Vertical Infrastructure to be (a) substantially the same as the existing Vertical Infrastructure to be replaced, (b) consistent with the County’s specifications for similar Vertical Infrastructure, and (c) consistent with the County’s objective design standards; and, (2) install the replacement Vertical Infrastructure at Licensee’s sole cost and expense and in accordance with all applicable provisions in this Master License, which includes without limitation Section 7 (Equipment Installation). After Licensee installs any replacement Vertical Infrastructure, the Chief Real Estate Officer will have the right to inspect the improvements and installation work and accept, reject and require corrections to such improvements or installation work. Licensee shall make any and all necessary corrections to any replacement Vertical Infrastructure within sixty (60) days after a rejection by the Chief Real Estate Officer. After the Chief Real Estate Officer accepts a replacement Vertical Infrastructure, Licensee shall transfer title to the replacement Vertical Infrastructure to the County by a written instrument mutually acceptable to the Parties. Licensee acknowledges and agrees that the Chief Real Estate Officer’s approval of the Site License will be the only consideration due to Licensee in exchange for transferring title to any replacement Vertical Infrastructure to the County, and Licensee will not be entitled to any additional pecuniary or non-pecuniary consideration.

##  6.5. Future Modifications to Equipment Shown on the Approved Plans

Licensee shall perform all Equipment modifications, or Equipment replacements or upgrades which are the same or smaller than the Equipment in the Approved Plans for that Vertical Infrastructure, in accordance with the provisions in Section 7 (Equipment Installation). Within sixty (60) days after Licensee completes any modification, Licensee shall, at its sole cost, tender to the Chief Real Estate Officer as-built plans and Equipment specifications for the modified Equipment. The Chief Real Estate Officer shall review such as-built plans and approve or reject them for cause. After the Chief Real Estate Officer’s approval, such as-built plans will replace the portions of **Exhibit A-2** that depicted the Equipment prior to the modification. The Chief Real Estate Officer and Licensee shall execute an amendment to the applicable Site License to memorialize such replacement.

# 7. **Equipment Installation**

##  7.1. County Permit Requirement

Licensee shall have all construction, including the installation, modification, removal or demolition of any systems, facilities or Equipment, Vertical Infrastructure and/or maintenance plans approved in writing by the Chief Real Estate Officer, through Orange County’s Property Permit (“**CPP**”) department with payment of normal processing fees therefor, prior to commencement of any work in, on, over, under, across or about the License Area; and upon completion of any such work, Licensee shall immediately notify the Chief Real Estate Officer in writing of such completion. Licensee agrees that it shall not commence any work on or about the License Area until and unless Licensee first obtains a CPP executed on behalf of the County. The issuance of a CPP to Licensee will serve as Licensee’s authorization to proceed with work outlined in such CPP.

The Chief Real Estate Officer’s approval of Licensee’s construction, maintenance and/or demolition plans, shall not be deemed approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements. County is not responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of Licensee’s construction, maintenance and/or demolition plans. The Chief Real Estate Officer will rely on the professional expertise of the Engineer of Record when approving Licensee’s construction, maintenance and/or demolition plans.

Should it be necessary for Licensee to conduct any construction, maintenance or demolition activities requiring the use of any specialized vehicles or equipment, including but not limited to cranes, within, over, under or about the License Area subsequent to the completion of the initial installation of the Equipment, Licensee agrees to notify Chief Real Estate Officer in writing sixty (60) days in advance of such planned activities, obtain Chief Real Estate Officer’s written approval of all plans, and obtain a permit through CPP with payment of normal processing fees therefor, prior to commencement of any such activities. Said approval shall not be withheld unreasonably, nor shall said approval be necessary in any emergency situation. However, Licensee shall notify the Chief Real Estate Officer within five (5) days following commencement of any emergency repair work, and if so requested by Chief Real Estate Officer, Licensee shall secure a permit through CPP for the purpose of documenting the emergency work.

##  7.2. Prior Regulatory Approvals Required

Licensee shall not commence any work on or about the License Area until and unless Licensee first obtains all necessary prior Regulatory Approvals. Any work performed by Licensee or its Agents or Invitees without such Regulatory Approvals will be a default under this Master License in addition to any other liabilities or penalties the County, in its regulatory capacity, may impose on Licensee for the same acts or omissions. .

##  7.3. Installation Work

Licensee shall perform all work in connection with the License Area in strict compliance with the Approved Plans and in a diligent, skillful and workmanlike manner.

###  7.3.1. Changes to Approved Plans Required by Regulatory Approvals

Licensee may amend any Approved Plans when such changes are required to obtain or maintain compliance with Regulatory Approvals necessary to install the Equipment, so long as Licensee obtains the Chief Real Estate Officer’s prior written consent, which consent shall not unreasonably be withheld.

###  7.3.2. Corrections to Approved Plans

Licensee shall have the obligation to correct any errors or omissions in any Approved Plans and related Regulatory Approvals. Licensee shall immediately send written notice to the Chief Real Estate Officer in the event that Licensee discovers any such defects. Any Approved Plans and/or amendments to Approved Plans by the Chief Real Estate Officer will not release or excuse Licensee’s obligations under this Section 7.3.2.

 7.3.3 **Equipment Inspections and Audits**

In the event the Chief Real Estate Officers conducts an inspection or evaluation of any License Area and Equipment and concludes that Licensee installed Equipment without proper authorization or that Equipment installed on more than five percent (5%) of the License Sites were not installed in compliance with the Approved Plans or all applicable Laws, Licensee shall, within fifteen (15) days after a written demand from the County, reimburse the County for the County’s reasonable, actual and documented costs and expenses to conduct the investigation or evaluation.

###  7.3.4. Alterations to County Facilities

Licensee shall not remove, damage or in any manner alter any County Facility without prior written consent from the Chief Real Estate Officer and any other public agencies with jurisdiction over the subject County Facility. The Chief Real Estate Officer may withhold consent in the Chief Real Estate Officer’s sole and absolute discretion, and may reasonably condition consent in each instance based on scope and nature of the proposed alterations. Licensee shall immediately notify the Chief Real Estate Officer if any removal, damage or other alteration occurs to any County Facility for any reason and through any cause.

###  7.3.5. Licensee’s Contractors

Licensee shall use only qualified and trained persons and appropriately licensed contractors for all work performed on or about the License Area.

##  7.4. Labor and Material Costs

Licensee shall be responsible for and timely pay all direct and indirect costs (labor, materials and overhead) in connection with designing, purchasing, permitting installing and maintenance of any Equipment within the License Area in accordance with the Approved Plans and all applicable Laws all costs to obtain and maintain all Regulatory Approvals required in connection with the Equipment installation, which includes without limitation all direct and indirect costs to comply with any approval conditions or mitigation measures that arise from Licensee’s proposed installation Licensee shall also bear all costs for all professional services related to the Permitted Use or services furnished to the License Area at Licensee’s direction or for Licensee’s benefit.

##  7.5. Project Managers

The County and Licensee each designate the person listed in this Section 7.5 as its project manager to coordinate Licensee’s Equipment design and installation, and serve as each Party’s respective primary contact person for all design, engineering, construction and installation issues that may arise between the Parties in connection with this Master License.

 **County’s Project Manager:** County Property Permit Dept.

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 **Licensee’s Project Manager:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Licensee acknowledges that the County’s Project Manager is not exclusively assigned to this Master License or any Site License, and that the County’s Project Manager may not always be immediately available to Licensee or to Licensee’s Project Manager. Licensee further acknowledges that the authority delegated by the County to the County’s Project Manager is limited to construction-related activities of this Master License, any Site License Applications and any approved Site Licenses. The Parties’ respective Project Managers will have no obligation to personally perform any term or covenant to be performed by the other Party under this Master License. Notices to the Parties’ respective Project Managers alone will not be deemed effective notice for any purpose under this Master License.

##  7.6. Fiber Optic Cables

Licensee shall reserve either a minimum of four (4) strands of fiber, and up to six (6) strands if existing or (b) six (6) strands where newly placed, throughout its entire network in the County’s rights-of-way for the County’s exclusive use as partial consideration paid to the County for this Master License. Licensee’s fiber strands reserved to the County shall consist of a contiguous route or routes of dark fiber that create an infrastructure that can be used as a network and system to effectively transport broadband between points of connection throughout the County. Licensee shall grant the County the right to use all related infrastructure to access, manage and maintain the fiber strands, including conduit, pull boxes, vaults, splice cases and other such things and network elements. The County shall have the right to splice the fibers to new or other fibers as it deems necessary; provided, however, that the County shall not unreasonably interfere with Licensee’s fiber, other related equipment or operations. Such license shall be automatically effective upon Licensee’s installation of any fiber-optic cables on the License Area, and Licensee shall designate and mark the four or six fiber strands in any conduit that serves the License Area for the County’s use at the time it installs such fiber-optic cables (e.g., with a tag or other marker). Licensee further agrees that, at the time this Master License expires or terminates, Licensee shall transfer to the County title and ownership of any fiber stands that the County uses or desires to use by quitclaim or bill for sale at no cost to County.

##  7.7. Title to Licensee’s Equipment and Other Improvements

Except as specifically provided otherwise in this Master License, all Equipment and other improvements installed, constructed or placed on or about the License Area by Licensee or its Agents or Invitees will be and remain at all times Licensee’s personal property. All structural improvements to any Vertical Infrastructure, any replacement Vertical Infrastructure and any underground fiber optic cables, all as approved by the County and shown in the Approved Plans, will become County Property and remain in place should Licensee vacate or abandon such License Area, unless the Chief Real Estate Officer elects in a written notice to Licensee that it does not wish to take title to such structural improvements.

##  7.8. Prevailing Wages

The services to be provided under the Master License or Site License are or may be subject to prevailing wage rate payment as set forth in California Labor Code § 1771. Accordingly, to the extent that any such services are subject to the prevailing wage rate payment requirements, Licensee shall comply with all applicable California Labor Code requirements pertaining to “public works,” including the payment of prevailing wages in connection with the services to be provided to the County hereunder (collectively, “**Prevailing Wage Policies**”). Licensee shall submit, upon request by the Chief Real Estate Officer, certified copies of payroll records to the County and shall maintain and make such records available to the County or the County’s duly authorized representative for inspection and copying in a manner consistent with Licensee’s obligations under Section 24 (Records).

Licensee shall defend, indemnify and hold the County and County Parties harmless from and against any and all present and future Claims, that arise from or in connection with Licensee’s obligation to comply with all Laws with respect to the work and Prevailing Wage Policies, which includes without limitation any and all Claims that may be made by contractors, subcontractors or other third parties pursuant to California Labor Code §§ 1726 and 1781, as amended and added by California Senate Bill 966 (Alarcon), and as may be amended or superseded in the future.

Licensee hereby waives, releases and discharges forever the County and County Parties from any and all present and future Claims that arise from or in connection with Licensee’s obligation to comply with all Laws with respect to the work and Prevailing Wage Policies. Licensee hereby acknowledges that Licensee is aware of and familiar with the provisions in California Civil Code § 1542 which provides as follows:

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

Licensee hereby waives and relinquishes all rights and benefits which it may have under California Civil Code § 1542, as such relates to the Master License and any Site License. Licensee’s obligations under this Section 7.9 will survive the expiration or earlier termination of this Master License and any Site License.

# 8. Licensee’s Maintenance Obligations

##  8.1. Equipment Maintenance

Licensee shall, at its sole cost and expense, maintain all Equipment installed on the License Area in good condition at all times, and shall promptly repair any damage to any Equipment installed on the License Area whenever repair or maintenance may be required, subject to the County’s prior approval if required under Section 7 (Equipment Installation). Licensee expressly acknowledges that Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455), as may be amended or superseded, does not apply to this Master License or any Site License. consistent with Section 7 of this Agreement

##  8.2. Damage to Vertical Infrastructure

###  8.2.1. Notice to County

If Licensee discovers any damage to the License Area from any cause, Licensee shall promptly give notice to the Chief Real Estate Officer. that describes such damage and the location(s) where the damage occurred. Licensee will not be deemed to have assumed liability for any life-threatening or hazardous conditions by giving such notice, unless such conditions were caused by or arose in connection with Licensee’s or its Agent’s or Invitee’s acts, omissions or negligence.

###  8.2.2. Damage Caused by Licensee

Licensee at its sole cost and expense, shall promptly repair or replace any Vertical Infrastructure, County Facilities, improvements or right of way located within the License Area or in proximity to the License Area that are damaged or destroyed by Licensee in the exercise of Licensee’s rights under this Master License or Site License. Such repair or restoration shall be to approximately the same workmanship and condition as existed prior to such damage or destruction.

If Licensee fails to maintain or make repairs or replacements as required in this Master License or Site License, the Chief Real Estate Officer may notify Licensee in writing of said failure. Should Licensee fail to correct the situation within a reasonable time thereafter as established by the Chief Real Estate Officer, the Chief Real Estate Officer may have the necessary correction made and the cost thereof, including but not limited to the reasonable cost of labor, materials, and equipment and a fifteen percent (15%) administration fee of such costs, shall be paid by Licensee to County within fifteen (15) days of receipt of a statement of said cost accompanied with supporting documentation describing such costs, from the Chief Real Estate Officer. The Chief Real Estate Officer may, at the Chief Real Estate Officer’s option, choose other remedies available herein, or by law. In establishing the time in which Licensee must correct its failure to make repairs or replacements under this Section 8.2.2, the Chief Real Estate Officer shall allow a minimum of ten (10) business days to complete such repairs or replacements unless the situation constitutes a violation of applicable laws or otherwise threatens imminent harm to persons or property

###  8.2.3. No Right to Repair Vertical Infrastructure

Absent notice from the Chief Real Estate Officer with a demand to cure any damage to any Vertical Infrastructure, Equipment, County Facilities, License Area or right of way, Licensee is not authorized to make any repairs to any Vertical Infrastructure Equipment, County Facilities or right of way or License Area without first having obtained a CPP therefor. Licensee expressly waives all rights it may have under any applicable Laws to make repairs at the County’s expense.

##  8.3. Graffiti Abatement

In addition to Licensee’s other maintenance obligations under this Master License and any Site License, Licensee shall remove any graffiti or other similar markings from the License Area, Vertical Infrastructure or Equipment promptly upon actual notice (but in no event later than 48 hours after notice from the Chief Real Estate Officer).

##  8.4. Maintenance Work Performance Standards

All work performed by or for Licensee under this Section 8 shall be performed: (1) at Licensee’s sole cost and expense; (2) by only qualified and trained persons and appropriately licensed contractors; (3) in a manner and with equipment and materials that will not interfere with or impair the County’s governmental operations on or about the License Area; and (c) in a manner compliant with all applicable Laws.

##  8.5. Maintenance Certification

Once in every five (5) year period throughout the Term, Licensee shall inspect (or cause to be inspected) all Equipment installed pursuant to this Master License and any Site Licenses and submit a written report to the Chief Real Estate Officer that: (1) identifies each Vertical Infrastructure licensed to Licensee; (2) inventories the Equipment installed on such Vertical Infrastructure; (3) identifies any third-parties who use each such Vertical Infrastructure pursuant to this Master License; and (4) certifies that all installations are in compliance with this Master License, the applicable Site License and the most current Approved Plans. In the event that the CPUC or any other governmental authority requires Licensee to perform the same or substantially similar inspection, the County agrees that it will accept a written report prepared in connection with such inspection so long as it meets the requirements described in items (1), (2), (3) and (4) in this subsection and such report was prepared within the last 12 months.

# 9. Utilities

Licensee shall be responsible to secure its own utility services for its Permitted Use and shall not be permitted to “submeter” from any electrical service provided to the County on any License Area without the Chief Real Estate Officer’s prior written consent, which the Chief Real Estate Officer may withhold in his or her sole and absolute discretion. Licensee shall timely pay when due all charges for all utilities furnished to its Equipment on the License Area.

# 10. Taxes, Assessments and Other Impositions

This Master License and any Site License may create a possessory interest that is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the License Area or upon fixtures, equipment, or other property installed or constructed thereon by or on behalf of Licensee, shall be the full responsibility of Licensee, and Licensee shall cause said taxes and assessments to be paid promptly. Licensee further understands and acknowledges that any sublicense or assignment under this Master License and any options, extensions or renewals in connection with this Master License or any Site License may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this Master License In the event that the County receives any tax or assessment notices on or in connection with the License Area or Licensee’s Equipment, the Chief Real Estate Officer shall promptly (but in no event later than thirty (30) calendar days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to the Equipment or Licensee’s use of the License Area and Licensee agrees to pay such amount before delinquency. ..

# 11. Licensee’s Obligations to Maintain Compliance with Laws

##  11.1. Compliance with CPUC General Orders

In addition to all other Laws, Licensee shall conduct all activities on the License Area in accordance with all applicable CPUC general orders, which includes without limitation CPUC General Order 95 and CPUC General Order 128 as those orders may be amended or superseded in the future, and the rules, regulations and other requirements adopted or enacted by the CPUC under such general orders.

##  11.2. Compliance with Building and Electric Codes

To the extent that CPUC General Order 95 does not address cellular telephone antenna installations on Vertical Infrastructure carrying electrical lines, Licensee shall apply applicable provisions of the NESC, with particular attention to paragraphs 224, 235C, 235F, 238, 239 and 239H and sections 22, 41 and 44. Where any conflict exists between the California Building Code, the NESC, the California Electric Code, any local code and CPUC General Order 128, the more stringent requirements will apply, as determined by the County.

##  11.3. Compliance with RF Exposure Regulations

In addition to Licensee’s compliance with all other Laws, Licensee shall maintain compliance with all Laws related to human exposure to RF emissions, which includes without limitation all guidelines and recommended best practices issued by the FCC, OSHA, CPUC and other regulatory agencies on or about the License Area, whether such RF emissions or exposure results from Licensee’s Equipment alone or in combination with all other sources on or near the License Area.

# 12. Public Works’ Operations

##  12.1. County’s Access to License Area

Except as specifically provided otherwise in this Master License, the Chief Real Estate Officer and County’s Agents have the absolute right to access any License Area in whole or in part at any time without notice for any purpose. The County will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the Chief Real Estate Officer’s or any County Agents’ access to the License Area, which includes, without limitation, any Equipment removed in an emergency or other exigent circumstances pursuant to Section 12.4 (Emergencies), except to the extent that the damage arises directly and exclusively from the Chief Real Estate Officer’s or any County Agent’s sole active negligence or willful misconduct and not contributed to by Licensee’s or Licensee’s Agents’ or Invitees’ acts, omissions or negligence.

##  12.2. County’s Maintenance, Repairs or Alterations to Vertical Infrastructure

The County will: (1) maintain and repair Vertical Infrastructure as needed, in the Chief Real Estate Officer’s sole judgment, for its street light operations and other governmental functions; and (2) correct any immediately hazardous condition of any Vertical Infrastructure within the License Area. Except as provided in Section 19 (Termination), neither any County work on any Vertical Infrastructure nor any condition on any Vertical Infrastructure will: (a) entitle Licensee to any damages; (b) excuse or reduce any obligation by Licensee to pay any License Fees or Additional Fees or perform any covenant under this Master License or any Site License; or (c) constitute or be construed as a constructive termination of this Master License or any Site License.

##  12.3. County’s Maintenance, Repairs or Alterations to Other County Property

The Chief Real Estate Officer may, at any time, cause the alteration, addition to, reduction or repair of, and/or improvement of the License Area in whole or in part for any governmental function, which includes without limitation maintenance and improvements in connection with street light services and compliance with all applicable Laws; provided, however, that except in an emergency the Chief Real Estate Officer: (1) makes a good-faith effort to provide prior notice to Licensee’s On-Call Representative; (2) allows Licensee’s On-Call Representative to observe the work; and (3) instructs that reasonable steps be taken so as not to disrupt Licensee’s ordinary operations on the License Area, taking into account any exigencies that may threaten persons or property. The provisions in this Section 12.3 will not be construed to allow Licensee’s ordinary operations to impede or delay the County’s authority and ability to make changes to the License Areas necessary to maintain street light services, traffic control services, any governmental utility services (to the extent permissible under applicable Laws) or any other governmental functions carried out for the public’s health, safety, welfare or benefit.

##  12.4. Emergencies

In emergencies, and unless expressly provided in applicable Laws, the County’s work and operations will take precedence over Licensee’s operations, which includes without limitation any Equipment operated on the License Area, and the Chief Real Estate Officer may access the License Area in whole or in part as the Chief Real Estate Officer deems necessary in the Chief Real Estate Officer sole and absolute determination and in accordance with this Section 12.4, with or without notice to Licensee. When safe and practicable, as determined by the Chief Real Estate Officer, the Chief Real Estate Officer will notify Licensee of any emergency or other exigent circumstances that requires the County to remove or replace any Vertical Infrastructure or other County Facility and will allow Licensee to remove its Equipment before the County removes or replaces such Vertical Infrastructure or other County Facility; provided, however, that the County will remove the Equipment from the License Area when in the Chief Real Estate Officer’s sole determination it would: (1) be unsafe or not practicable to wait for Licensee to perform (or cause to be performed) the work; (2) result in significant delay; or (3) otherwise threaten or compromise public health, safety, welfare or public services. The County will remove any Equipment with reasonable care and store such Equipment for retrieval by Licensee. Licensee shall have the right to reinstall such removed Equipment (or equivalent replacement Equipment) at Licensee’s sole expense on the repaired or replaced Vertical Infrastructure and/or License Area and in accordance with Section 7 (Equipment Installation). Licensee expressly acknowledges that any act(s) taken by the County or its Agent pursuant to this Section 12.4, which includes without limitation any Equipment removal or storage, will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee’s contractual privilege to use the License Area.

# 13. Indemnification

##  13.1. Licensee’s Indemnification Obligations

Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the County and all County Parties (collectively, the “**Indemnified County Parties**”) harmless from and against any and all Claims incurred in connection with or arising in whole or in part from: (1) death or personal injury to any person or damage or loss to any property that occurs on or about the License Area or arises in connection with Licensee’s or its Agents’ or Invitees’ authorized or unauthorized uses or activities on or about the License Area; (2) Licensee’s failure or refusal to observe or perform any term, covenant, condition or other provision in this Master License to be observed or performed by Licensee; (3) Licensee’s or its Agents’ or Invitees’ use or occupancy of the License Area, or the manner in which Licensee or its Agents or Invitees use or occupy the License Area; (4) any exposure to RF emissions from Licensee’s Equipment; (5) the License Area condition or any occurrence on or about the License Area attributable to the events described in clauses (1), (2), (3) or (4) under this Section 13; or (6) any act or omission by Licensee or its Agents or Invitees on or about the License Area; all whether any negligence may be attributed to any Indemnified County Parties or not, all whether any liability without fault is imposed or sought to be imposed on any Indemnified County Parties or not, but except to the extent that such Claim arise directly from any Indemnified County Parties’ gross negligence or willful misconduct. Licensee’s obligations under this Section 13 includes, without limitation, all reasonable fees, costs and expenses for attorneys, consultants and experts, and the County’s actual costs to investigate any Claim. Licensee expressly acknowledges and agrees that (a) it has an immediate and independent obligation to defend any Indemnified County Parties from any Claim that actually or potentially falls within this Section 13, even when the allegations in the Claim are or appear to be groundless, fraudulent or false; and (b) Licensee’s obligations arise at the time any Indemnified County Parties tender such Claim to Licensee and continue until such Claim’s final resolution. Licensee’s obligations under this Section 13 shall survive this Master License’s and any applicable Site License’s expiration or termination.

##  13.2. Licensee’s Defense of County

In the event that any Claim is brought against any Indemnified County Parties in connection with any subject matter for which any Indemnified County Parties are indemnified by Licensee under this Master License or any Site License, Licensee shall, upon written notice and at Licensee’s sole cost and expense, resist and defend against such Claim with legal counsel acceptable to the County. The County shall not unreasonably withhold its consent to legal counsel selected by Licensee; provided, however, that the County may reject any legal counsel that: (1) has less than 10 years’ direct experience representing public agencies in similar actions or proceedings as that brought against the Indemnified County Parties; (2) has any past disciplinary actions by any United States tribunal or state bar association; or (3) has any actual or potential conflicts of interest with any Indemnified County Parties. Licensee shall not, without the County’s written consent, enter into any compromise or settlement agreement on any Indemnified County Parties’ behalf that (a) admits any liability, culpability or fault whatsoever on any Indemnified County Parties’ part; or (b) requires any Indemnified County Party to take any action, which includes without limitation any change in the County’s policies, or pay any money. Nothing in this Master License shall be construed to limit or preclude any Indemnified County Parties or their respective legal counsel, which includes without limitation County Counsel and its attorneys, consultants and experts, from cooperating with Licensee and participating in any judicial, administrative or other litigation or proceeding.

# 14. Insurance

#  14.1. General Requirements

 Licensee agrees to purchase all required insurance at Licensee’s expense and to deposit with the Chief Real Estate Officer certificates of insurance, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Master License have been complied with, and to keep such insurance coverage and the certificates and endorsements therefor on deposit with County during the entire term of this Master License.

 Licensee agrees that Licensee shall not operate on the License Area at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of the Chief Real Estate Officer. In no cases shall assurances by Licensee, or its Agents, including any insurance agent, be construed as adequate evidence of insurance. The Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Licensee also agrees that upon cancellation, termination, or expiration of Licensee’s insurance, the Chief Real Estate Officer may take whatever steps are necessary to interrupt any operation from or on the License Area until such time as the Chief Real Estate Officer reinstates the Master License.

If Licensee fails to provide the Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder at any time during the term of the License, County and Licensee agree that this shall constitute a material breach of this Master License. Whether or not a notice of default has or has not been sent to Licensee, said material breach shall permit the Chief Real Estate Officer to take whatever steps necessary to interrupt any operation from or on the License Area, and to prevent any persons, including, but not limited to, members of the general public, and L’s Licensee’s Agents or Invitees, from entering the License Area until such time as the Chief Real Estate Officer is provided with adequate evidence of insurance required herein. Licensee further agrees to hold County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the Chief Real Estate Officer’s action.

Licensee may utilize the License Area only upon providing to COUNTY the required insurance stated herein and shall maintain such insurance for the entire term of this Master License. The Chief Real Estate Officer reserves the right to terminate this Master License at any time Licensee’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. Licensee shall pay County a fee of Nine Hundred Dollars ($900) for processing the reinstatement of this Master License. Licensee shall provide to the Chief Real Estate Officer immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of Licensee pursuant to this Master License shall obtain insurance subject to the same terms and conditions as set forth herein for Licensee. Licensee shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by County from the Licensee under this Master License. It is the obligation of the Licensee to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the License Area. Such proof of insurance must be maintained by Licensee through the entirety of this Master License and be available for inspection by a County representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by County’s Risk Manager, or designee, upon review of Licensee’s current audited financial report. If Licensee’s SIR is approved, Licensee, in addition to, and without limitation of, any other indemnity provision(s) in this Master License, agrees to all of the following:

A. In addition to the duty to indemnify and hold the County of Orange harmless against any and all liability, claim, demand or suit resulting from Licensee’s, or its Agents’ or Invitees’ performance of this Master License, Licensee shall defend County at Licensee’s sole cost and expense with counsel approved by the Board of Supervisors against same; and

B. Licensee’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

C. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Licensee’s SIR provision shall be interpreted.

If Licensee fails to maintain insurance acceptable to County for the full term of this Master License, the Chief Real Estate Officer may terminate this Master License.

# 14.2 Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best’s Rating) and VIII (Financial Size Category) as determined by the most current edition of the **Best’s Key Rating Guide/Property-Casualty/United States or ambest.com**. It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company’s performance and financial ratings.

# 14.3. Minimum Limits

The policy or policies of insurance maintained by the Licensee shall provide the minimum limits and coverage as set forth below:

|  |  |
| --- | --- |
| CoveragesCommercial General LiabilityAutomobile Liability including coverage for owned, non-owned and hired vehiclesWorkers’ CompensationEmployers' Liability InsuranceEnvironmental Pollution Liability | Minimum Limits$1,000,000 per occurrence$2,000,000 aggregate$1,000,000 limit per occurrenceStatutory$1,000,000 per occurrence\_\_\_\_\_\_\_\_\_\_\_\_ per occurrence\_\_\_\_\_\_\_\_\_\_\_\_ aggregate |

# 14.4. Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

# 14.5. Required Endorsements

A. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

A. An Additional Insured endorsement using ISO form CG 20 26 04 13or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds. Blanket coverage may also be provided which will state- As Required By Written Agreement.

B. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the LESSEE’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees. Blanket coverage may also be provided which will state- As Required By Written Agreement.

All insurance policies required by this Master License shall waive all rights of subrogation against the County its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the County’s financial interest when applicable.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a “separation of insureds” clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the County’s address provided in the Master License or to an alternate address provided by the Chief Real Estate Officer.

LESSEE has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

The County expressly retains the right to require Licensee to increase or decrease insurance of any of the above insurance types throughout the term of this Master Licensee. Any increase or decrease in insurance will be as deemed by the Risk Manager as appropriate to adequately protect the County.

The Chief Real Estate Officer shall notify Licensee in writing of changes in the insurance requirements. If Licensee does not deposit copies of acceptable certificates of insurance and endorsements with the Chief Real Estate Officer, incorporating such changes within thirty (30) days following receipt of such notice, this License may be in breach without further notice to Licensee, and the County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance, or self-insurance shall not be construed to limit Licensee’s liability hereunder nor to fulfill the indemnification provisions and requirements of this Master License, nor in any way to reduce the policy coverage and limits available from the insurer.

# 15. Limitations on Liability

##  15.1. General Limitation on County’s Liability

Licensee expressly acknowledges that the County is not responsible or liable to Licensee for any and all Claims that arise in connection with (1) acts or omissions by persons or entities using the sidewalk, street or other areas adjoining, adjacent to or connected with any License Area; (2) any utility service interruption; (3) theft; (4) burst, stopped or leaking water, gas, sewer, steam or other pressurized pipes; (5) fires, floods, earthquakes or other *force majeure*; or (6) any vehicular collision on or about the License Area or other County Property; all except to the extent such events are caused by the County’s or its Agents’ sole active negligence or willful misconduct. Licensee expressly waives and releases all Claims it may have against the County or its Agents that arise in connection with the events described in this Section 15.1 as may be related to this Master License, any Site License or on or about the License Area.

##  15.2. Consequential, Indirect or Punitive Damages

Licensee expressly acknowledges and agrees that the License Fees and Additional Fees payable under this Master License do not take into account any potential liability on the County’s part or any Indemnified County Parties’ part for consequential or incidental damages. The County would not be willing to enter into this Master License or issue any Site Licenses unless Licensee completely waived any Claims against the County or any Indemnified County Parties, to the fullest extent permitted by applicable Laws, for consequential or incidental damages due to the acts or omissions by the County or its Agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligation placed on Licensee or other waivers contained in this Master License, and as material consideration for this Master License and all Site Licenses (if any), Licensee fully releases, waives and discharges forever any and all Claims against the County for consequential and incidental damages that may arise from or in connection with this Master License or any Site License, which includes without limitation any lost profits related to any disruption to Equipment, any interference with uses or operations conducted by Licensee under this Master License and/or any Site Licenses, from any cause whatsoever, and whether or not due to the active or passive negligence or willful misconduct by the County or any Indemnified County Parties, and covenants not to sue for such damages the County, the County’s other departments and all County agencies, officers, directors and employees, and all persons acting by, through or under them. In no event will Licensee be liable to the County for any special, consequential or indirect damages.

##  15.3. No Relocation Assistance

Neither this Master License nor any Site License creates any right in Licensee to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (California Government Code §§ 7260 *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 *et seq*.) or similar Laws upon or after the expiration or sooner termination of this Master License or any Site License. To the extent that any such Laws may apply, Licensee waives, releases and relinquishes forever any and all Claims that it may have against the County for any compensation from the County except as provided inSection 23 (Condemnation).

##  15.4. Mutual Personal Liability Waiver

In no event will the any County board, agency, member, or County Party be personally liable to Licensee, it successors or assigns, for any default, breach, other nonperformance or sum unpaid sum by the County. In no event will any Licensee board, agency, member, officer, employee or other Agent be personally liable to the County for any for any default, breach, other nonperformance or sum unpaid sum by Licensee.

# 16. Hazardous Materials

##  16.1. Hazardous Materials in the License Area

Licensee covenants and agrees that neither Licensee nor its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed of or Released in, on, under or about the License Area or any other County Property, in whole or part, or transported to or from the License Area in violation of any Environmental Laws, except that Licensee may use small quantities of Hazardous Materials as needed and customarily used for routine operation, cleaning and maintenance of Licensee's Equipment so long as all such Hazardous Materials are contained, handled and used in compliance with all Environmental Laws.

##  16.2. Hazardous Material Release Notice

Licensee shall immediately notify the County if and when Licensee learns or has reason to believe any Hazardous Material Release has occurred in, on, under or about the License Area or other County Property. Licensee will not be deemed to have assumed liability for any such Release by giving such notice, unless such Release was caused by or arose in connection with Licensee’s or its Agent’s or Invitee’s acts, omissions or negligence.

##  16.3. Licensee’s Hazardous Material Indemnification Obligations

If Licensee breaches any obligations contained in this Section 16 (Hazardous Material), or if any act, omission or negligence by Licensee or its Agents or Invitees results in any contamination on or about the License Area or other County Property, or in a Hazardous Material Release from, on, about, in or beneath the any License Area or any other County Property, in whole or in part, or results in any Environmental Law violation, then Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the County and any Indemnified County Parties harmless, from and against any and all Claims (including damages for decrease in value of the License Area or other County Property, the loss or restriction of the use of usable space in the License Area or other County Property and sums paid in settlement of Claims, attorneys’ fees, consultants’ fees, and experts’ fees and related costs) that arises during or after the Term related to or in connection with such Release or violation; provided, however, Licensee shall not be liable for any Claims to the extent such Release or violation was caused by the County’s or Indemnified County Parties’ gross negligence or willful misconduct. Licensee’s indemnification obligation includes all costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought or Released onto the License Area or other County Property by Licensee or its Agents or Invitees and to restore the License Area or other County Property to its condition prior to such introduction or Release, or to correct any Environmental Law violation. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the County and the other Indemnified County Parties from any Claim that actually or potentially falls within this indemnity provision even if the allegations supporting the Claim are or may be groundless, fraudulent or false, and which obligation arises at the time such Claim is tendered to Licensee by the Indemnified County Party and continues until the Claim is finally resolved. Without limiting the foregoing, if Licensee or any of its Agents or Invitees causes any Hazardous Material Release on, about, in or beneath the License Area or other County Property, then in any such event Licensee shall, immediately, at no expense to any Indemnified County Party, take any and all necessary actions to return the License Area and/or other County Property, as applicable, to the condition existing prior to such Hazardous Materials Release on the License Area or other County Property or otherwise abate the Release in accordance with all Environmental Laws, except to the extent such Release was caused by the County’s or Indemnified County Parties’ gross negligence or willful misconduct. Licensee shall afford the County a full opportunity to participate in any discussions with Regulatory Agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise or proceeding that involves Hazardous Material Release on or about the License Area.

# 17. Interference

##  17.1. Licensee’s Obligations Not to Cause Inference

Licensee will not install, maintain or operate any Equipment in a manner that interferes with or impairs other communication (radio, telephone, data and/or other transmission or reception) or computer equipment lawfully used by any persons or entities, which includes the County and its Agents and Invitees. Such interference will be a default under this Master License and any applicable Site License by Licensee, and upon notice of interference from the Chief Real Estate Officer, Licensee shall promptly eliminate such interference at no cost to the County. Licensee will be required to use its best efforts to remedy and cure such interference without any impairment to any County operations. If Licensee does not promptly cure such default, the Parties acknowledge that continued interference may cause irreparable injury to the County and, therefore, the County will have the right to bring an action against Licensee to, at the County’s election, immediately enjoin such interference and/or to terminate all Site Licenses where the Equipment causes interference or impairment.

##  17.2. Interference Caused by a Change in County’s Use

If any change in any use on or about the License Area by the County during the Term results in measurable, material and adverse impairment to Licensee’s normal and lawful operations, which makes it necessary for Licensee to alter the Equipment to mitigate the adverse effect, Licensee shall so notify the Chief Real Estate Officer and provide evidence to substantiate the claimed impairment. After receipt of such notice, the Chief Real Estate Officer will have the right to make its own reasonable determination and, if he or she agrees with Licensee, the Chief Real Estate Officer will determine whether the County can reasonably and economically mitigate that interference.

If the Chief Real Estate Officer determines, in the Chief Real Estate Officer’s sole discretion, that the County will mitigate the adverse effect, the Chief Real Estate Officer will notify Licensee when the adverse effect will be mitigated. The County’s mitigation will effect a cure, and the County will not be liable to Licensee in any other way or be required to take any other measures with respect to the Equipment.

If the Chief Real Estate Officer determines that mitigation is not reasonably or economically feasible, Licensee may elect either to: (1) terminate the affected Site License and receive a ratable refund in the License Fee for those Site Licenses terminated after the first License Year; or (2) take steps itself at its own cost to mitigate the adverse effect and continue to operate the Equipment on the License Area, and receive from the County a License Fee credit in the amount of the actual costs of mitigation, as approved by the Chief Real Estate Officer, or 180 days’ License Fee credit, whichever is lesser for each affected Site to offset the mitigation costs. Licensee agrees that the County’s License Fee credit under this Section 17.2 will be the only compensation due to Licensee for costs incurred or otherwise arising from the adverse effect as liquidated damages fully compensating Licensee for all Claims that may arise from or be related to the adverse effects. Under no circumstances will the County be required to alter its operations at the identified License Area or provide a replacement License Area to Licensee as the result of an adverse interference.

##  17.3. Interference Caused by County Access

Licensee acknowledges and agrees that it will not be entitled to any License Fee abatement if the County exercises its rights to access, remove and/or store Equipment under Section 12 (Public Works’ Operations) unless the County’s activities cause Licensee to be unable to operate the Equipment on the License Area for its permitted use for a period of more than ten (10) days, in which case, subject to proof, License Fees will be abated ratably for the entire period that Licensee is unable to operate any Equipment on any affected License Area. Licensee will not be entitled to an abatement of rent for any period of interruption for a duration of ten (10) days or less.

# 18. Default

##  18.1. Defaults and Cure Periods

The Parties agree that any failure to perform or observe any term, condition, obligation or other provision in this Master License or any Site License shall be a default. For any monetary default, the defaulting Party shall have fifteen (15) days after written notice from the non-defaulting Party to perfect a cure. The defaulting Party shall not be entitled to any additional time to cure a monetary default. For any non-monetary default, the defaulting Party shall have thirty (30) days after written notice from the non-defaulting Party to perfect a cure; provided, however, that for any non-monetary default that cannot reasonably be cured within thirty (30) days, the defaulting Party shall have additional time as is reasonably necessary to perfect the cure if the defaulting Party commences to cure the default within the first thirty (30) days after notice and diligently pursues the cure to completion.

##  18.2. Licensee’s Remedies

Except as may be otherwise provided elsewhere in this Master License, Licensee’s sole remedies for the County’s uncured default will be (1) to terminate the Site License(s) affected by the uncured default on thirty (30) days prior written notice; and (2) an action for damages subject to the provisions in Section 15 (Limitations on Liability).

##  18.3. County’s Remedies

In addition to all other legal and equitable rights and remedies available to the County, the County will have the following remedies after an uncured default by Licensee:

###  18.3.1. License Continuation

Without prejudice to its right to other remedies, the County may continue this Master License and any applicable Site Licenses then in effect, with the right to enforce all its rights and remedies, which includes without limitation the right to receive all License Fees, Additional Fees, Default Fees and other sums as they may become due.

###  18.3.2. Master License Termination

If the County determines, in its sole judgement, that Licensee’s default materially impairs the County’s ability to perform its governmental functions or threatens public health, safety or welfare, then the County may terminate this Master License on thirty (30) days prior written notice to Licensee.

###  18.3.3. Site License Termination

If Licensee’s default affects one or more Site Licenses and remains uncured beyond all applicable cure periods, the County may terminate such Site Licenses upon thirty (30) days’ prior written notice to Licensee.

###  18.3.4. Default Fees

In addition to all other rights and remedies available to the County, the County may require Licensee to pay an additional fee to offset the County’s administrative cost to enforce compliance with this Master License or any Site License as more particularly described on **Schedule 2** (each a “**Default Fee**”). Licensee shall pay the Default Fee within fifteen (15) days after a written demand from the County. If Licensee fails to timely pay the Default Fee or cure the underlying default within the applicable cure period, the County shall have the right (but not the obligation) to send Licensee a follow-up notice and demand for an additional Default Fee that will be due and payable within fifteen (15) days. Licensee’s obligation to pay Default Fees is separate and distinct from the underlying default. Default Fee payments shall not be deemed to cure the underlying default.

##  18.4. Cumulative Remedies

Except as otherwise provided in this Master License, all rights and remedies available to the County or Licensee are cumulative, and not a substitute for, any rights or remedies otherwise available to the County or Licensee.

# 19. Termination

##  19.1. Master License Termination by Licensee

Licensee may not terminate this Master License during the Term for any reason other than cause as provided in this Master License.

##  19.2. Site License Termination by Licensee

Except as otherwise provided in this Master License, Licensee may not terminate any Site License within the first License Year. At any time after the first License Year, Licensee may, in Licensee’s sole discretion and for any or no reason, terminate any Site License upon ninety (90) days’ prior written notice to the County and subject to the provisions of Section 26 (Surrender of License Area) of this Master License.

##  19.3. County’s Termination Rights

The Chief Real Estate Officer has the right to terminate any or all Site Licenses upon ninety (90) days’ prior written notice to Licensee when the Chief Real Estate Officer determines, in the Chief Real Estate Officer’s reasonable discretion, that Licensee’s operations on or about the License Area adversely affects or threatens public health and safety, materially interferes with the County’s governmental functions or requires the County to maintain Vertical Infrastructure that the County no longer needs for its own purposes. In the event that any Site License is terminated by the Chief Real Estate Officer for reasons unrelated to Licensee’s failure to perform its obligations under this Master License, the County shall refund any pre-paid Licensee Fee on a pro-rata basis. In addition, the Chief Real Estate Officer shall prioritize Licensee’s Site License Application for any Site License to replace the terminated Site License; provided, however, that (1) the Chief Real Estate Officer shall prioritize only as many Site License Applications as Site Licenses terminated by the Chief Real Estate Officer and (2) the Chief Real Estate Officer prioritization will not affect Licensee’s obligations under this Master License.

# 20. Assignment and Other Transfers

##  20.1. General Restriction on Assignment and Other Transfers

Except as specifically provided in Section 20.2 (Permitted Assignments), Licensee shall not directly or indirectly assign or transfer its interests or rights, whether in whole or in part, in connection with this Master License, any Site License or the License Area without the Chief Real Estate Officer’s prior written consent, which consent may withheld or conditioned in Chief Real Estate Officer’s sole and absolute discretion for any or no reason.

##  20.2. Permitted Assignments

###  20.2.1. General Authorization

The County agrees that Licensee will be permitted to assign or otherwise transfer this Master License and any Site License(s) issued under it without the County’s prior consent but with notice to the Chief Real Estate Officer when such an assignment or transfer is to: (1) an Affiliate; (2) an entity that acquires all or substantially all Licensee’s assets in the market in which the License Area is located (as the “market area” is or may be defined by the FCC); (3) an entity that acquires a Controlling interest in Licensee by a change in stock ownership or partnership interest; or (4) an entity Controlled by Licensee; (each such assignment or transfer, a “**Permitted Assignment**”).

###  20.2.2. Conditions on Permitted Assignments

All Permitted Assignments will be subject to all the following conditions: (1) Licensee provides the Chief Real Estate Officer with notice within thirty (30) days’ following the date the Permitted Assignment becomes effective and which notice includes the contact information for the Permitted Assignee; 2) Licensee provides the Chief Real Estate Officer with a copy of the assignment or other transfer agreement (or other document reasonably satisfactory to the Chief Real Estate Officer evidencing such assignment or transfer; (3) the permitted Assignment will relieve Licensee from any obligation on its part under this Master License or any Site License; and (4) Licensee is in good standing under this Master License.

##  20.3. General Assignment and Other Transfer Procedures

###  20.3.1. Proposed Assignment Notice

In the event that Licensee desires to assign or otherwise transfer any right, title or interest in this Master License or in any Site License, whether in whole or in part, and such assignment or other transfer is not a Permitted Assignment, Licensee shall first send written notice to the Chief Real Estate Officer (the “**Proposed Assignment Notice**”), providing in detail the proposed terms and conditions for the proposed assignment or transfer and at the request of the Chief Real Estate Officer, shall provide additional information that the Chief Real Estate Officer reasonably requires to fully evaluate Licensee’s request. Such additional information may include, without limitation, satisfactory evidence that the Proposed Assignee has obtained all Regulatory Approvals required to operate as a wireless communications service provider on the assigned License Area, financial statements, business track records, and or references for the proposed assignee or transferee (the “**Proposed Assignee**”). Such additional information shall be requested within fifteen (15) days following the Chief Real Estate Officer’s receipt of the Proposed Assignment Notice. The Proposed Assignment Notice shall not be deemed effective until Licensee delivers all such information to the Chief Real Estate Officer.

###  20.3.2. County’s Response to Proposed Assignment Notice

The Chief Real Estate Officer shall approve or disapprove any request for consent to an assignment or other transfer within forty-five (45) days following receipt of a complete Proposed Assignment Notice (the “**Assignment Response Period**”). If the Chief Real Estate Officer fails to respond within the Assignment Response Period, the request for consent will be deemed disapproved.

If the Chief Real Estate Officer has no objection to the proposed assignment or transfer, the Chief Real Estate Officer shall require that Licensee and the Proposed Assignee execute an assignment document in a form acceptable to the Chief Real Estate Officer, which assignment document shall provide that Licensee shall not be relieved of Licensee’s obligations under this Master License or any Site License and that the Proposed Assignee agrees that it will be bound by and remain, jointly and severally liable with Licensee for all obligations to be performed by Licensee under the terms of this Master License. Within thirty (30) days following the Chief Real Estate Officer’s presentation to Licensee of an acceptable assignment document, Licensee shall deliver to the Chief Real Estate Officer the assignment document, executed by Licensee and the Proposed Assignee. The Chief Real Estate Officer shall in turn execute the Assignment Document, giving consent to the proposed assignment. Consent to the assignment will be deemed automatically denied if Licensee fails to return an executed assignment document within said 30-day period; which period may be extended at the Chief Real Estate Officer’s sole discretion if the extension is necessitated by circumstances outside Licensee’s control.

##  20.4. Assumption by Assignee or Transferee

Each Proposed Assignee shall assume all Licensee’s obligations under this Master License and/or under each assigned Site License; and will be, and will remain, jointly and severally liable with Licensee for all obligations to be performed by Licensee. No assignment or other transfer will be binding on the County unless and until the Chief Real Estate Officer affixes his or her signature to an assignment document, executed by both the Licensee and the Proposed Assignee, giving consent to the assignment or transfer. in substance and form consistent with the requirements in this Section 20 (Assignment and Other Transfers). The failure or refusal by a Proposed Assignee to execute such instrument will not release such Proposed Assignee from its liability as set forth in this Section.

##  20.5. Effect of Assignment or Other Transfer

Any assignment or other transfer that is not in compliance with this Master License will be void and be a material default by Licensee without a requirement for notice and a right to cure. The County’s acceptance of any License Fee, Additional Fee, or other payments from a Proposed Assignee will not be deemed to be the County’s consent to such assignment or other transfer, recognition of any assignee or transferee or waiver of any failure of Licensee or other transferor to comply with this Section 20 (Assignments and Other Transfers).

##  20.6. Assignment Administrative Fee

Except for a Permitted Assignment as provided in Section 20.2 (Permitted Assignments), Licensee shall reimburse the County on demand for any reasonable costs that the County incurs in connection with any proposed assignment or transfer, which includes the costs to investigate the acceptability of the Proposed Assignee and legal costs incurred in connection with considering any requested consent. The County agrees that its right to reimbursement under this Section will be limited to **Two Thousand Dollars and 00/100 Dollars** (**$2,000.00**) for each request to consent to an assignment or transfer of this Master License or any Site License.

# 21. Licensee’s Customers and Co-locators

Licensee may provide capacity to Licensee’s customers using, or permit such customers to use, the Equipment installed by Licensee without the County’s consent required in this Section; provided, however, that: (1) Licensee remains solely responsible for such Equipment and (2) such use by Licensee or Licensee’s customers does not involve any physical changes to the Equipment other than changes permitted under Section 6.5 (Future Modifications to Equipment Shown on the Approved Plans).

In the event Licensee wishes to allow third party use of the Equipment on any given license area, but which needed capacity would require enhancement of the then existing Equipment, prior to allowing such use of the Equipment by a third party Licensee shall: (a) provide written notice to the Chief Real Estate Officer identifying the party who will be using the Equipment, (b) identify the location(s) where such use will occur; (c) obtain approval of the proposed Equipment modifications in accordance with the provisions of Section 7 (Equipment Installation); and (d) notify the Chief Real Estate Officer of the annual fee for the additional carrier as specified in **Schedule 1**,. Effective as of sign-off date of the CPP for the Equipment modification or enhancement, Licensee shall pay the additional carrier fee prorated to account for any partial year in the same manner as the License Fee so long as the third party continues to use the Equipment. Notwithstanding anything in this Master License to the contrary, Licensee shall not be required to pay any additional fee to allow Licensee’s customers to use wireline Equipment for data transport, backhaul or similar services.

# 22. Damage or Destruction of License Area

##  22.1. County’s Rights after Damage or Destruction

###  22.1.1. County’s Election to Repair or Replace Vertical Infrastructure

If any act by a third party or other *force majeure* circumstance outside of the Licensee’s or its Agent’s or Invitee’s control, destroys or damages any Vertical Infrastructure, License Area or other County Facilities which results in the interruption of Licensee’s use of the License Area, within thirty (30) days following discovery of such damages or destruction, the Chief Real Estate Officer will give Licensee notice of the decision as to whether the County will repair or replace the damaged Vertical Infrastructure or other County Facilities and provide a good faith estimate as to the time the County will need to complete the repair or replacement work. If the repair or replacement work cannot be completed within the estimated timeframe or if the estimated timeframe shall, in Licensee’s sole determination, cause excessive interruption of its use of the License Area, then Licensee will have the right to terminate the affected Site License(s) upon thirty (30) days’ notice to the Chief Real Estate Officer.

###  22.1.2. County’s Election to Not Repair Damage Vertical Infrastructure

If any act by a third party or other *force majeure* circumstance outside the Licensee’s or its Agent’s or Invitee’s control, destroys or damages any Vertical Infrastructure, License Area or other County Facilities to such an extent that, in the Chief Real Estate Officers reasonable determination, the Equipment on the Vertical Infrastructure, License Area or other County Facilities cannot be operated thereon, and County will not repair or replace such damaged or destroyed Vertical Infrastructure or any other County Facility, the Chief Real Estate Officer shall notify Licensee of such decision within thirty (30) days of discovery of such damage or destruction, terminate the affected Site License upon a minimum of 30 days’ notice to Licensee, and require Licensee to remove the Equipment from the damaged Vertical Infrastructure or other County Facility, subject to the provisions of Section 7 (Equipment Installation), before the removal date specified in the termination notice. The applicable Site License will automatically terminate on the last day of the month in which the removal occurs.

##  22.2. Licensee’s Rights after Termination

After the County terminates a Site License pursuant to Section 22.1 (County’s Rights After Damage or Destruction), the County will: (1) refund any pre-paid License Fee in connection with the terminated Site License on a pro-rata basis determined by the number ofdays left in the then current License Year, unless the termination occurs in the first twelve (12) months after the Commencement Date; and (2) prioritize Licensee’s Site License Application for one (1) replacement Site License for each such license terminated by the County.

##  22.3. Licensee’s Statutory Waiver

The Parties understand, acknowledge and agree that this Master License fully governs their rights and obligations in the event that any licensed Vertical Infrastructure becomes damaged or destroyed, and, to the extent applicable, the County and Licensee each hereby waives and releases the provisions in California Civil Code §§ 1932(2) and 1933(4) or any similar Laws.

# 23. Condemnation

##  23.1. Permanent Takings

In the event that any person or entity with the power to condemn permanently takes any License Area, in whole or in part, or in the event that the County transfers any License Area in whole or in part to such entity in lieu of eminent domain, the following provisions will apply:

###  23.1.1. Termination Rights after Condemnation

Any affected Site License will automatically terminate as to the part taken or transferred on the date the permanent taking or transfer occurs. At the same time, the License Fee under the affected Site License will be ratably reduced to account for the reduction in License Area.

###  23.1.2. Award

The County will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Licensee will have no Claim against the County for the value of any unexpired Term under either this Master License, any Site License or otherwise except that Licensee may claim any portion of the award that is specifically allocable to Licensee’s loss or damage to the Equipment.

###  23.1.3. No Statutory Right to Terminate

The Parties understand, acknowledge and agree that this Section 23.1 (Permanent Takings) is intended to fully govern the Parties’ rights and obligations with respect to a permanent taking for which just compensation is due. Licensee and the County each hereby waives and releases any right to terminate this Master License in whole or in part under California Code of Civil Procedure §§ 1265.120 and 1265.130, as both may be amended or superseded, and under any similar Laws to the extent applicable to this Master License and any Site License(s).

##  23.2. Temporary Takings

Any taking that affects any License Area, in whole or in part, for less than ninety (90) days will have no effect on the affected Site License, except that Licensee will be entitled to a pro-rata abatement in the applicable License Fee to the extent that such temporary taking materially impairs Licensee’s ability to use the License Area for more than ten (10) days.

# 24. Records

Licensee shall maintain throughout the Term (and for at least four years after this Master License expires or terminates) the following records in physical format at Licensee’s physical office within the state of California andin an electronic format: (i) site identification information and physical location (*e.g.*, a physical address and/or GPS coordinates) for all Vertical Infrastructure under active Site Licenses between the County and Licensee; (ii) a ledger or other similar document that contains the amount and payment date for all License Fees paid to the County pursuant to this Master License and any Site Licenses; (iii) true and correct copies of all Approved Plans and Regulatory Approvals issued in connection with the Equipment on any given Vertical Infrastructure; (iv) copies of all insurance policies, endorsements and other related documents required to be obtained and maintained under Section 14 (Insurance); and (v) all correspondence with the County in connection with any matter covered under this Master License and any Site License. To determine whether Licensee has fully and accurately paid all License Fees and other sums payable to the County under this Master License and any Site License, and to determine whether Licensee has complied with its other obligations the Chief Real Estate Officer, will have the right to inspect and audit Licensee’s records at Licensee’s office in the State of California during regular business hours on ten (10) days’ notice to Licensee. In the event that any inspection or audit concludes that Licensee failed to pay License Fees and other sums by more than five percent (5%), Licensee shall, within fifteen (15) days after a written demand from the County, pay all outstanding sums and reimburse the County for the County’s reasonable, actual and documented costs and expenses to conduct the investigation or audit.

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##  24.1. Estoppels

Licensee, at any time throughout the Term and on not less than fifteen (15) days’ written notice from the County, shall execute, acknowledge and deliver to the County or its designee, an estoppel certificate with the following statements: (i) that Licensee has accepted the License Area (or, if Licensee has not done so, that Licensee has not accepted the License Area in whole or in part and specifying the applicable License Areas and reasons for non-acceptance); (ii) the Commencement Dates for any Site Licenses then in effect; (iii) the Effective Date and Expiration Date under this Master License; (iv) that this Master License and any Site Licenses are unmodified and in full force and effect or, if modified, the manner in which they are modified; (v) whether any defenses currently exist against any action to enforce Licensee’s obligations under this Master License (and, if so, specifying the same); (vi) whether Licensee believes that the County failed to perform any obligations under this Master License or any Site License (and, if so, specifying any obligations that Licensee believes that the County has failed to meet); (vii) the dates, if any, on which the License Fees and Additional Fees have been paid; and (viii) any other information that may be reasonably required by any such persons.

# 25. Surrender of License Area

##  25.1. Licensee’s Removal and Restoration Obligations

No later than thirty (30) days after this Master License or any Site License expires or terminates, Licensee shall (1) peaceably remove its Equipment from the License Areas affected by the expiration or termination; (2) restore any such License Areas and other County Property affected by the removal to the condition that existed immediately before Licensee installed its Equipment, reasonable wear and tear excepted; and (3) surrender such License Area to the County free and clear from any debris, hazards, liens and encumbrances. The obligations under this Section 26.1 will survive this Master License’s or any Site License’s expiration or termination.

##  25.2. Abandonment

At its option, the County may deem any Equipment to be abandoned that remains on any Vertical Infrastructure, License Area or other County Property for more than thirty (30) days after this Master License or any Site License expires or terminates. In any case, the County may dispose of abandoned Equipment in any lawful manner. Licensee agrees that California Civil Code sections 1980 *et seq.* and similar Laws addressing abandoned property by residential or commercial tenants do not apply to any abandoned Equipment.

##  25.3. Hold Over

If Licensee fails to surrender the License Area as required in this Master License, and the County consents to Licensee’s holdover, the Term will be automatically extended for one (1) year on the same terms and conditions except that the License Fee shall automatically increase by one hundred fifty percent (150%) over the then-current License Fee. Any holdover without the County’s consent will be a default by Licensee and will entitle the County to exercise any or all rights and remedies.

# 26. Surety Bond

##  26.1. Surety Bond Amount

Prior to any work performed by Licensee pursuant to this Master License or any Site License, Licensee shall furnish the County with a surety bond in the amount equal to **Seventy-Five Thousand and 00/100 Dollars** (**$75,000.00**) (the “**Surety Bond**”) as security to provide recourse for the County (at its option) in the event that Licensee defaults on any obligations under this Master License or any Site License. Such bond shall be with a company and in a form and amount reasonably satisfactory to the Chief Real Estate Officer and the County Counsel.

##  26.2. Bond Amount Replenishment

In the event that the County applies or uses the Surety Bond, in whole or in part, to cure any default by Licensee under this Master License or any Site License, Licensee shall replenish the Surety Bond in the amount and on the date specified in a written notice to Licensee. The County may, in the County’s reasonable judgment, require Licensee to increase the Surety Bond amount from time-to-time when the County determines that Licensee’s past acts or omissions in connection with the License Area warrants additional security.

##  26.3. Bond Application

Licensee agrees that the County may use the Surety Bond, in whole or in part, to remedy any damage to the License Area caused by Licensee, its Agents or Invitees or any failure by Licensee to perform any term, covenant or condition in this Master License or any Site License (which includes, without limitation, any failure to pay any License Fee or other sums due under this Master License or any Site License either before or after any default). In the event that the County uses the Surety Bond in whole or in part, the County will not be deemed to have waived any rights under this Master License, or legal or equitable rights whatsoever. Licensee expressly waives any rights it may have under California Civil Code § 1950.7 or any similar Laws and agrees that the County may retain from the Surety Bond any portion reasonably necessary to compensate the County for any foreseeable or unforeseeable loss or damage caused by Licensee’s, its Agents’ or Invitee’s acts or omissions.

# 27. Miscellaneous Provisions

##  27.1. Notices

Except as may be specifically provided otherwise in this Master License, all notices, demands or other correspondence required to be given in connection with or pursuant to this Master License must written and delivered through (i) an established national courier service that maintains delivery records and confirmations; (ii) hand delivery; or (iii) certified or registered U.S. Mail with prepaid postage and return receipt requested, and addressed as follows:

 **TO COUNTY:** County of Orange

 333 West Santa Ana Boulevard, 3rd Floor

 Santa Ana, California 92701

 Attn: Chief Real Estate Officer

 Telephone: (714) 834-3026

 Facsimile:

 Email: scott.mayer@coco.ocgov.com

 with copies to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 **TO LICENSEE:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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All notices, demands or other correspondence in connection with this Master License will be deemed to have been delivered: (a) two days after deposit if delivered by U.S. certified mail; (b) the date delivery is made by personal delivery or overnight delivery; or (d) the date an attempt to make delivery fails if a Party changes its address without proper notice or refuses to accept delivery after an attempt. Telephone, facsimile and email information are provided for convenience and for couriers who may require such information, and any notice given solely through electronic means will not be deemed to be effective notice. Any copies required to be given constitute an administrative step for the Parties’ convenience and not actual notice. The Parties may change the notice addresses above from time-to-time through written notice to the addresses above or the then-current notice address.

##  27.2. Waivers

No failure by either the County or Licensee to insist that the other strictly perform any obligation, term, covenant or condition under this Master License or to exercise any rights, powers or remedies in connection with the other Party’s failure to strictly perform such obligation, term, covenant or condition no matter how long the failure to insist on such performance or exercise such rights, powers or remedies, will be deemed to waive any default for non-performance. No behaviors, patterns or customs that may arise between the Parties with respect to their performance required under this Master License will be deemed to waive any rights, powers or remedies the Parties’ may have to insist on strict performance. Neither Licensee’s payment nor the County’s or its Agents acceptance of any License Fees, Additional Fees or any other sums due to the County or its Agents under this Master License during any such default will be deemed to cure any such default, waive the County’s right to demand material compliance with such obligation, term, covenant or condition or be deemed to be an accord and satisfaction for any Claim the County may have for further or additional sums. Any express waiver by either the County or Licensee in connection with any default or obligation to perform any provision, term, covenant or condition under this Master License will: (i) be limited to the specific default or performance for which the express waiver is granted; (ii) not be deemed to be a continuing waiver; and (iii) not affect any other default or performance no matter how similar or contemporaneous such other default or performance may be. The County’s or Licensee’s consent given in any specific instance in connection with or pursuant to this Master License will not relieve the County or Licensee from the obligation to secure the other’s consent in any other or future specific instances, no matter how similar or contemporaneous the request for consent may be.

##  27.3. Integration; Amendments

This Master License constitutes the entire agreement and understanding between the Parties, and supersedes any and all prior agreements and understandings, whether written or oral, with respect to the subject matter covered in this Master License. This Master License and any Site Licenses (and any default in connection with this Master License or any Site Licenses) may not be orally changed, waived, discharged, altered, modified, amended or terminated. This Master License and any Site Licenses (and any default in connection with this Master License or any Site Licenses) may not be changed, waived, discharged, altered, modified, amended or terminated, except by a written instrument signed by both Parties.

##  27.4. Interpretation

The Parties acknowledge and agree that the following interpretive rules will be applicable to this Master License and any Site License:

###  27.4.1. General

Whenever required by the context, the singular includes the plural and vice versa; the masculine gender includes the feminine or neuter genders and vice versa; and defined terms encompass all their correlated forms (*e.g.*, the definition for “indemnify” applies to “indemnity,” “indemnification,” etc.).

###  27.4.2. Joint and Several Liability

In the event that the County consents to enter this Master License with more than one Licensee, which consent the County may withhold or condition in the County’s sole and absolute discretion, the obligations and liabilities imposed on Licensee under this Master License will be joint and several among the multiple Licensees to this Master License.

###  27.4.3. Captions and Other Reference Material

The section captions in this Master License and the table of contents have been included for the Parties’ convenience and reference and neither the captions nor the table of contents in no way define or limit the scope or intent of any provision in this Master License.

###  27.4.4. Time

References in this Master License to “days” mean calendar days, unless specifically provided otherwise. A “business day” means a day other than a Saturday, Sunday or a bank or County holiday. If the last day in any period to give notice, reply to a notice or to undertake any other action occurs on a day that is not a business day, then the last day for giving notice, replying to the notice or undertaking any other action will be the next business day. Except as modified in this Section, time is of the essence with respect to all provisions in this Master License for which a definite time for performance is specified.

###  27.4.5. Inclusive Words and/or Phrases

Inclusive terms and/or phrases, which includes without limitation the terms and/or phrases “including,” “such as” or similar words or phrases that follow any general or specific term, phrase, statement or matter may not be construed to limit the term, phrase, statement or matter to the stated terms, statements or matters, or the listed items that follow the inclusive term or phrase, whether any non-limitation language or disclaimers, such as “including, but not limited to” and/or “including without limitation” are used or not. Rather, the stated term, phrase, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within such term, phrase, statement or matter given its broadest interpretation.

##  27.5. Successors and Assigns

Except as may be expressly provided in this Master License, the conditions, covenants, promises and terms contained in this Master License will bind and inure to the benefit of the County and Licensee and their respective successors and assigns.

##  27.6. Brokers

The Parties represent to each other that neither has had any contact, dealings or communications with any Broker in connection with this Master License, whose commission, if any, would be paid pursuant to a separate written agreement between such Broker and such Party with which such Broker contracted. In the event that any Broker perfects any claim or finder’s fee based upon any such contact, dealings or communications, the Party to such written contract with such Broker shall indemnify the other Party from all Claims brought by such Broker. This Section 28.6 will survive this Master License’s expiration or earlier termination.

##  27.7. Governing Law; Venue

This Master License must be construed and enforced in accordance with the laws of the

State of California, without regard to the principles of conflicts of law. This Master License is made, entered and will be performed in the County of Orange, State of California. Any action concerning this Master License must be brought and heard in the California Superior Court for the County of Orange.

##  27.8. Litigation Fees and Costs

In the event the County or Licensee prevails in an action to enforce its rights under this Master License or individual Site License, the prevailing shall be entitled to recover its costs and expenses, including reasonable attorneys’ fees, incurred in connection with such action.

##  27.9. Recording

Licensee acknowledges and agrees that: (1) this Master License and any Site License affects the County’s personal property and therefore cannot be recorded in any official records; (2) Licensee shall not have the right to record this Master License, any Site License, any memorandum or any short-form agreement in relation to this Master License or any Site License; and (3) Licensee shall, at Licensee’s sole cost and expense, remove any document or other instrument recorded against the County’s title to any County Property promptly upon the County’s request or demand. In the event that this Master License or any Site License affects or is deemed to affect any real property owned by the County, Licensee may not record any document or instrument in connection with this Master License or any Site License without the County’s prior written consent, which the County may withhold in the County’s sole and absolute discretion.

##  27.10 No Third-Party Beneficiaries

Neither this Master License nor any Site License is intended to (and shall not be construed to) give any third party, which includes without limitation Licensee’s Customers or any other third-party beneficiaries, any right, title or interest in this Master License, any Site License or the real or personal property(ies) that may be affected by the same, unless such third parties are specifically and explicitly identified by their legal name in this Master License.

##  27.11. Survival

All terms, provisions, covenants, conditions and obligations in this Master License any Site License will survive this Master License’s or the subject Site License’s expiration or termination when, by their sense or context, such provisions, covenants, conditions or obligations: (1) cannot be observed or performed until this Master License’s or any Site License’s expiration or earlier termination; (2) expressly so survive; or (3) reasonably should survive this Master License’s or any Site License’s expiration or earlier termination. Notwithstanding any other provision in this Master License or any Site License, the Parties rights to enforce any and all Indemnities, representations and warranties given or made to the other Party under this Master License, any Site License or any provision in this Master License or any Site License will not be affected by this Master License or any Site License expiration or termination.

##  27.12. Severability

If any provision in this Master License, any Site License or such provision’s application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (1) such provision or its application to such person, entity or circumstance will be deemed severed from this Master License or any Site License; (2) all other provisions in this Master License, any Site License or their application to any person, entity or circumstance will not be affected; and (3) all other provisions in this Master License, any Site License or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by Law, except to the extent that such enforcement would (a) be manifestly unreasonable or manifestly inequitable under all the circumstances or (b) undermine one or both Parties’ fundamental purpose in entering this Master License.

**[END OF MASTER LICENSE – SIGNATURE PAGE APPEARS ON NEXT PAGE]**

**IN WITNESS WHEREOF,** the County and Licensee executed this Master License on the Effective Date:

**COUNTY:** **LICENSEE:**

County of Orange, [*insert full licensee name*],

a political subdivision of the State a [*insert licensee’s corporate form*]

of California

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

Its: Chief Real Estate Officer Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

APPROVED AS TO FORM:

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

 [*name*]

 County Counsel

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

APPROVED BY BOARD OF SUPERVISORS

RESOLUTION NO. [*insert*]

**[END OF SIGNATURE PAGE – EXHIBITS & SCHEDULES BEGIN ON NEXT PAGE]**

# Exhibit A

**FORM OF SITE LICENSE AGREEMENT**

(appears behind this coversheet – \_ pages)

**SITE LICENSE NO. [*INSERT NUMBER IN CONSECUTIVE ORDER*]**

Pursuant to that certain Master License between the County of Orange, a political subdivision of the State of California (the “**County**”) and [*insert full licensee name*], a [*insert licensee corporate form*] (“**Licensee**”), Licensee submits to the County two partially executed counterparts of this Site License, together with all the materials listed below, as its Site License Application in accordance with Section 6 under the Master License:

1. **Exhibit A-1**, which contains a summarized list that identifies all Vertical Infrastructure covered under this Site License Application;
2. **Exhibit A-2**, which contains detailed construction plans for the proposed installation(s) and an inventory for all proposed Equipment to be installed on the Vertical Infrastructure covered under the Site License Application;
3. a true and correct copy of **Schedule 1** attached to this Master License
4. a License Fee equal to [*$ per site multiplied by number of sites*];
5. all other information and materials required for a complete application for all Regulatory Approvals issued by the County’s departments, which the County may update from time-to-time in accordance with applicable Laws; and
6. if the County elects to augment its staff as provided in this Master License, a deposit for the County’s estimated costs.

Licensee acknowledges that: (1) this Site License will not be effective until the County returns a fully executed copy to Licensee; and (2) Licensee will not have the right to access or install Equipment on the License Area until after Licensee has: (a) submitted a complete Acknowledgment Letter to the County with all information and funds required; (b) submitted insurance information to the County as specified in **Exhibit B** to the Master License; and (c) the County has provided notice to proceed by returning to Licensee a countersigned copy of the Acknowledgment Letter.

This Site License is executed and effective on the last date written below and, upon full execution will be the County’s authorization for the County to begin its review of the locations and plans and specifications proposed in this Site License Application.

**[END OF SITE LICENSE – SIGNATURES APPEAR ON NEXT PAGE]**

**THE COUNTY:** **LICENSEE:**

County of Orange, [*insert licensee name*],

a political subdivision of the State a [*insert licensee’s corporate form*]

of California

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

Its: Chief Real Estate Officer Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

# Exhibit A-1

**VERTICAL INFRASTRUCTURE LOCATIONS / LICENSE AREA**

**Site License No. \_\_\_**

[Licensee to list all proposed Vertical Infrastructure requested in this Site License Application]

# Exhibit A-2

**LICENSEE’S PLANS AND SPECIFICATIONS**

**Site License No. \_\_\_**

[Licensee to attach all plans and specifications for all Equipment proposed to be installed at all proposed Vertical Infrastructure]

# Exhibit A-3

**FORM OF ACKNOWLEDGMENT LETTER**

[*Licensee to complete and submit after Regulatory Approvals obtained*]

[*insert date*]

[*insert addressee information*]

 **RE: Site License No. \_\_\_**

Dear Chief Real Estate Officer:

This letter will confirm the following: (1) that Licensee has obtained all the Regulatory Approvals required for the Permitted Use under this Site License, and (2) the Commencement Date of this Site License is [*insert date*], which is the first day of the month after Licensee obtained all Regulatory Approvals.

This letter also confirms that Licensee has submitted all required insurance information to the County. A check for the full License Fee for the first License Year of this Site License is attached.

Please acknowledge the County’s receipt of this letter and the items listed below, and issue the County’s approval for Licensee to begin installation of Equipment on the License Area by signing and returning a copy of this letter.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[*insert name*]

[*insert title*]

Enc.

[ ] copies of all permits issued by the County’s departments

[ ] Insurance certificates

[ ] Contractor's bonds and insurance certificates

[ ] First License Year's License Fee

[ ] Surety Bond

SITE LICENSE NO. \_\_ APPROVED:

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

 [*name*]

 Chief Real Estate Officer

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

# Exhibit B

**LICENSEE’S INSURANCE OBLIGATIONS**

1. **GENERAL REQUIREMENTS**

Licensee agrees to purchase all required insurance at Licensee’s expense and to deposit with the Chief Real Estate Officer certificates of insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this License have been complied with and to keep such insurance coverage and the certificates and endorsements therefor on deposit with the County during the entire term of this Master License. This Master License shall automatically terminate at the same time Licensee’s insurance coverage is terminated. If within ten (10) business days after termination under this Exhibit B, Licensee obtains and provides evidence of the required insurance coverage acceptable to the Risk Manager, this License may be reinstated at the sole discretion of the Chief Real Estate Officer. Licensee shall pay the County \_\_\_\_\_\_\_\_\_\_ Hundred Dollars ($\_\_\_\_\_00) for processing the reinstatement of this Master License.

Licensee agrees that Licensee shall not operate on the License Area at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of the Chief Real Estate Officer. In no cases shall assurances by Licensee, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. The Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Licensee also agrees that upon cancellation, termination, or expiration of Licensee’s insurance, the Chief Real Estate Officer may take whatever steps are necessary to interrupt any operation from or on the License Area until such time as the Chief Real Estate Officer reinstates the Master License.

If Licensee fails to provide the Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder at any time during the term of the License, the County and Licensee agree that this shall constitute a material breach of this License. Whether or not a notice of default has or has not been sent to Licensee, said material breach shall permit the Chief Real Estate Officer to take whatever steps necessary to interrupt any operation from or on the License Area, and to prevent any persons, including, but not limited to, members of the general public, and Licensee’s employees and agents, from entering the License Area until such time as the Chief Real Estate Officer is provided with adequate evidence of insurance required herein. Licensee further agrees to hold the County its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment, harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the Chief Real Estate Officer’s action.

All contractors performing work on behalf of Licensee pursuant to this Master License shall obtain insurance subject to the same terms and conditions as set forth herein for Licensee. Licensee shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the County from Licensee under this Master License. It is the obligation of Licensee to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the License Area. Such proof of insurance must be maintained by Licensee through the entirety of this Master License and be available for inspection by a County representative at any reasonable time.

All self-insured retentions (“**SIRs**”) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of $25,000 ($5,000 for automobile liability), shall specifically be approved by the Risk Manager upon review of Licensee’s current audited financial report.

If Licensee fails to maintain insurance acceptable to the County for the full term of this Master License, the Chief Real Estate Officer may terminate this Master License.

1. **QUALIFIED INSURER**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best’s Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best’s key Rating Guide/Property-Casualty/United States or ambest.com. It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California.

If the insurance carrier does not have an A.M. Best rating of A-/VIII, the Risk Manager retains the right to approve or reject a carrier after a review of the company’s performance and financial ratings.

1. **MINIMUM LIMITS**

The policy of insurance or program of self-insurance maintained by Licensee shall provide the minimum limits and coverage as set forth below:

|  |  |
| --- | --- |
| CoveragesCommercial General LiabilityAutomobile Liability including coverage for owned, non-owned and hired vehiclesWorkers’ CompensationEmployers’ Liability InsuranceEnvironmental Pollution Liability | Minimum Limits$1,000,000 per occurrence$2,000,000 aggregate$1,000,000 limit per occurrenceStatutory$1,000,000 per occurrence\_\_\_\_\_\_\_\_\_\_\_\_ per occurrence\_\_\_\_\_\_\_\_\_\_\_\_ aggregate |

1. **REQUIRED COVERAGE FORMS**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad. The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

1. **REQUIRED ENDORSEMENTS**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

A. An Additional Insured endorsement using ISO form CG 20 26 04 13or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds. Blanket coverage may also be provided which will state- As Required By Written Agreement.

B. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the LESSEE’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees. Blanket coverage may also be provided which will state- As Required By Written Agreement.

All insurance policies required by this Master License shall waive all rights of subrogation against the County its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the County’s financial interest when applicable.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a “separation of insureds” clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the County’s address provided in the Master License or to an alternate address provided by the Chief Real Estate Officer.

LESSEE has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

The County expressly retains the right to require Licensee to increase or decrease insurance of any of the above insurance types throughout the term of this Master Licensee. Any increase or decrease in insurance will be as deemed by the Risk Manager as appropriate to adequately protect the County.

The Chief Real Estate Officer shall notify Licensee in writing of changes in the insurance requirements. If Licensee does not deposit copies of acceptable certificates of insurance and endorsements with the Chief Real Estate Officer, incorporating such changes within thirty (30) days following receipt of such notice, this License may be in breach without further notice to Licensee, and the County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance, or self-insurance shall not be construed to limit Licensee’s liability hereunder nor to fulfill the indemnification provisions and requirements of this Master License, nor in any way to reduce the policy coverage and limits available from the insurer.

# Schedule 1

**LICENSE FEE SCHEDULE**

**Site License No. \_\_\_**

|  |
| --- |
| **LICENSE FEE SCHEDULE** |
| annual License Fee per licensed Vertical Infrastructure | 1 Carrier | 2 Carriers | 3 Carriers |
| 2017 | $1,500.00 | $2,000.00 | $2,500.00 |
| 2018 | $1,560.00 | $2,080.00 | $2,600.00 |
| 2019 | $1,622.40 | $2,163.20 | $2,704.00 |
| 2020 | $1,687.30 | $2,249.73 | $2,812.16 |
| 2021 | $1,634.47 | $2,339.72 | $2,924.65 |
| 2022 | $1,754.78 | $2,433.31 | $3,041.63 |
| 2023 | $1,824.98 | $2,530.64 | $3,163.30 |
| 2024 | $1,897.98 | $2,631.86 | $3,289.83 |
| 2025 | $1,973.89 | $2,737.14 | $3,421.42 |
| 2026 | $2,052.85 | $2,846.62 | $3,558.28 |
| 2027 | $2,134.97 | $2,960.49 | $3,700.61 |

# Schedule 2

|  |
| --- |
| **DEFAULT FEE SCHEDULE** |
| **VIOLATION** | **INITIAL NOTICE** | **EACH FOLLOW-UP NOTICE** |
| unauthorized installations | $1,000 | $1,500 |
| failure to make required repairs | $300 | $350 |
| access violations | $300 | $350 |
| insurance violations | $300 | $350 |