

## **MASTER LICENSE AGREEMENT FOR WIRELESS AND POLE MOUNTED COMMUNICATIONS FACILITIES LOCATED WITHIN THE CITY OF AURORA**

This MASTER LICENSE AGREEMENT ("Agreement") is made and entered into by and between the City of Aurora, an Illinois home rule municipality ("City"), and Vigilant Global LLC ("Communications Licensee"). City and Communications Licensee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

**WHEREAS**, the City intends to promote the expansion of communications services in a manner consistent with, for example, the Illinois Cable and Video Competition Act, the Illinois Telephone Company Act, the Telecommunications Act of 1996, the Middle Class Tax Relief and Job Creation Act of 2012, the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-1, et. seq. and Federal Communication Commission Regulations; and

**WHEREAS**, the City has jurisdiction over and controls the City Ways, as defined below, in furtherance of the public health, safety and welfare; and

**WHEREAS**, Section 253 of the Federal Communications Act of 1934, as amended, including 47 U.S.C § 253, and Illinois 220 ILCS 5/21-1001, among other state and federal laws, provides that the City has the authority, subject to certain limitations, to control access to and use of the Right-of-Way within the City limits; and

**WHEREAS**, Section 19-69.b.1 and Section 19-69.b.2 of the City of Aurora Code of Ordinances, provides that certain communications facilities shall be considered permitted uses provided a license or lease authorizing such communications facilities has been approved by the City; and

**WHEREAS**, the Corporate Authorities of the City of Aurora have determined that the establishment of a master license agreement for communications use in public ways, on other City property, and facilities mounted on poles on private property, will properly facilitate and manage the deployment of communications facilities without requiring a communications company to come before the City Council each time it seeks approval of a permit for each such communications facility; and

**WHEREAS**, regulation of the deployment of said communications facilities can be accomplished through the use of site-specific permitting, managed and controlled by City of Aurora staff, but only after a communications company agrees to the terms of this Agreement; and

**WHEREAS**, the Communications Licensee, is requesting to attach, install, operate, maintain, repair, replace, reattach, reinstall, relocate, and remove its Communications Facilities as defined in Chapter 19 of the City of Aurora Code of Ordinances, to provide improved communications coverage for the operation of its Communications Service as defined herein.

**NOW THEREFORE**, based upon the consideration recited herein and the granting of this Master License, the Communications Licensee and the City of Aurora agree to abide by the terms and conditions of this Agreement as follows:

1.0 Recitals. The recitals set forth above are incorporated herein and made part of this Agreement as representing the intent of the parties, and as substantive covenants and conditions.

2.0 Definitions. Except where the context requires otherwise, the capitalized terms used in this Agreement shall have the following meanings.

**“Agreement” or License Agreement**” shall mean this Master License Agreement.

**“Annual License Fee”** means the annual rate described in Section 6.3 of this Agreement.

**“Site-Specific Permit Application”** means the application for a permit for the installation of Communications Facilities at a Site-Specific Location.

**“Cash”** means United States currency.

**“CFR”** means Code of Federal Regulations.

**“City Representative”** means the then current person at the City that oversees administration of this Agreement, or his/her designee.

**“City Facilities”** means roads, alleys, paved surfaces, utility / light poles, traffic control devices, water services, sanitary sewer services, stormwater services, gas lines, electric lines, fiber or cable communication lines, and their appurtenances.

**“City Ways”** means public rights of way owned or controlled by the City, or other City property.

**“Communications Facility or Facilities”** as defined in Chapter 19 of the City of Aurora Code of Ordinances which includes communications facilities and/or communications support facilities.

**“Communications Service”** shall have the meaning ascribed to such term in Chapter 19 of the City of Aurora Code of Ordinances, but shall also include, but not be limited to, a private communications network services.

**“Entity”** means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, unit of local government, a receiver, trustee, guardian or other

representative appointed by order of court, or any other legally recognized organization, whether for-profit or not-for-profit. The City shall not be considered a "Person" or "Entity" for purposes of this Agreement.

**“Law(s)”** means any applicable statute, administrative or judicial act, decision, charter, code, constitution, law, opinion of a court of competent jurisdiction, court order, ordinance, policy, regulation, including procedures and the conditions of certificates as prescribed by regulation, rule, schedule, specification, rates and tariffs as established in statute, rules, or regulation, or other requirement of the City or any other unit of government or agency of a unit of government having joint or separate jurisdiction over the Communications Licensee, now or hereafter in effect, during the term of this Agreement.

**“Letter of Credit” (hereinafter “LOC”)** means an irrevocable standby letter of credit issued by a United States bank or other financial institution reasonably acceptable to the City of Aurora and having a credit worthiness rating of at least “A” by Standard and Poor’s or “A2” by Moody Investment Services.

**“Licensee Pole”** means a Utility / light pole as defined in Chapter 19 of the City of Aurora Code of Ordinances which is installed by the Communications Licensee where the City does not have any light fixtures attached and therefore the Communications Licensee retains ownership of the pole.

**“I-88 Technology Corridor”** as defined in Chapter 19 of the City of Aurora Code of Ordinances.

**“Permit Drawing and Specifications”** means documents submitted by a Communications Licensee, in conformance with the requirements of the City, for a Site-Specific Permit Application which depict the design, construction, installation, and maintenance of any Communications Facility.

**“Pole”** Utility / light pole as defined in Chapter 19 of the City of Aurora Code of Ordinances, excluding poles in a Roadway median, decorative light poles and traffic signals.

**“Pole Attachment”** means any Communications Facility attached above grade to a Pole by the Communications Licensee.

**“Pole Mount Certification”** means certification by a structural engineer that a pole has sufficient structural integrity to carry the weight of the Communications Facility with or without hardening, in conformance with applicable ordinances and industry standards.

**“RFEF”** means radio frequency electromagnetic fields.

**“Roadway Median”** means the median strip or reserved area that separates opposing lanes of traffic on divided roadways. The reserved area may or may not be curbed and be landscaped or paved.

**“Simplified Municipal Telecommunications Tax” (hereinafter “SMTT”).** Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5-1 et seq) as amended from time to time.

**“Site-Specific Location”** means a location which qualifies, under this Agreement, for the placement of, or which contains, Communications Facilities allowed under a Site-Specific Permit.

**“Site-Specific Permit or Permit”** means a non-exclusive permit granted by the City allowing the installation of Communications Facilities at a Site-Specific Location.

**“Total Height”** shall mean and be calculated as, the distance measured from the lowest point on the ground of the Pole to the highest point on the Pole, including the base pad and any antenna.

**“Unauthorized Communication Site”** means the installation of a Communications Facility or Licensee Pole within the corporate limits of Aurora or the Aurora Comprehensive Planning Area without the specifically authorized approval by the Corporate Authorities of Aurora.

**“Unauthorized Installation Charge”** means the penalty payable by Communications Licensee to City under this Agreement for an Unauthorized Communication Site.

**“Work”** means all design, construction, restoration, maintenance, removal, repair, relocation, or modification of any Communications Facility.

### 3.0. **Term.**

3.1. **Initial and Extension Terms.** This Agreement shall apply to all Communications Facilities proposed, permitted and installed at Site-Specific Locations on Poles in the City Ways or on poles on other property pursuant to Section 19-69.b.2 of the City of Aurora Code of Ordinances. The initial term of this Agreement shall be five (5) years (“initial term”) commencing on the effective date, unless it is earlier terminated in accordance with this Agreement. The extension term of this Agreement shall be five (5) years (“extension term”) commencing on the expiration of the initial term provided that:

3.1.1. The Communications Licensee gives the City written notice of its intent to extend the Agreement no less than sixty (60) days prior to the expiration of the initial term; and

- 3.1.2. The Communications Licensee is in substantial compliance with the provisions of this Agreement and applicable Laws and Regulations; and
- 3.1.3. There has not been any change in the Law or Regulations that materially affects the provisions of this Agreement or its enforceability; and
- 3.1.4. The City has not otherwise terminated this Agreement in accordance with its provisions.

**3.2 New Agreement/Holdover.** A Communications Licensee may enter into a new License Agreement with the City no later than six (6) months before the expiration of the initial term or extension term based upon the License Agreement then in effect or in accordance with such other contract rates, terms and conditions, or ordinances that may be adopted by the City from time to time. If upon expiration of the extension term the parties fail to negotiate the renewal of a new License Agreement, and the Communications Licensee fails to comply with Section 3.3, the Communications Licensee shall be deemed to holdover and shall otherwise be liable to perform its obligations of the terms and conditions of the License Agreement as well as, in the case of Communications Licensees which do not pay the City the SMTT, payment of double the amount of all costs and fees. No holdover shall exceed six (6) months.

**3.3 Non-Renewal.** If a new License Agreement has not been executed by the parties by the expiration of the extension term and the parties do not otherwise agree in writing to renew, then the Communications Licensee, at its option, shall either:

- 3.3.1 Remove the Communications Licensee's Communications Facilities from the City Ways or other property at its sole cost and expense within sixty (60) days from the expiration date, otherwise the City may at its discretion re-purpose or remove said facility pursuant to Section 10.9 herein; or
- 3.3.2 Without cost or charge to the City abandon the Communications Licensee's Communications Facilities in place, but only if the City first approves the proposed abandonment, in writing; including conditions applicable to the abandonment, or the City may at its discretion re-purpose or remove said facility pursuant to Section 10.9 herein; or
- 3.3.3 Sell the Communications Licensee's Communications Facility to a qualified third party subject to the City's prior written approval; which will not be unreasonably withheld.
- 3.3.4 Upon the occurrence of any circumstance set forth in this Section 3.3, this Agreement shall be deemed terminated except as to the indemnification and hold harmless provisions which shall survive until all statutes of limitations and repose applicable to a casualty occurring during the license term have expired.

**3.4 Termination.** Except as otherwise provided herein, the City may terminate this Agreement for cause, as defined herein, upon thirty (30) days written notice sent by the City to the Communications Licensee. In this event, the City may exercise its legal rights and/or equitable remedies either under this Agreement or by any other means that may be provided by law or equity, including the right, without limitation, to recover any uncollected fees that would be due and payable by the Communications Licensee

to the City if this Agreement had not been terminated during the initial or extension term as well as reasonable costs, including attorney's fees, incurred in the termination process, and to retain all of the Removal LOC deposited with the City.

**3.4.1 A termination for cause means** 1) The Communications Licensee fails to cure a material default of this Agreement within thirty (30) days after it receives the City's notice of default, or, if the default can be cured and such cure reasonably requires more than thirty (30) days to achieve, fails to commence and thereafter diligently continue such cure to completion within the specified period; or 2) Any agency exercising jurisdiction over the Communications Licensee has by final order that is no longer subject to appeal, terminated or otherwise revoked the Communications Licensee's approval, authorization, certification or license to provide the Communications services or Facilities; or 3) In the event the Communications Licensee installs or causes to be installed an Unauthorized Communication Site or the Communications Licensee proceeds to another agency, court or venue to secure permission to install or cause to be installed an Unauthorized Communication Site, the City shall have the right to immediately terminate this agreement.

**3.4.2 Removal upon Termination for Cause.** Upon establishment of termination for cause and after the expiration of the time period set out in Section 3.4.1 above, the right to make any pole attachment or occupy any City Way or other property will immediately terminate. If the Communications Licensee has failed within sixty (60) days from the effective date of termination for cause to remove or cause removal of the Communications Licensee's Communications Facilities, the City may at its discretion re-purpose or remove said facility pursuant to Section 10.9 herein.

**3.5 Changes in the Law.** The parties acknowledge that communications services and the law associated with communications services is evolving at the Federal, State and local level. If during the initial term or extension term the Laws are adopted, amended or repealed that are binding on the City and that requires the City to alter existing Agreements, the parties shall negotiate an amendment to this Agreement to the extent necessary to comply with any Law affecting existing agreements. The Parties understand that, in general, changes in the Laws are prospective only and any prospective changes do not require an amendment to the terms in this Agreement. If the parties cannot mutually agree to an amendment to this Agreement within three (3) months after a party receives the other parties' request to negotiate an amendment, then the parties will agree to submit the dispute to mediation under mutually acceptable terms and conditions.

#### **4.0. Grant and Scope of License.**

**4.1 Grant of License.** Subject to all the terms and conditions of this Agreement, the City grants to the Communications Licensee and, the Communications Licensee accepts from the City a non-exclusive license to submit Site-Specific Permit Applications for access to and use of City Ways or other property to attach, install, and upon installation pursuant to a valid Site-Specific Permit to operate, maintain, repair, remove, reattach, reinstall, relocate, and replace Communications Licensee's Communications Facilities pursuant to said permit. All rights and obligations of the

Communications Licensee under this Agreement shall be exercised by the Communications Licensee at its sole cost and expense unless otherwise agreed to in writing by the parties.

4.1.1. **Site-Specific Permit.** The Communications Licensee, as condition precedent to its right to access, use, install, attach, operate, maintain, repair, replace, reattach, reinstall, relocate, and remove any of the Communications Licensee's Communications Facilities in a City Way or other property, shall prior to occupying any area, submit a Site-Specific Permit Application to the City Representative, and receive from the City Representative a Site-Specific Permit to occupy the Site-Specific Location with the Communications Facilities. The Communications Licensee shall complete and file a Site-Specific Permit Application and any other necessary authorizations or approvals to request access to any use of 1) City Ways, City Facilities, or city owned property or 2) other property pursuant to Section 19-69.b.2 of the City of Aurora Code of Ordinances. Said Site-Specific Permit Application shall be submitted in conformance with Section 7.3. Application Requirements herein.

4.1.2. **Duration of Site-Specific Permit.** A Site-Specific Permit, subject to the terms of this Agreement, shall be valid from the date of issuance to the end of the term of this Agreement. However, a Site-Specific permitted Communications Facility must be operational within nine (9) months following the issuance date of the Site-Specific Permit, otherwise said Permit shall become void and the Site-Specific Location shall be available to other Entities in compliance with City Code.

4.1.3. **Compliance with Laws.** The installation and maintenance of any Communications Facilities in City Ways or other property shall comply with all Laws.

4.2. **Scope of Site-Specific Permit.** The grant of a Site-Specific Permit to the Communications Licensee is subject to prior use and existing and continuing rights, consents and approvals of the City for utilities and any rights of other communications licensees, and to existing and future recorded and unrecorded deeds, easements, dedications, grievances, conditions, covenants, restrictions, encumbrances, and claims of title which may affect any right, title, and interest in and to the City Ways or other property and any City owned or controlled facilities located within those City Ways or other property.

4.2.1. **License Only.** Nothing in this Agreement or in a Site-Specific Permit shall be deemed to grant, convey, create, or vest in the Communications Licensee a property right or perpetual interest in land or in the City Ways or other property including, without limitation, any fee interest, leasehold interest, easement, or franchise right. Any interpretation of this license or a Site-Specific Permit by a Court, which would purport to create any fee, leasehold, easement, or franchise interest in the Communications Licensee shall, twenty-four (24) hours after such determination, result in the Communications Licensee's forfeiture of any and all rights under this Agreement or any Site-Specific Permit.

4.2.2. **No Warranty.** Neither the City, nor any existing easement holder, franchisee, nor any other communications licensee shall be liable to the Communications Licensee for failure of the City or the others to secure legal authority from a grantor of an easement affecting the communications installation. It shall be the obligation of the Communications Licensee to ascertain any legal right held by any

servient estate of an easement affecting the proposed or existing Communications Facilities and resolving those issues with the owner of the servient estate.

4.2.3. **Modification of Site-Specific Permit.** The City may for consideration of the public health, safety, and welfare including, without limitation: safety, reliability, security, and engineering reasons, terminate or otherwise modify the scope of the Communications Licensee's non-exclusive Site-Specific Permits upon sixty (60) days written notice to the Communications Licensee. If the City exercises its rights under this subsection it will use reasonable efforts to find one or more alternative locations for the Communications Licensee to install its Communications Facilities.

4.2.4. **Non-Interference.** Communications Licensee agrees that its license is subject at all times to the City's right to use the City Ways and City Facilities for their primary purpose. Communications Licensee, in the performance and exercise of any of its authorizations and obligations under this Agreement or a Site-Specific Permit, shall not obstruct or interfere in any manner with the City Ways, public rights of way, existing utility easements, private rights of way, sanitary sewers, sewer laterals, water mains, storm drains, gas mains, traffic signals, lighting, poles, aerial and underground electric and telephone wires, electrical wires, multi-channel video surface facilities and other communications facilities, and utility and municipal property facilities without the express written approval of the City or the other owners, including franchisees, of the affected property or properties. Written approvals of the owners or franchisees shall be provided to the City Representative prior to the commencement of the installation of Communications Facilities on an existing structure. In the event any after-installed Communications Facilities causes such interference, and after City has notified Communications Licensee in writing of such interference, Communications Licensee will take all reasonable steps necessary to correct and eliminate the interference.

4.2.5. **City Facilities.** The City reserves to itself the right to attach, install, maintain, replace, and enlarge City Facilities and operate the same from time to time in such manner as will enable it to provide for the public health, safety, and welfare. The Communications Licensee acknowledges that certain utilities provided by the City, other units of government and franchisees, are essential public services, including but not limited to: water, sanitary and stormwater services, and utilities necessary to provide heat.

4.2.6. **Interruptions.** The City shall not be liable to the Communications Licensee or its customers for any interruption of service to the Communications Licensee or interference with the Communications Licensee's Communications Facility arising in any manner relating to the City's operations, City Facilities or within City Ways or the operations of utilities by the City's franchisees, or arising in any manner out of the condition or character of City Ways or City's Facilities.

4.2.7. **Immunities.** Nothing in this Agreement shall be interpreted to override, compromise or waive any of the City's statutory or common-law privileges or immunities which are all specifically reserved. There are no third-party beneficiaries of this Agreement.

4.3. **Radio Propagation Studies of RFEF.** The Communications Licensee shall, pre-installation, file with the City Representative radio frequency propagation specifications confirming that the Communications Licensee's Communications

Facilities will comply with applicable CFR radio frequency propagation standards at the time of installation. When the Communications Facilities are activated the Communications Licensee, at its expense, shall provide the City with a radio frequency propagation report establishing that the facility is operating within applicable CFR requirements. Any time after the installation, the City Representative may have a Site-Specific radio frequency propagation study performed to determine if the Communications Licensee's Communications Facility, both above-ground and pole-mounted facilities, are in compliance with applicable CFR radio frequency propagation standards. The Communications Licensee shall be obligated to reimburse the City the reasonable cost of the study, up to one study per calendar year.

**4.4. Authorized Use.** The Communications Licensee shall use Communications Licensee's Communications Facilities for the sole purpose of providing Communications Services and may only attach, install, construct, operate, maintain, repair, replace, reattach, reinstall, relocate and remove Licensee's Communications Facilities as authorized by the Site-Specific Permit.

**4.5. Control of Facilities.** Communications Licensee's customers may own the equipment installed in the Communications Facilities, but in no event shall Communications Licensee allow any other Entity to control the Communications Licensee's Communications Facilities or any portion thereof for any purpose not directly related to the Communications Licensee's provision of Communications Services. Communications Licensee shall have no authority to assign, sell or transfer a Site-Specific Permit without the written consent of the City Representative, unless such assignment, sale or transfer is made to an affiliate of Communications Licensee.

**4.6. Condition of Premises.** As a material part of the consideration for this Agreement, Communications Licensee takes and accepts the City Ways, City Facilities and Poles "as is" in the condition in which the Communications Licensee finds them, with any and all latent and patent defects and with no express or implied warranties by the City of merchantability, fitness, suitability, or fitness for any particular purpose. The Communications Licensees shall have the right to inspect the City Way, City Facilities or Poles prior to installing its Communications Facilities. The City will be responsible for the regular maintenance of the City Facilities and City Way and will keep the City Facilities and City Way in good repair as required by all federal, state, county and local laws.

The Communications Licensee shall be responsible for repairing any damage to the City Way, or City Facilities that is disturbed or damaged as a result of, the installation, construction, reconstruction, repair, replacement, relocation, operation or maintenance of the Communications Facilities.

#### **5.0. Other Rights and Obligations of Communications Licensee.**

**5.1. General.** During the term of this Agreement, should Communications Licensee wish to modify the form, fit, or function of any Communications Facility, Communications Licensee may request, in writing, the City's approval and authorization

to add, attach, install, move, repair, replace, or otherwise alter or change the Communications Licensee's Communications Facilities in a manner consistent with this Agreement. All written requests for this purpose shall be filed with the City Representative, who may revise the Site-Specific Permit for such work subject to appropriate reasonable conditions.

5.2. **Due Care.** Communications Licensee shall at all times use due care to insure that no damage, beyond reasonable wear and tear, is caused to Poles, City Ways, or City Facilities, conduits, or any other portion of the City's or others' property including but not limited to: ground surfaces, landscaping, paved surfaces, swales, sewer drainage features, fibers, wires, cables, poles and/or conduits lawfully located on or about Poles, or other physical structures on which the Communications Licensee intends to attach and/or install Communications Licensee's Communications Facilities. Any damage which is caused by the Communications Licensee shall be reported to the City's emergency contact listed in Section 14.17 herein and in writing to the affected party within forty-eight (48) hours of the damage. Communications Licensee shall reimburse the other party upon demand for any damage caused by its employees, contractors, subcontractors, agents or representatives. The Communications Licensee shall be fully liable for the acts or omissions of its subcontractors, agents and employees.

5.3. **Identification of Facilities.** Communications Licensee shall identify its Communications Facilities, including, without limitation, its fibers, wires, and cables and wireless facilities with appropriate durable visible identification tags that describe the Communications Licensee's name, number, color, identification, code, size, and manufacture of Communications Licensee's Communications Facilities. Communications Licensee shall consult with the City Representative to make certain that such identification tags are specific to the Communications Licensee so as not to be confused with other Entities lawfully within the area of Communications Licensee's Communications Facilities. Communications Licensee shall comply with J.U.L.I.E protocol and shall have sole responsibility to locate Licensee's Communications Facilities. Upon a change in ownership or control of Communications Facilities, the new Entity shall provide updated identification within fourteen (14) days.

5.4. **Routine Work.** Except in emergencies requiring restoration within twenty-four (24) hours of loss of function of the Communications Licensee's Communications Facilities, the Communications Licensee shall give not less than ten (10) days written notice to the City Representative whenever the Communications Licensee intends to perform any work on or about the Communications Licensee's Communications Facilities. The City Representative's permission to perform the work shall not be unreasonably withheld or delayed.

5.5. **Graffiti Abatement.** As soon as practical, but not later than twenty-one (21) days from the date Communications Licensee receives notice thereof, Communications Licensee shall remove all graffiti on any of the Communications Licensee's Communications Facilities. The foregoing shall not relieve the

Communications Licensee from complying with any City graffiti or visual blight ordinance or regulation including but not limited to those found in Chapter 20 Article IV of the City Code of Ordinances.

## 6.0. Fees

6.1. **Application Fee.** In addition to any standard permit fees, Site-Specific Permit Applications are subject to an additional application fee based on the Fee schedule set forth in **Appendix A**. Said Fee schedule may be revised by the City Council from time to time to reflect existing market conditions and Permit-related increases in the City's overhead.

6.2. **Out-of-Pocket Costs.** Any reasonable out-of-pocket costs incurred by the City in consequence of its need to retain outside consultants, including but not limited to lawyers or structural engineers, to process a Site-Specific Permit application and/or evaluate a Communications Licensee's activities subject to this Agreement shall be reimbursed to the City by the Communications Licensee, up to an aggregate amount per Site-Specific Permit based on the Fee schedule set forth in **Appendix A**. Said Fee schedule may be revised by the City Council from time to time to reflect existing market conditions and Permit-related increases in the City's overhead.

6.3. **Annual License Fee.** The Communications Licensees shall pay, on an annual basis, an Annual License Fee for each Site-Specific Location as determined by the City Representative based on the amount listed on the Fee schedule set forth in **Appendix A**. Said Fee schedule may be revised by the City Council from time to time to reflect existing market conditions and Permit-related increases in the City's overhead. Communications Licensee may then, at its discretion, accept the revised Fee schedule or terminate the use of any or all Site-Specific Locations whereby the Communications Licensee shall remove Communications Licensee's Communications Facilities from said Site-Specific Location(s) within the timeframe specified in Section 3.3.1. Communications Licensee's failure to remove within the time required will authorize the City at its discretion to re-purpose or remove said facility pursuant to Section 10.9 herein.

6.4. **Timing of Annual License Fee Payments.** Said Annual License Fee shall be due and payable by the Communications Licensee on January 1<sup>st</sup> of each year. If a Site-Specific Permit or Permits are issued for additional Site-Specific Locations after January 1<sup>st</sup>, the Communications Licensee shall pay any additional sums to the City within thirty (30) days of invoice. Any additional Site-Specific Permit(s) issued after the Fee Schedule is amended would be subject to the amended Fee Schedule.

6.5. **Late Payment Interest.** Any Annual License Fees not paid within thirty (30) days of due date will be assessed a rate of 10% per annum from that date.

6.6. **Failure to Pay.** Communications Licensee's failure to pay any costs or Annual License Fees under this Agreement within thirty (30) days of the due date shall

constitute a material default. Communications Licensee's obligation to pay all previously incurred costs, fees, and right-of-way fees shall survive the expiration or earlier termination of this Agreement. If a failure to pay has not been cured within thirty (30) days of the due date, the Communications Licensee shall remove Communications Licensee's Communications Facilities from the City Ways or other property within the timeframe specified in Section 3.3.1. Communications Licensee's failure to remove within the time required will authorize the City at its discretion to re-purpose or remove said facility pursuant to Section 10.9 herein.

## **7.0 Site-Specific Permit Applications.**

**7.1. Number of Applications.** The number of Site-Specific Permit Applications which may be filed by the Communications Licensee shall be limited by the following:

7.1.1 Outside of the I-88 Technology Corridor: Within the first sixty (60) days following the approval of this Agreement, no more than two (2) Site-Specific Permit Applications may be filed by the Communications Licensee. Thereafter no more than four (4) Site-Specific Permit Applications may be filed by the Communications Licensee within any sixty (60) day period, unless said restriction is waived in writing by the City Representative.

7.1.2 Within the I-88 Technology Corridor: Within the first sixty (60) days following the approval of this Agreement, no more than one (1) Site-Specific Permit Application may be filed by the Communications Licensee. Thereafter no more than two (2) Site-Specific Permit Applications may be filed by the Communications Licensee within any sixty (60) day period, unless said restriction is waived in writing by the City Representative.

**7.2. First Come, First Served.** Site-Specific Permit Applications will be processed on a first come, first served basis. The City Representative's office shall stamp Site-Specific Permit Applications on the date of their arrival and, in the case of applications received on the same date, by time stamp. First come, first served shall mean that the first complete application filed shall be processed first. If a first processed application is denied the City Representative shall give the first processed application five (5) business days to correct any correctable issues in the application. If the issues are not corrected within the five (5) business days the City Representative shall move to the next complete application filed which will then be considered first processed application.

**7.3. Application Requirements.** Communications Licensee shall file with the City Representative a complete Site-Specific Permit Application and application fee for every proposed Communications Facility site. Said application form may be modified from time-to-time by the City Representative as deemed reasonably necessary in order to more efficiently process applications. Said Site-Specific Permit Application shall include but not be limited to all siting, design, construction methodology, equipment and pole manufacturer's specifications, Pole Mount Certifications, structural engineering reports, documentation required by Chapter 19 of the City of Aurora Code of

Ordinances and other documentation which the City Representative may deem in his/her professional discretion, as necessary. Unless deemed necessary by City Representative, Site-Specific Permits would not be required to meet requirements of Section 19-68(q) Security fencing or Section 19-68(r) Landscaping, of Chapter 19 of the City Code of Ordinances.

**7.4. Approval Process for Site-Specific Permits.** Upon the filing of a Site-Specific Permit Application the City Representative shall review the documents submitted for completeness and conformance with document requirements. The City Representative may request additional detail if the information provided in the application is inadequate. The City will use reasonable efforts to review and determine if the application is complete within a reasonable period of time. Any determination of an incomplete application shall be accompanied by a written explanation detailing the reasons why the Permit has been determined to be incomplete.

Upon receipt of a complete Site-Specific Permit Application, the City Representative shall review and provide comments on the Site-Specific Permit Application within sixty (60) days, and will use reasonable efforts to approve or deny the Site-Specific Permit Application within this period of time. However, if the City Representative sends out review comments to the Communications Licensee regarding a Site-Specific Permit Application, the Communications Licensee shall have ten (10) days to respond to said review comments, to the satisfaction of the City Representative, or the Application process time period will be suspended until the Communications Licensee responds to the City Representative's review comments. If the Communications Licensee has not responded to or fully addressed the City Representative's review comments to the satisfaction of the City Representative, within thirty (30) days of date of the initial review comments, the Site-Specific Permit will be considered denied for non-responsiveness. The City Representative and Communications Licensee can mutually agree in writing to extend any of the timeframes in this paragraph. Any denial of a Site-Specific Permit shall be accompanied by a written explanation detailing the reasons why the Permit has been denied.

If the Permit is granted or denied, the City Representative shall require reimbursement to the City by the Communications Licensee of any actual and reasonable out-of-pocket costs and fees incurred by the City for independent and outside consultants used by the City to evaluate the application prior to the issuance of the Permit, pursuant to Section 6.2 herein.

In reviewing the Site-Specific Permit Application the City Representative evaluation shall include but not be limited to:

7.4.1 Rights-of-Way Determination – determine whether the location (and any existing pole) identified by Communications Licensee as a Communication Site is within City Rights-of-Way.

7.4.2 Ownership of Pole – confirm the ownership of any City pole identified for installation of the Communications Facility.

7.4.3 Site Eligibility – determine whether a requested City pole or the location for the installation for a new pole is eligible as a Communication Site.

7.4.4 Engineering Design Documents – Determine:

7.4.4.a. compliance with contractual requirements under this Agreement;  
and

7.4.4.b. That there is No interference with City public safety radio system, traffic signal light system, or other communications components; and

7.4.4.c. Compliance with City pole attachment regulations for poles, including replacement of an electric meter with dual meters, if and as applicable.

**7.5. Site-Specific Permit Issuance.** The approval of the Site-Specific Permit Application requesting to attach to a City pole, or to install a new pole, shall authorize Communications Licensee to proceed to obtain all generally applicable, ministerial permits that are required of all occupants of the Public Rights-of-Way, if required (collectively, “ROW Permit”). Communications Licensee shall comply with the requirements of the City’s rights-of-way regulations including those found in Chapter 42 Article X and Chapter 19 of the City Code of Ordinances, the City’s Standard Specifications for Improvements, and applicable easement provisions or franchise agreements in effect at a given location. Communications Licensee shall pay all standard promulgated ROW Permit fees, if required. City may impose on the ROW Permit those conditions that are necessary to protect structures in the Public Rights-of-Way, to ensure the proper restoration of the Public Rights-of-Way and any structures located therein, to provide for protection and the continuity of pedestrian and vehicular traffic, and otherwise to protect the safety of the public's utilization of the Public Rights-of-Way. In no event shall City treat Communications Licensee’s Site-Specific Permit Applications or ROW Permit applications in a more burdensome manner than City treats Public Rights-of-Way access permits of other similarly situated public utilities and communications services providers. Upon obtaining a ROW Permit, Communications Licensee may proceed to install the Communications Facility in coordination with any affected City departments. Approval of a Site-Specific Permit Application related to the use of a pole owned by a third party, shall authorize Communications Licensee to proceed as agreed in writing with the pole owner and in accordance with the pole owner’s regulations, proceed to install the Communications Facility in coordination with any affected City departments.

**7.6. Site-Specific Permit Inspections.** The City shall have the right to inspect any Site-Specific Location or work related to the Communications Licensee’s Communications Facilities as it deems appropriate. The Communications Licensee shall reimburse the City for any out-of-pocket third party cost of such inspections, pursuant to Section 6.2 herein.

#### **8.0. Installation and Replacement of Communications Facilities.**

**8.1. Provision of Personal Communication Service.** City Ways or other property may be used by Communications Licensee, seven (7) days a week, twenty-four (24) hours a day, only for the attachment, installation, construction, use,

maintenance, operation, repair, reinstallation, reattachment, modification, replacement, removal and upgrade of Communications Facilities approved by a Site-Specific Permit by Communications Licensee from time to time for Communication Services and not for any other purpose whatsoever. This Agreement shall include new types of Communications Facilities that may evolve or be adopted using wireless technologies. Communications Licensee shall, at its expense, comply with all applicable federal, state, and local laws, ordinances, rules and regulations in connection with the use of City Ways or other property.

**8.2 Co-Location.** Communications Licensee shall exercise all reasonable efforts to locate its Communications Facilities on or within existing structures or Poles. Licensee shall not install new Licensee Poles in a City Way or other property unless Communications Licensee demonstrates that all of the following criteria are satisfied: (1) Communications Licensee certifies that a new Pole in the City Way or other property are necessary to fill a coverage or capacity gap in Communications Services, (2) there are no other existing structures in the City Way or other property or buildings near the City Way or other property that are available and capable of supporting the Licensee's Communications Facilities.

**8.3 Installations on Existing Poles.** Communications Facilities may be installed under the terms of this Agreement on (1) preferably existing third party Poles or (2) City's existing Poles. Prior to submitting a Site-Specific Permit Application related to the use of a City Pole, Communications Licensee shall verify with the City in writing the eligibility of the specified Pole for attachment of the Communications Facility. Eligibility of a City Pole is subject to the review and approval by the City Representative and said Pole shall:

8.3.1 Be available meaning the Pole 1) falls under the definition of Pole in Section 2 herein, and is within said City Ways and are under the control or ownership of the City of Aurora and not otherwise occupied by or otherwise committed for City Facilities or to a franchise holder or existing Communications Licensee, at the time a Site-Specific Permit Application is submitted for the use of a Site-Specific Location by a Communications Licensee or 2) a third party Poles with a separate agreement with the owner of such Pole.

8.3.2 If the existing pole is located in a section of Roadway Median, the median must have barrier curbing, be landscaped, and be a minimum of ten feet (10') wide, and ground level equipment shall not be allowed in any Roadway Median.

8.3.3 If located within a public right-of-way, the right of way must be of an Arterial, Major Collector, Minor Collector or Residential roadway as defined in the current city comprehensive plan; and

8.3.4 Be no more than fifty (50) feet in total height, and shall be a break away base system in accordance with IDOT standard 838001 Breakaway Devices or approved equal; and

8.3.5 Not have any part of the Communications Facility installed higher than seven (7) feet above the highest point of the Pole or lower than nine (9) feet above grade level measured from the bottom of the Pole.

8.3.6 Be straight with adequate strength, and of a design which can withstand the added weight of the Communications Facility.

8.3.6.a If reinforcement or replacement of an existing Pole is necessary, as determined by a Pole Mount Certification provided by the Communications Licensee, Communications Licensee shall, at their sole expense, provide engineering design and specification drawings demonstrating the proposed alteration to or replacement of the Pole. Said alteration to or replacement of the Pole may not increase the total height of the Pole by more than seven (7) feet. If a Site-Specific Permit is approved, any required pole reinforcement or replacement shall be completed at the Communications Licensee's sole expense.

8.3.6.b If the Communications Licensee desires to alter or replace an existing Pole which would result in an increase in the total height of the Pole by more than seven (7) feet, this would be considered a New Pole and the provisions of Section 8.4 would apply.

**8.4 Installations on New Poles.** New Poles for Communications Facilities may be installed under the terms of this Agreement and said Pole shall:

8.4.1 Allow for the maximum number of antenna co-locations on the New Pole, which the Communications Licensee shall make available at a fair market rate.

8.4.2 Be set so that they will not interfere with the flow of water in any ditch, gutter or drain, and so that they will not interfere with ordinary travel on the streets or sidewalk; and

8.4.3 New poles or ground level equipment shall not be allowed in any Roadway Median.

8.4.4 If located within a public right-of-Way, the right of way must be of an Arterial, or Major Collector roadway as defined in the current city comprehensive plan. An application for an installation within lower grade roadway system shall be subject to Chapter 19 Sec 19-71 "Special Use Permits" of the City of Aurora Code of Ordinances; and

8.4.5 Be no more than fifty (50') feet in total height, and shall be a break away base system in accordance with IDOT standard 838001 Breakaway Devices or approved equal; and

8.4.6 Not have any part of the Communications Facility installed lower than nine (9) feet above grade level measured from the bottom of the Pole.

8.4.7 Be of a design acceptable to the City, the City shall reserve the right to request pole type upon site selection so the pole can match the light poles within the vicinity of the site.

8.4.8 Be located as such to 1) be no less than fifty (50') feet from any existing pole or structure, 2) meet at least fifty (50%) percent of the Minimum Clear Sight Distance standards in the Minimum Street Standards table in Section II.A. of the City's Standard Specifications for Improvements.

**8.5 Installations on Buildings.** Communications Facilities may be installed under the terms of this Agreement on buildings however said facilities shall not be installed on water towers.

8.6. **Lack of Space.** Unless otherwise provided by law the City reserves the right to refuse to approve or authorize the Site-Specific Permit Application when it determines that space in an available City Way or other property is inadequate to accommodate the Communications Licensee's Communications Facilities. The City, in its sole discretion, may rearrange or replace existing utilities or Communications Facilities to accommodate the Communications Licensee's Communications Facilities at the Communications Licensee's sole cost and expense if the Communications Licensee is willing to do so.

8.7. **Licensee Cooperation.** Communications Licensee shall fully cooperate with the City, its franchisees, or any prior communications licensees occupying the City Way during the installation and operation of its Communications Facilities so as to minimize conflicts, avoid damage, and threats to the public property, health, safety and welfare. The Communications Licensee shall not trim or cut trees, shrubbery or other vegetation without authorization from the City Representative.

8.8. **Removal or Relocation.** Whenever the City deems it necessary to temporarily or permanently remove and/or relocate the Communications Licensee's Communications Facilities in the exercise of its governmental proprietary rights and powers, the City will issue timely notice to the Communications Licensee to permit the Communications Licensee to secure the necessary approvals or authorizations before the removal or relocation must commence. The City reserves the right to require the immediate removal or transfer of the Communications Licensee's Communications Facilities in cases of emergency, as determined by the City.

Within reasonable periods of time established by the City, which shall not be less than sixty (60) days, the Communications Licensee, at its sole cost and expense, shall construct, attach, install, maintain, operate, repair, replace, reattach, reinstall, remove, and relocate the Communications Licensee's Communications Facilities in a safe manner and so as to not physically or electronically interfere with the City's facilities or franchisee's facilities within the City Way. In the event there are mitigating circumstances which prevent the Communications Licensee from meeting the established periods of time, the Communications Licensee may request an extension from the City Representative, which will not be unreasonably withheld. All removal and relocation work shall be performed by the Communications Licensee in a safe and workmanlike manner.

If the removal of a facility exceeds sixty (60) days, and no reasonable alternative site is available, Communications Licensee may terminate the Site-Specific Permit and receive credit for the unused fees prorated for the time in which the facility was temporarily removed.

8.9. **Undergrounding.** Where existing utilities within a City Way are undergrounded, the Communications Licensee shall underground its facilities or shall

have the option to move their facilities to another location pursuant to the same Permit requirements set forth in this Agreement.

8.10. **No proration.** No proration or refund of any permit application fee, license fee, or independent contractor costs will be provided after a review of the Permit application or where the City has commenced a review. Subject to Section 8.8, there shall also be no proration or refund of any use, costs, or fees based upon removal on a permanent basis unless that removal is based solely upon the City's direction to remove with no relocation site providing substantially similar Communications Services being available for the Licensee's Communications Facilities.

8.11. **Ongoing Inspections.** The City shall have the ongoing right to inspect any Site-Specific Location or work related to the Communications Licensee's Communications Facilities as it deems appropriate. The Communications Licensee shall reimburse the City for the cost of up to two inspections per calendar year per Site-Specific Location. Additionally, if as a result of an initial inspection, subsequent inspections are necessary to resolve a problem or issue, the Communications Licensee shall reimburse the City for the cost of any said follow up inspections.

8.12. **Maintenance and Repair of Communications Facility.** Communications Licensee shall keep and maintain all Communications Facilities installed on Public Rights-of-Way in commercially reasonable condition and repair throughout the Term, normal wear and tear and casualty excepted. Communications Licensee shall have the right to conduct testing and maintenance activities, and repair, replace, reattach, reinstall, relocate, and remove damaged or malfunctioning Communications Facilities at any time during the term, as provided herein.

8.13. **Damage of Communications Facility.** Should a Pole with attached Communications Facilities be damaged or fall down, the City shall have no responsibility or liability for any damage to the Communications Facilities that may have occurred. In such an event, the Communications Licensee may request a temporary Site-Specific Permit for a location in the immediate area, which will not be unreasonably withheld, to be effective until the original Pole is re-installed. If said Pole is owned by the City, the City shall reinstall said Pole in a timely manner, however there is no time obligation and the re-installation of the Communications Facilities shall be the responsibility of the Communications Licensee. If said Pole is not owned by the City, the City shall have no obligation to remove or reinstall said Pole, and this should be done by the third party or Communications Licensee at their sole expense. If the damaged Pole is not restored to usable condition within sixty (60) days after the damage, and no reasonable alternative site is available, Communications Licensee may terminate the Site-Specific Permit and receive credit for the unused fees prorated for the time in which the Pole was unusable.

8.14. **Unauthorized Installation Charge.** If the Communications Licensee installs an Unauthorized Communication Site, the Communications Licensee agrees to an Unauthorized Installation Charge payable to the City in the amount listed on the Fee

schedule set forth in **Appendix A** due on the first (1st) day of each month regardless of the amount of time the Unauthorized Communication Site physically remains during that month until removed or permitted. Payment of the penalty shall not authorize the presence of the Unauthorized Communication Site in the specific site without a Site-Specific Permit. No action or inaction by the City with respect to unauthorized use of any City Way or other property shall be deemed to be a ratification of an unauthorized use or waiver of any provision of this Agreement.

**8.15. Location of Communications Licensee's Communications Facilities.**

A granted Site-Specific Permit shall not extend to any pole or conduit to which the attachment and/or installation of the Communications Licensee's Communications Facilities would result in the forfeiture of the rights by the City or the imposition of additional obligations or liabilities upon the City or other joint owners or, other licensees, or franchisees. If the existence of the Communications Licensee's Communications Facilities in or on City Ways would result in a forfeiture, the Licensee at its sole cost and expense shall promptly remove the Communications Licensee's Communications Facilities within sixty (60) days from the date of written notice from the City demanding the removal. If the Communications Licensee's Communications Facilities are not timely removed, the City may at its discretion re-purpose or remove said facility pursuant to Section 10.9 herein.

**8.16. Removal.** Communications Licensee may in its discretion remove its Facilities at its own cost and expense provided that it has given the City Representative notice of the removal, and posted a Restoration LOC pursuant to Section 10.9 herein.

**9.0 Indemnity, Waiver, Risk of Loss.**

**9.1. Communications Licensee Indemnification.** The Communications Licensee agrees to defend, indemnify and hold the City and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Communications Licensee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its Communications Facilities or occupancy of the ROW, and in providing or offering service over the Communications Facilities, whether such acts or omissions are authorized, allowed or prohibited by this Agreement or by a franchise, license, or similar agreement; provided, however, that the Communications Licensee's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the willful misconduct by the City.

**9.2. Waiver.** The waiver by a party of any breach or default or violation of any provision, by any other party, shall not be deemed to be a waiver or continuing waiver

by that party of any subsequent breach or default or violation of the same or any other provision.

9.3. **Risk of Loss.** The Communications Licensee shall assume all responsibility for promptly reimbursing the City, or its franchisees, for any of their losses or expenses associated with damages caused directly or indirectly by the Communications Licensee, its employees, agents and/or contractors or subcontractors in the City Way, including without limitation to any poles or conduits, sewers, gas, water, electric lines, fiber or cable communication lines, caused by the installation, presence, operation, maintenance or repair of the Communications Licensee's Communications Facilities. The Communications Licensee shall provide immediate notification to the affected party upon the occurrence of any such damage.

9.4. **Limitation.** Notwithstanding the foregoing, neither party shall have any liability to the other under this Agreement or otherwise for special, punitive or consequential damages, including without limitation, damages for lost profits or business interruption.

#### 10.0. **Insurance Requirements and Securities.**

10.1. The Communications Licensee's financial integrity is of interest to the City; therefore, the Communications Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the Communications Licensee's sole expense, insurance coverage, which will satisfactorily insure the Communications Licensee and, where appropriate, the City against claims and liabilities which may arise out of the use of the license area. Such insurance shall be issued by companies licensed to do business in the State of Illinois, with an A.M. Best's rating of no less than A-VII, and subject to the approval by the City, not to be unreasonably withheld or delayed. Such insurance shall be in the types and for an amount not less than those listed in **Appendix B.**

10.1.1. The liability insurance policies required by this section shall be maintained by the Communications Licensee throughout the terms of the Agreement, and such other period of time during which the Communications Licensee is operating without a license hereunder, or is engaged in the removal of its Communications Facilities. Each such certificate of insurance and insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until thirty (30) days after receipt by the City of a written notice addressed to the City Representative of such intent to cancel or not to renew."

10.1.2. In no event later than thirty (30) days prior to such cancellation, the Communications Licensee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.

10.1.3. Following the expiry of the initial term of this Agreement, the City Corporation Counsel, or City Risk Manager, may require an increase in the minimum insurance coverage required by this section based on prevailing market trends. Communications Licensee agrees to provide the additional coverage within sixty (60) days of the City's written request.

**10.2. Additional Insurance Requirements.** Prior to the commencement of any work under this Agreement, the Communications Licensee shall furnish copies of all required certificate(s) of insurance consistent with the foregoing to the City Representative. The City shall have no duty to perform under this Agreement until such certificate has been received and approved by the City. Claims-made policies are not acceptable. If a general contractor is posting the insurance, as co-insureds, excluding the workmen's compensation coverage, the policies of insurance shall name the City and the Communications Licensee. Neither the Communications Licensee, or its contractor or sub-contractor, shall enter any City Way until evidence of all required insurance has been received and approved by the City.

**10.3. Primary Insurance.** Communications Licensee's required insurance shall be primary with respect to any other valid or collectible insurance that the City may possess, including any City self-insured retentions and any insurance that the City does possess shall not be required to contribute to the Communications Licensee's insurance.

**10.4. Occurrence-Based Insurance.** All insurance policies shall be occurrence based. Any insurance provider of the Communications Licensee shall be admitted and authorized to do business in the State of Illinois and shall be rated at least A-: VII in Best's Key Rating Guide. Insurance certificates issued by non-admitted insurance companies do not qualify. If occurrence based coverage is not available from a carrier admitted to do business in Illinois a non-admitted carrier may be acceptable subject to the reasonable approval of the City's Corporation Counsel or Risk Manager.

**10.5. Retention of Deductibles.** Any and all self-insured retention or deductibles shall be stated on certificates of insurance provided to the City.

**10.6. Breach.** In the event that the Communications Licensee, or its contractor, breaches any provision contained in this Section 10, the City may immediately terminate this Agreement or a Site-Specific Permit, as the City determines in its discretion, by serving written notice as provided for in Section 14.17 herein. In this circumstance, all work at all Site-Specific Locations, except protection for property and persons, shall stop until the Communications Licensee's insurance obligations are in conformance with this Section 10.

**10.7 Right to Review.** City reserves the right to review the insurance requirements of this Section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when reasonably determined necessary by the City based upon changes in statutory law, court decisions, or City policy.

**10.8 Letter of Credit Security.** Prior to the commencement of any work under this Agreement, the Communications Licensee shall post a Restoration LOC and a Removal LOC for each Site-Specific Location in an amount not less than the amount listed on the Fee schedule set forth in **Appendix A**. Upon completion of the associated work and upon satisfactory restoration or repair of all affected areas as accepted by the City Representative, said Restoration LOC shall be reduced to twenty percent (20%) of the original value for a one (1) year maintenance period. Said Removal LOC obligations shall be combined into one Letter of Credit for all existing Communications Facilities and shall have a five (5) year expiration date and shall only be reduced or returned to the Communications Licensee upon the removal of the associated Communications Facilities.

**10.9. Failure to Restore or Remove.** The City may, only in accordance with the terms of this Agreement, and at the Communications Licensee's sole cost and expense, remove Communications Facilities or cause their removal without liability on the part of the City, and the Communications Licensee shall pay the City, upon demand, the City's actual and reasonable cost of removal and for any other losses or damages incurred by the City by such undertaking. This obligation shall survive termination or expiration of this Agreement.

**10.9.1** In the event that the Communications Licensee fails properly restore the area or repair any damage caused to areas within or outside the boundaries of the City Way within thirty (30) days of the date of the written notice from the City demanding the restoration or repair, the City shall have the right to take such action as it deems necessary to perform the restoration work or repair the damage including the authority to engage the services of an independent contractor and to utilize the Restoration LOC deposited with the City.

If the costs and expenses incurred by the City in performing the restoration are less than the amount of the Restoration LOC, the balance, minus a twenty percent (20%) administrative fee, will be promptly returned to the Communications Licensee. If the costs and expenses incurred by the City in performing the restoration or repair work, plus a twenty percent (20%) administrative fee, exceeds the amount of the Restoration LOC deposited with the City the Communications Licensee shall be responsible for reimbursing the City for the additional costs and expenses in excess of the amount deposited within thirty (30) days of the City's written request.

**10.9.2** In the event that the Communications Licensee fails to remove a Communications Facilities within sixty (60) days from the date of written notice from the City demanding the removal, the City shall have the right to take such action as it deems necessary to remove the Communications Facilities, including the authority to

engage the services of an independent contractor and to utilize the Removal LOC deposited with the City. Failure of the Communications Licensee to remove a Communications Facilities within sixty (60) days of from the date of written notice from the City demanding the removal shall be a material breach of this Agreement.

10.9.3 If the City removes the Communications Licensee's Communications Facilities in accordance with this Agreement, the City shall have no obligation to protect, store, recycle, or otherwise conserve the removed facilities. The City shall have no obligation to pay or reimburse the Communications Licensee for any Communications Licensee Facility removed by the City. Any monies secured by the City as a result of repurposing all or part of the Communications Facility may be applied by the City to its general fund.

If the costs and expenses incurred by the City in performing the removal are less than the amount of the Removal LOC deposited by the City, the City shall have no obligation to return the balance to the Communications Licensee pursuant to Section 3.4 of this Agreement. If the costs and expenses incurred by the City in performing the removal, plus a twenty percent (20%) administrative fee, exceeds the amount of the Restoration LOC deposited with the City the Communications Licensee shall be responsible for reimbursing the City for the additional costs and expenses in excess of the amount deposited within thirty (30) days of the City's written request.

#### **11.0. Emergency Contacts.**

11.1. **Coordination of Emergency Events.** In case of an emergency due to interference, failure of traffic light signal system, or any unforeseen events, the City will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. The City will make every reasonable effort to coordinate its emergency response with the Communications Licensee. To that end, the City will use the emergency contact listed in Section 14.17 herein.

11.2 **Licensee's Duty to Maintain Current Emergency Contacts.** Communications Licensee will maintain the emergency contact information current at all times with the City Representative.

11.3 **Licensee's Response to Network Emergency.** In case of a network emergency, Communications Licensee may access its Communications Facility without first obtaining a ROW Permit provided Communications Licensee has conducted network trouble-shooting and diagnostic tests and has reasonably identified the point or points of network failure or malfunction. While acting under this provision to address a network emergency, Communications Licensee shall conduct its activities within the Rights-of-Way in such a manner as to protect public and private property, and the health and safety of the public at large. Communications Licensee will make every reasonable effort to coordinate its emergency response with the City. To that end, prior to entering the Rights-of-Way, Communications Licensee will contact the City

Representative and give written notice to the City of the network emergency and an estimated time period to address the situation.

**12.0. Representations and Warranties.**

**12.1. Representations and Warranties of the Parties.** As of the effective date, each Party represents and warrants to the other Party that:

- 12.1.1. It is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;
- 12.1.2. The execution, delivery, and performance of this Agreement and its exhibits are within its powers, have been duly authorized by all legally necessary actions, and do not violate any of its governing documents, any contracts with any joint owners to which it is a party, or any Law;
- 12.1.3. This Agreement and its exhibits and any other document executed and/or delivered in accordance with this Agreement constitute a legally valid and binding obligation, enforceable against it in accordance with its covenants, terms, conditions, and provisions;
- 12.1.4. It has not filed and it is not now contemplating the filing for bankruptcy protection and, to its knowledge, no action is threatened against it which would result in it being or becoming bankrupt;
- 12.1.5. There is not, to its knowledge, pending or threatened against it or any of its affiliates, any legal or administrative proceedings that could materially and adversely affect its ability to perform its obligations under this Agreement; and
- 12.1.6. No “event of default” or potential “event of default” with respect to it has occurred or is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

**12.2 Representations and Warranties of the Communications Licensee.**  
The Communications Licensee represents and warrants to the City that:

- 12.2.1. The Communications Licensee has all approvals, authorizations, certifications, licenses, and franchises required by the State of Illinois, the FCC and/or any other agency to provide the Communications Service; and
- 12.2.2. The Communications Licensee is not aware of any facts or circumstances that would call into doubt the continuing validity of any such approvals, authorizations, certifications, licenses, or franchises; and
- 12.2.3. There is not pending or, to the Communications Licensee’s knowledge, threatened against the Communications Licensee or its parent corporation or any of its subsidiaries or affiliates, any legal or administrative proceedings that could materially and adversely affect the validity of such licenses, authorizations, or franchises; and

12.2.4. All Work to be performed by the Communications Licensee pursuant to this Agreement will be (i) performed in a good and workmanlike manner, consistent with any Permit specifications, manufacturer's specifications, prevailing industry standards, applicable Laws, and the provisions of this Agreement, and (ii) that it will be free from defects.

13.0. **Miscellaneous Provisions.**

13.1. **No Bar to Other Relief.** Nothing contained in this Agreement will prevent or otherwise restrict either Party from pursuing its rights at law or in equity, including injunctive relief and specific performance, in the event of a default and a material breach by the other Party.

13.2. **Immediate Relief.** Except for challenges to the validity of this Agreement or portions hereof which are specifically waived and released, nothing in this Agreement shall be deemed or construed to prohibit a Party from obtaining judicial, regulatory, or other relief necessary in order to preserve the status quo or prevent the loss or violation of that Party's rights.

13.3. **Amendments.** This Agreement may not be amended except pursuant to a written instrument signed by the Parties.

13.4. **Assignment.** This Agreement is personal to only the Communications Licensee and no other Entity. The Communications Licensee may not directly or indirectly assign, transfer, or convey to another Entity this Agreement, or any of the rights and obligations of the Communications Licensee established by this Agreement without written approval of the City. Any assignment or transfer of this Agreement shall be void, and the City may terminate this Agreement if the Communications Licensee attempts to assign or transfer this Agreement without compliance hereof. The preceding sentences of this Section 14.2 notwithstanding, the Communications Licensee may assign or transfer this Agreement to its parent corporation or any subsidiary corporation or affiliate or successor in interest, provided that such parent corporation, subsidiary corporation, affiliate, or successor in interest first agrees, in writing, to be fully bound by this Agreement and the exhibits and to assume all of the Communications Licensee's obligations and liabilities hereunder, whether arising before or after the date of such assignment or transfer. The City Representative shall be notified of assignment or transfer.

13.5. **Attorneys' Fees.** If there is litigation under this Agreement, the prevailing party will be entitled to reimbursement of its own costs and expenses by the other party, including without limitation reasonable attorneys' and expert witness fees.

13.6. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

13.7. **Exhibits.** As of the effective date, all exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to and duly executed amendments to this Agreement, are by such reference incorporated in this Agreement and shall be deemed a part hereof as if fully set forth herein.

13.8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to its conflict of laws rules or principles.

13.9. **Headings.** The headings hereof are inserted for convenience of reference only, are not a part hereof, and shall have no effect on the construction or interpretation hereof.

13.10. **Independent Contractor.** Each Party to this Agreement acts as an independent contractor and not as an employee of the other Party. Nothing in this Agreement shall be construed to establish a partnership, joint venture, group, pool, syndicate, or agency relationship between the City and the Communications Licensee.

13.11. **Resolving Conflicting Provisions.** To the extent the provisions and any other authorizations and approvals required to be obtained by the Communications Licensee from the City are in conflict, the provisions of the Agreement, authorizations and approvals which impose(s) the higher or greater legal duty or obligation upon the Communications Licensee shall take precedence.

13.12 **Rules of Construction.** Each Party and its counsel have reviewed this Agreement. Accordingly, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the construction and interpretation hereof.

13.13. **Severability.** Except as to Section 4.2.1, if a court of competent jurisdiction finds or rules that a provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect. If, however, Section 4.2.1 is found void or unenforceable, this entire Agreement shall be rendered void except for except as to the indemnification and hold harmless provisions which shall survive until all statutes of limitations and repose applicable to a casualty occurring during the license term have expired.

13.14. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assignees of the Parties and approved successors.

13.15. **Time of Action.** For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any day observed as

an official holiday by the City, the time for performance shall be extended to the following Business Day.

**13.16. Jurisdiction and Venue.** Exclusive jurisdiction and venue for any and all disputes related in any manner to this Agreement, regardless of their basis or nature, shall be in the Sixteenth Judicial Circuit Court, Kane County, Illinois.

**13.17. No Recording.** Communications Licensee shall not record this Agreement or any other document referred to herein without the written consent of the Corporation Counsel of Aurora.

**13.18. Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, warranties, agreements, or understandings (whether oral or written) between the Parties relating to the subject matter hereof which are not fully expressed herein.

**13.19. Notices.** All notices which shall or may be given pursuant to this Agreement shall be given, in writing, and shall be deemed validly given if delivered or sent by certified mail, return receipt requested, or by commercial courier, provided the commercial courier's regular business is delivery service, and addressed, as follows:

CITY: Mayor  
City of Aurora  
44 East Downer Place  
Aurora, Illinois 60507

Copy to: City of Aurora Corporation Counsel  
44 East Downer Place  
Aurora, Illinois 60507

24/7 EMERGENCY CONTACT: Phone Number

Any notice to be sent to the Mayor or Corporation Counsel shall be sent to the same address referred to above.

Communications Licensee:  
Ebenezer Antony  
Vigilant Global LLC  
540 West Madison Street, Suite 2500  
Chicago, IL 60661  
eantony@vigilantglobal.com

24/7 EMERGENCY CONTACT: 514-320-2054

**14.20. No Waiver.** A waiver by the City of any breach of one or more of the terms of this Agreement shall not constitute a waiver of any subsequent or other breach

of the same or other term, nor shall the failure on the part of the City to require exact, full, and complete compliance with the terms contained herein be construed as changing the terms of this Agreement or as stopping the City from enforcing full compliance with the provisions herein. No delay, failure, or omission of the City to exercise any right, power, privilege, or option arising from any breach shall impair any right, power, privilege, or option, or be construed as a waiver or acquiescence of such breach or as a relinquishment of any right. No right, power, privilege, or option of the City shall be construed as being exhausted by the exercise thereof in one or more of the instances. The rights, powers, privileges, and options given to the City under this Agreement and by law shall be cumulative.

14.0. **Execution.**

14.1. This Agreement may be executed in Counterparts.

\_\_\_\_\_  
Communications Licensee

\_\_\_\_\_  
Date

\_\_\_\_\_  
City of Aurora

\_\_\_\_\_  
Date

**Appendix A**  
**Fee schedule**

**Application Fee:** The Application Fee per Site-Specific Permit Application shall be \$200.00

**Annual License Fee:** The Annual License Fee per Site-Specific Location shall be as provided in the following table depending on the type of Communications Facility there at:

<b>Type of Site-Specific Location:</b>	<b>Annual License Fee per location:</b>
Wireless Communication Equipment (or Wireless Backhaul Equipment) on a pole owned by City	\$250.00 per month
Wireless Communication Equipment (or Wireless Backhaul Equipment) on a pole owned by a third party.	\$150.00 per month*
Wireless Communication Equipment (or Wireless Backhaul Equipment) on a pole owned by Communications Licensee.	\$300.00 per month*
Landline Backhaul Equipment	The City's standard underground utility rate

**\*SMTT Exemption.** Any Entity occupying a City Way or other property with Communications Facilities shall not pay Annual License Fees to the City for Site-Specific Permits, so long as the Entity is a retailer of Communications Services paying, for the benefit of the City, the SMTT tax. If the Communications Licensee becomes a retailer of communications services in the City by transmitting, supplying, or furnishing communications, including without limitation internet services, data services, local telephone services, or long distance services, as contemplated under the SMTT, the Communications Licensee shall provide written proof thereof to the City and as soon as practicable thereafter commence collection of the taxes provided for under that Act and any other taxes that it may be required by law to collect.

**Letter of Credit Amounts:** The Letter of Credit per Communication Site shall be as provided in the following table depending on the type of Communications Facility thereat:

<b>Type of Communications Facility:</b>	<b>Amount</b>
Restoration LOC	an amount deemed reasonable by the City Representative to guarantee restoration of the City's property upon completion of the Lessees work
Removal LOC City owned facility	an amount deemed reasonable by the City Representative to guarantee restoration of the City's property upon completion of the Lessees work
Removal LOC Third party	an amount deemed reasonable by the City Representative to guarantee restoration of the City's property upon completion of the Lessees work

**Unauthorized Installation Charge:** The penalty shall be between \$1,000 and \$20,000 per day.

**Out-of-Pocket Costs:** up to an aggregate amount per Site-Specific Permit in the amount indicated below. Any costs exceeding such aggregate amount must be approved in writing by Communications Licensee.

<b>Type of Site-Specific Location:</b>	<b>Amount:</b>
Wireless Communication Equipment (or Wireless Backhaul Equipment) on a pole owned by City	\$5,000.00
Wireless Communication Equipment (or Wireless Backhaul Equipment) on a pole owned by a third party.	\$2,000.00
Wireless Communication Equipment (or Wireless Backhaul Equipment) on a pole owned by Communications Licensee.	\$10,000.00

**Appendix B**  
**Insurance Requirements**

The insurance coverage, in addition to the requirements of Section 42-307 of the City of Aurora Code of Ordinances, shall include the following:

- (A) Commercial general liability insurance with limits not less than:
  - (1) \$5,000,000.00 for bodily injury or death to each Entity;
  - (2) \$5,000,000.00 for property damage resulting from any one accident; and
  - (3) \$5,000,000.00 for all other types of liability.
- (B) Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 for each Entity and \$3,000,000.00 for each accident.
- (C) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$500,000.00.
- (D) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.00.