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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 _____ ("Licensee"). City and 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, Section 19-69 of the City of Aurora Code of Ordinances, provides that certain communications facilities shall be considered permitted uses provided a license agreement 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 license agreement for facilities mounted on poles on private property, and communications uses in public ways or on other City 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 Licensee is requesting a license to 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 License, the 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 License Agreement.

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

“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.

“Effective Date” means the date this Agreement is approved by Aurora's City Council.

“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 Licensee, now or hereafter in effect, during the term of this Agreement.

“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 Licensee where the City does not have any light fixtures attached and therefore the 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 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 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.

“**Site-Specific Permit Application**” means the application for a permit for 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 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 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, private property owned by the Licensee in the City, 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 (~~twenty (20)~~ years (“initial term”) commencing on the Effective Date, unless it is earlier terminated in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, the extension term(s) of this Agreement shall be up to one five (5) years ~~two ten (10) year extensions~~ (“extension term”) automatically commencing on the expiration of the initial term or extension term, as may be extended from time to time, provided that:

- 3.1.1. The Licensee ~~gives the City~~ has not provided written notice of its intent to ~~extend~~ terminate the Agreement no less than ~~sixty (60)~~ one hundred and eighty (180) days prior to the expiration of the initial term; and
- 3.1.2. The 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 or Licensee has not otherwise terminated this Agreement in accordance with its provisions.

3.2. Reserved **New Agreement/Holdover.** ~~A Licensee may enter into a new License Agreement with the City no later than six (6) months before the expiration of the~~

Commented [C1]: Staff does not agree to this change, the City Code covers this and adding more provision could be contradictory.

Commented [C2]: Staff agrees to this change

Commented [C3]: Staff does not agree to this change. It is standard in an agreement that both parties have to agree to renew. In this case, the Agreement will automatically renew, however the City should have the same ability to not renew an agreement. The amount of time seems unnecessarily and prohibitively long.

~~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 Licensee fails to comply with Section 3.3, the 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 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.~~

Commented [C4]: Staff agrees to this change

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 Licensee, at its option, shall either:

- 3.3.1 Remove the Licensee's Communications Facilities at its sole cost and expense within sixty (60) days from the expiration date, otherwise, if the Communications Facility is located on the City Way, the City may at its discretion remove said facility pursuant to Section 10.8 herein; or
- 3.3.2 Without cost or charge to the City abandon the 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, if the Communications Facility is located on the City Way, the City may at its discretion remove said facility pursuant to Section 10.8 herein; or
- 3.3.3 Sell the 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.

Commented [C5]: Staff does not recommend this change. The only time the City would have to remove Communication Facilities is if the Property Owner has breached the Agreement and has not removed the Equipment themselves. If the City has to go to the lengths to remove inoperable or illegal Equipment, it should be able to repurpose the Equipment.

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 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 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 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 a reasonable period of time; or 2) Any agency exercising jurisdiction over the Licensee has by final order that is no longer subject to appeal, terminated or otherwise revoked the Licensee's approval, authorization, certification or license to provide the Communications services or Facilities; or 3) In the event the Licensee installs or causes to be installed an Unauthorized Communication Site or the 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 of the Lessee to operate a Wireless or Pole Mounted Communications Facilities within the City of Aurora will immediately terminate. If the Licensee has failed within sixty (60) days from the Effective Date of termination for cause to remove or cause removal of the Licensee's Communications Facilities, the City may at its discretion remove said facility pursuant to Section 10.8 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 Licensee and, the Licensee accepts from the City a non-exclusive license to submit Site-Specific Permit Applications to install, and upon installation pursuant to a valid Site-Specific Permit to operate, maintain, repair, remove, reattach, reinstall, relocate, and replace Licensee's Communications Facilities pursuant to said permit. All rights and obligations of the Licensee under this Agreement shall be exercised by the Licensee at its sole cost and expense unless otherwise agreed to in writing by the parties.

4.1.1. **Site-Specific Permit.** The Licensee, as condition precedent to its right to access, use, install, attach, operate, maintain, repair, replace, reattach, reinstall, relocate, and remove any of the Licensee's Communications Facilities, 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 pursuant to Chapter 19 of the City of Aurora Code of Ordinances.

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.

4.1.3. **Compliance with Laws.** The installation and maintenance of any Communications Facilities shall comply with all Laws.

4.1.4. **License Only.** Nothing in this Agreement or in a Site-Specific Permit shall be deemed to grant, convey, create, or vest in the Licensee a property right or perpetual interest in land or in the City Ways 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 Licensee shall, twenty-four (24) hours after such determination, result in the Licensee's forfeiture of any and all rights under this Agreement or any Site-Specific Permit. For the avoidance of doubt, this does not apply to easements granted by the City in connection with this Agreement to allow access to utilities or facilities in the public right of way. For the avoidance of doubt, this does not apply to easements granted by the City in connection with this Agreement to allow access to utilities or facilities in the public right of way.

4.1.5. **No Warranty.** Neither the City, nor any existing easement holder, franchisee, nor any other Licensee shall be liable to the 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 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. **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. **Authorized Use.** The Licensee shall use 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.

4.4. **Control of Facilities.** Licensee's customers may own the equipment installed in the Communications Facilities, but in no event shall Licensee allow any other Entity to control the Licensee's Communications Facilities or any portion thereof for any purpose not directly related to the Licensee's provision of Communications Services. 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 Licensee.

4.5. **Condition of Premises.** The Licensee shall be responsible for repairing any damage to the City Way, or City Facilities that is disturbed or damaged as a result

Commented [C6]: Staff does not agree to this change as it goes too far. As with all other utilities or uses within the public right-of-way, the Permit grants the right to use the public right-of-way. Granting a specific easement is too broad and not given to any other requestor.

of, the installation, construction, reconstruction, repair, replacement, relocation, operation or maintenance of the Communications Facilities.

5.0. Other Rights and Obligations of Licensee.

5.1. **General.** During the term of this Agreement, should Licensee wish to materially modify the form, fit, or function of any Communications Facility, Licensee may request, in writing, the City's approval and authorization to add, attach, install, move, ~~repair, replace,~~ or otherwise materially alter or change the 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.

Commented [C7]: Staff does not recommend this change. Staff is agreeable to the replacement or repairs of like-for-like equipment. However, the term "materially" goes broader than just like-for-like equipment.

5.2. **Due Care.** 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 Licensee intends to attach and/or install Licensee's Communications Facilities. Any damage which is caused by the Licensee shall be reported to the City's emergency contact listed in Section 13.19 herein and in writing to the affected Party within forty-eight (48) hours of the damage. Licensee shall reimburse the other Party upon demand for any damage caused by its employees, contractors, subcontractors, agents or representatives. The Licensee shall be fully liable for the acts or omissions of its subcontractors, agents and employees.

5.3. **Identification of Facilities.** 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 Licensee's name, number, color, identification, code, size, and manufacture of Licensee's Communications Facilities. Licensee shall consult with the City Representative to make certain that such identification tags are specific to the Licensee so as not to be confused with other Entities lawfully within the area of Licensee's Communications Facilities. 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. **Graffiti Abatement.** As soon as practical, but not later than twenty-one (21) days from the date Licensee receives notice thereof, Licensee shall remove all graffiti on any of the Licensee's Communications Facilities. The foregoing shall not relieve the 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 Licensee's activities subject to this Agreement shall be reimbursed to the City by the 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 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. Licensee may then, at its discretion, accept the revised Fee schedule or terminate the use of any or all Site-Specific Locations whereby the Licensee shall remove Licensee's Communications Facilities from said Site-Specific Location(s) within the timeframe specified in Section 3.3.1. Licensee's failure to remove within the time required will authorize the City at its discretion to remove said facility pursuant to Section 10.8 herein.

6.4. **Timing of Annual License Fee Payments.** Upon the final inspection of a Site-Specific Permit the Licensee shall pay the Annual License Fee for the balance of that calendar year for that Site-Specific Location. Annual License Fees, for all Site-Specific Locations, shall thereafter be due and payable by the Licensee on January 1st of each year. 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.** 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. 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 Licensee shall remove Licensee's Communications Facilities within the timeframe specified in Section 3.3.1. Licensee's failure to remove within the time required will authorize the City at its discretion to remove said facility pursuant to Section 10.8 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 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 Licensee. Thereafter no more than four (4) Site-Specific Permit Applications may be filed by the 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 Licensee. Thereafter no more than two (2) Site-Specific Permit Applications may be filed by the Licensee within any sixty (60) day period, unless said restriction is waived in writing by the City Representative.

7.2. **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.

7.2.1. 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 Licensee regarding a Site-Specific Permit Application, the 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 Licensee responds to the City Representative's review comments. If the 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 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.

7.2.2. If the Permit is granted or denied, the City Representative shall require reimbursement to the City by the 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.

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

7.4. **Site-Specific Permit Issuance in Non-City Ways.** The approval of the Site-Specific Permit Application requesting to attach to an existing pole, or to install a new pole shall authorize Licensee to proceed to obtain all generally applicable, ministerial permits. Licensee shall comply with the requirements of the City's regulations including those found in 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. Licensee shall pay all Permit fees, if required. Approval of a Site-Specific Permit Application related to the use of a pole owned by a third-party, shall authorize 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.

7.5. **Site-Specific Permit Issuance in City Ways.** The approval of the Site-Specific Permit Application requesting to attach to a City pole, or to install a new pole in a City Way shall authorize 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"). 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. 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 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, 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 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.

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

8.1. **Provision of Communication Service.** This Agreement shall include new types of Communications Facilities that may evolve or be adopted using wireless technologies. 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. For Site-Specific Locations in the City Ways said locations may be used by Licensee, seven (7) days a week, twenty-four (24) hours a day, only for the installation, construction, use, maintenance, operation, repair, reinstallation, reattachment, modification, replacement, removal and upgrade of Communications Facilities approved by a Site-Specific Permit by Licensee from time to time for Communication Services and not for any other purpose whatsoever.

8.2. **Ongoing Inspections.** The City shall have the ongoing right to inspect any Site-Specific Location or work related to the Licensee's Communications Facilities as it deems appropriate. The 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 Licensee shall reimburse the City for the cost of any said follow up inspections.

8.3. **Unauthorized Installation Charge.** If the Licensee installs an Unauthorized Communication Site, the 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.

8.4. **Location of 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 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 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 Licensee's Communications Facilities within sixty (60) days from the date of written notice from the City demanding the removal. If the Licensee's Communications Facilities are not timely removed, the City may at its discretion remove said facility pursuant to Section 10.8 herein.

8.5. **Removal.** Licensee may in its discretion remove its Communications Facilities at its own cost and expense provided that it has given the City Representative notice of the removal and has been issued any necessary permits to do so.

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

9.1. **Licensee Indemnification.** The 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 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 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 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 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 Licensee's Communications Facilities. The 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 Licensee's financial integrity is of interest to the City; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the Licensee's sole expense, insurance coverage, which will satisfactorily insure the 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 Licensee throughout the terms of the Agreement, and such other period of time during which the 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 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. 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 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 Licensee. Neither the 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.** 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 Licensee’s insurance.

10.4. **Occurrence-Based Insurance.** All insurance policies shall be occurrence based. Any insurance provider of the 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 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 be suspended until the 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. As soon as practicable, the City will notify Licensee of any such modification.

10.8. **Failure to Restore or Remove.** The City may, in accordance with Chapter 19 and Chapter 42 of the City Code and the terms of this Agreement, at the Licensee's sole cost and expense, remove Communications Facilities or cause their removal without liability on the part of the City, and the 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.

11.0. **Emergency Contacts.**

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

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 Licensee.** The Licensee represents and warrants to the City that:

- 12.2.1. The 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 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 Licensee’s knowledge, threatened against the 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 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 Licensee and no other Entity. The Licensee may not directly or indirectly assign, transfer, or convey to another Entity this Agreement, or any of the rights and obligations of the 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 Licensee attempts to assign or transfer this Agreement without compliance hereof.

13.4.1. The preceding sentences of this Section notwithstanding, the 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 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.

13.4.2. ~~The preceding sentences of this Section notwithstanding~~ **Notwithstanding the foregoing**, if Licensee sells or otherwise transfers all or substantially all of its assets, then, upon the provision of written ~~approval from~~ **notice to** the City, ~~which will not be unreasonably withheld~~, Licensee may assign or otherwise transfer this Agreement and the rights and obligations hereunder without the approval of the City so long as the transferee is not statutorily unfit to hold such a license. For the avoidance of doubt, if Licensee owns the underlying land at any site specific location, the mere sale or other transfer of the land shall not affect this License.

13.5. **Sublicensing.** The parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Communications Facilities deployed by Licensee in the rights-of-way pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Communications Facilities shall be treated as Licensee's facilities for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such facilities, (ii) the City's sole point of contact regarding such facilities shall be Licensee, and (iii) Licensee shall remain responsible and liable for the removal and relocation of such facilities per the Agreement. Licensee shall not grant such Carriers rights of access to such facilities. The City acknowledges that Licensee may include third party-owned equipment in its initial installation of Communications Facilities and that such inclusion shall not be considered a sublicense to a third party subject to the provisions of this section.

Commented [C8]: Staff is agreeable to this change, with the provision that the Licensee shall provide notice of the transfer and obtain City approval, which will not be unreasonably withheld.

13.6. **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.

13.7. **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.

13.8. **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.

13.9. **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.

13.10. **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.

13.11. **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 Licensee.

13.12. **Resolving Conflicting Provisions.** To the extent the provisions and any other authorizations and approvals required to be obtained by the 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 Licensee shall take precedence.

13.13. **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.

13.14. **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.

13.15. **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.

13.16. **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.

13.17. **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.

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

13.19. **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.

13.20. **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.

Licensee:
Name

Company
Address
City, State Zip

Copy to: Name
Company
Address
City, State Zip

24/7 EMERGENCY CONTACT: Phone Number

13.21. **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.

Licensee Date

City of Aurora Date

Appendix A
Fee schedule

Application Fee: The Application Fee per Site-Specific Permit Application shall be as prescribed in the currently effective city ordinance governing building permit fees.

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:

Type of Site-Specific Location:	Annual License Fee per location:
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 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 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 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.

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 Licensee.

Type of Site-Specific Location:	Amount:
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 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.