



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** September 3, 2020

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding a Master License Agreement ("MLA") template, and authorization for the Mayor to enter into Master License Agreements, between Carson City and wireless providers for the placement and operation of small cell wireless equipment on City-owned and third-party poles and street lights located within the City right-of-way, including an application fee of \$1,400.00 per installation and an annual attachment fee of up to \$1,036.00 per installation. (Darren Schulz, Dschulz@carson.org and Dan Stucky, DStucky@carson.org)

Staff Summary: In conjunction with a proposed ordinance governing the installation of small cellular wireless equipment in Carson City and the "Carson City Public Works Placement of Small Cell Wireless Equipment in Carson City Right-of-Way" policy ("Policy"), Carson City has developed a MLA to govern installation of small cell wireless equipment on poles and street lights located in the City right-of-way. The MLA contains the terms including, but not limited to, licensing of the City's right-of-way, fees, permits, design, installation, alteration and maintenance of the small cell equipment. The MLA builds on the ordinance and Policy to establish a comprehensive licensing scheme for the installation of small cell equipment. The fees in the MLA include a building permit application fee of \$1,400.00 per installation, and an annual attachment fee per installation in an amount up to \$1,036.00.

Agenda Action: Formal Action / Motion **Time Requested:** 10 minutes

Proposed Motion

I move to approve the proposed MLA template, and authorize the Mayor to enter into Master Licensing Agreements with the wireless providers using this template and to correct any clerical errors.

Board's Strategic Goal

Economic Development

Previous Action

April 4, 2019 - Board of Supervisors approved the adoption of the Policy to implement aesthetic requirements and procedures for small cell wireless equipment on poles and street lights located in the City right-of-way and to give limited authorization to the Director of Public Works or his or her designee to update the Policy.

Background/Issues & Analysis

Over the last two years, the City has been working with small cell wireless equipment providers in good faith to develop policies, procedures, and agreements which will govern installation of small cell wireless equipment on poles and street lights located in the City right-of-way. City staff has held four workshops with small cell providers to develop City aesthetic and technical standards, application and permit processes, annual fees, and license agreements setting the terms and conditions for use of the rights-of-way and City infrastructure.

On April 4, 2019, the Policy was presented to the Board of Supervisors and approved with modifications. Since this time, staff has continued to develop the Master Licensing Agreement template, which will address application review and annual use fees for the process and further govern the City's relationship with the wireless providers. Staff has also prepared an ordinance regarding the licensing scheme and an associated business impact statement, and proposed amendments to the Policy to clarify that the Policy conforms to federal law, to clarify the process and procedures for a application for a building permit to install small cell equipment, and to establish fees for the application process and the placement of small cell wireless equipment within City-owned rights-of-way. The Policy, ordinance, and business impact statement are presented as separate items.

The MLA defines the responsibilities of both parties and reinforces the City's position for maintaining acceptable aesthetic standards, as well as design standards that will ensure installations meet engineering, ADA accessibility, and safety requirements. The MLA provides for a \$1,400.00 building permit fee which includes estimates of staff time and associated costs to adequately review the proposed small cell wireless site applications. A one-time permit extension fee in the amount of \$500 is also included. The proposed fees (1) are consistent with the fees proposed by neighboring regional municipalities; (2) use sound methodology to estimate the required cost burden by the City to adequately review applications; (3) are non-discriminatory; and (4) are reasonable in cost. This fee structure has been communicated openly in good faith with small cell wireless providers at multiple working group meetings. No objections were noted during the initial in-person meetings, but the providers have asked for the justification of the cost above the FCC Order's presumptive cost (\$100 per facility), which has been provided. The City Engineer's memorandum setting forth the estimated cost is also attached.

Additionally, the MLA includes an annual fee for use and occupancy of City-owned right-of-way in an amount up to \$1,036.00, consisting of a \$270 ROW use fee, a \$75 electric meter fee, and a \$691 electricity fee. The \$270 ROW use fee is established as permitted under federal law for the use of the City's ROW. The electric meter fee and the \$691 electricity fee are meant to cover the City's actual electrical expenses if small cell equipment is hooked up to the City's circuits, and will not be charged if the small cell equipment does not use City electricity. The attachment fee may be revised once per year to an amount that is permitted under the FCC's regulations and orders, or other applicable law.

Each small cell wireless provider will be required to have a MLA in place prior to submitting for a building permit. Each small cell wireless equipment site will be covered by a Site Supplement Agreement or Third-Party Site Supplement which is subject to the same terms and conditions of the MLA but will be subject to approval by the City Engineer.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 244.320; Carson City Policy - Placement of Small Cell Wireless Equipment in Carson City Right-of-Way; FCC Orders and Regulations - Order on September 27, 2018 and Order Denying Stay on December 10, 2018

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Building Permits Fund: Building Permit Fees Revenue (Account #: 5259080-441680)

Regional Transportation Fund: Lease Revenue (Account #: 2503080-463010)

Is it currently budgeted? No

Explanation of Fiscal Impact: Based on feedback gathered from the providers during the working group sessions conducted over the last two years, staff anticipates each of the major small cell providers will install small cell wireless facilities at approximately 20 locations across Carson City over the next 5 years. This would

equate to approximately 80 locations and generate approximately \$112,000 in building permit fees to be deposited in the Building Permits Fund over the next 5 years. In regards to the annual attachment fee and use of the City's right-of-way, these 80 locations would generate approximately \$82,880 annually (depending on electrical connection), to be deposited in the City's Lease Revenue account in the Regional Transportation Fund.

Alternatives

Do not approve the proposed MLA template and provide other direction to staff.

Attachments:

[08-25-20 DRAFT Small Cell Master License Agreement.pdf](#)

[Small Cell Fee Memo-CC.pdf](#)

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

MASTER LICENSE AGREEMENT

CONTRACT NUMBER: _____

This Agreement is made by and between:

Licensor	Carson City Attn: City Engineer Carson City Public Works 3505 Butti Way Carson City, Nevada 89701
Licensee	Provider Address Address Address

Licensor and Licensee may be individually referred to as “Party” and collectively referred to as “Parties.”

RECITALS

This Agreement is made with reference to the following Recitals, each of which is deemed to be a material term and provision of this Agreement:

A. Licensor is the owner of certain public right-of-way (“ROW”) and other real property situated within the limits of Carson City, Nevada, and of certain facilities located within the ROW.

B. Licensee is duly organized, licensed in Carson City, and existing under the laws of the State of [REDACTED], and its lawful successors, assigns, and transferees, are authorized to conduct business in the State of Nevada.

C. Licensee desires to construct, operate, and maintain wireless communication sites in Licensor’s ROW and/or on Licensor-owned facilities situated in the ROW and, for such purpose, desires to locate, place, attach, install, operate, control, and maintain antennas and other related wireless communication equipment consistent with Small Cell technology in Licensor ROW and/or on Licensor-owned facilities in the ROW.

D. Licensor desires from time to time to allow Licensee to place Equipment (defined below) in City’s ROW so long as Licensee complies with Licensor’s ROW use and application requirements as provided herein.

E. Licensee is willing to compensate Licensor in exchange for a grant and right to use and physically occupy portions of the ROW and/or Licensor-owned facilities as provided herein.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement and other good and valuable consideration, the Parties do agree as follows:

AGREEMENT

1. Definitions and Exhibits.

1.1. Definitions. For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and derivations shall have the meaning given herein.

- (a) *Agreement* means this Master License Agreement.
- (b) *Attachment Fee* means that fee described in Section 4.2 of this Agreement.
- (c) *Building Permit* means a Building Permit obtained from Licensor's Community Development Department.
- (d) *City* and *Licensor* mean the consolidated municipality of Carson City.
- (e) *Code* means Licensor's Municipal Code, as may be amended from time to time.
- (f) *Commencement Date* means the date on which a Supplement commences, in accordance with Section 3.2 of this Agreement.
- (g) *Equipment* means Small Cell antennas or Small Wireless Facilities and other wireless communications equipment utilizing small cell technology that is specifically identified and described in Exhibit 1 attached to each Site Supplement or Third-Party Site Supplement (as defined below).
- (h) *Execution Date* means the date that this Agreement is fully executed by the Parties.
- (i) *FCC* means the Federal Communications Commission.
- (j) *FCC Orders* mean the Declaratory Ruling and Third Report and Order (WT Docket No. 17-79; WC Docket No. 17-84) In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment adopted by the FCC on September 26, 2018 and effective on January 14, 2019; the Order Denying Motion for Stay (WT Docket No. 17-79; WC Docket No. 17-84) In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment adopted by the FCC on December 10, 2018; and any other applicable FCC Orders.
- (k) *Fiscal Year* means July 1 of any given calendar year to June 30 of the following calendar year.
- (l) *Hazardous Substance* means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.
- (m) *Interference* means physical interference and radio frequency interference.

(n) *Law or Laws* means any and all applicable statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals, or other applicable requirements of Licensor or other governmental entity or agency having joint or several jurisdiction over Licensee's activities under this Agreement or over any aspect of this Agreement, including the Code (as defined above), the FCC Orders (as defined above), and the Policy (as defined below), that are in force on date of the execution of this Agreement and as they may be enacted, issued, or amended during the Term of this Agreement.

(o) *Municipal Facilities or Municipal Facility* means those Licensor-owned poles and fixtures located within the ROW, including, without limitation, Licensee installed poles, replacement poles installed by Licensee, streetlight poles, and traffic poles that are designated or approved by Licensor as being suitable for placement of Equipment.

(p) *Permit* means a permit issued and described in accordance with the Law, which is used to regulate, monitor and control improvement, construction or excavation activities, or other work or activity, occurring upon or otherwise affecting Licensor's ROW.

(q) *Physical interference* means where equipment, vegetation or a structure causes reduced use of another's prior mounted equipment, or an obstruction in a necessary line-of-sight path.

(r) *Policy* means Licensor's Public Works Department Placement of Small Cell Wireless Equipment in Carson City Right-of-Way Policy, as may be amended from time to time.

(s) *Radio frequency interference* means the radiation or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent equipment.

(t) *ROW* means the surface of and the space above and below the public roads, streets and alley right-of-way, and public utility easements or other public ways of any type whatsoever, now or hereafter located and existing within the City, whether or not improved.

(u) *Site Supplement* means the form of license granted by this Agreement, described in Section 2 below pertaining to a Municipal Facility, and attached as Exhibit A.

(v) *Small Cell or Small Wireless Facilities* means compact communication sites in a mobile network, as further defined by FCC Regulation, 47 CFR Part 1, Subpart U, section 1.6002(l), as may be amended from time to time, as facilities that meet, among other things, the following criteria:

(i) facilities that:

(1) are mounted on structures 50 feet or less in height including their antennas as defined in 47 CFR Part 1, Subpart U, Section 1.1320(d), or

(2) are mounted on structures no more than 10 percent taller than other adjacent structures, or

(3) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(ii) each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR Part 1, Subpart U, Section 1.1320(d)), is no more than three cubic feet in volume;

(iii) all other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and

(iv) do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR Part 1, Subpart U, Section 1.1307(b).

(w) *Supplement* or *Supplements* means a Site Supplement and/or a Third-Party Site Supplement, as applicable.

(x) *Term* means the period that this Agreement is in effect, from the Execution Date to June 30, 2030, and for any renewals of this Agreement, as described in Section 3.1 of this Agreement.

(y) *Third-Party Site Supplement* means the form of the license granted by this Agreement, described in Section 2 below pertaining to a pole or other facility that is not owned by Licensor but is within a Licensor-owned ROW, and attached as Exhibit B.

1.2. Exhibits. The following documents, which are occasionally referred to in this Agreement, are formally incorporated and made part of this Agreement by this reference:

- (a) Exhibit A: Site Supplement.
- (b) Exhibit B: Third-Party Site Supplement.
- (c) Exhibit C: Limits of Insurance.
- (d) Exhibit D: Payment Form.

In the event of any conflict or ambiguity between this Agreement, including the above-referenced exhibits (the “Exhibits”), and any other agreement between Licensor and Licensee, this Agreement, together with the Exhibits, shall govern and prevail. In the event of any conflict or ambiguity between this Agreement, including the Exhibits, and any Supplement, the Supplement shall govern and prevail. In the event of any conflict or ambiguity between this Agreement, including the Exhibits, or any Supplement, and the Policy, the Supplement shall govern and prevail as to the specified fees, and the Policy shall otherwise govern and prevail. The Supplements, this Agreement, and the Policy shall comply with the FCC Orders.

2. License Granted.

2.1. Scope. Licensors does hereby grant to Licensee a nonexclusive license to use the Municipal Facilities and ROW identified in each Supplement to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate, and replace the Equipment that may be required or desired to operate a Small Cell. This grant is subject to the terms, conditions, and other provisions set forth in this Agreement; to applicable provisions of the Code and the Policy; to all applicable Laws and reasonable regulations of any regulatory agency having competent jurisdiction; and to Licensors's approval of a Supplement. Any changes in the Code or Policy shall not apply retroactively unless required by any applicable Law.

2.2. Limitation on Scope. The Supplements and this Agreement solely pertain to the installation of Small Cell Equipment. Nothing in a Supplement or this Agreement grants a franchise or constitutes an authorization to provide wireless telecommunications, cable, or video service. Providers of such services must obtain and maintain all applicable Federal, State, or local licensing, agreements, and franchises.

2.3. Use of Licensors Property. A Supplement allows Licensee to access, occupy, and use allocated available space within the ROW and/or on the Municipal Facility identified in the Supplement, to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate, and replace the Equipment solely for the purpose of Licensee operating a Small Cell wireless network. A Supplement also allows the installation, operation, and maintenance of ground-based, pad-mounted equipment cabinets and/or power pedestals needed for the operation of Equipment attached to any of the Municipal Facilities or to third-party poles, together with any related conduit, cable, or wiring, with the location of any such cabinet or pedestal determined in connection with the issuance of a Building Permit. Licensee shall have access to the ROW and/or Municipal Facilities upon which Equipment is installed, subject to the conditions of the Building Permit, 24 hours a day, 7 days a week.

2.4. Limitations on Use. Except as otherwise expressly provided herein, a Supplement does not authorize Licensee to:

(a) occupy or use any poles, improvements, or structures of any kind, whether within or outside of the ROW, other than the Municipal Facility and ROW identified in a Supplement;

(b) enter upon public property and attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate, and/or replace any item of Equipment in or on poles or other structures not owned by Licensors and located within the ROW, without first obtaining a Third-Party Site Supplement and approval of the relevant owner; or

(c) install underground conduit to or from a Municipal Facility or within the ROW, except for any underground conduit to or from the Municipal Facility and any ground-based, pad-mounted equipment cabinets and/or power pedestals needed for the operation of Equipment attached to the Municipal Facility; a separate building permit and a franchise agreement is required for the installation of underground conduit to or from the Municipal Facility or ground-based, pad-mounted equipment cabinets and another location.

3. **Term and Termination.**

3.1. **Effective Date; Agreement Term; Extensions.** This Agreement shall be in effect commencing on the Execution Date, and shall run from the Execution Date to June 30, 2030, unless sooner cancelled or terminated as provided in this Agreement. The Term will automatically renew for four (4) additional ten (10) year periods, upon the same terms and conditions set forth in this Agreement unless:

(a) Licensee provides written notice of termination to Licensor ninety (90) days prior to the expiration of the Term;

(b) Licensor provides written notice of termination to Licensee ninety (90) days prior to the expiration of the initial or a successive Term; provided, however, that after said notice is given by Licensor, Licensor agrees to meet and confer for the purpose of amending the Agreement or negotiating a successor agreement, and that if the Parties have in good faith not reached agreement within the ninety (90) days, termination will be effective at the end of the ninety (90) days;

(c) the Parties mutually agree to terminate this Agreement; or

(d) this Agreement terminates for any other reason provided in this Agreement.

3.2. **Supplement Commencement Date; Agreement Term; Extensions.** Each Supplement shall be in effect commencing on the "Commencement Date" determined in accordance with this section and each Supplement. The Commencement Date shall be the date on which Licensee commences installation of its Equipment in Licensor-owned ROW, on a Municipal Facility, or upon a third-party pole or facility located in a Licensor-owned ROW, as applicable. Unless terminated as provided in this Agreement, the initial term of a Supplement shall run until the initial expiration date of this Agreement in Section 3.1, or the expiration date of any renewal period of this Agreement if the Site Supplement is entered into after the initial term of this Agreement. All of the provisions of this Agreement shall be in effect during the Supplement term and any extension of the Supplement term. Provided that Licensee is not in default of the Supplement beyond the applicable notice and cure periods, the Supplement term will automatically be extended for subsequent five-year terms for the entire Term of this Agreement, unless:

(a) Licensee provides written notice to Licensor ninety (90) days prior to the expiration of the Supplement term of Licensee's election not to extend the term of the Supplement;

(b) Licensor provides written notice to Licensee ninety (90) days prior to the expiration of the Supplement term, subject to the provisions of Section 3.1(b) if the Supplement is terminated within the first fifteen (15) years after the Commencement Date;

(c) the Parties mutually agree to terminate the Supplement; or

(d) this Agreement or any Supplement terminates for any other reason provided in this Agreement or the Supplement.

3.3. Early Termination.

(a) Termination by Licensee. Licensee may terminate this Agreement or any Supplement at any time, for any reason, by providing Licensors with ninety (90) days advance written notice of termination.

(b) Termination by Licensors.

(i) Licensors may terminate a Supplement by providing Licensee with ninety (90) days advance written notice of termination, if:

(1) Licensors no longer own the subject Municipal Facility or ROW;

(2) the subject Municipal Facility or ROW no longer exists;

(3) the subject Municipal Facility is permanently relocated, as provided in this Agreement;

(4) Licensee is in default, as hereinafter defined, on a Supplement, beyond the applicable notice and cure periods;

(5) Licensee ceases use of a Municipal Facility or the ROW for a period of six (6) or more consecutive months, or for twelve (12) or more consecutive months if, within the initial six (6) month period, Licensee notifies Licensors that Licensee intends to resume operations at the Municipal Facility or ROW; or

(6) as otherwise provided in this Agreement.

(ii) Licensors may terminate this Agreement as otherwise provided in this Agreement.

3.4. Effect of Notice of Termination.

(a) A notice of termination shall not be effective until Licensee has removed, as applicable, all Equipment from the Municipal Facility or ROW used under the Supplement, or each Municipal Facility subject to this Agreement, and otherwise complied with all provisions of this Agreement.

(b) Upon notice of termination given by either Party, Licensee shall have ninety (90) days to remove, at its sole expense, Licensee's attached and ground-mounted Equipment, to repair any damage to the affected Municipal Facilities or the ROW, and to restore the Municipal Facilities and the ROW to the condition in which they existed prior to the installation of the Equipment (whether attached or ground-mounted), reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted. In the event that

Licensee is unable or refuses to remove the Equipment within ninety (90) days, and after thirty (30) days' written notice to Licensee that Licenser will remove the Equipment, Licenser may authorize removal of the Equipment and Licensee shall be responsible for all costs incurred for such removal, including restoring and repairing the Municipal Facility and the ROW to the condition in which they existed prior to the installation of the Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted, and storage of the Equipment.

(c) After the Equipment is removed, the Municipal Facilities and the ROW are restored or repaired as required by Section 3.4(b), and Licensee has reimbursed Licenser (if applicable), this Agreement or the applicable Supplement shall be of no further force or effect and Licensee shall have no further obligations for the payment of Attachment Fees to Licenser. Any prepaid Attachment Fee up to the termination date shall be retained by Licenser; however, any Attachment Fee prepaid for periods following the termination date shall be refunded by Licenser within thirty (30) days of the termination date. The refund will be based on the number of remaining months in the fiscal year, not including the month in which the Agreement or Supplement is terminated.

(d) Upon termination and after the Equipment is removed, the Agreement or Supplement terminated shall be of no further force or effect except to the extent of the representations, warranties, and indemnities made by each party to the other in this Agreement.

4. **Fees and Charges.** Licensee shall be solely responsible for the payment of all applicable fees and charges in connection with Licensee's performance under this Agreement, including those set forth in this section.

4.1. **Application Fees.**

(a) **Application Fee.** At the time that Licensee applies for a Building Permit to install Small Cell Equipment in Licenser's ROW, whether on a Municipal Facility or a third-party pole, Licensee shall pay to Licenser the Application Fee of \$1,400 per Municipal Facility or per pole. In addition to this fee, Licensee shall also pay any other fees required by the Code specific to the requested Building Permit (such as pavement patching fees or any other fees imposed by the Code). Application Fees are non-refundable.

(b) **Pavement Patching Fees.** If the City Engineer approves a Licensee's request to excavate or cut into a City street or alley, Licensee shall pay the standard pavement patching fee imposed by the Code, which is \$120 + \$3.91 per square foot over the first 25 feet, or if the permanent surfacing is less than five years old an increased fee, which shall be 400 percent of the patching fee during the initial year after the date the street paving was accepted by the city, 340 percent of the patching fee after the first year, 280 percent of the patching fee after the second year, 220 percent of the patching fee after the third year, and 160 percent of the patching fee after the fourth year.

(c) **Change of Application Fees.** Upon 90 days' advance, written notice to Licensee, Licenser may increase or decrease the Application Fee to an amount that is permitted under the FCC Orders or other applicable Law, including to reflect the results of a cost-based

study of Licensor's costs. Any adjustments or changes to the fees in this Agreement or in the Policy will not be retroactive, unless required by applicable Laws.

4.2. Attachment Fee.

(a) In General. The Attachment Fee is non-refundable, except as otherwise stated in this Agreement, and includes all infrastructure, Equipment, appurtenant equipment, and facilities used in connection with each Municipal Facility or Third-Party Pole. The initial Attachment Fee shall be prorated based on the Supplement Commencement Date, defined in Section 3.2, and for the number of months remaining in the given fiscal year (ending on June 30 of any given year), and is due within sixty (60) days of the Commencement Date. All subsequent Attachment Fees are due on July 1 for the following fiscal year. The Parties agree that any Attachment Fees not received by Licensor within sixty (60) days of the due date shall bear a late fee equal to 1 1/2 percent simple interest per month that the Attachment Fees remain unpaid.

(b) Municipal Facilities Attachment Fees. Licensee shall pay Licensor an annual Attachment Fee of \$1,036 per Municipal Facility, consisting of a \$270 ROW use fee, a \$75 electric meter fee, and a \$691 fee for electricity use. If Licensee does not connect the Equipment to Licensor's electrical circuits, the annual Attachment Fee for the affected Municipal Facility shall be \$270.

(c) Third-Party Pole Attachment Fees. Licensee shall pay the following annual fees for installation of Equipment on a Third-Party pole within Licensor's ROW under a Third-Party Site Supplement:

(i) \$0 for installation of Equipment only on a Third-Party pole without using City electricity;

(ii) \$270 for installation of Equipment on a Third-Party pole and the associated installation of ground-mounted Equipment within City ROW without using City electricity;

(iii) \$766 for installation of Equipment on a Third-Party pole that is connected to City electrical circuits (a \$75 electric meter fee, and a \$691 fee for electricity use); or

(iv) \$1,036 for installation of Equipment on a Third-Party pole and the associated installation of ground-mounted Equipment within City ROW, with a connection to City electrical circuits.

(d) Change of Attachment Fees. Licensor may revise the Attachment Fee once per fiscal year to an amount that is permitted under the FCC Orders or other applicable Law. Licensor may, in conjunction with Section 4.5(c) of this Agreement, adjust the electricity fee once per fiscal year, or in response to any repair or alterations of Equipment on a Municipal Facility or third-party pole, if such repair or alterations change the electricity usage of the Equipment. Licensor shall provide Licensee 90 days advance written notice of an Attachment Fee change, which shall take effect on July 1 of any given year. Any adjustments or changes to

the fees in this Agreement or in the Policy will not be retroactive, unless required by applicable Laws.

(e) Multiple Licensees. If Licensor enters into licensing agreements with multiple licensees, Licensor shall not charge one licensee an Attachment Fee that is or will be more favorable than the Attachment Fee charged to another licensee. In the event that Licensor charges one licensee an Attachment Fee that is more favorable than the Attachment Fee under this Agreement, Licensee shall be entitled to the more favorable fee under this Agreement on and after the date the more favorable Attachment Fee becomes effective. This section does not apply to adjusting the electricity fee for any particular Equipment to reflect actual or estimated power usage, or to charging, or not charging, an electric meter fee and an electricity fee based on whether the Equipment is using City-provided power.

4.3. Building Permit Extension Fee. Under the Policy, Licensee has 180 days in which to begin construction after being issued a Building Permit, otherwise the Building Permit expires. Licensee may pay a \$500 Extension Fee to extend the time frame in which to begin construction for another 90 days, for 270 days total after the issuance of the Building Permit.

4.4. Taxes. Licensee shall pay all applicable local, state, or federal taxes levied, assessed, or imposed on Licensee by reason of this Agreement or those related to any of Licensee's Equipment and/or provided services. Such taxes are in addition to any non-tax amounts owed by Licensee to Licensor pursuant to this Agreement.

4.5. Electricity and Electric Meters.

(a) Access to Circuits. Licensor will, if feasible, provide access to Licensor's circuits to allow Licensee to obtain electricity for the operation of Licensee's Equipment, with the fees for such electricity being paid to the utility provider by Licensor.

(b) Installation of Electric Meter. If required, Licensee will install or cause to be installed an electric meter for the operation of its Equipment. If the electric meter is not accepted by Licensor, Licensee shall be responsible for paying directly to the utility provider all charges for any electricity supplied to the Equipment.

(c) Electricity Fees. An electricity fee and an electric meter fee for Licensee's use of Licensor paid electricity is included in the Attachment Fee stated in Section 4.2 of this Agreement and Section 4 of the Policy. The electricity fee is based on an analysis of the yearly electricity use of certain Small Cell Equipment. If any of Licensee's Equipment is more efficient than the tested equipment, Licensee may provide with the Building Permit application a load study or similar analysis of electricity use for the particular set of Small Cell Equipment being installed, or a similar installation of the same Equipment, or a statement that Licensee will provide a load study of the Equipment as actually installed, and Licensor will base the electricity fee on the demonstrated electricity usage. If Licensor subsequently determines that any installed Small Cell Equipment is actually using more or less electricity than is contemplated by the applicable electricity fee, Licensor will adjust the electricity fee to reflect the actual electricity use of Licensee's Small Cell Equipment.

(d) No Use of Licensors Electricity. Licensee will not pay an electric meter fee or an electricity fee to Licensors as part of the Attachment Fee if Licensee does not use electricity paid by Licensors for Licensee's Small Cell Equipment.

4.6. Payments Made. Unless a fee is required to be submitted with an application or other documents, all fees and/or additional payments must be paid to Licensors using the form in Exhibit D and sent to the address provided therein. Payments must be made within sixty (60) days of the applicable due date specified in this Agreement. All payments shall be in lawful money of the United States of America.

5. **Additional License and Permits Required by Code.**

5.1. The Equipment will be installed, operated, and maintained by or on behalf of Licensee in accordance with applicable provisions of the Code, Policy, and state or federal Law regulating wireless communications facilities. The Code and Policy shall apply to the extent not in contravention of any applicable Law or the FCC Orders. Any changes in the Code or Policy shall not apply retroactively unless required by Law.

5.2. Licensee or its designee will be required to apply for and obtain a Building Permit issued by Licensors for work performed within the ROW, and the ROW must be used according to the plans submitted by Licensee and approved by Licensors in issuing a Building Permit. Execution of this Agreement or any Supplement does not constitute the issuance of a Building Permit.

6. **Application, Aesthetic, Design, and Installation Requirements.**

6.1. Application Requirements and Procedure. The application process is set forth in more detail in Licensors's Policy, which is incorporated herein by reference. The following sets forth the basic application requirements and process. Any discrepancies between the process stated herein and the Policy are controlled by the Policy. All proposed installations shall be reviewed by Licensors and will be subject to aesthetic, noise, and engineering review.

(a) Agreement. This Agreement is required to be signed by any person or entity desiring to place Equipment onto Municipal Facilities or third-party poles within the City's ROW.

(b) Site Reservation. Before submitting a Building Permit application, Licensee may, but is not required to, reserve up to ten (10) Municipal Facilities at a time by emailing Licensors's Real Property Manager at gis@carson.org with the Pole ID and location of the Municipal Facility Licensee desires to reserve. Site reservations will take approximately ten (10) business days to process, and will last for ninety (90) days, from the date that the site reservation email is sent, as provided in the Policy. There is no fee for a site reservation.

(c) Major Project Review. After making a Site reservation and before submitting a Building Permit application, Licensee may submit preliminary plans and drawings, as further specified in the Policy, to Licensors's Major Project Review. This review permits Licensors's staff to identify any potential problems with Licensee's proposed installation. This review is free and is optional, but is highly recommended.

(d) Building Permit Application.

(i) Licensee must make an application for a Building Permit for each Municipal Facility or third-party pole within Licensor's ROW on which it desires to install Equipment, together with all documents, information, and fees required by the Code and the Policy. Immediately upon receipt, Licensor will determine if the Building Permit application is complete. Within ten (10) calendar days, Licensor will determine if the application is in compliance with Licensor's Policy, Code, and Standards. Licensor will then review the Building Permit application and notify Licensee of deficiencies, grant the application, or deny the application, as further described in the Policy and the Code. Licensor will comply with the FCC shot clocks.

(ii) Multiple Building Permit applications may be submitted at one time for multiple Municipal Facilities, but for no more than ten (10) Municipal Facilities or third-party poles at a time. In the event that multiple applications are submitted, the applications must contain an Application Fee and the required documentation and information for each Municipal Facility or third-party pole. The rejection of one Municipal Facility or third-party pole in a set of applications does not signal rejection of all of the applications.

(iii) Licensee may withdraw a building permit application at any time, but the Application Fee is non-refundable.

(e) Site Supplement Agreement. If the Building Permit is approved, the Parties shall enter into a Supplement to this Agreement, or a Third-Party Supplement, as applicable. As-built plans and the other documents required by the Policy must be attached as Exhibit 1 to a Supplement. As-built plans may be provided up to thirty (30) days after installation and City inspection of the Equipment are complete.

(f) Annual Attachment Fees. Once the installation is complete, Licensee must pay an Annual Attachment fee as specified in this Agreement, which will be due annually on July 1.

6.2. Aesthetic Requirements. Licensee shall comply with all aesthetic requirements in the Policy, which are expressly incorporated herein by reference, at the time that Licensee submits its Building Permit application. Changes made to Licensor's aesthetic requirements shall not be imposed or otherwise applied retroactively unless required by applicable Laws.

6.3. Design Criteria. Licensee shall comply with all design and construction criteria for the Small Cell Equipment set forth in the Policy, which are expressly incorporated herein by reference. Changes made to Licensor's design criteria shall not be imposed or otherwise applied retroactively unless required by applicable Laws.

6.4. Compliance with FCC Orders. Aesthetic or other design criteria for Municipal Facilities upon which Licensee's Equipment are attached, which are adopted by Licensor, shall comply with the FCC Orders and shall apply if the criteria are reasonable, no more burdensome than those applied to other types of infrastructure deployments, objective and published in advance of a Building Permit application, and otherwise comply with applicable federal and state Laws.

6.5. Installation Requirements.

(a) Installation, Engineering, and Construction Work. All of Licensee's engineering, design, construction, and installation work for its Equipment shall be performed at Licensee's sole cost and expense, and in a good and workmanlike manner and promptly completed. Licensee shall comply with all installation requirements for Equipment set forth in the Policy, which are expressly incorporated herein by reference. Changes made to Licensor's Code, Policy, or installation requirements shall not be imposed or otherwise applied retroactively unless required by applicable Laws.

(b) Make-Ready Work. If Licensor is to perform make-ready work on its Municipal Facilities, Licensor will provide Licensee with a written estimate of any make-ready work costs to prepare the Municipal Facility within fourteen (14) days of approval of a Building Permit. Licensee must indicate whether it accepts the cost estimate in writing within thirty (30) days of the date Licensee receives the cost estimate. If Licensee accepts the cost estimate, Licensor will perform the make-ready work, and Licensee will reimburse Licensor for the entire expense actually incurred up to the amounts in the cost estimate. Licensor shall complete such make-ready work within forty-five (45) days after Licensee approves the cost estimate. Where the nature of the make-ready work requires more than forty-five (45) days after Licensee approves the cost estimate to complete, the Parties will negotiate a mutually satisfactory longer period to complete the make-ready work and agree to delay the Commencement Date accordingly.

(c) Municipal Facilities; Replacement; Reinforcement.

(i) Except as otherwise approved by Licensor, Municipal Facilities or third-party poles shall be used as the support element for the Equipment.

(ii) If an existing Licensor-owned Municipal Facility needs to be reinforced or replaced to accommodate the Equipment, Licensee shall provide engineering design and specification drawings demonstrating the proposed alteration to the Municipal Facility and pay all costs related to reinforcing or replacing the Licensor-owned Municipal Facility, including but not limited to reinforcement or installation of the replacement Municipal Facility, transfer of the streetlight fixtures, traffic signal equipment, intelligent transportation systems, and/or other items attached to the existing Licensor-owned Municipal Facility to the replacement Municipal Facility, and removal and salvage of the existing Licensor-owned Municipal Facility to Licensor. Payment of the Municipal Facility reinforcement or replacement costs does not provide Licensee with any ownership interest in the replacement pole. Upon the completion of installation of the reinforcement or replacement pole by Licensee and subsequent inspection and approval of installation by Licensor, the reinforcement improvements or replacement pole shall become the property of Licensor in its then-existing condition, without warranty or representation (express or implied) by Licensee. Licensor will be deemed to own the original Licensor-owned Municipal Facility and the replacement or reinforced Municipal Facility. The re-installation or reattachment of the Equipment using the replacement Municipal Facility shall be at Licensee's sole cost and expense.

7. Operation of Installed Small Cell Equipment.

7.1. Equipment Locations. If Licensee desires to add a new location, Licensee must follow the application process in Section 6. If Licensee desires to change locations, Licensee may abandon the licensed location and must follow the application process in Section 6 to obtain a new location.

7.2. Maintenance and Repair. At Licensors's sole cost and expense, but subject to Section 7.4, Licensors shall maintain and keep a Municipal Facility containing Equipment in good condition and in accordance with Licensors's standard maintenance requirements. Licensee shall keep any Equipment and other improvements by Licensee on the Municipal Facility, if any, in good repair. Licensee shall remove graffiti from Licensee's Equipment within ten (10) days after receipt of written notification from Licensors, or if more than ten (10) days are required to remove the graffiti, Licensee must commence the removal of the graffiti within ten (10) days after written notification from Licensors and diligently pursue the removal of the graffiti to completion within thirty (30) days after written notification from Licensors.

7.3. Alterations.

(a) Replacement In Kind. Licensee may maintain, repair, replace, and make like-kind modifications to any Equipment that meets the permitted design and aesthetic requirements, including dimensions and weight of the Equipment, number of enclosures, structural integrity of the support structure, and any other criteria listed in the Code and Policy, and does not increase the power demand, without requiring additional applications, permits, or other Licensors approval.

(b) Other Alterations/Replacement. If Licensee proposes to alter or replace then-existing and approved Equipment, Licensee shall first obtain a Building Permit for the use and installation of the proposed Equipment, which shall not be unreasonably withheld, conditioned, or delayed. Licensee may be required to meet current standards at the time of alteration or replacement. In addition to any other submittal requirements, and if requested by Licensors, Licensee shall provide "load" (structural) calculations for all Municipal Facilities or third-party poles upon which it intends to modify Equipment in the ROW. The Supplement shall be amended to reflect the replacement.

7.4. Damage to Licensors Property. If Licensee damages or disturbs the surface or subsurface of any ROW or adjoining property, or any pole, streetlight fixture, traffic signal equipment, intelligent transportation system, or other public improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to Licensors, repair the damage or disturbance.

7.5. Emergency Repair or Replacement. In the event of an emergency repair required due to traffic crash, deterioration of the Municipal Facility or ROW, or any other emergency, or to protect the public health or safety, Licensors will make every reasonable effort to coordinate its emergency response with Licensee. To that end, Licensors will use the following emergency contact information: Licensee's network operations center may be reached 24/7 at ([REDACTED]). In an emergency situation, and where reasonably possible, Licensors will

provide twenty-four (24) hours advance notice to Licensee to (a) request that Licensee deactivate its Equipment, or (b) communicate Licensor's intent to deactivate Licensee's Equipment. Licensee will endeavor to respond within one hour of notification by Licensor in order to deactivate and salvage the Equipment. If Licensee has installed a disconnection switch, however, Licensor may deactivate the Equipment; if reasonably possible, Licensor will provide the stated twenty-four hours advance notice before deactivating the Equipment. Prior to Licensor accessing or performing any work on a Municipal Facility on which Licensee has installed Equipment, Licensor may seek to deactivate Licensee's Equipment or require Licensee to deactivate such Equipment if any of Licensor's employees or agents must move closer to the Equipment than the recommended one foot minimum distance. Licensor will provide twenty-four (24) hours advance notice, where reasonably possible, to request that Licensee deactivate its Equipment or to communicate its intent to deactivate Licensee's Equipment in the event Licensee has installed a disconnect switch. If a Municipal Facility needs replacement or repair due to a traffic crash or deterioration, Licensee shall have the right to immediately replace the same Equipment upon completion of the Facility replacement. Licensor shall cooperate with Licensee to temporarily relocate its Equipment, if necessary. Upon completion of the replacement of the Facility, Licensor shall notify Licensee in order for Licensee to reinstall its Equipment. Licensor shall not be responsible to protect, preserve, or store Licensee's Equipment should it fail to respond to emergency notification.

7.6. Planned Municipal Facility Replacement. In the event of a Licensor project that would require the removal and replacement of Licensee's Equipment, Licensor shall provide Licensee with at least ninety (90) days prior written notification of the project scope, schedule and anticipated reimbursable costs. Licensee shall be responsible for the temporary relocation of Equipment as required by the project. Within sixty (60) days receipt of an invoice, Licensee shall reimburse Licensor for all actual costs associated with the accommodation of Equipment during the project. Upon completion of the project, Licensor shall notify Licensee in order for Licensee to reinstall its Equipment. Licensor shall cooperate with Licensee to temporarily relocate its Equipment, if necessary. Licensor agrees to minimize requests for temporary removal of Equipment to the extent possible, and use good faith efforts to limit such request to one-time per calendar year per Supplement.

7.7. Permanent Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate or remove one or more of its Equipment installations whenever the City Engineer reasonably determines that relocation or removal is needed for any of the following purposes: (a) if required for the construction, modification, completion, or relocation, of a Licensor or other public agency project; or (b) because the Equipment is interfering with the proper operation of Licensor owned poles, traffic signals, intelligent transportation systems, communications, or other Municipal Facilities, and such interference cannot be cured by Licensee. Upon 180 days prior written notice to Licensee, Licensee shall, at Licensee's sole cost and expense, either (i) relocate such Equipment to another permitted Municipal Facility or third-party pole, following the application procedure and requirements in this Agreement and the Policy, or (ii) terminate the applicable Supplement and remove the Equipment. In any such case, Licensor shall not deny Licensee access to a reasonably equivalent, available alternate location.

(b) If Licensee elects to or is required to remove its Equipment, Licensee shall, at its sole expense, within the 180 days, remove Licensee's attached and ground-mounted Equipment, and repair any damage to the affected ROW and restore the ROW to the condition in which it existed prior to the installation of the Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted. If the Municipal Facility will remain at the location, Licensee must also repair any damage to the affected Municipal Facility and restore the Municipal Facility to the condition in which it existed prior to the installation of the Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted. In the event that Licensee is unable or refuses to remove the Equipment within the 180 days, and after thirty (30) days' written notice to Licensee that Licensor will remove the Equipment, Licensor may authorize removal of the Equipment and Licensee shall be responsible for all costs incurred for such removal, including restoring and repairing the Municipal Facility and the ROW to the condition in which they existed prior to the installation of the Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted, and storage of the Equipment.

(c) In the event Licensee desires to relocate any Equipment from one Municipal Facility to another, Licensee may apply for a Building Permit at the desired Municipal Facility and terminate the applicable Site Supplement.

7.8. Non-interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and radio frequency interference) resulting from Licensee's installation, operation, and/or maintenance of its Equipment:

(a) RF Interference. Licensee shall ensure that the Equipment will not cause radio frequency interference with existing wireless communication facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or Licensor traffic, public safety or other communications signal equipment existing at the time of installation of the Equipment, in accordance with the requirements in the FCC Orders.

(b) Existing Uses. Licensee shall not interfere in any manner with the existing uses of Licensor property including ROW, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner(s) of the affected property or properties.

(c) Licensor Communications. Licensee shall not interfere in any manner with current or future Licensor public safety communication, nor with future uses of Licensor property including the use of ROW by Licensor for legitimate public purposes. In the event Licensee causes interference to the uses in the foregoing sentence, Licensee will work with Licensor to minimize and resolve unreasonable interference issues in accordance with applicable FCC requirements set forth in 47 CFR §§ 22.970-973 and 47 CFR §§ 90.672-675 respectively.

(d) Licensor Interference. Licensor agrees that any other tenants, licensees, or users of the ROW who currently have or in the future take possession of space within the ROW will be permitted to install only such equipment that is of the type and frequency which will not

interfere with the signal or will not cause harmful interference which is measurable in accordance with FCC standards to the then existing and subsequent Equipment of Licensee.

8. **Privilege Limitations.** Any privilege claimed under this Agreement by Licensee shall be subordinate to any prior or subsequent occupancy or use by Licensor or any other governmental entity, and shall be subordinate to any prior lawful occupancy or use by any other person, and shall be subordinate to any prior easements; provided, however, that nothing in the Agreement shall extinguish or otherwise interfere with property rights established independently of the Agreement.

9. **Limits of Liability.**

9.1. Licensor shall be liable only for the cost of repair to damaged components of Licensee's Equipment to the extent caused by the negligence or willful misconduct of Licensor, its employees, agents, or contractors. Licensor does not waive and intends to assert any and all available NRS chapter 41 immunity in all cases.

9.2. Notwithstanding any provision of this Agreement to the contrary, in no event shall either party be liable for consequential, incidental, punitive, exemplary, or indirect damages suffered by the other party or by any customer or any purchaser of such party or any other person, or for lost profits or other business interruption damages.

10. **Licensor's Reserved Rights.**

10.1. **Licensor Use of Municipal Facilities.** Licensor reserves the right, but not the obligation, to maintain and operate its Municipal Facilities in such reasonable manner as will best enable Licensor to fulfill its own service requirements or obligations. Except as provided in this Agreement, Licensor shall not be liable for any interference with the operation of Licensee's Equipment that may arise in any manner out of Licensee's use of the Municipal Facilities, except to the extent caused by Licensor's negligence or willful misconduct.

10.2. **Abandonment.** Licensor reserves the right to abandon, relocate, or remove any Licensor pole. If such pole is identified as a Municipal Facility and Licensee has Equipment attached to it, Licensor shall give Licensee written notice of Licensor's intent to abandon, relocate, or remove the Municipal Facility and Licensee shall have one hundred eighty (180) days thereafter to move or remove, at its sole expense, Licensee's attached and ground-mounted Equipment and to repair any damage to the Municipal Facilities or the ROW caused by such removal, and shall restore the Municipal Facilities to the condition in which they existed prior to the installation of the Equipment (whether attached or ground mounted), reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted. Repair of the Municipal Facility is not necessary if the Municipal Facility is being abandoned or removed. In the event that Licensee is unable or refuses to remove the Equipment within 180 days, and after thirty (30) days' written notice to Licensee that Licensor will remove the Equipment, Licensor may authorize removal of the Equipment and Licensee shall be responsible for all costs incurred for such removal, including restoring and repairing the Municipal Facility and the ROW to the condition in which they existed prior to the installation of the Equipment, reasonable wear and

tear and loss by casualty or other causes beyond Licensee's control excepted, and storage of the Equipment.

11. **Title and Ownership.**

11.1. **Title to the Equipment.** Title to the Equipment, exclusive of the Municipal Facility (original or replacement) used for support, but including ground mounted equipment, shall remain with Licensee or its third-party wireless carrier customers and shall constitute Licensee's or its carriers' personal property and equipment, and not fixtures or improvements attached to the land.

11.2. **No Ownership in Licensors Property.** Neither this Agreement, nor any Supplement issued hereunder, nor any Permit separately issued for installation of any Equipment, regardless of the payment of any fees and charges, shall create or vest in Licensee any ownership or property rights in any portion or elements of the Municipal Facilities, the underlying real property on which any Licensors-owned poles or any Equipment is located, or any portion of the ROW. Additionally, except as otherwise expressly provided herein, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest or right to the benefit of any Licensors property or portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to construct, retain, extend, place, or maintain any poles or other facilities for the benefit of Licensors which are not needed for Licensee's own service requirements.

11.3. **"As Is" Condition.** Subject to Licensors maintenance obligations in Section 7, Licensee accepts the Municipal Facilities or ROW identified in any Supplement, or any replacement poles, in their "AS IS" condition, without representation or warranty of any kind by Licensors, or any Licensors officer, agent, or employee, and subject to all applicable laws, rules and ordinances governing the use of Licensors poles for Licensee's intended purpose.

12. **Hazardous Substances.** Licensee agrees that Licensee, its contractors, subcontractors and agents, will not use, generate, store, produce, transport, or dispose any Hazardous Substance on, under, about or within the area of a Municipal Facility or the ROW in which it is located in violation of any applicable federal, state, county, or local law or regulation. Except to the extent of the negligence or intentional misconduct of Licensors, Licensee will pay, indemnify, defend and hold Licensors harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement and must promptly notify Licensors of any Hazardous Substance at any time discovered or existing upon the ROW. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. The Parties recognize that Licensee is only using a small portion of the ROW and that Licensee shall not be responsible for any environmental condition or issue except to the extent resulting from Licensee's specific activities and Licensee shall not be liable for any environmental condition or Hazardous Substance existing prior to the Commencement Date of the applicable Supplement.

13. **Surety Bond.** Before the commencement of any work under this Agreement for the installation of Small Cell Equipment, Licensee shall file with Licensors a good and sufficient surety bond in accordance with the requirements of Nevada State law. The form and terms of the surety bond and the identity of the surety shall be subject to the reasonable approval of the Licensors and the surety shall guaranty the full performance of Licensee's restoration obligations arising upon expiration, termination, or abandonment of this Agreement or any Site Supplement. Any acceptable surety instrument having an expiration date earlier than the expiration of the Term shall be automatically renewable. Any company issuing such a surety instrument must give Licensors at least thirty (30) days advance written notice of cancellation or expiration of such surety instrument. The amount of the surety bond shall be \$25,000 based upon the estimated cost of removing Licensee's Equipment from multiple Municipal Facilities and the storing or disposing thereof.

14. **Indemnity.**

14.1. **Licensee Indemnity.** Except to the extent of the negligence or intentional misconduct of Licensors or its agents, contractors or employees, Licensee shall indemnify, defend, save and hold harmless, Licensors, and any of its elected or appointed officials, officers, directors, commissioners, board members, agents, or employees, from and against any and all demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury, and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties, fines, costs (including, but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings), judgments, and obligations, which may be imposed upon or incurred by or asserted against Licensors by reason of the negligent or intentional actions, acts, errors, mistakes, or omissions to the extent caused in whole or in part by Licensee, or any of its contractors or subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

14.2. **Licensors Indemnity.** Except to the extent of the negligence or intentional misconduct of Licensee or its agents, contractors or employees, subject to Chapter 41 of the Nevada Revised Statutes, Licensors shall indemnify, defend, save and hold harmless, Licensee, and any of its officers, directors, affiliates, partners, board members, agents or employees, from and against any and all demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties, fines, costs (including, but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings), judgments, and obligations, which may be imposed upon or incurred by or asserted against Licensee by reason of the negligent or intentional actions, acts, errors, mistakes or omissions to the extent caused in whole or in part by Licensors, or any of its contractors or subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

15. **Insurance Requirements.**

15.1. **Insurance.** Licensee shall procure and maintain insurance in the amounts and form specified in attached Exhibit C.

15.2. Certificates. If a Certificate of Insurance evidenced on an ACORD FORM or Licensee's form for Self-Insurance is submitted as verification of coverage, Licensors will reasonably rely upon the certificate as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, Licensee must forward renewal or replacement certificates to Licensors within ten (10) business days after the renewal date containing all necessary insurance provisions.

16. Assignment/Subletting.

16.1. This Agreement and each Supplement granted herein is personal to Licensee and for Licensee's use only. The Parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Equipment deployed by Licensee in the ROWs pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers and installed and maintained by Licensee pursuant to license agreements between Licensee and such carriers. Such Equipment shall be treated as Licensee's Equipment 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 Equipment; (ii) Licensors's sole point of contact regarding such Equipment shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Equipment. Except as provided in this Agreement, Licensee shall not lease, sublicense, share with, convey, or resell to others any such space or rights granted hereunder. Violation of this subsection will be grounds for termination under Section 18.

16.2. Subject to Section 16.5, this Agreement and the related rights and privileges may not be assigned or otherwise transferred without the express written consent of Licensors. Any Agreement or Supplement that is assigned or otherwise transferred pursuant to Section 16 shall be equally subject to all the obligations and privileges of this Agreement and the Supplement, including any amendments of any document, which will remain in effect, as if the assigned Agreement/Supplement was the original Agreement/Supplement. Violation of this subsection will be grounds for termination of the Agreement/Supplement under Section 18.

16.3. After assignment, this Agreement and any Supplements, including any amendments of any document, shall be binding on the assignee to the full extent that was binding upon Licensee.

16.4. Any non-permitted transfer or assignment of the right to attach Equipment to a Licensors-owned pole shall be void and not merely voidable. Licensors may, in its sole discretion and in addition to all other lawful remedies available to Licensors under this Agreement, collect any fees owed from Licensee all without prejudicing any other right or remedy of Licensors under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provisions of this Agreement against a transferee or assignee who did not receive Licensors's consent.

16.5. Notwithstanding anything to the contrary in Section 16, Licensee shall have the right to assign this Agreement or sublicense the licensed facilities to any parent, subsidiary, or affiliate entity or to any entity acquiring all or a substantial portion of the assets of Licensee without the consent or approval of Licensors. No change of stock ownership, partnership interest

or control of Licensee or transfer upon partnership or corporate dissolution of Licensee shall constitute an assignment hereunder.

17. **Default.** It is a “Default” if either Party fails to comply with this Agreement or any Supplement and does not remedy the failure within sixty (60) days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted sixty (60) days and thereafter diligently pursue the cure to completion within 120 days after the initial notice, or within a reasonable time after the initial notice if the cure cannot, in good faith, be completed within 120 days. Defaults relating to interference shall, in addition to the stated timeframes, be resolved, in good faith, as soon as reasonably possible.

18. **Termination/Revocation.** In the event of a Default, without limiting the non-defaulting party in the exercise of any right or remedy which the non-defaulting party may have by reason of such Default, the non-defaulting Party may terminate this Agreement if the Default affects all Supplements and the Agreement as a whole, or any Supplement subject to the Default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under Law. Further, upon a Default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party’s duty or obligation. The actual and reasonable costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon its receipt of an invoice therefor with evidence substantiating such costs. If Licensee undertakes any such performance on Licensor’s behalf and Licensor does not pay Licensee the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, Licensee may offset the full undisputed amount due against all fees due and owing to Licensor under this Agreement until the full undisputed amount is fully reimbursed to Licensee.

19. **Notices.** Any notice, request, demand, statement, or consent required or permitted to be given by either Party to the other under this Agreement, shall be in writing signed by or on behalf of the Party giving the notice and addressed to the other at the address as set forth below:

<u>Licensee</u>	Provider Address Address Attention:
<u>Licensor</u>	City Engineer Carson City Public Works 3505 Butti Way Carson City, Nevada 89701
With copy to:	Office of the District Attorney 885 East Musser Street Carson City, Nevada

Each Party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. Each notice, demand,

request, or communication shall be (i) mailed by United States first class certified or registered mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service; (ii) sent by a nationally recognized overnight courier, postage prepaid; or (iii) personally delivered, and shall be deemed effective when properly sent and received, refused, or returned undelivered. Any communication made by email or similar method shall not constitute notice pursuant to this Agreement.

20. **Miscellaneous.**

20.1. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all prior negotiations, understandings, or agreements. Any amendments to this Agreement must be in writing and executed by both Parties.

20.2. **Severability.** If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.3. **Counterparts.** This Agreement and the Supplements may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

20.4. **Governing Law; Jurisdiction.** Except where governed by federal law, this Agreement shall be governed by the laws of the State of Nevada without regard to choice of law. The Parties consent to the jurisdiction of the courts of the First Judicial District Court of the State of Nevada in Carson City or, if an action is brought in federal court, to the jurisdiction of the Reno office of the United States District Court for the District of Nevada.

20.5. **Change of Law.** If any applicable Law sets forth a term or provision that is inconsistent with or different than this Agreement, then the Parties agree to promptly amend the Agreement to effect the term or provision set forth under the law.

20.6. **Exhibits.** All Exhibits referred to and attached to this Agreement are incorporated herein by reference.

20.7. **Authority to Execute.** Any individual executing this Agreement on behalf of or as representative for a corporation or other person, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such party, and this Agreement is binding upon such party in accordance with its terms. Licensor hereby designates and authorizes the City Engineer to execute all Supplements entered into under this Agreement. This designation and authorization may be changed by Licensor upon written notice to Licensee.

20.8. **Modification and Waiver.** No supplement, modification, or amendment of any provision, term or condition of this Agreement shall be deemed binding or effective unless in

writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall be binding unless executed in writing by the Party making the waiver.

20.9. No Waiver. A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the other Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. No waiver of any right or remedy shall be effective unless in writing.

20.10. Independent Entities. Except as otherwise expressly stated in this Agreement or a Supplement, nothing contained in this Lease may be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, to convey ownership of any asset, or to otherwise create any liability for one Party whatsoever with respect to the indebtedness, liabilities, and obligations of the other Party.

20.11. Force Majeure. With respect to any provisions of this Agreement, the violation or non-compliance of any term of this Agreement which could result in the imposition of a financial penalty, liquidated damages, forfeiture, or other sanction upon Licensee or Licensors, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by Licensee or Licensors and is beyond Licensee's or Licensors' reasonable control.

20.12. USA Locate. Licensee shall be responsible for the geographical locations and records of all underground facilities constructed. Licensee shall register and maintain membership of "UNDERGROUND SERVICE ALERT (USA North 811)" for the duration that facilities remain in place per Chapter 455 of the Nevada Revised Statutes.

20.13. Public Records. Licensee acknowledges that information submitted to Licensors is subject to Chapter 239 of the Nevada Revised Statutes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

LICENSOR:

LICENSEE:

CARSON CITY

By: _____
Robert Crowell
Mayor

By: _____

Dated: _____

Dated: _____

ATTEST:

By: _____
Aubrey Rowlett
Carson City Clerk-Recorder

Dated: _____

APPROVED AS TO FORM:

By: _____
Deputy District Attorney

Dated: _____

**EXHIBIT A:
[FORM OF SITE SUPPLEMENT]**

Site Supplement No. _____ to Contract No.: _____

This Site Supplement ("Supplement") is made by and between Carson City ("Licensor") and _____ ("Licensee") under the Master License Agreement dated _____ ("Agreement") between Licensor and Licensee for the installation of Small Cell Equipment within Licensor's ROW, as defined in the Agreement. This Supplement shall be made a part of the Agreement, and all of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement.

1. Description of Municipal Facility:

Municipal Facility Type: _____ Commencement Date: _____

Site ID: Carson City: _____ Licensee: _____

Location: Latitude: _____ Longitude: _____

Building Permit Number: _____

2. Annual Fees

Attachment Fee: _____ Electric Fee: _____ Electric Meter Fee: _____

Total: _____

3. Project Location, Equipment, and Supplement. As-built plans and all other documents required by the Policy shall be attached to this Site Supplement as Exhibit 1. Licensee shall have the right to use the Municipal Facility and the designated area of the ROW for Equipment as described above and as further described in Exhibit 1. Licensor acknowledges that Licensee may include third party-owned equipment in its initial installation of Equipment and that such inclusion shall not be considered a sublicense to a third party under Section 16 of the Agreement.

4. Term. The term of this Supplement shall begin on the Commencement Date and run as set forth in Section 3.2 of the Agreement.

EXECUTED to be effective as of the Commencement Date shown above.

LICENSOR:
CARSON CITY

LICENSEE:

By: _____
Title: City Engineer

By: _____
Title: _____

Date: _____

Date: _____

Exhibit 1 Licensed Area

EXHIBIT B:
[FORM OF THIRD-PARTY SITE SUPPLEMENT]

Third-Party Site Supplement No. _____ to Contract No.: _____

This Third-Party Site Supplement ("Supplement") is made by and between Carson City ("Licensor") and _____ ("Licensee") under the Master License Agreement dated _____ ("Agreement") between Licensor and Licensee for the installation of Small Cell Equipment within Licensor's ROW, as defined in the Agreement. This Supplement shall be made a part of the Agreement, and all of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement.

1. Description of Pole:

Pole Type: _____ Commencement Date: _____
Site ID: Carson City: _____ Licensee: _____
Location: Latitude: _____ Longitude: _____
Building Permit Number: _____

2. Annual Fees

Attachment Fee: _____ Electric Fee: _____ Electric Meter Fee: _____
Total: _____

3. Project Location, Equipment, and Supplement. As-built plans and all other documents required by the Policy shall be attached to this Third-Party Site Supplement as Exhibit 1. Licensee shall have the right to use the designated area of the ROW for Equipment as described above and as further described in Exhibit 1. Licensor acknowledges that Licensee may include third party-owned equipment in its initial installation of Equipment and that such inclusion shall not be considered a sublicense to a third party under Section 16 of the Agreement.

4. Term. The term of this Supplement shall begin on the Commencement Date and run as set forth in Section 3.2 of the Agreement.

EXECUTED to be effective as of the Commencement Date shown above.

LICENSOR:
CARSON CITY

LICENSEE:

By: _____
Title: City Engineer

By: _____
Title: _____

Date: _____

Date: _____

Exhibit 1 Licensed Area

EXHIBIT C

Insurance Requirements

1. General.

1.1. Prior to performing work under this Agreement, Licensee shall furnish Licensor a certificate of insurance on a standard insurance industry ACORD form or equivalent. The insurance coverage required must be issued by an insurance company eligible to transact business in the State of Nevada, possessing a current A.M. Best, Inc. rating of A-VII or better.

1.2. Licensee shall, and shall require any of its contractors while working hereunder to obtain and maintain substantially the same coverage as required of Licensee, procure and maintain, until all of their obligations have been discharged the insurances set forth below.

1.3. The insurance requirements set forth in no way limit the contractual liability coverage contained in this Agreement.

1.4. Licensor in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

1.5. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2. Scope and Limits of Insurance. Licensee shall provide coverage with limits of liability not less than those stated below.

2.1. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance on the most current ISO form or an equivalent with a limit of \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

2.2. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

2.3. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

2.4. Builders' Risk/Installation Floater Insurance. Builders' Risk/Installation Floater Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than Licensor, has an insurable interest in the property required to be covered. Licensee may self-insure this risk. Licensee is responsible for payment of all deductibles under the Builders' Risk/Installation Floater insurance policy.

3. Additional Policy Provisions Required.

3.1. Miscellaneous Provisions.

A. Licensee's required auto and general liability insurance coverage must be primary insurance with respect to Licensor, its officers, officials, and employees. Any insurance or self-insurance maintained by Licensor, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

B. Licensee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. The policies must contain a severability of interest clause and waiver of subrogation against Licensor, its officers, officials, and employees, for losses arising from work performed by Licensee for Licensor.

D. Licensee must maintain the required insurance during the duration of the Agreement and for one (1) year following expiration of the Agreement. An updated certificate must be issued and provided to Licensor at each renewal.

E. If a Certificate of Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

F. Licensee must provide at least thirty (30) days written notice to Licensor of cancellation or non-renewal of any required coverage that is not replaced. Such notice shall be sent directly as provided for in Section 19.

3.2. Licensor as Additional Insured.

A. The above-referenced policies shall, excluding workers compensation and employer's liability, include Licensor, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability caused, in whole and in part, by Licensee's operations under this Agreement.

B. Licensor's additional insured status shall (i) be limited to bodily injury, property damage, or personal and advertising injury caused, in whole or in part, by Licensee, its employees, or others acting on Licensee's behalf; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Licensor, its employees, or others acting on Licensor's behalf or where such coverage is prohibited by law or to claims arising out

of the gross negligence of Licensor, its employees, or others acting on Licensor's behalf; and, (iii) not exceed Licensee's indemnification obligation under this Agreement, if any.

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



CARSON CITY NEVADA

Consolidated Municipality and State Capital

PUBLIC WORKS

MEMORANDUM

TO: File

CC: Stephanie Hicks, Real Property Manager
Iris Yowell, Deputy District Attorney

FROM: Dan Stucky, City Engineer

SUBJECT: Small Cell Wireless Application Fees for Carson City

DATE: October 29, 2018

Carson City Public Works and Community Development staff estimated the required City staff time and associated costs to adequately review the proposed small cell wireless site applications. At a minimum, this review would include the following tasks:

- Site reservation on City's GIS database of pole supports. This includes preliminary review of sites to identify any potential issues, as well as the continual maintenance to online GIS application (i.e. online map available to providers to research available City owned poles).
- General review of application package to ensure completeness.
- Review detailed plans of sites to ensure they meet design standards, including review of: aesthetics, facility dimensions, conflicts with adjacent infrastructure, ADA requirements, electrical meter locations, and underground conduit locations, any easements for access and utilities, certified engineer's report for electrical infrastructure, structural analysis (if applicable), radio frequency report, review of any unique impacts (such as location in historical district), etc.
- Coordination with applicant, including compiling comments from City staff and reviewing responses of applicant
- Preparation and attendance at project review meeting with applicant to discuss application and comments.

During this analysis of estimated staff time/costs, the goal to provide efficient review times was balanced with the City's responsibility to ensure that these sites are properly evaluated and do not adversely impact adjacent infrastructure or the residents and businesses of Carson City. The following summarizes the estimated costs incurred by the City during the review of a typical application.



CARSON CITY NEVADA

Consolidated Municipality and State Capital

PUBLIC WORKS

MEMORANDUM

City Small Cell Wireless Application Review Cost Estimate

Staff	Estimated Staff Hours	Description
Permit Technician	4.0	Collect, scan and archive, and route application to City Staff, compile City review comments to send to applicant, review of application package to ensure completeness.
Sr. Project Manager (Development Engineering)	4.0	Lead to review application for engineering related items (including infrastructure, plans and details, ADA requirements, engineering reports, etc.), attend review meeting
Associate Planning Manager	1.0	Review application for planning items (location in historical district, aesthetics), attend review meeting (if applicable)
Real Property Manager	4.0	Lead project manager for the City and primary point of contact, lead and attend review meetings, provide review to ensure required design requirements are satisfied.
Asset Manager/GIS Specialist	1.0	Update and maintain online GIS application, including reservation of sites by providers
Operations Manager-Control Systems	3.0	Review of electrical components and underground conduit, attend review meeting
Construction Inspector	1.0	Inspect construction, review traffic control plans (if applicable)

Total Hours = 18.0

Per the City's fiscal analyst, the average hourly rate (direct salary and benefit rates) for this collection of staff is approximately \$75/hour. Assuming 18 hours of review time at \$75/hour, the total cost to the City to review a typical application is approximately \$1,400.

The proposed fees are (1) consistent with the fees proposed by neighboring regional municipalities, (2) use sound methodology to estimate the required cost burden by the City to adequately review applications- as shown above, (3) non-discriminatory and (4) reasonable in cost. This fee structure has been communicated openly in good faith with small cell wireless providers at multiple working group meetings. No objections were noted during these meetings. The City is supportive of the broad implementation of small cell wireless and has worked effectively with small cell wireless providers to determine reasonable design standards that will successfully integrate this technology across the City while ensuring that sites remain aesthetically pleasing and do not adversely impact existing infrastructure.