

**MASTER LICENSE AGREEMENT BETWEEN
THE CITY OF OAKLAND AND EXTENET SYSTEMS (CALIFORNIA) LLC**

This Master License Agreement ("**Agreement**") is entered into as of February 22, 2018 ("**Effective Date**") by and between the City of Oakland, a municipal corporation (the "**City**"), and ExteNet Systems (California) LLC, a California Limited Liability Company whose address is 3030 Warrenville Road, Suite 340, Lisle, Illinois 60532 ("**Licensee**").

RECITALS

A. Licensee installs, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission ("**FCC**") and the California Public Utilities Commission ("**PUC**"), telecommunications networks serving Licensee's customers through distributed antenna system and/or small cell facilities in public rights-of-way ("**ROW**"), among other locations, in the State of California.

B. Licensee holds a valid Certificate of Public Convenience and Necessity (Decision 06-04-063) with the PUC ("**PUC Registration**").

C. Licensee seeks to enter the City's ROW to install, maintain and operate features of a small cell distributed antenna and/or small cell system (the "**Network**") to be used to provide wireless telecommunications and data services to the residents and visitors of the City ("**Services**").

D. Features of the Network which are the subject of this Agreement include, without limitation, antenna nodes, fiber repeaters and related equipment (each individually, a "**Telecom Facility**", and collectively, the "**Telecom Facilities**") in a configuration, and at locations (each individually, a "**Site**", and collectively, the "**Sites**") and to be located on streetlights owned, or to be owned, by City within the City ROW (the "**Poles**"), all as may be approved by City and identified in site-specific supplemental agreements to be entered into by the City and Licensee pursuant to this Agreement in the form attached as **Exhibit A** (each, a "**Supplement**").

E. As more particularly described below, if to install the Telecom Facilities, appropriate structural and/or other analyses demonstrate the necessity therefor, Licensee will, at no cost to City, dismantle the existing Pole at the applicable Site ("**Existing Pole**"), and install a new or replacement Pole to be owned by City, as more particularly described and shown in the applicable Supplement.

F. Licensee desires to obtain from City, and City, as the proprietary owner of the Existing Poles and the Replacement Poles, is willing to grant to Licensee, the right to use the Sites to locate, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Telecom Facilities in a manner consistent with the City's relevant land use approvals ("**Land Use Approvals**"), the City's Municipal Code ("**OMC**") and all other applicable "**Laws**" (as defined herein), and this Agreement.

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1
GRANT; INSTALLATION OF THE NETWORK; LICENSEE FEE

1.1 **Grant.** Subject to all other terms and conditions of this Agreement, City grants to Licensee a non-exclusive license to use the Sites to locate, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Telecom Facilities, at Licensee's sole cost and expense. The license granted hereunder constitutes a revocable license; nothing herein shall be construed as a grant of title or any interest in real property.

1.2 **Permitted Installation.** Licensee's installation of the Telecom Facilities shall be subject to the additional terms and conditions set forth herein, including without limitation the pre-condition of the execution of a Supplement for each Site as more particularly described in Section 1.3, below.

1.2.1 The installation of the Telecom Facilities shall all be made in accordance with the plans and specifications attached to the applicable Supplement, or in accordance with such other plans and specifications as may be approved by the City, and after having obtained all necessary Land Use Approvals and "Permits" (as defined in Section 1.5, below), copies of which shall be attached to the applicable Supplement.

No additions or changes to the Telecom Facilities as shown on the applicable Supplement shall be permitted without City's written permission; the process for obtaining such permission shall be substantially the same as is described in Section 1.3, below, with respect to the original Supplement and the results of which shall be reflected in an amendment to the applicable Supplement. Approval of plans and specifications and the issuance of any Permits by the City shall not release Licensee from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or Permits. Licensee shall be responsible for notifying the City and all other relevant parties within five (5) business days following discovery of such omissions and/or errors and for obtaining any amendments for corrected Permits, as may be necessary.

1.2.2 **Reserved**

1.2.3 All installation work shall be performed lien-free, in a skillful and workmanlike manner, only by qualified and properly trained persons and appropriately licensed contractors. At least thirty (30) days prior to the installation of the Telecom Facilities (or such shorter period of time as may be approved by the City in writing), Licensee shall deliver to the City's Real Estate Services Department ("RESD") a schedule for the proposed work, as well as a list of the names of all contractors of Licensee authorized by Licensee to enter the Sites. Prior to commencing any installation work, Licensee shall provide evidence to the RESD that the contractors performing such work have bonds to guarantee performance of the work and payment of subcontractors and suppliers, all in form and content acceptable to the City's Department of Transportation. Licensee shall complete installation work within one hundred eighty (180) days of the full execution of the applicable Supplement.

1.2.4 Licensee shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations at the Sites. Licensee shall be the City's

point of contact with respect to such coordination and all communications shall be through Licensee.

Without limiting the generality of the foregoing, at least thirty (30) days prior to commencing excavation work in the City's ROW pursuant to this Agreement (or such shorter period of time as may be approved by the RESD in writing), Licensee shall notify the RESD in writing. The notice shall describe the work to be performed, the specific City ROW that will be used, and the dates such work is anticipated to be performed. The City will provide Licensee within ten (10) business days thereafter a notice form that identifies other existing or potential users ("User" or "Users") of the City's ROW who are known to City's Department of Transportation staff and likely to be affected by such excavation work. Licensee shall provide the City's notice form to the Users. To the extent reasonably feasible, and subject to Licensee and User entering into a written agreement for such work and/or use, Licensee shall coordinate its work with any User who timely informs Licensee that it desires to perform work jointly in the City's ROW, provided that such User has obtained any required permits or other approvals from the City applicable thereto. Licensee agrees to use its commercially reasonable best efforts to accommodate and cooperate with joint work requests of any Users. The notice requirement in this Section is in addition to any notice otherwise required by applicable Laws, such as Government Code section 4216.2, and does not replace or otherwise affect the requirements of other applicable Laws.

1.2.5 Licensee and its officers, employees, agents and contractors shall comply with all applicable "Laws", as defined in Section 10.2 below, in performing the installation work, including without limitation, taking all required steps to minimize dust and noise in conformance with the OMC, implementing traffic control plans for temporary construction work that are approved by the City, and any other applicable governmental standards. Notwithstanding the foregoing, in no event shall Licensee cause or permit any hazardous substances or materials to be brought upon, kept or used in the City ROW, except as may have been previously approved in writing by City.

1.2.6 The City shall have access to inspect any work conducted by Licensee; provided, however, that no such inspection shall release Licensee from the responsibility for, or the correction of, any errors, omissions or other mistakes.

1.2.7 Licensee shall coordinate with Pacific Gas and Electric Company ("PG&E") for electric service and associated meters. Licensee and the City will reasonably cooperate with PG&E regarding (i) the location of any meter required for each Site, and (ii) the opportunities to co-locate Licensee's meters in the City's meter boxes if possible; provided, however, that all costs and expenses associated therewith shall be borne by Licensee, and City shall be entitled to such compensation as it deems reasonably appropriate, in its sole discretion, for any such co-location (and/or sharing of City conduits, as contemplated in Section 1.3, below). If at any time PG&E determines meters are no longer required, Licensee shall remove the meter pedestals/cabinets and restore each Site to the condition that existed prior to the installation of the meter pedestal/cabinet, or as required by the City.

1.2.8 As requested by City, Licensee shall provide City with paper and/or electronic maps of the portion of its Network covered by this Agreement and located in City ROW, including GIS or other data.

1.3 **Expansion of the Network.** Licensee's expansion of the Network into the City ROW shall be conditioned upon the parties' execution of a Supplement for the initial, and each additional, proposed Site. Each Supplement shall have as its subject a single Site. Prior to the execution of any Supplement, the location of the proposed Site and the specifics of the applicable Telecom Facility shall have been approved in writing by all applicable City departments, and Licensee shall have obtained all necessary Land Use Approvals and Permits for all relevant work.

Each request of Licensee for expansion shall be made in writing to the City (each, a "Site Request"), identifying the proposed Site using nearest address, nearest assessor parcel number, and mapped coordinates (by GIS or other method approved by City), describing in reasonable detail the type of Existing Pole, proposed Telecom Facility and method of installation, attachment and connection with utilities and the Network, and including a unique location identifier for the Site for ease of future reference (each, a "Site Identifier").

As of the Effective Date, for each proposed expansion, Licensee shall deliver the Site Request to the RESD, whose task will be to determine whether or not: (i) the proposed Telecom Facility is compatible with the type of Existing Pole, and (ii) any competing demands from other telecommunications providers for the Site have been addressed in accordance with any guidelines established therefore.

In the event that RESD determines that the proposed Telecom Facility is compatible with the type of Existing Pole, and that any competing demands from other telecommunications providers for the Site have been appropriately addressed, RESD shall provide Licensee with a signed letter of authorization (each, an "LOA"), which LOA shall serve solely to evidence the City's consent, as owner of the Site, that Licensee may begin processing the proposed expansion with other applicable City departments, but shall not otherwise establish any rights of Licensee with respect to the Site.

In the event that RESD determines that the proposed Telecom Facility is not compatible with the type of Existing Pole, or that any competing demands from other telecommunications providers for the Site have not been appropriately addressed, RESD shall notify Licensee in writing of such determination, which determination shall constitute a denial of Licensee's request for the proposed expansion; provided, however, that Licensee may elect to promptly resolve the identified issues and resubmit its request to RESD.

In determining whether to approve the location of the proposed Site and the specifics of the applicable Telecom Facility, the various City departments may consider any factors which City deems relevant, including without limitation, Licensee's proposed method of connecting electric and fiber optic lines to the Telecom Facilities (including without limitation whether the method of connection involves use of City conduits and/or meters), the condition of the Existing Pole and foundation (including without limitation the structural integrity thereof to support the Telecom Facilities and/or suitability/feasibility thereof for shared or new conduits), the aesthetic impacts of the Telecom Facility, and other City goals and policies. Notwithstanding anything to the contrary in this Agreement, the decision as to whether or not Licensee shall be permitted to use City conduits and/or meters is reserved to City in its sole and absolute discretion, and any such permission may be the subject of a separate agreement between the City and Licensee.

City has established an approval process, including guidelines elaborating on and governing its consideration of the factors described above, and Licensee agrees to be bound by such process and guidelines, as City may supplement, modify or amend the same from time to time.

Licensee understands that such process and guidelines may also impose restrictions on the number of Sites that Licensee may request within a certain period of time in order to ensure City's administrative ability to efficiently review requests from multiple parties. Licensee further understands that, as of the Effective Date, Telecom Facilities are only considered compatible when proposed for installation on standard (non-historic or specialty) Existing Poles or, if not proposed for installation on standard Existing Poles, when such Telecom Facilities are otherwise integrated into the design of the Existing Pole to the satisfaction of the City's Department of Transportation. City's initial guidelines for addressing competing demands are set forth in **Exhibit "D"** attached hereto.

An overview of such process, including Land Use Approvals, Permits and other City approvals that, as of the Effective Date, may be required concerning the location of the proposed Site and the specifics of the applicable Telecom Facility and the installation thereof is set forth in **Exhibit "E"** attached hereto.

During the "Term" of this Agreement (as defined in Section 2.1, below), within a reasonable period of time after the location of the proposed Site and the specifics of the applicable Telecom Facility have been approved in writing by all applicable City departments, and Licensee has obtained all necessary Land Use Approvals and Permits for all relevant work, the parties shall enter into a Supplement with respect thereto. In the event the location of the proposed Site and the specifics of the applicable Telecom Facility have not been approved in writing by all applicable City departments, or Licensee has not obtained all necessary Land Use Approvals and Permits for all relevant work within one hundred eighty (180) days of the date of the LOA, Licensee's request for the proposed expansion shall be deemed denied, and if Licensee desires to continue to seek the proposed expansion it must recommence the process therefore from the beginning.

In no event can any Supplement amend any term or condition of this Agreement.

Notwithstanding the generality of the foregoing, the City shall be under no obligation to agree to any expansion of the Network with respect to any particular Site or Telecom Facility.

1.4 No Warranty by City. Notwithstanding any other provision to the contrary in this Agreement, the City makes no representations or warranties regarding the suitability, condition or fitness of the Sites for the installation, maintenance or use of the Telecom Facilities, and Licensee accepts the same in their "AS-IS, WITH ALL FAULTS" condition, whether or not known or suspected.

Further, Licensee shall in no event place or install on any Network Pole any Telecom Facilities the weight of which shall exceed the load-bearing capacity, or size of which shall exceed the wind sheer strength thereof, and shall bear sole responsibility for any damage to or failure of any Network Pole notwithstanding City's review of or reliance upon any Integrity Analysis.

1.5 **Permits.** As described in Section 1.2, above, in addition to the Land Use Approvals, Licensee shall obtain any necessary ministerial permits (the “**Permits**”) and pay all fees associated therewith relating to the installation of the Network as required by Law, including without limitation, those permits listed below.

1.5.1 **Encroachment Permits.** Licensee shall obtain any necessary encroachment permits from the City for the installation of the Network and for any other work within the City’s ROW, if required by the OMC or other Law.

1.5.2 **Building Permits.** Licensee shall obtain any necessary building permits from the City for the installation of the Network and for any other work within the City’s ROW, if required by the OMC or other Law.

1.6 Reserved

1.7 **Replacement of Existing Poles.** As a part of Licensee’s submission to City’s Department of Transportation and Building Services Division for approval of each expansion of the Network, Licensee shall deliver to City structural and/or other analyses concerning the condition of the Existing Pole and/or foundation or other appurtenances, which analyses shall be in form and content acceptable to the City and shall demonstrate to the reasonable satisfaction of the City that the Existing Pole and/or foundation or other appurtenances (as modified or replaced in accordance with any recommendations contained therein) can support and will not be damaged by the proposed Telecom Facilities (each, an “**Integrity Analysis**”).

Such Integrity Analyses shall be performed using engineers and other professionals, and following such procedures and protocols, as City has approved, at the sole cost of Licensee. The results and recommendations of such Integrity Analyses, including without limitation any replacement to the Existing Pole and/or foundation or other appurtenances (collectively, the “**Replacement Pole**”), if approved by City’s Department of Transportation and Building Services Division, shall be incorporated by Licensee into its work for the proposed Site, and shall meet the requirements of the Land Use Approvals, be capable of supporting the Telecom Facilities, and comply with all Permits and other applicable Laws. Licensee shall replace the streetlights or other lighting on the Replacement Poles and any other equipment or facilities necessary to place the lights or facilities back in operation for all uses in place prior to the removal and replacement of the Existing Pole. The City shall own the Replacement Poles. Licensee shall provide such transfer or dedication documentation as the City reasonably requests.

Any work under this Agreement which involves replacing or removing Poles shall be subject to such additional requirements as may be specified by the City’s Department of Transportation, including without limitation payment of prevailing wages.

Any pole upon which Telecom Facilities have been installed by Licensee under this Agreement, whether an Existing Pole or Replacement Pole, is hereinafter referred to as a “**Network Pole**”.

1.8 **City Use of Network Poles.** Licensee understands and agrees that the City intends to use the Network Poles for City streetlights and other City lighting purposes, and may do so without limitation. Further, the City may install other non-lighting related City facilities on, or otherwise

make use of, the Network Poles as it deems desirable, including without limitation granting new or additional access and/or use rights to the Network Poles by third parties; provided that such other non-lighting related City uses of the Network Poles or new or additional access and/or use rights to the Network Poles by third parties do not "Interfere" (as such term is defined in Section 9.2, below) with Licensee's use of the Sites as permitted hereunder. Licensee shall reasonably cooperate with the City and all other third parties using the Network Poles. Any Interference caused by other non-lighting related City uses shall be governed as provided in Article 9, below.

1.9 License Fee. Licensee is solely responsible for the payment of license fees in connection with Licensee's performance under this Agreement, as set forth below.

1.9.1 Annual License Fee. As of the Commencement Date (as defined in Section 2.1 below) for each Supplement, Licensee shall commence to pay to the City an annual fee ("Node Fee") for each Site which is the subject of that Supplement of Two Thousand Three Hundred and 00/100 Dollars (\$2,300.00), which amount shall be subject to annual increase as provided below.

The Node Fee for each Site shall be due and payable to City in advance on the Commencement Date and on January 1 of each and every year following each such Site's Commencement Date and the Node Fee shall be prorated for the first and last partial years based on a daily rate based on a three hundred sixty day (360) year. Licensee agrees to pay all Node Fees to Licensor during this Agreement, without any offset or deduction whatsoever, for the nonpayment of which City shall be entitled to exercise all such rights and remedies as are herein provided for in the case of the nonpayment of the Node Fee. Licensee hereby agrees to pay such Node Fee to City at the following address, or such other address as the City may from time to time designate:

City of Oakland
Real Estate Services
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, California 94612
Attn: Telecommunications Program

Each payment of the Node Fee shall include a reference to the Site Identifier .

The Node Fee payable for all Sites shall automatically increase on January 1 of each year of the Term by Three Percent (3%); for the avoidance of doubt, attached hereto as **Exhibit "B"** is a schedule setting forth the Node Fee to be paid with respect to all Sites in any given year of the Term of this Agreement.

1.9.2 Late Payment Charges. Licensee acknowledges that the City incurs collection and administrative costs associated with pursuing delinquent Node Fee payments. City and Licensee hereby agree that if payment of the Node Fee for any year is not received by the City prior to 5:00 p.m. on the day it is due, Licensee shall pay a late charge equal to ten percent (10%) of such overdue amount and shall be due and payable at the time the Node Fee is paid. Acceptance of such late charge by City shall in no event constitute a waiver of Licensee's "Default" (as such term is defined in Section 8.1.1, below) with respect to such overdue amount, nor prevent City from exercising any of the other rights and remedies granted hereunder.

1.9.3 Processing and Administrative Fees. Concurrent with its execution of this Agreement, Licensee shall pay the City a non-refundable processing fee ("**Processing Fee**") of Two Thousand Seven Hundred Twenty-Three and 00/100 Dollars (\$2,723.00) to compensate City for its legal and other costs in entering into this Agreement. Licensee acknowledges that the Processing Fee is not applicable against Node Fee or any other charge or fee under this Agreement.

Concurrent with its execution of each Supplement, as well as in the event that Licensee requires additional administrative services to amend, update, modify or change any Telecom Facilities, Licensee shall pay an Administrative Review Fee ("**Review Fee**") to recover staff costs associated with the technical analysis, legal review and preparation of documents with respect thereto. The current Review Fee is as stated in the City of Oakland Master Fee Schedule is Two Thousand Four Hundred Sixty-Two and 00/100 Dollars (\$2,462.00), which may be increased by City from time to time. The Review Fee is in addition to any fees required by other City departments, and may be adjusted annually in accordance with the City of Oakland Master Fee Schedule.

For the purposes of maintaining an unlawful detainer action, the Node Fee and all other monetary obligations of Licensee under this Agreement shall be considered "rent".

ARTICLE 2 TERM AND TERMINATION

2.1 **Term.** The initial term of this Agreement ("**Term**") shall commence on the Effective Date and terminate on the date ten (10) years following the Effective Date, unless terminated earlier in accordance with the provisions of this Agreement. Licensee shall have the right to extend this Agreement for one (1) renewal term of ten (10) years, provided at the time of such renewal Licensee is not then in Default under this Agreement. The Term of this Agreement shall automatically renew for such ten-year renewal unless Licensee gives City written notice of its election not to renew not less than 180 days prior to the expiration of the Term.

The term of each Supplement shall commence on the first day of the calendar month following the date of full execution of each such Supplement ("**Commencement Date**"), and expire upon the expiration of the Term hereunder, unless Licensee elects an earlier expiration of the term of the Supplement (which shall be expressed in a set number of years), which earlier expiration date shall be set forth in such Supplement.

2.2 **Termination of Use.** Notwithstanding Section 2.1 above, Licensee may terminate its use of any or all of the Network Poles by providing City with ninety (90) days prior written notice; provided, however that in no event shall any such termination be effective with respect to more than twenty-five percent (25%) of the Network Poles in any given twelve (12) month period, unless such termination is a result of Licensee's withdrawal from the regional market of which Oakland is a part; and provided, further, however, that in no event shall any such termination be permitted as a means of circumventing the provisions of the last sentence of Section 10.2, below.

ARTICLE 3 REMOVAL AND RELOCATION

3.1 **Removal Due to Public Project.** Subject to other provisions of this Agreement, in the event City desires to redevelop, modify, remodel, demolish, or in any way alter the Sites and any

improvements thereon, the City shall make good faith efforts to accommodate Licensee's continuing use of the Network Poles, to the extent reasonably feasible given the scope of the project and provided that such accommodation can be made at no cost to the City. Upon receipt of a written demand from the City pursuant to this Article 3, Licensee, at its sole cost and expense, shall remove and relocate any part of the Network, constructed, installed, used and/or maintained by Licensee under this Agreement, whenever the City reasonably determines that the removal and/or relocation of any part of the Network is needed for any of the following purposes: (i) due to any work proposed to be done by or on behalf of the City or any other governmental agency, including but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities such as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; (ii) because any part of the Network is Interfering with or adversely affecting the proper operation of City communication or computer equipment (or any Network Pole lighting or pre-existing third party equipment), and such Interference has not been cured within a reasonable period of time despite the parties' reasonable cooperation undertaken in good faith; or (iii) to protect or preserve the public health and safety. The City shall provide Licensee with prior written notice of such removal or relocation as soon as reasonably feasible and shall reasonably cooperate with Licensee in relocating any portion of the Network removed pursuant to this Section 3.1 in a manner that allows Licensee to continue providing Service to its customers and the applicable Supplement shall be accordingly amended; provided, however, that such cooperation shall be at no cost to the City. In the event any such portion of the Network is not so relocated, the applicable Supplement shall terminate.

3.2 Removal Due to Termination. Prior to expiration of the Term of this Agreement or any Supplement, or earlier termination thereof pursuant to the provisions of this Agreement, Licensee shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the Sites or adjacent property, restore each Site and its adjacent property to its original condition, reasonable wear and tear excepted, including landscaping and related irrigation equipment, or other aesthetic improvements made by Licensee to the Site or adjacent property, or as otherwise required by the City. For Replacement Poles, Licensee shall install a standard replacement Pole if directed by City. Alternatively, the City may allow Licensee, in the City's sole and absolute discretion, to leave the Network, or any part thereof, in place in which event the same shall become the property of the City without further action of the parties.

3.3 Abandonment. In the event Licensee ceases to operate the Network, or any part thereof, for a period of ninety (90) days or more, Licensee shall be deemed to have abandoned the same and shall, at its sole cost and expense and within thirty (30) days after written notice from City, vacate and remove the Network or the abandoned part thereof, whereupon the applicable Supplements shall terminate. If such removal disturbs the Site or adjacent property, Licensee shall also, at its sole cost and expense, restore the Site or adjacent property to its original condition, reasonable wear and tear excepted, including landscaping and related irrigation equipment, or other aesthetic improvements made by Licensee to the Site or adjacent property. For Replacement Poles, Licensee shall install a standard replacement Pole if directed by City. Alternatively, the City may allow Licensee, in the City's sole and absolute discretion, to leave the Network, or any part thereof, in place in which event the same shall become the property of the City.

3.4 **Payment of the Node Fee Pending Removal; No Relocation Compensation.** Licensee shall continue to pay to City a prorated Node Fee for any period beyond the expiration of the Term of this Agreement or any Supplement (or earlier termination thereof), until Licensee completes its obligation to remove the Telecom Facilities and restore the Sites and adjacent property, as provided above, at the rate of 150% of the last Node Fee payable hereunder at the date of such expiration. Licensee understands and agrees that Licensee is not and shall not be entitled to compensation for any relocation of its Network that may be required under Section 3.1. Licensee further acknowledges that Licensee is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable Law upon termination of this Agreement or any Supplement.

ARTICLE 4 MAINTENANCE AND REPAIR

4.1 **Electricity and Other Utility Use.** Licensee shall pay for the electricity and other utilities services it consumes in its operations at the rate charged by the servicing utility company.

4.2 **Maintenance and Repair.** Licensee shall, at Licensee's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain the Telecom Facilities and all other parts of the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. Licensee shall not permit rubbish, garbage or debris to accumulate on or around the Telecom Facilities or the Sites. If the City gives Licensee written notice of a failure by Licensee to maintain the Telecom Facilities or other parts of the Network, Licensee shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice, unless such failure constitutes a danger to public safety, in which event Licensee shall remedy such failure immediately. All such maintenance and repairs shall be undertaken in accordance with all other applicable provisions of this Agreement, including without limitation the provisions of Sections 1.2.3 through 1.2.6.

City shall perform all maintenance and repair of the Network Poles, but not the Telecom Facilities, for their intended municipal purposes as necessary to correct life-threatening or hazardous conditions of which City has knowledge, which maintenance and repair shall be at City's sole cost and expense, except that the correction of any condition caused by Licensee, its contractors, officers, employees or agents, shall be undertaken by the City at Licensee's cost in all events. If the cost of any given repair to a Network Pole is expected to exceed the typical cost to City of undertaking a comparable repair of its standard Pole (the "**Maximum City Repair Cost**"), City may elect to terminate that Supplement and adjust Node Fee accordingly, unless Licensee elects to pay the portion of such costs in excess of the Maximum City Repair Cost, in which case City shall proceed with the repair to the Network Pole (but not the Telecom Facilities); provided, however, that in cases when such repair requires replacement of the Network Pole, City may elect to require Licensee to provide the appropriate Replacement Pole and/or perform such repairs, but in no event shall the cost to City in connection therewith exceed the Maximum City Repair Cost.

4.3 **Repair of ROW.** Licensee shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused or contributed to by Licensee's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of

the Network in the City's ROW. Licensee shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition in accordance with the City's applicable street restoration standards and other applicable Laws.

4.4 Access to the Sites.

4.4.1 The Sites subject to this Agreement are in the ROW, and Licensee shall follow the City's processes for accessing the ROW, including without limitation obtaining any applicable Permits. A schedule of routine maintenance shall be provided to the RESD. All maintenance and repair activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services.

4.4.2 The City reserves, and Licensee agrees to, the right of the City, its officers, employees, agents or contractors, to enter into and access the Sites at any time. Without limiting the foregoing, the City and Licensee agree that the City may: (1) inspect the Sites and Telecom Facilities for Licensee's compliance with the terms of this Agreement; (2) make repairs, alterations or additions to the Sites or maintain or use the Site in a manner that, to the extent reasonably feasible, causes minimal impairment, interruption or interference with Licensee's use of the Sites and in a manner that is consistent with the terms of this Agreement.

4.5 Bond. Concurrent with execution of the first Supplement to this Agreement, Licensee shall provide to City a bond in the amount of One Million and 0/100 Dollars (\$1,000,000.00) to secure Licensee's faithful performance of all terms, covenants and conditions of this Agreement. City may (but shall not be required to) draw upon such bond to remedy any failure of Licensee to perform any term, covenant or condition of this Agreement (including without limitation, the payment of the Node Fees or other sum due hereunder), without waiving any other right or remedy of City. Licensee waives the provisions of any Law (including without limitation California Civil Code 1950.7) which may restrict the manner in which such security may be applied. Such bond shall be maintained in effect for one (1) year following the expiration of the Term of this Agreement, and shall be in form and content and issued by a surety acceptable to the City Attorney. The amount of such bond shall in no way limit the liabilities of Licensee under this Agreement.

ARTICLE 5 TAXES

5.1 Taxes. Licensee agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the Network or otherwise arising under this Agreement. Pursuant to Section 107.6 of the California Revenue and Taxation Code, the City hereby advises, and Licensee recognizes and understands, that Licensee's use of the City's ROW and the Network Poles may create a possessory interest subject to real property taxation and that Licensee may be subject to, and responsible for, the payment of real property taxes levied on such interest. Licensee will cooperate with the Alameda County Assessor in providing any information necessary for the Assessor to make a property tax determination. Licensee reserves the right to challenge any such assessment, and the City agrees to cooperate with Licensee in connection with any such challenge so long as such cooperation can be provided at no cost to the City.

ARTICLE 6 INDEMNIFICATION

6.1 **Indemnity.** To the maximum extent permitted by Law, Licensee shall indemnify, defend, and hold harmless the City, its councilmembers, officers, employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense, arising out of or resulting from activities undertaken by or on behalf of Licensee pursuant to this Agreement, except to the extent arising from or caused by the sole active negligence or willful misconduct of the City, its councilmembers, officers, employees, agents, or contractors which negligence or misconduct is not otherwise covered by insurance required hereunder. The City shall promptly notify Licensee of any claim, action or proceeding covered by this Section 6.1.

6.2 **Waiver of Claims.** To the maximum extent permitted by Law, Licensee waives all claims, demands, causes of action, and rights it may assert against the City, its councilmembers, officers, employees, agents, and contractors, on account of any loss, damage, or injury to any property or person arising out of or resulting from activities undertaken by or on behalf of Licensee pursuant to this Agreement except to the extent arising from or caused by the sole active negligence or willful misconduct of the City, its councilmembers, officers, employees, agents, or contractors, which negligence or misconduct is not otherwise covered by insurance required hereunder.

6.3 **Limitation of City's Liability.** To the maximum extent permitted by applicable Law, the City will in no event be liable for indirect or consequential damages under any circumstances. Licensee understands that City would not be willing to enter into this Agreement in the absence of such limitation, and Licensee accordingly agrees to assume the risk with respect thereto.

ARTICLE 7 INSURANCE

7.1 **Minimum Insurance Requirements.** Licensee shall, at its sole cost and expense, procure and maintain during the Term of this Agreement insurance in accordance with the requirements of Exhibit "C" which is attached hereto and incorporated herein. Evidence of insurance shall be submitted to the City concurrently with execution of the first Supplement to this Agreement.

ARTICLE 8 DEFAULT

8.1 **Default.**

8.1.1. Defined. A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure such within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a Default shall not

have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

8.1.2. Remedies. Upon the Default of one party, then the non-defaulting party may terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable Law relating to such breach.

8.2 **City Termination Right.** In addition to termination as set forth in Section 8.1.2, the City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government requiring the removal of the Telecom Facilities from the Sites; or (ii) if Licensee's PUC Registration is terminated, revoked, expired, or otherwise abandoned; or (iii) in the event of the bankruptcy or otherwise insolvency of Licensee. Such termination right under subsection (i), above, shall be subject to Licensee's rights to the portion of any award arising under any such taking which is specifically allocable to Licensee's relocation expenses or loss or damage to the Telecom Facilities; provided, however, that such allocation does not reduce amounts to which City would otherwise be entitled in connection with such taking and City is not responsible for paying for Licensee's portion. In the event any such taking affects less than all of the Sites, this Agreement shall continue but the Supplements for the taken Sites shall terminate, and applicable Node Fees shall cease, from the date of the taking. The City shall provide Licensee with prior written notice of such termination as soon as reasonably feasible.

8.3 **City Right to Cure Licensee Non-Performance.** In addition to other remedies available to the City, if Licensee fails to perform any obligation under this Agreement which is in the nature of repair, maintenance, correction of work, or removal and/or replacement, and Licensee fails to commence and thereafter diligently pursue to completion such obligation following reasonable written notice to Licensee, Licensor shall have the option to complete such obligation and Licensee shall immediately reimburse the City for actual costs incurred in connection therewith.

8.4 **Interest.** If Licensee fails to make any payment under this Agreement when due, such amounts shall accrue interest, from the date such payment is due until paid, including accrued interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

ARTICLE 9 INTERFERENCE

9.1 **Interference by Licensee.** As set forth in FCC regulations, Licensee shall operate the Network and Telecom Facilities in such a manner that all communications sent or received by the Telecom Facilities shall be in accordance with FCC rules and regulations and pursuant to Licensee's FCC issued and regulated frequency licenses; provided, however, that in all events Licensee shall ensure that its use of the Network does not "Interfere" (as defined below) with City's communication or computer equipment (including without limitation the communications or computer equipment of third parties, such as the East Bay Regional Communications Authority or the Oakland International Airport, which support the City's communications), or City's streetlights or other lighting or any pre-existing third parties' equipment on the Network Poles.

9.2 **Curing Interference.** As used in this Agreement, the term "Interference" shall mean and include any and all material and/or measurable interference as defined by the FCC. The parties

agree to reasonably cooperate in good faith to remedy and cure such Interference with or impairment of City's equipment or any Network Pole lighting or pre-existing third party equipment as soon as is feasible under the circumstances, but Licensee's operation of the Telecom Facilities shall at all times be subordinate to and accommodate the reasonable requirements of City's equipment and any Network Pole lighting or pre-existing third party equipment.

If any change in the nature of the City's use of any Network Pole during the Term results in Interference with the Network making it necessary to alter the Telecom Facilities to mitigate the adverse effect, Licensee shall notify the City and provide evidence of the claimed impairment. If the City determines in its reasonable discretion that mitigation is not feasible or cannot be achieved for a reasonable cost in the City's reasonable judgment, as its sole remedy therefore Licensee may elect either to: (1) terminate the Supplement as to the affected Network Pole; or (2) take steps itself at its own cost to mitigate the adverse effect and continue to operate the Telecom Facilities on the Network Pole, and receive from the City a waiver of the Node Fee for up to the first six months of the following year of the Term under the affected Supplement to offset the cost of mitigation.

9.3 **Public Emergency.** City and Licensee acknowledge that in the event of imminent threats to public health or safety (including without limitation Interference with City's public safety communications), City may be required to take action with or without notice to Licensee, or may request Licensee to take immediate action, which may cause Interference with Licensee's Network or signal transmission and reception, and in the event of such threats, Licensee shall comply with all such requests and City shall have no liability to Licensee for any Interference or other damage caused to Licensee's Network.

(i) Licensee agrees to install a master power "cut-off" switch on the Sites for the purpose of assisting City in such an emergency, and shall deliver written instructions to the RESD regarding the use and operation of such switch.

(ii) Unless otherwise specifically provided in a notice of termination of this Agreement, City's exercise of the right to shut off any power to the Sites pursuant to this Section is not intended to constitute a termination of this Agreement by either party.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 **Nonexclusive Use.** Licensee acknowledges that this Agreement does not provide Licensee with exclusive use of the City's ROW or any municipal facility and that City retains the right to permit other providers of communications services to install equipment or devices in the City's ROW and on municipal facilities. Licensee acknowledges that the City may make information available to other providers of communications services concerning the presence or planned deployment of the Network in the City's ROW.

10.2 **Compliance with Laws.** Licensee shall comply with the Land Use Approvals and Permits and any and all other applicable Laws in the exercise of its rights and performance of its obligations under this Agreement. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals, policies or other applicable requirements of the City or other governmental entity or agency having

jurisdiction over Licensee's activities under this Agreement or having jurisdiction that is applicable to any aspect of this Agreement, including without limitation the OMC, all laws concerning hazardous substances or materials, and all requirements of the PUC, that are in force at any time during the Term of this Agreement.

Licensee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Agreement to receive any abatement, diminution, reduction or suspension of payment of Node Fees.

10.3 **Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and personally delivered or transmitted through United States mail return receipt requested or certified to the following address or such other address of which a party may give written notice:

If to Licensee: ExteNet Systems (California) LLC
 3030 Warrenville Road, Suite 340
 Lisle, Illinois
 Attention: CFO

With a copy to: General Counsel at same address

If to City: City of Oakland
 c/o Real Estate Division
 250 Frank H. Ogawa Plaza, 4th Floor
 Oakland, California 94612
 Attn: Telecommunications Program

Such notice shall be deemed made when personally delivered or, if mailed, such notice shall be deemed made five (5) calendar days after the date of deposit in the U.S. Mail.

10.4 **Sublicensing /Assignment/Co-location.**

Licensee shall not directly or indirectly (including without limitation by merger, acquisition, or other transfer of controlling interest in Licensee) assign, encumber, pledge, or otherwise transfer (including any transfer by operation of law, or sublicensing) this Agreement (or any Supplement) or any interest therein or use rights derived thereunder (in any event, an "Assignment") without City's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Licensee shall have the right, without Licensor's consent (but with notice to City), to assign this Agreement (together and all Supplements) in whole, to any person, firm or corporation which shall control, be under the control of, or be under common control with Licensee, or to any corporation into which Licensee may be merged or consolidated or which purchases more than fifty-one percent (51%) of the assets or stock of Licensee ("**Permitted Transferee**"), provided, that such Permitted Transferee has a net worth of at least Ten Million Dollars (\$10,000,000.00), and provided, further, that such Permitted Transferee agrees in writing to be fully bound by this Agreement and to assume all of the Licensee's obligations and liabilities hereunder, whether arising before or after the date of such assignment.

The City's consent to an Assignment shall not be deemed to be a consent to a subsequent Assignment.

It shall be reasonable for City to withhold consent to any Assignment to a third party whose qualifications (including, without limitation, financial condition, reputation and operating history) are less than those of Licensee (and Licensee shall provide City evidence of such qualifications upon request). As a condition to any such consent, Licensee shall pay to City fifty percent (50%) of the value of any consideration payable under any such Assignment over the amounts payable hereunder to the City; provided, however, that with respect to any Assignment which involves the installation of an additional third-party carrier's Telecom Facilities or servicing of an additional third-party wireless carrier customer outside of the parameters described in the following paragraph, Licensee shall pay to City one additional Node Fee for each such Assignment.

The parties agree and acknowledge that certain Telecom Facilities installed by Licensee on Network Poles pursuant to this Agreement may either: (i) 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 wireless carrier customers, or (ii) used by Licensee to service such wireless carrier customers. Such Telecom Facilities shall be treated as Licensee's Telecom Facilities for all purposes under this Agreement and such arrangements shall not constitute an Assignment in violation of the foregoing restriction on Assignment or be subject to additional Node Fees, provided that (i) Licensee remains responsible and liable for all obligations under the Agreement with respect to such Telecom Facilities; (ii) Licensor's sole point of contact regarding such Telecom Facilities shall be Licensee; (iii) Licensee shall have the right to remove and relocate the Telecom Facilities as otherwise provided in the Agreement; (iv) and Licensee shall not grant such wireless carrier customers with rights to access such Telecom Facilities; provided, further, however, that in no event more than one (1) such third-party wireless carrier customer's Telecom Facilities be so installed at any given Site, nor shall at any given time more than one (1) such third-party wireless carrier customer be serviced from any given Site.

10.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

10.6 Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof, are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

10.7 Severability. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

10.8 Governing Law. This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by, the domestic law of the State of California or

applicable federal law, without regard to laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement shall occur in the federal court with jurisdiction over Alameda County or the state courts located in Alameda County, California.

10.9 **Survival of Terms.** All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of City's liability and waiver shall survive termination of this Agreement.

10.10 **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

10.11 **Exhibits.** All Exhibits referenced in this Agreement are hereby incorporated as though set forth in full herein.

10.12 **Drafting.** Licensee agrees that should any of the terms of this Agreement be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the City, and that it waives the effect of California Civil Code Section 1654.

10.13 **Execution in Counterparts.** This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

10.14 **Authority to Execute This Agreement.** Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

10.15 **Authorization to Manager RESD.** Where this Agreement requires or permits the City to act and no officer of the City is specified, the Manager RESD or their designated representative has the authority to act on behalf of the City.

10.16 **Agreement Applicable Only to the Sites.** This Agreement shall not be construed to permit construction, installation, maintenance or use of Telecom Facilities on any property other than the Sites which are the subject of Supplements.

10.17 **No Abrogation of Legal Responsibilities.** Licensee acknowledges and agrees that City is entering into this Agreement in its capacity as a property owner with a proprietary interest in the Sites, and not as a regulatory agency with police powers. The City's execution of this Agreement shall not abrogate, in any way, Licensee's responsibility to comply with all permitting requirements or to comply with all Laws with respect to its performance of the activities permitted under this Agreement.

10.18 **Enforced Delay.** Except for any obligations or conditions related to the payment of money, performance by either party under this Agreement shall not be deemed to be in Default where delays or Default are due to war; acts of terrorism; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; or unusually severe weather. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) calendar days of the commencement of the cause. Notwithstanding the above, if one or more such events cause(s) an aggregate delay of more than one year, the other party may terminate the Agreement upon thirty (30) days' written notice. Notwithstanding anything to the contrary in this Section 10.18, the condition of the market, lack of credit or financing (unless such lack is itself a result of some other event of enforced delay) shall not be considered to be a matter beyond the Licensee's control and therefore no event caused by a lack of such financing or credit in and of itself shall be considered to be an event requiring an extension of time for performance under this Section 10.18.

10.19 **No Partnership.** Nothing in this Agreement shall be construed to create a partnership or joint venture between the City and Licensee or any other relationship other than as licensor and licensee; nor shall Licensee in any manner act or indicate to any third party that it is acting as agent of the City.

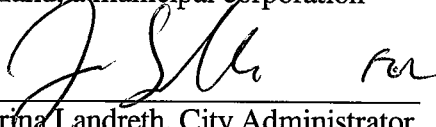
10.20 **Title to Licensee's Equipment.** Title to the Telecom Facilities, which in no event shall include the Network Poles, shall be held by Licensee. All of the Telecom Facilities shall remain the property of the Licensee and are not fixtures. Licensee has the right to remove all of the Telecom Facilities at its sole expense at any time without the City's consent (but with prior notice to the City), provided such removal does not adversely affect the aesthetics of the Network Poles, that any damage to the Network Poles is promptly repaired, and that no rights of the City under this Agreement are otherwise affected thereby, including without limitation the right to continue to receive Node Fees with respect to the affected Sites. The City acknowledges that Licensee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of the Telecom Facilities (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, City (i) consents to the installation of the Collateral, to the extent that the Collateral is part of the Telecom Facilities; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution foreclosure, sale, levy, attachment, or distress for any Node Fees and that, subject to the foregoing limitations, such Collateral shall be removed at any time without recourse to legal proceedings; provided, however, that in no event shall the Collateral include the Network Poles.

[Signatures Begin on Following Page]

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date stated in the introductory clause.

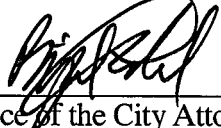
CITY:

City of Oakland, a municipal corporation

By: 
Sabrina Landreth, City Administrator

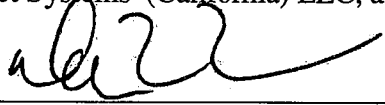
Date: 2/28/18

APPROVED AS TO FORM AND LEGALITY


Office of the City Attorney

LICENSEE:

ExteNet Systems (California) LLC, a California Limited Liability Company

By: 

Daniel L Timm
Printed Name

Its: Vice President

02/22/18

EXHIBIT A
SUPPLEMENT TO LICENSE AGREEMENT

This Supplement to License Agreement ("**Supplement**"), is made this _____ day of _____, 20____, between the City of Oakland, a municipal corporation, hereinafter designated "**Licensor**," and _____, a _____, with its principal offices at _____, hereinafter designated "**Licensee**":

1. **Supplement.** This is a Supplement as referenced in that certain Master License Agreement between Licensor and Licensee dated _____, ____ ("**Agreement**"). All of the terms and conditions of the Agreement are incorporated herein by this reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of the Agreement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **Site.** The Site covered by this Supplement is described in Attachment 1, attached hereto and incorporated herein by this reference. The Site Identifier is: _____.
3. **Equipment.** The Telecom Facilities to be installed at the Site is described in Attachment 2, attached hereto and incorporated herein by this reference.
4. **Land Use Approvals.** The Land Use Approvals and Permits for the Telecom Facilities are attached as Attachment 3, attached hereto and incorporated herein by this reference.
5. **Term.** The term of this Supplement shall be as set forth in Section 2.1 of the Agreement or, if Licensee has elected an earlier expiration of the term of this Supplement, then such term shall expire on . The Commencement Date under this Supplement shall be .
6. **Fees.** The Node Fee for this Site shall be as described Section 1.9.1 of the Agreement. City acknowledges that the Review Fee required by Section 1.9.3 of the Agreement has been paid in full.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have signed this Supplement as of the date stated in the introductory clause.

City of Oakland, a municipal corporation

By: _____
Sabrina Landreth, City Administrator

Date: _____

APPROVED AS TO FORM AND LEGALITY

Office of the City Attorney

_____, a _____

By: _____

Printed Name

Its: _____

By: _____

Printed Name

Its: _____

Date: _____

Exhibits:

Attachment 1 - Site

Attachment 2 - Facility

Attachment 3 - Land Use Approvals and Permits

EXHIBIT B

Schedule of Node Fee Payable by Calendar Year

YEAR	NODE FEE (3% Annual Escalation)
1	\$2,300.00
2	\$2,369.00
3	\$2,440.07
4	\$2,513.27
5	\$2,588.67
6	\$2,666.33
7	\$2,746.32
8	\$2,828.71
9	\$2,913.57
10	\$3,000.98
11	\$3,091.01
12	\$3,183.74
13	\$3,279.25
14	\$3,377.63
15	\$3,478.96
16	\$3,583.33
17	\$3,690.82
18	\$3,801.55
19	\$3,915.60
20	\$4,033.06

EXHIBIT C

Insurance Requirements

a. General Liability, Automobile and Worker's Compensation

Licensee shall procure, prior to the time specified in Section 7.1 of this Agreement, and keep in force for the Term of this Agreement, at Licensee's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Licensee shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- ii. **Automobile Liability Insurance.** Licensee shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA.

- iii. **Worker's Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Licensee certifies that it is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Licensee shall comply with the provisions of section 3700 of the California Labor Code before commencing any work under this Agreement and thereafter as required by that code.

b. Terms Conditions and Endorsements

The aforementioned insurance shall have all the following conditions:

- i. Insured Status (Additional Insured): Licensee shall provide insured status naming the City, its Councilmembers, directors, officers, agents, employees and volunteers as insured's under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Licensee submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Coverage afforded on behalf of the City, its Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City, its Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and
- iii. Cancellation Notice: Each insurance policy required by this Agreement shall provide that coverage shall not be canceled, except with notice to the City; and
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City, its Councilmembers, directors, officers, agents, employees and volunteers for all work performed by the Licensee, its employees, agents and contractors; and
- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Licensee, such insurance in the name of Licensee as is required pursuant to this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Licensee will be required to provide evidence of all insurance required, including copies of Licensee's insurance policies if and when requested, prior the time specified in Section 7.1 of this Agreement. Failure to provide the insurance evidence requested or failure to do so in a timely manner shall constitute a Default.

f. Contractors

Should the Licensee contract out the work under this Agreement, it shall include all contractors as insureds under its policies or shall obtain separate certificates of insurance and endorsements from each contractor. As an alternative, the Licensee may require all contractors to provide at their own expense evidence of all the required coverages listed in this Exhibit. If this option is exercised, both the City and the Licensee shall be named as additional insured under the contractors' General Liability policy. All coverages for contractors shall be subject to all the requirements stated herein. The City reserves the right to perform insurance audits at any time during the Term of this Agreement to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Licensee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Licensee waives all rights against the City, its Councilmembers, officers, directors, agents, employees and volunteers, for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City maintains the right to modify, delete, alter or change these requirements from time to time, with reasonable notice, upon not less than ninety (90) calendar days prior written notice.

j. Higher Limits of Insurance

If the Licensee maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the Licensee.

EXHIBIT D

Competitively Neutral Notification Process

The purpose of this process is to ensure that, while wireless telecommunications providers may seek approval for the installation of Telecom Facilities at any given Site on a neutral, non-discriminatory basis, no individual wireless telecommunication provider that already has Telecom Facilities at any given Site or has received an LOA (or has asserted a non-expired present interest as provided herein) for any given Site has the right to receive an LOA with respect to additional Sites within a radius of 500 feet, unless and until all other wireless telecommunications providers have been given a fair opportunity to make use of any other available Sites in that radius.

If Licensee intends to submit a Site Request for a Site (a "**Preferred Site**") that is within 500 feet of another Site that already is the subject of an executed Supplement for Licensee's Telecom Facilities or with respect to which Licensee has received an LOA or has asserted a non-expired present interest as provided herein, Licensee shall first determine whether any other telecommunications provider that has a master license agreement for wireless attachments in effect with the City ("**Other Firm**") has a present interest in using the Preferred Site as a location for its own Telecom Facilities. Licensee shall establish whether such an interest exists as follows:

- a. Licensee must send out a notice ("**Preferred Site Notice**") to all Other Firms. Notices should be sent at least thirty (30) days before Licensee plans to submit its Site Request to RESD with respect to the Preferred Site.
- b. Such Preferred Site Notice must disclose the street location and any identifying number, name or description sufficient to specify the Site that is the Preferred Site. Such notice may also identify other Sites that may serve as an alternative to the Preferred Site.
- c. Such notice must be sent via certified mail with return receipt requested, however, Licensee may, by agreement with one or more Other Firms, establish standing arrangements whereby such notice is provided in a manner other than by certified mail, for example through email notice with confirmed receipt or using some other process in which receipt of notification can be documented.
- d. An Other Firm will have ten (10) business days from its receipt of the Preferred Site Notice to inform the RESD whether it has a present interest in attaching Telecom Facilities to the Preferred Site.
- e. An Other Firm may assert such an interest only if it: (1) does not have its own Telecom Facilities installed on any Site within 500 feet of the Preferred Site or an LOA for a Site within that distance; and (2) reasonably intends in good faith to submit, within six (6) months of receipt of the notice, a Site Request for the Preferred Site. If an Other Firm timely states such an interest, the Other Firm shall have the first right to submit a Site Request for the Preferred Site within that period, unless the Licensee negotiates another arrangement with the Other Firm.

f. If there are multiple Other Firms that timely express an interest in a Preferred Site, the Other Firms and Licensee shall jointly work together, within thirty (30) days to devise a plan to allocate available nearby Sites between them so as not to interfere with each other, and two or more of them may jointly propose to install Telecom Facilities on shared Poles. Licensee shall be responsible for initiating these discussions.

g. The appropriate City personnel, including RESD staff, will be reasonably available to participate and advise in these coordination discussions, the results of which shall be subject to the approval of City in its sole and absolute discretion.

EXHIBIT E

Land Use Approvals, Permits and Other City Approvals

Note: The Agreement more fully addresses certain of the items identified below:

RESD – With input from the Department of Transportation if required, approves compatibility of proposed Telecom Facility with the type of Existing Pole. Determines whether competing demands for Sites have been properly addressed. Provides LOA to Licensee permitting Licensee to apply for Land Use Approvals and Permits.

Planning and Zoning Division – Undertakes design review of proposed Telecom Facilities.

Planning Commission – Applicable to proposed Telecom Facilities requiring conditional use permits or variances.

Department of Transportation/Building Services Division – Review and approve plans and specifications for proposed Telecom Facilities, including Integrity Analysis and method of connection. Determine conditions relating to any sharing of conduits/meters, including without limitation consideration to be paid by Licensee in connection therewith.

Building Services Division - Issues building permit

Department of Transportation – Issues encroachment permit