

RESOLUTION NO. 2019-187

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE FINDING NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO STATE CEQA GUIDELINES SECTIONS 15183, 15301, AND 15303 AND APPROVING A MASTER LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC

WHEREAS, New Cingular Wireless PCS, LLC (by AT&T Mobility) (the “Applicant”) seeks approval of a Master License Agreement (the “MLA”) for small cell wireless facilities to be constructed in the City; and

WHEREAS, the Planning Commission held a duly-noticed public hearing on July 18, 2019 to consider all information presented by staff, interested persons, and the Applicant concerning approval of the MLA and related amendments to Title 23 (Zoning) of the Elk Grove Municipal Code; and

WHEREAS, the Planning Commission voted 4-0 to recommend that the City Council approve the MLA and related amendments to Title 23 (Zoning) of the Elk Grove Municipal Code (“EGMC”); and

WHEREAS, the City Council held a duly-noticed public hearing on August 28, 2019, to consider all information presented by staff, interested persons, and the Applicant concerning approval of the MLA and related amendments to Title 23 (Zoning) of the Elk Grove Municipal Code.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove finds that no further environmental review is required under the California Environmental Quality Act (CEQA) for approval of the MLA pursuant to State CEQA Guidelines Sections 15183, 15301, and 15303 based upon the following finding:

California Environmental Quality Act (CEQA)

Finding: No further environmental review is required for approval of the MLA under CEQA pursuant to State CEQA Guidelines Sections 15183, 15301, and 15303.

Evidence: CEQA requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (State CEQA Guidelines Section 15378). The proposed Project is a project under CEQA.

Staff has analyzed the MLA and related EGMC text amendments and has determined that no further environmental review is necessary for their approval pursuant to State CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning), Section 15301 (CEQA exemption for minor alteration to existing facilities), and Section 15303 (CEQA exemption for new construction or conversion of small structure). The MLA facilitates the deployment of small cell antennas and associated equipment throughout the City, and it addresses the processing of permits individual small cell facilities; their operation and maintenance; and their location, design and technical specifications.

Chapter 23.27 of the EGMC currently defines wireless telecommunications facilities and specifies the zoning districts where these wireless facilities are allowed, as well as the permit processes to which these facilities are subject. The proposed EGMC text amendments and MLA define "Wireless Telecommunications Facilities, Small Cell" which are a specific subset of those wireless facilities that are currently allowed but fall within particular size criteria. Wireless Communications Facilities are allowed in all zoning districts throughout the City. Small cell facilities will also be allowed in all zoning districts; however, the MLA allows facilities that differ from the traditional, large scale facilities. The approval of the MLA is consistent with General Plan policies related to community infrastructure and development density. An EIR was certified in conjunction with the approval of the General Plan (SCH# 2017062058). Approval of the MLA will not create a significant new impact inconsistent with the General Plan EIR. Therefore, pursuant to CEQA Guidelines Section 15183, no further CEQA review is required for the approval of the proposed MLA.

Approval of the MLA and the small cell wireless facilities that would be subject to the MLA, are also exempt from CEQA under CEQA Guidelines Sections 15301 and 15303. Section 15301 exempts from CEQA minor alteration to existing public or private structures. Section 15303 exempts from CEQA the construction of small facilities, including the installation of small new equipment and facilities. Here, the associated EGMC text amendments and the MLA authorize the installation of facilities at various sites within the City. The new facilities are to be installed on existing City facilities such as streetlight and/or traffic signal poles, and the new facilities will be less than 28 cubic feet, with the specifically proposed facilities being much less than half the size of the existing poles. Therefore, the approval of the proposed EGMC text amendments and MLA are exempt from CEQA review pursuant to CEQA Guidelines Sections 15301 and 15303.

AND BE IT FURTHER RESOLVED that the City Council of the City of Elk Grove hereby approves the Master License Agreement with New Cingular Wireless PCS, LLC in substantially the form attached hereto as Exhibit A. This resolution shall be effective as of the effective date of the related text amendments to Title 23 (Zoning) of the Elk Grove Municipal Code (Ordinance No. 19-2019).

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 28th day of August 2019



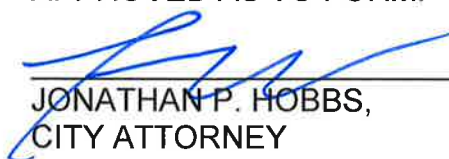
STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

EXHIBIT A

MASTER LICENSE AGREEMENT FOR SMALL CELL WIRELESS COMMUNICATIONS FACILITIES BETWEEN THE CITY OF ELK GROVE AND NEW CINGULAR WIRELESS PCS, LLC

This License Agreement for Small Cell Wireless Communications Facilities on Municipal Facilities (the “Agreement”) is made and entered into as of _____, 2019 (“Effective Date”) by and between the City of Elk Grove, a municipal corporation (“Licensor” or “City”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company (“Licensee”). Licensor and Licensee shall sometimes be referred to hereafter individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. Licensor is the owner of certain Municipal Facilities located in the City’s right-of-way situated within the City of Elk Grove;
- B. Licensee seeks to affix Small Cell Wireless Communication Facilities to certain of Licensor’s Municipal Facilities, as set forth herein;
- C. Licensee is willing to compensate Licensor in exchange for a grant and right to use and physically occupy portions of the Municipal Facilities as provided herein;
- D. Licensor is willing to accommodate Licensee’s non-exclusive use of such Municipal Facilities for Small Cell Wireless Communication Facilities in accordance with all applicable law and the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth in this Agreement, the Parties hereby agree as follows:

1. DEFINITIONS

As used herein, the following capitalized terms have the meaning ascribed to them below:

- 1.1 “EGMC” means the City of Elk Grove Municipal Code.
- 1.2 “Emergency” means an event that severely impairs public health, safety, and/or welfare.
- 1.2 “FCC” means the Federal Communications Commission.
- 1.3 “Individual Site Permit” means a permit for a single Small Cell Wireless Communications Facility at a specified location on a Municipal Facility.
- 1.4 “Municipal Facilities” or “Municipal Facility” means those Licensor-owned streetlights, traffic signals, flags, banners and/or signage, refuse receptacle(s); bus stop(s); poles; fixtures, or any other similar structure(s) capable of accommodating a Small Cell

Wireless Communications Facility located within the Licensor's Right of Way ("ROW") that are designated or approved by Licensor as being suitable for placement of Small Cell Wireless Communication Facilities.

1.5 "Person" or "Persons" means any natural person or other legal entity including, without limitation a corporation, partnership, or government agency.

1.6 "Small Cell Wireless Communication Facilities" or "Small Cell Wireless Communication Facility" means any small cell antennas and other wireless communications equipment, including facilities that operate on unlicensed frequencies and FCC-approved frequencies in the bands authorized for commercial wireless communication services by the FCC pursuant to FCC licenses issued to Licensee, and all associated equipment, affixed by Licensee to a Licensor's Municipal Facility and meeting the following size criteria: (i) the small cell antenna on a single Municipal Facility shall not exceed six (6) cubic feet in volume; (ii) any individual piece of associated equipment on a single Municipal Facility shall not exceed nine (9) cubic feet in volume; and (iii) the cumulative total of all associated equipment for a single Municipal Facility shall not exceed twenty-eight (28) cubic feet in volume.

2. SCOPE OF AGREEMENT

2.1 Scope of Agreement. Licensor, acting in its proprietary capacity as the owner of Municipal Facilities, and subject to the terms and condition of this Agreement, does hereby grant to Licensee a nonexclusive license to use the Municipal Facilities to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Small Cell Wireless Communication Facilities at the locations identified in Exhibit A, attached hereto. Licensee shall provide geographic information system ("GIS") information to the City identifying such sites in an electronic or other form acceptable to the City allowing the City to modify or layer such GIS information on an on-going basis, as needed. The list of Small Cell Wireless Communication Facilities locations set forth at Exhibit A may be amended or supplemented from time to time by the City Manager in order to update the applicable Small Cell Wireless Communication Facilities locations. Nothing in this Agreement grants Licensee the right to make any installation, or to install any other facilities or equipment not addressed in this Agreement and/or that do not conform to this Agreement. Nothing in this Agreement grants Licensee the right to make any installation, or to install any other facilities or equipment on private property. The rights and obligations set forth in this Agreement are contractual only, and no use of Licensee's Municipal Facilities under this Agreement shall create or vest in Licensee any ownership, property, or other similar legal interest in such Municipal Facilities. No permit shall be issued for any Small Cell Wireless Communications Facility for a location not identified on the map contained at Exhibit A, as it may be amended from time to time.

2.2 Interference with Small Cell Wireless Communication Facilities. As of the Effective Date of this Agreement and the installation of Small Cell Wireless Communication Facilities by Licensee pursuant to this Agreement, Licensor shall not materially and adversely affect or interfere with the Licensee's existing Small Cell Wireless Communication Facilities

or Licensee's ability to comply with the terms and conditions of this Agreement, all as determined by Licensee in consultation with Licensor, including, without limitation, Licensor's granting of rights to third-parties that would materially and adversely affect or interfere with the Licensee's existing Small Cell Wireless Communication Facilities or Licensee's ability to comply with the terms and conditions of this Agreement. Notwithstanding the foregoing, nothing herein shall prevent Licensor from granting rights to third-parties to allow co-location of facilities or equipment on Municipal Facilities occupied by Licensee, provided that such co-location does not materially and adversely affect or interfere with the Licensee's existing Small Cell Wireless Communication Facilities or Licensee's ability to comply with the terms and conditions of this Agreement in conflict with this section 2.2.

3. GENERAL OBLIGATIONS

3.1 Technical Requirements and Specifications.

(a) All Small Cell Wireless Communication Facilities must be constructed, erected, installed at Licensee's sole expense and in compliance with all applicable laws. Licensee shall maintain and repair all Small Cell Wireless Communication Facilities at its expense in safe condition and good repair including, without limitations, in compliance with the following:

(i) The requirements and specifications of the National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC") and any and all other applicable regulatory codes for safe practices when performing work on or near Municipal Facilities (collectively, "Safety Codes"); and

(ii) Any current or future rules or orders of the FCC, the State public utility commission, or any other federal, state or local authority having jurisdiction.

(iii) All requirements of the EGMC and other applicable law.

(iv) Changes to the requirements, specifications, rules and orders in subsections (i), (ii) and (iii) shall not apply retroactively unless required by law.

3.2 No Liens Permitted. Licensee will not, directly or indirectly, create, incur, assume or suffer to exist any lien with respect to any Municipal Facilities or other Licensor property resulting from any work performed by Licensee or on its behalf pursuant to this Agreement or any act or claim against it or any of its contractors, agents, or customers and will, at its sole expense, promptly take any action as may be necessary to discharge any such lien within thirty (30) days of first being notified in writing of its existence.

3.3 Worker Qualifications; Responsibility for Agents and Contractors. Licensee shall ensure that its workers and, to the extent that it may employ agents or contractors, their workers, are adequately trained and skilled to access the Municipal Facilities in accordance with all applicable laws and industry standards. Licensor may deny access to its Municipal Facilities to any such worker who is not so qualified, or does not act in a safe and

professional manner when accessing any Municipal Facility, all as determined in Licensor's reasonable discretion. In such event, Licensee shall take such reasonable and necessary action so as to ensure that such worker does not continue to access the Municipal Facilities on Licensee's behalf unless such worker is qualified to Licensor's reasonable satisfaction. For installation of all Small Cell Wireless Communications Facilities, Licensee shall designate a project manager who at all times shall represent the Licensee before the Licensor on all matters relating to installation of the Small Cell Wireless Communications Facilities. The project manager shall continue in such capacity unless and until he or she is removed at the request of City, is no longer employed by Licensee, or is replaced with the written approval of City, which approval shall not be unreasonably withheld.

3.4 Training of City Staff. Licensee, at its sole expense, shall provide technical educational materials to City staff and any City contractor, on an ongoing basis and/or as new City staff or City contractors are added, as to the operation of each of its Small Cell Wireless Communication Facilities to ensure safe and efficient operation and maintenance of the Small Cell Wireless Communication Facilities, all in accordance with all applicable laws and industry standards.

3.5 Utilities. Licensee shall be solely responsible for arrangement and payment for electric service necessary in connection with installation of any Small Cell Wireless Communication Facilities. Notwithstanding the foregoing, Licensor, if feasible and subject to Licensor's reasonable discretion, shall provide use and access to Licensor's existing power supply, conduit or other form of infrastructure for the delivery of power and fiber access to a Municipal Facility to allow Licensee to obtain electricity for the operation of Licensee's Small Cell Wireless Communication Facilities with such electricity being paid for by Licensee.

4. PERMITS

4.1 City Use Permits. Prior to the installation of any Small Cell Wireless Communications Facility, Licensee shall obtain all necessary permits as required by EGMC Chapter 23.94 and this Agreement, and Licensee shall obtain all other City permits and/or entitlements necessary for the Small Cell Wireless Communication Facility required by any government agency. In securing permits pursuant to this section and the EGMC, Licensee shall comply with all applicable environmental laws including, without limitation, the California Environmental Quality Act ("CEQA").

4.2 Nonresidential Zoning Districts – Administrative Approval of Individual Site Permits.

(a) Individual Site Permits for Small Cell Wireless Communication Facilities in nonresidential zoning districts within the City shall be subject to the provisions of this section 4.2. The structure, design, and technical standards of the Small Cell Wireless Communication Facilities, as identified at Exhibit B, are hereby preapproved by the City. This preapproved list of Small Cell Wireless Communication Facilities may be amended or supplemented from time to time by the City Manager in the City Manager's discretion. Provided that Licensee

submits an application for an Individual Site Permit at a designated location, accompanied by the Individual Site Permit Application Fee as set forth at Exhibit C, that substantially complies with the Small Cell Wireless Communication Facilities identified at Exhibit B, the Public Works Director or his/her designee shall ministerially approve the permit application within forty-five (45) days of submission of the application. During the pendency of the Individual Site Permit application, which “pendency” shall include the time for filing and prosecuting an administrative appeal, if filed, the City shall not approve another Individual Site Permit at the location identified in the application for a Small Cell Wireless Communications Facility other than the Small Cell Wireless Communications Facility identified in the application. Should the Public Works Director affirmatively deny an application, he/she shall set forth in writing the basis for the denial. Any denial of a permit application pursuant to this section, whether by inaction or affirmative denial, shall be subject to administrative appeal to the City Manager or his/her designee, which appeal shall be submitted in writing within ninety (90) days of denial. If no appeal is timely filed, the pendency of the application for the Individual Site Permit shall terminate upon the expiration of the ninety (90) day appeal period. If an appeal is filed and prosecuted to completion, the determination of the City Manager shall be final, shall terminate the pendency of the application for the Individual Site Permit, whether approved or denied, and there shall be no further right of administrative appeal from the City Manager’s determination; provided, however, Licensee shall have the right to pursue other appeals and/or remedies available at law.

(b) The administrative approval process set forth at section 4.2(a) shall have no application to Individual Site Permits in any residential zoning district or agricultural-residential zoning district in the City. Notwithstanding any other provision of this Agreement, such Individual Site Permits in any residential zoning district or agricultural-residential zoning district in the City shall be governed by the terms of Chapter 23.94 of the City’s Municipal Code, as now existing or hereafter lawfully amended. Notwithstanding the foregoing, those Small Cell Wireless Communication Facilities identified on the initial Exhibit A, attached hereto, which may be in a residential zoning or an agricultural-residential zoning district are hereby approved by this Agreement, but any additional or further Individual Site Permits in in any residential zoning district or any agricultural-residential zoning district in the City shall be governed by the terms of Chapter 23.94 of the City’s Municipal Code, as now existing or hereafter lawfully amended.

4.3. Other permits. In addition to any permits required by sections 4.1 through 4.2, Licensee represents and warrants to Licensor that it has (or will have at the time of installation of any Small Cell Wireless Communications Facilities) all licenses, permits, qualifications and approvals of whatsoever nature legally required for Licensee to conduct such installations. Licensee represents and warrants to City that it shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Licensee to conduct such installations.

5. OPERATION AND MAINTENANCE; RESERVATION OF RIGHTS

5.1 Reservation of Rights. Licensor reserves all rights to operate and maintain its Municipal Facilities, to discontinue such maintenance, and to remove its Municipal Facilities, in the best manner required to fulfill its own service requirements, and to maintain public, employee, and worker safety and welfare.

5.2. Radio Frequency ("RF") Emissions.

(a) Licensee shall comply with all FCC regulations regarding RF emissions and exposure limitations. Licensee shall install signage and other mitigation, such as a power cut-off switch on Municipal Facilities, to allow workers and third parties to avoid excess exposure to RF emissions. Licensor's authorized field personnel will contact Licensee's designated point of contact not less than 24 hours in advance to inform Licensee of the need for a temporary power-shut-down. In the event of an unplanned outage or cut-off of power or an Emergency, the power-down will be with such advance notice as practicable. Once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Licensee as soon as possible that power has been restored. The Parties acknowledge that they understand the vital nature of Licensee's Small Cell Wireless Communications Facilities and agree to limit the frequency of power-downs and restore power as promptly as much as reasonably possible.

(b) Licensee and other users of the Municipal Facilities which emit RF on Licensor's Municipal Facilities are under an obligation to operate their own existing or future facilities to protect against RF interference to RF signals of Licensor, Licensee, and such other users of the Municipal Facilities, as applicable, as may emanate or arise. Licensor and Licensee and all others on Licensor's Municipal Facilities shall endeavor to correct any interference to other networks created by its RF emissions promptly and shall coordinate and cooperate with each other relating to the same.

5.3 FCC Antenna Registrations, Federal Aviation Administration ("FAA") Compliance. Licensee is solely responsible for ensuring compliance with any and all FCC antenna registration, FAA, or similar requirements with respect to the location of the Licensee's antennas or other facilities. Without limitation, Licensee acknowledges and agrees that Licensor's Municipal Facilities are not "antenna structures" under the FCC's rules and that, accordingly, Licensor has no obligation of its own in this regard to register them with the FCC, the FAA, or other agency.

5.4 Small Cell Wireless Communication Facilities Modification and Replacements. Subsequent to the original installation of Licensee's Small Cell Wireless Communication Facilities, Licensee may modify or replace a Small Cell Wireless Communication Facility without Licensor approval so long as such modification or replacement looks the same aesthetically as the existing Small Cell Wireless Communication Facility and is substantially similar in size, weight, and configuration, complies with all other terms of this Agreement, and does not increase the load on the applicable Municipal Facility beyond the loading, if any, that was established at the time of Licensor's approval of the

placement of the Small Cell Wireless Communication Facility, unless otherwise expressly approved by Licensor.

5.5 Access. At all times throughout the Term of this Agreement, and at no additional charge to Licensee, Licensee and its employees, agents, and subcontractors, will have reasonable pedestrian and vehicular access (“Access”) to, in and on any Municipal Facility used so that Licensee may install, operate, maintain, repair, replace, remove, or modify its Small Cell Wireless Communications Facilities, provided, however, that such Access shall not unreasonably interfere with any operations of the City including, without limitation, pedestrian or vehicular access on City property or rights-of-way. To the extent Licensee seeks to temporarily encroach on any roadway or other City right-of-way not expressly addressed in this Agreement in order to install, operate, maintain, repair, replace, remove, or modify its Small Cell Wireless Communications Facilities, Licensee shall obtain an encroachment permit from the City, including payment of all applicable encroachment permit fees.

5.6. No 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. For purposes of this Agreement, “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.

6. CHARGES, BILLING AND PAYMENT

6.1 Master License Agreement Fee. Upon execution of this Agreement by Licensee, Licensee shall pay Licensor the Master License Agreement Fee set forth at Exhibit C to defray the cost of Licensor’s preparation of this Agreement.

6.2 Annual Rent for Small Cell Wireless Communications Facilities. Licensee shall pay Licensor the annual rental fee (“Rent”) for each Small Cell Wireless Communications Facility subject to this Agreement in the amounts set forth in Exhibit C for each year (or partial year) that this Agreement remains in effect. Rent is per Municipal Facility and includes all appurtenant Small Cell Wireless Communication Facilities and facilities used in connection with Small Cell Wireless Communications Facilities. The Rent shall automatically escalate on January 1 of each year that this Agreement is in effect by 2%.

6.3 Timing of Payment and Calculation of Number of Small Cell Wireless Communication Facility.

(a) The Rent shall be payable annually on or before January 1 of each year for each Individual Site Permit issued as of October 1 of the prior calendar year.

(b) If Licensee’s records show a different number of Small Cell Wireless Communication Facility for which a Rent payment is required, Licensee shall so notify Licensor. Licensor will then, following receipt of Licensee’s notification, either accept in

writing Licensee's revised count/information or notify Licensee in writing that a dispute exists about such count, in which event the parties shall comply with the dispute resolutions provisions of the Agreement.

6.4 Surety Bond. Licensee shall furnish a Performance Bond ("Surety Bond") in the amount specified in Exhibit C, attached hereto, and maintain such Bond during the Term of this Agreement. The Bond shall be in a form satisfactory to the City and shall be obtained from a responsible corporate surety acceptable to the City, which is licensed by the State of California to act as surety upon bonds and undertakings and which maintains in this State at least one office for the conduct of its business. The surety shall furnish reports as to its financial condition from time to time as requested by the City. The premiums for said Bond shall be paid by Licensee. The Bond shall be furnished by a company who is authorized and licensed by the Insurance Commissioner as an "admitted surety insurer." The surety shall provide the City with the documentation required by Section 995.660 of the California Code of Civil Procedure. If any surety becomes unacceptable to the City or fails to furnish reports as to its financial condition as requested by the City, Licensee shall promptly furnish such additional security as may be required from time to time to protect the interests of the City and of persons supplying labor or materials in the prosecution of the work contemplated by this Agreement. In the event of any conflict between the terms of the Agreement and the terms of the Bond, the terms of the Agreement shall control and the Bond shall be deemed to be amended thereby. Without limiting the foregoing, the City shall be entitled to exercise all rights granted to it by the Agreement in the event of default, without control thereof by the surety, provided that the City gives the surety notice of such default at the time or before the exercise of any such right by the City, and, regardless of the terms of said Bond, the exercise of any such right by the City shall in no manner affect the liability of the surety under said Bond.

6.5 Unauthorized Small Cell Wireless Communications Facilities. Upon discovery of Small Cell Wireless Communications Equipment of Licensee that has not been approved by Licensor ("Unauthorized Equipment"), Licensee shall remove such Unauthorized Equipment upon thirty (30) days' notice from Licensor unless Licensee has submitted the Small Cell Wireless Communications Equipment for approval under this Agreement. Licensee shall also pay liquidated damages to Licensor in the amount of three (3) times the then current Rent multiplied by the number of Licensee's unauthorized Small Cell Wireless Communications Equipment in addition to any actual damages provable by Licensor.

6.6 Billing and Payment Generally.

(a) Except as otherwise provided herein, all bills and invoices and other requests for payment rendered under this Agreement shall be paid by Licensee within sixty (60) days from the receipt of invoice. Interest of one and one-half percent (1.5%) per month (or the highest amount permitted by law, whichever is less) of the total amount due and unpaid will apply to any unpaid amount after ten (10) days from the receipt of written notice of late payment.

(b) Licensee shall notify Licensor within thirty (30) days of the date of invoice of any dispute, with sufficient particularity to identify the amounts in, and grounds for, dispute.

7. AUDITS AND INSPECTIONS

7.1 Audits.

(a) Licensee and Licensor shall reasonably cooperate in determining the total number of Small Cell Wireless Communication Facilities within the City. This determination shall be based on an on-going inventory as shown on the Individual Site Permits issued to Licensee. Licensor has the right to require a jointly conducted physical audit of Small Cell Wireless Communications Facilities at least once per calendar year, or more often as deemed reasonable by Licensor. Licensee shall pay all expenses associated with such audit, if requested by Licensor. Any audit by Licensor that is more frequently than once a calendar year shall be at Licensor's expense. Licensor must provide at least ninety (90) days' written notice of any audit.

(b) Licensee and Licensor may mutually agree that in lieu of such a jointly conducted physical audit, the number of Small Cell Wireless Communication Facilities may be determined from existing maps and attachment records, in which case, each Party shall make all relevant maps and records available to the other Party and the number of Small Cell Wireless Communications Facilities shall be cooperatively determined.

(c) The audit conducted pursuant to the foregoing sections shall also confirm operation of each Small Cell Wireless Communication Facilities on a Municipal Facility. Any such Small Cell Wireless Communication Facility that has not operated for a continuous period of three (3) months or more shall be deemed abandoned and shall be removed by Licensee in accordance with the EGMC and this Agreement. Licensee shall have one-hundred eighty (180) days from the issuance of an Individual Site Permit to commence operation of a Small Cell Wireless Communication Facility or the site shall be deemed abandoned.

7.2 Safety Inspections. Licensor may conduct, at its sole expense, inspections of Small Cell Wireless Communications Facilities on Licensor's Municipal Facilities and to conduct inspections in the vicinity of Small Cell Wireless Communications Facilities. Licensor shall give Licensee twenty-one (21) days' prior written notice of such inspections and Licensee shall have the right to be present at and observe any such inspections, at Licensee's sole expense. However, in the event of an Emergency, as determined in Licensor's discretion, Licensor may conduct such inspections immediately and without prior notice to Licensee.

8. MUNICIPAL FACILITY REPLACEMENT AND ABANDONMENT AND REMOVAL OF WIRELESS COMMUNICATIONS FACILITIES

8.1 Replacement or Abandonment of Municipal Facility.

(a) If for safety, reliability, operational reasons, or due to government requirements Licensor desires to replace a Municipal Facility to which a Small Cell Wireless Communications Facility is affixed, Licensee shall remove all Small Cell Wireless Communications Facilities upon ninety days (90) days' written notice from Licensor, unless a shorter period is required pursuant to a regulatory or governmental order or judicial decision. In the event the removed Small Cell Wireless Communications Facility cannot be reinstalled at any replacement Municipal Facility at the same location, Licensor shall make best and reasonable efforts to identify a relocation site for the Small Cell Wireless Communications Facility located on the original Municipal Facility and transfer it to a replacement Municipal Facility. If Licensor cannot identify a relocation site, after having made best and reasonable attempts to do so, Licensee has the right to terminate the Individual Site Permit for that Municipal Facility, at which point Licensee must promptly remove the Small Cell Wireless Communications Facility at that location. Notwithstanding the foregoing, in the case of an Emergency, as determined in Licensor's reasonable discretion, Licensor may require Licensee to immediately remove and/or replace the Small Cell Wireless Communications Facilities and/or transfer them to replacement Municipal Facilities, or perform any other work in connection with said Small Cell Wireless Communications Facilities that may reasonably be required to maintain, replace, remove or relocate the Municipal Facility. Any removal, replacement, and/or transfer of Small Cell Wireless Communications Facilities pursuant to this section shall be at Licensee's sole expense, and Licensee shall reimburse Licensor for any and all expenses incurred by Licensor as a result of such replacement, removal, and/or transfer. In the event of an Emergency, Licensor shall notify Licensee as soon as reasonably practicable. If Licensor is unable to accommodate a transfer of the Small Cell Wireless Communications Facilities to another Municipal Facility pursuant to this section, Licensee shall be relieved of its obligation to pay Rent for that Small Cell Wireless Communications Facilities.

(b) If Licensor desires to abandon any Municipal Facility, it shall give Licensee ninety (90) days' written notice of the date of the abandonment. Upon abandonment of the Municipal Facility, Licensee shall remove or otherwise dispose of the Small Cell Wireless Communications Facilities installed on such Municipal Facility, unless otherwise agreed in writing.

(c) If a Licensor's Municipal Facility needs to be repaired or replaced in order to accommodate an existing or proposed Small Cell Wireless Communications Facility, Licensee may request of Licensor that Licensee be permitted to undertake such repair and/or replacement work, which may be approved or denied in Licensor's discretion. Any such work will be at Licensee's sole expense, and Licensee shall reimburse Licensor for any and all expenses incurred by Licensor related thereto. Licensor may, at its discretion, require prepayment by Licensee for the estimated costs of such repair or replacement before any such work commences; any unused funds shall be returned to Licensee upon Licensor's

acceptance of the work and any additional expenses exceeding the deposit shall be paid by Licensee within thirty (30) days of an invoice by Licensor.

(d) If, upon expiration of any required notice period for removal, any such Small Cell Wireless Communications Facilities have not been removed, Licensor may at Licensee's sole expense, remove and dispose of the Small Cell Wireless Communications Facilities, without any liability to Licensee for such removal and disposition.

(e) Nothing herein shall obligate the City to replace any Municipal Facility to accommodate any Small Cell Wireless Communications Facility proposed by Licensee.

8.2 Removal of Small Cell Wireless Communications Facilities by Licensee. Licensee may at any time, whether for convenience, damage to the Small Cell Wireless Communications Facilities, or other reason, remove Small Cell Wireless Communications Facilities from Licensor's Municipal Facilities and terminate the applicable Individual Site Permit(s), and shall give Licensor notice of such removal and termination within thirty (30) days prior to removal. Notwithstanding the foregoing, in the case of an Emergency, as determined in Licensee's discretion, Licensee may remove the Small Cell Wireless Communications Facilities and terminate the applicable Individual Site Permit(s) without prior notice to Licensor, provided, however, that Licensee shall provide such notice of removal and termination to Licensor as soon as reasonably practical. No refund of any Rent paid will be due on account of such removal and termination, unless such removal and termination arises from a Default of Licensor, as provided for in section 13.3.

8.3 Licensee Safety or Other Violations. If Licensor discovers any regulatory, safety or other violation of this Agreement with respect to Small Cell Wireless Communications Facilities, it may notify Licensee and Licensee shall have sixty (60) days in which to remedy such violations, except that Licensor may require shorter cure period in the event of an Emergency, as determined by Licensor.

9. INSURANCE

Licensee shall at its sole cost and expense maintain the insurance coverage and limits as set forth at Exhibit D, attached hereto, during the entire Term of this Agreement, and shall deliver the required proof of insurance compliance to City or City's insurance certificate processor as City directs. Licensee shall also certify its compliance with Labor Code Section 3700 in the form attached hereto as Exhibit E.

10. LIMITATION ON DAMAGES

Notwithstanding any provision of this Agreement to the contrary, in no event shall either Party be liable in law or equity to the other Party for consequential, incidental, punitive, exemplary, or indirect damages suffered by the other Party, nor for any lost profits or other business interruption damages, whether pursued under statute, tort, contract or other legal or equitable theory. Nothing herein shall relieve either Party from any liability for damages or

injury injuries suffered by third Persons or any third Person's property proximately caused by a Party's act or omission.

11. INDEMNIFICATION

To the fullest extent permitted by law, Licensee shall indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers (together "Licensor Indemnitees") from and against any and all liabilities, damages or claims for damage, including but not limited to all actual and reasonable costs, attorneys' fees, and other charges and expenditures that Licensor Indemnitees may incur, arising out of any failure by Licensee to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this Agreement on the part of Licensee, except such loss or damage which was caused by the negligence or willful misconduct of the City, as determined by a Court of competent jurisdiction. Unless and until such judicial determination is made, or as otherwise agreed by the parties, Licensee shall remain obligated to defend, indemnify, and hold harmless the City, its officers, officials, employees, volunteers, and agents pursuant to this Agreement.

To the fullest extent permitted by law, Licensor shall indemnify, protect, hold harmless and, at Licensee's sole option, defend Licensee, its principals, parents, affiliates, officers, directors, contractors, subcontractors, suppliers, licensees, invitees, agents, attorneys, employees, successors and assigns (together "Licensee Indemnitees") from and against any and all liabilities, damages or claims for damage, including but not limited to all actual and reasonable costs, attorneys' fees, and other charges and expenditures that Licensee Indemnitees may incur, arising out of any failure by Licensor to comply with applicable law, or the negligent installation, operation, use, repair, or removal of Licensor's Municipal Facilities or breach of the terms of this Agreement by Licensor, including acts or omissions by its agents, contractors, or subcontractors except to the extent that such liabilities, damages or claims are a result of the negligence or willful misconduct of Licensee, as determined by a Court of competent jurisdiction. Unless and until such judicial determination is made, or as otherwise agreed by the parties, Licensor shall remain obligated to indemnify, hold harmless, and, at Licensee's sole option, defend Licensee Indemnitees pursuant to this Agreement. To the extent permitted by law, Licensor shall purchase liability insurance in an amount adequate to fulfill its obligations to indemnify and protect Licensee under this Agreement.

The provisions of this section shall survive termination or suspension of this Agreement.

12. TERM

The Effective Date of this Agreement shall be the date it was executed by all Parties and approved as to form by the City Attorney. In the event that the Parties do not execute the Agreement on the same date, the Effective Date of the Agreement shall be the latest date on which one of the Parties executes the Agreement. This Agreement shall commence as of the

Effective Date, and, if not lawfully terminated sooner, shall remain in full force and effect for a term of ten (10) years. Upon mutual written agreement of the Parties, the Agreement may be extended for two (2) successive five (5) year terms, or as otherwise agreed by the Parties in writing. The parties will negotiate in good faith the terms of a successor agreement during the ninth year of the initial term and/or during the final year of any subsequent extension of the Agreement; provided, however, that nothing herein shall obligate either party to enter into any such successor agreement. Upon termination of this Agreement, Licensee shall remove all Small Cell Wireless Communications Equipment from all Licensor's Municipal Facilities within one hundred and eighty (180) days. If not so removed within one hundred and eighty (180) days following such termination, Licensor shall have the right to remove such Small Cell Wireless Communications Facilities, and to dispose of same, at Licensee's sole expense and without any liability to Licensee for such removal and disposition.

13. DEFAULT AND TERMINATION

13.1 Default. If either Party fails to perform or observe any material term or condition of this Agreement within sixty (60) days after receipt of written notice of such failure from the other Party, then such Party will be in default of the Agreement ("Default"). No such failure, however, will be deemed to exist if a Party has commenced to cure such Default within such period and provided that such efforts are prosecuted to completion with reasonable diligence.

13.2 Licensee's Default and Licensor's Remedies. If Licensee does not cure its Default within the allotted time period, Licensor may, at its reasonable discretion, take any one or more of the following actions:

- (a) Suspend Licensee's access to any of Licensor's Municipal Facilities to which the Default relates;
- (b) Revoke any permits issued to Licensee to which the Default relates;
- (c) Require the obligation to be fulfilled;
- (d) Remove, relocate, or rearrange Small Cell Wireless Communications Facilities to which such Default relates (all at Licensee's sole expense);
- (e) Decline to permit additional Small Cell Wireless Communications Facilities under this Agreement until all such Defaults are cured;
- (f) Exercise its rights with respect to the Surety Bond; and/or
- (g) Terminate this Agreement if the Default relates to all of Licensee's Small Cell Wireless Communications Facilities.

13.3 Licensor's Default and Licensee's Remedies.

(a) If Licensor does not cure its Default within the allotted time period, Licensee may, at its reasonable discretion, either terminate this Agreement, terminate the Individual Site Permit to which the Default relates, or demand that the terms of this Agreement be complied with.

(b) If Licensor Defaults and Licensee elects to terminate the Agreement, Licensor shall refund any portion of advanced, prepaid Rent actually paid by Licensee pro-rated for any period of the Term remaining following the date of the termination of this Agreement. Licensor shall make such refund within ninety (90) days of the effective date of such termination.

13.4 Date of Termination. Any termination under this section 13 shall be effective upon written notice from the terminating Party to the other Party. Such notice will identify the date of the termination, which date may be as early as the date of the notice under section 15.1.

13.5 Cumulative Remedies. The remedies provided by this section 13 are cumulative and in addition to any other remedies available under this Agreement or otherwise.

14. DISPUTE RESOLUTION PROCEDURES

14.1 Prior to either Party commencing any legal action under this Agreement, the Parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations or as may be otherwise provided herein, then either party may commence legal action against the other. Notwithstanding the foregoing, either Party may commence legal action sooner than this forty-five (45) day period to the extent necessary to obtain specific performance and/or injunctive, equitable, or other relief necessary to protect the interests of the Party seeking such relief.

15. GENERAL PROVISIONS

15.1 Notices. Except as provided below, all written notices shall be effective upon actual delivery addressed to the other party as follows:

To City/Licensor:
City of Elk Grove
Attn: City Manager
8401 Laguna Palms Way
Elk Grove, California 95758

To Licensee:
New Cingular Wireless PCS, LLC
Attn: Tower Asset Group – Lease Administration
Re: Wireless Installation on Public Structures
(City of Elk Grove, CA)
FA No.: _____
1025 Lenox Park Blvd NE
3rd Floor

Atlanta, GA 303219

with a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept. - Network Operations
Re: Wireless Installation on Public Structures
(City of Elk Grove, CA)
FA No: _____
208 S. Akard Street
Dallas, TX 75202-4206

Any Party may change its address or other contact information at any time by giving the other Party, and Persons named above, written notice of said change.

15.2 Force Majeure. If an event beyond the reasonable control of either Party, including, but not limited to, hurricane, flood, earthquake or other natural disaster, war or insurrection, fires, natural calamities, riots, significant changes in law, regulation or governmental policy precludes either Party from performing the obligations under this Agreement, then the Agreement shall be suspended as of the date of such event and until such time as such event has subsided, if ever, provided that the Party claiming an inability to perform provides written notice to the other Party within five (5) days of the event justifying the suspension or termination of operations. If the event is not reasonably likely to subside in the foreseeable future and renders the Parties' performance of the Agreement impossible, the Party claiming an inability to perform may terminate this contract upon not less than ten (10) days' written notice. Each Party reserves the right to contest the other Party's claim of inability to perform under this section.

15.3 Time. All times stated herein are of the essence.

15.4 Assignment and Transfer. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties. Except as otherwise provided in this Agreement, neither Party shall assign this Agreement or its rights or obligations to any firm, corporation, individual, or other entity, without the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign its rights and obligations to an affiliate without consent. Affiliate for purposes of this provision is any entity that controls, is controlled by, or is under common control with assigning party. Licensee may also assign this Agreement or Individual Site Permit without City's consent to an entity that acquires all or substantially all of Licensee's assets in the market in which the Municipal Facility is located or an entity that acquires Licensee by a change of stock ownership or partnership interest and such assignee entity operates the Small Cell Wireless Facilities subject to this Agreement in the same manner as Licensee.

15.5 No Third Party Beneficiary. It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the Licensor and Licensee. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the Licensor and Licensee that any

such person or entity, other than the Licensor and Licensee, receiving benefits or services under this agreement shall be deemed as incidental beneficiary and shall have no standing under this Agreement.

15.6 Non-Discrimination/Non-Preferential Treatment Statement. In performing this Agreement, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination

15.7 Applicable Law. This Agreement shall be interpreted, construed, and enforced, in accordance with the laws of the State of California, without regard to its conflict of laws principles, and, where applicable, federal law.

15.8 Venue. Should any legal proceeding be brought relating to this Agreement, venue shall lie exclusively in a court of competent jurisdiction located in the County of Sacramento, State of California.

15.9 Exhibits. In the event of any inconsistency between the provisions of this Agreement and any Exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such incorporated Exhibits unless such Exhibit specifies otherwise.

15.10 Execution in Counterparts. This Agreement may be executed in several counterparts, including by counterpart facsimiles or emails, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

15.11 Waiver. The failure of either Party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision.

15.12 Severability. If any portion of this Agreement is found to be unenforceable, the remaining portions shall remain in effect and the Parties shall begin negotiations for a replacement of the invalid or unenforceable portion.

15.13 Survival. The terms and provisions of this Agreement that by their nature require performance by either Party after the termination or expiration of this Agreement, shall be and remain enforceable notwithstanding such termination or expiration of this Agreement for any reason whatsoever.

15.14 Construction and Interpretation. Licensee and Licensor agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each Party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.

15.15 Entire Agreement; Amendments. This Agreement (including the Exhibits hereto) embodies the entire agreement between Licensee and Licensor with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, oral or written, with respect thereto. Each Party acknowledges that the other Party has not made any representations other than those contained herein. This Agreement may not be amended or modified orally, but only by an agreement in writing signed by the Party or Parties against whom any waiver, change, amendment, modification, or discharge may be sought to be enforced.


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

CITY OF ELK GROVE

Dated: _____, 2019

By: _____
Jason Berhmann,
City Manager, City of Elk Grove

APPROVED AS TO FORM:



Jonathan P. Hobbs,
City Attorney, City of Elk Grove

ATTEST:

Jason Lindgren,
City Clerk, City of Elk Grove

LICENSEE

Dated: _____, 2019

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation
Its: Manager

By:  8-20-19

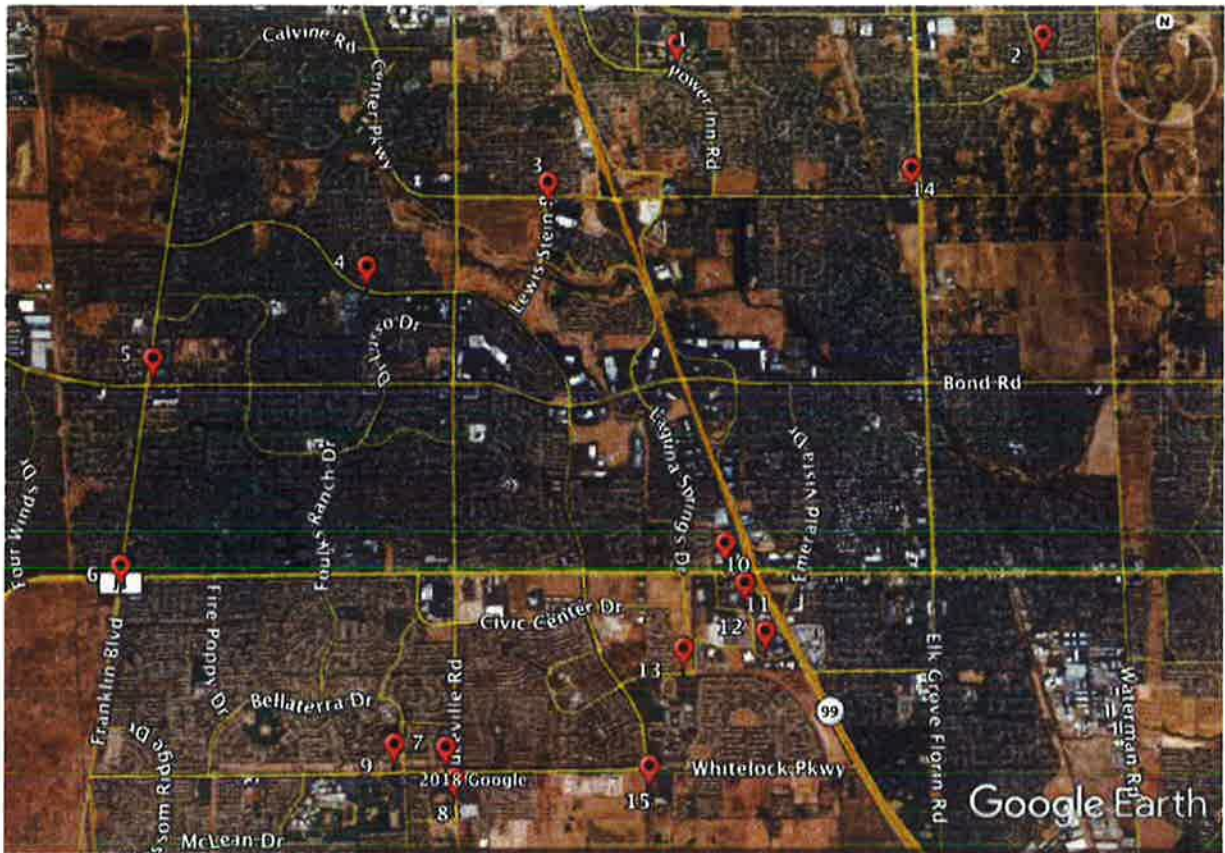
Its: Michael Guilbord
Director
Construction & Engineering

APPROVED AS TO FORM:

Licensee's Attorney

Exhibit A

AT&T-Elk Grove: Small Cell Wireless Communication Facility Map



* Node locations depicted on map correspond with row numbers listed on the following page.

Exhibit A (Continued)

AT&T-Elk Grove: Small Cell Wireless Communication Facility List

ROW #	LATITUDE	LONGITUDE	AT&T SITE NAME	CITY POLE #
1	38.4481190	-121.3956090	CRAN_RSFR_SAC01_017	35222L
2	38.4488169	-121.3589061	CRAN_RSFR_SAC01_018	29750
3	38.4370580	-121.4085530	CRAN_RSFR_SAC01_020	33345
4	38.4304740	-121.4265140	CRAN_RSFR_SAC01_021	30041
5	38.4233200	-121.4473410	CRAN_RSFR_SAC01_022	28918
6	38.4074800	-121.4499200	CRAN_RSFR_SAC01_023	8002574
7	38.3939900	-121.4185300	CRAN_RSFR_SAC01_024	28051D
8	38.3916960	-121.4176840	CRAN_RSFR_SAC01_025	8001958
9	38.3942200	-121.4234300	CRAN_RSFR_SAC01_026	260510P
10	38.4092600	-121.3915800	CRAN_RSFR_SAC01_027	27717
11	38.4062700	-121.3897800	CRAN_RSFR_SAC01_028	31713
12	38.4026200	-121.3879200	CRAN_RSFR_SAC01_029	8002244
13	38.4013440	-121.3956920	CRAN_RSFR_SAC01_030	8001847
14	38.4381800	-121.3725200	CRAN_RSFR_SAC05_005	8000824
15	38.3926100	-121.3990800	CRAN_RSFR_SAC05_006	TBD

* Row numbers correspond with node locations shown on map on preceding page.

EXHIBIT B
**Approved Small Cell Wireless Communication Facilities Structure, Design,
and Technical Standards**

Overview of Pole Types and Designs

(1) Pole Type One: Cobra Head Light Pole

(A) Micro Design

(B) Pico Design

(2) Pole Type Two: Decorative Light Pole

(A) Micro Design

(B) Pico Design

(1) Pole Type One: Cobra Head Light Pole

(A) Micro Design



(1) Pole Type One: Cobra Head Light Pole

(B) Pico Design



(2) Pole Type Two: Decorative Light Pole

(A) Micro Design



(2) Pole Type Two: Decorative Light Pole

(B) Pico Design





ART MOUNTING
5001 COSTUME TRAVEL
SAN MARINO, CA 91066



PRECISION DESIGN
CRAFTING, INC.
1875 FOWLER BLVD STE 200
SAN MARINO, CA 91066



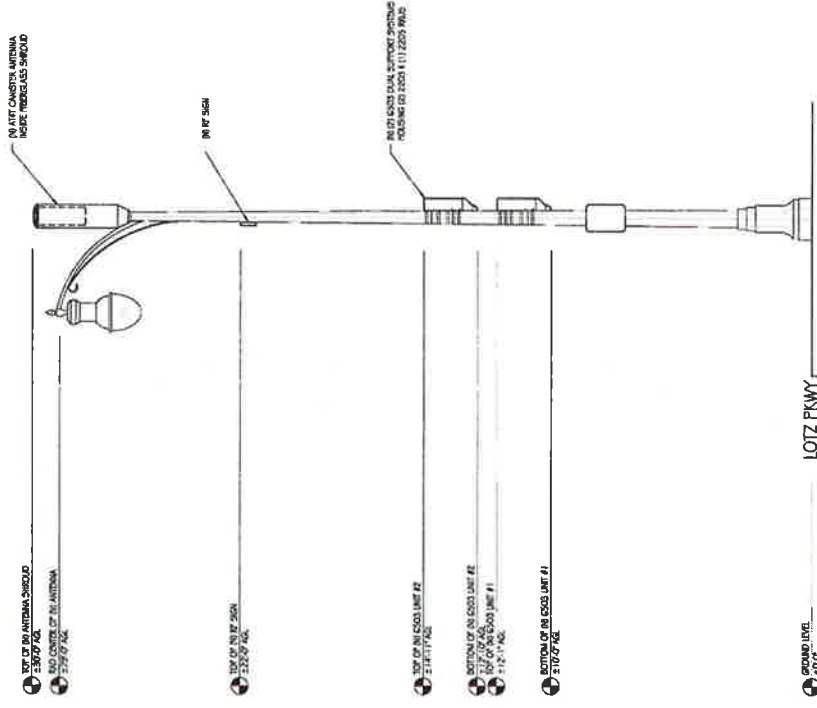
CRAN [RSTR_5400_030
ATTACHED TO 13 NEW WEST LINE
BX 8004, CA 91727

ISSUE STATUS	
NO.	DESCRIPTION
1	ISSUED FOR PERMIT
2	ISSUED FOR CONSTRUCTION
3	ISSUED FOR RECORD

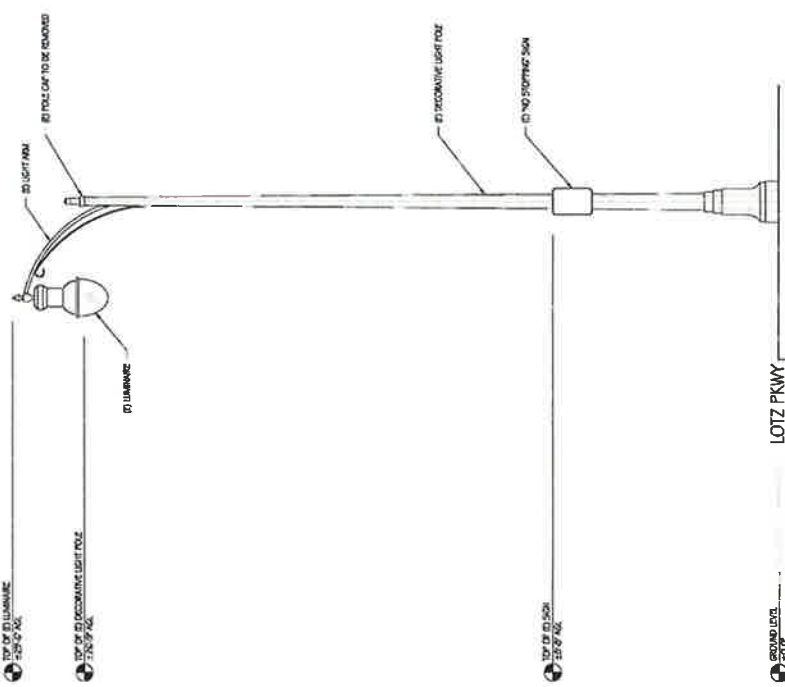
DESIGNED BY: S. M. WONG
CHECKED BY: S. M. WONG
APPROVED BY: S. M. WONG
DATE: 08/20/18
SHEET 1 OF 1

ELEVATIONS
SHEET NUMBER
A-3

- NOTES**
1. FINISH THE SQUARE, MOUNTING COMPONENTS & CABLE SHEET TO MATCH POLE
 2. FINISH THE CONDUIT THROUGH SHEET TO MATCH POLE
 3. REMOVE ID LAMINATED VACANT BOND MOUNTS ON POLE
 4. NEW LOCATION STORAGE LOCAL SHALL FACE OUT TO STREET
 5. POLE SHALL BE SET AND POSITIONED TO MATCH EXISTING POLE AND CONDUIT. VERIFY ALL LIFT AND SET CONDITIONS BY LOCAL CONTRACTOR. VERIFY ALL CONDITIONS TO THE CITY, FIRE DEPT, TRUCK, AND FIRE ALLIANCE



NEW WEST ELEVATION
1/2"=1'-0"



EXISTING WEST ELEVATION
1/2"=1'-0"

EXHIBIT C
Fees and Bonds

Master License Agreement Fee: \$10,000

Individual Site Permit Application Fee: \$500 (up to five (5) permits per application)

Annual Rent for each Small Cell Wireless Communication Facility shall be paid as follows:

Licensee shall pay to the City the Annual Rent for each year in the amount of Two Hundred Seventy and 00/100 Dollars (\$270.00) per year. In the event the FCC's Declaratory Ruling and Third Report and Order, FCC 18-133, Released September 27, 2018 ("FCC 2018 Order") is either: (1) reversed and/or set aside by a final and unappealable order of the FCC, a court of competent jurisdiction, or by settlement; or (2) repealed or otherwise set-aside or rendered ineffective by legislative action, and provided that there is no other legal or regulatory requirement that would constrain or otherwise limit the amount of money that City may charge Licensee for the right to place small cells on City's property in the public rights of way in substantially the same manner as the FCC 2018 Order, then the Annual Rent payable for all of Licensee's Small Cell Wireless Communication Facility(ies) located in City's right-of-way shall be as follows: \$1,500 for Small Cell Wireless Communication Facilities 1 through 20; \$1,000 for Small Cell Wireless Communication Facilities 21 through 100; \$500 for Small Cell Wireless Communication Facilities 101 and beyond (collectively, the "New Rate"). The New Rate shall apply prospectively as of the Annual Rent due after the date the relevant judgment, order, settlement, and/or legislative action is effective. Nothing herein shall preclude the Parties from agreeing to an alternative rate structure not set forth herein by a writing signed by all Parties.

The amount of the Performance Bonds shall be \$50,000.

EXHIBIT D

Insurance Requirements

Prior to installation of any Small Cell Wireless Communication Facilities under this Agreement, Licensee shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Agreement, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

- a. Commercial general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence) including contractual liability coverage.
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall be:

Each occurrence:	One Million Dollars (\$1,000,000)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
General Aggregate:	One Million Dollars (\$1,000,000)
- e. If a products and completed operations aggregate limit of liability is used, the products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of hired and non-owned automobiles.
- b. Coverage for owned, hired, and non-owned.
- c. The limits of liability per accident shall be:

Combined Single Limit	One Million Dollars (\$1,000,000)
-----------------------	-----------------------------------
- d. Coverage shall include contractual liability coverage.

The City, its officials, employees, and volunteers shall be included as additional insured as their interests may appear under this Agreement as respects liability caused, in whole or in part, by activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied, or used by the Licensee, or

automobiles owned, leased, hired, or borrowed by the Licensee on a separate blanket additional insured endorsement as respects this Agreement reasonably acceptable to the City.

3. Worker's Compensation

- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Licensee is a qualified self-insurer with the State of California), and Employers Liability coverage. The Licensee shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.
- b. Employer's Liability Coverage limits of One Million Dollars (\$1,000,000) per accident/disease/policy limit.
- c. If an injury occurs to any employee of the Licensee for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Licensee under this Agreement, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due.
- d. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Licensee.
- e. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Licensee.

4. Other Insurance Provisions: The required general liability coverage shall contain the following provisions and endorsements:

- a. The City, its officials, employees, and volunteers shall be included as additional insured as their interests may appear under this Agreement as respects liability caused, in whole or in part, by activities performed by the Licensee, products and completed operations of the Licensee, premises owned, occupied, or used by the Licensee as respects this Agreement, or automobiles owned, leased, hired, or borrowed by the Licensee on a separate blanket endorsement reasonably acceptable to the City.
- b. Coverage shall contain a provision or endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
- c. The policy shall contain no special limitations impairing the scope of coverage afforded to the City, its officials, employees, or volunteers herein other than for claims solely caused by the additional insureds or by the gross negligence of the additional insured.
- d. Provision or endorsement stating that for any claims related to this project, the Licensee's required insurance coverage shall be primary

insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Licensee's required insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

- e. Any failure to comply with reporting or other provisions of the policies on the part of the Licensee, including breaches of warranties, shall not affect Licensee's requirement to provide coverage to the City, its officers, officials, employees, or volunteers.

5. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A minus:VII.**
6. The Licensee shall furnish the City with certificates of insurance and original blanket additional insured endorsements, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Agreement.
7. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder once per three years by giving 30 days written notice, all subject to Licensee's review and acceptance.
8. The Licensee shall provide the City at least thirty (30) days' prior written notice of cancellation or non-renewal of any required coverage that is not replaced.
9. If the Licensee fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Reasonable premiums paid for such insurance procured by the City shall be deducted and retained from any sums due the Licensee under the contract.
10. Failure of the City to obtain such insurance shall in no way relieve the Licensee from any of its responsibilities under the contract.
11. The making of progress payments to the Licensee shall not be construed as relieving the Licensee or its Subcontractors or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
12. The failure of the City to enforce in a timely manner any of the provisions

of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.

13. The requirement as to types and limits of insurance coverage to be maintained by Licensee are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Licensee under the Agreement.

14. Self-Insurance. Notwithstanding the foregoing, Licensee shall have the right to self-insure the coverages required in this section as long as Licensee or its affiliated parent maintains a net worth of at least \$100 million as evidenced in publicly available certified financials. In the event Licensee elects to self-insure its obligation to include City as an additional insured, the following additional provisions shall apply (in addition to those set forth in section):

(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.

EXHIBIT E

Certificate of Compliance With Labor Code § 3700, Release and Indemnification

The undersigned, on behalf of and as the duly certified representative of Licensee, certifies as follows:

1. Licensee is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Licensee has complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor Code §§1860, 1861.)
2. Should Licensee fail to secure Workers' Compensation coverage as required by the State of California, Licensee shall release, hold harmless, defend and indemnify the City of Elk Grove from and against any damage, liability, claim, cause of action and any other loss, including without limitation, court costs, reasonable attorney's fees and costs resulting from any failure to take and/or maintain Workers' Compensation insurance as required by law. The provisions of this Exhibit shall survive termination, suspension and/or completion of this Agreement. It is further understood and agreed that this release and assumption of risk is to be binding on Licensee's successors, heirs and assigns.

LICENSEE

By: _____

Date: _____

Name: _____

Title: _____

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2019-187**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)
CITY OF ELK GROVE) ss

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on August 28, 2019 by the following vote:

AYES: COUNCILMEMBERS: *Ly, Hume, Detrick, Nguyen, Suen*

NOES: COUNCILMEMBERS: *None*

ABSTAIN: COUNCILMEMBERS: *None*

ABSENT: COUNCILMEMBERS: *None*



**Jason Lindgren, City Clerk
City of Elk Grove, California**

