

**MASTER LICENSE AGREEMENT  
FOR WIRELESS FACILITIES AND POLES IN THE RIGHT-OF-WAY**

**THE STATE OF TEXAS**

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§

**COUNTY OF HARRIS**

This **MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES AND POLES IN THE RIGHT-OF-WAY** (“Agreement”) is made by and between the **CITY OF HOUSTON, TEXAS** (“City”), a home-rule municipal corporation of the State of Texas, and **[ENTITY NAME]** (“Licensee”), a [state] corporation with its principal offices at [address].

**RECITALS**

**WHEREAS**, Licensee, a Wireless Services provider or Neutral Host Provider, is requesting to attach, install, operate, maintain, repair, replace, reattach, reinstall, relocate, and remove its Wireless Facilities for small cell networks or outdoor distributed antenna systems (“DAS”) in the City’s Right-of-Way to provide better coverage and meet increased demand for its services; and

**WHEREAS**, the City owns and controls the Right-of-Way; and

**WHEREAS**, Section 253 of the Federal Communications Act of 1934, as amended, including 47 U.S.C. § 253, acknowledges that the City has the authority to control access to and use of the Right-of-Way within the City limits; and

**WHEREAS**, the City has been authorized and granted by the State to have ownership rights and discretion to grant use of the Right-of-Way within the City limits and condition that use; and

**WHEREAS**, conditions to use of the Right-of-Way include height, width, and aesthetic requirements of the Wireless Facilities and Licensee Poles occupying the Right-of-Way; and

**WHEREAS**, Licensee is willing to compensate the City pursuant to state law for the grant of permission to install Licensee’s Wireless Facilities and Licensee Poles at approved locations in the City’s Right-of-Way; and

**WHEREAS**, the City is willing to allow the Licensee’s non-exclusive use at approved locations in its Right-of-Way, subject to the terms and conditions set forth herein, and pursuant to Permits issued by the City’s Public Works and Engineering Department; and

**WHEREAS**, the City and Licensee desire by this Agreement to set forth their understanding of such matters.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein below, City and Licensee agree as follows:

**ARTICLE I. PARTIES**

1.1. ADDRESSES

The initial address of the parties, which either party may change at any time by giving written notice to the other party pursuant to the terms of this Agreement, are as follows:

City  
Director  
Department of Administration and  
Regulatory Affairs  
City of Houston  
P.O. Box 2226  
Houston, TX 77252

Licensee

With Copy To  
(as required by this Agreement)  
City Attorney  
City of Houston  
P.O. Box 368  
Houston, TX 77002

\_\_\_\_\_

With Copy To  
(as required by this Agreement)  
Public Works and Engineering  
c/o City Engineer  
1002 Washington Ave.  
Houston, TX 77002

1.2. TABLE OF CONTENTS, SCHEDULES, AND EXHIBITS

This Agreement consists of the following sections and exhibits:

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**EXHIBITS**

- A. LICENSED LOCATIONS**
- B. APPROVED WIRELESS FACILITIES AND EQUIPMENT LIST**
- C. APPLICATION FOR LOCATION REVIEW (REPRESENTATIVE SAMPLE)**
- D. RENTAL FEE SCHEDULE**
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- F. DRUG POLICY COMPLIANCE AGREEMENT**
- G. ENGINEER’S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE UNDER A CITY AGREEMENT**
- H. DRUG POLICY COMPLIANCE DECLARATION**
- I. PERMIT (REPRESENTATIVE SAMPLE)**

1.3. **PARTS INCORPORATED**

All of the above-described sections and exhibits are made a part of and incorporated into this Agreement.

1.4. **CONTROLLING PARTS**

If a conflict between the sections of the Agreement and any of the exhibits arises, the sections of the Agreement control over the exhibits.

1.5. **SIGNATURES**

IN WITNESS WHEREOF, the Original Signatories, through their duly authorized officers, have executed this Agreement in multiple counterparts, each of equal force and effect, effective as of the date countersigned by the City Controller.

**LICENSEE:**

[ENTITY NAME]

\_\_\_\_\_  
Name:  
Title:  
Tax Identification No.:

**ATTEST/SEAL:**

\_\_\_\_\_  
Name:

**APPROVED AS TO FORM:**

\_\_\_\_\_  
YuShan Chang, Sr. Assistant City  
Attorney  
L.D. File No. 0371400090001

**COUNTERSIGNED BY:**

\_\_\_\_\_  
City Controller

**CITY:**

**CITY OF HOUSTON, TEXAS**

Signed by:

\_\_\_\_\_  
Mayor

**ATTEST/SEAL:**

\_\_\_\_\_  
City Secretary

**APPROVED:**

\_\_\_\_\_  
Director, Department of Administration and  
Regulatory Affairs

**APPROVED:**

\_\_\_\_\_  
Director, Public Works and Engineering  
Department

**DATE COUNTERSIGNED:**

\_\_\_\_\_  
("Effective Date")

## ARTICLE 2. DEFINITIONS

2.1. As used in this Agreement, the following terms have the meanings set out below:

- 2.1.1. *“Abandon”* and its derivatives means the Wireless Facility, Licensee Pole, or portion thereof that has been left by Licensee in an unused or non-functioning condition for more than 120 consecutive days unless, after notice to Licensee, Licensee has established to the reasonable satisfaction of the City that the Wireless Facility, Licensee Pole, or portion thereof has the ability to provide communications.
- 2.1.2. *“Affiliate”* means (a) any entity who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with the Licensee; (b) any entity acquiring substantially all of the assets of Licensee in the market defined by the Federal Communications Commission in which the Licensed Locations are located; or (c) any successor entity in a merger, acquisition, or other business reorganization involving Licensee. For purposes of this definition, “own” means to own an equity or other financial interest (or the equivalent thereof) of more than 10 percent or any management interest.
- 2.1.3. *“Agreement”* means this contract between the Parties, including any exhibits and any written amendments as authorized by this Agreement.
- 2.1.4. *“ARA Director”* means the Director of the City's Department of Administration and Regulatory Affairs, or its successor department, or the person he or she designates.
- 2.1.5. *Camouflaged Wireless Facility or Licensee Pole* means any Wireless Facility or Licensee Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility or Licensee Pole blends into the surrounding environment and is visually unobtrusive. A Camouflaged Wireless Facility or Licensee Pole also includes any Wireless Facility or Licensee Pole approved by the City Management District or TIRZ as conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to, a Licensee Pole or Wireless Facility that is hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.
- 2.1.6. *“Carrier”* means a provider of Wireless Services authorized by the Licensee to utilize the Wireless Facilities and/or Licensee Poles.
- 2.1.7. *“City”* is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.8. *“City Attorney”* means the currently appointed or acting City Attorney or his/her designee.

- 2.1.9. “City Code” means the Code of Ordinances, City of Houston, Texas.
- 2.1.10. “City Engineer” means the city engineer for the City from the City’s Public Works and Engineering Department, or its successor department, or a person he or she designates.
- 2.1.11. “Effective Date” means the date this Agreement is countersigned by the City Controller as reflected on the signature page of this Agreement.
- 2.1.12. “Ground Equipment” means part of a Wireless Facility that is located on the surface of the Right-of-Way and, if included in an approved Application for Location Review or otherwise approved by the City in writing, an incidental structure to support metering devices.
- 2.1.13. “Historic District” means “Historic district” as defined in Section 33-201 of the City Code, now or hereafter in effect.
- 2.1.14. “Historic Landmark” means “landmark” as defined in Section 33-201 of the City Code, now or hereafter in effect.
- 2.1.15. “Licensee” means the entity identified in the preamble of this Agreement and includes its successors and assigns.
- 2.1.16. “Licensed Location” means the location in the Right-of-Way, as listed in Exhibit A of this Agreement, in which Licensee is authorized to place its Wireless Facilities and Licensee Poles, provided that it has obtained all Permits.
- 2.1.17. “Licensee Pole” or “Licensee Poles” means pole(s) or similar vertical structure(s) owned and installed by Licensee or a Neutral Host Provider for the sole purpose of supporting Wireless Facilities, but does not include an incidental structure for supporting metering devices.
- 2.1.18. “Management District” means a governmental entity created by the Texas legislature whose purpose is to finance facilities, infrastructure and services beyond those already provided by individual property owners or the municipality.
- 2.1.19. “Modification” means any addition, removal, or alteration of any kind, to the Wireless Facility, or Licensee Pole, including altering their camouflaging or appearance, except for routine maintenance or replacement with equipment that has identical dimensions and appearance.
- 2.1.20. “Neutral Host Provider” means a provider of Wireless Facilities and Licensee Poles that leases space on its Wireless Facilities and Licensee Poles to Carriers.
- 2.1.21. “Other Party” or “Other Parties” means a Wireless Services provider or Neutral Host who is not a Party to this Agreement.

- 2.1.22. *"Park"* means the various properties under the direction, control and supervision of the City's Director of Parks and Recreation Department pursuant to the authority granted by City Council and the City Code of Ordinances.
- 2.1.23. *"Parks Director"* means the City's director of the Department of Parks and Recreation, or its successor department, or the person he or she designates.
- 2.1.24. *"Party" or "Parties"* mean the Licensee and City, individually or collectively as indicated in the context in which it appears.
- 2.1.25. *"Permit"* means a document issued by the City's Department of Public Works and Engineering authorizing installation, removal, and other work at a Licensed Location for Licensee's Wireless Facilities or Licensee Poles in accordance with the approved plans and specifications. A representative sample of Permit(s) is attached as Exhibit I.
- 2.1.26. *"PWE Director"* means the Director of the City's Public Works and Engineering Department, or its successor department, or the person he or she designates.
- 2.1.27. *"Rental Fee"* means the amount Licensee is required to pay the City, as calculated according to Article V of this Agreement, for the use of the City's Right-of-Way.
- 2.1.28. *"Right-of-Way"* means the ground level, air space above, and space below a public street, road, alley, and/or sidewalk located in the City's jurisdiction, including the entire area between the boundary lines of every right-of-way, and public utility easements, whether acquired by purchase, grant or dedication and acceptance by the City or by the public, that has been dedicated or designated for or opened to the use of the public for purposes of vehicular and pedestrian travel; and shall include any designated state or federal highway or road or any designated county road under the administrative control of the City for maintenance, repair, or vehicular traffic control purposes.
- 2.1.29. *"School"* means an educational institution that offers a course of instruction for students in one or more grades from kindergarten through grade 12.
- 2.1.30. *"Wireless Services"* means only 'personal wireless services' as that term is defined in 47 U.S.C. § 322(c)(7)(C), now or hereafter in effect, including commercial mobile services, (defined in 47 U.S.C. § 332(d)), now or hereafter in effect, provided to personal mobile communication devices through or by Wireless Facilities located wholly or partially in the Right-of-Way.
- 2.1.31. *"Term"* means the Initial Term and any Extension Terms, collectively, during which this Agreement is in effect.
- 2.1.32. *"TIRZ"* means Tax Increment Reinvestment Zone created by City Council pursuant to the Texas Tax Code to allow financing that attracts new investment and improvements to an area.

- 2.1.33. *“Traffic Signal”* means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.
  - 2.1.34. *“Traffic-Control Device(s)”* means all signs, signals, markings, or devices placed or erected by the City or a public body having jurisdiction for the purpose of regulating, warning, or guiding traffic.
  - 2.1.35. *“Underground Utility District”* means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground.
  - 2.1.36. *“Utility Pole”* or *“Utility Poles”* means a pole or vertical structure owned by CenterPoint Energy Houston Electric, LLC, AT&T, and other utility companies or entities with a vertical structure in the Right-of-Way pursuant to State law authorization or City franchise agreement to support their electric utility and wireline telecommunications lines. Utility Poles as defined herein for the purposes of this Agreement shall not be considered “towers” or “tower structures” as defined in Section 28-521 of the City Code, now or hereafter in effect.
  - 2.1.37. *“Wireless Facility”* or *“Wireless Facilities”* means the approved and permitted equipment in Exhibit B that consists of radios, radio transceivers, antennas, wires, fiber optic cables, coaxial cables, amplifiers, switches, power sources, repeaters, and regular and backup power supply, and other supporting devices installed overhead or above the ground on a Licensee Pole or Utility Pole and control boxes, pull boxes, cabinets, and other supporting devices installed at ground level, but not including any separate poles, that are located within the Right-of-Way as part of a wireless network, such as a small cell or outdoor distributed antenna system (“DAS”) network, for the purpose of providing Wireless Services.
- 2.2. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
  - 2.3. The word “shall” is always mandatory and not merely permissive.
  - 2.4. “Include” and “including,” and words of similar import, shall be deemed to be followed by the words “without limitation.”

**ARTICLE 3. AUTHORIZATION TO USE RIGHT-OF-WAY**

3.1. **GRANT OF PERMISSION**

- 3.1.1. The City hereby grants Licensee the right to enter and to use the Right-of-Way located in the areas listed in Exhibit A to attach, install, construct, operate, lease,

maintain, repair, replace, reattach, reinstall, relocate, and remove Licensee Poles and Wireless Facilities listed in the most recently approved version of Exhibit B subject to the terms of this Agreement.

3.1.2. This Agreement does not confer any other rights not described herein nor does it permit Licensee or parties contracted to use Licensee's Wireless Facility or Licensee Pole to use the Right-of-Way for purposes not specified in this Agreement.

3.1.3. This Agreement does not authorize the Licensee to install equipment and facilities associated with or for macro wireless towers in the Right-of-Way.

3.1.4. Only Neutral Host Providers that have an existing agreement with a Carrier to use or lease the Neutral Host Provider's Wireless Facilities or Licensee Poles are authorized to be in Licensed Locations.

### 3.2. SCOPE OF AGREEMENT

3.2.1. This Agreement is **not exclusive** and the City reserves the right to grant permission to use its Right-of-Way for the same or similar purposes to Other Parties.

3.2.2. Except as expressly provided herein, this Agreement does not grant Licensee the authority to grant any rights under this Agreement to any Other Party without the written consent of the City. If Other Parties seek to install Wireless Facilities on a Licensee Pole, either the Licensee or Other Party must first notify the ARA Director in writing and submit an Application for Location Review, a representative example of which is attached as Exhibit C, for each Wireless Facility and Licensee Pole and obtain the City Engineer's written consent.

3.2.3. Licensee and City agree that Licensee Poles once installed shall not be considered "Utility Poles" within the definition of this Agreement, and that third-party wireline attachments (unrelated to Licensee's network or Wireless Facilities) shall not be permitted to be on Licensee Poles.

3.2.4. This Agreement only authorizes permission to use the Right-of-Way and does not confer any rights or permission to install Wireless Facilities on a Utility Pole. Licensee must obtain permission from the owner of the Utility Pole or Licensee Pole prior to submitting its proposed plans to the City Engineer for approval and for Permits to install its Wireless Facilities within the Right-of-Way.

3.2.5. This Agreement does not grant to the Licensee an interest in any property.

### 3.3. LIST OF LICENSED LOCATIONS

3.3.1. Licensee shall install its Wireless Facilities or Licensee Poles only in the Licensed Locations. Licensee requesting to use City Right-of-Way location not

listed in Exhibit A must submit to the City Engineer an Application for Location Review (Exhibit C).

3.3.2. The City Engineer shall review the Application for Location Review to determine availability, compliance with this Agreement, public safety impact, and other applicable considerations related to the requested location. The City Engineer shall provide written notice of the approval or denial of the Application for Location Review and reasons for denial, if applicable, within 30 days of receipt of the complete and accurate application.

3.3.3. The ARA Director may revoke a Licensee's permission to use a Licensed Location listed in Exhibit A for that Licensee's non-compliance with a term or terms of this Agreement subject to the same notice and right to cure procedures for a default in Sections 12.3.2 and 12.3.3. The ARA Director may amend or supplement Exhibit A as needed during the Term of this Agreement without approval from City Council.

#### 3.4. UNAUTHORIZED WIRELESS FACILITIES AND LICENSEE POLES

3.4.1. The ARA Director will review proposed Wireless Facilities, Licensee Poles, and other equipment specifications at least once a calendar year and may amend and supplement Exhibit B without approval from City Council.

3.4.2. The ARA Director shall deem as unauthorized any type of Wireless Facility or Licensee Pole not listed in or attached under Exhibit B. The ARA Director at his or her sole discretion may, upon 30 days' written notice, remove or require the Licensee to remove unauthorized Wireless Facilities or Licensee Poles at Licensee's expense without any liability to the City. The City will invoice and Licensee shall reimburse the City within 30 days of receipt of the invoice for the City's cost of removal of unauthorized Wireless Facilities and Licensee Poles.

3.4.3. Any Modification to a Wireless Facility or Licensee Pole must be approved by the City Engineer except for routine maintenance or replacement of an existing Wireless Facilities with equipment that (1) has identical dimensions and appearance or smaller dimensions and a less intrusive appearance and (2) does not require a Permit from the PWE Director or plan approval from the City Engineer.

#### 3.5. LICENSEE POLES

3.5.1. Licensee shall not install Licensee Poles in the Right-of-Way unless Licensee demonstrates that all of the following criteria are satisfied: (1) Licensee certifies that a new Licensee Pole and Wireless Facilities in the Right-of-Way are necessary to fill a coverage or capacity gap in Wireless Services, (2) there are no other existing structures in the Right-of-Way or City buildings in the area that are available and capable of supporting the Licensee's Wireless Facilities.

- 3.5.2. If there is a City building in the area of the requested Licensed Location that is available (as solely determined by the City) and capable of supporting Licensee's Wireless Facilities, Licensee may use the City building instead of installing a new Licensee Pole. The installation, if any, of Licensee Poles or Wireless Facilities on a City building, shall be subject to a duly authorized contract executed between Licensee and the City.
- 3.5.3. Licensee Pole must be spaced at least 300 linear feet from another pole that is capable of supporting Wireless Facilities along the proposed location, unless otherwise approved by the City Engineer in writing.
- 3.5.4. References to Licensee Poles throughout this Agreement shall not be construed as permission to install Licensee Poles in the Right-of-Way absent a Permit.
- 3.5.5. Licensee shall not install wooden poles, unless the poles are consistent with the design of other poles in the surrounding area.

### 3.6. LEASING AND SUBLEASING

No later than ninety (90) days from the Effective Date, Licensee shall notify the ARA Director, in writing, for each one of its Licensed Locations that is used by more than one Carrier and every ninety (90) days thereafter, Licensee shall provide an updated notice of the existence of any additional Carriers added at each of its Licensed Location during that period. The written notification to the ARA Director must identify the Licensed Location.

Licensee may license use of its Wireless Facilities and/or Licensee Poles to Carrier(s) for provision of Wireless Services only if the use strictly complies with this Agreement.

## **ARTICLE 4. PERMITS AND PERMISSION**

### 4.1 REQUEST FOR LICENSED LOCATION

4.1.1. Prior to installation or Modification of a Wireless Facility or Licensee Pole, Licensee shall complete and submit to the City Engineer the plan review form referenced in this Agreement as the Application for Location Review, attached as Exhibit C as a representative sample, and the following items:

- 4.1.1.1. A one-time nonrefundable plan review fee for review of the Application for Location Review (whether submitted electronically or in hard copy) in the amount stated in the most recent City fee schedule;
- 4.1.1.2. Documents necessary for the review or requested by the City Engineer, including but not limited to:

- 4.1.1.2.1. Map showing intended location of the Wireless Facility or Licensee Pole and its distance from a Historic Landmark, Park, or School, if any;
- 4.1.1.2.2. Representative drawings or pictures of the intended Wireless Facility or Licensee Pole;
- 4.1.1.2.3. Engineering and construction plans and drawings;
- 4.1.1.2.4. Written confirmation of an agreement between Carrier and Licensee for Carrier to use Licensee Pole and Wireless Facility, if applicable; and

4.1.2. If the applicant is not the same as the Licensee listed on the Application for Location Review, the Licensee is presumed to be the owner of the Licensee Pole, Wireless Facilities, and Ground Equipment and shall be responsible for them and the Rental Fees.

#### 4.2. LOCATION REVIEW PROCESS

4.2.1. The City Engineer shall review an Application for Location Review for completeness and notify the Licensee in writing within 30 days of receipt of the application if Licensee needs to submit additional or missing information. The notice shall include the information that must be submitted to the City Engineer. If Licensee does not submit the missing or additional information within 180 days of the notice, then the Licensee's Application for Location Review shall be deemed withdrawn.

However, Application for Location Review will not be accepted and shall be deemed incomplete if it is not accompanied by the following information:

- 4.2.1.1. Written permission from the Utility Pole owner authorizing the Licensee to install a Wireless Facility or Licensee Pole on the Utility Pole.
- 4.2.1.2. The ARA Director or City Engineer's written approval that the Camouflaged Wireless Facility or Licensee Pole conforms to the Management District or TIRZ's design standards, as required in Section 6.1.6, if applicable.

4.2.2. The City Engineer shall review the application to determine:

- 4.2.2.1. If the requested site has already been approved as a Licensed Location listed in Exhibit A;
- 4.2.2.2. The requested site is in the Right-of-Way;
- 4.2.2.3. Compliance with Article 6 of this Agreement;

4.2.2.4. That written permission has been obtained by applicable parties as required by this Agreement; and

4.2.2.5. Compliance with applicable construction, engineering, design specifications, and other applicable requirements, including the Americans with Disabilities Act.

4.2.3. The City Engineer shall deny a requested location in the Application for Location Review if the Licensee's application is not in compliance with Articles 3, 4, and 6 of this Agreement.

#### 4.3 PERMITS

4.3.1. Licensee shall not install a Wireless Facility or Licensee Pole without the requisite Permit(s).

4.3.2. Upon approval of the Application for Location Review, the Licensee is authorized to apply for Permit(s).

4.3.3. The Licensee shall give notice to the ARA Director of any revocation or denial of any such Permit affecting its performance hereunder within 15 days of such revocation or the day upon which the Licensee received actual or constructive notice of denial of such Permit.

4.3.4. The City Engineer shall forward to the ARA Director each approved GIS or Street Address and related information in the Application for Location Review when Permit(s) is approved.

#### 4.4 INVENTORY

Licensee shall maintain a list of its Wireless Facilities, Licensee Poles, and Licensed Locations during the Term of this Agreement. Licensee shall provide to the ARA Director such list on the fifth anniversary of the Effective Date and every two years thereafter until the end of the Term.

City shall maintain an accounting of all Rental Fees owed from, invoiced to, and received from Licensee under this Agreement. The ARA Director shall provide such accounting to the Licensee on the fifth anniversary of the Effective Date and every two years thereafter until the end of the Term.

### **ARTICLE 5. RENTAL FEES AND OTHER PAYMENTS**

#### 5.1 RENTAL FEE

Licensee shall pay the City an annual Rental Fee for use of each Licensed Location for which Licensee has obtained Permit(s) regardless of whether or not a Licensee installs Wireless Facilities or Licensee Poles in the Right-of-Way during the Term of this Agreement. Except as

provided for in this Agreement, the Rental Fee is non-refundable. Licensee shall pay the City the Rental Fee as provided in Exhibit D, Rental Fee Schedule.

## 5.2. PERIODIC FEE ADJUSTMENT

5.2.1. Standards Rates Apply. If the Licensee is paying the Standard Rental Fee rates under 5.1.1 in Exhibit D, then on January 1 of each year after 2016, the Rental Fees shall automatically increase by 2% over the Rental Fees in effect the prior calendar year, as shown in Table 1: Standard Fee Schedule in Exhibit D. For reference, this section is also stated in Exhibit D under 5.1.3.1.

5.2.2. Volume Discount Rates Apply. If Licensee is paying the Volume Discount Fee Schedule rates under Table 3 in Exhibit D, then the periodic fee adjustment in 5.1.3.2 in Exhibit D shall apply.

## 5.3. IN KIND SERVICES

In the event Licensee, in its sole discretion, elects to offer the City in-kind services as a credit against the Rental Fee(s) due under this Agreement for the use of Licensed Location(s), the City, through a representative from the Mayor's Office, as designated by the Mayor of the City ("the Mayor's designee"), may consider accepting the in-kind services on a first in time of offer basis, to the extent they are beneficial to the City, provided that such acceptance does not violate any applicable procurement laws or policies. If the City agrees the offered in-kind services are beneficial to the City, the Parties shall mutually agree to the bona fide fair market value of the in-kind services on a year-to-year basis, and on a year by year basis, adjust the amount of the Rental Fee, such that the amount of the Rental Fee due is the total of the monetary amount paid to the City and the value of the in-kind services each year. At a minimum, the amended and supplemented Rental Fee Schedule must include: (a) a description of the in-kind services to be provided, including how they are beneficial to the City; (b) the determined bona fide fair market value of the in-kind services on a year-to-year basis that equals the amount of the Rental Fee adjustment for the provision of in-kind services each year while beneficial to the City; (c) due date(s) for the adjusted Rental Fee; (d) the time period for which the Rental Fee adjustment shall apply; and (e) provisions for reverting to the Rental Fees otherwise in accordance with the terms of this Agreement and the then-current Rental Fee Schedule in the absence of the provision of in-kind services (e.g. in the event the City declines the in-kind services or Licensee ceases to provide the in-kind services). The Mayor's designee shall provide the members of City Council with the proposed adjustment to the Rental Fee Schedule at least two weeks in advance of the Mayor's designee providing written approval to the Licensee of the City's acceptance of the in-kind services proposal. After the conclusion of the two-weeks advance notice period, if the Mayor's designee approves the Rental Fee adjustment for in-kind services, the Mayor's designee shall notify the Licensee in writing and amend and supplement Exhibit D, Rental Fee Schedule (a copy of which shall be maintained by the ARA Director).

5.4. OTHER PAYMENTS

The Rental Fee payable hereunder shall be exclusive of, and in addition to all ad valorem taxes, special assessments for municipal improvements, and other lawful obligations of the Licensee to the City.

5.5. LATE PAYMENT CHARGE

Until the payment due is received by the City, Licensee shall incur 12 percent annual interest, compounded daily from the due date until payment is received on the amount due.

5.6. HOLD OVER CHARGE

The Rental Fee for any Hold Over Period, as described in Section 12.5, shall be 150% of the most recent Rental Fee due according to the Rental Fee Schedule in Exhibit D. Payment pursuant to this subsection does not extend or renew this Agreement.

5.7. NON-FUNCTIONING WIRELESS FACILITIES

Licensee shall continue to pay Rental Fees for Wireless Facilities or Licensee Poles that are no longer in service or operational if the Wireless Facilities or Licensee Poles occupy the Right-of-Way.

5.8. PAYMENT

5.8.1. No later than 30 days before the payment due date, the ARA Director shall mail notice to Licensee that includes the current Rental Fees and other fees, payment, or charges due.

5.8.2. Rental Fee and other payments shall be payable by ACH direct deposit or check payable to the City of Houston and sent to the following address:

ATTN: Franchise Administration  
City of Houston  
P.O. Box 2226  
Houston, TX 77252

5.9. REIMBURSEMENT

When under the terms of this Agreement, the City at its own expense has removed or remediated Licensee's Wireless Facilities or Licensee Poles or Licensee is required to reimburse the City, the Licensee shall remit payment to the City to the address listed in Section 5.8 within 30 days of the date of the invoice.

5.10. PAYMENT LIMITS

Upon Licensee's termination of any Licensed Location in accordance with the terms of this Agreement and Licensee peaceably surrendering the Licensed Location to the City in the same condition the Licensed Location was in on the date the Permit(s) was granted excepting

ordinary wear and tear, there will be no compensation due, including any Rental Fees to the City, by Licensee for such Licensed Location except that the City shall not issue any refunds for any amounts already due or paid by Licensee except as provided in Section 5.1.2 in Exhibit D.

Following removal of any Wireless Facility or Licensee Pole in accordance with the terms of this Agreement, there will be no compensation due, including any Rental Fees, to the City by Licensee for such Wireless Facility or Licensee Pole except that the City shall not issue any refunds for any amounts already paid by Licensee for Wireless Facilities or Licensee Poles that have been removed.

Notwithstanding the foregoing, if Licensee is required by the City to remove a Wireless Facility or Licensee Pole and such removal is not the result of Licensee's failure to comply with this Agreement, City will reimburse Licensee the Rental Fee for the Licensed Location used by such Wireless Facility or Licensee Pole pro-rated monthly starting on the month after the removal is completed and for the remainder of the calendar year.

#### 5.11. COMPLIANCE REVIEW

The City may, at its discretion, upon no less than 30 days prior written notice, require that the Licensee produce its records related to this Agreement for review by the ARA Director to ascertain the correctness of the information provided under Article 5 of this Agreement. If the ARA Director identifies, as a result of a review of the information provided pursuant to Article 5 of this Agreement Rental Fees and other payments owed by the Licensee from prior periods, the Licensee shall pay a late penalty of 12 percent per annum on the amount identified. If the review determines that payment of the Rental Fee was not made in accordance with the terms of this Agreement and that such payment represents an underpayment of at least 20 percent of the Rental Fees due, the Licensee shall reimburse the City for all reasonable review costs, and pay the Rental Fees determined to be due and payable to the City hereunder. Such costs and fees, if any, shall be paid within 30 days after determination of amount due is made. If the review determines that payment of the Rental Fee was not made in accordance with the terms of this Agreement and that such payment represents an overpayment of any amount, City will credit such overpayment against Licensee's future obligations to City under this Agreement and reimburse Licensee the remainder of such amount, if any, within the later of 30 days of the end of the Term or a date agreed to by the Parties.

### **ARTICLE 6. WIRELESS FACILITIES AND LICENSEE POLES REQUIREMENTS**

#### 6.1. AESTHETIC REQUIREMENTS

6.1.1. The Wireless Facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible.

- 6.1.2. Unless required by this Agreement, Licensee may, at its own expense, install a Camouflaged Wireless Facilities or Licensee Poles, provided Licensee obtains the requisite approvals and Permits required by this Agreement. Licensee must install Wireless Facilities or Licensee Poles that conform to the Management District or TIRZ's aesthetic or design standards for the proposed installation site, if any, unless otherwise approved by the ARA Director.
- 6.1.3. In order to minimize negative visual impact to the surrounding area, the City Engineer may deny a request for a proposed Licensed Location if the Licensee installs Wireless Facilities or Ground Equipment where 100 cubic feet of Wireless Facilities or Ground Equipment already exist at that time.
- 6.1.4. Licensee shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.
- 6.1.5. If a Licensed Location becomes an Underground Utility District during the Term of this Agreement, then Licensee's grant of permission for the Licensed Location with the Utility Poles at such Licensed Location will be automatically revoked upon removal of said Utility Poles. When installing or re-installing Wireless Facilities in the area where the Utility Poles at issue were removed, Licensee must install Camouflaged Wireless Facilities, Ground Equipment, and Licensee Poles as authorized by the ARA Director and in compliance with Underground Utility District, TIRZ, and Management District aesthetic standards, unless otherwise approved by the ARA Director.
- 6.1.6. Licensee shall not install Licensee Poles or Ground Equipment in Underground Utility Districts, Management Districts, or TIRZs except as authorized by the ARA Director and in compliance with Underground Utility District, TIRZ, and Management District aesthetic standards, unless otherwise approved by the ARA Director. Any Licensee Poles, Wireless Facilities, or Ground Equipment authorized to be installed in Underground Utility Districts shall be Camouflaged Wireless Facilities or Licensee Poles as required by the ARA Director.
- 6.1.7. Licensee shall provide to the ARA Director and City Engineer written documentation from the Management District or TIRZ confirming that the Management District or TIRZ has reviewed the aesthetics of the proposed Wireless Facilities or Licensee Poles, including the design and concealment plan or the proposed Camouflaged Wireless Facility or Licensee Pole, if any, prior to obtaining a Permit from the PWE Director for installation or Modification of Licensee Poles or Wireless Facilities within a Management District's or TIRZ's service area that has betterments or enhancements. Betterments and enhancements are decorative or specialty street light fixtures, street signs, Traffic Signals, sidewalks, pavement, and other infrastructure that are above City standards.

- 6.1.8. Licensee must obtain written approval from the ARA Director that the City approves the aesthetics of the proposed Wireless Facilities or Licensee Poles, including the design and concealment plan or the proposed Camouflaged Wireless Facility or Licensee Pole before an Application for Location Review can be approved by the City Engineer for the installation or Modification of Licensee Poles or Wireless Facilities within a Historic District.
- 6.1.9. From time to time, the ARA Director or City Engineer may request that Licensee explore the feasibility of using certain equipment, including certain Wireless Facility, Ground Equipment, Licensee Pole, to improve the aesthetics of the Wireless Facilities, Licensee Poles, Ground Equipment or any portion thereof or to minimize the impact to the aesthetics of the surrounding area. If Licensee, at its sole discretion, chooses to utilize or install such equipment at its sole cost and expense, Exhibit B will be amended to add the equipment.

## 6.2 INSTALLATION

Licensee shall, at its own cost and expense, install the Wireless Facilities or Licensee Poles in a good and workmanlike manner and in accordance with the requirements promulgated by the City Engineer, as such may be amended from time to time. Licensee's work shall be subject to the regulation, control and direction of the City Engineer. All work done in connection with the installation, operation, maintenance, repair, Modification, and/or replacement of the Wireless Facilities or Licensee Poles shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

## 6.3 INSPECTIONS

- 6.3.1. The City Engineer may perform visual inspections of any Wireless Facilities or Licensee Poles located in the Right-of-Way as the City Engineer deems appropriate without notice. If the inspection requires physical contact with the Wireless Facilities, the City Engineer shall provide written notice to the Licensee within five business days of the planned inspection. Licensee may have a representative present during such inspection.
- 6.3.2. In the event of an emergency situation, the City may, but is not required to, notify Licensee of an inspection. The City may take action necessary to remediate the emergency situation and the City Engineer shall notify Licensee as soon as practically possible after remediation is complete.

## 6.4 PLACEMENT

- 6.4.1. *Parks.* Placement of Wireless Facilities and Licensee Poles in any Parks, Park roads, sidewalk, or property is prohibited unless dedicated as Right-of-Way and

the placement complies with applicable Laws, private deed restrictions, and other public or private restrictions on the use of the Park.

- 6.4.1.1. The Licensee shall not install Ground Equipment in a Right-of-Way that is within 150 feet of the boundary line of a Park, unless approved by the City Engineer and Parks Director in writing.
- 6.4.1.2. The Licensee shall not install a Licensee Pole in a Right-of-Way that is within 300 feet of the boundary line of a Park, unless approved by the City Engineer and Parks Director in writing.
- 6.4.2. *Traffic Signals.* Licensee shall neither allow nor place a Wireless Facility on a Traffic-Control Device or Traffic Signal or any structure supporting a Traffic-Control Device or Traffic Signal.
- 6.4.3. *City Infrastructure.* Licensee shall neither allow nor install Wireless Facilities or Licensee Poles on any part of a City bridge, overpass, or tunnel, unless approved by the City Engineer in writing.
- 6.4.4. *Streets.* Licensee shall neither allow nor install Licensee Poles and Ground Equipment in Right-of-Ways that are adjacent to streets and thoroughfares that are 50 feet or less in width and both sides of the street or thoroughfare are adjacent to exclusively single-family residential lots, unless approved by the ARA Director in writing.
- 6.4.5. *Historic Landmarks.* Licensee shall neither allow nor install a Wireless Facility or Licensee Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, state or federal government under §33.201 of the City Code of Ordinances, §442.001(3) of the Texas Government Code, and 16 U.S.C. §470, as of the date of the submission of the Application for Location Review (Exhibit C) for the requested location, unless approved by the ARA Director in writing.
- 6.4.6. *Schools.* Licensee shall adhere to the federal radio frequency (RF) emissions standards set forth in Federal Communications Commission OET Bulletin 65 (as may be amended or replaced during the Term) when installing or allowing to be installed a Wireless Facility or Licensee Pole within 150 feet of a School.
- 6.4.7. *Poles.* Wireless Facilities on a Utility Pole or Licensee Pole shall be installed at least 8 feet above the ground.
- 6.4.8. *Right-of-Way.* Licensee Poles and Ground Equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line. Licensee Pole or Wireless Facility shall not impede pedestrian or vehicular traffic in the Right-of-Way. If a Licensee Pole or Wireless Facility is installed in a location that is not in accordance with the plans approved by the City Engineer and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-

of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Licensee shall remove the Wireless Facility or Licensee Pole. Licensee shall be subject to a \$2,000 per day penalty until the Licensee Pole or Wireless Facility is relocated to the correct area within the Licensed Location, regardless of whether or not the Licensee's contractor, subcontractor, or vendor installed the Licensee Pole or Wireless Facility. Licensee may request from the City Engineer a waiver of underground construction requirements set forth in Section 40-5 of the City Code to allow for "microtrenching" at a depth of less than 24 inches for lateral connections connecting Wireless Facilities to the fiber-optic network.

6.4.9. *Design Manual.* Placement or Modification of Wireless Facilities and Licensee Poles shall comply with the City's Infrastructure Design Manual published on the City's website at the time the Permit for installation or Modification is approved and as amended from time to time.

#### 6.5. ELECTRICAL SUPPLY

Licensee shall be responsible for obtaining any required electrical power service to the Wireless Facilities and Licensee Poles. The City shall not be liable to the Licensee for any stoppages or shortages of electrical power furnished to the Wireless Facilities or Licensee Poles, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Licensee of the structure, or for any other cause beyond the control of the City. Licensee shall not be entitled to any abatement of the Rental Fee for any such stoppage or shortage of electrical power.

#### 6.6. FIBER CONNECTION

Licensee shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its Wireless Facilities or Licensee Pole.

#### 6.7. GENERATORS

Licensee shall not allow or install generators or back-up generators in the Right-of-Way.

#### 6.8. EQUIPMENT DIMENSIONS

6.8.1. *Wireless Facilities.* Licensee's Wireless Facilities installed on a Utility Pole or Licensee Pole shall not exceed 4 feet in height, 2 feet in width, and 2 feet in depth, unless otherwise approved, in writing, by the City Engineer. Licensee shall not install any equipment not described in or included in Exhibit B. Extensions to an existing Wireless Facility shall not result in a combined width of more than 3 feet as measured from the edge of the Utility Pole or Licensee Pole, and any subsequent Modifications to said pole. Licensee shall be allowed an additional cabinet for emergency battery back-up power that will not be counted towards the dimension requirements previously stated in this paragraph, provided the battery back-up power cabinet does not exceed 2 feet in height, 2 feet in width, and 21 inches in depth.

6.8.2. *Licensee Poles.* Licensee Poles shall not exceed 40 feet in height as measured from the ground, and with subsequent Modifications shall not exceed 45 feet in height as measured from the ground. Licensee Poles shall not exceed 3 feet in diameter or 3 feet in width as measured from the edge of the Utility Pole or Licensee Pole, and any subsequent Modifications to said pole.

6.8.3. *Ground Equipment.* Any Ground Equipment shall be no more than 3 feet in height, 3.5 feet in width, and 2 feet in depth and not total more than 21 cubic feet, excluding any concrete pad that is at grade or no more than one inch above grade. Licensee shall be allowed an additional cabinet for emergency battery back-up power that will not be counted towards the dimension requirements previously stated in this paragraph, provided the battery back-up power cabinet does not exceed 2 feet in height, 2 feet in width, and 21 inches in depth.

#### 6.9. TREE MAINTENANCE

Licensee, its contractors, and agents shall obtain written permission from the ARA Director before trimming trees hanging over its Licensee Poles to prevent branches of such trees from contacting attached Wireless Facilities or the Licensee Poles. When directed by the ARA Director, Licensee shall trim under the supervision and direction of the Parks Director. The City shall not be liable for any damages, injuries, or claims arising from Licensee's actions under this section.

#### 6.10. SIGNAGE

6.10.1. Licensee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Wireless Facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the ARA Director.

6.10.2. Except as required by Laws or by the Utility Pole owner, Licensee shall not post any other signage or advertising on the Wireless Facilities, Licensee Pole, or Utility Pole.

#### 6.11. OVERHEAD LINES PROHIBITED

In Underground Utility Districts, Licensee shall neither allow nor install overhead lines connecting to Licensee Poles. All overhead lines connecting to the Licensee Pole in Licensed Locations where other overhead telecommunications or utility lines are or planned to be buried below ground as part of a project shall be buried below ground.

#### 6.12. REPAIR

Whenever the installation, placement, attachment, repair, Modification, removal, operation, use, or relocation of the Wireless Facility, Licensee Pole, or any portion thereof is required or permitted under this Agreement, and such installation, placement, attachment, repair, Modification, removal, operation, use, or relocation causes any property of the City to be

damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any Laws, Licensee, at its sole cost and expense, shall promptly repair and return such property to its original condition. If Licensee does not repair such property or perform such work as described in this paragraph, then the City shall have the option, upon 15 days' prior written notice to Licensee or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and to charge Licensee for the reasonable and actual costs incurred by the City. Licensee shall reimburse the City for the costs in accordance with Article 5.8 of this Agreement.

#### 6.13. GRAFFITI ABATEMENT

As soon as practical, but not later than fourteen (14) days from the date Licensee receives notice thereof, Licensee shall remove all graffiti on any of its Wireless Facilities or Licensee Poles located in the Right of Way. The foregoing shall not relieve the Licensee from complying with any City graffiti or visual blight ordinance or regulation.

#### 6.14. LICENSEE'S PERFORMANCE

Licensee shall make citizen satisfaction a priority in using the Right-of-Way under this Agreement. Licensee shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Wireless Facilities, Ground Equipment, or Licensee Poles in the Right-of-Way. Licensee's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the ARA Director's opinion, Licensee is not interacting in a positive and polite manner with citizens, he or she shall request Licensee to take all remedial steps to conform to these standards.

### **ARTICLE 7. INTERFERENCE WITH OPERATIONS AND COLLOCATIONS**

#### 7.1. NO LIABILITY

7.1.1. The City shall not be liable to Licensee for any damage caused by other Licensees with Wireless Facilities sharing the same Utility Pole.

7.1.2. The City shall not be liable to Licensee by reason of inconvenience, annoyance or injury to the Wireless Facility, Licensee Pole, or activities conducted by Licensee therefrom, arising from the necessity of repairing any portion of the Right-of-Way, or from the making of any necessary alteration or improvements, in, or to, any portion of the Right-of-Way, or in, or to, City's fixtures, appurtenances or equipment. The City will use reasonable efforts not to cause material interference to Licensee's operation of its Wireless Facility or Licensee Pole.

## 7.2. NO INTERFERENCE

7.2.1. Licensee's Wireless Facilities must not cause harmful interference to the City's radio frequency, wireless network, or communications operations ("City Operations) and Wireless Facilities used by other Wireless Services providers or Neutral Host Providers with permission from the City to use the Right-of-Way to provide Wireless Services ("Protected Equipment"). If Licensee's Wireless Facilities interfere with the City's Operations, then Licensee shall promptly cease operation of the Wireless Facilities causing said interference upon receiving notice from the City and refrain from operating, except for intermittent testing to be coordinated with the City Engineer as part of the remedial process, until Licensee has eliminated the interference. If, after notice, Licensee continues to operate Wireless Facilities that cause interference with the City Operations, such Wireless Facilities may be deemed unauthorized and subject to the provisions of Section 3.4 of this Agreement.

If Licensee's Wireless Facilities interfere with Protected Equipment, then Licensee shall take steps necessary to correct and eliminate such interference within 24 hours of receipt of notice from the City. If the Licensee is unable to resolve the interference issue within this time frame, it will voluntarily power down the Wireless Facilities causing the interference, except for intermittent testing until such time as the interference is remedied.

7.2.2. Following installation or Modification of a Wireless Facility, the City Engineer may require Licensee to test the Wireless Facility's radio frequency and other functions to confirm it does not interfere with the City's Operations or Protected Equipment.

7.2.3. The City will include in any agreement or otherwise obligate other Wireless Services providers or Neutral Host Providers with permission from the City to use the Right-of-Way to provide Wireless Services to comply with the provisions of Section 7.2.1 and 7.2.2 of this Agreement to avoid, correct, and/or eliminate harmful interference with Licensee's Wireless Facilities.

## **ARTICLE 8. ABANDONMENT, RELOCATION AND REMOVAL**

### 8.1. ABANDONMENT OF OBSOLETE WIRELESS FACILITIES AND LICENSEE POLES

Licensee shall remove Wireless Facilities or Licensee Poles when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the Licensee Pole or Wireless Facility being Abandoned or within 90 days of receipt of written notice from the City. When Licensee removes or Abandons permanent structures in the Right-of-Way, the Licensee shall notify the City Engineer and ARA Director in writing of such removal or Abandonment and shall

file with the City Engineer and ARA Director the location and description of each Wireless Facility or Licensee Pole removed or Abandoned. The City Engineer may require the Licensee to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

## 8.2. REMOVAL REQUIRED BY CITY

8.2.1. Licensee shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Wireless Facility or Licensee Pole within the time frame and in the manner required by the City Engineer if the City Engineer reasonably determines that the disconnection, removal, or relocation of any part of a Wireless Facility or Licensee Pole (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Wireless Facility, Licensee Pole, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Licensee fails to obtain all applicable licenses, Permits, and certifications required by Law for its Wireless Facility, Licensee Pole, or use of any Licensed Location under this Agreement. If the City Engineer reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Wireless Facilities or Licensee Pole at the Licensee's sole cost and expense.

8.2.2. The City Engineer shall provide 90 days written notice to the Licensee before removing a Wireless Facility or Licensee Pole under this Section 8.2, unless there is imminent danger to the public health, safety, and welfare.

8.2.3. Licensee shall reimburse City for the City's actual cost of removal of its Wireless Facilities or Licensee Poles in accordance with this Agreement within 30 days of receiving the invoice from the City.

## 8.3. REMOVAL OR RELOCATION BY LICENSEE

8.3.1. If the Licensee removes or relocates a Wireless Facility or Licensee Pole at its own discretion, it shall notify the City Engineer and ARA Director in writing not less than 10 business days prior to removal or relocation. Licensee shall obtain all Permits required for relocation or removal of its Wireless Facility or Licensee Pole prior to relocation or removal.

8.3.2. Except as provided in Section 5.10, the City shall not issue any refunds for any amounts paid by Licensee for Wireless Facilities or Licensee Poles that have been removed.

## 8.4. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT

8.4.1. Licensee understands and acknowledges that the City may require Licensee to remove or relocate its Wireless Facility, Licensee Pole, or any portion thereof from the Right-of-Way, and Licensee shall, at the City Engineer's direction, remove or relocate the same at Licensee's sole cost and expense, whenever the

City Engineer or PWE Director reasonably determines that the relocation or removal is needed for any of the following purposes:

8.4.1.1. Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project.

8.4.1.2. Required for the creation of an Underground Utility District.

8.4.2. In any such case, the City shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location, if available.

8.4.3. If Licensee fails to remove or relocate the Wireless Facility, Licensee Pole, or portion thereof as requested by the City Engineer within 90 days of Licensee's receipt of the request, then the City shall be entitled to remove the Wireless Facility, Licensee Pole, or portion thereof at Licensee's sole cost and expense, without further notice to Licensee, and Licensee shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Wireless Facility, Licensee Pole, or portion thereof.

#### 8.5. REMOVAL REQUIRED AFTER TERMINATION OR EXPIRATION OF LICENSE

Within 30 days after termination or expiration of this Agreement, Licensee shall commence removal of all of Licensee's Wireless Facilities and Licensee Poles from the Right-of-Way and peaceably surrender the Licensed Location to City in the same condition the Right-of-Way was in on the date the Permit was granted for that Licensed Location, excepting ordinary wear and tear. Removal of all the Licensee's Wireless Facilities and Licensee Poles under this section must be completed within 180 days. If Licensee fails to begin removal of the Wireless Facilities or Licensee Poles on or before the 30th day after the Agreement expires or terminates or fails to complete removal within 180 days, the City may remove, store, or dispose of any remaining portion of the Wireless Facilities or Licensee Poles in any manner the City Engineer deems appropriate. Licensee shall, within 30 days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith (including any reasonable overhead and storage expenses).

#### 8.6. REMOVAL REQUIRED AFTER REVOCATION

Within 30 days after the date of the notice of revocation of a Licensed Location, Licensee shall commence removal of the Wireless Facility or Licensee Pole from the Right-of-Way and peaceably surrender the Licensed Location to City in the same condition the Right-of-Way was in on the date the Permit was granted for that Licensed Location, excepting ordinary wear and tear. If Licensee fails to complete removal within 90 days, the City may remove, store, or dispose of any remaining portion of the Wireless Facilities or Licensee Poles in any manner the City Engineer deems appropriate. Licensee shall, within 30 days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith (including any reasonable overhead and storage expenses).

8.7. OWNERSHIP

The City agrees that no part of a Wireless Facility or Licensee Pole constructed, Modified, or erected or placed on the Right-of-Way by Licensee will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Wireless Facility or Licensee Pole constructed, modified, erected, or placed by Licensee on the Right-of-Way will be and remain the property of Licensee and may be removed by Licensee at any time during or after the Term.

8.8. RESTORATION

Licensee shall repair any damage to the Right-of-Way, and the property of any third party resulting from Licensee's removal or relocation activities (or any other of Licensee's activities hereunder) within 10 days following the date of such removal or relocation, at Licensee's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Licensee was granted a Permit for the applicable Licensed Location, including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the ARA Director.

8.9. LICENSEE RESPONSIBLE

Licensee shall be responsible and liable for the acts and omissions of Licensee's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sublicensees, sublessees, and subcontractors in connection with the performance of this Agreement, as if such acts or omissions were Licensee's acts or omissions.

8.10. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE

The City has appropriated \$0 under this Agreement to pay for the cost of any removal or storage of Wireless Facilities or Licensee Pole, as authorized under this Article, and no other funds are allocated in connection with the performance of this Agreement.

**ARTICLE 9. ADDITIONAL REQUIREMENTS**

9.1. NON-DISCRIMINATION

Licensee shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the City Code, now or hereafter in effect.

9.2. DRUG POLICY

9.2.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Licensee's employees, contractors, subcontractors, sublicensees, or vendors while on City Premises is prohibited. Licensee shall comply with all

the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

9.2.2. Before the Licensee signs this Agreement, Licensee shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) A copy of its drug-free workplace policy,
- (b) The Drug Policy Compliance Agreement substantially in the form set forth in Exhibit F together with a written designation of all safety impact positions, and
- (c) If applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit G.

If Licensee files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the Term of this Agreement, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit H. Licensee shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of each 6-month period of installation or removal and within 30 days of expiration of this Agreement. The first 6-month period begins on the first day Licensee begins work under this Agreement.

9.2.3. Licensee also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Licensee's employee work force.

9.2.4. Licensee shall require that its contractors or subcontractors comply with the Executive Order, and Licensee shall secure and maintain the required documents for City inspection.

### 9.3. ENVIRONMENTAL LAWS

Licensee shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental agency with the authority to promulgate environmental rules and regulations applicable to Licensee's use of any Licensed Location under this Agreement ("Environmental Laws"). Licensee shall promptly reimburse the City for any fines or penalties levied against the City because of Licensee's failure to comply with Environmental Laws.

Licensee shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in compliance with the Environmental Laws. "Hazardous Materials" mean any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Licensee and its lessees, if any, shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or

substances in the City's storm sewer system or sanitary sewer system or elsewhere on Licensed Locations in violation of the Environmental Laws. Except for its contractors, subcontractors, and vendors, Licensee will not have any responsibility for managing, monitoring, or abating, nor be the owner of, nor have any liability for, any Hazardous Materials that it did not bring into the Licensed Locations.

## **ARTICLE 10. SECURITY**

Within 30 days of the execution of this Agreement, Licensee shall maintain and furnish to the ARA Director a Security in favor of the City. "Security" means either an executed performance bond, letter of credit, or a bank or cashier's check made payable to the City, or other form of security acceptable to the ARA Director for the purpose of protecting the City from the costs and expenses associated with Licensee's failure to comply with its material obligations under and throughout the life of this Agreement, including but not limited to, (a) the City's restoration of the Right-of-Way; (b) the City's removal of any of Licensee's Wireless Facilities or Licensee Poles that are Abandoned or not properly maintained or that need to be removed to protect public health, safety, welfare, or City property; (c) the City's remediation of environmental and hazardous waste issues caused by Licensee; or (d) the City's recoupment of Rental Fees that have not been paid by Licensee in over 12 months, after Licensee receives reasonable notice from the City of any of the non-compliance listed above and opportunity to cure.

The amount of the Security shall be determined by mutual agreement by the Licensee and ARA Director in writing, provided that in no event shall the Security be less than (a) \$25,000 for the installation of any and all Wireless Facilities and (b) \$100,000 for the installation of any and all Licensee Poles.

The Bond, if any, must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. An example of a City approved bond has been provided in Exhibit E. The surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability up to \$100,000.00, by a reinsurer listed on the U.S. Treasury list.

In the event the surety or party issuing the Security cancels or decides not to renew or extend the Security, Licensee shall obtain, and provide to the City Attorney for approval, a replacement Security with another surety, authorized to do business in Texas, within 30 days of the date the Security has been cancelled or non-renewed. If Licensee fails to provide the replacement Security within the 30-day period, the ARA Director, after consulting with the City Attorney, may immediately suspend Licensee from any further performance under this Agreement and begin procedures to terminate for default pursuant to the terms of Section 12.3.

In the event that the City draws upon the Security, Licensee must replenish the amount of the Security within 30 days. Notwithstanding any provisions of this Agreement to the contrary, the ARA Director shall be required to notify Licensee in writing as a precondition to drawing on, seeking payment under, or executing against the Security.

In the event that Licensee shall fully and faithfully comply with all of the terms of this Agreement, the City shall return the Security to Licensee within 60 days of the Agreement's expiration or termination, to the extent not otherwise applied in compliance with this Agreement.

## **ARTICLE 11. RELEASE, INDEMNIFICATION, LIMITATION OF LIABILITY, AND INSURANCE**

### **11.1. RELEASE AND LIMITATION AND LIABILITY**

**LICENSEE AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

**NEITHER LICENSEE NOR CITY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT. THIS SECTION WILL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

### **11.2. INDEMNIFICATION**

**11.2.1. LICENSEE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY" AND "INDEMNIFICATION") THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY PARTIES") FOR ALL THIRD-PARTY CLAIMS, SUITS, DAMAGES, LIABILITIES, FINES, AND EXPENSES INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS (COLLECTIVELY "LOSSES") FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH LICENSEE'S USE OR OPERATION OF ANY WIRELESS FACILITY, LICENSEE POLE, OR UTILITY POLE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION THOSE CAUSED BY LICENSEE'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS' OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS.**

**11.2.2. LICENSEE'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT WILL SURVIVE FOR FOUR YEARS AFTER THE AGREEMENT EXPIRES OR TERMINATES.**

**11.2.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY, LICENSEE'S INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT IS LIMITED TO \$500,000 PER OCCURRENCE.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY, LICENSEE WILL NOT BE REQUIRED TO INDEMNIFY THE CITY PARTIES FOR THE CITY PARTIES' ACTS OR OMISSIONS.**

**11.2.4. SUBCONTRACTORS' AND SUBLICENSEES' INDEMNIFICATION: LICENSEE SHALL REQUIRE ALL OF ITS SUBCONTRACTORS AND SUBLICENSEES (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY AS SET FORTH IN THIS AGREEMENT.**

### 11.3 INDEMNIFICATION PROCEDURES

11.3.1. The following procedures shall apply to indemnification under this Agreement:

11.3.1.1. Notice of Claims. If the City receives notice of any claim or circumstances that could give rise to Losses, the City shall give written notice to the other party within 10 days. The notice must include the following:

- 11.3.1.1.1 A description of the indemnification event in reasonable detail;
- 11.3.1.1.2. The basis on which indemnification may be due; and
- 11.3.1.1.3. The anticipated amount of Losses.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of Losses than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that the Licensee is prejudiced, suffers loss, or incurs expense because of the delay.

11.3.2. Defense of Claims. The Licensee may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. The Licensee shall then control the investigation, defense, and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, the Licensee must advise the City as to whether or not it will defend the claim. If the Licensee does not assume the defense, the City shall assume and control the defense, and all defense expenses shall constitute Losses.

11.3.1. Continued Participation. If the Licensee elects to defend the claim, the City may retain separate counsel at its own expense to participate in (but not control) the defense and to participate in (but not control) any settlement

negotiations. The City will provide the Licensee with reasonable information and assistance related to such claim. The Licensee may settle the claim without the consent or agreement of the City unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City; (ii) would require the City to pay amounts that the Licensee does not fund in full; or (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

11.4. INSURANCE

11.4.1. The Licensee shall maintain certain insurance and endorsements in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows:

11.4.1.1. **Risks and Limits of Liability.** The Licensee shall maintain the following coverage and limits of liability:

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$1,000,000 (each accident)
	Bodily Injury by Disease \$1,000,000 (policy limit)
	Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Bodily Injury and Property Damage; Products and Completed Operations Coverage; Explosion, Collapse, and Underground	Combined Limits of \$2,000,000 per occurrence and \$2,000,000 aggregate or Combined Limits of \$1,000,000 per occurrence and \$1,000,000 aggregate plus \$1,000,000 in excess liability coverage for commercial general liability and automobile liability.
Automobile Liability	\$2,000,000 combined single limit for each accident for bodily injury and property damage coverage for all owned, hired, and non-owned Autos  or \$1,000,000 combined single limit for each accident for bodily injury and property damage coverage for all owned, hired, and non-owned Autos plus  \$1,000,000 excess liability coverage for Commercial General Liability and Automobile Liability
Aggregate limits are per 12-month policy period, unless otherwise indicated.	

- 11.4.1.2. **Form of Policies.** The insurance may be in one or more policies of insurance, which must be reasonably approved by the ARA Director and City Attorney; however such approval shall never excuse non-compliance with the terms of this Section nor shall it be unreasonably withheld.
- 11.4.1.3. **Issuers of Policies.** The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide.
- 11.4.1.4. **Additional Insured Parties.** The City and its officers, agents, and employees shall be included as additional insured as their interest may appear under this Agreement on the above commercial general liability and automobile liability policies.
- 11.4.1.5. **Deductibles.** Licensee shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.
- 11.4.1.6. **Cancellation.** Upon receipt of notice from its insurer, Licensee shall provide the ARA Director 30 days' advance written notice of any cancellation. Within the 30 day period, Licensee shall procure other suitable policies in lieu of those about to be canceled or non-renewed so as to maintain in effect the required coverage. If Licensee does not comply with this requirement, the ARA Director, at his or her sole discretion, may immediately suspend Licensee from any further performance under this Agreement and begin procedures to terminate for default pursuant to the terms of Section 12.3.
- 11.4.1.7. **Subrogation.** Licensee waives any claim or right of subrogation to recover against the City, its officers, agents, or employees and each of Licensee's insurance policies must on its face or by endorsement state that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.
- 11.4.1.8. **Endorsement of Primary Insurance.** Each policy, except Workers' Compensation, shall be primary and non-contributory in regards to any insurance or program of self-insurance maintained by the City.
- 11.4.1.9. **Liability for Premium.** Licensee shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

11.4.1.10. **Subcontractors.** Licensee shall require all subcontractors to obtain and maintain substantially the same insurance as required of Licensee.

11.4.2. **Certificates of Insurance.** At the time this Agreement is signed and as long as this Agreement continues, Licensee must furnish to the ARA Director certificates of insurance, including any blanket additional insured endorsements that meet the requirements of this Agreement. These certificates must bear the Licensee's name in which it is insured. Licensee shall provide updated certificates of insurance to the ARA Director upon request. Every certificate of insurance Licensee delivers shall:

11.4.2.1. Evidence coverage in effect for a twelve (12) month period;

11.4.2.2. Include the company name and address, policy number, NAIC number or AMB number, and authorized signature;

11.4.2.3. Include the name and reference numbers and indicate the name and address of the project manager or authorized contact person in the Certificate Holder Box; and be appropriately marked to accurately identify all coverages and limits of the policy;

11.4.2.4. Be appropriately marked to accurately identify:

11.4.2.4.1. All coverage and limits required under this Agreement;

11.4.2.4.2. Effective and expiration dates; and

11.4.2.4.3. Waivers of subrogation, endorsement of primary insurance and additional insured language, as described above.

11.4.2.5. Licensees shall, upon the City's request, deliver an assurance letter from Licensee's insurer stating that the insurer intends to issue Licensee a new policy that meets the terms of this Article.

## **ARTICLE 12. TERM AND TERMINATION**

### **12.1. TERM**

12.1.1. This Agreement is effective on the Effective Date and unless sooner terminated under other provisions of this Agreement, will remain in effect until December 31, 2025 ("Initial Term").

## 12.2. RENEWALS

Upon expiration of the Initial Term, this Agreement will automatically renew for up to two (2) successive five (5) year terms (each a "Renewal Term") on the same terms and conditions, unless either the City or Licensee chooses not to renew. If either the City or Licensee chooses not to renew this Agreement, the ARA Director shall notify the Licensee or the Licensee shall notify the ARA Director of non-renewal at least 90 days before the expiration of the then-current term.

## 12.3. TERMINATION FOR CAUSE BY CITY

12.3.1. If Licensee defaults under this Agreement, the City may terminate this Agreement subject to Licensee's ability to cure such defaults below. The City's right to terminate this Agreement for Licensee's default is cumulative of all its rights and remedies which exist now or in the future. Default by Licensee includes, but is not limited to:

12.3.1.1. Failure of the Licensee to comply with any material term of this Agreement;

12.3.1.2. Licensee becomes insolvent.

12.3.1.3. The Licensee's failure to obtain all licenses, Permits, and certification required by the City under this Agreement (to the extent not unreasonably withheld by the City) and pay all fees associated therewith after the City has notified the Licensee that licenses, Permits, and certifications must be obtained to work in the Right-of-Way;

12.3.1.4. All or a substantial part of Licensee's assets are assigned for the benefit of its creditors;

12.3.1.5. A receiver or trustee is appointed for Licensee; or

12.4.1.6. Licensee fails to install any Wireless Facilities or Licensee Poles in the Right-of-Way within 1 year of the Effective Date.

12.3.2. If a default occurs, the ARA Director shall deliver a written notice to Licensee describing the default and the proposed termination date. If the ARA Director sends a default notice, the Licensee shall have 60 days from the receipt of such notice to cure the default (unless the nature of the event takes longer to cure and the Licensee commences a cure within such 60 day period and thereafter diligently pursues it but will not exceed 180 days unless agreed to by the ARA Director which agreement will not be unreasonably withheld). If Licensee cures the default before the proposed termination date, the proposed termination is ineffective.

- 12.3.3. If the default is not cured in the time and manner set out above or by the ARA Director then the ARA Director may immediately terminate this Agreement by notifying Licensee in writing of such termination. After receiving the notice, Licensee shall, immediately cease operations and remove Wireless Facilities and Licensee Poles from the Right-of-Way in accordance with Section 8.5 of this Agreement, and any payment due shall be remitted by Licensee within 30 days of the receipt of the notice to the address in the Section 1.1 of this Agreement.

#### 12.4. TERMINATION BY LICENSEE

- 12.4.1. The Licensee may terminate this Agreement or any one Licensed Location at any time by giving 30 days advance written notice to the ARA Director.
- 12.4.2. If the Licensee does not remove all Wireless Facilities and Licensee Poles from the Right-of-Way within the time period required by Section 8.5 of this Agreement, the Wireless Facilities and Licensee Poles shall be deemed to be in a Hold Over Period subject to the payment obligations in Section 12.5 and Article 5 of this Agreement.

#### 12.5. HOLDING OVER

If Licensee's Wireless Facilities or Licensee Poles continue to occupy the Right-of-Way after termination or expiration of this Agreement, as extended, such occupancy shall not be deemed to be a renewal or extension of this Agreement, but shall be a month to month use of the Right-of-Way (known as the "Hold Over Period") provided Licensee (a) pays the Hold Over Period fee and other payments required in Article 5 of this Agreement and (b) continues to comply with this Agreement.

### **ARTICLE 13. TRANSFER OF AUTHORITY**

#### 13.1. ASSIGNMENT

- 13.1.1. Licensee may not assign, delegate, transfer, or sell all or any portion of its rights, privileges and obligations under this Agreement without written notice to and the prior written consent of the ARA Director, which consent will not be unreasonably withheld. No assignment in law or otherwise shall be effective until the assignee has filed with the ARA Director an instrument, duly executed, reciting the fact of such assignment, accepting the terms hereof, and agreeing to comply with all of the provisions hereof. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment of this Agreement for the purposes of this Article.
- 13.1.2. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in this Article. This Agreement

does not create any personal liability on the part of any officer or agent of the City or Licensee.

- 13.1.3. Notwithstanding anything to the contrary contained in this Agreement, Licensee will, whenever in its sole discretion it is required or appropriate for the operation of its business, have the right, without notice to or consent of City, ARA Director, or any other party, to assign all or any portion of its rights under this Agreement in whole or in part, to (a) any Affiliates as long as such entity has expertise in the operation of Wireless Facilities, Licensee Poles, or provision of Wireless Services; (b) any entity with which the Licensee or an Affiliate of the Licensee shares joint ownership of the Wireless Facilities or Licensee Poles; or (c) any entity that is a holder of a then-current Agreement. The Licensee shall give written notice to the ARA Director within thirty (30) days of such assignment.

## 13.2. BUSINESS STRUCTURE AND ASSIGNMENTS

Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Licensee shall immediately furnish to the ARA Director with proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

## **ARTICLE 14. RECORDS AND AUDITS**

### 14.1. RECORDS

- 14.1.1. Licensee shall keep complete and accurate GIS location information, maps, plans, equipment inventories, and other records related to Licensee's Wireless Facilities and Licensee Poles in Licensed Locations.
- 14.1.2. The ARA Director or City Engineer may at any time examine, review, or verify the records described in 14.1.1.

### 14.2. INSPECTIONS AND AUDITS

- 14.2.1. City representatives shall have the right to perform, or to have performed, (1) inspections or audits of the records described in 14.1.1 and (2) inspections of all places in the Right-of-Way where work is undertaken in connection with this Agreement. Licensee shall keep its books and records available for this purpose for at least four years after this Agreement terminates or expires. The inspection or audit may be performed by City staff or third-party representatives engaged by the City. This provision does not affect the applicable statute of limitations.
- 14.2.2. In addition to other records or filings required hereunder or by law, the Licensee shall maintain and provide access to a current map by either paper

or electronic means, upon request by the ARA Director or City Engineer, showing the approximate locations of the Wireless Facilities and Licensee Poles in the Right-of- Way.

- 14.2.3. The ARA Director may reasonably require the keeping of additional records or accounts reasonably necessary to determine the Licensee's compliance with the terms of this Agreement.

#### 14.3. CONFIDENTIAL INFORMATION

The ARA Director shall not disclose any confidential information reproduced for documentation of audit issues unless required by law. If the City receives a request to review or copy confidential information under the Texas Public Information Act or related law (the "Act"), the City shall comply with the requirements for handling third party information under the Act, including notifying the Licensee that a request to review or copy confidential information has been submitted to the City. Confidential information deemed subject to disclosure under the Act by the Attorney General of the State of Texas shall be disclosed.

### **ARTICLE 15. MISCELLANEOUS**

#### 15.1. FORCE MAJEURE

Other than the Licensee's failure to pay amounts due and payable under this Agreement, the Licensee shall not be in default or subject to sanction under any provision of this Agreement when its performance is prevented by Force Majeure. Force Majeure means an event caused by epidemic; act of God; fire, flood, hurricanes, tornadoes, or other natural disasters; explosions; terrorist acts against the City or Licensee; act of military or superior governmental authority that Licensee is unable to prevent by exercise of reasonable diligence; war; riots; or civil disorder; provided, however, that such causes are beyond the reasonable control and without the willful act, fault, failure or negligence of the Licensee. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Performance is not excused under this section following the end of the applicable event of Force Majeure. Force Majeure does not entitle Licensee to reimbursement of payments.

This relief is not applicable unless the affected party does the following:

- 15.1.1. Uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- 15.1.2. Provides the other party with prompt written notice of the cause and its anticipated effect.

The ARA Director will review claims that a Force Majeure that directly impacts the City or Licensee has occurred and render a written decision within 14 days. The decision of the ARA Director is final.

Licensee is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Licensee shall employ only fully trained and qualified personnel during a strike.

## 15.2. DISPUTE RESOLUTION

- 15.2.1. In the event of a dispute between the Parties that arises during the Term of this Agreement, the Parties shall attempt to expeditiously and amicably resolve any dispute through good faith discussions in the ordinary course of business at the level at which the dispute originates.
- 15.2.2. If the Parties are not able to resolve the dispute in the ordinary course of business, the ARA Director and representatives of other City departments that are involved in the dispute will meet with Licensee's authorized representative in an attempt to resolve the dispute.
- 15.2.3. If the Parties are unable to resolve the dispute pursuant to Article 15.2.2 of this Agreement and if either of the Parties intends to file suit, the Parties shall agree to first refer the matter to mediation before a mutually-agreed upon neutral, third-party mediator and to diligently pursue a mediated settlement. If within thirty (30) days of the request to mediate, the Parties cannot agree on a mediator, the mediator selected by the City shall be the default mediator. Mediation shall begin within thirty (30) days of choosing a mediator, unless the Parties otherwise agree, in writing, to a later date.
  - 15.2.3.1. The Parties shall initiate mediation by providing written notice to the other Party stating a desire to mediate the dispute and describing the disputed issues.
  - 15.2.3.2. Mediation shall occur in Houston, Texas and each party shall bear its own costs incurred in connection with the mediation, including traveling expenses. The parties shall equally share the costs of the mediator's fees.
  - 15.2.3.3. The resolution of any dispute during mediation will be in writing and made available to both Parties by the mediator.
  - 15.2.3.4. If a party receiving a mediation request refuses to mediate, participate in selecting a mediator, or attend mediation, this dispute resolution provision will be deemed to have been fulfilled by the aggrieved party and the aggrieved party is permitted to pursue any other remedies it may have.

- 15.2.4. Except in emergencies, no lawsuit under or related to this Agreement by one party against the other may be filed until mediation of the issue has ended as determined by the mediator or has ended in accordance with section 15.2.3.4. Before initiating litigation, either party shall notify the other party of its intent to sue.
- 15.2.5. This section does not apply to disputes that involve a question of law.
- 15.2.6. Notwithstanding the existence of any dispute between the Parties, insofar as is possible under the terms of this Agreement, each Party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a court of competent jurisdiction or unless this Agreement terminates or expires under the terms provided herein.

### 15.3. ACCEPTANCE AND APPROVAL; CONSENT

An approval by the ARA Director, PWE Director, Parks Director, the City Engineer, or any other instrumentality of City, of any part of the Licensee's performance shall not be construed to waive compliance with this Agreement or to establish a standard of performance other than required or permitted by this Agreement or by law. Where this Agreement contains a provision that either party approve or consent to any action of the other party, such approval or consent shall not be unreasonably withheld or delayed. Except as provided for in this Agreement, the ARA Director, PWE Director, Parks Director, or City Engineer are not authorized to vary the terms of this Agreement.

### 15.4. REPRESENTATIONS AND WARRANTIES

In addition to the representations, warranties, and covenants of the Licensee to the City set forth elsewhere herein, the Licensee represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City) that, as of the Effective Date and throughout the term of this Agreement:

- 15.4.1. *Organization, Standing and Power.* The Licensee is a Neutral Host Provider or Wireless Services provider duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized to do business in the State of Texas and in the City. The Licensee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.
- 15.4.2. *Truthful Statements.* The Licensee warrants, to the best of its knowledge and belief, that information provided and statements made in connection with its

application for this Agreement were true and correct when made and are true and correct upon execution hereof.

- 15.4.3. *Condition of Right-of-Way.* Licensee accepts the Right-of-Way where Wireless Facilities and Licensee Poles are authorized to be located “**AS IS**”, without any express or implied warranties of any kind.

15.5. STATEMENT OF ACCEPTANCE

Licensee and City, for themselves, their successors and assigns, hereby accept and agrees to be bound by all terms, conditions and provisions of this Agreement.

15.6. RELATIONSHIP OF THE PARTIES

Licensee shall be responsible and liable for its contractors, subcontractors, and sublicensees. The City has no control or supervisory powers over the manner or method of Licensees’ contractors’ and subcontractors’ performance under this Agreement. All personnel Licensee uses or provides are its employees, contractors, or subcontractors and not the City’s employees, agents, or subcontractors for any purpose whatsoever.

15.7. SEVERABILITY

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

15.8. ENTIRE AGREEMENT

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

15.9. WRITTEN AMENDMENT

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Licensee. The ARA Director, PWE Director, Parks Director, and City Engineer are only authorized to perform the functions specifically delegated to each of them in this Agreement.

15.10. APPLICABLE LAWS AND VENUE

- 15.10.1. This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction (collectively “Law”), including any lawful court or administrative decisions, judgments or orders that have been fully and finally adjudicated, including any appeals of such decisions judgments, or orders (“Decisions”). If any material

provision of this Agreement is superseded or affected by Law, then the Parties shall negotiate in good faith to revise this Agreement. If a Decision is rendered interpreting or relating to Chapter 283 of the Texas Local Government Code or any other Law, or if any Law is enacted or amended, in each case resulting in or making available a lesser fee than that which is required pursuant to this Agreement (or would be required if this Agreement were with any Other Party or similar person), or if the City enters into an agreement with any Other Party or similar person granting permission to use the Right-of-Way for purposes similar to those described herein for a fee that is less than the fee required pursuant to this Agreement, then in lieu of the fees provided in this Agreement, the Licensee automatically shall be subject to the fees determined pursuant to that Decision or Law or agreed upon in such agreement, and the fee provision in this Agreement shall be automatically and without further action of the Parties amended accordingly.

- 15.10.2. Subject to the Parties' obligation to submit to the dispute resolution process or mediation as described in this Agreement, Licensee shall submit any and all litigation and legal proceedings between any of them and the City to the exclusive jurisdiction of the state or federal courts in the State of Texas and waive any objections or right as to forum non conveniens, lack of personal jurisdiction, or similar grounds. Venue for any litigation relating to this Agreement is Harris County, Texas.
- 15.10.3. Licensee and City agree that neither Party shall initiate nor intervene as a party in any legal action against the other party to challenge the terms and the validity of this Agreement under Chapter 283 of the Texas Local Government Code.

#### 15.11 NOTICES

- 15.11.1. All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS, or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article I, Section 1.1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.
- 15.11.2. Licensee shall address a copy to the City Engineer at the address set out in Article I, Section 1.1 of all notices pertaining to Article 6 and 8 and other notices to the City Engineer required under this Agreement.

#### 15.12. CAPTIONS

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

#### 15.13. NON-WAIVER

If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

#### 15.14. ENFORCEMENT

The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. Licensee shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining Licensee's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

#### 15.15. AMBIGUITIES

If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

#### 15.16. SURVIVAL

Licensee and the City shall remain obligated to the other Party under all provisions of this Agreement that expressly or by their nature extend beyond the termination or expiration of this Agreement, including, but not limited to, the provisions regarding warranty, indemnification and confidentiality.

All representations and warranties contained in this Agreement shall survive the term of the Agreement.

#### 15.17. PUBLICITY

Licensee shall make no public announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the ARA Director. However, nothing herein shall preclude Licensee from listing City on its routine client list for matters of reference.

#### 15.18. PARTIES IN INTEREST

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Licensee only.

15.19. REMEDIES CUMULATIVE

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

15.20. LICENSEE DEBT

LICENSEE SHALL COMPLY WITH ARTICLE VIII OF CHAPTER 15 OF THE CITY CODE OF ORDINANCES, AS AMENDED FROM TIME TO TIME. IF CITY CONTROLLER BECOMES AWARE THAT LICENSEE OWES ANY DELINQUENT SUM OF MONEY IN AN AMOUNT GREATER THAN \$100.00 TO THE CITY OR ANY RELATED ENTITY FOR AD VALOREM TAXES ON REAL OR PERSONAL PROPERTY LOCATED WITHIN THE BOUNDARIES OF THE CITY ("DEBT"), IT SHALL NOTIFY LICENSEE IN WRITING. IF LICENSEE DOES NOT PAY THE DEBT WITHIN 30 DAYS OF SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO LICENSEE UNDER THIS AGREEMENT.

**Exhibit A**

**Licensed Locations (Representative Sample)**

<b>Licensee</b>	<b>Nearest Street Address</b>	<b>GIS or GPS Coordinates</b>

**Exhibit B**

**Approved Wireless Facilities and Equipment List**

## Exhibit C

### Application for Location Review (Representative Sample)

#### Office of the City Engineer

Required under the License Agreement for Wireless Facilities and Licensee Poles  
Please Note: Submittal of false information will result in invalidation of the application.

#### Please read the following information before proceeding

- Field Marks with “\*” are required.
- Any Application submitted by anyone other than the property owner must be accompanied by the Application Authorization Form that designates the applicant as an “authorized representative”
- The specified number of sheets must be accurate or the application may not be accepted.

#### Application

Request Location for (Please check all boxes that apply for the location):

Wireless Facility

Licensee Pole

Ground Level Wireless Facility

Number of Sheets \_\_\_\_\_

#### Applicant/Engineer Information

Firm License/Type

Mailing Address

City

State

Zip

Contact

Phone Number

Email Address

Facsimile Number

Engineer of Record

Phone Number

Email Address

#### Owner Information

Entity Name Type Individual

Corporation or Firm

Applicant is Owner

Last, First Middle Name

Mailing Address

Name

Unit

City

State

Zip

Contact

Phone Number

Email Address

Facsimile Number

#### Requested Location

GIS coordinates

Street Number (provide closest number)

Address

Zip Code

Is the requested location within 300 feet of a historic district?

Yes

No

Is the requested location within 1000 feet of another pole?

Yes

No

Is the requested location in an Underground Utility District?

Yes

No

Dimensions in feet	height	circumference	
Number of Wireless Facilities			
Wireless Facility Owner(s)			
Dimensions of Wireless Facilities	height	width	depth
Attached to pole	height	width	depth
	height	width	depth
Backhaul Type and Provider			
Ground Level Wireless Facility or Equipment	Yes	No	
FCC License # (if any)			

**Wireless Facilities Attached to Pole**

Number of Wireless Facilities			
Dimensions of Wireless Facilities	height	width	depth
Attached to pole	Height	width	depth
	Height	width	depth
Number of Existing Facilities on Pole			
Dimensions	Height	Width	Depth
For extensions to existing Wireless facilities only:			
Total Dimensions of Wireless facilities from pole	Height	Width	
Pole Owner			
Ground Level Wireless Facility or Equipment	Yes	No	
Backhaul Type and Provider			
FCC License # (if any)			

**Ground Level Wireless Facilities (if applicable)**

GIS coordinates			
Street Number (provide closest number)			
Address			
Zip Code			
Dimensions in feet	height	width	depth
Ground Equipment Owner			
Backhaul Type and Provider			
FCC License # (if any)			

**Permission**

**License Agreement with the City for Use of the Right-of-Way**

Applicant certifies that s/he has permission from the City to use the Right-of-Way locations listed in Exhibit A of the Wireless Facilities License Agreement (“Agreement”) for the purposes specified therein.

**Permission to Use Utility’s Property (If Applicable)**

If Applicant is installing, modifying, or removing Wireless Facilities from a utility pole, Applicant certifies that s/he has permission from the owner of the utility pole to install its Wireless Facilities on the utility pole located in the City’s Right-of-Way. A copy of the Agreement or permission from the utility pole owner has been provided and will be attached as **Exhibit B** of this Application.

**Permission to Use Wireless Facilities and Licensee Poles (If Applicable)**

If Applicant is installing, modifying, or removing Wireless Facilities from a Licensee Pole that it does not own, Applicant certifies that s/he has permission from the owner of the Licensee Pole to install its Wireless Facilities on the Licensee Pole located in the City’s Right-of-Way. Written permission from the owner of the Licensee Pole has been provided and will be attached as **Exhibit A** of this Application.

**Written Approval of Concealment Options from Management District (If Applicable)**

If Applicant is installing or modifying Wireless Facility or Licensee Pole in a Management District or TIRZ that has been identified as requiring concealment options under the terms of this Agreement, Applicant shall provide a copy of the approved concealment options from the Management District.

**Exhibit D**  
**Rental Fee Schedule**

Licensee shall pay the City a Rental Fee either under Section 5.1.1 (Standard Fee) or Section 5.1.2 (Pre-payment and Volume Discount).

**Standard Fee**

5.1.1. Licensee shall pay the City annually in advance, on or before January 31 of each calendar year that is not an Initial Payment year, a Rental Fee in the amount set forth in Table 1, Standard Fee for each Licensed Location and for each additional Carrier using the Licensee Pole, if any. The amount of the initial Rental Fee for Licensed Locations with new Licensee Poles or Existing Utility Poles shall be determined based on the calendar year in which the Licensee submits the Application for Location Review. The amount of the initial Additional Carrier fee shall be determined based on the calendar year in which Licensee provides or should have provided the notice required pursuant to section 3.6 of this Agreement. For example, the Rental Fee for Applications for Location Review submitted in 2016 is (a) two thousand dollars (\$2,000) for each Licensed Location that has an existing Utility Pole and (b) two thousand and seven hundred dollars (\$2,700) for each Licensed Location with a Licensee Pole, which includes one Wireless Facility and its associated Ground Equipment at the Licensed Location, plus nine hundred dollars (\$900) for each additional Carrier using the Licensee Pole.

5.1.1.1. Within thirty (30) days after notifying the ARA Director pursuant to section 3.6 of this Agreement, Licensee shall pay the fee for additional Carrier per year in the event that more than one Carrier is using the same Licensed Location. If Licensee is a Carrier using a Licensee Pole owned by another party, then the Licensee Pole owner, and not the Carrier, shall be responsible for submitting all fees to the City for Licensee's Wireless Facilities on such Licensee Pole.

5.1.1.2. For purposes of this Section, the Ground Equipment at a Licensed Location must support the overhead Wireless Facilities at such Licensed Location.

5.1.1.3. The Rental Fee payment for the first year at any Licensed Location ("Initial Payment") is due sixty (60) days after Licensee obtains Permit(s) to install a Wireless Facility or Licensee Pole at the Licensed Location or, if the PWE Director determines in writing that no Permit is required, approval of Licensed Location. The Initial Payment shall be pro-rated monthly for the remainder of the calendar year. The Initial Payment will accrue effective the first of the month following the date Permit(s) is approved or the date the Licensed Location is approved if no Permit is required. For example, the chart below demonstrates the monthly proration for a Licensed Location that has a Utility Pole:

Permit Approval Date	If current Rental Fee for Licensed Locations with existing Utility Poles is \$2000	Payment Due Date
January 1, 2016	\$1833	March 1, 2016
February 25, 2016	\$1667	April 25, 2016
March 1, 2016	\$1500	April 30, 2016

Table 1: Standard Fee

Standard Rental Fee Schedule Per Licensed Location With:			
Year of Application Submittal	Licensee Pole	Existing Utility Pole	Fee Per Additional Carrier
2016	\$ 2,700.00	\$ 2,000.00	\$ 900.00
2017	\$ 2,754.00	\$ 2,040.00	\$ 918.00
2018	\$ 2,809.08	\$ 2,080.80	\$ 936.36
2019	\$ 2,865.26	\$ 2,122.42	\$ 955.09
2020	\$ 2,922.57	\$ 2,164.86	\$ 974.19
2021	\$ 2,981.02	\$ 2,208.16	\$ 993.67
2022	\$ 3,040.64	\$ 2,252.32	\$ 1,013.55
2023	\$ 3,101.45	\$ 2,297.37	\$ 1,033.82
2024	\$ 3,163.48	\$ 2,343.32	\$ 1,054.49
2025	\$ 3,226.75	\$ 2,390.19	\$ 1,075.58
2026	\$ 3,291.28	\$ 2,437.99	\$ 1,097.09
2027	\$ 3,357.11	\$ 2,486.75	\$ 1,119.04
2028	\$ 3,424.25	\$ 2,536.48	\$ 1,141.42
2029	\$ 3,492.74	\$ 2,587.21	\$ 1,164.25
2030	\$ 3,562.59	\$ 2,638.96	\$ 1,187.53
2031	\$ 3,633.84	\$ 2,691.74	\$ 1,211.28
2032	\$ 3,706.52	\$ 2,745.57	\$ 1,235.51
2033	\$ 3,780.65	\$ 2,800.48	\$ 1,260.22
2034	\$ 3,856.26	\$ 2,856.49	\$ 1,285.42
2035	\$ 3,933.39	\$ 2,913.62	\$ 1,311.13

**5.1.2. Pre-Payment and Volume Discount**

Licensee shall pay the City in advance a Rental Fee as follows:

- (a) Except as provided below, to be eligible for the Rental Fee under the Volume Discount Rental Fee Schedule as outlined in Table 3 below, Licensee shall:

- (i) commit, in writing to the ARA Director, to submitting Application(s) for Location Review for at least 200 Licensed Locations under Tier 1 (“the Volume Discount Threshold”) within a six-month period, starting from the date the first Application for Location Review is submitted to the City Engineer (e.g. the initial application with the first (or more) of the 200 Licensed Locations required for the Volume Discount Threshold); and
  - (ii) tender to the ARA Director, upon submission of the first Application for Location Review under Tier 1, the Pre-Payment amount for Tier 1 for 200 Existing Utility Poles, in accordance with Table 2, Pre-Payment Schedule.
- (b) To remain eligible for the Volume Discount Rental Fee Schedule in Table 3 below, Licensee must satisfy all of the following criteria: (i) submit the first Application for Location Review for each Tier on or before the due date for Tiers 1, 2, and 3, respectively, as set forth in Table 2, Pre-Payment Schedule, (ii) submit complete and accurate Applications for Location Review for the minimum number of Licensed Locations for Tiers 1, 2, and 3, respectively, as set forth in Table 2, Pre-Payment Schedule, and (iii) tender the Pre-Payment amount due for the next Tier within 30 days of receiving notice from the ARA Director that the Pre-Payment amount submitted for the previous Tier has been fully exhausted or is insufficient to cover the Rental Fee required for any pending Applications for Location Review. Licensee shall be required to requalify for the rates in the Volume Discount Rental Fee Schedule by submitting a new commitment for a new 200 Licensed Locations and restarting the Tier structure in Table 2, Pre-Payment Schedule as if there are zero (0) Applications for Location Review submitted and zero (0) approved Licensed Locations, if Licensee fails to comply with any one or more of the criteria in this paragraph.
- (c) The Pre-Payment.
- (i) In addition to the requirements in section 5.1.2(a), to remain eligible for the Rental Fee under the Volume Discount Rental Fee Schedule outlined in Table 3, Licensee must tender the Pre-Payment amount in accordance with Table 2, Pre-Payment Schedule.

Table 2: Pre-Payment Schedule

Tier	Minimum Number of Licensed Locations	Base Rate per Licensed Location for the Pre-Payment Deposit	Due Date to submit the first Application for Location Review	Due Date by which all Applications for Location Review must be Submitted (e.g. Applications for all of the Minimum Number of Licensed Locations)
Tier	200	Then-current rate for	Upon submission of	No later than

1		locations with Existing Utility Poles for Tier 1, determined as of the date the first Application for Location Review is submitted	the first Application for Location Review under Tier 1	180 days from the submission of the first Application for Location Review under Tier 1
Tier 2	100	Rate for Tier 2 locations with Existing Utility Poles determined as of the calendar year in which the first Application for Location Review was submitted for Tier 1	No later than 180 days from the submission date of the first Application for Location Review under Tier 1	No later than 180 days from the submission of the first Application for Location Review under Tier 2
Tier 3	100	Rate for Tier 3 locations with Existing Utility Poles for determined as of the calendar year in which the first Application for Location Review was submitted for Tier 1	No later than 180 days from the submission date of the first Application for Location Review under Tier 2	No later than 180 days from the submission of the first Application for Location Review under Tier 3
Tier 4	0	Rate for Tier 4 locations determined as of the calendar year in which first Application for Location Review was submitted for Tier 1	None required	No later than 5 years from the submission date of the first Application for Location Review under Tier 1

- (ii) The Pre-Payment shall be paid for a five (5) year period, starting on the submission date of the first Application for the Location Review for the applicable Tier. Except as provided in 5.1.2(c)(iii) the Pre-Payment is the Base Rate per Licensed Location as set forth in Table 2 multiplied by the minimum number of Licensed Locations for the applicable Tier multiplied by five (5).
- (iii) Provided Licensee submits Applications for Location Review for the minimum number of Licensed Locations required for each Tier on or before the due date by which all such applications must be submitted for Tiers 1, 2, and 3, respectively, as set forth in Table 2, Licensee is permitted to submit individual Pre-Payments in batches for at least 25 Licensed Locations for Tiers 2 and 3. If Licensee elects to submit Pre-Payments in batches for at least 25 Licensed Locations, the Pre-Payment is the Base Rate per Licensed Location multiplied by the number of Licensed Locations in each Application for Location Review for the applicable Tier multiplied by five (5).
- (iv) All Volume Discount Rental Fee payments shall be calculated per year per Licensed Location incorporating a Licensee Pole or Wireless Facility, including any Camouflaged Wireless Facility or Licensee Pole.

- (v) The Pre-Payment shall be used by the City as a credit against the Rental Fee owed by the Licensee for each Licensed Location approved by the City Engineer until the Pre-Payment is fully depleted or the remaining balance of the Pre-Payment amount is insufficient to cover the Rental Fee required for any pending Applications for Location Review. For the initial five (5) year Rental Fee payment for Tiers 1, 2, 3, and 4, the Volume Discount Rental Fee owed by Licensee for each License Location approved by the City Engineer shall be determined (a) based on the type of pole, either a Licensee Pole or an Existing Utility Pole, and (b) at the rate set forth in Table 3 for the calendar year in which the first Application for Location Review was submitted for Tier 1.

The Pre-Payment shall be non-refundable, except as provided for in paragraph 5.9, if Licensee fails to satisfy any one or more of the following criteria: (i) submit complete and accurate Applications for Location Review for all 200 proposed Licensed Locations in the Volume Discount Threshold or (ii) submit complete and accurate Applications for Location Review for the minimum number of Licensed Locations in each Tier on or before the due date to submit the first application for Location Review for each Tier, as listed in Table 2, Pre-Payment Table.

- (vi) For purposes of the Pre-Payment and Volume Discount Rental Fee Schedules in Tables 2 and 3, the Licensed Location for Ground Equipment shall be the location of the associated Wireless Facilities they are supporting.
- (d) The City shall issue written responses either approving or denying each Permit application for each approved Licensed Location within six-months from the date a complete and accurate Application for Location Review is submitted to the City Engineer. At six-month intervals, starting from the submission date of the first Application for Location Review for Tier 1, the Parties shall meet to review (i) the application and permit approval process and (ii) the City's compliance with the terms and conditions of this paragraph. If the Licensee has prepaid for any Licensed Locations and the City has failed to issue any Permits within the six-month period required by this paragraph, then Licensee shall be entitled to a refund or a credit, at Licensee's written request, which must be submitted to the ARA Director.
- (e) Notwithstanding anything to the contrary herein, if, during the Term of this Agreement, Licensee applies for at least 400 proposed Licensed Locations within any six month period, starting from the Application for Location Review date of 400 proposed Licensed Locations, Licensee shall no longer be required to commit to installing at a minimum number of Licensed Location; provided, however, to be eligible for the fees under 5.1.2, Licensee must still tender payment of the Rental Fee in advance to the City for the requisite number of Licensed Locations in the next tier in Table 2. The payment shall be equal to Base Rate per Licensed Location in effect on the date the Application for Location Review is submitted multiplied by the minimum number of Licensed Locations.

- (f) Within thirty (30) days after notifying the ARA Director pursuant to section 3.6 of this Agreement, Licensee shall pre-pay an additional fee for each Carrier for a five (5) year period starting on the date Licensee provided or should have provided the required notice pursuant to section 3.6 of this Agreement. The pre-payment for each Additional Carrier shall be the Additional Carrier fee set forth in Table 3, determined as of the calendar year in which the first Application for Location Review was submitted for Tier 1 multiplied by 5. Provided Licensee pre-pays for each additional carrier, all new carriers added pursuant to Section 3.6 on or before the anniversary of the calendar year in which the Application for Location Review was submitted for Tier 1, shall be pre-paid at that same new carrier rate. At the conclusion of any five (5) year Pre-Payment period for each additional carrier, Licensee shall pay in advance for the next five (5) year period for each new carrier (“Recurring Additional Carrier Pre-Payment”). The Rental Fee for the Recurring Additional Carrier Pre-Payment shall be based on the Additional Carrier fee set forth in Table 3 in effect in the year the Recurring Additional Carrier Pre-Payment is due. The Rental Fee for the then-due Recurring Additional Carrier Pre-Payment shall be due and payable to the ARA Director on or before thirty (30) days after the conclusion of each five (5) year Pre-Payment period for each additional carrier.

Table 3: Volume Discount Rental Fee Schedule Per Licensed Location

Pre-Paid Volume Discount Rental Fee Schedule per Licensed Location with the following structures:							
Year of Tier 1 Application Submittal	Licensee Pole	Existing Utility Pole: 1-75 (Tier 1)	Existing Utility Pole: 76-200 (Tier 1)	Existing Utility Pole: 201-300 (Tier 2)	Existing Utility Pole: 301-400 (Tier 3)	Existing Utility Pole: 401+ (Tier 4)	Fee Per Additional Carrier
2016	\$ 2,200.00	\$2,000.00	\$1,500.00	\$1,350.00	\$1,200.00	\$1,050.00	\$900.00
2017	\$ 2,244 .00	\$2,040.00	\$1,530.00	\$1,377.00	\$1,224.00	\$1,071.00	\$918.00
2018	\$ 2,288.88	\$2,080.80	\$1,560.60	\$1,404.54	\$1,248.48	\$1,092.42	\$936.36
2019	\$ 2,334.66	\$2,122.42	\$1,591.81	\$1,432.63	\$1,273.45	\$1,114.27	\$955.09
2020	\$ 2,381.35	\$2,164.86	\$1,623.65	\$1,461.28	\$1,298.92	\$1,136.55	\$974.19
2021	\$ 2,428.98	\$2,208.16	\$1,656.12	\$1,490.51	\$1,324.90	\$1,159.28	\$993.67
2022	\$ 2,477.56	\$2,252.32	\$1,689.24	\$1,520.32	\$1,351.39	\$1,182.47	\$1,013.55
2023	\$ 2,527.11	\$2,297.37	\$1,723.03	\$1,550.73	\$1,378.42	\$1,206.12	\$1,033.82
2024	\$ 2,577.65	\$2,343.32	\$1,757.49	\$1,581.74	\$1,405.99	\$1,230.24	\$1,054.49
2025	\$ 2,629.20	\$2,390.19	\$1,792.64	\$1,613.37	\$1,434.11	\$1,254.85	\$1,075.58
2026	\$ 2,681.79	\$2,437.99	\$1,828.49	\$1,645.64	\$1,462.79	\$1,279.94	\$1,097.09
2027	\$ 2,735.42	\$2,486.75	\$1,865.06	\$1,678.56	\$1,492.05	\$1,305.54	\$1,119.04
2028	\$ 2,790.13	\$2,536.48	\$1,902.36	\$1,712.13	\$1,521.89	\$1,331.65	\$1,141.42
2029	\$2,845.93	\$2,587.21	\$1,940.41	\$1,746.37	\$1,552.33	\$1,358.29	\$1,164.25
2030	\$ 2,902.85	\$2,638.96	\$1,979.22	\$1,781.30	\$1,583.37	\$1,385.45	\$1,187.53
2031	\$ 2,960.91	\$2,691.74	\$2,018.80	\$1,816.92	\$1,615.04	\$1,413.16	\$1,211.28
2032	\$ 3,020.13	\$2,745.57	\$2,059.18	\$1,853.26	\$1,647.34	\$1,441.42	\$1,235.51

<b>2033</b>	\$ 3,080.53	\$2,800.48	\$2,100.36	\$1,890.33	\$1,680.29	\$1,470.25	\$1,260.22
<b>2034</b>	\$ 3,142.14	\$2,856.49	\$2,142.37	\$1,928.13	\$1,713.90	\$1,499.66	\$1,285.42
<b>2035</b>	\$ 3,204.98	\$2,913.62	\$2,185.22	\$1,966.70	\$1,748.17	\$1,529.65	\$1,311.13

The example in the box below demonstrates the calculations described in this section and is intended to show how the calculations should be performed.

**Example**

For example, if the first Application for Location Review satisfying the Volume Discount Threshold was submitted in 2017 and all of the other contractual terms and conditions are met, the calculation for each Tier would be as follows:

**The first five year pre-payment (years 2017-2022)**  
 Tier 1, 1-75 Licensed Locations:  $\$2,040 * 75 \text{ Licensed Locations} * 5 = \$765,000$   
 Tier 1, 76-200 Licensed Locations:  $\$1,530 * 125 \text{ Licensed Locations} * 5 = \$956,250$   
 Tier 2, 201-300 Licensed Locations:  $\$1,377 * 100 \text{ Licensed Locations} * 5 = \$688,500$   
 Tier 3, 301-400 Licensed Locations:  $\$1,224 * 100 \text{ Licensed Locations} * 5 = \$612,000$

**The Recurring Pre-Payment (years 2023-2028)**  
 Tier 1, 1-75 Licensed Locations:  $\$2,297.37 * 75 \text{ Licensed Locations} * 5 = \$861,375.75$   
 Tier 1, 76-200 Licensed Locations:  $\$1,723.03 * 125 \text{ Licensed Locations} * 5 = \$1,076,893.75$   
 Tier 2, 201-300 Licensed Locations:  $\$1,550.73 * 100 \text{ Licensed Locations} * 5 = \$775,365.00$   
 Tier 3, 301-400 Licensed Locations:  $\$1,378.42 * 100 \text{ Licensed Locations} * 5 = \$ 689,210.00$

### 5.1.3. PERIODIC FEE ADJUSTMENT

5.1.3.1. Standards Rates Apply. If the Licensee is paying the Standard Rental Fee rates under 5.1.1, then on January 1 of each year after 2016, the Rental Fees shall automatically increase by 2% over the Rental Fees in effect the prior calendar year, as shown in Table1: Standard Fee Schedule.

5.1.3.2. Volume Discount Rates Apply. To remain eligible for the Volume Discount Rates in Table 3 after the conclusion of any five (5) year Pre-Payment period, Licensee shall pay in advance for the next five (5) year period for each Licensed Location (“Recurring Pre-Payment”). The Rental Fee for the Recurring Pre-Payment shall be based on the Volume Discount Rates in effect in the year the Recurring Pre-Payment is due. The Rental Fee for the then-due Recurring Pre-Payment shall be due and payable to the ARA Director on or before thirty (30) days after the conclusion of each five (5) year Pre-Payment period.

**EXHIBIT E**

**Performance Bond (REPRESENTATIVE SAMPLE)**

**THE STATE OF TEXAS           §**  
**§**  
**COUNTY OF HARRIS           §**

\_\_\_\_\_, ("Principal") and \_\_\_\_\_, ("Surety"), shall pay to the City of Houston, Texas ("City"), the sum of \$\_\_\_\_\_ in accordance with the terms and conditions stated below:

On or about this date, the Principal executed a \_\_\_\_\_ Agreement in writing with the City for \_\_\_\_\_ ("Agreement"), which is incorporated into this Bond.

The conditions of this obligation are that if the Principal performs its obligations under the terms of the Agreement and this Bond in all respects, then this obligation is void and has no further force and effect; otherwise this obligation remains in effect and the sum of \$\_\_\_\_\_ is payable to the City on demand.

The Surety relieves the City and its representatives from the exercise of any diligence whatever in securing the Principal's compliance with the terms of the Agreement, and the Surety waives any notice to it of the Principal's default or delay in the performance of the Agreement. The Surety shall take notice of and is held to have knowledge of all acts or omissions of the Principal, its agents, and representatives in all matters pertaining to the Agreement.

The City and its representatives may at any time, without notice to the Surety, make any changes in the terms and conditions of the Agreement, or extend it, and may add to or deduct from the Principal's obligations under the Agreement. Such changes, if made, do not in any way relieve, release, condition, or limit the obligation in this Bond and undertaking or release the Surety therefrom.

**SURETY AND PRINCIPAL AGREE TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, AND REPRESENTATIVES FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, DAMAGES, FINES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY FAILURE ON THE PART OF THE PRINCIPAL, ITS AGENTS, AND REPRESENTATIVES, TO FULLY PERFORM UNDER THE AGREEMENT, INCLUDING ANY CHANGES OR EXTENSIONS TO IT.**

If the City brings any suit or other proceeding at law on the Agreement or this Bond, or both, the Principal and the Surety shall pay to the City the additional sum of 10 percent of whatever amount the City recovers, which sum of 10 percent is agreed by all parties to be indemnity to the City for the expense of and time consumed by its City Attorney, his or her

assistants, and office staff, and other costs and damages to the City. The amount of 10 percent is fixed and liquidated by the parties because the exact damage to the City would be difficult to ascertain.

This Bond and all obligations created under it shall be performable in Harris County, Texas, and all are non-cancelable. This Bond must be automatically renewed annually on the anniversary of the effective date of the Bond for the term of the Agreement and any extensions, unless the Surety gives the Principal and the City 30 days written notice before the renewal date that the Surety will not renew this Bond, in which case the Principal shall provide the City with a replacement bond (in the same form as this Bond) before the renewal date. The provisions of V.T.C.A., Government Code Section 2253, as amended, control even though the Statute may not be applicable.

All notices required or permitted by this Bond must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out on the signature page of this Bond or at such other address as the receiving party designates by proper notice to the sending party.

**EXHIBIT F**

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_ as an officer or officer of  
(Name) (Print/Type) (Title)  
\_\_\_\_\_  
(Name of Company) (Engineer)

Have authority to bind Engineer with respect to its acts under any and all Right-of-Way license agreements it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Engineer is aware of and by the time the Right-of-Way license agreement is granted will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Engineer that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Engineers (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Engineer that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the Right-of-Way license agreement with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the Right-of-Way license agreement with the City and may result in termination of the Right-of-Way license agreement by the City of Houston.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Engineer Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT G**

**ENGINEER'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE  
UNDER A CITY AGREEMENT**

\_\_\_\_\_  
(Name) (Title)

as an owner or officer of \_\_\_\_\_  
(Engineer)

(Name of Company)

have authority to bind the Engineer with respect to its bid, and hereby certify that Engineer has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing \_\_\_\_\_.

(Project)

Engineer agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established in performance of acts authorized under this Agreement.

\_\_\_\_\_  
(Typed or Printed Name) \_\_\_\_\_ (Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**EXHIBIT H  
DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_, as an owner or officer of  
 \_\_\_\_\_,  
 \_\_\_\_\_ (Licensee)  
 \_\_\_\_\_ (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ A written Drug Free Workplace Policy has been implemented and employees notified. The policy  
 Initials meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence  
 (Mayor's Policy).

\_\_\_\_\_ Written drug testing procedures have been implemented in conformity with the Mayor's Drug  
 Initials Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have  
 been notified of such procedures.

\_\_\_\_\_ Collection/testing has been conducted in compliance with federal Health and Human Services  
 Initials (HHS) guidelines.

\_\_\_\_\_ Appropriate safety impact positions have been designated for employee positions related to the  
 Initials performance of this Agreement. The number of employees in safety impact positions during this  
 reporting period is \_\_\_\_\_.

From \_\_\_\_\_ to \_\_\_\_\_ the following test has occurred  
 (Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

\_\_\_\_\_ Any employee who tested positive was immediately removed from the Right-of Way work site  
 Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

\_\_\_\_\_ I affirm that falsification or failure to submit this declaration timely in accordance with established  
 Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

\_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Typed or Printed Name)

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Title)

## Exhibit I

### Permit (Representative Sample )

City of Houston  
Department of Public Works & Engineering

*Mobility Permit System*

**Permit Number:** 156930

**Permit Type:** Roadway Obstruction

**Date Issued:** 4/15/2015

**Street Name:** MONTROSE BLVD

**Starting Block:** 5200

**Ending Block:** 5400

**Side of Street:** East

**Date From:** 4/15/2015

**Date To:** 4/30/2015

**Lanes Blocked:** 1

**Time From:** 12:00 AM

**Time To:** 12:00 AM

**Name:**

**Company:**

**Phone:**

**Address:** 850 Aldine mail route, Houston, TX 77037

#### Permit Conditions:

- Permit holder must notify METRO Bus Operations (Transportation) 7 -10 working days in advance of commencing work at: Carl.Taylor@RideMetro.org, Shirley.Mitchell@RideMetro.org
- Notify the Mayor's Office of Public Safety & Homeland Security at 713.247.8500 to coordinate any security video equipment relocation/removal.
- Contractor shall contact COH Traffic Signal Operations (713) 881 3172 at least 3 business days prior to beginning work to arrange necessary signal modifications
- Certified flagman required
- Notify Emergency services and local tenants 5 days in advance
- Coordinate Work with other contractors before closing lane
- No work allowed during special events or parades
- Post Permit for visual inspection on the effected street at the construction/event site at all times
- Provide and install traffic control devices in compliance with Part VI of the "Texas Manual on Uniform Traffic Devices"
- Adhere to the City of Houston noise ordinance
- Provide access to tenants and emergency services
- The City of Houston reserves the right to revoke this permit at its discretion
- Police officer(s) required

#### Special Conditions:

Uniformed peace officer required to direct traffic when working at a signalized intersection during active construction. Certified flagman required to direct traffic at mid-block location(s) during active construction. Must maintain 2-way traffic at all times. No personal vehicles permitted to be parked within lane closure. Notify/coordinate work activities with the Museum District and Metro Bus Operations. Provide and install traffic control devices in compliance with Part VI of the "Texas Manual on Uniform Traffic Devices".

#### For Information Contact:

**Telephone:** 832-395-3020 **Email:** mobilitypermits@houstontx.gov



# CITY OF HOUSTON

## DEPARTMENT OF PUBLIC WORKS AND ENGINEERING

### EXCAVATION (STREET CUT) PERMIT

EXCAVATION ON THE PUBLIC WAY  
CITY OF HOUSTON ORDINANCE NO. 2006-595

Permit No. SCPS-281720-0  
Excavation on pavement more than five years old.

Date of Issue: 11/24/2015

Owner:   
Address:   
  
Owner's Contact:   
Insurance Company:   
Contractor:

Tel. Number:   
Tel. Number:   
Tel. Number:

Location of Excavation: 7690 Hobby Airport Loop Road  
Nearest Intersecting Street: Broadway  
Cut Starting Point From the Nearest Intersecting Street (feet):  
980  
Cut Width (feet): 10  
Street Lane in Which Cut Starts: s4  
If the excavation is in a Major Thoroughfare or High Volume  
Collector Street, provide lane/street closure permit number:  
Texas Underground Facility Notification Corporation  
transmittal number:  
Start Date to Commence Work: 11/30/2015  
Final Completion Date of Excavation: 12/11/2015  
Authorized number of days to complete the excavation: 12

Method of Excavation: Open Cut  
Cut Length (feet): 10  
Street Lane in Which Cut Ends: s4

**Special Conditions:**  
SIDEWALK CUT ONLY.

**Purpose Of Excavation:** Excavate to tap existing 10in sanitary main at 7690 Airport Loop Road for 6in service line to new parking garage at 7800 Airport Blvd.  
**Facilities To Be Installed:** Installing 10x6 SDR 26 wye, 2-6in SDR 45 and 60ft of SDR 26 pipe  
**Are You Applying For Steel Plate Permit:** No

**Multiple Excavations:**  
Number of Excavations:1  
Block Numbers:7000

**Reminders:**

1. The permittee shall complete the excavation within the authorized dates and number of days allowed.
2. The City Engineer may extend the number of days allowed to complete the excavation. A request for extension shall be submitted to the City prior to expiration of the Final Completion Date of Excavation.
3. 24-Hour Advance Notification is required prior to commencement of excavation.
4. Permittee shall call One-Call Notification System at (713) 223-4567 (in Houston) Or 1-800-545-6005 (Statewide) prior to commencement of excavation.
5. A Certificate of Restoration is required upon completion of excavation.
6. Permit not transferable; void if excavation not timely commenced.