



MASTER AGREEMENT

THIS MASTER AGREEMENT IS ENTERED INTO AS OF THE DATE OF THE FINAL EXECUTION BELOW (THE "EFFECTIVE DATE") BY AND BETWEEN:

The City of San José, a charter municipal corporation ("San José" or the "City"), and Verizon Business Network Services Inc., GTE Mobilnet of California Limited Partnership, dba Verizon Wireless, by Cellco Partnership, its general partner and their Affiliates (collectively, "Verizon"), with its principal offices at One Verizon Way, Basking Ridge, New Jersey, 07920. The City and Verizon may be referred to herein collectively as the "Parties" and individually as a "Party." Definitions for terms used herein that are not otherwise defined in the section within which they initially appear are defined in subsection 19.23 below.

BACKGROUND

A. The City of San José and Verizon have identified several key areas of focus for the community including: addressing digital inclusion; building a digitally connected community; supporting youth programs; reducing pedestrian traffic injuries; improving public safety; optimizing parking; upgrading municipal asset management and enhancing the availability of an advanced high-speed, high-capacity telecommunications network to the citizens and guests of the City, and believe that through the framework presented in this Agreement (as defined below), their collective assets and expertise can meaningfully impact those key areas for the community.

B. The City and Verizon share a mutual interest in the accelerated deployment of an enhanced fiber and an advanced wireless network, including without limitation, small cells, together with smart city solutions' pilots, in order to provide residents, visitors and businesses located in the City with the benefits of a state-of-the-art connected community. This undertaking will accelerate the deployment of such infrastructure and technology through improved permitting processes and enable state-of-the-art city management tools that will enable better public safety and quality of life outcomes for citizens and position the City for future technology advancements.

C. Given such mutual interest, Verizon and the City desire to form a mutually beneficial strategic relationship in the form of a master agreement to facilitate the planning, implementation and management of the accelerated deployment of fiber and associated services as well as the deployment of an advanced small cell wireless network and the implementation of Verizon's smart city solutions, in designated areas of the City (the "Collaboration"), under the terms of this Master Agreement, as described herein, including exhibits hereto ("Exhibits"), amendments, and any Specific Agreement (as defined in Section 19 General Provisions below), which are, or will be, attached hereto and incorporated herein by reference and which, along with any subsequent amendments, shall collectively be referred to herein as the "Agreement."

NOW THEREFORE, BE IT RESOLVED BY THE PARTIES THAT, in order to give effect to the Collaboration, Verizon and the City agree as follows:

1. RELATIONSHIP OBJECTIVES

- 1.1 Primary Agreement Purpose. By participating in this Agreement, the Parties shall have the opportunity to realize mutually beneficial outcomes that neither Party could implement independently, including but not limited to:
- a. The expansion of small cells to enhance cellular service in the City, using public assets and Verizon technologies;
 - b. The cost-effective expansion of fiber network and wireless cellular infrastructure investment in the City;
 - c. Demonstration, testing, implementation, and joint evaluation of new Smart City solutions to augment City services such as Fleet Connectivity, Intersection Safety Analytics, Parking Optimization and Traffic Data Services;
 - d. Partnership and collaboration in programs that facilitate digital inclusion, enhance economic development, and drive innovation; and
 - e. Partnership and collaboration for expedited permitting and regulatory processing to accelerate deployment of such infrastructure and Smart City solutions.
- 1.2 Non-Exclusive Arrangement. This arrangement is non-exclusive, and each Party remains free, subject to the terms of this Agreement, to elect or decline to work with or enter into any agreements with any other product or service providers, municipalities, or distributors.

2. SCOPE OF COLLABORATION AND INCORPORATION BY REFERENCE

- 2.1 Scope. This Agreement reflects the principles of the Collaboration to achieve mutually beneficial goals. In its sole discretion, Verizon may fulfill its obligations under this Agreement and receive the benefits provided by the City, in whole or in part, through various Affiliates. The Collaboration between the City and Verizon requires significant investment from Verizon to build the infrastructure to support the citizens living in the community; and the commitment by the City to accelerate permitting processes and other procedures necessary to deploy such infrastructure in a cost-effective manner is crucial to this undertaking. In addition, the Collaboration with the City creates a business model to provide additional services to the City that would be financially constraining to provide on a stand-alone basis. The goal of this holistic approach is to reduce deployment cost and disruption to the community and to address the needs of underserved communities within the City.
- 2.2 Specific Agreements. The activities and Collaboration described above in addition to other agreements between the Parties within the scope of this Agreement (as applicable), shall be memorialized further into Specific Agreements. Notwithstanding the foregoing or anything contained elsewhere in this Agreement to the contrary, the Parties (whether directly or through one or more Affiliates) agree to execute the Specific Agreements which are or will be in the form of Exhibits attached to this

Agreement and are hereby incorporated by reference, on or as soon as practicable after the Effective Date. This Agreement is a comprehensive (or master) agreement under which the Parties will undertake all of the activities identified herein and negotiate and execute one or more Specific Agreements associated with such initiative(s).

3. DIGITAL INCLUSION, SMART CITY SOLUTIONS, FLEET CONNECTIVITY AND LED LIGHTING

Verizon hereby agrees to contribute to and/or collaborate with the City in the programs described in subsections 3.1 through 3.4 below. Also, Verizon will install the Smart City pilot solutions set forth in subsection 3.2 below (collectively, the "Solutions") in accordance with the terms and conditions set forth in Exhibit A, which are incorporated herein by this reference. The deployment of next-generation wireless and wireline network infrastructure is key to powering these advanced Solutions.

3.1 Digital Inclusion.

- a. **Annual Fund Contributions.** Verizon will make an annual contribution of two hundred and fifty thousand dollars (\$250,000) to the City's Digital Inclusion Fund in each of the first four (4) years following the Effective Date, for a total investment of one million dollars (\$1,000,000).
- b. **Per Pole Fund Contributions.** During the first four (4) years following the Effective Date, as Verizon expands its network infrastructure in the City, Verizon will make a one-time contribution of one thousand six hundred ninety-one dollars (\$1,691) to the City's Digital Inclusion Fund for every pole that the City turns over to Verizon as "construction ready" once all necessary permits have been issued by the City (which means that: all associated municipal wireless and wireline permits, including necessary permits covering placement of fiber from the pole to the Centralized Radio Access Network (or "CRAN") hub location, and municipal approvals have been granted; any City make ready work has been completed; and the City has turned the pole over to Verizon for attachment of the small wireless facility antennas and equipment (the "Node")). Verizon shall coordinate and align submission of wireless and wireline permit applications by Node site such that the City will not be delayed in its permit processing for individual sites. If Verizon fails to align submission of its wireless and wireline permitting applications related to an individual small cell site, it shall make the one-time one thousand six hundred ninety-one dollar (\$1,691) contribution related to such site once all municipal wireless permits have been issued and the pole turned over to Verizon for attachment of the Node.
- c. **STEM.** Verizon will partner with the City and community organizations located or serving residents in the City of San José (to be determined by Verizon) to sponsor STEM workshops for elementary, middle school and/or high school students in targeted neighborhoods, as mutually identified by the Parties, during the first four (4) years following the Effective Date. Verizon's contribution toward this pilot

effort will be approximately fifty thousand dollars (\$50,000) per year, with the total term investment not to exceed two hundred thousand dollars (\$200,000).

3.2 Smart City Pilot Solutions. Verizon will partner with the City to deploy Smart City pilot solutions. Verizon agrees to provide hardware and software services related to the Solutions as described below.

- a. **Intersection Safety Analytics Pilot.** Pursuant to Exhibit A, Verizon will align with the City's Vision Zero transportation safety initiative by implementing an Intersection Safety Analytics pilot at three (3) key traffic intersections at locations to be determined by the Parties (the "Intersection Data Pilot"). The Intersection Data Pilot will allow the City to use the analytic insights gathered at the selected traffic intersections according to the applicable statement of work ("SOW") to guide traffic engineering, enforcement, or education initiatives that can help improve traffic safety. Where the video sensors are deployed, the City will ensure that appropriate infrastructure is available at no cost to Verizon, including a light pole with a light-emitting diode ("LED") luminaire, standard three, five or seven (3, 5 or 7) pin National Electrical Manufacturers Association ("NEMA") sockets on the luminaire, power supply 24x7 in the luminaire, etc. Also, at mutually determined traffic intersections, the City will provide Verizon permission to install signal phase data capture hardware in the traffic cabinets. Verizon will provide the Intersection Data Pilot free of charge for twenty-four (24) months.
- b. **Parking Optimization Pilot.** Pursuant to Exhibit A, Verizon will provide twenty-five (25) video sensors and associated licensing for the Parking Optimization pilot (the "Parking Pilot") to understand key parking spot metrics like occupancy, availability, average number of vehicles parked over a period of time, average dwell time, average turn-over rate, number of violations in a given period, etc. The City and Verizon will cooperatively determine the locations where infrastructure will be deployed. Where video sensors will be deployed, the City will ensure that appropriate infrastructure is in place at no cost to Verizon, including a light pole with an LED luminaire, standard three, five or seven (3, 5 or 7) pin NEMA sockets on the luminaire, power luminaire, power supply 24x7 in the luminaire etc. Verizon will provide the Parking Pilot free of charge for twenty-four (24) months.
- c. **Traffic Data Services Pilot.** Pursuant to Exhibit A, Verizon will provide a Smart Community Traffic Data Services ("TDS") pilot (the "Traffic Pilot") to the City which will deliver traffic congestion insights in a turnkey Software-as-a-Service model. Key traffic metrics, such as segment level vehicle speed, the direction of travel and travel time, will be delivered on a near real-time basis to help understand vehicular traffic flow for a mutually agreed set of routes totaling three hundred (300) bidirectional miles which will include "feeder miles" that will be required for configuring the solution for each road segment. In addition, Verizon will provide support for limited customization of message formats that will be compatible with the City's internal applications like eTracker. Verizon will provide the Traffic Pilot free of charge for a total of twenty-four (24) months.

- 3.3 Fleet Connectivity. Verizon will support the City's upgrade of its fleet to enable a total of two thousand seven hundred and fifty (2,750) City vehicles to use Verizon Connect hardware and services through AssetWorks. Upon request by the City within two (2) years after the Effective Date, Verizon will fund installation of hardware required for City vehicle use of Verizon Connect services ("VerizonConnect Hardware"). Verizon agrees to provide up to five hundred thousand dollars (\$500,000) for purchase and installation of the VerizonConnect Hardware. To the extent that Verizon is able to fund the installation of the VerizonConnect Hardware on City-owned vehicles to enable a total of two thousand seven hundred and fifty (2,750) City vehicles to use Verizon Connect services which must be made within two (2) years of the Effective Date for an amount less than five hundred thousand dollars (\$500,000) (the "Actual Hardware Funding"), Verizon shall provide in-kind Smart City solutions to be mutually agreed upon with the City that will be comparable in value to the difference between the Actual Hardware Funding and five hundred thousand dollars (\$500,000). In addition to funding the installation of the VerizonConnect Hardware, Verizon shall also provide the City two hundred and fifty thousand dollars (\$250,000) for the purchase of Verizon Connect services by the City upon installation of such hardware. Verizon will also provide annual funding of two hundred and fifty thousand dollars (\$250,000) for Verizon Connect services in the following two (2) years. Accordingly, the total funding under this subsection 3.3 will be five hundred thousand dollars (\$500,000) for installation of Verizon Connect hardware and seven hundred and fifty thousand dollars (\$750,000) for Verizon Connect services (\$250,000 per year over three years).
- 3.4 LED Retrofitting. The Parties agree to discuss value trade opportunities for light-emitting diode retrofitting to replace any City light poles that require replacement with (i) a new LED light pole, (ii) an LED luminaire, and (iii) electrical remediation per the City's small cell guidelines, the City specifications for LED luminaires, and any applicable electrical requirements ("LED Retrofit"). However, nothing in this subsection is intended either expressly or by implication to require either the City or Verizon to enter into any value trade agreement with the other Party. The City Manager shall have the authority to approve value trade agreements for LED Retrofit. All value trade agreements pertaining to LED Retrofitting are subject to review and approval by the City prior to the commencement of any work.

4. WIRELESS AND WIRELINE DEPLOYMENT AND PERMITTING OPTIMIZATION

Verizon will enhance and further densify its existing wireline and wireless networks through the deployment of fiber and Nodes to provide users with more broadband capacity for current and future needs. These infrastructure investments require significant cooperation from the City as well as cost-effective access to City Facilities. To accomplish these goals, permitting of Nodes and fiber must be efficient, expeditious and economical with no discretionary zoning approvals required for Node installations. The joint objectives will be met through a permit or permits by the City to Verizon for the use of designated City Facilities for fiber, wireless telecommunications facilities and structures associated with both fiber and wireless telecommunications facilities (which may require amendment to existing agreements or additional agreements), whereby Verizon shall have the right to deploy and own poles in the right-of-way pursuant to applicable law and have access to City Facilities, as well as through coordination and collaboration between Verizon and the City.

Verizon will make a significant investment in the City by further expanding its state-of-the-art networks as follows:

- 4.1 **Wireless Small Cell Deployment.** Verizon will enhance its existing wireless network through the deployment of Nodes to provide users with more wireless broadband capacity. In furtherance of powering the technologies contemplated by this Agreement and beyond, wireless permitting of Nodes to be placed on City Facilities and processes and permitting (including traffic management permits and safety inspections) related to Nodes placed on non-City owned assets must be efficient and expeditious. This objective will be met through coordination between Verizon and the City on the following to accommodate the extensive wireless deployment within the timeframe contemplated:
- a. **Usage and Attachment Fees.** City imposes a Usage Fee for Nodes as described in Exhibit B, the Master Non-Exclusive Installation and Property Use Agreement (hereinafter “MAA”), Section 3. The Usage Fee has been reduced by Verizon’s in-kind services and financial contribution to the City’s Digital Inclusion Fund. For attachments of Nodes to City Facilities, Verizon shall pay the City one hundred and seventy-five dollars (\$175) per City Facility annually during the initial ten (10)-year term. One year prior to expiration of the initial ten (10)-year term, the City and Verizon shall meet to negotiate the rate term as set forth in MAA which the Parties shall enter concurrently with this Agreement and which shall be attached hereto as Exhibit B. The start of the term for each City Facility to which Verizon attaches Nodes will begin when the Node has been attached or one hundred and twenty (120) days after the City Facility is “turned over” to Verizon as construction ready, whichever occurs sooner.
 - b. **Permit Timeline.** All permits for installation of Nodes, inclusive of all City departments and other approvals required for issuance of a permit, shall, within thirty (30) days from date of receipt by City, be approved or denied as specified below. Permit application review deadlines and processes shall be established to facilitate meeting the thirty (30) day issuance requirement. Installation of Nodes will be achieved by permit only, with no zoning approvals required for any antennas or equipment.
 - c. **Permit Volumes.** The City shall take the necessary steps to ramp up the permit processing so that by January 7, 2019 it shall process and issue an average of thirty (30) Verizon wireless permits per week. The City shall track the permit processing performance and if it fails to meet these permitting averages for four (4) consecutive weeks, the City shall meet internally and with Verizon to identify permit processing improvements necessary to maintain the agreed-upon permit time frames and volumes specified above and shall implement such improvements within thirty (30) days.
 - d. **Batch Applications.** Verizon may “batch” requests to attach Nodes to City Facilities (collectively, “Submittals”) based on a single design. The City may reject a Submittal for a single City Facility location within the “batched” group while approving the Submittals for the other City Facility locations within such group.
 - e. **Pole Reservation.** Verizon shall make a Submittal no later than one hundred and

twenty (120) days after reserving a pole through the City's automated pole reservation system, or the reservation shall be cancelled without prejudice; provided, however, the City's Director of Public Works shall have discretion to extend the reservation upon request by Verizon.

- f. **Permit Application Fees.** Permit application fees shall be based on published hourly rates which are reasonable and cost-based. With regard to Verizon's network deployment, the City shall not impose: new or revised standards or requirements that significantly increase Verizon's fiber deployment costs; new or additional fees, including but not limited to right-of-way access fees or street restoration fees, or any other fees outside of reasonable, cost-based application fees. Node permit application fees shall be paid via a prepaid fund in the amount of two hundred and fifty thousand dollars (\$250,000) (the "Wireless Fund") established by Verizon from which the City may withdraw funds upon email approval from Verizon. The City shall provide monthly accounting reports for Wireless Fund withdrawals. Concurrent with the execution of the Agreement, the Parties shall enter into a Wireless Funding and Reimbursement Agreement governing the Wireless Fund and payment of Node permit application fees and attached hereto as Exhibit C-1.
 - g. **Power Delivery.** The City shall assist Verizon in obtaining electrical power for the Nodes from the City's power source by providing information about City asset power configurations which may include power draw data, as-built drawings showing circuitry and joint site walks. The City shall not be obligated to pay for electrical power required to operate the Nodes.
- 4.2 Wireline Deployment. Verizon is planning to make a significant investment to deploy fiber and associated structures in the City. The City agrees to support Verizon's expedient and efficient deployment of Verizon's expanded wireline network in the City in the following manner.
- a. **Permit Timeline.** The City shall take all actions necessary to ramp up permit processing so that within twelve (12) weeks of the Effective Date and during the Term, it will approve or deny all permits associated with Verizon's deployment of fiber, inclusive of all City departments and other approvals required for issuance of a permit (including without limitation issuance of site, encroachment and excavation permits) as specified below within thirty (30) days of filing the permit application. The Parties shall conduct meetings to be concluded within six (6) weeks of the Effective Date to review Verizon's planned fiber build, including proposed design, associated timelines and anticipated permitting volumes, and other information necessary for the City to identify resources necessary to meet permitting obligations established herein. The City will establish application review deadlines and processes to facilitate meeting permitting obligations established herein.
 - b. **Permit Volumes.** The City shall take all actions necessary to ramp up the permit processing so that within twelve (12) weeks of the Effective Date and during the Term, it shall process and issue an average of thirty-five (35) Verizon wireline permits per week. The City shall track the permit processing performance and if it fails to meet

these permitting averages for four (4) consecutive weeks, the City shall meet internally and with Verizon to identify permit processing improvements necessary to maintain the agreed-upon permit time frames and volumes specified above and shall promptly implement such improvements.

- c. **Fees and Standards.** Permit application fees shall be based on the City's published hourly rates which are reasonable and cost-based. With regard to Verizon's network deployment, the City shall not impose: new or revised standards or requirements which significantly increase Verizon's fiber deployment costs; new, additional or increased fees, including but not limited to right-of-way access or street restoration fees; or any other fees outside of cost-based applications fees. Fiber permit application fees shall be paid via a prepaid fund in the amount of eight hundred and fifty thousand dollars (\$850,000) (the "Wireline Fund") established by Verizon from which the City may withdraw funds upon email approval from Verizon. The City shall provide monthly accounting reports for Wireline Fund withdrawals. Concurrent with the execution of the Agreement, the Parties shall enter into a Wireline Funding and Reimbursement Agreement governing the Wireline Fund and payment of fiber permit application fees and attached hereto as Exhibit C-2.

- d. **Pole Conduit Access.** The City shall provide access to City-owned pole conduit between the service drop and Verizon's Node, where available, at no charge to Verizon.

- 4.3 City Infrastructure. In addition to providing access to City Facilities as set forth in this Section 4, the City shall make a good faith effort to make City's infrastructure available for all of Verizon's Nodes, and Verizon and the City shall work cooperatively to allow Verizon to use City infrastructure wherever possible. In the event that Verizon makes an application with the City for a particular Node location on City Properties, and the City does not allow Verizon to use City's infrastructure for Verizon's Node utilization, then the City and Verizon will work cooperatively to identify an alternate location where the City would be willing to allow Verizon to utilize for Verizon's use, and which provides comparable wireless service coverage and performance acceptable to Verizon. If the City and Verizon are unable to agree on an alternate City Property location, or if the City and Verizon agree to an alternate location that is not on City Property, then Verizon shall receive credit as if Verizon had commenced construction of the particular small cell location on the City Property for which Verizon originally made application to the City.

5. PROJECT MANAGEMENT, PERFORMANCE AND SMART TEAM COLLABORATION

- 5.1 Joint Collaboration Team. The Parties shall establish a Joint Collaboration Team ("JCT") to help ensure proper diligence occurs prior to permitting and coordinate and oversee implementation of the projects established hereunder. The JCT is defined as and will consist of:
 - a. Executive team members from Verizon and the City who will provide leadership towards the objectives identified herein, identify working teams, resolve issues as required, and regularly evaluate the success of the program and attainment of the goals.

- b. Working teams consisting of members from Verizon and the City who will meet on a regular basis to identify areas needing attention, create a process for issue resolution, and make recommendations to the executive team as needed to resolve issues. Such meetings shall include, but not be limited to, the following: Within thirty (30) days of the Effective Date and each quarter until Verizon achieves its planned deployment of Nodes in the City, the City and Verizon shall meet and confer regarding (i) the status of the public-private partnership, (ii) the number of Node sites constructed, and (iii) Verizon's anticipated Node build plan for the coming three (3) month period. The City may request that Verizon consider building in certain areas of the City as part of the meetings, and Verizon will consider each request in good faith and may in its sole discretion decide to amend its build plan to accommodate such request. The Parties shall agree upon a target number of Nodes to build in the coming twelve (12)-month period consistent with Verizon's planned Node deployment.
- c. The initial JCT members are identified in Exhibit D. Any changes to the JCT should be provided to the other Party in writing in advance.

5.2 Project Management. The objectives, investment commitments, concessions and other commitments, as well as the implementation time lines and associated milestones, as indicated in each project, define the activities the Parties plan to undertake for implementing and managing the deliverables of that project. The Parties agree to coordinate such implementation and management through the following:

- a. The City shall assign a dedicated, single-point of contact (the "SPOC") for all permitting submission, review, and resolution. The SPOC will be available during all normal business hours, with back-up for periods of absence. The SPOC function may be staffed by more than one individual, provided all such individuals are knowledgeable regarding the City/Verizon shared goals and objectives for the build. The SPOC shall have authority to obtain City-wide resources necessary to meet the agreed-upon permitting performance objectives, including requiring expedited processing or review by any City department or official, as necessary.
- b. The SPOC shall make a reasonable attempt to provide responses to Verizon within one (1) business day on all routine inquiries seeking clarification of requirements or process, status of applications, guidance on permitting requirements, and scheduling of meetings.
- c. Verizon and the SPOC shall meet regularly to discuss ways to enhance the application process including streamlining the process.
- d. Verizon shall have the option to work directly with the City for all Node deployments and shall not be required to work through a City agent.
- e. Each Party shall also designate a Project Management executive for the projects undertaken hereunder.

- f. The Parties shall agree upon metrics which establish clear milestones to measure the undertakings, and an agreed upon performance measurement approach based on such metrics.
- g. The Parties shall establish a work plan (with related action items and milestones) relating to the implementation of the business plan for each of the referred initiatives.

5.3 Executive Sponsorship. Each Party shall appoint a senior member of its management and a senior member of its legal department as executive sponsors ("Executive Sponsor"). Executive Sponsors are responsible for monitoring the relationship, conducting periodic briefings for each other and their management teams, and providing a defined means of communication with other executives. Executive Sponsors are responsible for responding to any and all notices of breach and are responsible for communication during any such notice and cure period. The Executive Sponsors are identified in Exhibit D. Each Party may replace its Executive Sponsor with another executive, on reasonable and written notice to the other Party.

5.4 Relationship Managers. Each Party shall appoint a person to manage the parties' relationship ("Relationship Manager"). Relationship Managers are responsible for managing day-to-day strategy, operations, execution, and the overall relationship of the parties. Relationship Managers shall act as a single point of contact for administering the undertakings contemplated under this Collaboration. The Relationship Managers are identified in Exhibit D and shall be responsible for keeping their respective Executive Sponsors informed as to the progress of the collaboration. Among their responsibilities, Relationship Managers shall work together to:

- a. Draft, revise and implement this Agreement;
- b. Manage and monitor performance under the Agreement, and provide regular information and updates to interested parties and stakeholders;
- c. Manage negotiation of subsequent exhibits or amendments as needed;
- d. Lead and facilitate expectation setting and conflict resolution; and
- e. Maintain regular communication with the designated Project Coordinators and managers of each party who are responsible for executing against this Agreement.

5.5 No Reimbursement of Expenses. Except as specifically set forth herein, each Party shall remain solely responsible for its own expenses arising hereunder.

6. CONFIDENTIALITY; PUBLIC RECORDS ACT

6.1 Definition of Confidential Information. The term "Confidential Information" means Verizon Materials, Verizon trade secrets, and other Verizon proprietary or business information provided to the City that are clearly labeled, marked or otherwise identified as "confidential" or "proprietary information," or would otherwise normally be considered Confidential Information in the ordinary course and scope of business.

6.2 Exceptions. Notwithstanding the foregoing, "Confidential Information" shall exclude (and the City shall not be under any obligation to maintain in confidence) any information (or any portion thereof) disclosed to the City by Verizon to the extent that such information:

- a. Is in the public domain at the time of disclosure; or
- b. At the time of or following disclosure, becomes generally known or available through no act or omission on the part of Verizon; or
- c. Is known, or becomes known, to the City from a source other than Verizon or its representatives, provided that disclosure by such source is not in breach of a confidentiality agreement with Verizon and the City has notified Verizon of such; or
- d. Is independently developed by the City without violating any of its obligations under this Agreement or any other agreement between the Parties and the City has notified Verizon of such; or
- e. May be legally required to be disclosed under state or local law, including the California Public Records Act, Government Code section 6250 *et seq.* or ("Public Records Act") or by judicial or other governmental action; or
- f. Is permitted to be disclosed by a formal written agreement executed by and between the Parties.

6.3 Duty to Keep Confidential. The City agrees to maintain as confidential, to the extent permitted or required by applicable law, including the Public Records Act, all Confidential Information furnished or otherwise made available to the City by Verizon.

6.4 Requests for Disclosure Pursuant to the Public Records Act.

- a. Verizon acknowledges that the City is a public agency subject to the requirements of the Public Records Act and the state constitution. Verizon acknowledges that it may submit to or otherwise provide the City with access to Confidential Information, which may or may not be exempt from public disclosure under applicable law.
- b. Where any third party (the "Requestor") not otherwise authorized to access Confidential Information under this Agreement makes a demand or request to the City for access to Confidential Information (the "Request"), including, without limitation, the terms and conditions being negotiated, or the production, inspection or copying of other information designated by Verizon as Confidential Information, City will notify Verizon within forty-eight (48) hours of the Request before responding to the Requestor; however, Verizon shall be solely responsible for taking whatever legal steps Verizon deems necessary to protect information determined by Verizon to be Confidential Information and to prevent release of information to the Requestor (including the release of such information by the City). Verizon is responsible for all costs associated with pursuit of such legal steps, including the pursuit of any legal remedies.

- c. Verizon understands and acknowledges that the Public Records Act may compel the City to respond to Requests within a specific number of days from receipt of a Request (the "City Deadline"). Where the City has met its obligation to timely notify Verizon as set forth in subsection 6.4(b) and Verizon fails to notify the City that it will seek a protective order or other legal remedy to bar the disclosure of information Verizon considers Confidential Information prior to the City Deadline, the City may, without liability hereunder, disclose the Confidential Information that is necessary to be disclosed in response to the Request.
 - d. Without limiting the more general indemnity terms of this Agreement, Verizon will indemnify, defend, and hold harmless the City from any claim, costs, or liability arising from such Requests, including City's refusal to disclose information Verizon considers to be Confidential Information in response to any Verizon demand that such information not be disclosed.
- 6.5 Execution, Return, Disposal. Upon termination or expiration of this Agreement, City shall, at Verizon's direction, make reasonable efforts to either return or destroy all Confidential Information consistent with applicable law; provided, however, any Confidential Information found in electronic format as part of City's off-site or on-site data storage/archival process system, will be held by City and kept subject to the terms of this provision or destroyed pursuant to the City's document retention schedule. The obligations of this provision will survive termination or expiration of this Agreement.

7. TRADEMARKS

7.1 Verizon Trademarks, Service Marks, and Name.

- a. Verizon grants to the City the right to use the Verizon's Trademarks, Service Marks and Name (collectively "Verizon Marks") for the sole purpose of announcing the existence and content of this Agreement to third parties, provided that the conditions for such announcements, as set forth in Section 19.2 (Publicity) of this Agreement, have been satisfied. Any other use by City of Verizon Marks shall require previous written consent of Verizon. For avoidance of doubt, the inclusion of other marks in any product guide or other written policies of Verizon shall not grant the City the right to use any such other marks apart from the specific rights granted in respect of the Verizon Marks as expressly set forth in this Section 7 or in a Specific Agreement. The City agrees not to affix or otherwise reference any Verizon Marks to or with (as applicable) products and services other than Verizon products or services as contemplated in this Agreement.
- b. The goodwill arising from any permitted use of the Verizon Marks by the City shall inure to the benefit of Verizon. The City shall have no claim or right in the Verizon Marks, including but not limited to trademarks, service marks, or trade names owned, used or claimed now or which Verizon has authority to grant the City the right to use in the future.

7.2 City Trademarks.

- a. As and to the extent applicable, the City grants to Verizon the right to use the name, logo, trademarks, and other marks of the City, excepting the City's seal (collectively "City Marks") for the sole purpose of announcing the existence and content of this Agreement to third parties, provided that the conditions for such announcements, as set forth in Section 19.2 (Publicity) of this Agreement, have been satisfied. Any other use by Verizon of City Marks shall require previous written consent of the City.
- b. The goodwill arising from any permitted use of the City Marks by Verizon shall inure to the benefit of the City. Verizon shall have no claim or right in the City Marks, including but not limited to trademarks, service marks, or trade names owned, used or claimed now or which the City has authority to grant Verizon the right to use in the future.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Definition of Intellectual Property Rights. "Intellectual Property Rights" means any and all tangible and intangible:

- a. rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof;
- b. trademark and trade name rights and similar rights, including without limitation Verizon Trademarks as defined in Section 19 (General Provisions);
- c. trade secret rights;
- d. patents, designs, algorithms, utility models and other industrial property rights, and all improvements thereto;
- e. all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and
- f. all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

8.2 No Conveyance of Intellectual Property Rights. Except for the limited trademark license set forth above, the Parties do not intend to convey under this Agreement any Intellectual Property Rights in, or associated with, any of their respective products, services or any work product they may provide. Except as specifically described in this Agreement, any licensing, sale, grant, or conveyance of any Intellectual Property Rights, will be described in a separate agreement. Furthermore, any joint development of any new intellectual property will be subject to negotiation and execution of a separate development agreement. Accordingly, the Parties agree that all right, title and interest to any and all Intellectual Property Rights in Verizon's products and services,

and any related third Party products and services, arising prior to, during or after the term of this Agreement, including any and all modifications, enhancements, improvements and derivative works thereof, are and will be at all times the exclusive property of Verizon and its third party vendors, respectively.

- 8.3 Ownership. The Solutions, the Verizon Materials, and any corrections, modifications, customizations, revisions, improvements, upgrades, new releases or other change to the Solutions or the Verizon Material constitute or otherwise involve valuable Intellectual Property Rights of Verizon and/or Verizon's service providers. City acknowledges that it obtains only the right to use the Solutions under this Agreement in accordance with subsection 9.1. No title to or ownership of the Solutions, the Verizon Materials or any corrections, modifications, customizations, revisions, improvements, upgrades, new releases or other change to the Solutions, the Verizon Material or any Intellectual Property Rights associated with the Solutions or Verizon Materials is transferred to City, any Authorized User or any third party under this Agreement. Except for the rights explicitly granted in subsection 7.1, no additional rights are granted by Verizon, including by implication, estoppel, statute or otherwise.
- 8.4 City Data. As between the Parties, City shall own City Data and may use City Data for City's governmental purposes so long as such purpose or use is not prohibited by this Agreement or Applicable Law. City grants to Verizon a non-exclusive right to store, use, reproduce, make available, modify, display and store (digitally or otherwise) City Data to fulfill its obligations under this Agreement. Neither Party shall engage in any Prohibited Activities.
- 8.5 Open Data. Verizon is committed to enabling the City to make City Data available in an online portal that the public can access, enabling the principles of open government ("Open Data Portal"). Verizon shall work with the City to discuss how to provide the City's Open Data Portal with performance metrics, statistics, and other related measures for the Solutions implemented pursuant to this Agreement. If requested by the City, Verizon will work with the City to create an Open Data policy, ensuring that Personally Identifiable Information, confidential data, critical infrastructure data and other sensitive data is protected, while enabling the communication of City Data in an Open Data Portal.
- 8.6 Privacy and Data Rights. The Parties commit to obtain all necessary permissions and comply with all applicable privacy and data protection laws, rules and regulations relating to the personal information of employees, Affiliates, and independent contractors of the City and Verizon.

9. RESTRICTIONS, MODIFICATIONS AND SUSPENSION OF SERVICES

- 9.1 General Restrictions and Limitations. This Agreement sets forth the entirety of City's right to access and use the Solutions and services hereunder and to make the Solutions and services available to Authorized Users. City's right to use the Solutions and services does not include the right to, and City will not directly or indirectly: (a) enable any person or entity other than Authorized Users to access and use the Solutions and services; (b) modify or create any derivative work based upon any Verizon Material; (c) resell the Solutions or Verizon Material to any third party; (d) use the Solutions or services to monitor, control, or otherwise interface with any unauthorized networking, sensor, video, audio or other equipment attached to or integrated into the Authorized Hardware; (e) grant any sublicense or other rights to the Solutions or Verizon Material; (f) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any software that is part of the Verizon Technology; (g) remove, obscure or alter any Intellectual Property Rights notice related to the Verizon Materials or the Solutions; (h) engage in or permit any infringing or unlawful activities involving the Solutions, Verizon Materials; or (i) engage in or permit any use, reproduction, distribution, disposition, possession, disclosure or other activity involving the Solutions or the Verizon Material that is not authorized under the Agreement or otherwise in writing by Verizon. City shall ensure that all access to and use of the Solutions by City or Authorized Users, or otherwise through City's facilities, equipment, identifiers or passwords, shall conform to this Agreement and shall be made and used solely for proper and legal purposes, and shall be conducted in a manner that does not violate any Applicable Law, the rights of any third Party, court orders or Verizon's policies. Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that, subject to limited exceptions and exemptions, the public records of the City may be subject to release to and/or review by the public under various provisions of law.
- 9.2 Modifications. Verizon may alter or modify the Solutions from time to time in its sole discretion. Such alterations and modifications may include, without limitation, addition or withdrawal of features, data, information, products, services, software, hardware or change in instructions. Verizon shall provide the City with thirty (30) calendar days' prior notice of any planned material changes to Solutions, and in the event that Verizon intends to materially reduce the extent of the features or functionality of Solutions, Verizon shall provide the City with sixty (60) calendar days' prior notice.
- 9.3 Suspension of Services. In the event (a) the City materially breaches any of the terms of this Agreement beyond any applicable notice and cure period set forth below in Section 12 (Term and Termination); or (b) it is necessary to (i) prevent or mitigate fraud, (ii) protect persons or property or protect the integrity or normal operation of Verizon Facilities, (iii) comply with law or regulation, or (iv) undertake Emergency Works; or (c) Verizon has reasonable grounds to consider that use of a Solution violates Verizon's relevant Acceptable Use Policy, Verizon shall have the right, in its sole discretion and, in addition to any other remedies available at law or in equity, to immediately suspend access to the relevant Solutions. Upon suspension of services by Verizon, Authorized Hardware will switch to a default control schedule as specified

using the various Solution applications prior to suspension of any Solutions. The default schedule does not consider any sensors or related dimming specification. Also, upon suspension, the Authorized Hardware, sensors and network will not be monitored and managed unless those services are paid for.

10. DATA AND NETWORK SECURITY AND ACCEPTABLE USE

- 10.1 Data Security. Verizon will use appropriate security for the data and uses to: (a) establish and maintain commercially reasonable security measures designed to ensure the security and confidentiality of the City Data, including physical, technological and administrative measures; (b) promptly forward any individual's request for access to any City Data to City and cooperate with City in responding to such request; (c) unless it is legally prohibited from doing so, promptly notify City of any breach of security involving any Personally Identifiable City Data or any notices of investigation or non-compliance from any governmental or regulatory authority or agency related to the collection, use or disclosure of Personally Identifiable City Data, and cooperate with and assist City in any such investigation; (d) amend any Personally Identifiable City Data within a reasonable time after City's reasonable request; and (e) provide industry standard security, backup and disaster recovery systems and procedures designed to protect City Data.
- 10.2 Network Security. Verizon will use appropriate security for the data and uses to maintain commercially reasonable practices for network security and to work out and support escalation and troubleshooting. Within the Solutions, Verizon uses Transport Layer Security ("TLS"), an encryption protocol that is used to encrypt information in transit over the Internet. TLS uses certificates to encrypt sessions to maintain confidentiality of information. Verizon uses TLS to encrypt traffic with its application via HTTPS and API. Devices and applications connect using AES 128-bit encryption and TLS. In addition, Verizon conducts regular internal reviews of our practices to keep up to date with new and evolving standards in our industry.
- 10.3 City's Data Security and Acceptable Use. As a condition to the City's use of the Solutions and any Third-Party Application, the City shall comply in all respects with the Privacy and Data Security Standards and the Acceptable Use Policy attached hereto as Exhibits E and F, incorporated herein by this reference. To the extent that the City requires Verizon's services in order to comply with the Privacy and Data Security Standards and Acceptable Use Policy, City and Verizon agree to negotiate the terms of the respective Services Agreement and related fees for such services.
- 10.4 Verizon Security Monitoring. Verizon shall conduct continuous monitoring of Verizon's security and privacy protection systems for the Verizon Solutions and Hardware Products. Verizon shall address any security shortcomings following its then-current Incident Response Plan.

11. DEVELOPMENT RIGHTS

- 11.1 Right to Independently Develop. Subject to obligations of Confidentiality and rights to Intellectual Property as described in this Agreement, in no event shall Verizon be precluded from developing or providing for itself, or for others, materials that are competitive with the products and services of the other Party, irrespective of their similarity to any products or services offered by the other Party in connection with the Collaboration. Each Party shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its business that are used or developed while undertaking this Agreement by such Party, and each Party shall remain free to provide products and services to any client or prospective client so long as the terms of this Agreement are not violated. The City may submit new suggestions, comments or other feedback ("Feedback") to be evaluated for future releases by Verizon. Both Parties agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by the City, will not, absent a separate written agreement, create any confidentiality obligation on Verizon. In addition, Verizon shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Feedback provided to it, royalty free, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

12. TERM AND TERMINATION

- 12.1 Term. The Agreement commences on the Effective Date and will continue for longer of (i) fifteen (15) years or (ii) as long as any services are being provided under this Agreement or under any Exhibit or Amendment to this Agreement or any Specific Agreement.
- 12.2 Termination. The following will be causes for the early termination of the Agreement:
- a. Mutual agreement of the Parties.
 - b. Failure to fulfill or breach of any of the material terms and conditions of the Agreement (collectively, a "Default") by either Party. If either Party commits a Default, then the non-defaulting Party will give the defaulting Party written notice of the Default (including a statement of the facts relating to the breach or default, the provisions of this Agreement that have been breached or caused default and the action required to cure the breach or default) and written notice that the Agreement may be terminated pursuant to this provision if the Default is not cured within sixty (60) calendar days after receipt of notice (or a later date as specified by the non-defaulting Party or as mutually agreed upon). If the defaulting Party fails to cure the specified Default within sixty (60) calendar days after receipt of such notice (or later date as specified by the non-defaulting Party or as mutually agreed upon), then the non-defaulting Party will have the unilateral right to terminate the Agreement immediately or at any time thereafter.

- c. The Parties agree, prior to any notice of Default and the start of any cure period, to escalate any matters that a Party believes is cause for termination to the Executive Sponsors for resolution prior to issuing a notice of breach or exercising their termination rights above. The Executive Sponsors agree to try to resolve such issue within thirty (30) calendar days, which time period may be extended by mutual written agreement.
- d. Notice must be provided in accordance with the terms of subsection 19.6 (Notices) of this Agreement.

12.3 Effect of Termination and Wind-Down Framework. If the Term is terminated pursuant to and in accordance with this Section 12, then, unless otherwise specifically provided for in writing by the Parties, the following will apply: (a) the Parties will cooperate to effect an orderly, efficient, effective and expeditious termination of the Party's respective activities under this Agreement pursuant to a mutually agreeable wind-down plan, including without limitation the immediate disabling of access to the Solutions and any and all respective services and Applications thereto, within a reasonable mutually agreed timeframe; (b) for all Solutions that involve capital improvements or hardware installed in the right-of-way or on City Property or City Facilities, except for under-pavement traffic sensors, unless otherwise directed by the City in writing or otherwise mutually agreed upon by the Parties, within ninety (90) days of the expiration or termination of this Agreement, at Verizon's sole cost and expense, Verizon shall remove all of above-grade Improvements from project sites, and shall restore the above-grade portion of the any project sites to original condition prior to the installation of the improvements, normal wear and tear excepted. Should Verizon fail to complete said removal within one hundred and twenty days (120) days, the City shall conduct the removal and disposal of Improvements at Verizon's sole cost and expense and shall invoice Verizon accordingly. If any project sites are damaged by Verizon in the process of removal, such damage shall be repaired forthwith by Verizon at its sole cost and expense. Should the City elect to keep Hardware Products, they shall remain programmed at a default settings at Verizon's discretion; (c) the rights granted to City with respect to the Solutions, and the Verizon Materials will terminate as of the effective date of the termination; (d) City shall return to Verizon any and all Confidential Information of Verizon in the possession or control of City; (e) rights granted to Verizon with respect to City Data, will terminate as of the effective date of the termination and Verizon will provide the City its data in a useable format, promptly, and without charge; (f) unless otherwise agreed upon by the Parties, Verizon shall have no obligation to provide the Solutions to City or Authorized Users after the effective date of the termination; (g) any and all liabilities accrued prior to the effective date of the termination will survive; and (h) the Parties' respective rights and obligations under Sections 6 (Confidentiality; Public Records Act), 8 (Intellectual Property Rights), 12 (Term and Termination), 13 (Dispute Resolution), 14 (Warranties), 15 (Limitations of Liability) and 17 (Indemnification) of this Agreement will survive.

13. DISPUTE RESOLUTION

- 13.1 Resolution Process. In the event that a dispute arises between the Parties pertaining to the subject matter of the Collaboration (a "Dispute"), prior to the initiation of any formal legal action, the following dispute resolution process shall apply. The Parties' respective Relationship Managers will initiate and execute the entire escalation and resolution process and use discretion to resolve the Dispute through conference calls or face-to-face meetings. Except as provided in subsection 13.2, the entire escalation and resolution process, described below, will be completed in fewer than ninety (90) calendar days. The Parties may agree in writing to an extension of this time period.
- a. Any Dispute (except those related to permits) shall be submitted in writing for discussion and resolution to the Parties' respective Relationship Managers. Each Relationship Manager shall include any other relevant senior managers from the Party, such as any affected sales and business unit managers. The Relationship Managers shall have thirty (30) days after referral of the Dispute to resolve it to the Parties' mutual satisfaction. If the Relationship Managers are unable to resolve the Dispute within the time provided, they shall refer the matter to the Executive Sponsors. The Executive Sponsors shall have an additional thirty (30) days after referral of the Dispute to resolve it to the Parties' mutual satisfaction.
 - b. In the event of a Dispute related to performance of any terms related to permitting requirements hereunder, the Relationship Managers shall have five (5) days after referral of the Dispute to resolve it to the Parties' mutual satisfaction. If the Relationship Managers are unable to resolve the Dispute within the time provided, they shall refer the matter to the Executive Sponsors. The Executive Sponsors shall have an additional five (5) days after referral of the permitting Dispute to resolve it to the Parties' mutual satisfaction.
 - c. If the Parties are unable to resolve the Dispute after exhaustion of the process specified in this Section 13, then the Parties shall be free to pursue any remedies available to them at law or equity.
- 13.2 Exception. For Disputes relating to an alleged or actual breach of the confidentiality obligations or any intellectual property ownership or licensing issues, the Parties may submit the matter for discussion and resolution to the general counsel, city attorney or other head of the legal service of each Party. These individuals shall use good faith efforts to resolve the Dispute within ten (10) days, or such longer time as the Parties may agree. Notwithstanding the foregoing, each Party, without waiving any remedy under this Agreement, may seek an injunction or other equitable relief in the court of its choosing, subject to the venue provisions set forth herein, to protect Confidential Information and Intellectual Property Rights.

14. WARRANTIES

- 14.1 Disclaimer of Warranties. THE WARRANTY AND REMEDIES SET FORTH IN SUBSECTION 14.2(a) AND VERIZON'S OBLIGATIONS AND LIABILITIES SET

FORTH IN SUBSECTION 14.2(b) ARE EXCLUSIVE. EXCEPT AS SET FORTH IN SUBSECTION 14.2(a), VERIZON MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO ANY SOLUTIONS, SERVICES, VERIZON MATERIALS, CITY DATA, THIRD PARTY APPLICATIONS, OR OTHER ITEMS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. VERIZON MAKES NO WARRANTIES REGARDING THE ACCURACY, COMPLETENESS OR TIMELINESS OF ANY INFORMATION OR CITY DATA PROVIDED IN CONNECTION WITH OR RESULTS OBTAINED THROUGH USE OF THE SOLUTIONS OR SERVICES. VERIZON DOES NOT WARRANT THAT USE OF ANY OF THE SOLUTIONS OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT VERIZON WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS.

14.2 Limited Solutions Warranty and Remedy.

- a. **Warranty.** Verizon warrants that it will provide the Solutions in a good and workmanlike manner and that its employees and the third-Party service providers it retains as necessary have the proper skill, training and experience to provide the Solutions. During the Term, Verizon will use commercially reasonable efforts to correct any Solutions that do not comply with the foregoing warranty; provided that City notifies Verizon of such noncompliance within thirty (30) days after City discovers such noncompliance or the date that such noncompliance should have been disclosed. The foregoing will be City's sole remedy for any breach of the foregoing warranty by Verizon.
- b. **Equipment Warranty.** Verizon warrants the Verizon manufactured Equipment in accordance with the terms in Exhibit G, Equipment Warranty. "Equipment" means any equipment that is manufactured by Verizon and/or its Affiliates, supplied to the City in conjunction with the Solutions, and the City is deemed the original "purchaser".
- c. **Exclusions.** Verizon's warranties under subsections 14.2(a) and 14.2(b) do not apply to any noncompliance resulting from any: (i) materials provided by City; (ii) use not in accordance with this Agreement, the Privacy and Data Security Standards, the Acceptable Use Policy or Applicable Law; (iii) the combination of any Hardware Products or services provided by Verizon or portion thereof with any product, materials or services not provided by Verizon; (iv) modifications, damage, misuse or other action by City or any third party; (v) the use of other than the latest update or upgrade on or after the thirty (30) calendar day period following the date that Verizon makes such update or upgrade available; or (vi) any failure of City to comply with this Agreement, the Privacy and Data Security Standards, the Acceptable Use Policy or Applicable Law. Further, Verizon does not warrant that the Solutions are free from bugs, errors, defects or deficiencies.

- 14.3 City Warranties. In addition to any warranties set forth elsewhere in the Agreement, City warrants to Verizon that the performance of City's obligations and City and Authorized Users' access to and use of the Solutions or other exercise of its rights under this Agreement shall not violate any third-party rights or any Applicable Law.

15. LIMITATIONS OF LIABILITY

- 15.1 Damage Cap and No Consequential Damages. EXCLUDING LIABILITIES RELATED TO (A) THIRD PARTY CLAIMS SUBJECT TO INDEMNIFICATION OBLIGATIONS HEREUNDER, OR (B) BREACH OF THE TERMS OF A LICENSE GRANT, THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY ARISING OUT OF, RESULTING FROM, OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT SHALL BE LIMITED TO FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00); PROVIDED, HOWEVER THAT THE FOREGOING SHALL IN NO WAY REDUCE ANY CHARGES OR PAYMENTS DUE FROM ONE PARTY TO THE OTHER UNDER THE AGREEMENT. FURTHER, EXCLUDING LIABILITIES RELATED TO (A) THIRD PARTY CLAIMS SUBJECT TO INDEMNIFICATION OBLIGATIONS HEREUNDER, (B) A BREACH OF CONFIDENTIALITY OBLIGATIONS, (C) A BREACH OF THE TERMS OF A LICENSE GRANT, OR (D) INFRINGEMENT OF BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY NOR ANY OF ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OWNERS, SUPPLIERS, NETWORK SERVICE PROVIDERS, OR THE PROVIDERS OF THIRD PARTY APPLICATIONS SHALL BE LIABLE TO THE OTHER PARTY OR ANY AUTHORIZED USERS, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR ANY LOSS OF PROFIT, VALUE, REVENUE, DATA, BUSINESS, GOODWILL, ANTICIPATED SAVINGS, OR USE OR DAMAGE TO REPUTATION, OR BUSINESS INTERRUPTION) ARISING FROM OR RELATED TO ANY PROVISION OF THIS AGREEMENT, SOLUTIONS, THE VERIZON MATERIALS OR ANY SOFTWARE (INCLUDING THIRD PARTY APPLICATIONS), SERVICES OR OTHER ITEMS PROVIDED IN CONNECTION THEREWITH, OR THE FAILURE OF A PARTY TO PERFORM ITS OBLIGATIONS, REGARDLESS OF ANY NEGLIGENCE BY THAT PARTY AND EVEN IF THE PARTY RESPONSIBLE FOR THE BREACH OR VIOLATION OR ACT GIVING RISE TO THE CLAIM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

16. INSURANCE; CITY IMMUNITY

- 16.1 Insurance. At all times during the performance of this Agreement, Verizon, at its sole expense, shall obtain and keep in force the required insurance as set forth in Exhibit H.
- 16.2 Immunity. In no event shall the language in this Section 16 constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

17. INDEMNIFICATION

17.1 General Indemnities. Each Party (the "Indemnifying Party") will indemnify, defend, and hold harmless the other Party, its current and former Affiliates, its and their respective current and former officers, directors, employees, principals (partners, shareholders or holders of an ownership interest, as the case may be), agents, and the successors and assigns (collectively, the "Indemnitee"), from and against any and all liabilities, third party claims, demands, losses, damages, and expenses, including attorney's fees and costs as incurred, associated with or incurred as a result of any claim, action, or proceeding brought by a third party arising out of or relating to the Indemnifying Party's: (i) negligence, recklessness, or willful acts or omissions in performing its obligations under this Agreement that result in personal injury (including death) or damage to tangible property; and (ii) breach of any representation or warranty with regard to authorization made hereunder.

17.2 IP Indemnity.

- a. Except as provided below, Verizon will defend the City against any claim, suit, action or proceeding by a third party against the City and alleging that the Verizon Solution or Solutions infringes a valid U.S. patent or copyright ("IP Claim"), and subject to the terms of subsections 17.2 and 17.3, Verizon will indemnify and hold harmless the City against any and all finally awarded costs and expenses, including attorneys' fees, in connection with any such IP Claim. Verizon's obligations to defend and indemnify will not apply to any IP Claim or portion thereof that arises from the following, for which the City shall defend and indemnify Verizon: (1) any negligent or willful act or omission by or attributable to the City; (2) use or operation of a Solution in combination with equipment or services provided by the City or a third party; (3) any addition to or modification of the Solution by the City or a third party; (4) use of other than the then-current unaltered release of any Software used in or with the Solution; (5) any equipment, system, product, process, method or service of the City which otherwise infringed the U.S. patent or copyright asserted against the City prior to the supply of the Solution to the City by Verizon under this Agreement; (6) functionality provided by Verizon at the direction of the City, its agents, employees, or other contractors (including the provision of functionality in accordance with technical specifications provided by the City); (7) use or operation by the City, its agents, employees or other contractors, of the Services other than as specified in this Agreement and/or (8) claims arising out of the content of communications transmitted by or on behalf of the City in the use of the Solution.
- b. If the City's use of a Solution is enjoined or subject to an IP Claim as described above or Verizon reasonably believes that a Solution may become subject to an IP Claim, Verizon shall, at its option and expense, either (1) procure for the City the right to continue to use such Solution, (2) replace the Solution (or relevant component) with a non-infringing one, or (3) modify the Solution, so that it becomes non-infringing.
- c. The foregoing states each Party's entire obligation and the other Party's sole and exclusive remedy with respect to any IP Claim. Except as expressly provided otherwise

in this Agreement, Verizon disclaims all other warranties and obligations with respect to any claims of intellectual property infringement or misappropriation.

- 17.3. The defense and indemnification obligations set forth in this Section 17 are contingent upon (i) the Indemnitee providing the Indemnitor prompt, written, and reasonable notice of the claims, demands, and/or causes of action subject to indemnification or defense hereunder provided that lack of such notice would otherwise interfere with Indemnitor's defense of such claims, demands, and/or causes of action; (ii) the Indemnitee granting the Indemnitor the right to control the defense; and (iii) the Indemnitee's cooperation with the Indemnitor in defense of the claim, including providing information and assistance in defending the claim. Nothing herein restricts the Indemnitee from participating, on a non-interfering basis, in the defense of the claim, demand, and/or cause of action at its own expense with counsel of its own choosing. No settlement may be entered into by the Indemnitor on behalf of the Indemnitee that includes obligations to be performed by the Indemnitee (other than payment of money that will be fully paid by the Indemnitor under this Section 17) without Indemnitee's prior written approval.

18. ORDER OF PRECEDENCE.

- 18.1 The order of precedence between and among this Agreement, its Exhibits, and the Specific Agreements that are or will be attached hereto and incorporated herein by reference, with respect to a conflict between the same subject matter, shall be as follows, but provided that the prevailing term shall apply only to (i) the conflicting terms and (ii) the extent necessary to resolve the conflict:
- a. Amendments;
 - b. Specific Agreements (as defined below)
 - c. Exhibits (as defined above); and
 - d. The terms and conditions set forth herein.

19. GENERAL PROVISIONS

- 19.1 Entire Agreement and Modifications. No change, amendment to or modification of this Agreement shall be valid unless set forth in a written instrument signed by both Parties. The City acknowledges that the Agreement may require an amendment from time to time to address issues which may arise, including but not limited to unforeseen circumstances, advances in technology, legal matters, and other issues which may result in refinements to the Agreement. The City represents and warrants that the City Manager is authorized to enter into an amendment to this Agreement (upon mutual agreement of the Parties) so long as such amendment is within the general scope or subject matter of the Agreement.
- 19.2 Publicity. Marketing, advertising, promotional materials (e.g., marketing collateral), press releases or other public announcements regarding this Agreement, the activities hereunder, any Exhibit, any specific agreement attached hereto or any agreement or amendment executed hereunder, shall be made only after receiving the prior written

consent of the other Party, except as required by law, in which case the other Party shall be consulted to the extent reasonably practicable as to the content and timing of such release, announcement or statement. Notwithstanding the foregoing, each Party may generally describe the collaborative nature of the relationship with the other Party in presentations, and proposals, and Verizon may publicly disclose performance results of the Solutions.

- 19.3 Attorney's Fees. Other than as provided in Section 17 (Indemnification) and subsection 6.4 (Requests for Disclosure Pursuant to the Public Records Act) herein in any suit or proceeding relating to this Agreement, each Party shall be responsible for its own costs and fees incurred in connection with the suit or proceeding unless otherwise required by law.
- 19.4 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.
- 19.5 Waiver. The failure of either Party to insist upon or enforce performance by the other Party of any provision of this Agreement, or to exercise any right or remedy under this Agreement or otherwise by law, shall not be construed as a waiver or relinquishment of such Party's right to assert or rely upon the provision, right, or remedy in that or any other instance; rather the provision, right or remedy will be and remain in full force and effect.
- 19.6 Notices. Any notice, approval, request, authorization, direction, or other communication under this Agreement shall be given in writing, directed to the addresses of the Parties below, and shall be deemed to have been delivered and given for all purposes: (i) on the next business day if delivered by electronic mail, and with return receipt requested; or (ii) on the delivery date if delivered personally to the Party to whom the same is directed; or (iii) one (1) business day after deposit with a commercial overnight carrier with written verification of receipt; or (iv) five (5) business days after the mailing date whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available to the contact at the address of the Party to whom the same is directed. Either Party may from time to time change its address for purposes of this paragraph by giving the other Party notice of the change in accordance with this paragraph.

In the case of Verizon:

One Verizon Way
Basking Ridge, NJ
07920
Attn: Chief Network Engineering Officer

With a copy to: One Verizon Way, Basking
Ridge, NJ 07920
Attn: General Counsel

In the case of the City of San José:

City of San José City Manager's Office
200 E. Santa Clara St. Floor 17
Santa Jose, CA, 95113
Attn: Deputy City Manager

With a copy to: 200 E. Santa Clara Street,
Floor 16, San Jose, CA 95113
Attn: City Attorney

- 19.7 Force Majeure. Neither Party shall be deemed in breach of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms; levee breaches; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of terrorism; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control. A delay beyond a Party's control automatically extends the time, in an amount equal to the period of the delay, for that Party to perform the obligation under this Agreement. The Parties shall prepare and sign an appropriate document acknowledging any extension of time under this Section 19.
- 19.8 Compliance with Laws. In performance of its respective obligations under this Agreement, each Party will comply with Applicable Law (including, with respect to City, industry best practices relating to providing applicable notices to and obtaining consents from individuals regarding the collection, use and disclosure of data), rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities having jurisdiction. The City will cooperate with any reasonable request by Verizon that the City provide any notice to and/or obtain any consent from individuals in connection with the collection, use and disclosure of City Data. The City agrees that the services, solutions, products and/or equipment that are offered in this Agreement will not be provided or distributed to, or used by, any entity that participates or is eligible to participate in the Schools and Libraries Universal Service Support Program (commonly referred to as the "E-rate Program"), which is administered by the Universal Service Administrative Company ("USAC") under the direction of the Federal Communications Commission.
- 19.9 No Disqualification. Nothing herein contained shall preclude Verizon or its Affiliates from pursuing or bidding on any future City procurement opportunity or opportunities, and nothing in this Agreement is intended to limit future Verizon-City bids or business opportunities in any way.
- 19.10 Governing Law and Venue. This Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of California and the United States, without regard to the conflict of law provisions thereof. Venue for any action under this Agreement shall be: the state and federal courts located in Santa Clara County.

- 19.11 Remedies. In addition to any specific remedies listed in this Agreement, the Parties shall have the right to bring any remedy in law or equity to enforce the provision of this Agreement.
- 19.12 Assignment. The rights and obligations assumed by each of the Parties under this Agreement shall not be assigned or otherwise transferred, in whole or in part, without the written prior consent of the other Party which consent will not be unreasonably withheld, delayed or conditioned, provided however that either Party may assign this Agreement: (i) to any successor by way of any merger, consolidation, or other corporate reorganization of such Party or sale of all or substantially all of the assets of such Party, provided that such subsidiary or parent or successor assumes or is otherwise fully bound by all of the obligations of the assigning Party under this Agreement; (ii) or in whole or in part to an Affiliate. In cases where written prior consent is not required, the assigning Party shall provide the other Party with notice of such assignment within thirty (30) days, such notice to contain the new entity and contact information.
- 19.13 Severability. This Agreement will be enforced to the fullest extent permitted by Applicable Law. If any provision of this Agreement is held to be illegal, invalid or unenforceable to any extent, then such provision shall be excluded to the extent of such illegality, invalidity or unenforceability; all other provisions hereof shall remain in full force and effect; and, to the extent permitted and possible, the excluded provision shall be deemed replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of such excluded provision. If application of this Severability provision should materially and adversely impact the substance of the transaction contemplated hereby, the Party adversely impacted shall be entitled to compensation to achieve the benefit of the bargain. The City and Verizon shall promptly meet to diligently negotiate in good faith terms that provide the adversely impacted Party the benefit of the bargain. If the Parties are unable to reach agreement after negotiating in good faith for thirty (30) days, the Parties shall submit the issue(s) that is not resolved between the Parties through negotiations to non-binding mediation ("Mediation") with a neutral third party. The Parties agree that the Mediation shall take place within two (2) weeks of the end of the thirty (30) day good faith negotiation period. The Parties hereby agree that during the Mediation period, neither of them shall initiate litigation or other legal proceedings related to this Section 19, except to pursue a provisional remedy. However, this limitation is inapplicable to a Party if the other Party refuses to participate in good faith in the Mediation process during the mediation period. If the Mediation does not result in an agreement between the Parties, the Parties shall be entitled to pursue any other rights and remedies available at law or equity.
- 19.14 Survival. Sections 6 (Confidentiality; Public Records Act), 8 (Intellectual Property Rights), 12 (Term and Termination), 13 (Dispute Resolution), 14 (Warranties), 15 (Limitations of Liability) and 17 (Indemnification) shall survive expiration or termination of this Agreement for any purpose.
- 19.15 Counterparts. The Parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

- 19.16 No Third-Party Beneficiaries. This Agreement and any separate agreements created pursuant to this Agreement are solely for the benefit of the City and Verizon, including Verizon Affiliates. They are not intended to benefit any third parties.
- 19.17 Construction of Document. The Parties acknowledge that this document shall not be construed in favor of or against the drafter by virtue of said Party being the drafter and that this Agreement shall not be construed as a binding offer until signed by both Parties.
- 19.18 Captions. The captions preceding the sections of this Agreement are intended only for convenience of reference and in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof.
- 19.19 Comparable Treatment. City hereby represents and warrants that as of the Effective Date, no rates or fees have been or are currently offered to any other entity with respect to communications facilities that are or will be more favorable to such entity than those being proposed to Verizon herein. If after the Effective Date, the City should provide any entity terms or similar terms better than those specified in the Agreement with respect to any aspect of the Agreement, including but not limited to lower pole attachment rates or process improvements to speed network deployment, the City shall inform Verizon of such terms the same business day such terms go into effect. The City agrees to place Verizon in at least as good a position as such entity with respect to any such individual terms, the City and Verizon shall promptly meet to diligently negotiate in good faith Agreement terms to accomplish this. The Agreement and all site license agreements, as applicable, shall be amended, effective retroactively to the effective date of the more favorable offering to the third party. If the Parties are unable to reach agreement after negotiating in good faith for thirty (30) days, the Parties shall submit the issue(s) that is not resolved between the Parties through negotiations to non-binding mediation with a neutral third party. The Parties agree that the Mediation shall take place within two (2) weeks of the end of the thirty (30) day good faith negotiation period. The Parties hereby agree that during the Mediation period, neither of them shall initiate litigation or other legal proceedings related to this Section 19, except to pursue a provisional remedy. However, this limitation is inapplicable to a Party if the other Party refuses to participate in good faith in the Mediation process during the Mediation period. If the Mediation does not result in an agreement between the Parties, the Parties shall be entitled to pursue any other rights and remedies available at law or equity. In addition to the foregoing, the City shall afford Verizon an opportunity to match any business proposal, outside of a competitive procurement, which the City has accepted or is prepared to accept from any other party pertaining to smart cities, 5G and/or small cell deployment; provided, however, if the business proposal is not reasonably capable of being performed or accepted in whole or in part by Verizon, then the City shall provide to Verizon a comparable business proposal of equivalent economic and competitive value which is capable of being fully performed by Verizon. If Verizon indicates its willingness to proceed with either the business proposal which City has accepted or is prepared to accept from any other party or the comparable business proposal of equivalent economic and competitive value, then the Parties shall promptly negotiate in good faith

to amend this Agreement or enter into such additional written agreements as necessary to effectuate such business proposals.

- 19.20 No Preemption. During the first ten (10) years after the Effective Date of the Agreement, the enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations ("Change of Laws") pertaining to (i) the usage, rental rates or other form of compensation that the City may charge for use of City Facilities for small cells or (ii) the timing by which the City must process applications for small cells shall not preempt or impact any terms of the Agreement unless (A) the Change of Laws mandates compliance by at least one Party with either or both such provisions or (B) otherwise agreed to in writing by the Parties. Notwithstanding the foregoing, if a Change of Laws places Verizon, in its discretion, at a significant competitive disadvantage, City agrees to revise the Agreement to eliminate such disadvantage and to promptly negotiate with Verizon in good faith revised Agreement terms eliminating the disadvantage. The Agreement and all applicable site license agreements, as applicable, shall be amended, effective retroactively to the date of the Change of Laws. If the Parties are unable to reach agreement after negotiating in good faith for thirty (30) days, the Parties shall submit the issue(s) that is not resolved between the Parties through negotiations to non-binding mediation with a neutral third party. The Parties agree that the mediation shall take place within two (2) weeks of the end of the thirty (30) day good faith negotiation period. The Parties hereby agree that during the Mediation period, neither of them shall initiate litigation or other legal proceedings related to this Section 19, except to pursue a provisional remedy. However, this limitation is inapplicable to a Party if the other Party refuses to participate in good faith in the Mediation process during the mediation period. If the Mediation does not result in an agreement between the Parties, the Parties shall be entitled to pursue any other rights and remedies available at law or equity.
- 19.21 Authorization. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the others that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized.
- 19.22 Final Agreement. This Agreement, together with all Exhibits hereto and the Specific Agreements, sets forth the entire agreement between the Parties relating to the Collaboration, and supersedes any and all prior or contemporaneous agreements and representations written or oral, of the Parties with respect to the subject matter set forth herein.
- 19.23 Definitions. Whenever used in this Agreement with the initial letter capitalized, the following terms will have the following meanings. Capitalized terms not otherwise defined herein shall have the meaning based on the context in which the term is used.

- a. **“Acceptable Use Policy”** or **“AUP”** means Verizon’s Acceptable Use Policy incorporated herein and attached as Exhibit F, the terms of which may be amended from time to time at Verizon’s sole discretion.
- b. **“Access Credential”** means the unique user name and password issued or otherwise assigned to each Authorized User for access to and use of the Solutions.
- c. **“Affiliates”** means an entity controlling, majority-owned, or controlled or under common voting control by one of the Parties, or a contractual or joint venture partner, possessing rights, whether by contract or otherwise, with respect to the respective rights or obligations herein.
- d. **“Applicable Law”** means any international, national, federal, state or local law (statutory, common, civil or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, judgment, order or similar requirement, now or hereafter in effect, enacted, adopted, promulgated, or applied by any governmental authority or entity that is binding upon or applicable to a Party unless expressly specified otherwise.
- e. **“Applications”** means software applications, computer programs, and any other interactive service, designed to perform a group of coordinated functions, tasks, or activities, or the operation or use of which is controlled to any degree by an end user of such service, and in each case is either provided on a hosted basis over the Internet or distributed for use in connection with Internet properties.
- f. **“Authorized Hardware”** means equipment provided by Verizon or authorized by Verizon that enables the Solutions.
- g. **“Authorized User”** means any employees, agents, independent contractors or consultants of the City, qualified pursuant to Privacy and Security Standards (defined below) and City’s privacy and security policies in effect at such time. City’s or other members of the general public are not Authorized Users.
- h. **“City Data”** means City’s proprietary data and other non-public information at the time of disclosure provided by the City to Verizon as a part of using the Solution.
- i. **“City Facilities”** means any and all existing facilities, inclusive of but not limited to all buildings and improvements owned by and under the possession and control of the City, including but not limited to utility poles, lamp posts, traffic signals, other street furniture and utility facilities, fences, gates, and all roof tops of all such buildings, facilities and/or improvements.
- j. **“City’s Properties”** means those properties owned or controlled by the City, including without limitations, the right of ways and any public utility easements within the City (each of which is a subject of this Agreement).

- k. **"Defaulting Party"** means the Party to this Agreement that has defaulted as provided for in Section 12 (Term and Termination) of this Agreement.
- l. **"Documentation"** means the user manuals, online documentation and other materials relating to the Solutions provided in writing by Verizon to City.
- m. **"Emergency Works"** mean works, the execution of which, at the time it is proposed to be executed, is required to put an end to, or prevent, the arising of circumstances then existing or imminent that are likely to cause: (a) danger to persons or property; (b) the interruption of any services provided by the Verizon; (c) substantial loss to Verizon or any third party; and/or (d) such other works as in all the circumstances it is reasonable to execute with those works.
- n. **"Enhancement" or "Enhanced"** means any additions, updates or bug fixes to the Solutions released generally by Verizon for similarly situated users. Enhancements do not include upgrades, data migration or custom work, reports and host inquiries specific to City.
- o. **"Hardware Products"** means Authorized Hardware, Network Equipment and any other hardware products provided by Verizon or a Verizon Partner.
- p. **"Harmful Interference"** means Interference that endangers the functioning of a radio navigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radio communication service operating in accordance with both International Telecommunications Union Radio Regulations and the regulations of the Federal Communications Commission.
- q. **"Hazardous Material"** means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, or (viii) radioactive materials.
- r. **"Environmental Law(s)"** means the Comprehensive Environmental Response, Compensation, and Liability Act of 2080, 42 U.S.C. section 9601 *et seq.*, the Resource Conservation and Recovery Act of 2076, 42 U.S.C. section 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. section 2601 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. section 5101 *et seq.*, and the Clean Water Act, 33 U.S.C. section 1251 *et seq.*, as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance that regulates or proscribes the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Hazardous Material.

- s. **"Improvements"** means a Wireless Telecommunications Facility(ies).
- t. **"Interference"** means the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any performance degradation, misinterpretation, or loss of information.
- u. **"Licensee"** means GTE Mobilnet of California Limited Partnership, dba Verizon Wireless, by Cellco Partnership, its general partner.
- v. **"Network Equipment"** means any network equipment, including, without limitation sensors, wireless networking and computing hardware, wireless gateways, wireless repeaters, wireless service bridges and other networking equipment provided by Verizon or authorized by Verizon and which can be used with the Authorized Hardware.
- w. **"Non-Defaulting Party"** means the Party to this Agreement that has not defaulted as provided for in Section 12 (Term and Termination) of this Agreement.
- x. **"Personally Identifiable Information" or "PII"** means all data or information constituting the personal information of any natural person pertaining to or resulting from the access and use of the Solutions by City or any Authorized User including all such information subject to any Applicable Law respecting the privacy of financial, credit, medical or other information, including without limitation, name, address, telephone number, fax number, electronic mail address or other contact information, geographic locations, IP addresses, MAC addresses, identifiable facial likenesses, social security or insurance numbers, bank account number or credit card numbers, racial or ethnic origin, political opinions, religious or philosophical beliefs, trade or labor union membership, physical or mental health, sexual life, criminal offenses, license plate numbers or any data or unique identifier that could identify any natural person, computer or device, together with any other information about a natural person which is combined with or linked to any of the foregoing information.
- y. **"Privacy and Data Security Standards"** means the privacy and data security standards incorporated herein and attached as Exhibit E, the terms of which may be amended from time to time at Verizon's sole reasonable discretion.
- z. **"Prohibited Activities"** means (1) using any City Data to identify, market to, or otherwise contact an individual or an individual device, including, without limitation, by associating any City Data collected over time with a unique, persistent identifier that is attributable to an identified individual without such individual's consent; (2) combining any City Data with any other information that relates to an identified individual to identify, market to, or otherwise contact such individual or individual device, without such individual's consent; (3) attempting to re-identify any personally identifiable City Data to the extent that such City Data has been anonymized or otherwise de-identified, without such individual's consent, or (4) any violation of the Acceptable Use Policy.

- aa. **“Smart City Solutions” or “Solutions”** means the Hardware Products, Applications, software, cloud platform, and professional service combinations (and all Enhancements thereto), and any other software applications created or provided by Verizon and made available to City and Authorized Users, from Verizon, Verizon Affiliates, and Verizon Partners.
- bb. **“Specific Agreement”** means the Master Attachment Agreement, the Wireline Funding and Reimbursement Agreement, the Wireless Funding and reimbursement Agreement, the Wireline Funding Agreement, any SaaS agreement or other separate agreement that is agreed upon in writing by the Parties subsequently attached hereto and incorporated herein by this reference, including any exhibits, statements of work or amendments thereto.
- cc. **“Term”** means the period of time specified in Section 12 (Term and Termination).
- dd. **“Third Party Application”** means a software Application created and provided by a third Party and is used by City in connection with the Solutions.
- ee. **“Third Party Agreement”** means an agreement entered into by and between City, Verizon, and a third Party pursuant to which such third Party will access and use City Data to provide services to City via a Third-Party Application.
- ff. **“Verizon Materials”** means the Verizon Trademarks, the Verizon Site, Documentation and Verizon Technology.
- gg. **“Verizon Partner”** means a Verizon partner or an authorized reseller of Solutions and/or Hardware Products.
- hh. **“Verizon Site”** means the Verizon web sites (and all Enhancements thereto) located at www.verizon.com, together with such other Web sites owned or maintained by Verizon and its Affiliates and network service providers from time to time.
- ii. **“Verizon Technology”** means any know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, techniques, methods, applications, computer programs, software, firmware, products, lighting or network technology or other technology and materials of any kind, or any Enhancement thereto, including data gathered, processed, or Enhanced by such technology, used by Verizon in connection with the performance of the Solutions, or made available by Verizon to City, any Authorized User or any third Party.
- jj. **“Verizon Trademarks”** means any Verizon trademarks, service marks, trade dress, trade names, corporate names, proprietary logos or indicia and other source or business identifiers.

- kk. **“Wireless Telecommunications Facilities”** means the equipment and associated structures needed to transmit and/or receive electromagnetic signals. A wireless telecommunication facility typically includes antennas, supporting structures, enclosures and/or cabinets housing associated equipment, cable, access roads and other accessory development.

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

**VERIZON BUSINESS NETWORK
SERVICES INC.**

By: _____

Name: Nicola Palmer

Title: Chief Network Engineering Officer

Date: _____

**GTE MOBILNET OF CALIFORNIA
LIMITED PARTNERSHIP, DBA
VERIZON WIRELESS, BY CELLCO
PARTNERSHIP, ITS GENERAL
PARTNER**

By: _____

Name: Nicola Palmer

Title: Chief Network Engineering Officer

Date: _____

THE CITY OF SAN JOSÉ

By: _____

Name: Leland Wilcox

Title: Chief of Staff to City Manager

Date: September 25, 2018

APPROVED AS TO FORM

By: _____

Name: Elizabeth Klotz

Title: Senior Deputy City Attorney

Date: 9/28/18

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

VERIZON BUSINESS NETWORK SERVICES INC.

By: _____

Name: Nicola Palmer

Title: Chief Network Engineering Officer

Date: 9/25/18

GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP, DBA VERIZON WIRELESS, BY CELLCO PARTNERSHIP, ITS GENERAL PARTNER

By: _____

Name: Nicola Palmer

Title: Chief Network Engineering Officer

Date: 9/25/18

THE CITY OF SAN JOSÉ

By: _____

Name: Leland Wilcox

Title: Chief of Staff to City Manager

Date: _____

APPROVED AS TO FORM

By: _____

Name: Elizabeth Klotz

Title: Senior Deputy City Attorney

Date: _____

EXHIBIT A

SMART CITY SOLUTIONS

As of the Effective Date of the Master Agreement, the Parties hereby agree to the terms and conditions contained in this Exhibit A.

1. Solutions

Verizon will provide the following Smart City Solutions to the City: (a) Intersection Safety Analytics Pilot; (b) Parking Optimization Pilot; and (c) Traffic Data Services Pilot. Verizon and City will enter into Service Addendum and Statement of Work that govern both Parties' rights and responsibilities for each Smart City Solution ninety (90) days from the Effective Date of the Agreement.

2. Services

- a. System Design. A Verizon Field Applications Engineer ("FAE") will design a solution that meets the City's needs. This will include the determination of locations for core node sensor pods for environmental and activity sensing. This will also include the determination of locations for video nodes and video sensors to optimize performance. Where there are product options, the best product option will be selected informing the final system bill of materials ("BOM"). The outcome of the design activity is a BOM and an installation instruction indicating the precise mounting location and orientation for all Verizon-provided products. In the case of video nodes, the field of view from each sensor will be estimated and illustrated by superposition on satellite or CAD images from the site, for review and approval by the City.
- b. Site Survey. As part of the design activity, one or more site surveys normally are conducted in order to discover on-site conditions that are not obvious from inspection of maps, CAD drawings and satellite images. Usually one or more of these site visits will be conducted in conjunction with the City and other stakeholders to fully understand needs and expectations. Final locations for product installation are determined. Data such as heights and distances are confirmed, and photographs taken in order to fully document the design for installers. Among the outcomes of the site survey is the final list of installation kits and materials such as cables types and lengths and antenna types. Verizon will design the network to maximize the use of available City structures that can be leveraged in the requested areas of coverage.
- c. Network Approval. Verizon shall be responsible for and shall work with the City on the location and mounting of all network elements, including their appearance and the condition and suitability of the structures where the network elements will be installed (e.g. pole or tenon arm conditions, walls or roof of adjacent buildings, etc.).

- d. Network Installation and Commissioning. Verizon or an experienced Network design company is responsible to ensure each network element is individually provisioned to connect with neighbor network elements on correct operating channels, with anticipated signal strengths, and providing the designed network topology. Verizon will verify overall network performance, including coverage, throughput and latency. Verizon will test fault tolerance, fail-over and recovery scenarios.
- e. Verizon Cloud Infrastructure Set-Up. A Verizon Network Engineer will create and provision the required cloud resources to support the core and video nodes which are not designed to record regular and ongoing operations of City departments subject to Government Code section 34090.6.
- f. Video Node Installation & Commissioning. The Verizon FAE will ensure video nodes and video sensors are properly installed and fully operational. Correct orientation of every video sensor will be confirmed, and initial video streams inspected to ensure proper field of view and image quality. Where adjustments are required, the Verizon FAE will coordinate with the installer to implement the changes. Any Verizon-provided analytics will be configured and verified. The FAE will identify, debug and resolve any video node or video sensor issues working with the electrical contractor, Network Service Provider or other entities as necessary.
- g. Transition. The Verizon FAE will transfer the installation to Verizon's 24/7/365 monitoring service. Among the data transferred is 'as-built' network and product documentation, including equipment identification (serial numbers, product types, MAC addresses) physical locations and photographs, and configuration. This data is entered into Verizon's knowledge base to facilitate rapid problem solving and City support in the future.
- h. Platform Integration. A Verizon network engineer will consult to properly configure the provider's routers and firewalls, to support the needs of Verizon's nodes to communicate with the cloud infrastructure, and to ensure network security best practices are maintained.
- i. Training. Verizon will provide one in-person or WebEx-style training sessions to properly install and physically configure all Verizon-provided products including core nodes, sensor pods, video nodes, video sensors, network elements and accessories. Verizon will also provide detailed, site-specific installation instructions developed during the design and site-survey phases. Verizon will provide a WebEx-style standard training session covering concerning the use and operation of the Solutions once the Solutions are fully commissioned. Verizon will provide standard training to City employees and Authorized Users. All such training will occur either remotely or at a Verizon facility. Additional training sessions can be provided as needed on a fee-for-service basis, which will be agreed upon and set forth in an Amendment.

- j. Turn-Over. The Verizon FAE will close-out the project by transferring a turn-over package to the City documenting what has been installed and where, noting initial settings, and introducing the City to Verizon Partner Support and NetSense Live. Often the turn-over package is presented as part of the City training session. The NetSense service period will begin the month of the delivery of the turn-over package. Upon presentation of the turnover package to the City the project deliverables have been met in full with no further professional services obligation.

3. Access, Availability, Applications, Engineering Personnel, Help and Training.

- a. Authorized Hardware; Hardware Products. Verizon will supply the necessary Authorized Hardware to provide the Solutions. Whether Authorized Hardware has been provided as part of a Verizon trial, or public private partnership, is obtained from a Verizon Partner, or is procured directly by the City, or any combination thereof, the City is solely responsible for acquiring at its own expense any and all additional Hardware Products from Verizon or a Verizon Partner, as well as acquiring any other equipment, facilities and services necessary to access and use the Solutions beyond what is provided under this Agreement. The City is solely responsible for maintaining all Hardware Products unless service and maintenance support is purchased.
- b. Access Credential. Verizon will issue to the City an Access Credential to access and use the Solutions. The City is solely responsible for tracking the Access Credential to specific Authorized Users and for ensuring the security and confidentiality of all Access Credentials. The City acknowledges that it is fully responsible for all liabilities incurred through the use of any Access Credential. The City will immediately notify Verizon of any known unauthorized use of any Access Credential or any other breach of security known to it. Use of any Access Credential other than as provided in this Agreement will be considered a breach of this Agreement by the City.
- c. Applications and Platform. The City may license additional Verizon Applications, collectively part of the Smart Community Solutions, made available through the software-as-a-service ("SaaS") platform. Each Verizon Application and the corresponding application fees shall be indicated in a statement of work or separate SaaS agreement agreed upon in writing by the Parties, subsequently attached hereto and incorporated herein by this reference, and additional Applications may be added by the City through additional statements of work or amendments to the SaaS agreement.
- d. Third Party Applications. The City may license one or more Third Party Applications, subject to Verizon's written consent. The City will provide written notice to Verizon of each of the City's proposed Third-Party Application licenses. Such notice constitutes the City's direction to Verizon to review and determine whether to provide such Third-Party Application provider access. The City acknowledges that in the event that Verizon consents to grant access to such Third-

Party Applications provider, the City is responsible for the actions of each such Third-Party Application provider and shall prohibit the Third-Party Application provider from engaging in any Prohibited Activities. The City acknowledges and agrees that Verizon may charge reasonable access fees to any such Third-Party Application providers in exchange for Verizon providing such providers with access.

- e. Solutions. Verizon will enable Authorized Users of the City to (a) access and use the Solutions, subject and according to the terms of this Agreement, solely for the City's internal use in the regular course of its operations; and (b) use the Documentation as reasonably required in connection with such use.
 - f. Additional Solutions, Hardware. On or before the end of term for any Solution, the City shall determine whether to purchase ongoing Solutions and additional Hardware Products and services related to the Solutions provided hereunder. Any purchase of the Hardware Products and Solutions shall be subject to Verizon's standard purchase order terms and conditions as may be amended from time to time at Verizon's discretion.
4. Performance of Services. Verizon controls the means, methods, places and time of its performance of the Solutions (including the use of subcontractors and consultants). The City acknowledges and agrees that the Solutions may be provided by, and its information accessed and/or stored by, resources located within and outside the United States and consents to such access and storage of its information. The City agrees to cooperate with Verizon in the implementation, evaluation and testing of the Solutions, and the City will provide such assistance and resources as are reasonably necessary to allow Verizon to install, evaluate, and test the Solutions and Product(s). To the extent that onsite work by Verizon resources is required, Verizon will notify the City and abide by the City's reasonable security rules for the site provided in advance to Verizon. The City agrees to provide working space and facilities and any other assistance and support that Verizon may reasonably request in order to perform the Solutions. Verizon is not responsible for any failure or delay resulting from the City's failure to fulfill its obligations under the Agreement in a timely manner.
5. Service Addenda and Statements of Work. Each Solution described above will be provided pursuant to an amendment to the Agreement that may include a service addendum, exhibits and/or a statement of work which set forth additional terms and conditions applicable to the relevant Solution (individually, an "Amendment" and collectively, the "Amendments"). Such Amendments may be entered into after the Effective Date, will be mutually agreed upon by the Parties and will be incorporated by reference or otherwise into the Agreement. The City Manager or his designee is authorized to enter such Amendments without further approval by the City Council.
6. Acknowledgement of Solutions Testing. The City acknowledges Verizon is developing these Solutions in furtherance of the objectives of the Agreement and the Collaboration. The City further acknowledges that the Solutions may contain bugs, defects, and errors and

that the Solutions may not meet the City's requirements or that the use or operation of the Solutions may not be uninterrupted or error-free. Subject to the terms in the SOW, Verizon will make every effort to provide technical support for the Solutions as set forth in the SOW.

7. Delivery of Services. The Solutions may be delivered by Verizon or any of Verizon's Affiliates and their agents and subcontractors. Verizon's Affiliates shall have the right to participate in discussions and otherwise exercise any rights that could be exercised by Verizon in this Agreement.
8. Modification of Smart City Solutions. At any time, the Parties may mutually agree to modify the Solutions provided by Verizon under this Agreement, including changing the location or timing of deployment of individual Solutions or replacing individual Solutions with alternative Smart City solutions offered by Verizon so long as any such modification is of comparable value as determined by the Parties.
9. Follow-On Services. Following the expiration of the applicable term during which each of the Solutions were provided free of charge, the City and Verizon agree that the City may continue to receive the Solutions, subject to availability, at rates and terms to be negotiated by the Parties. The City will give advance written notice no less than sixty (60) days prior to the expiration of each applicable term of the City's intent to enter into negotiation of the rates and terms for the continuation of the aforementioned services.
10. Required On-Going Collaboration and Partnership. Both Parties agree to work closely together from design through deployment and operation of the Solutions and programs set forth above. This will include a significant amount of dialogue and co-creation in order to ensure the Solutions work with the City's existing solutions and that the data generated provides the information required to drive the benefits expected from the Solutions. Verizon will establish baseline metrics for the areas where Solutions are deployed and work collaboratively with the City to evaluate the results and make improvements as needed.

EXHIBIT B

**MASTER NON-EXCLUSIVE INSTALLATION AND PROPERTY USE
AGREEMENT**

**MASTER NON-EXCLUSIVE INSTALLATION AND
PROPERTY USE AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND
GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP, dba VERIZON
WIRELESS, BY CELLCO PARTNERSHIP, ITS GENERAL PARTNER**

This MASTER NON-EXCLUSIVE INSTALLATION AND PROPERTY USE AGREEMENT ("MAA") is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation ("CITY"), and GTE Mobilnet of California Limited Partnership, dba Verizon Wireless, by Cellco Partnership, its general partner, ("COMPANY"), upon mutual execution by CITY and COMPANY (the "EFFECTIVE DATE"). CITY and COMPANY are individually referred to herein as Party and collectively referred to hereinafter as "Parties".

RECITALS

A. **WHEREAS**, CITY owns a number of properties located in and around the City of San José, County of Santa Clara, California. CITY property includes, but is not limited to, real property, fire stations, libraries, convention center and out buildings, community centers, corporation yards, police facilities, light poles, street lights, and other CITY-owned buildings (the "PROPERTY"). For the purposes of this MAA, "PROPERTY" does not include public rights-of-way owned or controlled by CITY, but does include existing improvements owned by the CITY that may lie within the right-of-way, such as light poles and utility cabinets; and

B. **WHEREAS**, COMPANY desires to construct and install, at no cost to CITY, certain small cell wireless equipment and appurtenant structures that utilize up to 125 cubic feet of space on a PROPERTY and have an output of no more than 1200 watts of effective radiated power for the purpose of providing its services consisting of radio and wireless transmission for use by handheld wireless telephones, tablets, mobile computers, global positioning devices and other devices that use a wireless signal for use by the public (collectively, "SERVICES"), and CITY desires to allow the SERVICES in accordance with the terms and conditions contained herein; and

C. **WHEREAS**, both CITY and COMPANY desire to enter into this MAA setting forth the terms and conditions for CITY's granting of rights to use specified PROPERTY for the purposes of installing, maintaining, upgrading, operating and removing telecommunication facilities and associated equipment thereon to provide COMPANY's SERVICES (individually, "ANTENNA FACILITY" and collectively "ANTENNA FACILITIES"); and

D. **WHEREAS**, the ANTENNA FACILITY and location, shall be described in a separate SITE LICENSE AGREEMENT ("SLA") executed for each PROPERTY licensed from CITY by COMPANY, the form of which is attached hereto as **ATTACHMENT 1**; and the specific portion of the PROPERTY licensed and described in the SLA shall be referred to in each case as the "LICENSED AREA"; and

E. **WHEREAS**, this MAA and any SLA entered into in connection with MAA shall only be used for and apply to ANTENNA FACILITIES utilizing up to 125 cubic feet of space and outputting no more than 1200 watts of effective radiated power;

F. **WHEREAS**, this MAA and any SLA entered into in connection with this MAA shall not be used for ANTENNA FACILITIES utilizing more than 125 cubic feet of space and outputting more than 1200 watts of effective radiated power;

G. **WHEREAS**, prior to entering into an SLA for an agreed upon LICENSED AREA, CITY and COMPANY shall agree upon the location of the equipment used within any given LICENSED AREA;

H. **WHEREAS**, Company shall only be permitted to install and operate equipment within the Licensed Area that is approved in each SLA and for which Company has agreed to pay the applicable ATTACHMENT FEE (as defined below);

I. **WHEREAS**, the terms, conditions, representations, warranties and indemnities set forth in this MAA shall be incorporated into each SLA and compliance with such terms, conditions, representations, warranties and indemnities contained herein shall be a condition to the Parties' agreement to enter into any SLA or any renewal or extension thereof;

J. **WHEREAS**, the Parties are concurrently entering into a Master Agreement to facilitate the planning, implementation and management of the accelerated deployment of fiber and associated services as well as the deployment of an advanced small cell wireless network and the implementation of Verizon's smart city solutions, in designated areas of the City (the "MASTER AGREEMENT") and are entering into the MAA pursuant to Section 4.1(a) of the MASTER AGREEMENT.

NOW, THEREFORE, in consideration of their mutual promises, terms, covenants and conditions hereinafter set forth, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

SECTION 1. RIGHT TO USE CITY PROPERTY

A. Right to Use.

CITY hereby grants COMPANY the non-exclusive right to use the LICENSED AREA described in each separate SLA executed by CITY and COMPANY, for the purpose of installing, maintaining and operating an ANTENNA FACILITY for the sole purpose of allowing COMPANY to provide SERVICES approved in each SLA and for no other purpose. As further described in Section 9, COMPANY may "batch" applications to install ANTENNA FACILITIES on multiple CITY PROPERTIES to be concurrently processed by CITY. Each ANTENNA FACILITY shall be memorialized in a single SLA which either Party, at its option, may execute using electronic signature. Any ANTENNA FACILITY installed and operated in any LICENSED AREA licensed to COMPANY pursuant to this MAA shall utilize up to 125 cubic feet of space and shall have an output of no more than 1200 watts of effective radiated power.

B. Access.

1. COMPANY may access a LICENSED AREA Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m. ("Business Hours") to inspect, repair, and maintain an ANTENNA FACILITY located within an unlocked and/or unsecured LICENSED AREA, provided that such access does not interfere with traffic, public safety or public health or unreasonably disturb CITY business or operations conducted on CITY PROPERTY. COMPANY shall provide CITY with at least forty-eight (48) hours prior written notice that COMPANY intends to access CITY PROPERTY (which written notice may be delivered by e-mail or other electronic means to the property manager designated by CITY in the applicable SLA). Notwithstanding any of the foregoing to the contrary, CITY may deny COMPANY access for a reasonable time if CITY, in its sole discretion, determines that such access will interfere with the health, safety or welfare of the public or CITY employees. CITY's PROPERTY MANAGER, as described in the applicable SLA, shall be CITY's contact for these purposes, unless CITY otherwise indicates in writing.
2. COMPANY may access a LICENSED AREA at all other times not described in Section 1.B.1 above and for all other purposes only upon obtaining prior permission from CITY, which permission may be withheld conditioned or delayed in CITY's reasonable discretion.
3. Notwithstanding any of the foregoing in Section 1.B.1 and 2 above to the contrary, COMPANY may enter into a LICENSED AREA to perform Emergency Repairs (defined below) as follows: (i) If the affected ANTENNA FACILITY is not located in a secured or locked area within CITY PROPERTY and such Emergency Repairs will be performed without any additional traffic disruption, will not interfere with the health or safety operations of the CITY and will not interfere with any fire, police, transportation or other health and safety operations, then COMPANY may enter the CITY PROPERTY without permission from CITY to perform such Emergency Repairs, but only after COMPANY provides advance notice to City that COMPANY will enter the CITY PROPERTY for the purpose of performing Emergency Repairs. (ii) If the affected ANTENNA FACILITY is located in a secured or locked area within CITY PROPERTY (whether during Business Hours or any other time), then COMPANY must provide advance notice to CITY and CITY will provide access to the CITY PROPERTY as soon as practicable, but COMPANY may only enter the CITY PROPERTY upon being granted access by CITY. For the purpose of this Section 1.B.3, COMPANY may provide notice by telephone or email at the email address or phone number provided by CITY. For the purpose of this Section 1.B.3, "Emergency Repairs" shall mean repairs to restore SERVICES to the applicable ANTENNA FACILITY within 48 hours after the occurrence of an equipment malfunction, property casualty or other act beyond the control of COMPANY. CITY shall provide COMPANY with the phone number of the PROPERTY MANAGER in the applicable SLA.

4. COMPANY shall allow a representative of the CITY to observe any repair, maintenance or removal work performed within a LICENSED AREA or any other portion of the applicable PROPERTY.
5. COMPANY shall not do, or allow, or cause anything to be done whereby CITY's PROPERTY may be encumbered by a construction lien or any other type of lien. Within forty-five (45) days after receiving notice of any lien filed against CITY's PROPERTY purporting to be for labor or materials furnished to COMPANY, COMPANY shall discharge or bond against such lien of record. Notice is hereby given that CITY will not be liable for any labor or materials furnished to COMPANY on credit and that no construction or other lien for any such labor or materials shall attach to or affect CITY's interest in and to CITY's PROPERTY. COMPANY shall indemnify, defend and hold harmless CITY from all claims, demands costs and liabilities, including reasonable attorney's fees and costs, in connection with or arising out of any such lien or claim of lien. Failure to remove any lien recorded against the PROPERTY within forty-five (45) days of receipt of notice of recordation shall be considered a material breach of the applicable SLA and CITY shall have all available remedies set forth herein or in the applicable SLA.

C. Relocation and Removal.

1. At any time during the term of an SLA, CITY may require the temporary or permanent relocation of an ANTENNA FACILITY to a location designated by CITY. CITY shall coordinate with COMPANY and shall use reasonable efforts to identify an alternative location on CITY PROPERTY that is comparable to the existing LICENSED AREA and CITY and COMPANY shall make reasonable efforts to limit the disruption to COMPANY's SERVICES. CITY will provide no less than one hundred eighty (180) days advance notice prior to any need for any temporary relocation. If the relocation will be permanent, CITY shall provide COMPANY with no less than one (1) year prior written notice that such ANTENNA FACILITY must be permanently relocated. If CITY requests relocation of an ANTENNA FACILITY, COMPANY must remove such ANTENNA FACILITY within ninety (90) days after COMPANY commences construction or installation of any ANTENNA FACILITY at the temporary or alternative permanent location provided by CITY. CITY's Director of Public Works may provide extensions of such time periods in its sole and absolute discretion. If CITY is unable to provide an alternative location acceptable to COMPANY, COMPANY may terminate the SLA applicable to such ANTENNA FACILITY.
2. If, notwithstanding COMPANY's agreement to relocate an ANTENNA FACILITY, COMPANY fails to relocate the specified ANTENNA FACILITY or repair or restore the affected areas of the applicable LICENSED AREA and PROPERTY within the time period specified in this SECTION, as that period may be extended as provided in this SECTION, City's Director of Public Works, in his or her sole discretion and without limitation with respect to any other rights or remedies which he/she may have, may terminate the SLA for the applicable LICENSED AREA and ANTENNA FACILITY, effective no earlier than thirty (30) days after the date of delivery of notice

of termination, and CITY may remove any of COMPANY's property, including the specified ANTENNA FACILITY from the applicable PROPERTY.

3. If CITY removes the specified ANTENNA FACILITY pursuant to this SECTION, COMPANY shall pay to CITY all reasonable costs associated with CITY's removal of such ANTENNA FACILITY, including any storage costs and costs to repair and restore the PROPERTY, including the applicable LICENSED AREA, plus an administrative fee equal to the greater of ten percent (10%) of the total costs incurred by CITY for such removal or five hundred dollars (\$500), within thirty (30) days after receipt by COMPANY of an itemized bill therefor.

D. Title to the ANTENNA FACILITY.

Title to each ANTENNA FACILITY shall be and remain with COMPANY while each such ANTENNA FACILITY is installed and maintained at the applicable PROPERTY in accordance with and in compliance with all of the terms of this MAA and applicable SLA. Notwithstanding any of the foregoing to the contrary, if COMPANY fails to remove an ANTENNA FACILITY within thirty (30) days after expiration or within thirty (30) days after the termination date set forth in any notice of early termination of the period set forth in the applicable SLA, then CITY may remove the ANTENNA FACILITY and store it on behalf of COMPANY at COMPANY'S sole expense.

E. Title to improvements to the PROPERTY.

Notwithstanding **SECTION 1.D** above, title to the infrastructure or utility improvements on or in any PROPERTY or LICENSED AREA required prior to issuance of permits or other approvals by any CITY, County, State or Federal department or agency prior to the placement of an ANTENNA FACILITY on a PROPERTY, including buildings or other structures placed thereon, shall be and remain with CITY and/or shall be deemed the property of CITY. Title to all equipment installed for purposes of operating and providing SERVICES pursuant to this MAA and the applicable SLA shall be and remain with COMPANY. Notwithstanding any of the foregoing to the contrary, if COMPANY fails to remove an ANTENNA FACILITY within thirty (30) days after expiration or within thirty (30) days after the termination date set forth in any notice of early termination of the period set forth in the applicable SLA, then CITY may remove the ANTENNA FACILITY and store it on behalf of COMPANY at COMPANY'S sole expense.

F. No Warranties of Suitability of PROPERTY.

It is COMPANY's election to install and maintain each ANTENNA FACILITY at the applicable PROPERTY and COMPANY does so solely at its own risk. CITY makes no representations or warranties regarding the suitability, condition or fitness of any PROPERTY or LICENSED AREA for the installation, maintenance or use of an ANTENNA FACILITY. COMPANY and CITY acknowledge and agree that existing future improvements, adjacent to or within the proximity of the PROPERTY or LICENSED AREA may interfere, block or degrade any radio or other wireless telecommunications signal

transmitted from such LICENSED AREA by COMPANY and COMPANY expressly waives and releases CITY from any liability or loss that COMPANY may incur as a result thereof.

CITY shall provide written notice to COMPANY prior to entering into any SLA for a LICENSED AREA currently licensed to COMPANY. Thereafter, COMPANY shall cooperate in good faith with the proposed third-party licensor to determine if such LICENSED AREA may be shared or apportioned between COMPANY and the proposed licensor. If COMPANY delivers written notice to CITY within forty-five (45) days that COMPANY believes, in its reasonable discretion, that the LICENSED AREA cannot be shared or apportioned due to frequency interference or frequency degradation that will disrupt the delivery of COMPANY's SERVICES from the LICENSED AREA, then CITY shall not enter into an SLA for such space with the proposed licensor. Such notice shall include a description of the interference or degradation and the signals that are being interfered with or degraded. If COMPANY does not deliver such notice that the LICENSED AREA cannot be shared or apportioned, then CITY may enter into an SLA with such proposed licensor and the releases and waivers set forth in this Section shall be applicable to such LICENSED AREA.

G. Right of CITY Access.

CITY reserves and COMPANY agrees to the right of CITY, its authorized officers, employees, agents or contractors, to enter into and access any LICENSED AREA and PROPERTY at any time for the purpose of conducting CITY inspections, maintenance and repairs (including permitting other parties to use the LICENSED AREA to provide related services). Without limiting the foregoing, CITY and COMPANY agree that CITY may: (1) inspect any PROPERTY, LICENSED AREA and ANTENNA FACILITY for COMPANY's compliance with the terms of this MAA and applicable SLA; (2) make repairs, alterations or additions to any PROPERTY or LICENSED AREA or maintain or use any PROPERTY or LICENSED AREA in any manner not prohibited by the terms of this MAA or applicable SLA, all without a claim by COMPANY for any loss of occupation or use of, or any abatement of, the ATTACHMENT FEE (as defined below) for the applicable LICENSED AREA, provided that such repairs, alterations or additions will not unreasonably interfere with COMPANY's rights under the MAA or applicable SLA. CITY will provide no less than fifteen (15) days' notice to COMPANY prior to commencing any work described in clause (2) above. Notwithstanding anything in this MAA to the contrary, City may access the LICENSED AREA at any time if it is necessary to protect the safety, health or welfare of the public.

SECTION 2. TERM

A. Term of MAA.

The term of this MAA shall commence on the EFFECTIVE DATE set forth above, and shall continue for ten (10) years, expiring at 11:59 p.m. on the day preceding the tenth anniversary of said EFFECTIVE DATE ("INITIAL TERM"). This MAA will automatically renew for an additional term of five (5) years, ("EXTENSION TERM") unless COMPANY provides

written notice of termination to the CITY prior to expiration of the INITIAL TERM, provided however, during the EXTENSION TERM or any ADDITIONAL EXTENSION TERM (as defined below), COMPANY may terminate the MAA at any time upon at least thirty (30) days advance written notice to the CITY. After the EXTENSION TERM, this MAA shall continue in effect until it is terminated by either Party. CITY may terminate the MAA after the EXTENSION TERM by delivery of written notice no less than one (1) year prior to the termination date specified in such notice. The last day of the MAA term shall be hereinafter referred to as the "MAA EXPIRATION DATE". After any such EXTENSION TERM and upon the request of COMPANY, CITY shall enter into discussions with COMPANY to consider an additional extension of the term of the MAA for an additional period of up to fifteen (15) years at the sole discretion of CITY's Director of Public Works ("ADDITIONAL EXTENSION TERM"). After the MAA EXPIRATION DATE, its terms and conditions shall survive and govern with respect to any remaining SLAs in effect until their respective expiration or termination. The termination or expiration of the MAA shall not affect in any way the term of any SLA entered into by the Parties, which SLA term will continue in accordance with its terms and conditions.

One (1) year prior to expiration of the INITIAL TERM, CITY and COMPANY shall meet in good faith to negotiate the USAGE FEE applicable during the EXTENSION TERM and any ADDITIONAL EXTENSION TERM. If the Parties are unable to come to agreement on an alternate fee arrangement, the USAGE FEE during the EXTENSION TERM and any ADDITIONAL EXTENSION TERM shall be as set forth in the City's Small Cell Usage Fee Structure in place at the time of extension provided such fee is consistent with Applicable Law.

B. Term of SLA.

The term of each SLA shall commence on the date specified in the applicable SLA ("SLA EFFECTIVE DATE"), and shall continue for ten (10) years ("SLA INITIAL TERM"), expiring at 11:59 p.m. on the day preceding the tenth anniversary of said SLA EFFECTIVE DATE, unless earlier terminated pursuant to the terms of this MAA. Notwithstanding the foregoing, each SLA shall automatically renew for an additional term of five (5) years, ("SLA EXTENSION TERM") unless COMPANY provides written notice of termination to the CITY prior to expiration of the SLA INITIAL TERM, provided however, COMPANY may terminate any SLA after expiration of the SLA INITIAL TERM upon at least thirty (30) days advance written notice to the City.

SECTION 3. USAGE FEE

A. Charge and Payment.

COMPANY shall pay a usage fee for each PROPERTY ("USAGE FEE") as set forth below.

COMPANY plans to install greater than 2,000 small cells under this Agreement and shall pay a CONTRIBUTION (as defined below) and an ATTACHMENT FEE (as defined below) equivalent to the City's standard usage fee of \$750 based on deployment plans exceeding 2000 small cells. COMPANY will make payment towards, and shall receive

credits against, the USAGE FEES owed for installation of small cells on each PROPERTY via the COMPANY's contribution to the Digital Inclusion Fund, Smart City Solutions and Fleet Connectivity as described in the MASTER AGREEMENT (collectively, the "CONTRIBUTION"). COMPANY's CONTRIBUTION is equivalent to \$575 for each PROPERTY per year for a period of ten (10) years. The difference between COMPANY's CONTRIBUTION and the total Usage Fees owed hereunder is called the ATTACHMENT FEE.

COMPANY shall pay an annual fee of one hundred seventy-five dollars (\$175.00) per year for each PROPERTY upon which COMPANY installs ANTENNA FACILITIES ("ATTACHMENT FEE") during the INITIAL TERM.

The initial payment of the ATTACHMENT FEE shall be due and payable in advance on each SLA EFFECTIVE DATE and shall be prorated for the number of months remaining until June 30th of the current year. Thereafter the ATTACHMENT FEE shall be due and payable in full and in advance on July 1st of each year to coincide with the CITY's fiscal year without offset. COMPANY shall make all payments to CITY at the address below or such other address as CITY may designate in writing upon no less than thirty (30) business days advance notice:

City of San José
Department of Public Works
200 E. Santa Clara Street, 12th Floor
San José, CA 95113

SECTION 4. RIGHT TO USE ONLY APPLICABLE TO CITY PROPERTY; ALL OTHER COSTS PAID BY COMPANY

A. Right to Use Only Applicable to the CITY PROPERTY.

This MAA shall not be construed to permit construction, installation, maintenance or use of an ANTENNA FACILITY on any property other than the LICENSED AREA described in each applicable SLA.

B. All other Costs Paid by COMPANY.

COMPANY acknowledges and confirms that COMPANY is responsible for the design, construction and installation of the ANTENNA FACILITY and any and all infrastructure necessary for the operation and maintenance of each ANTENNA FACILITY. COMPANY shall pay all fees, costs and expenses necessary to construct, operate or maintain each ANTENNA FACILITY, including, without limitation, all construction costs, permit fees, or any other fees and costs arising out of or in connection with the construction, operation or maintenance of the ANTENNA FACILITY. COMPANY acknowledges the waivers made in Section 1.F. above with respect to the suitability of the PROPERTY.

SECTION 5. COMPLIANCE WITH APPLICABLE LAW AND APPROVALS

A. Facility to be Constructed in Accordance with Law.

COMPANY shall construct, install, operate, maintain and remove each and every ANTENNA FACILITY in accordance with all applicable federal, state and local governmental laws, rules and regulations now in existence or as hereafter enacted or amended. Without limiting the foregoing, COMPANY shall obtain, maintain and fully comply with any and all permits or approvals required from CITY (hereinafter the "PERMITS").

B. Telecommunications User's Tax.

COMPANY acknowledges and agrees that CITY requires users of telecommunications services such as the SERVICES to pay to CITY a users' tax pursuant to Chapter 4.70 of Title 4 of the San José Municipal Code, as the same may be amended from time to time. Without limiting the other provisions of this SECTION, COMPANY agrees that COMPANY shall collect from the users of the SERVICES and remit to CITY said telecommunications users' tax all in the manner described in, and in compliance with, Chapter 4.70 of Title 4 of the San José Municipal Code.

C. Licensing and Authorization.

COMPANY represents that it is licensed by the Federal Communications Commission to operate each and every ANTENNA FACILITY and to provide the SERVICES, and COMPANY agrees to provide documentation evidencing such licensing and authorization within thirty (30) business days after receipt of a written request from CITY for such documentation.

D. Data Collection, Storage and Sharing.

COMPANY shall not collect, store, share, sell or distribute any information, data, communications or frequency with any other person, company, government or agency in breach or violation of any State, Federal or local laws applicable to COMPANY.

SECTION 6. MAINTENANCE AND REPAIR

- A. COMPANY shall maintain and repair each and every ANTENNA FACILITY, at no cost to CITY (except as specifically provided otherwise in this MAA), and all damage to the applicable PROPERTY or LICENSED AREA that may result from any relocation or removal of an ANTENNA FACILITY or COMPANY's exercise of any of the rights and privileges hereby granted, including, without limitation, damage to any walls, floors, ceilings, doors or electrical system in the applicable PROPERTY or LICENSED AREA to CITY's reasonable satisfaction. Upon removal of an ANTENNA FACILITY and termination of the applicable SLA, COMPANY shall restore the affected areas of the applicable

PROPERTY to at least as good condition and repair as before COMPANY's use thereof, except for ordinary wear and tear.

- B. COMPANY agrees to and shall: (1) keep each and every ANTENNA FACILITY and applicable LICENSED AREA in neat, clean and orderly condition at all times; (2) not cause rubbish, garbage, debris or graffiti to accumulate or remain on or around any ANTENNA FACILITY, LICENSED AREA or PROPERTY at any time; (3) not commit at, in or around any ANTENNA FACILITY, LICENSED AREA or PROPERTY a violation of any law, regulation, permit or rule; and, (4) not use or allow the use of any ANTENNA FACILITY, LICENSED AREA or PROPERTY for any illegal or immoral purpose, to the extent such ANTENNA, FACILITY, LICENSED AREA OR PROPERTY are within COMPANY's control.
- C. COMPANY shall mark cabling as provided in each PERMIT with identifying ownership markings and identify the antennas with similar ownership markings.
- D. No less than thirty (30) days prior to installation, COMPANY shall submit plans and specifications to the CITY for approval of any proposed cable runs servicing the relevant ANTENNA FACILITIES.

SECTION 7. TERMINATION

- A. CITY Termination of Individual SLA. Except as otherwise provided in this MAA (including in Section 14), CITY shall have the right to terminate any SLA as follows:
 - 1. In the event of a COMPANY Default after the expiration of the applicable notice and cure period; or
 - 2. Immediately on written notice if COMPANY's operation of the subject ANTENNA FACILITY is deemed by CITY to endanger or pose a threat to the public health, safety or welfare or interfere with the normal day-to-day operation of any CITY department or service, including, without limitation, and as an example only, if operation of the ANTENNA FACILITY adversely interferes with, or otherwise adversely affects CITY communications or operations; or
 - 3. Immediately on written notice if CITY is mandated by law, a court order or decision, or the federal, state or local government to take certain actions that will cause or require the removal of an ANTENNA FACILITY from a LICENSED AREA; or
 - 4. Upon one (1) year's prior written notice, if the LICENSED AREA or PROPERTY on which an ANTENNA FACILITY is located is needed for another CITY use or purpose or if CITY intends to sell or decommission the PROPERTY.
- B. COMPANY Termination of Individual SLA. Except as otherwise provided in this MAA (including in Section 14), COMPANY shall have the right to terminate any SLA as follows:

1. Immediately upon written notice if any applications for any applicable certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any federal, state or local authorities (including the Federal Communications Commission ("FCC")) should be finally rejected;
 2. Immediately upon written notice if any applicable Governmental Approval issued to COMPANY is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority;
 3. Immediately upon written notice if COMPANY determines that any applicable Governmental Approvals may not be obtained in a timely manner;
 4. COMPANY determines that the applicable ANTENNA FACILITY is no longer technically compatible for its use;
 5. COMPANY, in its sole discretion, determines that the use of the applicable ANTENNA FACILITY is obsolete or unnecessary, or
 6. In the event of a CITY default after the expiration of the applicable notice and cure period as set forth in SECTION 14 of this MAA and subsections 12.2 (b) through (d) of the MASTER AGREEMENT.
- C. Removal of ANTENNA FACILITY Upon Expiration or Termination. No later than sixty (60) days after receipt of notice of termination or upon expiration of an SLA, COMPANY shall, at its sole cost and expense, remove the applicable ANTENNA FACILITY and repair and restore the affected areas of the LICENSED AREA and PROPERTY as they existed prior to the expiration of the SLA.
- D. Prorated Attachment Fee Reimbursement. In the event of the early termination of any individual SLA by CITY, CITY will reimburse COMPANY the unused portion of the applicable ATTACHMENT FEE(S) after proration and proper computation based on the number of months remaining in the fiscal year of the term for which payment was made in advance by COMPANY.

SECTION 8. NO LIABILITY

A. Liability.

COMPANY hereby waives any right of recovery from and affirmatively releases CITY, its agents, officers, employees or contractors from any and all claims, liabilities, losses, damages or loss of property or revenue from any cause whatsoever to any ANTENNA FACILITY or LICENSED AREA, specifically including, without limitation, damage, if any, resulting from CITY's maintenance operations adjacent to any ANTENNA FACILITY or from vandalism or unauthorized use of any ANTENNA FACILITY or LICENSED AREA, except as such damage is caused by the gross negligence or willful misconduct of CITY, its agents, officers, employees or contractors during the course of performing their official duties.

B. Security.

COMPANY shall take reasonable precautions against damage to or unauthorized use of any ANTENNA FACILITY. CITY shall not be liable for any vandalism or other damage that may occur to any ANTENNA FACILITY or in any LICENSED AREA or any unauthorized use of any ANTENNA FACILITY except as provided in **SECTION 8.A** above.

This **Section 8** shall survive the expiration or termination of this MAA.

SECTION 9. PLANS AND SPECIFICATIONS; PERMITS

- A. The CITY shall have the right of prior review and approval of all Plans and Specifications (the "PLANS"), which approval shall not be unreasonably withheld, conditioned or delayed. COMPANY may "batch" requests to attach ANTENNA FACILITIES (individually an "APPLICATION" and collectively, "APPLICATIONS") for a specific geographic area ("POLYGON"). The CITY may reject an APPLICATION for a single LICENSED AREA or PROPERTY within a POLYGON while approving the APPLICATIONS for the other LICENSED AREAS or PROPERTIES within said POLYGON. The CITY will work with COMPANY to develop, within ninety (90) days of the Effective Date, pre-approved ANTENNA FACILITY design standards ("AFDS") that shall be added to this MAA and incorporated herein by reference. APPLICATIONS that comport with the AFDS shall not require design approval by the CITY and may only be denied for reasons other than failure to comport with the AFDS. CITY shall also have the right to inspect each and every ANTENNA FACILITY at any time during and after installation. COMPANY shall not commence installation or alteration of any ANTENNA FACILITY, or any portion thereof, until CITY has approved the PLANS and COMPANY has obtained all PERMITS and has paid the applicable ATTACHMENT FEE. Approval of PLANS shall not release COMPANY from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained therein. COMPANY shall be responsible for notifying CITY and all other relevant parties immediately upon discovery of such omissions and/or errors.

- B. COMPANY agrees to perform any work in furtherance of the PLANS at COMPANY's sole expense and in accordance with and in a manner CITY is satisfied conforms to PLANS as may be approved by CITY in furtherance of this MAA and applicable SLA.
- C. COMPANY will submit at least one (1) set of PLANS to the CITY at the address set forth for Notices in **SECTION 15** herein, which CITY shall use for the LICENSED AREA and ANTENNA FACILITY descriptions and such approved PLANS shall be attached as an exhibit to the SLA. COMPANY shall supply the CITY any additional information or copies it may request before approving the PLANS.
- D. COMPANY shall apply for and obtain all PERMITS as are required by CITY to perform the work described in this MAA and applicable SLA and shall comply with all of the terms and conditions set forth in its PERMITS, including, without limitation, allowing CITY personnel to inspect the installation of each ANTENNA FACILITY on CITY PROPERTY. COMPANY shall arrange for, obtain and bear costs of all: PERMITS (including without limitation any fees as required by any federal, state or local law, statute, ordinance, rule or regulation); plan check and inspection fees; licenses; environmental impact reports; site preparation; surface treatment and relocation of any facilities on the PROPERTY, as necessary or required for health or safety in the construction or alteration of the PROPERTY. COMPANY may "batch" its permit requests ("REQUESTS") by POLYGON. The CITY may reject a REQUEST for a single LICENSED AREA or PROPERTY within a POLYGON while approving the REQUESTS for the other LICENSED AREAS or PROPERTIES within said POLYGON. As a condition of this MAA, COMPANY agrees to perform the covenants and conditions contained in any PERMIT issued or to be issued to COMPANY for an ANTENNA FACILITY by CITY's Chief Engineer or his/her designees upon CITY's approval of a REQUEST.

SECTION 10. INDEMNIFICATION

COMPANY shall protect, defend, indemnify, and hold harmless CITY, its officers, employees and agents against any claim, loss or liability to the extent it arises from or is related to any damage, injury or loss caused by, or resulting from, the installation, maintenance, operation or use of each and every ANTENNA FACILITY, the provision of SERVICES, or resulting in any way from COMPANY's occupation or use of each and every PROPERTY and LICENSED AREA thereon, including, without limitation, that which is due, in whole or in part, to the willful misconduct or negligent acts (active or passive) or omissions by COMPANY, its officers, employees, consultants or agents. COMPANY's obligation to indemnify and hold harmless excludes only such claim, loss or liability that is due to the sole negligence or willful misconduct of CITY and/or its employees. All of COMPANY's obligations under this SECTION are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this MAA.

In an action or claim against CITY in which COMPANY is defending CITY, COMPANY shall defend CITY at the expense of COMPANY by counsel approved in writing by CITY.

This **SECTION 10** shall survive the expiration or termination of this MAA or any SLA.

SECTION 11. TAXES

- A. COMPANY shall pay, before delinquency, any and all taxes, assessments, licenses, fees and other public charges which may be levied, assessed or imposed upon any of COMPANY's interests herein, upon COMPANY's businesses, upon COMPANY for the privilege of conducting business, or upon any property of COMPANY at a PROPERTY. COMPANY is advised that this MAA and/or individual SLA may, but is not intended to, create a possessory interest in the applicable LICENSED AREA, for which COMPANY may be subject to payment of possessory interest taxes therefore, for which CITY shall not be liable. Payment of any possessory interest tax shall not reduce in any way any charges or other fees required to be paid by COMPANY hereunder.
- B. COMPANY shall not permit or suffer any liens to be imposed upon any PROPERTY or any portion thereof, without promptly discharging the same, provided, however, that COMPANY may, if it so desires, contest the legality of same following prior written notice to CITY. In the event of a contest of a lien, COMPANY shall provide a bond in an amount and in a form acceptable to CITY immediately following request therefore by CITY.

SECTION 12. FREQUENCY INTERFERENCE

- A. COMPANY will not cause, permit or allow the installation, operation, maintenance or use of any ANTENNA FACILITY or any other equipment installed pursuant to this MAA to interfere with: (1) any CITY use of the applicable PROPERTY; (2) CITY equipment used at the applicable PROPERTY; (3) CITY communications; and/or (4) unless approved by such third party, any pre-existing third party uses of the applicable PROPERTY or any other CITY property, including uses of communications equipment, which uses were authorized or planned by CITY prior to the execution of this MAA or individual SLA. Upon written request from CITY, COMPANY shall provide within five (5) business days after request therefor, in writing, to the CITY at the address set forth for notices in **SECTION 15**, herein, the frequencies utilized in the operation of each and every ANTENNA FACILITY. COMPANY shall also provide the CITY, at the same address, with written notice of any intended changes in those frequencies, a description of those frequencies and the dates that those frequency changes are anticipated to occur, at least thirty (30) days prior to the date that those frequency changes are anticipated to occur. COMPANY shall not begin any work on any PROPERTY pursuant to this MAA until these frequencies have been approved in writing by CITY's Chief Information Officer or any other person that may be designated to make such approval by CITY's City Manager.
- B. COMPANY shall ensure that its use of each and every ANTENNA FACILITY does not interfere with any of CITY's public safety transmissions, police and fire communications, CITY's internal or external communications, communications used by CITY, or communications used in connection with the San Jose International Airport. At the request of CITY, COMPANY shall operate each and every ANTENNA FACILITY in such a manner that all communications sent or received by the ANTENNA FACILITY shall be separated from all CITY communications frequencies, including without limitation, CITY communications listed in the preceding sentence, by at least 1 megahertz. If CITY makes

such a request, CITY shall provide COMPANY with a list of the frequencies used by CITY and CITY and COMPANY shall cooperate to ensure there is no interference with CITY's public safety transmissions, police and fire communications, CITY's internal or external communications or any other communications used by CITY. To the extent any after installed CITY communications interferes with any existing ANTENNA FACILITY, CITY and COMPANY shall use best efforts to eliminate such interference. To the extent such interference cannot be eliminated, COMPANY shall have the right to terminate the applicable SLA and CITY shall return the pro-rated remainder of the ATTACHMENT FEE.

- C. If COMPANY's construction, installation, maintenance, operation, use or removal of an ANTENNA FACILITY violates this provision, COMPANY shall immediately eliminate such violation or interference, provided however, if interference occurs and continues for a period in excess of 48 hours following notice to COMPANY via telephone to COMPANY's Network Operations Center at (800) 621-2622, COMPANY shall reduce power or cease operations of the interfering equipment until the interference is cured, with the exception of operations necessary to test and/or cure the interference. CITY may, in addition to and without compromising any other remedy available to CITY, immediately cut off power to the facility in the manner set forth in **SECTION 13** below if there is a reasonable concern that such interference is a danger to the health, safety or welfare of the public. CITY shall immediately provide notice to COMPANY of any interference or the exercise of CITY's shut off rights pursuant to this SECTION, provided, however, if there is no danger to the health, safety or welfare of the public, then CITY and COMPANY will cooperate to eliminate such interference and CITY shall not terminate or cut off of power to the ANTENNA FACILITY.
- D. COMPANY shall use its best efforts to operate its communications equipment in a manner that is consistent with all applicable frequencies assigned to it by the FCC, if any, and in compliance with all applicable FCC rules and regulations.

SECTION 13. EMERGENCY

- A. COMPANY understands that emergency situations may develop from time to time that require power to an ANTENNA FACILITY to be shut off. Notwithstanding **SECTION 12**, COMPANY agrees that in the event that such a situation occurs, and there are frequency interferences of any nature between CITY's communication equipment and that of COMPANY, CITY shall have the right to shut off immediately any power to the applicable ANTENNA FACILITY and any equipment of COMPANY's located on the applicable PROPERTY for the duration of the emergency. Prior to exercising such shut off right, CITY shall provide telephone notice to COMPANY by calling COMPANY's Network Operations Center at (800) 621-2622 to give COMPANY an opportunity to immediately disconnect the applicable ANTENNA FACILITY. COMPANY agrees not to hold CITY responsible or liable for and shall protect, defend, indemnify and hold CITY harmless pursuant to **SECTION 10** for any damage, loss, claim or liability of any nature suffered as a result of the loss of the use of the applicable ANTENNA FACILITY or other communication facilities at the applicable PROPERTY or affected by the power outage at the PROPERTY. For the duration of the emergency, COMPANY may request to place a temporary communication

facility on the PROPERTY so long as the temporary communication facility does not interfere with the subject emergency situation.

- B. COMPANY agrees to install a master power "cut-off" switch on their equipment at each and every ANTENNA FACILITY for the purpose of assisting CITY in such an emergency.
- C. Unless otherwise specifically provided in a notice of termination of this MAA, CITY's exercise of the right to shut off any power to any ANTENNA FACILITY pursuant to this SECTION is not intended to constitute a termination of this MAA or applicable SLA by either Party. COMPANY and CITY shall meet after the CITY determines that an emergency situation has ended to establish the time and manner in which power shall be restored to the applicable ANTENNA FACILITY.
- D. CITY shall have the right to determine what constitutes an "emergency situation" pursuant to this SECTION.

SECTION 14. DEFAULT

- A. COMPANY Default. Except as otherwise specifically set forth in this MAA or each applicable SLA, if: (i) COMPANY shall fail to pay the ATTACHMENT FEE or other monies due under any SLA after the same are due, and such failure shall continue for thirty (30) days after receipt of written notice thereof to COMPANY, or (ii) COMPANY shall fail to perform any other term, covenant, or condition contained herein or in any SLA, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless COMPANY shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity, or (iii) COMPANY's interest in this MAA or in any SLA or any part of this MAA or any SLA is assigned or transferred, either voluntarily or by operation of law, without permission of CITY when such permission is required by the terms of this MAA or the applicable SLA, whether by judgment, statute, operation of law, execution, death or any other means, or (iv) COMPANY shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against COMPANY and such petition remains undischarged for a period of ninety (90) days; or if any receiver of the business or of the property or assets of COMPANY shall be appointed by any court (except a receiver appointed at the instance or request of CITY) and COMPANY fails to obtain dissolution of the receiver within ninety (90) days after appointment of the receiver; or (v) COMPANY shall make a general or any assignment for the benefit of its creditors; then in any of such events CITY shall provide COMPANY notice and a right to cure as set forth in subsections 12.2 (b) through (d) of the MASTER AGREEMENT and shall have the following options, in addition to any other remedies available to CITY at law or in equity:
 - 1. Continue this MAA and/or the applicable SLA and recover the ATTACHMENT FEE or any other monies from COMPANY as it may become due.
 - 2. Terminate the applicable SLA(s), and all rights of COMPANY hereunder by giving written notice to COMPANY of such intention to terminate, in which event CITY may recover from COMPANY:

- (a) Any unpaid ATTACHMENT FEES or other monies due to CITY that had been earned at the time of such termination; plus
- (b) Any other amount necessary to compensate CITY for all the detriment directly and/or proximately caused by COMPANY's failure to perform its obligations under the applicable SLA(s), or which in the ordinary course of events would be likely to result therefrom, including, without limitation, all costs and expenses reasonably incurred by CITY in (i) retaking possession of the LICENSE AREA, including reasonable attorney fees; (ii) maintaining or preserving the LICENSED AREA; and (iii) preparing the LICENSED AREA for a new licensee, including repairs or alterations to the LICENSED AREA or the CITY PROPERTY in connection therewith; plus
- (c) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

B. Except as otherwise provided in this MAA (including in Section 14), COMPANY shall have the right to terminate any SLA in the event of a CITY default after the expiration of the applicable notice and cure period as set forth in subsections 12.2 (b) through (d) of the MASTER AGREEMENT.

SECTION 15. NOTICES

Except as otherwise specifically set forth and allowed under this MAA, all notices herein required to be given or which may be given by either Party to the other shall be deemed to have been fully given when served personally on CITY or COMPANY, or when made in writing and deposited in the United States Mail, certified mail, return receipt requested, through electronic mail, postage prepaid and addressed as follows:

To CITY: City of San José
Department of Public Works
200 E. Santa Clara Street 12th Floor
San José, CA 95113

With a copy to: Office of the City Attorney
City of San José
200 E. Santa Clara Street
San José, CA 95113-1905
Attn: Real Estate Attorney

To COMPANY: Northern California Engineering Director
Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

With a copy (except for invoices) to:

Verizon Wireless
15501 Sand Canyon Avenue
Irvine, CA 92618
Attn: Market General Counsel

Either Party may change its address for notice by notifying the other Party in the manner provided in this SECTION.

SECTION 16. RIGHT TO USE SUBORDINATE

The right to use any LICENSED AREA herein granted by CITY to COMPANY, and all rights and privileges hereunder, are and shall at all times be subordinate to the rights of CITY to all mortgages, trust deeds and other financing and security instruments that may now or hereafter exist on the PROPERTY or LICENSED AREA, and to other existing tenants to use and occupy, and to any occupancy by them of, the applicable PROPERTY and LICENSED AREA thereon. COMPANY's right to install, maintain and operate an ANTENNA FACILITY, or to remove an ANTENNA FACILITY, shall be subject at all times to such rights as CITY may have to require the removal or relocation of the subject ANTENNA FACILITY at the sole cost and expense of COMPANY, under the terms stated in SECTION 1 of this MAA.

SECTION 17. ASSIGNMENT

COMPANY shall not voluntarily or by operation of law, directly assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of COMPANY's interest in this MAA, any SLA or any LICENSED AREA (collectively, an "Assignment"), without CITY's prior written consent, which will not be unreasonably withheld, delayed or conditioned. Any Assignment of the MAA or any SLA pursuant to any court order, administrative proceeding or a settlement thereof ("Court Ordered Assignment") shall be deemed approved by CITY. The USAGE FEE shall automatically be adjusted to CITY's rates in effect as of the effective date of such Assignment except where an assignment is an AFFILIATE/SUCCESSOR ASSIGNMENT as defined below. Except for a Court Ordered Assignment, CITY shall not approve an Assignment to any entity that has not entered into a master agreement with CITY and CITY may require any assignee, successor, transferee or sublessee (collectively, "Assignee") to execute a new SLA for each Licensed Area assigned, sublet or transferred. Any Assignee (including an Assignee pursuant to a Court Ordered Assignment) shall become directly liable to CITY for all obligations of COMPANY and shall be bound by the terms and conditions under this MAA and applicable SLA. After the Assignment of the MAA or any SLA, COMPANY shall remain liable for the performance of all obligations owed to CITY under the MAA and each SLA that existed or accrued prior to the date of the Assignment. Notwithstanding the foregoing, COMPANY shall be permitted, without CITY's prior consent, to assign, transfer, or otherwise convey or encumber this MAA, or any SLA to any entity which (i) shall control, be under the control of, or be under common control with COMPANY; (ii) is a successor to COMPANY either by merger or other consolidation of COMPANY; or (iii) acquires all or substantially all of the COMPANY's assets in the market defined by the FCC in which the ANTENNA FACILITY (collectively, "AFFILIATE/SUCCESSOR ASSIGNMENT") is located, provided that such entity is bound by all of the terms and conditions of this MAA. COMPANY

shall provide CITY notice of any such assignment within a reasonable period of time after the consummation thereof.

SECTION 18. GOVERNING LAW

This MAA shall be construed by, and in accordance with, the laws of the State of California.

SECTION 19. NO INTEREST IN PROPERTY

Nothing herein shall be deemed to create a lease, or grant an easement of any property, or to grant any interest in any PROPERTY, other than a real property license to use the applicable LICENSED AREA, revocable as set forth herein.

SECTION 20. INSPECTION/BOOKS AND RECORDS

COMPANY agrees to make information regarding the equipment listed on each SLA or otherwise used in the operation of the ANTENNA FACILITY to CITY, including, without limitation, information regarding FCC approvals, power consumption, signal output, signal strength, effective radiated power and RF power output. COMPANY shall deliver such information within ninety (90) days after written request therefore. CITY may request that such information be delivered in a summary fashion and/or delivered in a readable electronic format.

SECTION 21. UTILITIES

COMPANY shall be solely responsible for ensuring that each and every LICENSED AREA has adequate electrical power and any other utility service necessary or useful to operation of each and every ANTENNA FACILITY. COMPANY shall install separate meters for utilities. CITY is not obligated to make electricity or other utilities available to COMPANY. COMPANY shall contract with or arrange for utility service to the LICENSED AREA directly with the local utility provider. CITY shall cooperate with COMPANY, at no cost to CITY, to assist COMPANY in obtaining the utility service COMPANY requires. COMPANY shall not do, nor shall it permit anything to be done, which may interfere with the effectiveness or accessibility of the utility, heating, ventilation, diesel exhaust or air conditioning systems or portions thereof of any PROPERTY.

SECTION 22. NOT AGENT OF CITY

Neither anything in this MAA nor any acts of COMPANY shall authorize COMPANY or any of its employees, agents or contractors to act as agent, contractor, joint venturer or employee of CITY for any purpose.

SECTION 23. RESERVATION OF RIGHTS

COMPANY understands, acknowledges and agrees that any and all authorizations granted to COMPANY under this MAA and/or individual SLA are nonexclusive and shall remain subject to all prior and continuing regulatory and proprietary rights and powers of CITY to regulate, govern and use CITY property, as well as any existing encumbrances, deeds, covenants, restrictions,

easements, dedications and other claims of title that may affect CITY property. CITY and COMPANY agree that nothing contained in, or contemplated by, this MAA and/or individual SLA is intended to confer, convey, create or grant to COMPANY any perpetual interest in any CITY property or in any of CITY's public rights of way.

SECTION 24. CONFLICT OF INTEREST

COMPANY shall avoid all conflict of interest or the appearance of conflict of interest in the performance of this MAA and/or individual SLA.

SECTION 25. GIFTS

- A. COMPANY is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. COMPANY agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this MAA by COMPANY. In addition to any other remedies CITY may have in law or equity, CITY may terminate individual SLA(s) for such breach as provided in **SECTION 7** of this MAA.

SECTION 26. DISQUALIFICATION OF FORMER EMPLOYEES

COMPANY is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters, which are connected with former or official responsibilities as set forth in Chapter 12.10 of Title 12 of the San José Municipal Code ("Revolving Door Ordinance"). COMPANY shall not utilize either directly or indirectly any officer, employee, or agent of COMPANY to perform services under this MAA, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 27. MISCELLANEOUS

- A. This MAA, which hereby incorporates by reference the terms and conditions of the Master Agreement, contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest. Unless otherwise specified herein to the contrary, the City Manager, or his or her designee, shall have authority to give any approvals, disapprovals hereunder on behalf of CITY, including without limitation any amendments of this MAA that do not require additional CITY appropriation and any adjustments to the Schedule of ATTACHMENT FEES in accordance with this MAA.

- B. Whenever the singular number is used in this MAA and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- C. If there be more than one entity designated in, or signatory to, this MAA, the obligations hereunder imposed upon COMPANY shall be joint and several; and the term COMPANY as used herein shall refer to each and every of said signatory parties, severally as well as jointly.
- D. Time is, and shall be, of the essence for each term and provision of this MAA.
- E. Each and every term, condition, covenant and provision of this MAA is and shall be deemed to be a material part of the consideration for CITY's entry into this MAA and any breach hereof by COMPANY shall be deemed to be a material breach. Each term and provision of this MAA performable by COMPANY shall be construed to be both a covenant and a condition.
- F. The headings of the several paragraphs and sections of this MAA are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this MAA and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- G. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either CITY or COMPANY in its respective rights and obligations contained in the valid covenants, conditions and provisions of this MAA.
- H. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this MAA as if set forth fully herein.
- I. This MAA shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party.
- J. Days, unless otherwise specified, shall mean calendar days. The term "business day" shall mean any calendar day that is not a Saturday, Sunday or legal holiday recognized by the Federal Reserve Bank or the City of San José.
- K. Whenever in this MAA the approval or consent of a Party is required, such approval or consent must be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent unless the terms of this MAA specifically allow an oral approval or consent of a Party.

- L. This MAA may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- M. The persons who have executed this MAA represent and warrant that they are duly authorized to execute this MAA in their individual or representative capacity as indicated.
- N. In the event of a conflict between the terms and conditions contained in this MAA and the terms and conditions contained in an individual SLA entered into hereunder, the terms and conditions of the SLA shall supersede.
- O. In computing the time periods within which a right may be exercised or an act is to be performed, such period shall begin on the first day following the last day of such preceding event or delivery, except if the first day is not a business day, in which case the first day of such period shall be deemed to end at 5:00 p.m. California time.


[Signatures on the Following Page]

IN WITNESS WHEREOF, the Parties have executed this MAA as of the EFFECTIVE DATE.

APPROVED AS TO FORM

Office of the City Attorney

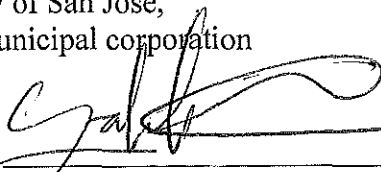
APPROVED:

By: 
Name: Elizabeth Klotz
Title: Senior Deputy City Attorney

Date: 9/25/18

"CITY"

City of San José,
a municipal corporation

By: 
Name: Leland Wilcox
Title: Chief of Staff to City Manager

Date: September 25, 2018

"COMPANY"

GTE Mobilnet of California Limited
Partnership, dba Verizon Wireless, by Cellco
Partnership, its general partner

By: _____
Name: Nicola Palmer
Title: Chief Network Engineering Officer

Date: _____

IN WITNESS WHEREOF, the Parties have executed this MAA as of the EFFECTIVE DATE.

APPROVED AS TO FORM

“CITY”

City of San José,
a municipal corporation

Office of the City Attorney

By: _____
Name: Leland Wilcox
Title: Chief of Staff to City Manager

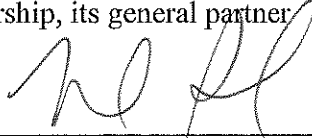
Date: _____

APPROVED:

“COMPANY”

GTE Mobilnet of California Limited
Partnership, dba Verizon Wireless, by Cellco
Partnership, its general partner

By: _____
Name: Elizabeth Klotz
Title: Senior Deputy City Attorney

By:  _____
Name: Nicola Palmer
Title: Chief Network Engineering Officer

Date: _____

Date: 9/25/18

ATTACHMENT 1

FORM SITE LICENSE AGREEMENT

This Site License Agreement (the "SLA") is made this _____ day of _____, 20____ by and between the CITY OF SAN JOSE, a municipal corporation ("CITY"), and _____, a _____, ("COMPANY") pursuant to that certain MASTER NON-EXCLUSIVE INSTALLATION AND PROPERTY USE AGREEMENT dated _____ 20____ between the parties (the "MAA").

All of the terms and conditions of the MAA are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the MAA. In the event of any contradiction, modification or inconsistency between the terms of the MAA and this SLA, the terms of this SLA shall prevail. Capitalized terms used in this SLA shall have the same meaning described for them in the MAA unless otherwise indicated herein.

Company Name: _____

Company Site ID: _____

Site Location (Address or Intersection): _____

APN: _____

Location Description and Maps: See Attachment A-1

Construction Drawing: See Attachment A-2

Equipment List for ANTENNA FACILITY: See Attachment A-3

Equipment Category: _____

CITY Contact Information:

City of San José
Real Estate Services
200 E. Santa Clara Street 12th Floor
San José, CA 95113
(408) 975-7400
cityownedproperties@sanjoseca.gov

COMPANY Contact Information: _____

Certificate of Insurance: See Master Agreement Exhibit H.

CITY

COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

For City Use Only

Zone: _____ Equipment Size: _____

USAGE FEE Classification: _____

SLA Effective Date: _____ Initial Payment Amount Due: _____

Additional Provisions: _____

ATTACHMENT A-1

LOCATION DESCRIPTION AND MAPS

[Insert location description, parcel map, and aerial map here]

ATTACHMENT A-2

CONSTRUCTION DRAWING

[Insert construction drawing here]

ATTACHMENT A-3

EQUIPMENT LIST FOR ANTENNA FACILITY

[Insert equipment for antenna facility list here]

EXHIBIT C-1

WIRELESS FUNDING AND REIMBURSEMENT AGREEMENT

**WIRELESS FUNDING AND REIMBURSEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND
GTE Mobilnet of California d/b/a Verizon Wireless FOR PERMITTING AND
PROCESS IMPROVEMENT COSTS
RELATED TO THE PERMITTING OF WIRELESS FACILITIES ON CITY
OWNED ASSETS IN THE PUBLIC RIGHT OF WAY**

This FUNDING AND REIMBURSEMENT AGREEMENT ("AGREEMENT") is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("CITY"), and GTE Mobilnet of California Limited Partnership, d/b/a Verizon Wireless, by Celco Partnership, its general partner, ("COMPANY"), by mutual execution by CITY and COMPANY ("EFFECTIVE DATE").

RECITALS

WHEREAS, COMPANY intends to place wireless network facilities on CITY owned assets and in the public right-of-way, subject to receiving required permits from City;

WHEREAS, the Parties are concurrently entering into a Master Agreement to facilitate the planning, implementation and management of the accelerated deployment of fiber and associated services as well as the deployment of an advanced small cell wireless network and the implementation of Verizon's smart city solutions, in designated areas of the City (the "MASTER AGREEMENT") and are entering into this AGREEMENT pursuant to Section 4.1(f) of the MASTER AGREEMENT;

and

WHEREAS, COMPANY and CITY are entering into this AGREEMENT for the purpose of COMPANY depositing with CITY certain funds (as specified below) that CITY may draw upon when processing COMPANY'S permit applications.

NOW, THEREFORE, subject to the terms, provisions and conditions hereinafter set forth, the parties hereto agree as follows:

1. Payment of Funds.

- 1.1 Payment of CITY's Costs.** COMPANY shall advance funds to pay for CITY's permitting costs ("CITY's COSTS"), including costs incurred by CITY's contractors and staff, for processing permits ("WORK") for COMPANY's wireless network construction in the CITY ("NETWORK CONSTRUCTION").

1.2 Payment Schedule.

- 1.2.1 Payment. COMPANY shall make an initial payment to CITY in the amount of Two Hundred Fifty-Thousand and No/100 Dollars (\$250,000.00) ("Payment") to pay for CITY's COSTS for the WORK. The Payment shall be made within thirty (30) days following full execution and delivery of this AGREEMENT by CITY and COMPANY. CITY will provide COMPANY notice within ten (10) calendar days when COMPANY's funds in the Account are depleted below twenty percent (20%) of the initial Payment or any replenishment Payment and additional permitting fee funds will be required. The Payment shall also be used for payment of individual permit fees for the WORK.

CITY and COMPANY agree that in the event of expiration or any early termination of this AGREEMENT, any such amount of the Payment not actually expended by CITY for the WORK shall be reimbursed to COMPANY in accordance with the terms and conditions of this AGREEMENT.

1.3 Accounting.

- 1.3.1 The CITY will establish a Billing Account ("Account") to which costs incurred pursuant to this AGREEMENT will be charged. CITY will bill work against the Account at hourly rates based on CITY's direct costs for the work, including, but not limited to salaries, benefits, overhead and other administrative expenses, as reflected in the applicable CITY department's schedule of fees and charges approved by City Council resolution and in effect at the time of billing. Costs of any contractors hired by CITY in connection with the scope of the WORK shall be billed at the rate actually incurred by CITY, without any markups. In no event shall any such cost or expense exceed the Payment agreed to hereunder without the prior written consent of COMPANY which consent may be withheld in COMPANY's sole discretion.
- 1.3.2 The CITY will keep records of all funds advanced by COMPANY pursuant to this AGREEMENT and of all expenditures of such funds. CITY will provide such records to COMPANY at no additional cost to COMPANY in the form of a quarterly computer printout summarizing the deposits and charges to the Account, or if requested by COMPANY, CITY will provide such records to COMPANY at no additional cost to COMPANY within fifteen (15) business days of such request, such request not to be made more often than once per month. Within thirty (30) calendar days following the date of expiration or earlier termination of this AGREEMENT pursuant to Section 4 (Termination and Expiration) below, CITY will submit to COMPANY a final written accounting of the Account and promptly refund to COMPANY any unused amounts at that time pursuant to Section 1.4 (Refunds) below. The foregoing CITY covenant will survive the expiration or earlier termination of this AGREEMENT.

1.4 Refunds.

- 1.4.1 If this AGREEMENT expires or is terminated as provided herein, the balance of the Payment made by COMPANY that is not required to pay for CITY'S COSTS already incurred by CITY in accordance with this AGREEMENT prior to the expiration date or the date of the termination notice, shall be refunded to COMPANY within thirty (30) calendar days of the final accounting pursuant to Section 1.3.2 of this AGREEMENT.

1.5 Interest.

- 1.5.1 Interest shall not accrue on any Payment and shall not be paid by CITY in refunding a Payment or any portion thereof.

2. Commitment by CITY.

- 2.1 COMPANY acknowledges and understands that this AGREEMENT is only for the purpose of providing a funding mechanism to allow CITY staff and CITY contractors to perform necessary tasks connected with expedited permitting of the NETWORK CONSTRUCTION. COMPANY agrees and acknowledges that this AGREEMENT in no way commits CITY to approving non-compliant encroachment permit requests. CITY agrees and acknowledges that it will process permit requests for the NETWORK CONSTRUCTION in an efficient manner pursuant to the requirements of Section 4.1 of the MASTER AGREEMENT which are incorporated herein by reference.

3. Procurement of Contractors.

- 3.1 For WORK to be paid from the Payment, CITY may select and retain the services of a contractor or contractors ("Selected Contractor") to conduct one or more portions of the WORK, subject to COMPANY's approval which approval shall not be unreasonably withheld. The Selected Contractor may engage subcontractors as approved and deemed appropriate by CITY and COMPANY. CITY shall direct and control the Selected Contractor's services and determine the scope of the WORK to be performed by CITY staff and the Selected Contractor and Selected Contractor(s) will work under the direct supervision of CITY staff. A Selected Contractor will not be hired for or allowed to perform services related to process improvement, code revision or other consulting-type services. CITY shall work together with COMPANY to utilize COMPANY expertise and consulting to create technical solutions that efficiently minimize costs and expenses contemplated hereunder.

4. Termination and Expiration.

- 4.1 This AGREEMENT shall expire upon the date of the completion of the NETWORK CONSTRUCTION, as such NETWORK CONSTRUCTION may be revised from time to time pursuant to the terms and conditions this AGREEMENT, but in no event later than the expiration or earlier termination of the MASTER AGREEMENT.

4.2 Either COMPANY or CITY may terminate this AGREEMENT for any reason or no reason by delivering to the other party twenty (20) calendar days' advance written notice of election to terminate. COMPANY's obligations to reimburse CITY for any outstanding amounts due, however, shall survive, and remain enforceable after, the termination or expiration of this AGREEMENT. In the event of termination or expiration of this AGREEMENT, CITY shall refund to COMPANY a pro rata portion of the Payment pursuant to Section 1.4 (Refunds) above.

5. **Indemnification.** COMPANY shall protect, defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising from or related to any damage, injury or loss caused by, or resulting from this AGREEMENT, including, without limitation, that which is due, in whole or in part, to the willful misconduct or negligent acts (active or passive) or omissions by COMPANY, its officers, employees, consultants or agents. COMPANY's obligation to indemnify and hold harmless excludes only such claim, loss or liability that is due to the sole negligence or willful misconduct of CITY and/or its employees. All of COMPANY's obligations under this Section 5 are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this AGREEMENT. In an action or claim against CITY in which COMPANY is defending CITY, COMPANY shall defend CITY at the expense of COMPANY by counsel reasonably acceptable to CITY as approved in writing by CITY. This Section 5 shall survive the expiration or termination of this AGREEMENT.

6. **Default.** Except as otherwise specifically set forth in this AGREEMENT, if: (i) COMPANY shall fail to pay the Payment or other monies due under this AGREEMENT after the same are due, and such failure shall continue for fifteen (15) days after receipt of written notice thereof to COMPANY; or (ii) COMPANY shall fail to perform any other term, covenant or condition contained herein, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless COMPANY shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity; or (iii) COMPANY's interest in this AGREEMENT or any part of this AGREEMENT is assigned or transferred, either voluntarily or by operation of law, without permission of CITY when such permission is required by the terms of this AGREEMENT, whether by judgment, statute, operation of law, execution, death or any other means; or (iv) COMPANY shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against COMPANY and such petition remains undischarged for a period of ninety (90) days; or if any receiver of the business or of the property or assets of COMPANY shall be appointed by any court (except a receiver appointed at the instance or request of CITY) and COMPANY fails to obtain dissolution of the receiver within ninety (90) days after appointment of the receiver; or (v) COMPANY shall make a general or any assignment for the benefit of its creditors; then in any of such events CITY shall have the following options, in addition to any other remedies available to CITY at law or in equity:

- (a) To continue this AGREEMENT and recover the Payment or any other monies from COMPANY as it may become due.

(b) To terminate this AGREEMENT, and all rights of COMPANY hereunder by giving written notice to COMPANY of such intention to terminate, in which event CITY may recover from COMPANY:

- 1 Any unpaid Payment or other monies due to CITY that had been due and payable at the time of such termination; plus
- 2 Any other amount necessary to compensate CITY for all the detriment directly and/or proximately caused by COMPANY's failure to perform its obligations under this AGREEMENT, or which in the ordinary course of events would be likely to result therefrom; plus
- 3 Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

Notwithstanding anything to the contrary contained in this Section 6 and in addition to any late fee that becomes due as provided above, COMPANY shall be charged a late charge equal to the greater of \$100 per occurrence or five percent (5%) of the amount that is past due (the "LATE CHARGE") for any monetary default of COMPANY under this AGREEMENT.

7. Miscellaneous Provisions.

7.1 Notices. All notices to be given hereunder shall be in writing and shall be served, either personally or by United States mail, certified or registered, postage prepaid, return receipt requested to the addresses set forth below, or to any other address provided by one party to the other in writing.

To CITY: City of San José
Office of Civic Innovation, Attn: Dolan Beckel
200 E. Santa Clara Street, 17th Floor Tower
San José, CA 95113

To COMPANY: Northern California Engineering Director
Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

With a copy (except for invoices) to:

Verizon Wireless
15501 Sand Canyon Avenue
Irvine, CA 92618
Attn: Market General Counsel


Such written notice shall to be effective when properly sent and received, refused or returned undelivered.

- 7.2 **Entire Agreement.** This AGREEMENT contains the entire understanding between the parties with respect to the subject matter herein. This AGREEMENT supersedes any and all prior representations, agreements, arrangements or understandings (whether oral or written) between or among the parties relating to the subject matter of this AGREEMENT. This AGREEMENT may not be amended except pursuant to a written instrument signed by all parties.
- 7.3 **Assignment.** COMPANY shall not assign any interest in this AGREEMENT and shall not transfer any interest in the same (whether by assignment or notation), without the prior written approval of CITY; provided that COMPANY may assign any interest in this AGREEMENT only to (i) any entity that is an affiliate of COMPANY, or (ii) to any entity that acquires all or substantially all of the COMPANY's assets that are subject to this AGREEMENT.
- 7.4 **Waiver.** [Intentionally Omitted].
- 7.5 **Applicable Law and Venue.** This AGREEMENT shall be governed by and interpreted in accordance with the laws of the State of California. In the event that suit shall be brought by either party to enforce or interpret the terms of this AGREEMENT, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- 7.6 **No Third Party Beneficiaries.** This AGREEMENT shall not be construed as, or deemed to be an AGREEMENT for the benefit of, any third party or parties; and no third party or parties shall have any right or action hereunder for any cause whatsoever.
- 7.7 **No Joint Venture.** Neither this AGREEMENT, nor the reimbursements made hereunder, shall constitute or create any form of association, joint venture, partnership or cooperative activity of any nature whatsoever for any purpose between CITY and COMPANY.
- 7.8 **Counterparts.** This AGREEMENT may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same AGREEMENT. The persons executing this AGREEMENT are duly authorized to execute this AGREEMENT in their individual or representative capacity as indicated.
- 7.9 **Severability.** If any provision of this AGREEMENT shall be determined to be invalid by any court of competent jurisdiction, the remaining portions of this AGREEMENT shall remain in full force and effect.

[Remainder of page intentionally left blank; signature page to follow.]

WITNESS THE EXECUTION HEREOF as of the EFFECTIVE DATE.

APPROVED AS TO FORM:



ELIZABETH KLOTZ

Senior Deputy City Attorney

Date 9/25, 2018

“CITY”

CITY OF SAN JOSE,
a municipal corporation

By 

NAME: LELAND WILCOX

TITLE: Chief of Staff to City Manager

Date September 25, 2018

“COMPANY”

GTE Mobilnet of California Limited Partnership
d/b/a Verizon Wireless, by Cellco Partnership, its
general partner

By: _____

Name: NICOLA PALMER

Title: Chief Network Engineering Officer

Date: _____, 2018

WITNESS THE EXECUTION HEREOF as of the EFFECTIVE DATE.

APPROVED AS TO FORM:

"CITY"

CITY OF SAN JOSE,
a municipal corporation

ELIZABETH KLOTZ
Senior Deputy City Attorney
Date _____, 2018

By _____
NAME: LELAND WILCOX
TITLE: Chief of Staff to City Manager
Date _____, 2018

"COMPANY"

GTE Mobilnet of California Limited Partnership
d/b/a Verizon Wireless, by Cellco Partnership, its
general partner


By: 
Name: NICOLA PALMER
Title: Chief Network Engineering Officer
Date: 9/25, 2018

EXHIBIT C-2

WIRELINE FUNDING AND REIMBURSEMENT AGREEMENT

**WIRELINE FUNDING AND REIMBURSEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND
MCIMETRO ACCESS TRANSMISSION SERVICES CORP.
D/B/A VERIZON ACCESS TRANSMISSION SERVICES
FOR PERMITTING AND PROCESS IMPROVEMENT COSTS
RELATED TO THE PERMITTING OF WIRELINE FACILITIES ON CITY
OWNED ASSETS IN THE PUBLIC RIGHT OF WAY**

This WIRELINE FUNDING AND REIMBURSEMENT AGREEMENT ("AGREEMENT") is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("CITY"), and MCImetro Access Transmission Services Corp., a Delaware corporation, d/b/a Verizon Access Transmission Services ("COMPANY"), by mutual execution by CITY and COMPANY ("EFFECTIVE DATE").

RECITALS

WHEREAS, COMPANY intends to place wireline network facilities on CITY owned assets and in the public right-of-way, subject to receiving required permits from CITY;

WHEREAS, the Parties are concurrently entering into a Master Agreement to facilitate the planning, implementation and management of the accelerated deployment of fiber and associated services as well as the deployment of an advanced small cell wireless network and the implementation of Verizon's smart city solutions, in designated areas of the CITY (the "MASTER AGREEMENT") and are entering into this AGREEMENT pursuant to Section 4.2(c) of the MASTER AGREEMENT;

and

WHEREAS, COMPANY and CITY are entering into this AGREEMENT for the purpose of COMPANY depositing with CITY certain funds (as specified below) that CITY may draw upon when processing COMPANY'S permit applications.

NOW, THEREFORE, subject to the terms, provisions and conditions hereinafter set forth, the parties hereto agree as follows:

1. Payment of Funds.

- 1.1 Payment of CITY's Costs.** COMPANY shall advance funds to pay for CITY's permitting costs ("CITY's COSTS"), including costs incurred by CITY's contractors and staff, for processing permits ("WORK") for COMPANY's wireline network construction in the CITY ("NETWORK CONSTRUCTION").

1.2 Payment Schedule.

- 1.5.1 Payment. COMPANY shall make an initial payment to CITY in the amount of Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00) ("Payment") to pay for CITY's COSTS for the WORK. The Payment shall be made within thirty (30) days following full execution and delivery of this AGREEMENT by CITY and COMPANY. CITY will provide COMPANY notice within ten (10) calendar days when COMPANY's funds in the Account are depleted below twenty percent (20%) of the initial Payment or any replenishment Payment and additional permitting fee funds will be required. The Payment shall be used for payment of individual permit fees for the WORK.

CITY and COMPANY agree that in the event of expiration or any early termination of this AGREEMENT, any such amount of the Payment not actually expended by CITY for the WORK shall be reimbursed to COMPANY in accordance with the terms and conditions of this AGREEMENT.

1.3 Accounting.

- 1.3.1 The CITY will establish a Billing Account ("Account") to which costs incurred pursuant to this AGREEMENT will be charged. CITY will bill work against the Account at hourly rates based on CITY's direct costs for the work, including, but not limited to, salaries, benefits, overhead and other administrative expenses, as reflected in the applicable CITY department's schedule of fees and charges approved by City Council resolution and in effect at the time of billing. Costs of any contractors hired by CITY in connection with the scope of the WORK shall be billed at the rate actually incurred by CITY, without any markups. In no event shall any such cost or expense exceed the Payment agreed to hereunder without the prior written consent of COMPANY, which consent may be withheld at COMPANY's sole discretion.
- 1.3.2 The CITY will keep records of all funds advanced by COMPANY pursuant to this AGREEMENT and of all expenditures of such funds. CITY will provide such records to COMPANY at no additional cost to COMPANY in the form of a quarterly computer printout summarizing the deposits and charges to the Account, or if requested by COMPANY, CITY will provide such records to COMPANY at no additional cost to COMPANY within fifteen (15) business days of such request, such request not to be made more often than once per month. Within thirty (30) calendar days following the date of expiration or earlier termination of this AGREEMENT pursuant to Section 4 (Termination and Expiration) below, CITY will submit to COMPANY a final written accounting of the Account and promptly refund to COMPANY any unused amounts at that time pursuant to Section 1.4 (Refunds) below. The foregoing CITY covenant will survive the expiration or earlier termination of this AGREEMENT.

1.4 Refunds.

- 1.4.1 If this AGREEMENT expires or is terminated as provided herein, the balance of the Payment made by COMPANY that is not required to pay for CITY'S COSTS already incurred by CITY in accordance with this AGREEMENT prior to the expiration date or the date of the termination notice, shall be refunded to COMPANY within thirty (30) calendar days of the final accounting pursuant to Section 1.3.2 of this AGREEMENT.

1.5 Interest.

- 1.5.1 Interest shall not accrue on any Payment and shall not be paid by CITY in refunding a Payment or any portion thereof.

2. Commitment by CITY.

- 2.2 COMPANY acknowledges and understands that this AGREEMENT is only for the purpose of providing a funding mechanism to allow CITY staff and CITY contractors to perform necessary tasks connected with expedited permitting of the NETWORK CONSTRUCTION. COMPANY agrees and acknowledges that this AGREEMENT in no way commits CITY to approving non-compliant encroachment permit requests. CITY agrees and acknowledges that it will process permit requests for the NETWORK CONSTRUCTION in an efficient manner pursuant to the requirements of Section 4.2 of the MASTER AGREEMENT which are incorporated herein by reference.

3. Procurement of Contractors.

- 3.1 For WORK to be paid from the Payment, CITY may select and retain the services of a contractor or contractors ("Selected Contractor") to conduct one or more portions of the WORK, subject to COMPANY's approval, which approval shall not be unreasonably withheld. The Selected Contractor may engage subcontractors as approved and deemed appropriate by CITY and COMPANY. CITY shall direct and control the Selected Contractor's services and determine the scope of the WORK to be performed by CITY staff and the Selected Contractor and Selected Contractor(s) will work under the direct supervision of CITY staff. A Selected Contractor will not be hired for or allowed to perform services related to process improvement, code revision or other consulting-type services. CITY shall work together with COMPANY to utilize COMPANY expertise and consulting to create technical solutions that efficiently minimize costs and expenses contemplated hereunder.

4. Termination and Expiration.

4.1 This AGREEMENT shall expire upon the date of the completion of the NETWORK CONSTRUCTION, as such NETWORK CONSTRUCTION may be revised from time to time pursuant to the terms and conditions this AGREEMENT, but in no event later than the expiration or earlier termination of the MASTER AGREEMENT.

4.2 Either COMPANY or CITY may terminate this AGREEMENT for any reason or no reason by delivering to the other party twenty (20) calendar days' advance written notice of election to terminate. COMPANY's obligations to reimburse CITY for any outstanding amounts due, however, shall survive, and remain enforceable after, the termination or expiration of this AGREEMENT. In the event of termination or expiration of this AGREEMENT, CITY shall refund to COMPANY a pro rata portion of the Payment pursuant to Section 1.4 (Refunds) above.

5. Indemnification. COMPANY shall protect, defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising from or related to any damage, injury or loss caused by, or resulting from this AGREEMENT, including, without limitation, that which is due, in whole or in part, to the willful misconduct or negligent acts (active or passive) or omissions by COMPANY, its officers, employees, consultants or agents. COMPANY's obligation to indemnify and hold harmless excludes only such claim, loss or liability that is due to the sole negligence or willful misconduct of CITY and/or its employees. All of COMPANY's obligations under this Section 5 are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this AGREEMENT. In an action or claim against CITY in which COMPANY is defending CITY, COMPANY shall defend CITY at the expense of COMPANY by counsel reasonably acceptable to CITY as approved in writing by CITY. This Section 5 shall survive the expiration or termination of this AGREEMENT.

6. Default. Except as otherwise specifically set forth in this AGREEMENT, if: (i) COMPANY shall fail to pay the Payment or other monies due under this AGREEMENT after the same are due, and such failure shall continue for fifteen (15) days after receipt of written notice thereof to COMPANY; or (ii) COMPANY shall fail to perform any other term, covenant or condition contained herein, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless COMPANY shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity; or (iii) COMPANY's interest in this AGREEMENT or any part of this AGREEMENT is assigned or transferred, either voluntarily or by operation of law, without permission of CITY when such permission is required by the terms of this AGREEMENT, whether by judgment, statute, operation of law, execution, death or any other means; or (iv) COMPANY shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against COMPANY and such petition remains undischarged for a period of ninety (90) days; or if any receiver of the business or of the property or assets of COMPANY shall be appointed by any court (except a receiver appointed at the instance or request of CITY) and COMPANY fails to obtain dissolution of the receiver within ninety (90) days after appointment of the receiver; or (v) COMPANY shall

make a general or any assignment for the benefit of its creditors; then in any of such events CITY shall have the following options, in addition to any other remedies available to CITY at law or in equity:

- (c) Continue this AGREEMENT and recover the Payment or any other monies from COMPANY as it may become due.
- (d) Terminate this AGREEMENT, and all rights of COMPANY hereunder by giving written notice to COMPANY of such intention to terminate, in which event CITY may recover from COMPANY:
 - 1 Any unpaid Payment or other monies due to CITY that had been due and payable at the time of such termination; plus
 - 2 Any other amount necessary to compensate CITY for all the detriment directly and/or proximately caused by COMPANY's failure to perform its obligations under this AGREEMENT, or which in the ordinary course of events would be likely to result therefrom; plus
 - 3 Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

Notwithstanding anything to the contrary contained in this Section 6 and in addition to any late fee that becomes due as provided above, COMPANY shall be charged a late charge equal to the greater of One Hundred and No/100 Dollars (\$100) per occurrence or five percent (5%) of the amount that is past due (the "LATE CHARGE") for any monetary default of COMPANY under this AGREEMENT.

7. Miscellaneous Provisions.

- 7.1 Notices.** All notices to be given hereunder shall be in writing and shall be served, either personally or by United States mail, certified or registered, postage prepaid, return receipt requested to the addresses set forth below, or to any other address provided by one party to the other in writing.

To CITY: City of San José
Office of Civic Innovation, Attn: Dolan Beckel
200 E. Santa Clara Street, 17rd Floor Tower
San José, CA 95113

To COMPANY: Verizon Access Transmission Services
600 Hidden Ridge
Irving, TX 75038
Attn: ROW Manager

With a copy (except for invoices) to:

Verizon Business Services
1320 N. Courthouse Road, Suite 900
Arlington, VA 22201
Attn: General Counsel, Network & Technology

Such written notice shall be effective when properly sent and received, refused or returned undelivered.


- 7.2 **Entire Agreement.** This AGREEMENT contains the entire understanding between the parties with respect to the subject matter herein. This AGREEMENT supersedes any and all prior representations, agreements, arrangements or understandings (whether oral or written) between or among the parties relating to the subject matter of this AGREEMENT. This AGREEMENT may not be amended except pursuant to a written instrument signed by all parties.
- 7.3 **Assignment.** COMPANY shall not assign any interest in this AGREEMENT and shall not transfer any interest in the same (whether by assignment or notation), without the prior written approval of CITY; provided that COMPANY may assign any interest in this AGREEMENT only to (i) any entity that is an affiliate of COMPANY; or (ii) to any entity that acquires all or substantially all of the COMPANY's assets that are subject to this AGREEMENT.
- 7.4 **Waiver.** [Intentionally Omitted].
- 7.5 **Applicable Law and Venue.** This AGREEMENT shall be governed by and interpreted in accordance with the laws of the State of California. In the event that suit shall be brought by either party to enforce or interpret the terms of this AGREEMENT, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- 7.6 **No Third Party Beneficiaries.** This AGREEMENT shall not be construed as, or deemed to be an AGREEMENT for the benefit of, any third party or parties; and no third party or parties shall have any right or action hereunder for any cause whatsoever.
- 7.7 **No Joint Venture.** Neither this AGREEMENT, nor the reimbursements made hereunder, shall constitute or create any form of association, joint venture, partnership or cooperative activity of any nature whatsoever for any purpose between CITY and COMPANY.
- 7.8 **Counterparts.** This AGREEMENT may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same AGREEMENT. The persons executing this AGREEMENT are duly authorized to execute this AGREEMENT in their individual or representative capacity as indicated.

- 7.9 **Severability.** If any provision of this AGREEMENT shall be determined to be invalid by any court of competent jurisdiction, the remaining portions of this AGREEMENT shall remain in full force and effect.

[Remainder of page intentionally left blank; signature page to follow.]

WITNESS THE EXECUTION HEREOF as of the EFFECTIVE DATE.


APPROVED AS TO FORM:



ELIZABETH KLOTZ
Senior Deputy City Attorney
Date: 9/28/18, 2018

“CITY”

CITY OF SAN JOSE,
a municipal corporation

By: 

NAME: DELAND WILCOX
TITLE: Chief of Staff to City Manager
Date: September 25, 2018

“COMPANY”

MCImetro Access Transmission Services Corp., a
Delaware corporation,
d/b/a Verizon Access Transmission Services

By: _____
Print Name: Nicola Palmer
Title: Chief Network Engineering Officer
Date: _____, 2018

WITNESS THE EXECUTION HEREOF as of the EFFECTIVE DATE.

APPROVED AS TO FORM:

“CITY”

CITY OF SAN JOSE,
a municipal corporation

ELIZABETH KLOTZ
Senior Deputy City Attorney

Date: _____, 2018

By _____
NAME: LELAND WILCOX
TITLE: Chief of Staff to City Manager
Date _____, 2018

“COMPANY”

MCImetro Access Transmission Services Corp., a
Delaware corporation,
d/b/a Verizon Access Transmission Services

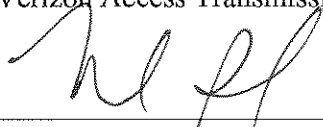
By: 
Print Name: Nicola Palmer
Title: Chief Network Engineering Officer
Date: 9/25, 2018

EXHIBIT D

JOINT COLLABORATION TEAM

a. Executive Sponsors:

City Contact (Primary) Name: Kip Harkness
Phone #: 408-483-1471
email address: Kip.harkness@sanjoseca.gov

City Contact (Secondary) Name: Dolan Beckel
Phone #: 408-535-8260
email address: Dolan.Beckel@sanjoseca.gov

City Contact (Legal) Name: Elizabeth Klotz
Phone #: 408-535-1963
email address: Elizabeth.klotz@sanjoseca.gov

Verizon Contact (Primary) Name: Lauren Love-Wright
Phone #: 908-559-4571
email address: lauren.love-wright@verizonwireless.com

Verizon Contact (Secondary) Name: Lani Ingram
Phone #: 908-559-3885
email address: mrinalini.ingram@verizon.com

Verizon Contact (Legal) Name: Alaine Miller
Phone #: 206-315-6358
email address: alaine.miller@verizon.com

b. Relationship Managers:

City Contact (Primary) Name: Dolan Beckel
Phone #: 408-535-8260
email address: Dolan.Beckel@sanjoseca.gov

City Contact (Secondary) Name: J. Guevara
Phone #: 408-535-8123
email address: J.guevara@sanjoseca.gov

Verizon Contact (Primary) Name: Tara Dutta
Phone #: 919-605-7916
email address: tara.dutta@verizon.com

Verizon Contact (Secondary) Name: John Hatem
Phone #: 415-218-8936
email address: john.hatem@verizon.com

c. Project Managers/Coordinators:

City Contact (Permitting) Name:	<u>J. Guevara</u>
Phone #:	<u>408-535-8123</u>
email address:	<u>J.guevara@sanjoseca.gov</u>
City Contact (Smart City) Name:	<u>Keshav Gupta</u>
Phone #:	<u>408-535-7793</u>
email address:	<u>Keshav.Gupta@sanjoseca.gov</u>
Verizon Contact (Wireless Network)	
Name:	<u>Scott Stewart</u>
Phone #:	<u>925-279-6588</u>
email address:	<u>scott.stewart@verizonwireless.com</u>
Verizon Contact (Wireline Network)	
Name:	<u>Scott Salzer</u>
Phone #:	<u>925-279-6859</u>
email address:	<u>scott.salzer@verizon.com</u>
Verizon Contact (Smart City) Name:	<u>Grace Morales</u>
Phone #:	<u>813-285-3025</u>
email address:	<u>grace.m.morales@verizon.com</u>

EXHIBIT E

PRIVACY AND DATA SECURITY STANDARDS

These Privacy and Data Security Standards apply to the City's use of the Solutions and City Data made available from those Solutions. In the event of a conflict between these terms and the Agreement, these terms will control.

Responsibilities of the City

Use of City Data. To the extent City processes, uses or otherwise accesses City Data for its own benefit or discloses (or permits the disclosure of) any City Data to any third Party, the City agrees that it is solely responsible for such disclosure, processing, use or access and that, in no event, will Verizon be liable for such disclosure, processing, use or access.

Notice and Consent. The City agrees that it is solely responsible for obtaining any and all required consents in connection with any use of the Verizon Services or the Hardware Products and that such consent will be compliant with all Applicable Law, including data protection legislation and other privacy laws, rules, and regulations. Without limiting the foregoing, before collecting any data from individuals, the City must provide adequate notice of what data the City collects and how it will be used and/or shared and obtain any necessary consents.

Security Safeguards

Upon accessing City Data from the Solutions, the City is fully responsible for any authorized or unauthorized collection, storage, use, disclosure, processing of or access to City Data collected, stored, used, disclosed, processed or otherwise accessed by the City. The City will implement and maintain administrative, physical and technical safeguards ("Safeguards") that prevent the unauthorized access to and use of data from the Verizon Solutions. Such information security program will include, commensurate with the nature and classification of the data, without limitation, (i) adequate physical security of all premises in which any data derived directly or indirectly from the Solutions or the Hardware Products will be processed and/or stored; (ii) reasonable precautions taken with respect to the employment of, and access given to, the City personnel, such as including background checks and security clearances that assign specific access privileges to individuals, training of employees on the proper use of the computer security system and the importance of information security, and restricting access to records and files containing any data derived directly or indirectly from the Solutions or the Hardware Products to those who need such information to perform their job duties; and (iii) an appropriate network security program, including designation of one or more employees to coordinate the security program, monitoring of systems for unauthorized use of or access to any data derived directly or indirectly from the Solutions or the Hardware Products, appropriate access and data integrity controls, testing and auditing of all controls, appropriate corrective action and incident response plans, and encryption of all records and files containing any data derived directly or indirectly from the Solutions or the Hardware Products that will travel across public networks, be transmitted wirelessly, or be transmitted outside of the City's secure system.

Security Audits

Upon reasonable advance notice, Verizon, its authorized representatives, or an independent third Party, may conduct, or have a third-Party conduct, an information security audit of the City's Safeguards of internal systems and procedures regarding access to the Verizon Solutions and Hardware Products. The City will (a) cooperate with any such audit, (b) address any security shortcomings identified in the audit by implementing industry best practices, and (c) certify in writing to Verizon that the City has corrected any such shortcomings within thirty (30) days of receiving notice of the audit results. All costs of the audit, excluding any costs to address or correct security shortcomings, will be borne by Verizon.

Security Breach

The City will immediately notify Verizon of any actual, probable, or reasonable suspected breach of security involving its systems or any loss, misuse, or accidental or unauthorized access, disclosure, alteration, or destruction of City Data or any other data accessed or stored by the City (each, a "Security Breach"). In any notification to Verizon, the City will designate a single individual employed by the City who must be available to Verizon 24-hours per day, 7-days per week as a contact regarding the City's obligations. The City will immediately (a) notify Verizon of any third-Party legal processes relating to the Security Breach; (b) help Verizon investigate, remedy, and take any other action the Verizon deems necessary regarding the Security Breach and any dispute, inquiry, investigation, or claim concerning the Security Breach; and (c) provide Verizon with assurance satisfactory to Verizon that such Security Breach will not recur.

Representations and Warranties

The City represents and warrants that: (a) it has not suffered any Security Breaches or if it has suffered one or more Security Breaches, it has taken appropriate measures to rectify any security vulnerabilities; (b) it is, and will remain, in compliance with all Applicable Law, and will not cause Verizon to be in material violation of any Applicable Laws; and (c) it will handle City Data in accordance with its privacy policy and such privacy policy will: (i) comply with all Applicable Law; (ii) be consistent with all of the City's duties and obligations under the Agreement and these Privacy and Data Security Standards; and (iii) clearly and accurately describe all City Data that the City collects and how the City uses and shares such information with Verizon and third parties.

EXHIBIT F

ACCEPTABLE USE POLICY

Smart City Solutions. This Acceptable Use Policy (this “AUP”) describes the prohibited actions when any party uses the Solutions. Capitalized terms used but not defined in this AUP shall have the meanings given such terms in the Agreement. The following list provides examples of prohibited conduct and should not be considered exhaustive. The City agrees not to, and not to allow any Authorized Users or agents of the City or other third parties, to engage in any the following activities:

- Use the Solutions for any unlawful, invasive, infringing, or fraudulent purpose or to violate the legal rights of others;
- Launch or facilitate a denial of service attack on any Solution or otherwise adversely impact the availability and reliability of the Solutions;
- Intentionally distribute viruses, worms, trojan horses, corrupted files or any other malicious, harmful, or deleterious programs;
- Decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt or create derivative works of the Solutions (except as and only to the extent any such restriction is prohibited by Applicable Law or to the extent as may be permitted by licensing terms governing use of open-sourced components or sample code);
- Test or reverse engineer the Solutions in order to find limitations and vulnerabilities or circumvent any use limitations (such as private APIs and rate limits) in the Solutions;
- Access the Solutions or API’s using anything other than an authorized API;
- Attempt to bypass or break any security mechanism in the Solutions or to access another account or use the API key of another user;
- Execute any form of network monitoring that will intercept data not intended for the City;
- Export or import software, technical information, encryption software, or technology in violation of international or regional export control laws; or
- Take any action to encourage or promote any activity prohibited under this AUP.

Consequences of Violating this Policy. Verizon may, but is not required to, monitor compliance with the terms of this AUP. Violations of this AUP may result in suspension or termination of the City and Authorized User access to the Solutions.

Reporting Violations of this Policy. Verizon requests that if the City becomes aware or suspects violations of this AUP, to notify Verizon promptly. Please provide a detailed description of the violation, including the date and time of the violation, any information about the identity of the Party responsible for the violation, the specific actions that resulted in the violation, and any supporting documentation.

EXHIBIT G

Equipment Warranty

1. **Verizon Warranty.** Verizon warrants to the original purchaser only ("City") that during the Warranty Period (as defined below) that the equipment manufactured by Verizon and its Affiliates and supplied to City pursuant to the ISA Service Attachment ("Equipment") will conform to and operate in accordance with the specifications in the applicable Documentation (as hereinafter defined) in all material respects ("Warranty"). For purposes of this Warranty, the term "Documentation" means Verizon's information manuals in printed or electronic form containing operating instructions and performance specifications that are made generally available to users of the Equipment. Documentation also includes statements of work delivered by Verizon to City to the extent pertaining to the Equipment. Documentation does not include marketing materials. This Warranty applies only to Equipment being used within the United States by the original purchaser, is non-transferable and is subject to the exclusions noted below and City's compliance with the Warranty procedures described herein.

2. **Warranty Period.** The "Warranty Period" for Equipment is twelve (12) months, beginning on the Warranty Start Date. The Warranty Start Date shall mean the "In-Service Date" for Equipment installed by Verizon or the date of shipment by Verizon for all other Equipment. "In-Service Date" means the date on which Verizon's employees, independent contractors and/or subcontractors have installed the Equipment.

3. **Warranty Procedures.** If any Equipment does not conform to the warranty described in Section 1 (Verizon Warranty) above, City shall notify Verizon in writing within the applicable Warranty Period, describe in reasonable detail how the Equipment is not in conformance and include evidence that the Equipment is under warranty. City will receive a Return Material Authorization ("RMA") number. City shall, at its own expense and risk, return the Equipment at City's expense within thirty (30) days of receiving instructions for return. City shall package Equipment in a manner that is in accordance with good commercial practice. No Equipment or component part(s) will be accepted for inspection, verification or return unless accompanied by a RMA number which can be obtained only from an authorized Verizon customer service representative. Verizon shall have no obligations under the Warranty if City fails to follow the return instructions.

4. **Warranty Remedies.** Upon Verizon's receipt of nonconforming Equipment covered by the Warranty from City, Verizon will elect, in its sole discretion, either to (i) repair or replace the Equipment and return the repaired or replaced Equipment to City, with outbound freight prepaid by Verizon or (ii) refund the purchase price of the Equipment less its depreciation (depreciated ratably on a 5-year basis). Replacement Equipment (or components) may be new, factory reconditioned, refurbished, remanufactured products or parts or functionally equivalent and will be furnished only on an exchange basis. Verizon reserves the right to repair or replace returned Equipment (or components thereof) with Equipment or components of equivalent or better performance. Returned Equipment that has been replaced by Verizon will become Verizon's property. Replacement Equipment is warranted as above for the remainder of the original applicable Equipment warranty period or sixty (60) days, whichever is longer. Verizon shall have no responsibility or liability for expenses incurred by City for the troubleshooting, removal and/or

installation of Equipment requiring service or for the handling and installation of the repaired or replaced Equipment. Verizon shall, in its sole discretion, determine whether the Equipment is not in conformance with its specifications and covered by the Warranty.

5. Warranty Exclusions. The Warranty does not extend to, and Verizon will not be liable for, any damages, malfunctions, or non-conformities caused by (i) use of the Equipment in violation of the terms of the Agreement or in a manner inconsistent with the Documentation; (ii) use of non-Verizon furnished equipment, software, or facilities with the Equipment (except to the extent provided in the Documentation); (iii) any failure to follow installation, operation or maintenance instructions or manufacturer's recommendations; (iv) negligence, accident, alteration or tampering or misuse, (v) corrosive or extreme environmental conditions beyond those defined in the product specifications provided in the Documentation; (vi) failure to permit Verizon or its suppliers timely access (remote or otherwise) to the Equipment; (vii) failure to implement all new Updates to Software embedded in the Equipment; (viii) Equipment that has had its original manufacturer's serial numbers altered, defaced or deleted; (ix) external causes such as accident, abuse, misuse, mishandling, negligence, fire or acts of God, theft, vandalism, riot, explosion, natural disaster, power surges, improper power supply, electrical current fluctuations or other external causes unrelated to an Equipment defect; and/or (x) Equipment that has been installed, serviced or modified by a party other than Verizon or a Verizon-authorized contractor. For purposes of this Warranty, an "Update" means changes in the embedded software that Verizon makes generally available to its customers as a maintenance/correction release. The Warranty does not apply to any customized deliverables that Verizon creates specifically for City, items not manufactured by Verizon (including, without limitation, photo and motion sensors, cameras, controls, networking components and other accessory products or components (e.g., cables)), consumable parts (e.g., batteries) or protective coatings designed to diminish over time unless failure has occurred due to a defect in materials or workmanship.

6. Products from Third Parties. City's decision to acquire or use equipment and other products from third parties is City's sole responsibility, even if Verizon helps City identify, evaluate or select them. VERIZON IS NOT RESPONSIBLE FOR, AND WILL NOT BE LIABLE FOR, THE QUALITY OR PERFORMANCE OF PRODUCTS FROM THIRD PARTIES.

7. DISCLAIMERS AND LIMITATIONS. EXCEPT AS SET FORTH IN SECTION 1, NEITHER VERIZON NOR ITS SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY EQUIPMENT AND DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. VERIZON AND ITS SUPPLIERS DO NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE EQUIPMENT. THE REMEDIES ABOVE ARE CITY'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CITY MAY HAVE AGAINST VERIZON OR ITS SUPPLIERS WITH RESPECT TO THE EQUIPMENT'S PERFORMANCE. UNDER NO CIRCUMSTANCES SHALL VERIZON OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS INTERRUPTIONS, LOSS OF REVENUE OR GOOD WILL, LOST OR DAMAGED DATA, LOSS OF ANY OTHER GOODS OR EQUIPMENT OR FACILITIES, COST OF CAPITAL OR STORAGE OR INSPECTION, COST OF SUBSTITUTION EQUIPMENT, DOWNTIME COSTS, OR CLAIMS

OF CITY OR PURCHASERS FOR SUCH DAMAGES. VERIZON'S LIABILITY ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE ANY EQUIPMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CITY FOR SUCH EQUIPMENT REGARDLESS OF THE AMOUNT OF DAMAGES CITY MAY INCUR AND WHETHER CITY'S CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE 24-MONTH WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CITY SPECIFIC LEGAL RIGHTS, AND CITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. The foregoing disclaimer of certain damages and limitation of liability will apply to the maximum extent permitted by Applicable Law. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose. Verizon reserves the right to alter the terms of its warranty without prior notice and without incurring obligation.

8. Applicable Law and Venue. This Warranty is governed by the laws of California without regard to any conflict of law principles to the contrary. The City irrevocably submits to jurisdiction of the California courts with respect to any proceeding under this Warranty or relating to the Equipment.

9. Severability. If any provision of this Warranty is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of this Warranty will remain in full force and effect.

10. Entire Agreement. This Warranty constitutes the entire agreement, and supersedes any prior agreements, between Verizon and City related to the subject matter hereof. No amendment, modification, or waiver of any of the provisions of this Warranty will be valid unless set forth in a written instrument signed by the Parties.

EXHIBIT H

INSURANCE REQUIREMENTS

VERIZON, at VERIZON's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, entries onto the Property hereunder by VERIZON, its officers, employees, agents or contractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 or comparable manuscripted form in all material respects; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Property insurance against all risks of loss to any improvements or betterments, Lessees stock, equipment, furniture, business interruption, and fixtures; and
5. Professional Liability Errors and Omissions insurance for all professional services rendered including during the planning and design phase of the project.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

VERIZON shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence or, if five or more sites are owned, operated, or managed by VERIZON, \$5,000,000 per occurrence for bodily injury, personal injury and property damage. Coverage shall include fire legal liability with minimum sublimit of \$100,000. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Property casualty insurance in an amount not less than one hundred percent (100%) of the actual replacement value of any materials, property, or stored items on or behalf of, by or through VERIZON at any City owned sites or public right-of-ways, against all perils as are embraced and covered by all-risk endorsements approve for use in the State of California.
5. Professional Liability Errors and Omissions: \$1,000,000 per claim and \$1,000,000 aggregate limit.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be disclosed to CITY's Risk Manager. VERIZON agrees to hold CITY harmless and be responsible to pay for any amounts due to a claimant to which a deductible or self-insured retention applies.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. CITY, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, VERIZON; products and completed operations of VERIZON; premises owned, leased or used by VERIZON; and automobiles owned, leased, hired or borrowed by VERIZON. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. VERIZON's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of VERIZON's insurance and shall not contribute with it.
 - c. VERIZON agrees to hold CITY, its officers, employees, agents, and contractors harmless for any failure to comply with the reporting provisions of the policies and pay any resulting losses or damages.
 - d. Coverage shall state that VERIZON's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.
3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days'

prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium or, VERIZON may elect to provide such written notice to the CITY within five (5) business days of VERIZON receiving notice.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager or with an A.M. Best's rated carrier or better.

F. **Verification of Coverage**

VERIZON shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department
Risk & Insurance Program
200 East Santa Clara St., 13th Floor
San Jose, CA 95113-1905

G. **Contractors**

VERIZON shall include all contractors as insured under its policies or shall obtain separate certificates and endorsements for each contractor. Coverage should be maintained for the design and planning stage as well as for the duration of the Master Agreement and any License Agreements.

EXHIBIT I

SOFTWARE LICENSE TERMS

IMPORTANT: PLEASE READ THIS LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING VERIZON OR VERIZON-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS LICENSE AGREEMENT.

The following terms govern City's access to and use of the Software.

Software License. Conditioned upon compliance with the terms and conditions of the Agreement, Verizon or its supplier grants to City a nonexclusive and nontransferable license to use for City's internal business purposes at the intended capacity level (if applicable) the Software (as defined below) and the Documentation for which City has paid the required license fees. "Documentation" means user manuals and other written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software, Equipment or Services and made available by Verizon to City in any manner as a Deliverable under the applicable Statement of Work issued pursuant to the applicable service agreement ("SOW"). City's license to use the Software installed on equipment shall be limited to, and City shall not use the Software in excess of, a single hardware chassis on which the Software was originally installed, or such other limitations as are set forth in the applicable SOW which has been accepted by Verizon and for which City has paid to Verizon the required license fees. Unless otherwise expressly provided in the Software Documentation, City shall use the Software solely as embedded in, for execution on, equipment owned or leased by City and used for City's internal business purposes. No other licenses are granted by implication, estoppel or otherwise.

User-Defined Applications. To the extent that any Software contains modules or development tools that permit City to create user-defined applications, workflows or processes for use with the applicable Software ("User-Defined Applications"), City agrees to indemnify Verizon, its officers, directors, employees, agents, affiliates and suppliers against and hold each of them harmless from any and all costs, expenses, liabilities and claims arising from City's use or distribution, either directly or indirectly, of any User-Defined Applications.

General Limitations. This is a license, not a transfer of title, to the Software and Documentation, and Verizon and licensors retain ownership of all copies of the Software and Documentation. City acknowledges that the Software and Documentation contain trade secrets of Verizon or its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Except as otherwise expressly provided under the License Agreement, City shall have no right, and City specifically agrees not to: (i) transfer, assign or sublicense its license rights to any other person or entity or use the Software on any equipment other than the equipment on which it was originally installed, and City acknowledges that any attempted transfer, assignment, sublicense or use shall be void; (ii) make error corrections to or otherwise modify or adapt the Software, create derivative works based upon the Software, or permit third parties to do the same; (iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form or attempt to reconstruct or discover the source code, underlying ideas or algorithms of any components of the Software, except to the extent otherwise expressly permitted under applicable law notwithstanding this

restriction; (iv) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time-sharing basis or otherwise, without the express written authorization of Verizon; (v) remove or obscure any proprietary notices from the Software, Documentation or other materials furnished or made available hereunder; (vi) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Verizon; (vii) enable any Software features or capacity (e.g., additional storage hours, agents, ports or mailboxes) which is licensed as separate products without Verizon's prior written consent; and/or (viii) permit or encourage any third party to do any of the foregoing. City shall implement reasonable security measures to protect such trade secrets.

Software, Updates and Additional Copies. "Software" shall include (and the terms and conditions of the License Agreement shall apply to) computer programs, including software and firmware embedded in Equipment, as provided to City by Verizon, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Updates") or backup copies of any of the foregoing. When City Updates to a new release, City shall not use the new Software release and the corresponding copy of the previous Software release concurrently (except for a limited period of parallel testing and migration and for archive purposes). Under no circumstances shall the previous release be re-used or transferred to any other device(s), or otherwise hosted for potential later reuse. Notwithstanding any other provision of the Agreement: (1) City has no license or right to make or use any additional copies or Updates unless City, at the time of making or acquiring such copy or Update, already holds a valid license to the original Software and has paid the applicable fee for the Update or additional copies; (2) use of Updates is limited to the equipment on which the Software was originally installed and for which City is the original purchaser or otherwise holds a valid license to use the Software which is being Updated; and (3) the making and use of additional copies is limited to necessary backup purposes only.

Proprietary Notices. City agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software and Documentation in the same form and manner that such copyright and other proprietary notices are included on the Software and Documentation. Except as expressly authorized herein, City shall not make any copies or duplicates of any Software without the prior written permission of Verizon.

Third Party Beneficiaries. City acknowledges that third party software may be included with the Software and that such third parties are beneficiaries to this License Agreement and are entitled to enforce their respective rights.

Term and Termination. The License Agreement and the license granted herein shall remain effective for the term specified in the applicable SOW. City may terminate the License Agreement and the license at any time by ceasing use of Software and Documentation. City's rights under this License Agreement will terminate immediately without notice from Verizon if City fails to comply with any provision herein. Upon termination, City shall destroy all copies of non-embedded Software and Documentation in its possession or control. All confidentiality obligations of City and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this License Agreement. The sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to this Agreement" shall also survive termination of this License Agreement.

Remote Access and Audit Rights. City acknowledges that certain Software may contain programming that when enabled or activated: (i) restricts, limits and/or disables access to certain features, functionality or capacity of such Software subject to City's paying for licenses to such features, functionality or capacity; or (ii) periodically deletes or archives data generated by use of the Software and stored on the applicable storage device if not backed up on an alternative storage medium after a certain period of time. Verizon will have the right to inspect and audit City's compliance with these license terms during normal business hours. City will cooperate with the audit and will grant assistance and access to applicable records, materials, equipment, and personnel. In addition, City will provide remote access to its systems to Verizon to enable Verizon to electronically audit City's compliance with the license terms. If an audit reveals that the City possesses or at any time possessed unlicensed copies of the Software or use of the Software beyond the licensed features or capacity restrictions, City will pay Verizon the applicable license fees immediately upon request.

Export. The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied hereunder are subject to export controls under the laws and regulations of the United States (U.S.). City shall comply with such laws and regulations governing export, re-export, transfer and use of Software and Technology supplied hereunder by Verizon and its suppliers and will obtain all required U.S. and local authorizations, permits or licenses. Verizon and City each agree to provide the other information, support documents, and assistance as reasonably required by the other in connection with securing authorizations or licenses.

U.S. Government End User. The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer Software" and "commercial computer Software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement. Use of either the Software or Documentation or both constitutes agreement by the Government that the Software and Documentation are "commercial computer Software" and "commercial computer Software documentation," and constitutes acceptance of the rights and restrictions herein.

Limited Warranty. Subject to the limitations and conditions set forth herein, Verizon warrants that commencing from the date of shipment to City and continuing for a period ninety (90) days: (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The shipment date of a product by Verizon shall be the date of download if electronically shipped or is set forth on the packaging material in which the product is physically shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the City who is the original licensee. City's sole and exclusive remedy and the entire liability of Verizon and its suppliers under this limited warranty will be (i) replacement of defective media or (ii) at Verizon's option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to Verizon or the party supplying the Software to City (if different than Verizon) within the warranty period. Verizon or the party supplying the Software to City may, at its option, require

return of the Software and/or Documentation as a condition to the remedy. In no event does Verizon warrant that the Software is error-free or that City will be able to operate the Software without problems or interruptions.

Restrictions. This warranty does not apply if the Software or the Equipment upon which the Software is authorized to be used (a) has been altered, except by Verizon or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Verizon, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (y) any temporary Software modules; or (z) any Software for which Verizon does not receive a license fee.

DISCLAIMER OF WARRANTY. EXCEPT AS SPECIFIED IN THE WARRANTY SECTION ABOVE AND IN THE AGREEMENT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY VERIZON, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CITY SPECIFIC LEGAL RIGHTS, AND CITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

General Terms Applicable to this License Agreement. No amendment, modification, or waiver of any of the provisions of the Software License will be valid unless set forth in a written instrument signed by the parties. The Software License is governed by the laws of California without regard to any conflict of law principles to the contrary and City irrevocably submits to jurisdiction of the California courts with respect to any proceeding pertaining to the Software License or the Software. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL EITHER PARTY OR ITS SUPPLIERS BE LIABLE TO THE OTHER PARTY FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF A PARTY OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY. In no event shall a party's liability to the other party exceed fees paid for the Software giving rise to the claim.

City agrees that the limitations of liability and disclaimers set forth herein shall apply regardless of whether City has accepted the Software or any other product or service delivered by Verizon or its suppliers.