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RESOLUTION NO. R-66-2018

A RESOLUTION OF THE LAS VEGAS CITY COUNCIL REGARDING THE NEGOTIATION OF AGREEMENTS FOR THE RENTAL OF CITY PROPERTY FOR THE CONSTRUCTION, INSTALLATION AND MAINTENANCE OF TELECOMMUNICATIONS FACILITIES BY PROVIDERS OF TELECOMMUNICATIONS SERVICES AND BY COMPANIES THAT ENTITLE, CONSTRUCT AND PROVIDE TELECOMMUNICATIONS INFRASTRUCTURE FOR TELECOMMUNICATIONS PROVIDERS

WHEREAS, on September 26, 2018, the Federal Communication Commission (“FCC”) adopted a Declaratory Ruling and Third Report and Order in the case entitled “In the Matter of Broadband Deployment by Removing Barriers to Infrastructure Investment,” WT Docket No. 17-79 and WC Docket No. 17-84 (“FCC Order”); and

WHEREAS, the FCC Order, among other things, acts to pre-empt a great deal of local authority to pass local legislation and/or negotiate agreements at arms-length for Provider access to, and payment of the fair market value for rental of city-owned property, whether rights-of-way or City-owned structures, with telecommunications providers such as AT&T, Verizon, T-Mobile and Sprint (“Telecom Providers”), as well as companies that entitle, construct and provide telecommunications infrastructure such as Mobilitie, Crown Castle and Extenet (“Infrastructure Providers”) (Telecom Providers and Infrastructure Providers may be hereinafter referred to together as “Providers”); and

WHEREAS, the FCC Order does not pre-empt, and continues to permit, local governments such as the City of Las Vegas (the “City”) the ability to regulate aesthetics and other aesthetic considerations such as the spacing of telecommunications facilities, a cap on the number of telecommunications facilities in a given area, as well as the undergrounding of portions of telecommunications facilities as long as the requirements are “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance;” and

WHEREAS, while the FCC Order indicates that the FCC believes it will take local jurisdictions one hundred-eighty days to “publish” such aesthetic guidelines, there is nothing in the FCC Order that leads the City to believe that such 180-day language stays the application of the FCC Order during that time period. As such, pursuant to the authority granted to the City pursuant to NRS 268.008(2) and NRS 278,

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1 the City Council will consider this resolution directing the City Manager to require Providers applying to
2 enter into an agreement with the City to rent its property for the installation of telecommunications
3 facilities to abide by certain aesthetic considerations, and if approved, the City will “publish” and this
4 resolution prior to the January 15th, 2019 effective date of the FCC Order; and

5 **WHEREAS**, the City has believed itself to be a good partner with the Providers in the recent past,
6 and desires the City to be on the forefront of 5G technology and lead in the development and growth of the
7 smart city model. While the City is obviously concerned about pre-emption of local control, and also
8 concerned about the financial impact to the City based upon the implied “cap” of the City’s rental of its
9 property to the Providers, which pursuant to the FCC Order is based upon cost recovery and not the fair
10 market value of City property (at \$270 per attachment, per year), as well as the very short shot clock
11 imposed on negotiation of the right-of-way and City structure rental agreements and the processing of
12 building permit applications, the City still desires to be a good partner to the Providers to enable our
13 citizenry access to the newest and best technology to drive their tablets, phones, computers and watches,
14 not to mention the applications for 5G in the future such as automotive uses and City Marshal and City Fire
15 Department uses; and

16 **WHEREAS**, to that end, attached to this Resolution is a form of agreement that shall be used when
17 Providers apply for access to City property for the installation of telecommunication facilities. This form
18 agreement will enable the Providers and the City to satisfy the FCC Order shot clocks, as well as provide
19 Providers advanced notice of the aesthetic considerations that govern the placement of telecommunications
20 facilities within, around or upon City-owned property.

21 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF**
22 **LAS VEGAS AS FOLLOWS:**

23 1. Attached as Exhibit 1 is the form agreement for the rental of locations within, around or upon City
24 property for the installation of telecommunications facilities by Providers (“Form Agreement”). The City
25 Council understands that there may be slight alterations to the Form Agreement in order to clarify the type
26 of Provider applying to rent City property (Telecom Provider or Infrastructure Provider).

1 2. If a Provider desires to rent City property for the installation of telecommunications facilities, a
2 Provider shall submit an application and a proposed agreement. The City shall review the application and
3 the proposed agreement, and if the provisions of such proposed agreement are not substantially similar to
4 the Form Agreement, the City Manager, or designee, shall not accept the agreement from the Provider and
5 the City Manager, or designee, shall deem the Provider application for access to City property incomplete,
6 and shall indicate as such in writing to the applicant within four City business days.

7 3. The City Manager, or designee, shall base his or her decision regarding substantial compliance of
8 the proposed agreement with the Form Agreement by confirming that the proposed agreement includes the
9 provisions identified in paragraph 4, below ("Required Provisions"). If the Required Provisions are
10 included in an agreement proposed by a Provider, and there is no language that otherwise conflicts with the
11 Required Provisions, the City Manager shall accept the agreement for processing and inclusion on an
12 upcoming City Council agenda for consideration. The City Council will make the final determination as to
13 whether the agreement executed and submitted by the Provider is substantially similar to the Form
14 Agreement.

15 4. Required Provisions – Form Agreement (capitalized words below are defined by the Form
16 Agreement):

17 a) Section 1, in its entirety, with the exception of language for 1.6 and 1.8, which must be
18 inserted by the Provider;

19 b) Section 2, in its entirety, with the exception that if a Company desires a lesser term, then
20 the City Council may consider such lesser term;

21 c) Section 3, in its entirety;

22 d) Section 4, in its entirety, with the exception of 4.1.5 (Exhibit A), which may be amended
23 for the express purpose of pre-approving configurations and Equipment specifications;

24 e) Section 5, in its entirety, with the exception of the Attachment Fee, which the City and the
25 Provider will negotiate prior to the inclusion of any agreement upon a City Council agenda for
26 consideration. Such fee must be consistent with all federal and state laws and regulations.

- 1 f) Section 6, in its entirety;
- 2 g) Section 7, in its entirety;
- 3 h) Section 8, in its entirety;
- 4 i) Section 9, in its entirety, with the exception that the City may forward amended language
- 5 to the City Council for consideration if approved by the City Attorney and the Division of Insurance
- 6 Services. Under no circumstance will the City Council approve self-insurance by a Provider;
- 7 j) Section 10, in its entirety;
- 8 k) Section 11, in its entirety;
- 9 l) Section 12, in its entirety;
- 10 m) Section 13, in its entirety;
- 11 n) Section 14, in its entirety; and
- 12 o) Section 15, in its entirety.

13 5. The Form Agreement permits Providers to install telecommunications facilities within, around or
14 upon City property consistent with the terms of such agreement, and under certain circumstances, provide
15 telecommunication services to end users, provided the Provider possesses a valid, unexpired business
16 license to provide such end-user services pursuant to the Las Vegas Municipal Code. In no way does this
17 agreement supercede, replace or otherwise negate a Provider's obligation to apply for and receive a
18 franchise and/or pay a business license fee to the City of Las Vegas for the provision of end-user
19 telecommunications services if otherwise required by the Las Vegas City Charter and/or Las Vegas
20 Municipal Code.

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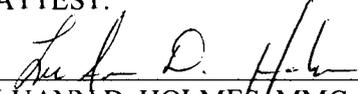
1 6. This Resolution shall be published in the Las Vegas Review-Journal after approval by the City
2 Council and execution by the Mayor of the City of Las Vegas, and it shall be published no later than
3 January 14, 2019.

4 PASSED, ADOPTED AND APPROVED this 19th day of December, 2018.

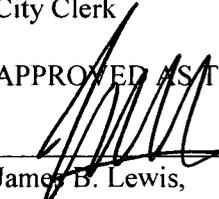
5 CITY OF LAS VEGAS

6 BY 
7 CAROLYN G. GOODMAN, Mayor

8 ATTEST:

9 
10 LUANN D. HOLMES, MMC
11 City Clerk

11 APPROVED AS TO FORM

12  11/28/18
13 James B. Lewis, Date
14 Deputy City Attorney

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EXHIBIT 1

WIRELESS USE AGREEMENT

[INSERT COMPANY NAME]

CITY OF LAS VEGAS

WIRELESS USE AGREEMENT

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WIRELESS USE AGREEMENT

THIS WIRELESS USE AGREEMENT (the “**Agreement**”) is executed to be effective the ____ day of _____, 2017 (the “**Effective Date**”), and entered into by and between the City of Las Vegas, a political subdivision of the State of Nevada (the “**City**”), and _____ [company name], a _____ [state/type of entity] (“**Company**”).

Recitals

WHEREAS, the City is the owner of ROW Poles (as defined in Subsection 1.18 below) located in the Rights-of-Way of the City; and

WHEREAS, Company is a _____ [type of entity] organized under and by virtue of the laws of the State of _____, duly qualified to transact business within the State of Nevada and is registered with the PUCN (as defined in Subsection 1.15 below) as a provider of telecommunication services (CPC # _____); and

WHEREAS, Company desires to use space on certain of the ROW Poles for construction, operation, management and maintenance of its Network serving Company’s wireless customers that are Qualified Service Providers (as defined in Subsection 1.16 below) and utilizing Equipment certified by the Federal Communications Commission (“**FCC**”) and in accordance with FCC rules and regulations; and

WHEREAS, for the purpose of operating the Network, Company wishes to locate, place, attach, install, operate, control, manage, and maintain Equipment on the ROW Poles, and on other facilities owned by third parties; and

WHEREAS, Company is willing to compensate the City in exchange for a grant and right to use and physically occupy portions of the ROW Poles.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. DEFINITIONS. The following definitions shall apply generally to the provisions of this Agreement:

1.1 Affiliate. “Affiliate” means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in Company; (b) each person or entity in which Company has, directly or indirectly, a controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party which also directly or indirectly controls Company. An “Affiliate” shall in no event mean any creditor of Company solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, Company.

1.2 Assignment or Transfer. “Assignment” or “Transfer” means any transaction in which: (a) any ownership or other right, title or interest of more than ten percent (10%) in Company or its Network is transferred, sold, assigned, leased or sublet, directly or indirectly, in whole or in part; (b) there is any change or transfer of control of Company or its Network; or (c) any change or substitution occurs in the managing members of Company, if applicable. An “Assignment” shall not include a mortgage, pledge or other encumbrance as security for money owed.

1.3 City. “City” means the City of Las Vegas, a political subdivision of the State of Nevada.

1.4 Commence Installation. “Commence Installation” shall mean the date that Company commences to install its Network, or any expansion thereof, in City ROW.

1.5 Commence Operation. “Commence Operation” shall mean the date that Equipment is installed and made operational by Company pursuant to this Agreement.

1.6 Company. “Company” means _____, a _____ [type of entity] duly organized and existing under the laws of the State of _____, and its lawful successors, assigns, and transferees.

1.7 Decorative Streetlight Pole. “Decorative Streetlight Pole” shall mean any streetlight pole that: (a) is made from a material other than metal; or (b) incorporates artistic design elements not typically found in standard metal streetlight poles. Decorative Streetlight Poles may not be used for the Network without prior written approval by City. The term Decorative Streetlight Pole includes any historically or architecturally significant or designated streetlight poles owned by the City located in ROW.

1.8 Equipment. “Equipment” means _____

All Equipment and installation configurations that have been pre-approved by the City are shown in the drawings and photographs attached hereto as Exhibit A and incorporated herein by reference. Any Equipment and installation configuration not contained within Exhibit A must receive additional written approval by the City Manager before it may be used on any City Municipal Facility or placed on or in the ROW.

1.9 Gross Revenue. “Gross Revenue” means any and all income and other consideration of whatever nature (including the full fair market value of any commercially traded or bartered goods and services that are provided in lieu of cash compensation to be paid to Company) gained or derived by Company or its Affiliates in any manner from its customers or Qualified Service Providers from or in connection with all services that Company provides to the customers or Qualified Service Providers from or in connection with use of the Equipment by customers or Qualified Service Providers to provide Commercial Mobile Service using the Equipment.

1.10 Information Service. “Information Service” has the same meaning as that term is defined in the United States Code, 47 U.S.C. § 153(24).

1.11 Laws. “Laws” means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

1.12 Municipal Facilities. “Municipal Facilities” means ROW Poles and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

1.13 Network. “Network” or collectively “Networks” means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks that Company uses to serve its customers that are Qualified Service Providers in the City.

1.14 PUCN. “PUCN” means the Public Utilities Commission of Nevada.

1.15 Qualified Service Provider. “Qualified Service Provider” means a person, other than the Company, that has all applicable federal and state authorizations required to provide Commercial Mobile Service using the Equipment.

1.16 Rights-of-Way. “Rights-of-Way” or “ROW” means public property (including air space associated with a ROW Pole) dedicated, granted, held, prescriptively used, or authorized by patent of the United States of America, for City public street purposes, except as limited by any underlying grant, including rights-of-way granted by the United States Bureau of Land Management, United States Bureau of Reclamation or the Nevada Department of Transportation and except public streets predominantly used for public freeway or expressway purposes. For purpose of this agreement, ROW does not include easements held by the City whereby the property is owned by a third party.

1.17 ROW Pole. “ROW Pole” means any Streetlight Pole, Traffic Signal Pole or School Zone Flasher and does not include strand between ROW Poles.

1.18 School Zone Flasher. “School Zone Flasher” means any metal pole that is owned by the City, is located in the ROW, and is used for traffic signal or traffic control purposes for schools. School Zone Flasher does not include any pole that is made from any material other than metal.

1.19 Streetlight Pole. “Streetlight Pole” means any standard-design metal pole that has a mast arm for the support of a light fixture, is owned by the City, is located in the ROW, and is used for street lighting purposes. Streetlight Pole can include a pole supporting a streetlight that is made from a material other than metal, if such material is approved in writing by the Public Works Director.

1.20 Telecommunications Service. “Telecommunications Service” has the same meaning as that term is defined in the United States Code, 47 U.S.C. § 153(53).

1.21 Traffic Signal Pole. “Traffic Signal Pole” means any standard-design metal pole that is owned by the City, is located in the ROW, and is used for traffic signal or traffic control

purposes, including School Zone Flashers. Traffic Signal Pole does not include any pole that is made from any material other than metal.

2. TERM. This Agreement shall take effect as of the Effective Date and shall extend for a term of five (5) years, unless it is earlier terminated by either party in accordance with the provisions herein. The parties in their sole discretion may extend the term of this Agreement for an additional five (5)-year period on mutually agreeable terms and conditions, provided that Company is not in default of any of its obligations under this Agreement at the time of extension.

3. REPRESENTATION CONCERNING SERVICES; TERMINATION WITHOUT CAUSE. Company acknowledges that its rights to use the ROW arise under Title 47 of the United States Code as a provider of Telecommunications Services and under CPC 2375 issued by the PUCN. At any time that Company ceases to operate as a provider of Telecommunications Services under Federal law, the City shall have the option, in its sole discretion and upon six (6) months' written notice to Company, to terminate this Agreement and to require the removal of Company's Equipment from the ROW and from Municipal Facilities, including the cost of any site remediation, at no cost to the City, without any liability to Company related directly or indirectly to such termination. Company shall have the option, in its sole discretion and upon six (6) months' written notice to City, to terminate this Agreement.

4. SCOPE OF AGREEMENT. Any and all rights expressly granted to Company under this Agreement, which shall be exercised at Company's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the ROW exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the ROW. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Company a real property interest in land, including any fee, leasehold interest, or easement.

4.1 Attachment to Municipal Facilities. Prior to the issuance of a permit, the Company will submit to the authorized representative of the City a proposed design for any proposed Network or Networks that will include the Equipment and Municipal Facilities Company proposes to use (the "Network Design"). The submittal will identify each Qualified Service Provider that will use the Equipment to provide Commercial Mobile Service, as well as provide the physical properties and nominal power requirements for all Equipment in a manner approved by the City. Once the Director of Public Works approves the design and the Equipment for the respective area and pole, the City will identify those Municipal Facilities to which Company can attach its Equipment.

4.1.1 If Municipal Facilities do not exist for the attachment of Equipment, Company will be required to install its Equipment on other poles in the ROW lawfully owned and operated by third parties or on poles installed by the company, subject to the conditions below, and compensate the City as defined in Section 5.

4.1.2 Company shall not attach its Equipment to more than a total of twenty-five (25) poles in the ROW within one square mile, regardless of whether such poles are owned by the City or third parties, unless approved by the Public Works Director or Public Works

Director's designee, who may approve up to ten (10) additional poles within the same square mile. Greater consideration shall be made for additional density if attachments are installed on City-owned poles.

4.1.3 Subject to the conditions herein, the City hereby authorizes and allows Company to enter upon the ROW and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on identified Municipal Facilities and third-party facilities for the purposes of operating the Network so that Qualified Service Providers may provide Commercial Mobile Service using the Equipment and the Network. The compensation for such attachments is defined in Section 5 within.

4.1.4 To reduce the disruption to Municipal Facilities, Company may power its Equipment by using the power sources that service the existing ROW Pole structure and its components. The power used by Company's Equipment shall be determined by the usage identified on the specifications for the Equipment installed pursuant to this Agreement, *provided that* the City may verify the actual power consumed by Company's Equipment using measurements of the power consumed prior to the installation of the Equipment compared to the power consumed after the installation of the Equipment. All electrical work and installations related to the power-sharing authorized by this Subsection 4.1.4 shall be performed by a licensed contractor that is approved by the City and in a manner that is approved by the City. Company shall make all requests for power-sharing arrangements pursuant to this Subsection 4.1.4 in advance and in writing. Company shall reimburse the City, as provided in Subsection 5.7, for the increased power costs that the City incurs as a result of any power-sharing authorized by this Subsection 4.1.4.

4.1.5 Subject to the constraints of Section 6.1.1, in the interest of maintaining the best aesthetics possible, the equipment and configurations used in the installations shall minimally protrude from the pole and conform as closely as practicable with the design and color of the Municipal Facility and the adjacent environment, and all cabling and wiring shall be installed inside the poles, foundations and underground conduit. Pre-approved configurations and the Equipment specifications set forth in Exhibit A may be used until improved technology that reduces the visual impact becomes reasonably available. Any changes to the pre-approved configurations shall be considered in accordance with 6.10.

4.1.6 At the sole discretion of the City, the Company may be required to provide documentation from a State of Nevada licensed structural engineer indicating the proposed Municipal Facility is adequate for any and all equipment which has been approved by the City to be installed by the Company. If Company selects a Municipal Facility the City determines is structurally or electrically inadequate to accommodate Equipment, Company may proceed at its sole cost and expense to replace the Municipal Facility, including the foundation, electrical service and any necessary underground conduit connections between the electrical service and the Municipal Facility. A replacement ROW Pole and foundation that Company includes in the Network Design shall be acceptable to and approved by the City, and shall conform to specifications of poles using existing City and regional standards, unless otherwise approved. Company shall dedicate such Pole or service

pedestal to the City as a Municipal Facility. In situations where a non-standard pole has been approved and installed to accommodate the Company's Equipment, the City reserves the right to replace a failed or damaged Municipal Facility at its sole convenience if ever required. In order to reestablish wireless service more quickly, the Company may elect to retain such distinct poles in their inventory and the City may allow the Company to hire an authorized electrical contractor to replace the damaged pole upon failure. ROW Poles shall accommodate all of Company's cabling to Equipment attached to the Pole inside the Pole from the ground up to the point that the cabling exits the Pole to connect to the Equipment.

4.1.7 If company is authorized by City to install a new ROW Pole pursuant to Subsection 4.3 below or replace a Municipal Facility pursuant to Subsection 4.1.6, Company guarantees, regardless of City's authorization and acceptance, all work Company and its contractors/subcontractors perform and all Municipal Facilities Company furnishes under this Agreement against defects in materials and workmanship for a period of two (2) years following City's acceptance of the Municipal Facility ("Initial Warranty Period"). Company also guarantees any corrective work and replaced or repaired Municipal Facility against defects for an additional two-year period following completion of the work ("Subsequent Warranty Period" and, together with the Initial Warranty Period, the "Warranty Period"). City may, at its option and Company's sole cost, either itself remedy or require Company to remedy any defect in materials or workmanship provided by Company or its contractors/subcontractors that develop during the Warranty Period. The option and obligation to repair extend to any damage to facilities or work caused by the particular defect or repair of the defect. Company must remedy the defect(s) to City's satisfaction. Should City choose to remedy a defect, Company must pay City all amounts it incurred within sixty (60) days after receiving an invoice from City. Company also agrees to sign and deliver a bill of sale in a form acceptable to City that conveys all of Company's rights, title, and interest to City in the ROW Pole that Company installed or replaced and certifies that the Municipal Facility is free of all liens and other encumbrances.

4.1.8 If company is authorized by City to install a new ROW Pole pursuant to Subsection 4.3 below or replace a Municipal Facility pursuant to Subsection 4.1.6, and such ROW Pole is found by the City to be damaged and a danger to the public, the Company shall replace the ROW Pole within thirty calendar (30) days of notification by the City for the need to replace the ROW Pole. If the Company needs additional time to acquire and install the replacement ROW Pole, the Director of Public Works may approve additional time for replacement, in his sole discretion. Should City choose to remedy the damage or replace the ROW Pole because of immediate danger to the public Company must pay City all amounts it incurred for repair or replacement within sixty (60) days after receiving an invoice from City.

4.1.9 Company may apply to the City to expand its initial Network installation through the same process as specified in this Subsection 4.1.

4.1.10 In the event of an emergency or to protect the public health or safety, prior to the City accessing or performing any work on a Municipal Facility on which Company has installed Equipment, the City may require Company to deactivate such Equipment if any of City's employees or agents must move closer to the Equipment than the recommended

one foot minimum distance. In such case, City will contact Company at the contact telephone number referenced in Subsection 14.3 herein to request immediate deactivation. If Company fails to respond in a timely manner, depending on the nature of the emergency, City may deactivate said Equipment to perform necessary work with no liability to City.

4.1.11 When applying for a permit to install Equipment pursuant to this Agreement, Company shall deliver a copy of the permit application to:

City of Las Vegas
Department of Finance
Attn: Franchise Administration
495 South Main Street – 4th Floor
Las Vegas, NV 89101

4.2 Attachment to Third-Party Property. Subject to obtaining the written permission of the owner(s) of the affected property, the City hereby authorizes and permits Company to enter upon the ROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on poles or other structures lawfully owned and operated by public utility companies or other property owners located within or outside the ROW as may be permitted by the public utility company or property owner, as the case may be. Company shall furnish to the City documentation in a form acceptable to the City of such permission from the individual utility or property owner responsible. A denial of an application for the attachment of Equipment to third-party-owned poles or structures, or installation of poles, in the ROW shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of Company's Equipment if the Equipment proposed for such application conforms to one of the pre-approved configurations and the Equipment specifications set forth in Exhibit A, except that Equipment must conform as closely as practicable with the design and color of existing poles in the vicinity of Company's Equipment and/or pole location.

4.3 Preference for Municipal Facilities. In any situation where Company has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the ROW, Company agrees to attach to the Municipal Facilities, provided that: (a) such Municipal Facilities are at least equally suitable functionally for the operation of the Network; and (b) the Use Fee (as defined in Subsection 5.1) and installation costs associated with such attachment over the length of the term are equal to or less than the fee or cost to Company of attaching to the alternative third-party-owned property. In the event that no Municipal Facilities or third-party-owned poles are functionally suitable, Company may, at its sole cost and expense, install a new ROW Pole. Design, location and height of proposed ROW Poles shall be reviewed and subject to administrative approval by the City prior to installation. Company's Equipment and ROW Poles must conform as closely as practicable with the design and color of ROW Poles existing in the vicinity of Company's Equipment or ROW Pole location, but under no circumstance shall a wooden pole be utilized. Company shall dedicate such Pole to the City as a Municipal Facility as provided in Subsection 4.1.7.

4.4 No Interference. Company in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the existence and operation of any

and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities, electroliers, cable television, location monitoring services, public safety and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement.

4.5 Permits; Default. Whenever Company is in default in any of its obligations under this Agreement, after written notice and first conferring in person with Company's Market Manager, City may deny further encroachment, excavation or similar permits until such time as Company cures all of its defaults.

4.6 Compliance with Laws. Company shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Agreement.

4.7 No Authorization to Provide Other Services; Ownership; Access to Right-of-Way; Cost of Construction; Connection to Network. Company represents, warrants and covenants that the Equipment installed pursuant to this Agreement will be utilized solely by Qualified Service Providers to provide Commercial Mobile Service using the Network and Company is not authorized to and shall not use the Equipment or Network to offer or provide any other services not specified herein. All Equipment shall be owned by Company, except that by agreement with Company, a Qualified Service Provider may own the radios, antenna arrays and related cabling. This Agreement authorizes Company, and no other person, to mount, operate, manage and maintain Equipment in the ROW. This Agreement does not authorize, and Company shall neither permit nor obligate itself to permit, a Qualified Service Provider to enter or access the ROW or to mount, operate, manage or maintain Equipment (i) on Municipal Facilities or (ii) on poles owned by third parties. All construction, maintenance, and other activities relating in any way to the construction, installation, repair, maintenance, operation, service, replacement, removal or otherwise relating to the Equipment, including without limitation any restoration of, affected City or third-party improvements must be performed by Company (or its contractors or agents) entirely at Company's expense.

4.8 Nonexclusive Use Rights. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Company under this Agreement shall be non-exclusive, and shall be subject and subordinate to: (a) the continuing right of the City to use, and to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities exclusively or concurrently with any other person or persons; and (b) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively "**Encumbrances**") which may affect the ROW or Municipal Facilities now or at any time during the term of this Agreement, including, without limitation, any Encumbrances granted, created or allowed by the City at any time.

4.9 Camouflage; Noise Minimization. Company shall use best efforts to camouflage, conceal, or otherwise minimize the visual impact of ROW Poles and of Equipment installed on a Municipal Facility, Third-Party Structure, or ROW Pole by employing screening, concealment, camouflage, or other stealth techniques so that the Equipment and ROW Poles

are architecturally integrated with existing buildings, structures and landscaping, including height, color, style, massing, placement, design and shape, and therefore do not stand out when viewed with the naked eye. Company must comply with all noise control laws. Any Equipment that generates over forty-five (45) decibels from three (3) feet away (as measured at the height of the Equipment) that is also located within ten (10) feet of a property line on which a residence, daycare, public library, institution of learning, court in session, nursing home, retirement home, hospital, rehabilitation facility, or hospice facility is located is prohibited.

5. COMPENSATION. Company shall be solely responsible for the payment of all lawful fees in connection with Company's performance under this Agreement, including those set forth below.

5.1 Use Fee. In order to compensate the City for Company's entry upon and deployment of Equipment within the ROW or on any Municipal Facilities or any and all other pole(s) located in ROW, regardless of ownership status, Company shall pay to the City, on a quarterly basis, an amount equal to five percent (5%) of Gross Revenues (the "Use Fee") collected during the calendar quarter of each calendar year. Company shall make any payment of the Use Fee that may be due and owing within forty-five (45) days after each calendar quarter of each year. Each payment shall be for the preceding calendar quarter, and shall be due no later than the fifteenth (15th) day of February, May, August and November. Within forty-five (45) days after the termination of this Agreement, the Use Fee shall be paid for the period elapsing since the end of the last quarterly period for which the Use Fee has been paid and for any past due amounts.

5.1.1 Company shall furnish to the City with each payment of the Use Fee a statement, executed by an authorized officer of Company or his or her designee, showing the amount of Gross Revenues for the period covered by the payment. If Company discovers any error in the amount of compensation due, the City shall be paid within thirty (30) days after discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the City of any payment of the Use Fee shall not be deemed to be a waiver by the City of any breach of this Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

5.1.2 The Use Fee shall be paid by check mailed or delivered to City of Las Vegas, Finance Department – 4th Floor – Cashier, 495 South Main, Las Vegas, Nevada 89101 with a transmittal referencing this Agreement. The place and time of payment may be changed at any time by City upon thirty (30) days' written notice to Company. Payment shall be deemed paid upon actual receipt by the City. Company assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

5.2 Business License and Business License Fee. In connection with its use of the ROW to provide services to its Qualified Service Provider customers under this Agreement, Company shall obtain and maintain at all times during the term of this Agreement a business license pursuant to Las Vegas Municipal Code Chapter 6.67. The Use Fee in Subsection 5.1 of this Section is in lieu of any business license fee based on Gross Revenues pursuant to the applicable licensing provisions of Title 6 of the Las Vegas Municipal Code, unless

Telecommunications Service as defined in Chapter 6.67 of the Las Vegas Municipal Code is provided by Company through its Network to end-user customers, in which case the applicable business license fees pursuant to Chapter 6.67 of the Las Vegas Municipal Code are applicable in lieu of the Use Fee in Subsection 5.1 of this Section.

5.3 Attachment Fee. Company shall pay to the City a quarterly fee (the “**Attachment Fee**”) in the amount of [insert number] (\$[insert numerals]) for [insert “each attachment” or “each site” based upon relevant federal or state law or regulations] (whether City-owned or otherwise) upon the commencement of the installation of Equipment pursuant to this Agreement. The aggregate Attachment Fee with respect to each calendar quarter of a year during the term shall be an amount equal to the total number of locations to which Equipment is attached at any time during the calendar quarter multiplied by the Attachment Fee and shall be due and payable not later than forty-five (45) days after each calendar quarter. Before deployment of Equipment with the “5G” generation of wireless technology, the parties agree to negotiate the Attachment Fee that applies to such Equipment.

5.4 Adjustment to Attachment Fee. Effective commencing on January 1 after the Effective Date and continuing annually thereafter during the term, the Attachment Fee shall be adjusted (rounded to the nearest whole dollar) by a percentage amount equal to the greater of (i) the percentage of change in the Annual Average Consumer Price Index, All Urban Consumers for All Items, U.S. City Average (1982-84=100) (“**CPI-U**”), for the most recently completed calendar year as compared to the previous calendar year, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. or (ii) two and one-half percent (2.5%).

5.5 Payment of Attachment Fee. The Attachment Fee shall be paid by check mailed or delivered to City of Las Vegas, Finance Department – 4th Floor – Cashier, 495 South Main, Las Vegas, Nevada 89101 with a transmittal referencing this Agreement. The place and time of payment may be changed at any time by City upon thirty (30) days’ written notice to Company. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt by the City. Company assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

5.6 Delinquent Payment.

5.6.1 If Company fails to pay any amounts due for Use Fees by the due date, Company will pay, in addition to the unpaid fees, a sum of money equal to two percent (2%) of the amount due, including penalties and accrued interest, for each month and/or fraction thereof during which the payment is due and unpaid.

5.6.2 If Company fails to pay any amounts due for Attachment Fees by the due date, Company will pay, in addition to the unpaid fees, a sum of money equal to two percent (2%) of the amount due, including penalties and accrued interest, for each month and/or fraction thereof during which the payment is due and unpaid.

5.6.3 If Company fails to timely pay any business license fees, Company will pay interest

and penalties on such delinquent fees as specified by the applicable provisions of Las Vegas Municipal Code Title 6.

5.7 Reimbursement of City's Increased Power Costs. The City may, in its sole discretion and on a calendar quarterly basis: (a) calculate and bill Company, as provided herein, for the City's increased power costs resulting from power-sharing at any Municipal Facility by using the power consumption estimates noted on the specifications for the Equipment, multiplied by the applicable energy charges for such consumption based on twenty-four hours per day, seven (7) days per week usage; or (b) measure the actual increase in power consumption at any Municipal Facility resulting from power-sharing, and bill Company, as provided herein, for the City's increased power costs based on such measurements. At the City's sole discretion, if the City's increased power costs for any ROW pole are Thirty Dollars (\$30.00) or less for a quarter, the increased power costs may be deemed to be included as part of the Municipal Facilities Attachment Fee required by Subsection 5.3 above, and Company would not be required to pay any separate power costs for that ROW Pole for that quarter. If the City's increased power costs for any ROW pole are more than Thirty Dollars (\$30.00) for a quarter, the City shall bill Company for all of the increased power costs. The City shall bill Company for the reimbursements due under this Subsection 5.7 at the end of each calendar quarter, and Company's reimbursements for the City's increased power costs shall be due and payable not later than forty-five (45) days after each calendar quarter the City may change its methodology for determining reimbursement costs on an annual basis, and any change in methodology shall take effect on July 1 of each year.

6. CONSTRUCTION. Company shall comply with all applicable federal, State, and City technical specifications and requirements and all applicable State and local codes related to the construction, installation, operation, maintenance, and control of Company's Equipment installed in the ROW and on Municipal Facilities in the City. Company shall not attach, install, maintain, or operate any Equipment in or on the ROW and/or on Municipal Facilities without the prior written approval of an authorized representative of the City for each location.

6.1 Commencement of Installation and Operation. Company shall Commence Installation of its initial Network approved by the City no later than six (6) months after the date of issuance of the City permit to install Company's initial Equipment Network and shall Commence Operation no later than one (1) year after said permit date. Failure to Commence Operation of the of the initial Network within one (1) year after said permit date shall be considered a default of a material covenant or term of this Agreement. In any case, Company shall Commence Installation of its initial Network no later than two (2) years after the Effective Date. Upon approval of any expansion of Company's Network pursuant to Section 4 above, Company shall Commence Installation of the approved expansion of its Network no later than six (6) months after the approval date of such expansion by City and shall Commence Operation of the expansion no later than one (1) year after the approval date by City.

6.2 Obtaining Required Permits. The attachment, installation, location, removal, or relocation of the Equipment in the ROW shall require permits from the City. Company shall apply for the appropriate permits and pay any standard and customary permit fees. City shall promptly respond to Company's requests for permits and shall otherwise cooperate with Company in facilitating the deployment of the Network in the ROW in a reasonable and timely

manner. Permit conditions may include, without limitation: (a) approval by the City of traffic control plans prepared by Company for Company's work in City ROW; (b) approval by the Nevada Department of Transportation ("NDOT") of traffic control plans prepared by Company for Company's work within ROW controlled by NDOT; and (c) adherence to time restrictions for work in streets as specified by the City and/or NDOT. The Company shall designate a single point of contact for any individual permit requested. The Company understands and acknowledges that the City will communicate with the Company regarding the permit, work thereunder and any inspections pursuant to such permit through that single point of contact. If it is necessary for the Company to offer multiple points of contact for the permit, any work thereunder or inspections pursuant to such permit, the Company must receive written approval for multiple points of contact from the Director of Public Works.

6.3 Location of Equipment. The proposed locations of Company's planned initial installation of Equipment shall be provided to the City in the form of a map or on an annotated aerial photograph, either of which must be in a format acceptable to the City, promptly after Company's field review of available ROW Poles and prior to deployment of the Equipment. Prior to Commencement of Installation of the Equipment in the ROW or upon any Municipal Facility, Company shall obtain written approval from an authorized representative of the City for such installation in the ROW or upon such Municipal Facility from the City pursuant to Subsection 6.2 above. The City may approve or disapprove a location and installation, based upon reasonable regulatory factors, including but not limited to the ability of the Municipal Facility to structurally support the Equipment, the location of other present or future communication facilities, efficient use of scarce physical space to avoid premature exhaustion, potential interference with other communication facilities and services, the public safety and other critical services. Within fifteen (15) days after inspection of each installation, Company shall furnish to the City an as-built map or annotated aerial photograph (which must be in a format acceptable to the City) and a current ROW Pole list showing the exact location of the Equipment in the ROW and on Municipal Facilities or third-party facilities. Company shall deliver this to City of Las Vegas, Land Development Counter #15, 1st Floor, 333 N. Rancho Drive, Las Vegas, NV 89106.

6.4 Zoning Height Restrictions. Notwithstanding anything to the contrary in this Agreement (including the specifications attached hereto at Exhibit A), no portion of Company's Equipment shall extend higher than twenty-four (24) inches above the height of any existing structure. Except for cabling, Company shall attach nothing less than fifteen (15) feet above grade. In the case of a new installation by Company, the overall height of ROW pole and equipment shall not exceed thirty-five (35) feet above grade unless otherwise approved by the City.

6.5 Street Furniture Cabinets. Company understands that above-ground street furniture and equipment cabinets located in the ROW are discouraged and generally prohibited as a matter of City policy and that any such installation of above-ground street furniture or equipment cabinets will be required to be placed in an easement on private property adjacent to the ROW, and will require additional approvals and/or permitting under applicable ordinances. Notwithstanding anything in the foregoing, the installation of below-ground vaults shall be allowed within the ROW pursuant to applicable City Code zoning and undergrounding provisions and provided that Company will be responsible for all costs associated with such

below-ground vaults, including without limitation relocation costs of any public improvements or public utilities facilities. Company agrees to comply with the City's current ordinances regarding such installations as well as any future regulations that may be adopted by the City respecting such installations. In no instance shall the installation of any of Company's Equipment or any appurtenant structures block pedestrian walkways in ROW or result in violation of the Americans with Disabilities Act, or obstruct sight visibility as defined by City ordinance or Regional Transportation Commission of Southern Nevada standard drawings.

6.6 Visual Impact of Cross-Arm Installations. Company agrees that, in order to minimize the visual impact of its attachments on utility poles, in any instance where a cross-arm is set on a utility pole as the locus for attachment of Equipment, Company shall use its best efforts to work with the applicable third parties to ensure that such Equipment shall be attached at the point on the cross-arm that is acceptable to the City. If, however, the third party does not accommodate the City's request, Company shall be allowed to attach in whatever fashion is required by the third party.

6.7 Relocation and Displacement of Equipment. Company understands and acknowledges that upon thirty (30) days' written notice (or with less notice that is reasonable in in event of an emergency) City may require Company to relocate one or more Equipment installations. Company shall at City's direction relocate such Equipment at Company's sole cost and expense whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a City or other public agency project; (b) because the Equipment is interfering with or adversely affecting proper operation of ROW Poles, traffic signals, communications, or other Municipal Facilities; (c) where inadequate power exists for any future City-owned electrical equipment installation needs, insofar as the Company was not required to upgrade the existing City-owned service pedestals as part of their network design; or (d) to protect or preserve the public health or safety. In any such case, City shall use reasonable efforts to afford Company a reasonably equivalent alternate location within such thirty (30)-day period. If Company shall fail to relocate any Equipment as requested by the City within thirty (30) days after receipt of the City's notice in accordance with the foregoing provision, or an additional reasonable time under the circumstances, City shall be entitled to remove or relocate the Equipment at Company's sole cost and expense, upon ten (10) days' written notice to Company. Company shall pay to the City actual costs and expenses incurred by the City in performing any removal work and any storage of Company's property after removal within thirty (30) days after the date of a written demand for this payment from the City. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform Company of the displacement or removal of any ROW Pole on which any Equipment is located. If the Municipal Facility is damaged or downed for any reason, and as a result is not able to safely hold the Equipment, the City will attempt promptly to inform the Company but otherwise shall have no obligation to repair or replace such Municipal Facility for the use of Company's Equipment. Company shall bear all risk of loss as a result of damaged or downed Municipal Facilities pursuant to Subsection 6.12 below, and may choose to replace such Municipal Facilities pursuant to the provisions of Subsection 4.1.6 above.

6.8 Relocations at Company's Request. In the event Company desires to relocate any Equipment from one Municipal Facility to another, Company shall so advise City. City will

use reasonable efforts to accommodate Company by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

6.9 Damages Caused by Company. Company shall, at its sole cost and expense and to the satisfaction of the City: (a) remove, repair or replace any of its Equipment that is damaged, becomes detached or has not been used for a period of more than ninety (90) days; and/or (b) repair any damage to ROW, Municipal Facilities or property, whether public or private, caused by Company, its agents, employees or contractors (or a Qualified Service Provider) in their actions relating to attachment, operation; repair or maintenance of Equipment. If Company does not remove, repair or replace such damage to its Equipment or to ROW, Municipal Facilities or other property within thirty (30) days after receipt of the City's notice to do so, the City shall have the option, upon fifteen (15) days' prior written notice to Company, to perform or cause to be performed such removal, repair or replacement on behalf of Company and shall charge Company for the actual costs incurred by the City. If such damage causes a public health or safety emergency, as determined by the City, the City may immediately perform reasonable and necessary repair or removal work (but not any technical work on Company's Equipment) on behalf of Company and will notify Company as soon as practicable. Upon the receipt of a demand for payment by the City, Company shall within thirty (30) days after such receipt reimburse the City for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of this Agreement.

6.10 Change in Equipment. If Company proposes to install Equipment which is different in any material way from the pre-approved configurations and Equipment specifications attached hereto as Exhibit A, then Company shall first obtain the written approval for the use and installation of the unauthorized Equipment from the Public Works Director. In addition to any other submittal requirements, Company shall provide documentation, including analysis and a stamp, from a State of Nevada licensed structural engineer indicating the proposed Municipal Facility is adequate for all proposed Equipment which has been approved by the City and installed by the Company, notwithstanding the original installation or by way of Equipment type changes. The City may approve or disapprove of the use of the different Equipment from the specifications set forth in Exhibit A, pursuant to the factors enumerated in Subsection 6.3 above.

6.11 Removal of Equipment. Upon sixty (60) days' written notice by the City pursuant to the expiration or earlier termination of this Agreement, Company shall promptly, safely and carefully remove the Equipment from all Municipal Facilities and ROW. Such obligation of Company shall survive the expiration or earlier termination of this Agreement. If Company fails to complete this removal work on or before the sixty (60) days subsequent to the issuance of notice pursuant to this Section, then the City, upon written notice to Company, shall have the right at the City's sole election, but not the obligation, to perform this removal work and charge Company for the actual costs and expenses, including, without limitation, reasonable administrative costs. Company shall pay to the City actual costs and expenses incurred by the City in performing any removal work and any storage of Company's property after removal within thirty (30) days after the date of a written demand for this payment from the City. After the City receives the reimbursement payment from Company for the removal work performed by the City, the City shall promptly make available to Company the property belonging to

Company and removed by the City pursuant to this Section at no liability to the City. If the City does not receive reimbursement payment from Company within such thirty (30) days, or if City does not elect to remove such items at the City's cost after Company's failure to so remove prior to sixty (60) days subsequent to the issuance of notice pursuant to this Section, or if Company does not remove the Equipment within thirty (30) days after such property having been made available by the City after Company's payment of removal reimbursement as described above, any items of Company's property remaining on or about the ROW, Municipal Facilities, or stored by the City after the City's removal thereof may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner by Law. Alternatively, the City may elect to take title to abandoned property, and Company shall submit to the City an instrument satisfactory to the City transferring to the City the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.12 Risk of Loss. Company acknowledges and agrees that Company bears all risks of loss or damage or relocation or replacement of its Equipment and materials installed in the ROW or on Municipal Facilities pursuant to this Agreement from any cause, and the City shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the City's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or negligence of the City, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Subsection 7.2 below.

7. INDEMNIFICATION AND WAIVER. Company agrees to indemnify, defend, protect, and hold harmless the City, its Council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") for personal injury (including death) or damages to tangible property directly or proximately resulting from the negligence or willful misconduct of Company (or its agents, contractors, or Qualified Service Providers), except to the extent arising from or caused by the negligence or willful misconduct of the City, its City Council members, officers, employees, agents, or contractors.

7.1 Waiver of Claims. Company waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of operation of the Network as a result of any event or occurrence which is beyond the reasonable control of the City.

8. SECURITY FOR PERFORMANCE.

8.1 General Requirements. As security for compliance with the terms of this Agreement and applicable City Code provisions, Company shall, no later than ten (10) days after the issuance of the first permit by the City to install Equipment and prior to any use of the ROW, provide security to the City in the form of either cash deposited with the City, or an irrevocable pledge of certificate of deposit, an irrevocable letter of credit, or a performance bond, payable in each instance to the City, in an amount of one hundred thousand dollars (\$100,000) to remain

in full force and effect for the term of this Agreement, any or all of which may be claimed by the City as payment for liquidated damages assessed in accordance with Section 11 below, and to recover losses resulting to the City from Company's failure to perform.

8.2 Bond Requirements. If bonds are used to satisfy these security requirements, they shall be in accordance with the following:

8.2.1 All bonds shall, in addition to all other costs, provide for payment of reasonable attorneys' fees.

8.2.2 All bonds shall be issued by a surety company authorized to do business in the State of Nevada, and which is listed in the U.S. Department of the Treasury Fiscal Service (Department Circular 570, Current Revision): companies holding certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies.

8.2.3 Company shall require the attorney-in-fact who executes the bonds on behalf of the surety to affix thereto a certified and current copy of his or her power of attorney.

8.2.4 All bonds prepared by a licensed nonresident agent must be countersigned by a resident agent per NRS 680A.300.

8.2.5 All bonds shall guarantee the performance of all of Company's obligations under this Agreement and all applicable laws.

8.2.6 All bonds shall be substantially in the same form as that contained in Exhibit B attached hereto or as otherwise approved by the City.

8.3 Replenishment of Security. If at any time the City draws upon such performance security, Company shall within thirty (30) days after written notice from the City replenish such performance security to the original minimum amount required by this Section 8.

8.4 Security Adjustments. If this Agreement is renewed or otherwise extended beyond its original term, the security amount required by this Section 8 shall be adjusted based upon the percentage of change in the CPI-U. Security amount changes shall be effective as of July 1 following the fifth anniversary date of this Agreement, and shall be based upon the percentage change in the CPI-U for the preceding five (5) calendar years.

9. INSURANCE. Company shall obtain and maintain at all times during the term of this Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance covering Company's operations in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its Council members, officers and employees as additional insureds as respects any covered liability arising out of Company's performance of work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be

canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Company shall be responsible for notifying the City of such change or cancellation.

9.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Agreement, Company shall file with the City original certificate(s) of insurance evidencing the coverages and limits required by this Section 9, which shall state the following:

9.1.1 the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

9.1.2 that the City shall receive thirty (30) days' prior notice of cancellation;

9.1.3 that Company's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

9.1.4 that Company's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificate(s) of insurance shall be mailed to the City at the address specified in Section 10 below.

9.2 Workers' Compensation Insurance. Company shall comply with the provisions of NRS Chapters 616A through 616D regarding industrial insurance and, if required to maintain coverage for employees, Company shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than the greater of (a) any amounts required by Nevada state law or (b) One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

9.3 Insurer Criteria. Any insurance provider of Company shall be admitted and authorized to do business in the State of Nevada and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (*i.e.*, a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

9.4 Severability of Interest. Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the City. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

10. NOTICES.

10.1 Method and Delivery of Notices. All notices which shall or may be given pursuant to this Agreement shall reference this Agreement and shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service:

If to the City:

City of Las Vegas
Department of Finance
Attn: Franchise Administration
495 South Main Street – 4th Floor
Las Vegas, NV 89101

With a copy to:

CITY OF LAS VEGAS
Director of Public Works
333 N. Rancho Drive – 9th Floor
Las Vegas, NV 89106

If to Company:

With a copy to:

10.2 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the United States mail, or the next business day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

11. DEFAULT; CURE; REMEDIES; LIQUIDATED DAMAGES.

11.1 Default and Notification. This Agreement is granted upon each and every condition herein and each of the conditions is a material and essential condition to the granting of this Agreement. Except for causes beyond the reasonable control of Company and subject to Section 11.2 below, if Company fails to comply with any of the conditions and obligations imposed hereunder, and if such failure continues for more than thirty (30) days after written demand from the City to commence the correction of such noncompliance on the part of Company, the City shall have the right to revoke and terminate this Agreement in addition to any other rights or remedies set forth in this Agreement or provided by law.

11.2 Cure Period. If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under Company's control, the period of time in which Company must cure the violation may be extended by the City Manager in writing for such additional time reasonably necessary to complete the cure, provided that: (a) Company has promptly begun to cure; and (b) Company is diligently pursuing its efforts to cure in the City Manager's reasonable judgment.

11.3 Liquidated Damages. If Company fails to cure any noncompliance with the terms and conditions of this Agreement within the time allowed under Subsections 11.1 and 11.2 above, after the City gives Company reasonable written notice of such noncompliance, and an opportunity to be heard by the City Manager, the City may assess the following liquidated damages for such noncompliance:

11.3.1 Failure to comply with the City's requirements concerning actual usage of the ROW or Municipal Facilities, including but not limited to any defaults resulting in construction-delay claims against the City: \$500.00 per day, for each day such failure continues.

11.3.2 Failure to comply with any other provisions of this Agreement, including but not limited to failure to promptly provide data, documents, reports, or information to the City, or to provide insurance or security for the performance of Company's obligations hereunder: \$100.00 per day, for each day such failure continues.

11.4 Payment of Damages. Any liquidated damages assessed pursuant to this Section 11 shall be due and payable by check mailed or delivered to the Director of Finance, at the address provided for in Section 10 above, not later than thirty (30) days after the City provides Company with written notification of the assessment.

11.5 Remedy not Penalty. Company agrees that any failures in Subsection 11.3 above shall result in injuries to the City and its citizens and institutions, the compensation for which would be difficult to ascertain and prove, and that the amounts specified in Subsection 11.3 are liquidated damages, not a penalty or forfeiture.

12. ASSIGNMENT. This Agreement shall not be assigned by Company without the express written consent of the City.

13. RECORDS; AUDITS.

13.1 Records Required by Code. Company will maintain complete records pursuant to the applicable provisions of Las Vegas Municipal Code Title 6.

13.2 Additional Records. The City may require such additional information, records, and documents from Company from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Agreement. Additionally, the City may require Company to collect supplementary information as needed.

13.3 Production of Records. Company shall provide records within twenty (20) business

days after a request by the City for production of the same unless the City agrees to additional time. Company shall not unreasonably deny the City (or its designated representative) access to records covered by this Agreement, including confidential and proprietary information. Such records shall be made available in the City. Failure to provide records in a timely manner shall subject Company to liquidated damages under Section 11. If any person other than Company maintains records on Company's behalf, Company shall be responsible for making such records available to the City (or its designated representative) for auditing purposes pursuant to this Section.

14. MISCELLANEOUS PROVISIONS. The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

14.1 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

14.2 Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

14.3 Contacting Company. Company shall be available to the staff employees of any City department having jurisdiction over Company's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The City may contact by telephone the network control center operator at _____ [telephone number] regarding such problems or complaints.

14.4 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of Nevada, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in federal or state courts located in Nevada.

14.5 Attorneys' Fees. Should any dispute arising out of this Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

14.6 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in Subsection 4.2 above.

14.7 Performance of Acts on Business Days. Any reference in this Agreement to time of

day refers to local time in Nevada. All references to days in this Agreement refer to calendar days, unless stated otherwise. Any reference in this Agreement to a “business day” refers to a day that is not a Friday, Saturday, Sunday or observed as a holiday by City. If the final date for payment of any amount or performance of any act required by this Agreement falls on a Friday, Saturday, Sunday or holiday, that payment is required to be made or act is required to be performed on the next business day.

14.8 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.9 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

14.10 Public Records. Company acknowledges that information submitted to the City is subject to public inspection and copying under Nevada Public Record Law, Chapter 239 of the Nevada Revised Statutes. Company is responsible for becoming familiar and understanding the provisions of the Nevada Public Records Law. While Nevada law does not recognize Company-provided information as “confidential,” Company may identify information, such as trade secrets, proprietary financial records, customer information or technical information, submitted to the City as confidential. Company shall prominently mark any information for which it claims confidentiality with the word “Confidential” on each page of such information prior to submitting such information to the City. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. The City retains the final discretion to determine whether to release the requested information designated as confidential by Company in accordance with applicable law.

14.11 Non-Exclusive Remedies. No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

14.12 No Third-Party Beneficiaries. Except as otherwise provided in Section 7 above, it is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the City with respect to third parties shall remain as imposed by Nevada law.

14.13 Construction of Agreement. The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

14.14 Effect of Acceptance. Company: (a) accepts and agrees to comply with this Agreement and all applicable federal, state, and local laws and regulations; (b) agrees that this Agreement

was granted pursuant to processes and procedures consistent with applicable Laws; and (c) agrees that it will not raise any claim to the contrary or allege in any claim or proceeding against the City that at the time of acceptance of this Agreement any provision, condition or term of this Agreement was unreasonable or arbitrary, or that at the time of the acceptance of this Agreement any such provision, condition or term was void or unlawful or that the City had no power or authority to make or enforce any such provision, condition or term.

14.15 Time is of Essence. Time is of the essence with regard to the performance of all of Company's obligations under this Agreement.

15. DISCLOSURE OF PRINCIPALS Pursuant to Resolution R-79-99 adopted by the City Council effective October 1, 1999, and amendments thereto by the City Council on November 17, 1999, Company warrants that it has disclosed, on the form attached hereto as Exhibit C, all principals, including partners, of Company, as well as all persons and entities holding more than one percent (1%) interest in Company or any principal of Company. If Company, principals, or partners described above are required to provide disclosure under federal law (such as disclosure required by the Securities and Exchange Commission (SEC) or the Employee Retirement Income Security Act (ERISA)), and attaches current copies of such federal disclosures to Exhibit C, the requirement of this Section shall be satisfied. Throughout the term hereof, Company shall within ten (10) days notify City in writing of any material change in the above disclosure. Copies of new federal disclosure filings shall also be sent to the City within ten (10) days of any such filing.

[Signatures on following page(s)]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed to be effective on the Effective Date specified herein.

CITY OF LAS VEGAS

COMPANY NAME _____
[type of entity]

By: _____
Carolyn G. Goodman, Mayor

By: _____
Name
Title

ATTEST

LuAnn D. Holmes, MMC
City Clerk

APPROVED AS FORM

James B. Lewis, Deputy City Attorney

Exhibits:

- Exhibit A - Equipment
- Exhibit B - Bond
- Exhibit C - Disclosure of Principals

WIRELESS USE AGREEMENT BY AND BETWEEN THE CITY OF LAS VEGAS, NEVADA
AND _____ [COMPANY]

EXHIBIT A — EQUIPMENT

WIRELESS USE AGREEMENT BY AND BETWEEN THE CITY OF LAS VEGAS, NEVADA
AND _____ [COMPANY]
EXHIBIT B — BOND FORM

EXHIBIT B

FORM OF SURETY BOND

Bond Number: _____

Surety Bond

Know all men by these presents:

That _____ as Principal, and _____, incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as sole Surety, are held and firmly bound unto _____, as Obligee, in the sum of _____; for the payment thereof, well truly to be made, said Principle and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:

Whereas, the Principal is about to enter into, or has entered into, a certain agreement with the Obligee dated _____, 201__ for the following:

_____.

Now, therefore, if the Principal shall well, truly and faithfully perform all of its duties, undertakings, covenants, terms, conditions and provisions of said agreement during the original term thereof and any extensions thereof which may be granted by the Obligee, with or without notice to the Surety, and if it shall satisfy all claims and demands incurred under such agreement and shall fully indemnify and save harmless the Obligee from all costs and damages which Obligee may suffer by reason of the Principal's failure to do so and shall reimburse and repay the Obligee all outlay and expenses which the Obligee may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

Provided, further, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder, or to the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Provided, however, this bond is issued subject to the following express conditions:

1. This bond shall be deemed continuous in form and shall remain in full force and effect until canceled under § 3 below, after which all liability ceases, except as to any liability incurred or accrued prior to the date of such cancellation.

2. The aggregate liability of the Surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.

3. The surety reserves the right to withdraw as surety from this bond, except as to any liability incurred or accrued, and may do so upon giving the Obligee not less than sixty (60) days' written notice.

Signed and sealed this _____ day of _____, 201 ____.

Principal:

By: _____

Its: _____

Surety:

By: _____

Its: _____

Address: _____

Telephone: _____

(State of Nevada License Number)

Nevada Resident Agent:

By: _____

Company: _____

(State of Nevada License Number)

(Attach Acknowledgments of both Principal and Surety signatures)

WIRELESS USE AGREEMENT BY AND BETWEEN THE CITY OF LAS VEGAS, NEVADA
AND _____ [COMPANY]

EXHIBIT C – DISCLOSURE OF PRINCIPALS

CITY FORM TO BE COMPLETED AND ATTACHED

CERTIFICATE DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

“City” means the City of Las Vegas.

“City Council” means the governing body of the City of Las Vegas.

“Contracting Entity” means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

“Principal” means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting Entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting Entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1	<u>Contracting Entity</u>
Name	
Address	
Telephone	
EIN or DUNS	

Block 2	<u>Description</u>
Subject Matter of Contract/Agreement:	
RFP #:	

Block 3	<u>Type of Business</u>
<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Corporation	

**CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS
(CONTINUED)**

Block 4 Disclosure of Ownership and Principals

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: _____

Block 5 Disclosure of Ownership and Principals - Alternate

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

_____ Name

_____ Date

Subscribed and sworn to before me this _____ day of

_____, 20__.

Notary Public