State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

TAB 54

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: May 21, 2014

Reference No.: 4.13 – *REPLACEMENT ITEM*
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Brent L. Green, Chief
Division of Right of Way
and Land Surveys

Subject: **REVIEW AND RENEWAL OF THE TELECOMMUNICATION (WIRELESS) LICENSING PROGRAM**
RESOLUTION G-14-11, REPLACING RESOLUTION G-08-17

RECOMMENDATION

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) renew the Wireless Telecommunications Licensing Program (Wireless Program) for a ten-year term commencing July 1, 2014 and ending June 30, 2014 with minor changes to the Master License Agreement (MLA) and Site License Agreement (SLA) and updated lease rates including new Distributed Antenna Systems (DAS) rates in the Annual Base License Fee Matrix (Matrix). In addition, The Department recommends the Matrix retain its current five-year review and revision term.

ISSUE

In 1997, the Commission established the Wireless Program as a subset of the Airspace Leasing Program and instituted a five-year renewal cycle. The Wireless Program is going through its third renewal cycle and the only changes to the MLAs and SLAs have been administrative in nature. The Department requests the Wireless Program follow a ten-year renewal cycle. Currently the MLAs renew every five years and the SLAs are re-evaluated after 15 years, placing the program on a ten-year cycle will provide for better coordination and lead to gains in program efficiencies.

The Department recommends the Matrix continue being reviewed and revised based on marked data every five years. The Department's conclusion is that ten years would be too long of a period of not reviewing the market data associated with lease rates. The wireless industry is evolving steadily and lease rates are continually changing. The attached Matrix (Attachment A) has been updated based on a survey of current telecommunications lease data in the market, and provides for a 3.5 percent annual increase through June 30, 2019. The attached MLA and SLA show the proposed changes in strike out and red.

BACKGROUND

In 1996, an Executive Order was issued to all Departments and Agencies in State Government to help facilitate and develop policies to improve telecommunications within California. As a result of that order, the Department's Division of Right of Way, with approval from the Commission, developed this Program as a part of the existing Airspace Program.

The Program's goals are to partner with telecommunications providers to improve their service to the traveling public by providing potential sites for those telecommunication providers, while at the same time insuring that any proposed telecommunications facility will not interfere with the operations of the freeway system or compromise the safety of the traveling public. Another goal, not specifically mentioned in official Department policy statements, is the generation of revenues for the State Highway Account.

The Program was officially implemented July 1, 1997. An MLA was developed containing terms and conditions. An SLA is required for each selected site specifying the rate, term, and use. Facility owners are required to provide co-locations for other providers when feasible and provide space for future Department needs.

The Program is structured such that each wireless carrier must execute the MLA prior to initiating a request to place a wireless facility within the Department's right of way. Right of way, for the purposes of this specific Program, is defined not only as freeway operating right of way, but also Park and Ride Lots, Safety Roadside Rest Areas, Department Maintenance Stations, Department owned buildings, and other real estate assets. As far as the highway right of way, the Program only applies to freeway rights of way, expressways, and other access controlled highways. The Program does not license facilities within the conventional highway rights of way. Wireless carriers who desire to construct cell towers in the conventional highway rights of way must coordinate with the Department's Encroachment Permit Branch, and are not subject to the terms and conditions of the MLA.

CURRENT STATUS

The Department has met its goal of assisting the telecommunications industry in meeting the communication needs of the public. Since its implementation, approximately 230 sites have been constructed with yearly revenues of over $5.5 million.

Eighteen years after inception of the Department's Program, many other State Transportation Departments still do not have a process to place cell towers in their rights of way. Those that do, utilize a multitude of processes and pricing mechanisms. Some states individually negotiate the price for each site; other states charge a nominal fee, while others have agreements to allow sites in exchange for cell phone and related services. The Matrix is a major benefit to the industry, since the carriers are able to calculate the licensing fee prior to submitting any site proposal. The Department benefits as well, as there is no protracted appraisal or valuation process to hinder the processing of a siting proposal.

Each SLA issued has a term of ten years with three five-year options. A re-evaluation to market occurs after the initial ten years of the SLA term, and every five years thereafter. This is a change to prior version of the SLA, which provided for re-evaluation after 15 years. The recommended change is based on market investigation.

The pricing of individual cell sites is updated based on a survey of telecommunications leases and licenses statewide and presented in a matrix based on location (rural, urban, and prime urban), size of the facility, or "footprint" and number of antenna. The updated Matrix is attached as an addendum for reference. Prices are adjusted upward annually at 3.5 percent and rounded so that the annual amount is divisible by 12 for accounting purposes.

Internal processing of individual proposals can be time consuming as many functions within the Department must review and approve proposed site locations and construction details. Due to an increased number of requests for amendments to existing agreements, we have increased fees for review of subsequent documents (e.g. encumbrances, subleases or substitutions and modifications requiring District Airspace Review Committee review) to $1,000; minor requests for site modification require no review fee. This is sufficient to reflect increased time and resources required to accommodate these requests, but not so much as to discourage development on state sites.

New technology in the telecommunications industry has resulted in requests to install and operate Distributed Antenna Systems (DAS). DAS is small cell technology deployed to provide coverage in targeted locations, and providing additional call and data-handling capacity in areas with concentrated demands for wireless services. However, DAS differ from other small cells in their functionality, capacity and cost. This has resulted in a need for an addition to the Matrix for these types of installations.

The Department's Legal Division, as well as representatives at the industry, have reviewed the MLA and are satisfied that it adequately addresses all issues. Based on the Department's successful experiences of the Program, we are proposing these relative minor changes to the existing Program to clarify some of the provisions of the MLA and streamline the requisite Program reviews and Matrix updates.

Attachments A: Annual Base License Fee Matrix
B: Master License Agreement
C: Site License Agreement
D: Resolution G14-11

ANNUAL BASE LICENSE FEE MATRIX, adjusted 3.5% per year
(rounded to the nearest whole dollar and divisible by 12)
July 1, 2014 - June 30, 2019

STATEWIDE

	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017	July 1, 2018
MACROCELL					
Prime Urban (Cat 1)	$43,704	$45,228	$46,812	$48,456	$50,148
Urban (Cat 2)	$33,708	$34,884	$36,108	$37,368	$38,676
Rural (Cat 3)	$21,528	$22,284	$23,064	$23,868	$24,708
MINICELL					
Prime Urban (Cat 1)	$37,452	$38,760	$40,116	$41,520	$42,972
Urban (Cat 2)	$31,212	$32,304	$33,432	$34,608	$35,820
Rural (Cat 3)	$21,528	$22,284	$23,064	$23,868	$24,708
MICROCELL					
Prime Urban (Cat 1)	$31,212	$32,304	$33,432	$34,608	$35,820
Urban (Cat 2)	$24,960	$25,836	$26,736	$27,672	$28,644
Rural (Cat 3)	$18,384	$19,032	$19,704	$20,388	$21,096

ULTRA-PRIME URBAN*

	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017	July 1, 2018
MACROCELL					
Ultra-Prime Urban (Cat 1)	$52,776	$54,624	$56,532	$58,512	$60,564
MINICELL					
Ultra-Prime Urban (Cat 1)	$45,276	$46,860	$48,504	$50,196	$51,948
MICROCELL					
Ultra-Prime Urban (Cat 1)	$37,716	$39,036	$40,404	$41,820	$43,284

DAS STATEWIDE

	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017	July 1, 2018
DAS($/antenna)					
Prime Urban (Cat 1)	$10,000	$10,356	$10,716	$11,088	$11,472
Urban (Cat 2)	$ 1,000	$ 1,032	$1,068	$ 1,104	$ 1,140
Rural (Cat 3)	$500	$516	$540	$564	$588

*Designated urban areas within Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Los Angeles, Orange, and San Diego counties pursuant to the Caltrans Earth Website: http://earth.dot.ca.gov/

Attachment A

Licensee: _____

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DEPARTMENT OF TRANSPORTATION
TELECOMMUNICATIONS MASTER LICENSE AGREEMENT
WIRELESS CARRIERS

This Master License Agreement is made and entered into by and between the State of California, acting by and through its Department of Transportation, hereinafter called Licensor, and the above-named Master Licensee, hereinafter called Licensee.

WITNESSETH:

WHEREAS Licensee seeks to construct, install, operate and maintain radio transmitting and receiving antennas and/or other associated electronic equipment for wireless communications in the State of California; and

WHEREAS Licensor has properties well suited for the antennas needed for wireless communications systems because they are extensive and located throughout the State, and because often they are adjacent to populated areas but not located in the heart of residential areas; and

WHEREAS Licensor desires to improve services available to the traveling public, to enhance communications systems within the State, and to add to its revenues by making state properties available for wireless communications infrastructure consistent with other public uses of its property; and

WHEREAS Licensee proposes that the use of State properties can be an important option for the placement of antenna sites if the cost is competitive and the process of establishing sites is expedited; and

WHEREAS Licensor has determined to make certain of its properties available to wireless communications companies, on a fair and equitable basis, for use as antenna sites; and

WHEREAS Licensor may seek to provide the traveling public with wireless telephone access to traffic information lines. If Licensor does so, Licensee shall cooperate in developing a program to provide the traveling public with wireless telephone access to information lines, and to create an emergency access line subject to Licensee's operational capacity;

NOW THEREFORE, in consideration of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and considerations hereinafter set forth and recited; Licensor and Licensee agree as follows:

MASTER LICENSE AGREEMENT

1. Master License Agreement.

This Master License Agreement (hereinafter, "Agreement") sets forth the basic terms and conditions upon which each Site (defined in Section 2 below) is licensed by Licensor to Licensee. Upon agreement between the parties with respect to the particular terms of a Site, the parties shall execute a completed "Site License" in the form attached hereto as Exhibit A and incorporated herein by this reference (the Site License Form may be modified in the future without amending the Agreement). In the event of a discrepancy or inconsistency between the terms and conditions of a particular Site License and this Agreement, the terms and conditions of the particular Site License shall govern and control.

2. Site License.

~~(a)~~ Licensor owns highway and freeway right of way, including appurtenant airspace righ Formatted: Indent: Left: 0" a particular Site License and the particular portion of the Premises used by Licensee is referred to herein as a "Site" (or collectively described herein as "Sites"). Subject to the terms and conditions contained in this Agreement, and in the Site License relating to a particular Site, Licensor hereby licenses to Licensee and Licensee licenses from Licensor the Site on the Premises owned or controlled by Licensor, as described in the particular Site License. The Site License includes access to and from the Site, and to and from the closest public right-of-way and on and over the land of which the Premises and the Site are a part (subject to terms and conditions of each Site License, with special limitations for access from access-controlled highways and freeways) and access to appropriate utilities as set forth in Section 7. Each Site License shall act as a separate and independent agreement for each Site, the express intent of the parties being to use this Agreement to facilitate each of the independent transactions. It is understood and agreed that Licensee's right and license to place unmanned radio communications facilities on the Premises is non-exclusive, but that the Site shall be exclusive for Licensee's equipment, subject to the terms and conditions of this Agreement, including but not limited to co-location requirements contained herein. Further, Licensee's license and rights granted under this Agreement and the particular Site License are irrevocable until the expiration or sooner termination of this Agreement and/or the Site License, by their respective terms. The "Commencement Date" for each Site License shall be either the date Licensee receives all permits and approvals necessary to construct and operate its facility at the Site (at which time Licensor will issue an Encroachment Permit allowing construction/installation at the Site), or six (6) months from the date the Site License is executed ("Execution Date"), whichever occurs first. -The period between the Execution Date and the Commencement Date shall be referred to herein as the "Local Permitting Period".-"

(b) Licensee may cancel a Site License at any time prior to the Commencement Date. The Local Permitting Period may be extended for two (2) additional three (3) month periods upon payment of twenty-five percent (25%) of the annual fee under the Site License for each three (3) month extension, and a showing of good faith efforts to obtain permits and/or commence construction. Under special circumstances where the delay in obtaining permits and/or commencing construction is beyond the reasonable control of Licensee, Licensor may grant extensions to the Local Permitting Period, upon the same payment terms as above.

3. Use.

(a) A Site may be used by Licensee only for the construction, installation, operation, replacement, removal, maintenance and repair (collectively "Operations") of an unmanned telecommunications facility, including required antennas and antenna support structures (as the same may be modified, added to and/or substituted from time to time), in accordance with the terms herein. Each such antenna and/or antenna support structure shall be configured as required by Licensee from time to time provided that Licensee obtains all permits and approvals required by applicable jurisdictions relative to any such desired configuration. Licensee shall have the right to park its vehicles on the Premises when Licensee is servicing its communications facility, subject to any conditions in the Site License. All operations by Licensee on the Premises or Site shall be lawful and in compliance with all applicable Federal Communications Commission ("FCC") requirements. Licensee shall, at its sole expense, comply with (and obtain and maintain such licenses, permits or other governmental approvals necessary to comply with) all laws, orders, ordinances, and regulations of federal, state, county, and municipal authorities applicable to its Operations or use of the Premises or Site. Licensee shall comply with any directive of any public officer or officers applicable to its Operations or its use of the Premises or Site (collectively "Laws"), which shall, with respect to Licensee's Operations, impose any violation, order or duty upon Licensor or Licensee arising solely from Licensee's use of the Premises subject, however, to Licensee's right to contest, in good faith, any such violation, order or duty. Licensee's Operations shall not interfere with the operations of Licensor, the traveling public, or any other users existing on the Commencement Date on the Premises. Licensor agrees to reasonably cooperate with Licensee, at Licensee's expense, in executing such documents or applications necessary or appropriate in order for Licensee to obtain and maintain, at Licensee's expense, such licenses, permits and other governmental approvals needed for Licensee's Operations. Licensor authorizes Licensee to make and prosecute applications for all such approvals. If Licensee is unable to obtain and maintain such licenses, permits or approvals (notwithstanding reasonable efforts to do so), Licensee shall so notify Licensor and the particular Site License shall immediately terminate.

(b) Licensee agrees to install, maintain, and operate its telecommunications equipment in accordance with the specific site standards more particularly described in each Site License and any other applicable statutes pertaining to the use of telecommunications and/or electronic equipment. In the event Licensee's installation, or Operation, in any way hinders, obstructs, or interferes with, the radio or electronic equipment of Licensor, or any tenant operating at the Premises as of the Execution Date of the applicable Site License, Licensee shall, at its sole cost and expense, upon receipt of written notification, forthwith cease the interfering operation, except for brief tests necessary for the elimination of the interference. Licensee shall conduct its Operations in compliance with all laws, orders, ordinances, and regulations of all federal, state, county, and municipal authorities. Licensor may execute any Site License upon the condition that Licensee's equipment shall be installed in such a manner to facilitate Licensor's telecommunication needs as set forth in Section 21 of this Agreement.

(c) If such hindrance, interference or obstruction cited in Subsection 3(b), is not

eliminated or does not fully cease within thirty (30) days after written notice to Licensee by Licensor or any appropriate regulatory agency, Licensor shall have the right to order cessation of Licensee's Operations at the Site as may be necessary to continuously eliminate said interference by giving ten (10) days prior written notice. In the event of Licensee's inability or refusal to eliminate such interference, Licensor may at its option additionally terminate the affected Site License and evict Licensee. Once Licensee has more than ten (10) Site Licenses in effect, if such uneliminated interferences occur at over twenty percent (20%) of Licensee's Sites occupied under this Agreement, Licensor may terminate this Agreement and evict Licensee from all its Sites on thirty (30) days' written notice.

(d) Any interference and compatibility testing required hereunder for radio interference with other equipment located at the Premises as of the Commencement Date, or Licensor's equipment installed at any time shall at the sole and reasonable cost of Licensee, be made by a qualified technical person representing Licensee and a representative designated by Licensor. If the test is satisfactory to both the technical person and Licensor representative, a certification of such test signed by both the technical person and the Licensor representative shall be forwarded to Licensor at locations indicated in Section 16. Any reasonable costs incurred by Licensor to conduct compatibility testing shall be reimbursed to Licensor within thirty (30) days after receipt of billing and reasonable supporting documentation.

(e) Any interference with Licensor's electronic equipment during an emergency incident will require immediate cessation of operation, transmission or further use of Licensee's equipment provided Licensee is given notice of such incident and is afforded the opportunity to cure such interference. Failure to do so promptly after notification of such interference will be grounds for immediate termination of the particular Site License and eviction of Licensee.

4. Term: Termination.

(a) The term of this Agreement shall expire on June 30, ~~2014~~2024. The California Transportation Commission may review and extend this agreement before its termination with input from the California Department of Transportation and other interested parties.

Comment [JE1]: Request CTC approval to change to 10 year MLA term

(b) ~~No new individual Site Licenses shall be entered into pursuant to this Agreement after June 30, 2013.~~ The initial term of each Site License shall be ten (10) years commencing on the Commencement Date. Licensee agrees to begin the process of gaining the approvals necessary to the initiation of site construction immediately after the Execution Date. If, however, Licensee does not, in good faith, actively pursue a building permit within the "Local Permitting Period" (as may be extended pursuant to Subsection 2(b)), Licensor may terminate the individual Site License.

Comment [JE2]: Propose we eliminate this condition as it forecloses opportunitites to enter into new SLAs for a year.

(c) Licensee shall have the option to renew each Site License for three (3) consecutive five (5) year periods on the same terms and conditions in effect during the initial term subject to Licensor's review and approval, with the exception of the amount of the License Fee (defined in Section 5, below) for use of the Site. However, the individual Site License for each Site shall be automatically terminated unless, at least sixty (60) days before the expiration of each five (5) year term, Licensee notifies Licensor of its intention to renew.

This Agreement, as incorporated into each Site License shall remain in full force and effect during the term of that individual Site License. At the end of the initial term and each renewal term, the Site shall be reevaluated to determine if the License Fee should be readjusted due to a change in geographic area type as set forth in Subsection 5(b). The License Fee shall be automatically increased if Licensee's equipment is modified to a higher category under the provisions of Subsection 5(b), and such modifications shall require the written approval of Licensor.

(d) If, at any time during the term of an individual Site License, it becomes commercially inadvisable in Licensee's business judgment for Licensee to utilize that particular Site, or if any required certificate, permit, license or approval is denied, canceled or otherwise terminated so that Licensee is unable to use the Site for its intended purpose, Licensee may terminate the individual Site License. If Licensee terminates a Site License pursuant to this Subsection 4(d), Licensee will provide Licensor with a minimum of one hundred ~~twenty (120)~~ eighty (180) days' written notice of its intention to terminate the individual Site License and will, in the case of a business judgment termination only, compensate Licensor in an amount equivalent to the annual License Fee as of the effective date of the Notice of as liquidated damages for the early termination. In the event that less than one (1) year remains in the term of the individual Site License terminated by Licensee, Licensee shall pay to Licensor such liquidated damages an amount equal only to those installments due or to become due during the remainder of the term of the individual Site License .

Comment [JE3]: Revises the termination notice required of Licensor to 180 days consistent with time required for tenant notice to landlord of intent to terminate. Provides state with greater flexibility than current one year notice required of State.

Comment [JE4]: Clarification as requested by districts and Accounting as to whether date Notice received or effective date applies.

(e) If Licensor's use of a Site makes it necessary for Licensee to remove or relocate its equipment and facilities to another location on the Premises or to another Licensor location near the Site, or if there is interference to or involving Licensee's Operations which cannot be resolved as set forth in Section 6, Licensee may elect to terminate the Site License for that Site, without penalty.

(f) Licensor may terminate an individual Site License if its own need for or use of a Site requires relocation of Licensee's facilities because of state transportation purposes, economic necessity or the best interests of the traveling public. To the extent practicable, Licensor shall provide Licensee with ~~three hundred sixty-five (365) days'~~ one hundred eighty (180) days prior written notice of the termination of an individual Site License due to Licensor's required need for or use of the Site. If Licensor's own need for or use of a Site requires it to terminate an individual Site License within the first five (5) years of the Site License, Licensor shall credit Licensee, against fees payable or to be payable under other individual Site Licenses, for the construction costs and expenses actually incurred by Licensee in installing facilities on the Site, in an amount not to exceed $60,000 for a macrocell site, $40,000 for a minicell site or $30,000 for a microcell site (as those terms are defined in Section 5 (a) (ii)), amortized over sixty (60) months straight line depreciation. (For example, if Licensee's construction costs and expenses were $40,000, and Licensor terminated the Site License twenty four (24) months after the Commencement Date, Licensee would be entitled to a credit of $24,000). Licensor shall use its best efforts to find another suitable location for Licensee's facilities in the event that Licensor's need for or use of a Site requires relocation by Licensee. Licensee's obligation to pay a fee for the use of an individual Site shall cease, and a prorated portion of any advanced payment made by

Comment [JE5]: See 4(d) termination will require 180 days by either party

Licensee shall be returned to Licensee by Licensor upon the date that Licensee removes its equipment and restores the Site, as set forth in Subsection (g) below.

(g) Upon termination or other expiration of an individual Site License, Licensor shall have the option of (1) keeping the tower(s) or monopole(s) and ancillary improvements, such as buildings, vaults, equipment sheds and pads, in place (except for Licensee's equipment and antennas), or (2) requiring Licensee, on thirty (30) days' notice given before, or within sixty (60) days after, the expiration of the site license, to remove the tower(s), hardware, building(s) and ancillary improvements (above and below ground) made by Licensee, and to return the Site to the condition existing on the Commencement Date, normal wear and tear and damage not caused by Licensee excepted, to the satisfaction of Licensor, at Licensee's sole cost and expense. If Licensor exercises its option to keep the tower and ancillary improvements in place on an individual Site, the following conditions shall apply: (1) Licensor shall accept the tower and ancillary improvements in their then existing condition, "AS-IS," without any representation or warranty, and Licensee shall have no further obligation with respect to the Site or such equipment, and (2) if the Site License is terminated pursuant to Subsections 4(e) or (f) above, then Licensee shall be entitled to a credit against other existing or future License Fees in an amount equal to the value of the tower and ancillary improvements retained by Licensor, based on their initial cost, not to exceed $60,000, amortized over a ten (10) year period (straight-line amortization, e. g., 1/120th per month). To the extent reasonably practicable, Licensor will advise Licensee in writing prior to entering into a Site License of Licensor's desire to retain Licensee's Tower or ancillary improvements pursuant to this Subsection. The cost of the tower and ancillary improvements and Licensor's reimbursement obligation for the cost thereof may be modified in the individual Site Licenses.

If Licensor advises Licensee to remove its facilities, and Licensee refuses to do so, Licensor may remove the facilities and charge the cost and expense of removal to Licensee or deduct the costs and expenses from monies due Licensee under this Agreement, individual Site Licenses or any other agreements. Licensor, in its sole discretion, may allow some or all of Licensee's equipment to remain on Licensor's property. If no such monies are owed, Licensor may invoke any remedies provided herein or at law or equity to recover all monies owed. Except as otherwise provided herein, the fee for use of a Site terminated before the end of the term for that Site License shall not terminate until the later of (1) the effective date of the early termination or (2) the date on which Licensee has removed its equipment and restored the Site in accordance with Section 12(a) or (3) the date on which Licensor notifies Licensee of its election to exercise its option to accept transfer of Licensee's facilities.

~~(h) All notices of termination shall become effective on the tenth day following the date the notice is received pursuant to Section 16 or such later date specified in the termination notice.~~ (h) All notices of termination shall become effective 180 days after receipt or such later date specified in the termination Notice.

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Comment [JE6]: Eliniated as it conflicts with notices for termination in 4d and 4f, duplicates info contained elsewhere

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5. License Fee.

(a) Base License Fee Factors - Licensee shall pay Licensor an annual fee ("License Fee") for the use of each Site that is the subject of an individual Site License, which fee shall

be calculated in accordance with this Section 5. The License Fee ~~for the initial ten (10) year~~ for the initial 10-year term of the individual Site License for each Site shall be calculated on the basis of the following two factors: (1) its geographic location and (2) the equipment and building space utilized.

(i) The State shall be divided into three types of geographic areas for the determination of the first factor. The three geographic area types are as follows:

Category 1: "Prime Urban" - Are the "Urbanized" (as defined below) portions of the Counties of Marin, San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, Los Angeles, Orange and San Diego.

Category 2: "Urbanized" - includes all areas defined as "Urbanized" in 23 U.S.C. 101 ["... an area with population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to the approval by the Secretary..."]. For reference purposes, currently designated urbanized areas are shown in yellow on the official California State Highway Map as issued by the Department of Transportation attached as Exhibit B to this Agreement.

Category 3: "Rural" - any area within the State of California not Urbanized, as defined above.

(ii) The equipment and building space utilized shall be determined by the following definitions of macrocell, minicell and microcell facilities and shall be used to determine the second factor necessary to the calculation of the License Fee. (Note: Only transmitting/receiving antennas are included in the count):

Macrocell: Facility with nine (9) or more antennas and/or with equipment building or concrete pad space and space required for the foundation of the monopole or tower when combined exceeds 500 square feet, not to exceed sixteen (16) antennas or two thousand five hundred (2,500) square feet. A standard telecommunications facility with a vault or enclosed building is an example of a macrocell site.

Minicell: A facility with four (4) to eight (8) antennas and/or with equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined is in excess of 300 square feet but less than 500 square feet. A standard telecommunications facility with free-standing cabinets on a pad is an example of a minicell site.

Microcell: Facility with one (1) to three (3) antennas and/or with equipment building or concrete equipment pad space and space required for the foundation of the monopole or tower, when combined is less than 300 square feet.

DAS: Distributed Antenna System (DAS:) A network of small cells comprised of a network of one or more antennas connected by fiber to a service cabinet . The fee matrix for DAS is based on price per antenna.

Comment [JE7]: Re-evaluation to market after 10 years is recommended based on market data

Comment [JE8]: Point of clarification – confirmed terminology w/Ferdinand Milanes

Comment [JE9]: These descriptions have been modified to correct discrepancy between MLA and Telecommunications Guidelines

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Comment [JE10]: Adds definition of DAS, new type of installations being requested by the industry, also reflected in the new fee matrix

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(b) Base License Fee Calculation: Based on the geographic location and equipment and building space factors detailed above, the annual License Fee to be paid for the use of each of the sites that is the subject of an individual Site License shall be determined by using the Annual Base License Fee attached as Exhibit C. Exhibit C is also known as the "Pricing Matrix".

(c) The License Fee for any facility which includes equipment or building space dimensions different from those set forth in the definitions in Subsection (a)(ii) above, shall be negotiated by the parties in good faith. The amount of space licensed shall include the total area fenced by Licensee. The building space dimensions shall not include space required by Licensor or any third party for co-location or co-use of the Site who is separately paying a fee to Licensor for the space it is utilizing. If Licensor requires, or if there are other circumstances caused by geographic, security or other concerns, which requires that Licensee utilize space on the Premises in excess of its customary needs or the size limitations specified herein, the individual Site License may provide for an alteration of the Site designation as a Macrocell, Minicell or Microcell.

(d) License Fee Payment Schedule - The first annual payment for each Site shall be paid to Licensor within ten (10) days after the issuance of the Enbroachment Permit to Construct. ~~the issuance of the Encroachment Permit to Construct (Commencement Date)~~. The prorated annual payment for the period from the Commencement Date through the next occurring ~~July 1~~June 30 shall be calculated by dividing a full annual payment as indicated in the Pricing Matrix by 12 and multiplying that number by the number of remaining full months in the year. Thereafter, Licensee shall make an annual payment on July 1. Payments shall be mailed to: Department of Transportation, Attention: Cashier, P.O. Box 168019, Sacramento, CA 95816-~~3819~~-8019.

(e) Fee Adjustments - Beginning on July 1, ~~2009~~ 2014 and on each July 1 thereafter during the term of each Site License: (i) Licensor will automatically increase and Licensee shall automatically pay the License Fee, payable under the Site License in accordance with the Pricing Matrix attached hereto as Exhibit C. ~~, and (ii) the License Fee set forth in Subsection 5(b) shall be increased. The amount of such annual increase shall be reflected in the Pricing Matrix to be issued annually prior to July 1 by the Department of Transportation's Division of Right of Way. The amount of each annual increase may be approximated by multiplying the annual License Fee for the last year prior to the increase by three and one-half percent (3.5%). Should the Consumer Price Index (All Urban Consumers Western Region All Items) US City Average, as published by the United States Department of Labor, Bureau of Labor Statistics, exceed 3.5% for the year, the Pricing Matrix will be adjusted correspondingly but in no event will the annual increase exceed 5.0%. The CPI adjusted increase will be calculated by the Department of Transportation's Division of Right of Way and will be incorporated into the annually prepared Pricing Matrix. A chart showing the expected annual fee for each year after July 1, 2008,~~ The Pricing Matrix as of July 1, 2014 ~~is attached hereto as Exhibit C.~~

(f) In the event Licensee fails to pay the annual License Fee within ten (10) days of when due, the past-due License Fees shall bear interest from (but excluding) the date due

Comment [JE11]: Reconsidered revision, reverted to original language.

Formatted: Highlight

Comment [JE12]: Revised to correct statement as to dates covered by annual payments.

Comment [JE13]: CPI is not calculated each year rather we're applying a flat 3.5% . This is consistent with market data and eliminates the need to send notices of new rent amounts each year.

until paid at the lesser of (i) twelve percent (12%) per annum, or (ii) the maximum rate permitted under California or federal law, if the aforesaid rate exceeds such maximum.

(g) ~~If Licensee occupies a site after June 30, 2019, T~~the parties shall renegotiate the base License Fee to reflect fair market value after the initial 10 years of each SLA, and every 5 years thereafter. However, in no case shall the License Fee be less than it would be under the annual rent provision of Paragraph 5(b) as adjusted by 5(e). ~~If the parties cannot agree on a new rent, the matter shall be submitted to a mutually agreeable Appraiser who is a Member of the Appraisal Institute ("MAI") for a binding determination~~. If the parties cannot agree on a new rent the matter shall be submitted to a mutually agreeable Appraiser who is a Member of the Appraisal Institute ("MAI") for a binding determination

Comment [JE14]: Revised to clarify and conform to 10 year initial SLA term.

Comment [JE15]: Reconsidered revision; reverted to original language

(h) If any existing site is rebuilt, a new Site License will be required, and payment will be consistent with the then current Pricing Matrix.

6. Improvements and Construction.

(a) Prior to commencing any installation, construction, alteration or improvement at any Site, Licensee shall obtain Licensor's prior written approval of Licensee's plans for the installation or alteration work which plans shall be attached to the Site License upon execution. A response (approval, denial, request for modification or additional information), including Federal Highway Administration (FHWA) and environmental clearances, will be made within forty-five (45) days of submittal of such plans; if a response is not forwarded within forty-five (45) days, Licensee shall be entitled to an extension of the Local Permitting Period. Licensee's plans shall include information on the length, width, weight, and cable routing, of and between equipment cabinets and/or shelters, antennas and equipment technical specifications, so as to permit Licensor to reasonably verify their placement on the Premises, potential interference and proper structural loading and Licensee shall provide Licensor with any other information as Licensor may reasonably request with respect to such plans. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement or any Site License, Licensee may replace, exchange, substitute or modify ("replacement") its equipment or antennas installed at any Site with equipment or antennas substantially similar to the equipment and antennas previously approved by Licensor, so long as such replacement equipment and antennas operate at the same frequencies, power levels, emissions, gain, bandwidth and beamwidth and (i) are no larger in size or heavier in weight, and (ii) do not enlarge the physical size of the Site area, subject to Licensor's having thirty (30) days' notice to insure there will be no interference with Licensor's operations.

(b) If construction is proposed, Licensee shall, prior to any construction or reconstruction, apply for an encroachment permit and submit seven (7) complete sets of plans, specifications, and structural calculations, stamped by a California NIA registered Engineer, to Licensor, and construction is not to proceed prior to approval of said plans by Licensor. A minimum of one set of plans must be standard size. Licensor shall respond (approval, denial, request for modification or additional information) within forty-five (45) days of Licensor's receipt of Licensee's plans. If Licensor does not provide such approval or request for changes: (i) within such forty-five (45) day period, then Licensee shall be entitled to one month's free extension of the Local Permitting Period, and (ii) if after sixty (60) days

Licensor has not delivered such approval or request for changes, Licensor and Licensee shall meet and confer to determine a mutually acceptable additional extension to the Local Permitting Period. Licensor shall not be entitled to receive any additional consideration in exchange for giving its approval of Licensee's plans. If the appropriate local entity declines to inspect Licensee's construction, Licensee shall provide written confirmation by a qualified individual, such as a current or former building inspector or registered engineer, that the construction conforms to plans and all appropriate building standards, prior to issuance of a Department of Transportation Notice of Completion by Licensor.

(c) All of Licensee's installation and alteration work shall be performed in accordance with applicable building codes and shall not adversely affect the structural integrity or maintenance of Licensor's property or improvements. Any structural work or reinforcement on an improvement shall be approved by a licensed structural engineer at Licensee's sole cost and expense. During construction, Licensee shall perform work in such a manner as will not hamper Licensor's operations or the needs of the traveling public.

(d) Licensee shall keep the Premises and Site free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Licensee. If any lien is filed against the Premises or the Site as a result of the acts or omissions of Licensee, or Licensee's employees, agents, or contractors, Licensee shall discharge, bond or otherwise secure same to Licensor's reasonable satisfaction within thirty (30) days after Licensee has notice that the lien has been filed. If Licensee fails to commence steps to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of Licensor, Licensor may, at its election, upon five (5) days' prior written notice to Licensee discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. Licensee shall pay on demand any amount so paid by Licensor for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of Licensor incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.

(e) Except as otherwise expressly set forth in this Agreement, Licensee agrees that each Site and every part and appurtenance thereof is offered AS IS. Based upon information supplied by Licensor on each Site License, Licensee will evaluate the possibility based on Licensee's contemplated Operations of interference from, or to, existing wireless communication or other uses on the Premises. Licensee will then determine if interference will occur assuming the other user's equipment and Licensee's equipment is properly and lawfully installed and operated. If Licensee determines that any such existing user would interfere with Licensee's Operations but that such interference can be reasonably eliminated, Licensee shall so notify Licensor and Licensor shall use reasonable efforts (with the cooperation of Licensee) to remedy the condition deemed to be responsible for such potential interference; provided, however, Licensor's failure to remedy such condition shall in no event result in any liability of Licensor hereunder or under any Site License. Any physical change to Licensor's existing equipment requested by Licensee shall be at Licensee's sole cost. At such time as Licensee determines that no interference shall occur, such determination by Licensee shall be binding on Licensee, and subject to Licensee's rights under Section 4, no subsequent determination with respect thereto shall excuse Licensee from liability hereunder

or with respect to any Site License; provided, however, that if Licensee's Operations are adversely affected in any material way as a result of the improper or unlawful operation of any equipment located on the Premises at the time of Licensee's evaluation or as a result of modifications to equipment and/or additional equipment being installed and operated on the Premises by either Licensor or any other user of the Premises under the control of Licensor, Licensor shall use its best efforts (with the cooperation of Licensee) to promptly resolve such interference. In no event shall Licensor's inability to resolve such interference entitle Licensee to terminate any Site License unless after thirty (30) days following the commencement of such efforts at resolution, such interference has not been resolved to the reasonable satisfaction of Licensee. Nothing in this Agreement shall be deemed to waive any rights Licensee may have pursuant to applicable FCC regulations to enjoin such interference or pursue any other remedies available to Licensee at law or in equity after expiration of the thirty (30) day period referred to in the preceding sentence.

(f) Notwithstanding anything in this Section 6 to the contrary, Licensee acknowledges that Licensor may not have control over equipment located on or adjoining the Premises which would interfere with Licensee's use of the Site and shall not be liable for such lack of control. In the event of such interference, Licensor and Licensee shall use all reasonable efforts within their control to obtain the cooperation of the equipment owner to resolve such interference; provided, however, that if the parties shall not succeed in obtaining the cooperation of the equipment owner to resolve such interference within thirty (30) days following such interference, Licensee may immediately terminate any Site License so affected (and/or this Agreement if no Site Licenses remain subject hereto), and neither party shall have any further liability with respect to such Site License. Any prepaid License Fee shall be credited or returned to Licensee on a pro rated basis.

(g) All portions of the telecommunications facilities or other property or improvements attached to or otherwise brought onto the Site by Licensee shall, at all times and for all purposes, be the personal property of Licensee and at Licensee's option, may be removed by Licensee at any time during the term, subject to the provisions of Section 4 (g), and shall be removed no later than within fifteen (15) days after expiration of the term or termination of the applicable Site License.

(h) Upon execution of a Site License, Licensor shall not thereafter grant to any third party any lease, license or other permission to use (in this Section collectively, a "Grant") the Premises, Site or area surrounding the Premises under Licensor's reasonable control, if the use permitted under such Grant would cause interference with Licensee's Operations. Any such Grant shall expressly prohibit the user thereunder from interfering with Licensee's Operations. Licensee shall reasonably cooperate with Licensor and/or any subsequent third party user to eliminate any interference and to allow co-location, if possible.

7. Utilities and Access.

(a) Licensee shall have the right at its sole cost and expense to obtain and connect to telephone and electrical service from any utility company that provides or is willing to

provide such service to the Site, subject to Licensor's right to approve proposed utility routes and the manner of installation. Licensee shall timely pay all of Licensee's utility costs. Licensee shall either obtain electric power directly from the local utility or from Licensor's power source and shall pay for installation of a submeter. Licensee shall pay all local utility company charges directly to the provider. Licensor is under no obligation to provide power or allow Licensee to use its power source, but shall cooperate with Licensee in its efforts to bring electrical power to the Site.

(b) The following provisions shall govern access to the Site and Premises by Licensee, unless otherwise modified on a particular Site License. Access for construction, routine maintenance and repair, conducting feasibility studies and other non-emergency visits shall be stated in each Site License Agreement and require a minimum of one (1) business day's prior written notice to Licensor at Licensor's address stated in the Site License (no Site License shall have more than one address of record in each Region or District of Licensor). Some Site Licenses may allow non-written notice for non-emergency visits and/or routine maintenance and repair visits. In the event of an unscheduled repair or other emergency, Licensee shall be entitled to access to the Premises twenty-four (24) hours per day, seven (7) days a week subject to any special conditions in the Site License. If Sites are allowed that could affect traffic flow, named maintenance and contractors may be restricted to non-peak flow hours. Licensee shall endeavor to provide written (but in any event shall attempt to provide oral) notice of an emergency repair prior to accessing the Site. Any such access by Licensee shall be subject to any other or superseding access requirements as may be specified in a Site License.

8. Improvement Fees/Taxes.

Licensee shall pay all real estate taxes, possessory interest taxes and other taxes and fees caused by Licensee's use and/or equipment placed on the Site or other improvements constructed by Licensee on the Premises.

9. Insurance and Indemnification.

(a) Licensee shall carry during the term of this Agreement, at its own cost and expense, the following insurance:

(i) "All Risk" property insurance for Licensee's property located at the Site;

(ii) Commercial general liability insurance having a minimum limit of liability of $5,000,000 for each injury or death arising out of one occurrence and $5,000,000 for damage to property from any one occurrence and excess/umbrella coverage of $5,000,000; and,

(iii) Worker's Compensation and Employer's liability insurance, in form and as required by law.

(b) Licensee shall name Licensor as an additional insured under its liability policy and require its insurance company to give at least thirty (30) days' written notice of the termination, cancellation or material change of the policy to Licensor. Such certificate of

insurance shall be delivered to Licensor within thirty (30) days from the execution of this Agreement and before the expiration of any term thereof from an insurance company with a minimum policy holder and financial rating of "B+/VII," or better in the then current edition of Best's Insurance Guide.

(c) Except as otherwise herein provided, the provision by Licensee of insurance required hereby shall not be construed to limit or otherwise affect Licensee's liability to Licensor.

(d) Licensee shall indemnify, defend and hold Licensor harmless from and against any and all direct and proximate claims, actions, damages, liability and expense (including reasonable attorneys' fees, costs and disbursements) in connection with the loss of life, personal injury, and/or damage to property to the extent arising from or out of: (i) all claims relating to or caused by, the equipment Licensee installs on Licensor's property and/or Licensee's Operations, (ii) any occurrence in, upon or at the Premises or elsewhere on the Site or on the land of which the Site is a part to the extent caused by the negligence or willful misconduct of Licensee or its employees, agents, or contractors, (iii) any occurrence occasioned by the violation of any law, regulation or ordinance by Licensee or its agents, employees, or contractors, or (iv) by Licensee's default under a Site License or this Agreement. The provisions of this Subsection 9(d) shall survive the expiration or termination of this Agreement with respect to any damage, injury, or death occurring before such expiration or termination.

(e) Notwithstanding anything in this Agreement, each party hereby releases and waives any and all claims against the other party and the other party's employees, agents, officers, partners and directors, for consequential, incidental or special damages, or lost profits.

10. Assignment.

This Agreement and the Site Licenses granted hereunder are personal to Licensee. Except as hereinafter provided, Licensee shall not, without Licensor's and the Federal Highway Administration's ("FHWA") prior written consent which consent may be withheld in Licensor's sole and absolute discretion, assign or otherwise transfer this Agreement, a Site License or its interest in any particular Premises or any part thereof. Notwithstanding the foregoing Licensee may assign or sublet this Agreement, a Site License or its interest in a particular Premises or any part thereof without Licensor's or FHWA's consent to any person or business entity which is a parent, subsidiary, partner, financing entity or affiliate of Licensee, or controls or is controlled by or under common control with Licensee or is merged or consolidated with Licensee or purchases a majority or controlling interest in the assets of Licensee. Licensor may assign this Agreement, a Site License or any particular Premises or any part thereof, provided said assignee will assume, recognize and become responsible to Licensee for, the performance of all of the terms and conditions to be performed by Licensor under this Agreement. Any request for an assignment requiring Licensor's consent will require the payment of Licensor's ~~then current~~ assignment request processing fee of $1,000~~($1,000 in 1997)~~.

Comment [JE16]: Revised to clarify

11. Repairs.

(a) Licensee shall, at all times during the term of any particular Site License and at Licensee's sole cost and expense, keep its facilities and equipment located on or about the Premises and every part thereof in good condition and repair, reasonable wear and tear excepted, including making replacements when necessary. If Licensee fails to promptly make any repairs that are necessary to remedy a dangerous condition on the Site caused by Licensee, its agents, employees or contractors, or other condition caused by Licensee, its agents, employees or contractors which is materially adverse to the quiet enjoyment by Licensor or any other user of the Site, Licensor shall give Licensee written notice of its intention to make such repairs and the date on which such repairs shall commence. Except for emergencies, Licensee shall be given at least fifteen (15) days from the day the letter is sent to commence the repairs. If Licensee does not, prior to the date set forth in such notice, commence to make such repairs, Licensor may make such repairs and shall be reimbursed by Licensee for any and all reasonable costs incurred by Licensor in performing (or contracting to have performed) such repairs, including any overhead costs reasonably allocable to the performance thereof. Licensor shall provide Licensee reasonably detailed supporting documentation of such costs concurrently with any demand for reimbursement.

(b) Licensee shall, at all times, during the term of any particular Site License and at Licensee's sole cost and expense, keep Licensee's equipment at the Site and any access roads constructed by Licensee for its sole use at the Premises in good condition and repair, except for any access roads or improvements installed by Licensor or other third parties.

(c) Licensee, at its sole cost and expense, will restore all Licensor property which is destroyed or damaged by Licensee's activities on a Site subject to an individual Site License. Licensee agrees to commence performance of any remedial work within thirty (30) days of written notice by Licensor and to complete remedial work required in the reasonable opinion of Licensor to restore the site to its original condition, reasonable wear and tear excepted, within the number of days specified in the written notice. The number of days specified shall be reasonable. If remedial work is not undertaken and completed within the specified time, Licensor may, on ten (10) days' prior written notice to Licensee, undertake and complete the remedial work with its own forces and/or independent contractors, and Licensee shall pay all actual costs or charges incurred by Licensor by reason of such work. Licensor shall provide Licensee reasonably detailed supporting documentation for such costs and charges.

12. Surrender of Premises; Holding Over.

(a) Upon the expiration or other termination of a Site License, Licensee shall peacefully vacate the Premises in as good order and condition as the same were on the Commencement Date, reasonable wear and tear, and damage not caused by Licensee excepted. If Licensee fails to promptly remove all of its facilities and equipment from the Premises within thirty (30) days after expiration or earlier termination of the Term, Licensor may, after five (5) days' prior written notice to Licensee, remove the same (without any liability to Licensee for any damage to such equipment and/or facilities which may result from reasonable efforts at removal), and Licensee shall pay to Licensor on demand any and all reasonable costs incurred by Licensor in removing and storing such improvements and

equipment prior to retrieval of same by Licensee. Licensor has no obligation to store such equipment, and Licensee shall have no claim if Licensor destroys the equipment if it is not removed by Licensee as provided herein. Any improvements Licensor desires to remain, shall be governed by the provisions of Subsection 4(g).

(b) Should Licensee continue to hold the Premises after the termination of a Site License, whether the termination occurs by lapse of time or otherwise, such holding over shall, unless otherwise agreed to by Licensor in writing, constitute and be construed as a tenancy at will at a monthly License Fee equal to twelve and one-half percent (12.5%) of the annual License Fee last paid and subject to all of the other terms set forth herein including the annual percentage increase.

13. Default and Remedies.

(a) The occurrence of any one or more of the following events shall constitute an "event of default" or "default" under the particular Site License(s) to which it applies:

(i) if Licensee fails to pay any License Fee or other sums payable by Licensee under the Site License as and when the License Fee or other sums become due and payable and such failure
continues for more than ten (10) days after written notice thereof from Licensor is received pursuant to Section 16;

(ii) if Licensee upon actual receipt of any formal written order or directives relating to the Site from any governmental entity fails to comply with such order or directive within the time limits set forth in such order or directive and any applicable administrative or judicial appeal rights having been exhausted;

(iii) if Licensee fails to perform or observe any other term of the applicable Site License(s), and such failure continues for more than fifteen (15) days after written notice thereof from Licensor or in the event of a default which cannot, with due diligence be cured within a period of fifteen (15) days, if Licensee does not duly institute within such fifteen (15) day period steps to remedy the same and the same is not remedied within thirty (30) days or such longer period as mutually agreed by the parties hereto;

(b) The occurrence of any one or more of the following events shall constitute an "event of default" or "default" of this Agreement and all Site Licenses:

(i) if any petition is filed by or against Licensee, under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof (and with respect to any petition filed against Licensee and such petition is not dismissed within ninety (90) days after the filing thereof), or Licensee shall be adjudged bankrupt or insolvent in proceedings filed under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof;

(ii) if Licensee becomes insolvent or makes a transfer in fraud of creditors;

(iii) if a receiver, custodian, or trustee is appointed by Licensee or for any of the assets of Licensee which appointment is not vacated within ninety (90) days of the date of the appointment;

(iv) if Licensee fails to perform or observe any other term of the Agreement other than a default allocable to a particular Site License, and such failure continues for more than fifteen (15) days after written notice thereof from Licensor or in the event of a default which cannot, with due diligence be cured within a period of fifteen (15) days, if Licensee does not duly institute within such fifteen (15) day period steps to remedy the same and the same is not remedied within thirty (30) days or such longer period as mutually agreed by the parties hereto.

(c) In any notice of an alleged default by Licensee from Licensor, Licensor shall specify the nature of the default and the Site License(s) potentially affected thereby. After applicable notice and grace periods have expired, at any time thereafter that Licensee remains in default, Licensor may terminate the Site License(s) directly affected by such default and, if all Site Licenses shall be affected, this Agreement, without notice or demand. Upon the applicable termination, Licensee shall immediately surrender all applicable Sites then licensed to Licensee under the affected Site License to Licensor and, subject to Subsection 4(g), remove all of its facilities and equipment therefrom. If Licensee fails to promptly remove all of its facilities and equipment from the Premises, Licensor may remove the same (without any liability to Licensee for any damage to such equipment and/or facilities which may result from reasonable efforts at removal), and Licensee shall pay to Licensor on demand any and all costs incurred by Licensor in removing and storing such facilities and equipment prior to retrieval of same by Licensee.

(d) If either Licensor or Licensee shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this License), or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
Nothing in this clause shall excuse Licensee from prompt payment of any rent, taxes, insurance or any other charges required of Licensee.

(e) In the event of a termination of a Site License, it shall be lawful for Licensor, after not less than thirty (30) days' prior written notice, to reenter into and upon the Site, and every part thereof, and to remove at Licensee's expense all of Licensee's property therefrom and to repossess and occupy the Site. In the event Licensor terminates a Site License pursuant to this Section, Licensor shall not be required to pay Licensee any sum or sums whatsoever related to that Site License.

14. Warranties/Disclaimer.

(a) Licensor represents and warrants that:

(i) With respect to each particular Site, Licensor owns or has control of the land on which the Site and Premises is located and has the right to enter into the Site License with Licensee with respect thereto and if Licensor is leasing a particular Site, a copy of the underlying Lease, License, Right-of-Way deed or other instrument will be attached to the individual Site License.

(ii) Subject to Subsection 14(c) below and except as otherwise disclosed to Licensee in writing prior to the execution of any Site License, there are, to Licensor's actual knowledge (without any independent investigation), no known liens, restrictions, mortgages, covenants, conditions, easements, leases, agreements of record or not of record, which would adversely affect or prohibit Licensee's use and enjoyment of the Premises under a Site License.

(iii) Subject to Subsection 14(c) below, Licensee shall have access to the Site and Premises and the quiet and peaceful use, enjoyment and possession of the Site and Premises during the term for its permitted uses.

(iv) Except as specifically set forth in an individual Site License, Licensor represents to the best of its knowledge no Hazardous Substances are present on, in or under the Premises or Site in violation of applicable law, and, to the best of Licensor's knowledge: (i) all operations on the Premises and Site are and have been in substantial compliance with all laws regulating such Hazardous Substances, (ii) no litigation has been brought or threatened, nor any settlements reached with any governmental, quasi-governmental entity or private party concerning the actual or alleged presence, disposal, release or threatened release of such Hazardous Substances in, on, about or under the Premises or Site, and (iii) Licensor has not received notice of any violation, or any alleged violation of any law related to Hazardous Substances and relating to the Premises or Site. "Hazardous Substances" includes substances, chemicals or wastes that are identified as hazardous, toxic or dangerous in any applicable federal or state law.

(aa) Nothing herein will be construed or interpreted to require that Licensor remediate any Hazardous Substance at any Site. If Licensee discovers hazardous substances on the Site during the Local Permitting Period, its sole remedy will be to cancel the Site License. Any work needed to remove or remediate any Hazardous Substance or other Environmental Hazard that requires the removal or relocation of Licensee's equipment will be treated as "Licensor's use of a Site" pursuant to Subsection 4(e).

(b) Licensor and Licensee represent and warrant to each other that:

(i) it has full right to make this Agreement;

(ii) the making of this Agreement and the performance thereof will not violate any laws, ordinances, restrictive covenants, or other agreements under which it is bound;

(iii) it is fully organized/formed, validly existing and in good standing and has all rights, power and authority to make this Agreement and bind itself hereto through the party

set forth as signatory set forth below; and,

(iv) neither party has liability for any brokerage commission due to any broker in connection with this Agreement or any Site License.

(c) Except as expressly provided herein, Licensor does not warrant:

(i) the suitability of any particular Site for the purposes contemplated hereunder, including without limitation the adequacy of such Site's location, its condition, or the condition of any structure or appurtenances thereto; or,

(ii) whether Licensee will be required to obtain (or will be able to obtain) any licenses, permits or approvals or any applicable governmental authority necessary for Licensee's Operations at any particular Site.

15. Compliance and Prohibited Uses.

(a) Licensee shall at all times and in all respects comply with all federal, state and local laws, ordinance and regulations, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. section 1251, et seq.), Resource Conservation and Recovery Act (42 U.S.C. section 6901, et seq.), Safe Drinking Water Act (42 U.S.C. section 300f, et seq.), Toxic Substances Control Act (15 U.S.C. section 2601, et seq.), Clean Air Act (42 U.S.C. section 7401, et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601,et seq.), Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code section 25249.5, et seq.), other applicable provisions of the California Health and Safety Code (section 25100, et seq., and section 39000, et seq.), California Water Code (section 13000, et seq.), and other comparable state laws, regulations and local ordinances relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances" under any such laws, ordinances or regulations (collectively "Hazardous Materials Laws"). As used in the provisions of this agreement, "hazardous materials" include any "hazardous substance" as that term is defined in section 25316 of the California Health and Safety Code or posing a hazard to health or the environment. Except as otherwise expressly permitted in this Agreement, Licensee shall not use, create, store or allow any hazardous materials on the site. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted. Back-up generators and the storage of fuel for such generators shall only be allowed if provided in a particular Site License under the conditions of that Site License. In no case shall Licensee cause or allow the deposit or disposal of any hazardous materials on the site. Licensor, or its agents or contractors, shall at all times have the right to go upon and inspect the Site and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or the testing or soils or underground tanks on the Site.

(b) Accumulation, storage, treatment, or disposal of any waste material is prohibited;

excepting only temporary storage, not to exceed fourteen (14) days, or nonhazardous solid refuse produced from activities on the Premises for pick up by municipal or licensed commercial refuse service, and lawful use of sanitary sewers (if any) for domestic sewage.

(c) Manufacturing; maintenance of equipment (excluding communications equipment and back-up power sources such as batteries and generators operated pursuant to the Site License Agreement) or vehicles, or use, installation or construction of vessels, tanks, (stationary or mobile), dikes, sumps, or ponds; or any activity for which a license or permit is required from any government agency for (1) transportation, storage, treatment, or disposal of any waste, (2) discharge of any pollutant including but not limited to discharge to air, water, or a sewer system is prohibited.

(d) Any spill caused by Licensee or from Licensee's equipment resulting in a release of a hazardous material to the air, soil, surface water, or groundwater in violation of applicable law will be immediately reported to Licensor as well as to appropriate government agencies and shall be promptly and fully cleaned up and the Premises (including soils, surface water, and groundwater) restored to its condition existing immediately prior to such spill or release, all in accordance with and as may be required by applicable law.

(e) Should Licensee desire to use pesticides on the Site or Premises (either herbicides, rodenticides, or insecticides) all applicable Environmental Protection Agency (EPA) standards must be met and prior approval must be received from Licensor and not all EPA approved pesticides will be permitted. Licensee will fill out form FG-880 and submit it to the area manager at least seven (7) days prior to application of pesticides. Licensor reserves the right to disapprove the use of any pesticide. Licensee shall obtain all county, state or federal permits required, including restricted pesticide use and burning permits and comply with all conditions of those permits. Licensee shall submit to the area manager a copy of all permits.

(f) In the event Licensee breaches any of the provisions of the Section, this Agreement or the particular Site License may be terminated immediately by Licensor and be of no further force or effect. It is the intent of the parties hereto that Licensee shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the Site during Licensee's period of use and possession as Licensee of the Site. Licensee shall also be responsible for any clean-up and decontamination on or off the Site necessitated by the introduction of such hazardous materials on the Site. Licensee shall not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the Site by any party other than Licensee during any period prior to commencement of Licensee's period of use and possession of the Site as Licensee. Licensee shall further hold Licensor, and its officers and employees, harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous materials on the Site during Licensee's period of use and possession of the Site.

16. Notices.

Unless otherwise provided herein, any notice or demand required or permitted to be given hereunder shall be given in writing by hand delivery, first class certified or registered

mail, return receipt requested, or by recognized overnight mail, in a sealed envelope, postage prepaid, to be effective when received or refused. Notice shall be addressed to the parties at the addresses set forth on the signature pages. Either party hereto may change the place for the giving of notice to it by like written notice to the other as provided herein.

17. Miscellaneous.

(a) This Agreement and the Site Licenses constitute the entire agreement and understanding between the parties, and supersede all offers, negotiations and other agreements concerning the subject matter contained herein except for any Master License Agreement entered into prior to January 1, 2009 and the Site Licenses entered into by the parties thereunder. Any amendments to this Agreement or any Site License must be in writing and executed by both parties.

(b) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. To the extent any provisions of this Agreement are in conflict with, or inconsistent with regulations or rules promulgated by the California Public Utilities Commission such provisions shall be null and void.

(c) This Agreement and the Site Licenses shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(d) This Agreement and each Site License shall be governed by the laws of the State of California without regard to any conflict of laws doctrine. Licensor and Licensee agree that any dispute, action or proceeding arising out of this Agreement or any Site License shall be subject to the jurisdiction of the Superior Courts of the State of California, and shall be venued in the County of Sacramento with respect to disputes arising out of this Agreement, and venued in the county in which the Site is located for disputes arising out of an individual Site License.

(e) Licensee may record an appropriate Notice or Memorandum of any Site License.

(f) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement or any individual Site License, such party shall not unreasonably delay, withhold or condition its approval or consent.

(g) All riders and Exhibits annexed hereto form material parts of this Agreement.

(h) This Agreement may be executed in duplicate counterparts each of which shall be deemed an original.

(i) Licensee will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, or physical handicap. Licensee will take affirmative action to insure that applicants are employed, and that

employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, national origin or physical handicap. (See California Government Code Sections 12920-12994 for further details.)

(j) Licensee shall not commit, suffer, or permit any waste on the licensed Site or any acts to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the licensed Site for any illegal or immoral purposes.

18. Administrative Fee.

(a) Licensee shall pay a one-time charge of ~~$1,000.00~~2,500.00 when applying for a Site License to cover the costs associated with the preparation and the engineering and technical analysis of the Site License to assure complete compatibility of operations at the Site. This payment will entitle Licensee to the Local Permitting Period without additional charge. This amount may be periodically adjusted to reflect an actual change in the costs incurred by Licensor with the preparation and the engineering and technical analysis for the Site. This is in addition to general permits required by any party entering Licensor's property, especially if entry is sought for an access-controlled roadway, such as annual district survey permit, encroachment permits, or maintenance permits.

Comment [JE17]: Fee raised for first time since 1996 to reflect time required to process applicRIONA

(b) Subsequent documents requiring approval including Encumbrances, Subleases or Substitutions require administrative fee of $1,000 to cover cost of review. Minor requests for site modification require no review fee; modifications requiring extensive District Airspace Review Committee review will require an administrative fee of $1,000.

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Comment [JE18]: New fees to cover costs of review of subsequent documents

19. Licensee Casualty Responsibilities.

Licensor will not keep improvements which are constructed or installed by Licensee under the provisions of this Agreement insured against fire or casualty, and Licensee will make no claim of any nature against Licensor by reason of any damage to the business or property of Licensee in the event of damage or destruction by fire or other cause. Licensee is solely responsible for insuring, or self-paying, all expenses caused by the destruction or damage of its facilities regardless of cause or fault.

20. Relocation Assistance.

Licensee acknowledges it is not entitled to any relocation assistance payments at the conclusion of this Agreement or any Site License under State (Government Code Section 7260 et seq.) or federal law (42 U.S.C.A. 4601 et seq.), and Licensee further agrees it will not file or pursue any such claim.

21. Collocation - Licensor.

(a) Unless otherwise specified in a Site License, the facility to be constructed by Licensee at that particular Site shall be built to include the following specifications to allow for Licensor's possible use, at no cost to Licensor:

(i) If Licensee will be constructing a monopole or other tower at the Site for its use, such tower/monopole shall, upon completion of construction, be available to Licensor to

use for one 800 MHZ omni antenna approximately 44" long, 1.5" in diameter, with a weight not to exceed twenty pounds, to be mounted at a height designated by Licensee, not less than twenty feet (20') high. In lieu of said antenna, Licensor may install another antenna of similar size and capability for Licensor's possible use.

(ii) If Licensee will be constructing a vault at the Site, Licensee shall make available, upon completion of initial construction, a 2' x 2' x 7' space for Licensor's equipment; if Licensee will be constructing an equipment pad, Licensee shall make available, upon completion of initial construction, at least 2.5' x 2.5' of space for Licensor's equipment cabinet.

(iii) Conduit or a cable tray for transmission from equipment area to antenna.

(iv) Cable access to phone and electrical lines.

(b) If Licensor chooses to occupy a tower/monopole built by Licensee, it may engage a contractor to install its equipment on Licensee's facilities. Licensee reserves the right to approve Licensor's list of contractors prequalified to perform the equipment installation. Contractors utilized by Licensor must all provide proof of adequate insurance coverage and must name Licensee as an additional insured. Licensee shall inspect the installation and advise Licensor of any deficiencies noted. Alternatively, Licensor may request that Licensee install Licensor's equipment. All expenses that Licensee actually incurs for ancillary equipment purchased or installed for the benefit of Licensor, or for radio tower work performed by Licensee for the benefit of Licensor, shall be at State expense, provided that such costs are commercially competitive and documented in reasonable detail.

(c) When Licensor occupies a tower/monopole constructed by Licensee, the parties agree to negotiate in good faith issues concerning such occupation by Licensor, including but not limited to issues relating to insurance, maintenance, interference and indemnity. If parties other than Licensee will co-use a Site with Licensee, it shall be Licensor's responsibility to ensure, through the use of its approval rights set forth in Section 22, that any space reserved for Licensor pursuant to this Section 21 remains available and technically feasible with respect to structural and technical interference issues.

22. Co-location - Third Party.

(a) Licensee shall not hinder the co-use of a Site by another company and Licensee may permit the use by third parties of space on facilities constructed by Licensee on a Site, with Licensor's prior written permission. Licensee shall not allow the use of any space on any facility which, in Licensor's sole opinion, results in any interference with Licensor's operations, communication systems, microwave antennas, and/or other equipment, or would prevent Licensor from utilizing its reserved space as set forth in Section 21. Licensee may charge a fee for the use of tower space and/or building space by third parties, under written agreements with those third parties, within the usual parameters of industry practice. Copies of the agreements between Licensee and the third parties shall be provided to Licensor. For third-party co-locations situated entirely within the Site (each a "Sub-Use"), Licensor shall be

paid by Licensee fifty percent (50%) of the gross monies paid by the third party to Licensee (but not including any portion of the amount charged the third party to compensate Licensee for the recoupment of all or any portion of its construction and installation costs, including engineering and entitlement expenses) or fifty percent (50%) of the fee paid by the then current Licensee, or fifty percent (50%) of license fee that would be paid by the third party if said third party were to establish their own facility at that location, whichever is highest. For third-party co-locations, Licensor will have a separate license agreement with each third party using the Premises, the term of which will be co-terminus with Licensee's Site License. For third-party co-locations requiring additional or separate land space on the Premises (each a "Direct-Use"), the License Fee shall be paid directly to Licensor by the third-party user. Any third party seeking to co-locate on Premises with an existing telecommunications licensee, whether under a Sub-Use or a Direct-Use, will be required to fulfill all of Licensor's review procedures and approvals.

(b) Licensee may not refuse to negotiate in good faith or to enter into agreements on equitable terms with any interested third party for the occupation of a facility built by Licensee, unless occupation will result in interference with Licensee's or Licensor's operations, communications systems, microwave antennas and/or other equipment.

23. Annual Financial Statements.

Licensor may require Licensee to submit its most recent annual financial statements to Licensor prior to Licensor executing any Site License with Licensee; thereafter, at Licensor's request, Licensee shall submit its most recent annual financial statement on or before June 30 of each year this Agreement or any Site License remains in effect. Licensor shall not enter or renew any Site License if, based on a review of the financial statement, Licensor determines, in its sole opinion, that Licensee cannot perform the financial obligations of this Agreement and/or any Site License. Copies of annual financial statements filed with the Securities and Exchange Commission ("SEC") shall fulfill this requirement; if Licensee is not a publicly traded corporation, then an audited financial statement will be required. If Licensee desires to fulfill this requirement by submitting the Annual Financial Statement of a parent or affiliated corporation, then that parent or affiliated corporation shall guarantee Licensee's performance of all obligations required by this Agreement and any Site License.

EXECUTED ON: _____

LICENSEE: _____

By: _____
(Signature) (Title)

Name: _____
(Print Name)

Title: _____

(Print Title)

Address: _____

LICENSOR: State of California, Department of Transportation (Caltrans)

By: _____
(Signature) Chief, Division of Right of Way

1120 "N" Street, Sacramento, CA 95814

SLA No._____
Dist.- Co.- Rte.- Parcel - Tenancy

Premises:_____

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SITE LICENSE AGREEMENT

Subject to the terms and conditions of the Master License Agreement ("MLA") between the undersigned Licensee and Licensor, Department of Transportation, the following described location is licensed to Licensee for unmanned telecommunications purposes:

1. Licensee:_____

2. Site Address/Description:_____

   _____

3. Geographic Area Category: Prime Urban Urbanized Rural

4. Equipment Classification: Macrocell Minicell Microcell

5. Base Annual License Fee: _____
   (Fee to be increased 3 1/2%, effective each June 30, commencing June 30, 20__. Annual License Fee is due by June 30 each year. The initial License Fee will be prorated to the next June 30, and will be past due after ten days of the Commencement Date.)

6. Effective Dates: The "Execution Date" is the date Licensor signs this Agreement. The "Commencement Date" is the date of the Encroachment Permit for construction, not to be later than six months after the Execution Date, unless extended per the terms of the MLA).

7. Local Licensor Contacts for access or emergencies (names, titles, phone, pagers, etc.)
   _____
   _____
   _____
   (Licensee will be responsible for all overtime charges)

8. Local Licensee Contacts for access or emergencies (names, titles, phone, pagers, etc.)
   _____
   _____
   _____

9. Term/Renewals: ~~As provided in Master License Agreement, unless a shorter term or number of renewals is specified as a special term or condition.~~ Ten years with three 5-year options

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10. Pursuant to MLA Section 4 (g), Licensor advises it is (likely) (unknown if) Licensor will desire to retain the tower/ancillary improvements at the conclusion of this Site License.

11. Special terms, conditions or other notes are attached and initialed by the parties. Examples include any Licensor use, known hazardous substances, special access, maintenance responsibilities, permit requirements, or co-location requests.

___ Check here if there are special terms or conditions to this agreement.

SITE LICENSE AGREEMENT – SPECIAL CLAUSES

ATTACHMENTS

For Preliminary Approval of this Site License Agreement, the following documents must be attached:

A. Preliminary description and/or map(s) of premises and site licensed, including location of equipment, access and utility routes.

B. Estimated Equipment Technical Specifications.

For Issuance of the Encroachment Permit to allow construction, the following documents will be needed in addition to approval of the final copies of A and B above:

C. Copy of Local Building Permit and/or local governmental approvals.

D. Environmental Approvals from FHWA.

E. Any legal description of the site developed by Licensee or submitted to the PUC.

F. Recording: if Licensee requires recorded notice, Licensee should submit a complete form, a copy of which will be included as an exhibit to this Site License. Licensee is responsible for obtaining any necessary legal description.

G. Planned regular maintenance schedule.

DATED:_____

LICENSEE:_____

BY:_____

ITS:_____

DATED:_____
("Execution Date")

LICENSOR: DEPARTMENT OF TRANSPORTATION

BY:_____

ITS: DISTRICT AIRSPACE MANAGER

PASSED BY

CTC

MAY 21 2014

CALIFORNIA
TRANSPORTATION COMMISSION

CALIFORNIA TRANSPORTATION COMMISSION

Reauthorization of the Department's Wireless Telecommunication Program

Resolution G-14-11
Replacing G-08-17 and Amending Resolution G-02-14

1.1 **WHEREAS**, Section 104.12 of the Streets and Highways Code authorizes the Department of Transportation (Department) to lease the use of airspace above or below State highways to private entities in accordance with procedures to be prescribed by the California Transportation Commission (Commission); and

1.2 **WHEREAS**, Section 30410 of the Streets and Highways Code authorizes the Director, upon such terms and subject to such reservations as are first approved by the Commission, to lease, sell, exchange or otherwise dispose of property acquired whenever it is for any other reason in the public interest to do so; and

1.3 **WHEREAS**, Section 21636 of the Public Utilities Code authorizes the Department to dispose of any property, airport, air navigation facility, or portion or interest, acquired pursuant to the State Aeronautics Act (PUC S21001 et seq.), by sale, lease or otherwise; and

1.4 **WHEREAS**, statutes referenced in 1.1, 1.2 and 1.3 above provide the authority to license telecommunications sites under the Department's Wireless Telecommunication Licensing Program through Master License and Site License agreements; and

1.5 **WHEREAS**, The Commission finds such licensing agreements are in the best interest of the State; and

1.6 **WHEREAS**, the Department's legal division has reviewed the Master License and Site License agreements and is satisfied that they adequately address all issues.

2.1 **NOW THEREFORE BE IT RESOLVED,** that the Director of Transportation is authorized to directly negotiate and execute long term development agreements for any location for which a telecommunications (wireless) carrier has indicated an interest, provided that those agreements only involve cash payments and no "in-kind" payments, and that all agreements involving "in-kind" payments will be individually reviewed and approved by the Commission; and

2.2 **BE IT FURTHER RESOLVED,** that the Department has the authority to enter into revenue sharing agreements with any underlying fee owner, which would require that all telecommunication sites comply with the terms of the Department's Master License Agreement and that the Base License Fee would be split 50-50. The Base License Fee must be no less than the rate established by the Master License Agreement unless the underlying fee owner requires a higher rate. The fee would only be shared with the underlying fee owner if they submitted a specific request for a portion of the fee, and only if the easement document is for highway purposes only; and

2.3 **BE IT FURTHER RESOLVED,** that the Director of Transportation is authorized to establish policies and procedures setting forth the specific terms and guidelines within which to administer the development of airspace as prescribed in this resolution and the law; and

2.4 **BE IT FURTHER RESOLVED,** that the Commission has reviewed and reauthorizes the Department's Wireless Telecommunication Licensing Program for a ten-year term commencing July 1, 2014 and ending June 30, 2024; and

2.5 **BE IT FURTHER RESOLVED,** that this Resolution replaces Resolution G-08-17 and amends Resolution G-02-14.