

## SMALL CELL LICENSE AGREEMENT

This Small Cell License Agreement (“License”) is made and entered into as of \_\_\_\_\_, 2019, by and between the City of Morgan Hill, California, (“City” or “Licensor”) and [Name of Company], [corporate structure] (“Licensee”). Licensor and Licensee may be collectively referred to as “Parties.”

### RECITALS

The following recitals are a substantive portion of this License:

- A. City is the owner of light poles, traffic signal poles or other poles (collectively “City Poles”) within the public right-of-way and owns or controls public right-of-way within the City of Morgan Hill located in Santa Clara County, State of California.
- B. Licensee is a [corporate structure] organized under the laws of the State of California, legally qualified to do business within the State of California whose business includes the installation of small cell cellular antenna sites.
- C. Licensee requests the use of certain City Poles as designated on the attached Exhibit “1”, for the installation and operation of small cell cellular antenna and radio sites.
- D. City is willing to permit Licensee to License the City Poles in accordance with the terms, conditions, and covenants of this License.

### NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE 1 City Poles and Improvements

1.1 License of City Poles. City hereby licenses to Licensee and Licensee licenses from City for the term, at the rental rate and upon all of the other terms and conditions set forth, the City Poles listed on Exhibit “1”, attached hereto and incorporated herein. The Parties acknowledge that they may amend Exhibit “1” if City and Licensee agree to additional City Pole sites.

1.2 Improvements. City licenses to Licensee the limited right to use City Poles only to locate a small antenna of the same or substantially similar initial design as previously approved by the City and shown on Exhibit “2”, attached hereto and incorporated herein. It is understood and agreed that the final antenna design will be shown in the plans submitted to the City in connection with the City’s encroachment permit process.

## ARTICLE 2

### Term

2.1 Term. The term of this License shall be for a period of five (5) years commencing on the Commencement Date and terminating on the fifth anniversary of the Commencement Date, unless earlier terminated ("Term").

2.2 Commencement Date. The Commencement Date of this License shall be the date this License is approved by the City Council.

2.3 Option to Extend. Provided Licensee is not in default, either at the time of exercise or at the time the extended Term commences, Licensee shall have the option to extend the Term of this Lease for a period of five (5) years ("Option Term") on the same terms and conditions provided. City shall not unreasonably deny this extension. Licensee shall exercise its option by giving City written notice ("Option Notice") at least sixty (60) days, but not more than one hundred twenty (120) days, prior to the expiration of the Term of this License.

## ARTICLE 3

### Rental

3.1 Base Rent. Licensee shall pay to City, as annual rent for the use of the City Poles, in advance on the first day of the calendar month during the Term and the Option Term, if any, of this License without deduction, offset, prior notice or demand, in lawful money of the United States, the sum of Two Hundred Seventy Dollars (\$270.00) ("Base Rent") for each City Pole. If the Commencement Date is not the first day of the month during the Term, the Base Rent shall be due on the first day of the calendar month after the Commencement Date of this License. The first year's rent shall be prorated as necessary, if the License does not commence upon the first day of the month. All payments, including Rent shall be mailed to: City Manager, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037.

3.2 Annual Increase. During the Term of this License, including the Option Terms, the Base Rent shall be increased annually by the San Francisco-Oakland-San Jose Consumer Price Index CPI-U ("CPI-U") for the prior year, beginning on the first anniversary of the Commencement Date, and effective each anniversary thereafter throughout the Term and Option Terms, if any. The Rent shall be increased by not less than 2.5% and not more than 5% depending upon the prior year's CPI-U. The sum shall be adjusted annually resulting in a compound rate of increase. For example, the Base Rent for the first year for one pole would be Two Hundred Seventy Dollars (\$270.00) per year and the new rate commencing on the first anniversary, assuming a CPI-U of 2.5% would be Two Hundred Seventy Six Dollars and Seventy Five Cents (\$276.75).

3.3 Transactional Costs. Licensee shall pay to City, as additional rent, any reasonable transactional costs, which shall include any reasonable attorneys' fees incurred by City because of the negotiation, preparation, execution, and delivery of this License, any amendment, any future consent of City required and the preparation and negotiation of an amendment to the License ("Transactional Costs"). City shall furnish Licensee with an invoice reflecting the

Transactional Costs due, and Licensee shall make full payment to City of these costs within thirty (30) days from the date of City's invoice.

3.4 Late Charge. Licensee acknowledges late payment by Licensee to City of rent will cause City to incur costs not contemplated by this License, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. If any installment of rent due from Licensee is not received by City within ten (10) days after the date rent is due, Licensee shall pay to City an additional sum of ten percent (10%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur because of late payment by Licensee. Acceptance of any late charge shall not constitute a waiver of Licensee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

## ARTICLE 4

### Use

4.1 Permitted Uses. Licensee shall use the City Poles for purposes related to the small cell antenna and radio installation (collectively "Antenna") only. Licensee shall be solely responsible for all costs associated with the construction, installation, maintenance, and use of the Antenna.

4.2 Access. City grants Licensee reasonable foot access to the City Poles. Access shall be available to Licensee, Licensee's employees and invitees, during normal business hours, except if an emergency occurs. It is anticipated, after installation of the Antenna is completed, that Licensee shall require reasonable access once every month for the purpose of ordinary tuning of Licensee's equipment and appropriate maintenance of the Antenna. As a part of this License, City grants to Licensee reasonable access to the area adjacent to the City Poles ("City Property") for the purposes of installing or maintaining the Antennas.

4.3 Prohibited Uses. Licensee shall not use City Poles for any purpose not expressly permitted herein. Licensee shall not (a) create, cause, or permit any nuisance or waste in, on or about the City Poles or permit the City Poles to be used for any unlawful purpose, (b) do or permit to be done anything that unreasonably disturbs the City's use of the City Poles or the occupants of neighboring property. Specifically, and without limiting the above, Licensee agrees not to cause any unreasonable odors, noise, vibration, power emissions or other item to emanate from the Antenna on the City Poles. No materials or articles of any nature shall be stored outside adjacent to any portion of the City Poles.

4.4 Approval by the City and Other Agencies. Licensee, at its sole cost and expense, may install the Antenna, subject to Licensee's obtaining all required permits, licenses, and approvals from the City and any other governmental agencies having jurisdiction. Licensee shall maintain permits, licenses, and approvals in force through the Term and the Option Term, if any. The revocation or expiration of any permit, license, or approval is a breach of this License. If Licensee replaces the Antenna, it shall not do so without the prior written approval of City, and all required permits, licenses, and approvals from the City and any other governmental agencies with

jurisdiction. If a change in the Antenna is approved, Licensee and City shall amend Exhibit "2" to reflect the change. Should Licensee change or expand any Antenna without the prior approval of City, City may require that Licensee remove the expansion at Licensee's sole cost and expense. Licensee shall be solely responsible for conducting any environmental review required in association with Licensee's use of the City Poles and for all reasonable costs associated, as well as all fees, charges or other reasonable expenses imposed by the City or other regulatory agencies in connection with Licensee's use of the City Poles prior to the License commencement, or at any time during the Term of the License.

4.5 Compliance with Laws. Licensee shall not do or permit anything to be done in, on the City Poles, or bring or keep anything in or on the City Poles which will conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted.

4.6 Condition, Use of City Poles. Licensor makes no warranty or representation concerning the condition of City Poles, or the fitness of City Poles for the use intended by Licensee, and disclaims any personal knowledge. Licensee has personally inspected the City Poles, knows their condition, finds them fit for Licensee's intended use, accepts them "as is", and has ascertained that they can be used for the limited purposes specified in Section 4.1.

4.7 Hazardous Materials.

4.7.1 Hazardous Materials on City Poles. Licensee shall not introduce any Hazardous Materials (as defined below) to the City Property, (excluding any Hazardous Materials which are components of commercially available products) unless the Hazardous Materials are transported, obtained, handled, stored, and/or disposed of in accordance with all federal, state, and local laws, ordinances, rules, regulations, or policies.

4.7.2. Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material, or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Secs. 9601 et seq., (b) RCRA, 42 U.S.C. Secs. 6901 et seq., (c) CWA, 33 U.S.C. Secs. 1251 et seq., (d) CAA, 42 U.S.C. Secs. 7401 et seq., (e) TSCA, 15 U.S.C. Secs. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Secs. 407, (g) OSHA, 29 U.S.C. Secs. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Secs. 5101 et seq., (i) USDOT Table (49 CFR Sec. 172.101 App. A and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) Carpenter-Presley-Tanner Hazardous Substance Account Act, Cal. Health & Safety Code Secs. 25300 et seq., (k) California Hazardous Waste Control Act, Cal. Health & Safety Code Secs. 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Secs. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal.

Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Secs. 108100 et seq., (q) Air Resources Law, Cal. Health & Safety Code Secs. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500 et seq., (s) TPCA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

**4.7.3 Hazardous Materials Indemnity.** Licensee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold Lessor harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including, without limitation, diminution in value of the City Poles or City Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of City Poles or, damages arising from any adverse impact or marketing of the City Poles and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings, or orders, fines, costs of death or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the License Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the City Poles by Licensee, Licensee's agents, employees, licensees or invitees or at Licensee's direction, of Hazardous Material, or by Licensee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Licensee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the City Poles or Project, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the License Term. For purposes of the indemnity, any acts or omissions of Licensee or its employees, agents, customers, assignees, contractors, or subcontractors of Licensee (whether or not they are negligent, intentional, willful, or unlawful) shall be strictly attributable to Licensee.

**4.7.4 City's Right to Perform Tests.** At any time during the License Term, City shall have the right to enter upon City Poles in order to conduct tests of water and soil and to deliver to Licensee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Licensee's use of the City Poles. Licensee shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities including actual attorneys' fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return the City Poles and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials. The testing shall be at Licensee's

expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the City Poles or the Project, which has been caused by or resulted from the activities of Licensee, its agents, employees, contractors, or invitees. Licensee shall demonstrate that the antenna meets or exceeds all appropriate FCC requirements. Licensee shall provide results of any test results on the antenna prepared for the FCC or any other testing body.

4.7.5 Survival. This entire Section 4.7 of this License shall survive termination of the License, as to any activities during the Term or Option Term of this License.

4.7.6 Termination of License. City shall have the right to terminate the Term of the License in City's sole and absolute discretion in the event that (i) any anticipated use of the City Poles or City Property by Licensee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) Licensee has been required to take remedial action in connection with Hazardous Material contaminating the City Poles or City Property, if the contamination resulted from Licensee's action or use of the City Poles or City Property; or (iii) Licensee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the City Poles or City Property.

4.7.7 Covenant of Non-Interference. Licensee shall be responsible for inspecting City Poles and finding adequate space at the site without moving or relocating any of City's Poles or equipment, or any other facility, or utility located at the City Property, at the time Licensee's facilities are installed. Licensee's equipment shall not negatively impact any other existing facility or antenna. In the event that Licensee's equipment does impact other facilities, Licensee shall be required to install, at its own expense, frequency filters or take other reasonable measures to correct the problem. Licensee shall be required to coordinate with other existing utilities located at the property, to ensure that Licensee's equipment does not interfere with the frequencies utilized by existing utilities or other parties.

4.7.8 Co-location. Licensee acknowledges that City has the right to license additional positions on City Poles to third parties. All operations by Licensee shall comply with all Federal Communications Commission ("FCC") requirements. If City adds new City Poles or other facilities in the future, Licensee will not electronically or physically interfere with City owned and operated equipment. Licensee shall reasonably cooperate with current and future City licensees. Lessor will not grant a license to any party for use of the City Pole site, if the new use would unreasonably interfere with Licensee's operation of its Antenna. Any future license of the City Pole site, which permits installation of Antennas, shall be conditioned upon the new Antennas not interfering with Licensee's Antenna.

4.7.9 Electromagnetic Emissions. Licensee's operations on the City Poles shall comply with all applicable federal laws and regulations regarding electromagnetic emissions. Licensee shall conduct all necessary tests after its improvements are constructed on the City Poles to ensure that its facilities comply with those laws and regulations. The tests shall be conducted by a licensed professional engineer, and the results shall be provided to the City.

4.8 Telecommunications Services. At any time that Licensee ceases to operate as a provider of telecommunications services under Federal law, the Licensor shall have the option, in its sole discretion and upon sixty (60) days written notice to Licensee, to terminate this License and to require the removal of Licensee's Antennas from City Poles, including the cost of any site remediation, at no cost to the Licensor, without any liability to Licensee related directly or indirectly to such termination.

4.9 Scope of Agreement. All rights expressly granted to Licensee under this License, which shall be exercised at Licensee's sole cost and expense, shall be subject to the prior and continuing right of the Licensor to use all parts of the public right-of-way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the right-of-way as of the date of this License.

## ARTICLE 5

### Maintenance, Repairs and Alterations

5.1 General. Licensee shall keep in good order, condition, and repair City Poles and the Antenna placed on the Poles. Licensee shall keep the City Poles clean and free of debris.

5.2 Surrender. On the last day of the Term, or of the Option Term, Licensee shall surrender City Poles to City in the same condition as when received, clean and free of debris. Licensee shall also remove all improvements and cables and wires located above ground or below ground that Licensee placed upon City Poles, and repair any damage to City Poles by the installation, maintenance, or removal of Licensee's improvements and any related cables, wires or other equipment, and shall restore City Poles to the same conditions as when Licensee received City Poles from City.

5.3 City's Rights. If Licensee is in default, subject to the applicable cure periods, City may (but shall not be required to) enter upon City Poles, (except in the case of an emergency, in which case no notice shall be required), to perform obligations on Licensee's behalf and put the City Poles and/or Antenna in good order, condition and repair, and the cost, together with interest at the maximum rate then allowable by law, shall become due and payable as additional rent to City with Licensee's next rental installment, provided, however, in the case of a non-emergency, City shall notify Licensee of City's intention to perform Licensee's obligations ten (10) days prior to performing any work on Licensee's behalf. If no rental installment is due to City, these costs shall become due and payable within thirty (30) days from the date of City's invoice.

5.4 City Repair Obligations. City shall have no obligation to repair and maintain the City Poles nor the Improvements and facilities. Licensee expressly waives the benefit of any statute now or hereinafter in effect which would afford Licensee the right to make repairs at City's expense or to terminate this License because of City's failure to keep City Poles in good order, condition, and repair.

5.5 Improvements.

5.5.1 Licensee Payment for Labor or Materials. Licensee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Licensee at or for use on the City Poles, which claims are or may be secured by any mechanic or material lien against the City Poles or any interest therein. Licensee shall give City not less than ten (10) days' notice prior to the commencement of any work on the City Poles, if City shall require a surety bond, Licensee shall furnish to City a surety bond satisfactory to City in an amount equal to the contested lien, claim indemnifying City against liability for and holding the City Poles free from the lien or claim. In addition, City shall have the right to require Licensee to pay City's attorneys' fees and costs in participating in the action if City decides to participate.

5.5.2 Conditions Precedent. Before construction of any improvements are commenced on City Poles, and before any building materials have been delivered to City Poles by Licensee or its agents, Licensee shall comply with the following conditions or procure City's written waiver of the conditions specified:

5.5.2.1 Protection of Adjacent Property, Indemnity of the City. Licensee shall protect the City Property and adjacent property against damage resulting from the performance of work undertaken by Licensee or Licensee's agents, employees, contractors (excluding any damage caused by gross negligence or the willful act of City) and shall indemnify the City against all liens or liability arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment, or power.

5.5.2.2 Insurance. In addition to the insurance coverage otherwise required under this License, Licensee shall maintain workers' compensation insurance covering all persons employed in connection with the construction of any improvements, repair, or maintenance activities with respect to whom death or injury claims could be asserted against the City, Licensee, or the City Poles. City may require any third party(ies) contractor performing work at the City Poles to maintain workers' compensation insurance as contractor's sole cost and expense at all times when any work is in process and shall otherwise conform to the requirements of this License with respect to insurance.

5.5.2.3 Final Inspection. Licensee shall not provide service to its customers from the Antenna in any way without receiving a final inspection of the Antenna from the City.

5.5.2.3 Notice of Changes in Plans. Upon completion of the installation of any Antenna, Licensee shall give City notice of all changes in the plans and specifications made during the course of the work and at the same time deliver to City "as built" drawings accurately reflecting all changes, provided that no change that substantially alters the final plans last approved by the City shall be made without the City's prior written approval.

5.6 City Access. The City or its agents, may enter onto City Poles at all reasonable times during the term of this License Agreement to determine whether Licensee is complying with the terms and conditions or for any other purpose incidental to rights of the City.

5.7 Licensee Access. Licensee may enter onto City Poles during normal business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m. upon reasonable notice to the City. In the

event of an emergency, Licensee's access shall be 24/7. Licensee acknowledges that other licensees also have rights to access the City Poles, and that if multiple licensees or licensees request simultaneous access, the City may have to delay Licensee's access to the City Poles to accommodate others or vice versa.

5.8 Licensee Access During Security Alert. During times of high security alert by the Homeland Security Advisory System, Licensee must obtain City's consent to access City Poles.

5.9 Attachment to City Poles. Licensee will submit to the authorized representative of the Licensor, no more than two proposed designs for any proposed Antenna installations. Assuming that all of Licensor's requirements are met, Licensor will preapprove up to two acceptable designs for Antennas. Licensee may only install Antenna designs that are the same as the preapproved design. All installations shall, to the maximum extent possible, be placed behind equipment shrouds or located so as to minimize visual impacts to the City Engineer's satisfaction. The City Engineer may require a physical mock-up of the installation and photo simulations. If required the mock-up shall be the actual size of the equipment and include the actual color(s) to be used for the final installation. Licensee is prohibited from installing ground mounted cabinets. Licensee shall install all wires within the pole, any external wires that feed external equipment shall be hidden or shrouded from view. Any equipment (including but not limited to radio boxes, on poles shall be screened by street signs to City's Engineer's satisfaction and shall not exceed the preapproved size. Each antenna shall have identifying information on it including emergency contact numbers. No advertising may be placed on any equipment. Should any of these restrictions be technically infeasible Licensee shall provide City Engineer with documentation of the technical infeasibility and the provisions may be waived should the City Engineer reasonably determine that the requirements are technically infeasible.

5.10 Encroachment Permit. Subject to the conditions herein, Licensee shall submit an application for an encroachment permit ("Encroachment Permit") to the Licensor to enter upon the right-of-way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace the Antenna on City Poles in the public right-of-way for the purposes of providing telecommunications services. Licensor reserves the right to deny any application for an Encroachment Permit for the installation of an Antenna to City Poles at the sole discretion of the City Engineer. Licensee agrees to abide by decisions made by the City Engineer regarding Antenna placement.

5.11 Replacement Pole. If Licensee selects a Pole that is structurally inadequate to accommodate the Antenna, Licensee may at its sole cost and expense, and at the discretion of the City Engineer, replace the Pole (a "Replacement Pole") with one that is acceptable to and approved by the Licensor and dedicate such Replacement Pole to the Licensor. Ownership of Replacement Pole shall be transferred to City.

5.12 No Interference. Licensee shall not interfere in any manner with the existence and operation of any public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the Licensor, electroliers, cable television, location monitoring services, public safety, and other then existing telecommunications equipment, utility, or municipal property,

without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable law or this License. However, the Licensor agrees that the Licensor and/or any other tenants, licensees, or users of the public right-of-way who currently have, or in the future take possession of, space within the public right-of-way adjacent to any of Licensee's Antennas will be permitted to install only equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Licensee. Licensee shall act reasonably to accommodate future providers so that the public right-of-way may be used by additional providers.

5.13 No Authorization to Provide Other Services. Licensee represents, warrants, and covenants that the Antennas installed pursuant to this License will be utilized solely for providing the telecommunications services identified herein. Licensee is not authorized to and shall not use its Antennas to offer or provide any services not specified herein.

5.15 Payment to PG&E of Power Costs. Licensee shall cause a separate electric line to be run to its equipment. Licensee shall pay all electricity costs directly to Pacific Gas and Electric Company ("PG&E") or its other electric service provider. Licensee shall not use Licensor's electricity to power its equipment. Licensee shall make good faith efforts to negotiate a flat rate with PG&E to avoid above ground metering facilities where practicable. Should Licensee be unable to secure a flat rate service from PG&E then a ground mounted meter or pole mounted smart meters may be utilized with written approval by the City Engineer. All Equipment shall have a master cutoff switch installed which will allow power shut down to the Equipment in case of emergencies.

5.16 Commencement of Installation and Operation. Licensee shall commence installation of its initial Antenna no later than one (1) year after the mutual execution of an applicable Encroachment Permit. Licensee shall commence operation no later than six (6) months after Licensee commences installation, excepting delays due to any force majeure event. Failure of Licensee to commence installation or commence operation of the applicable telecommunications service as provided above shall afford Licensor the right to terminate the License upon thirty (30) days' notice to Licensee, unless within such thirty (30) day period, Licensee shall commence installation or commence operation, as applicable.

5.17 Relocation and Displacement of Equipment. From time to time, Licensor may require Licensee to relocate its equipment. Upon Licensor's sixty (60) days written notice to Licensee, Licensee shall relocate such equipment at Licensee's sole cost and expense when Licensor reasonably determines that the equipment relocation is necessary for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (b) because the Antenna is interfering with, or adversely affecting proper operation of City Poles, traffic signals, communications, or other municipal facilities; or (c) to protect or preserve the public health or safety. Licensor shall use reasonable efforts to provide Licensee with a reasonably equivalent alternate location for its equipment. If Licensee shall fail to relocate any Antenna as requested by the Licensor in accordance with this provision, Licensor shall be entitled to remove or relocate the equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and

any storage of Licensee's property after removal within thirty (30) days of Licensor's written demand for such payment. If the City Pole is damaged or downed for any reason, and as a result is not able to hold the Antenna safely, the Licensor will have no obligation to repair or replace the City Pole for the use of Licensee's Antenna. Licensee shall bear all risk of loss because of damaged or downed City Poles, and may choose to replace City Poles pursuant to the provisions above.

**5.18 Damages Caused by Licensee.** Licensee shall, at its sole cost and expense and to the satisfaction of the Licensor: (a) remove, repair or replace any of its Antennas that are damaged or become detached; and/or (b) repair any damage to public right-of-way, City Property or other property, whether public or private, caused by Licensee, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of its Antennas. If Licensee does not remove, repair or replace such damage to its Antenna or to the public right-of-way, City Property or other property, the Licensor shall have the option, upon 30 days' prior written notice to Licensee, to perform or cause to be performed such removal, repair, or replacement on behalf of Licensee and shall charge Licensee for the actual costs incurred by the Licensor. If such damage causes a public health or safety emergency, as reasonably determined by the Licensor, the Licensor may immediately perform reasonable and necessary repair or removal work on behalf of Licensee and will notify Licensee as soon as practicable; provided, such repair work involves reattachment of its Antennas to a Pole or repair of the Pole itself, and shall not include any technical work on Licensee's equipment. Upon the receipt of a demand for payment from the Licensor, Licensee shall within thirty (30) days of such receipt, reimburse the Licensor for such costs. The terms of this provision shall survive the expiration, completion, or earlier termination of this License.

**5.19 Bond Requirement.** Licensee shall provide a bond to Licensor in the amount of fifty thousand dollars (\$50000.00), for the first twenty five installed Antennas to protect Licensor in that event that Licensee fails to remove its Antennas upon termination of this License. The bonding company shall be a United States based entity with legal rights to issue bonds in the State of California. The bond forms shall be in a form approved by the City Attorney. City reserves the right to increase bond amount required depending upon the reasonable determination of the City Public Works Director.

**5.20 As Built Plans.** Licensee shall provide as built plans, to the City, for each Antenna installation within 30 days of the completion of the installation.

## ARTICLE 6

### Indemnity and Insurance

**6.1 Indemnity.** This License is made upon the express condition that Licensee shall indemnify and hold harmless City and its officers, agents and employees against any suits, claims or actions arising out of Licensee's use of City Poles or from any act permitted, or any omission to act, in or about the City Poles or City Property by Licensee or its agents, employees, contractors or invitees, including, but not limited to, any injury or injuries to, or death or deaths of, persons or property that may occur, or that may be alleged to have occurred from any cause or causes whatsoever, while in, upon, about or in any way connected with City Poles during the term of this License, or during any holdover tenancy thereof (except where caused solely by the active negligence or willful misconduct of City, its employees or agents). Licensee agrees to

defend any actions, suits or claims and pay all reasonable charges of attorneys and all other costs and expenses arising therefrom. If any judgment is rendered against the City or any of the other individuals enumerated above in any action (except to the extent the judgment arises from the active negligence or willful misconduct of the City, its employees or agents) Licensee shall, at its expense, satisfy and discharge same.

6.2 Insurance. During the term of this License, Licensee shall maintain in full force and affect the following insurance policies:

- 6.2.1 Commercial general liability policy (bodily injury and property damage);
- 6.2.2 Worker's Compensation, employer's liability policy; and
- 6.2.3 Comprehensive automobile liability insurance policy.

These policies shall be maintained with respect to employees and vehicles using the City Property with coverage amounts and including the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit "3" attached and incorporated by this reference. In the event that Licensee contracts with another entity to install, monitor or utilize or own the Antenna the other entity shall also provide the same insurance as required above and in Exhibit "3".

## ARTICLE 7

### Damage, Destruction and Termination

7.1 Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the City Poles by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Licensee to terminate this License, unless City Poles are rendered unusable for the Antenna.

7.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Licensee, shall excuse the performance by Licensee for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to rent to be paid by Licensee pursuant to this License. In the event any work performed by Licensee or Licensee's contractor's results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Licensee of the provisions of this License.

7.3 Waiver. City and Licensee waive the provisions of any statutes, which relate to termination of Licenses when licensed property is destroyed and agree that such event shall be governed by the terms of this License.

## ARTICLE 8

### Taxes

8.1 Personal Property. Licensee shall pay, prior to delinquency, all taxes, license fees, and public charges assessed or levied against Licensee or Licensee's estate in this License or Licensee's improvements, trade fixtures, furnishings, equipment and other personal property.

8.2 Real Property. Licensee shall pay Licensee's share of all real property taxes (as defined in Section 8.3 below) which become due and payable to City on or before the later of ten (10) days prior to the delinquency, or three (3) days after the date on which Licensee receives a copy of the tax bill and notice of City's determination, including documentation reasonably supporting determination hereunder. Licensee's liability to pay real property taxes shall be prorated based on a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the License Term at the commencement or end of the License. Licensee is not responsible for taxes related to rental income to City under this License. Licensee specifically acknowledges it is familiar with Section 107.6 of the California Revenue and Taxation Code and realizes that a possessory interest subject to property taxes may be created, agrees to pay any tax, and waives any rights Licensee may have under Revenue and Taxation Code 107.6.

8.3 Definition. The term "real property taxes" as used herein shall mean:

8.3.1 All taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to (i) value, occupancy, use or possession of City Poles and/or the Improvements, (ii) any improvements, fixtures, equipment and other real or personal property of Licensee that are an integral part of City Poles, (iii) use of City Poles, improvements, public utilities, or energy within City;

8.3.2 All charges, levies, or fees imposed by reason of environmental regulation or other governmental control of City Poles and/or the improvements;

8.3.3 New excise, transaction, sales, privilege, or other taxes now or hereafter imposed upon City as a result of this License; and

8.3.4 All costs and fees (including attorneys' fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the City Poles. If at any time during the Term, the taxation or assessment of the City Poles and/or the improvements prevailing as of the commencement of this License shall be altered, then any tax or charge, however designated, shall be included within the meaning of the term "real property taxes." If any real property taxes are based upon property or rents unrelated to the City Poles and/or the improvements, then only that part of such tax that is fairly allocable to the City Poles and/or the improvements, as determined by City, on the basis of the assessor's worksheets or other available information, shall be included within the meaning of the term "real property taxes."

## **ARTICLE 9**

### **Utilities**

9. Licensee shall pay for all power, telephone, and other utilities and services supplied to the Licensee's improvements or equipment, together with any taxes.

## **ARTICLE 10**

### **Signs**

10. Licensee shall not place any signs upon City Poles without prior written consent of City, except for those signs that are required by law.

## **ARTICLE 11**

### **Assignment and Subletting**

11.1 City's Consent Required. Licensee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Licensee's interest in this License or in City Poles, without City's prior written consent, which consent shall not be unreasonably withheld. City shall respond to Licensee's request for consent in a reasonably timely manner and any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of this License.

11.2 Net Worth Requirements. Notwithstanding the foregoing, Licensee may not assign or sublet its equipment attached to the City Poles, or any portion thereof, without the City's consent, to any entity which controls, is controlled by, or is under the common control with Licensee, or to any entity resulting from any merger or consolidation with Licensee, or to any partner of Licensee or to any partnership in which Licensee is a general partner, or to any person or entity which acquires all of the assets of Licensee as a going concern, or to any entity which obtains a security interest in a substantial portion of Licensee's assets. Any entity listed in this paragraph shall have a new worth of not less than ten million dollars (\$10,000,000.00).

11.3 No Release of Licensee. No subletting or assignment as approved by City shall eliminate Licensee's obligation or alter the primary liability of Licensee to pay the rent and to perform all other obligations to be performed by Licensee hereunder. The acceptance of rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Licensee or any successor of Licensee in the performance of any of the terms hereof, City may proceed directly against Licensee without the necessity of exhausting remedies against said assignee.

## **ARTICLE 12**

### **Defaults; Remedies**

12.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default or breach of this License by Licensee:

12.1.1 The abandonment of the City Poles by Licensee as defined by Civil Code §1951.3.

12.1.2 The failure by Licensee to make any payment of rent or any other payment required to be made by Licensee hereunder, as and when due, where the failure shall continue for a period of ten (10) business days after written notice from City to Licensee. In the event City serves Licensee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

12.1.3 The failure by Licensee to observe or perform any of the covenants, conditions, or provisions of this License in any material respect to be observed or performed by Licensee, where the failure shall continue for a period of thirty (30) days after written notice from City to Licensee; provided, however, that if the nature of Licensee's default is that more than thirty (30) days are reasonably required for its cure, then Licensee shall not be deemed to be in default if Licensee commences cure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion.

12.1.4 The making by Licensee of any general arrangement or assignment for the benefit of creditors; Licensee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Licensee, it is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Licensee's assets located at or on City Poles or of Licensee's interest in this License where possession is not restored to Licensee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Licensee's assets located at the City Poles or of Licensee's interest in this License, where seizure is not discharged within thirty (30) days.

12.2 Remedies. In the event of any material default or breach by Licensee, City may at any time, thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of default or breach:

12.2.1 Terminate Licensee's right to possession of the City Poles by any lawful means, in which case this License shall terminate and Licensee shall immediately surrender possession of City Poles and improvements to City. In that event, City shall be entitled to recover from Licensee all damages incurred by City by reason of Licensee's default including, but not limited to, the cost of recovering possession of the City Poles, expenses of reletting, including if necessary, removal of improvements and restoration of the City Poles, reasonable attorneys' fees, the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this License and the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of such award exceeds the amount of rental loss for the same period that Licensee proves could be reasonably avoided;

12.2.2 Maintain Licensee's right to possession, in which case this License shall continue in effect whether or not Licensee shall have abandoned City Poles. In that event, City shall be entitled to enforce all of City's rights and remedies under this License, including the right to recover rent as it becomes due; and

12.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

12.3 No Relief from Forfeiture After Default. Licensee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event Licensee is evicted or City otherwise lawfully takes possession of the City Poles by reason of any default or breach of this License by Licensee.

## ARTICLE 13

### Termination of License

13.1 Termination by Licensee. Except as provided otherwise herein or by applicable law, Licensee may terminate this License for cause upon the giving of not less than thirty (30) days written notice to City if any of the following occur:

13.1.1 The failure by City to observe or perform any of the covenants, conditions, or provisions of this License in any material respect to be observed or performed by City, where the failure shall continue for a period of thirty (30) days after written notice from Licensee to City; provided, however, that if the nature of the City's default is such that more than thirty (30) days are reasonably required for its cure, then City shall not be deemed to be in default, if City commenced to cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion;

13.1.2 Licensee fails to obtain or loses any permits necessary for operation of the City Poles as a cellular telephone communications facility; or

13.1.3 Licensee determines that the site is inappropriate for technological reasons, beyond its control, including but not limited to signal interference.

13.2 Termination by City. Except as otherwise provided or by applicable law, City may terminate this License for cause upon giving thirty (30) days written notice if any of the following occur:

13.2.1 The City Council of City determines through credible scientific evidence collected with regard to the Antenna operated on the City Poles, that the facility is a threat to public health or safety; or

13.2.2 Licensee loses or fails to satisfy any condition of any permit required by City necessary for operation of City Poles as a location for the Antenna.

13.3 Condemnation of Licensed City Poles. Should all or part of the Licensed City Poles be taken by any public or quasi-public agency or entity under the power of eminent domain under the term of this License:

13.3.1 Either City or Licensee may terminate this License by giving the other thirty (30) days written notice of termination; and

13.3.2 Any damages and compensation awarded or paid because of the taking shall belong to the City, except for amounts paid Licensee for moving expenses or for damage to property owned by Licensee and the value of the unexpired Term of this License.

#### **ARTICLE 14** **City's Liability**

14. The term "City" as used herein, shall mean the City only while the City is the owner of the fee title of City Poles. In the event of any transfer of title or interest, the City (and in case of any subsequent transfer, then the grantor) shall, after the date of such transfer, be relieved from all liability with respect to its obligations hereunder occurring after the transfer date, provided that any funds in the hands of City at the time of transfer, in which Licensee has an interest, shall be delivered to the City's grantee.

#### **ARTICLE 15** **Interest on Past-Due Obligations**

15. Except as expressly provided, any overdue amount due to City shall bear interest at the lesser of ten percent (10%) per year or the maximum rate allowable by law from the date due.

#### **ARTICLE 16** **Holding Over**

16. If Licensee remains in possession of City Poles or any part of City Poles after the expiration of the Term or Option Term, the occupancy shall be a tenancy from month to month. All the obligations of this License applicable to Licensee shall remain in effect. The monthly rental obligation shall be two (2) times the Base Rent in effect at the time of expiration.

#### **ARTICLE 17** **City's Access**

17. City and City's agents shall have the right to access City Poles for the purpose of showing to prospective purchasers, lenders, or licensees, and making alterations, repairs, improvements, or additions to City Poles as City may deem necessary.

#### **ARTICLE 18** **Prevailing Wage**

18. To the extent applicable by law to Licensee's activities under this Agreement, Licensee shall pay prevailing wages.

## ARTICLE 19

### Easements

19. City reserves to itself, the right, from time to time, to grant such easements, rights, and dedications that City deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as the easements, rights, dedications, maps and restrictions do not materially interfere with Licensee's use of the City Poles. Licensee shall sign any of the aforementioned documents upon request of City and failure to do so shall constitute a material breach of this License.

## ARTICLE 20

### General Provisions

20.1 Severability. The invalidity of any provision of this License as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision.

20.2 Time of Essence. Time is of the essence under this License.

20.3 Additional Rent. Any monetary obligations of Licensee to City under the terms of this License shall be deemed to be rent and all references herein to "rent" shall be deemed to include the Base Rent and all other sums paid or payable by Licensee to City.

20.4 Entire Agreement, Modification. This License contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding shall be effective. This License may be modified in writing only.

20.5 No Warranty. Except as otherwise stated in this License, Licensee hereby acknowledges that neither the City nor any employees or agents of the City has made any oral or written warranties or representations to Licensee relative to the condition or use by Licensee of the City Poles. Licensee assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of City Poles, and compliance with all applicable laws and regulations in effect during the Term of this License.

20.6 Notices. Any notice required or permitted to be given, shall be in writing and may be given by personal delivery or by first class mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Licensee or to City at the address noted below:

Licensee:

Name of Company

Address

Address

Phone:

City:

City Manager

City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

With Copy to:

Donald Larkin  
City Attorney  
17575 Peak Avenue  
Morgan Hill, CA 95037

Each notice shall specify the License provision pursuant to which it is given. Either Party may specify a different address or contact person. Notice given under this section shall be deemed in compliance with applicable statutory notice requirements, including Code of Civil Procedure §1162.

20.7 Waivers. No waiver by City or Licensee of any provision shall be deemed a waiver of any other provision or of any subsequent breach by City or Licensee of the same or any other provision. Lessor or Licensee's approval of any act shall not be deemed to render unnecessary obtaining of the other Party's consent for any subsequent act. The acceptance of rent by City shall not be a waiver of any preceding breach by Licensee of a provision, other than the failure of Licensee to pay the particular rent so accepted, regardless of City's knowledge of the breach at the time of acceptance of rent.

20.8 Cumulative Remedies. No remedy or election under this License shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

20.9 Choice of Law. This License shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a Party to this License, the Parties agree that trial of such action shall be conducted exclusively in the state courts of California, County of Santa Clara. The language of all parts of this License shall be construed with its fair meaning and not strictly for or against the City or Licensee.

20.10 Condition to Effectiveness of License. The approval of the City Council of City constitutes an express condition precedent to the effectiveness of this License.

20.11 Attorneys' Fees. If either party brings an action to enforce the terms or declare rights hereunder, the prevailing Party in any such action, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the other Party.

20.12 Brokers. Each Party represents that it has not had dealings with any real estate broker or finder, with respect to this License in any manner. Each Party shall hold harmless the other Party from all damages resulting from any claims that may be asserted against the other Party by any broker, finder, or other person with whom the indemnifying Party has or purportedly has dealt.

20.13 Authority. Each individual executing this License on behalf of Licensee and City represents and warrants that he or she is duly authorized to execute and deliver this License on behalf of said Party.

20.14 Non-Liability of Officials and Employees of the City. No official or employee of City shall be personally liable for any default or liability under this License.

20.15 Non-Discrimination. Licensee covenants it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry in any activity under this License.

20.16 Independent Contractor. It is agreed that Licensee shall act and be an independent contractor and not an agent nor employee of City.

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20.17 Conflict of Interest. Licensee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this License.

**CITY OF MORGAN HILL, CALIFORNIA**

APPROVED AS TO FORM:

City

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DONALD LARKIN  
City Attorney

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CHRISTINA TURNER  
City Manager

ATTEST:

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City Clerk

Licensee  
[Licensee's name]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Licensee's Address:

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Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_

“Licensee”

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**EXHIBIT “3”**  
**Insurance Requirements**

1. **Insurance Requirements.** LICENSEE shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of LICENSEE, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. Any deductibles or self-insured retentions must be declared to and approved by City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. **LICENSEE further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to LICENSEE, at any time as deemed necessary to protect the interests of the CITY.**

1.1. **Insurance Types and Amounts.**

- 1.1.1. **Commercial General Liability (CGL).** LICENSEE shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to LICENSEE under LICENSEE's combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- 1.1.2. **Automobile Liability.** LICENSEE shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if LICENSEE does not own automobiles, then LICENSEE shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to LICENSEE under LICENSEE's combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- 1.1.3. **Workers' Compensation Insurance and Employer's Liability.** LICENSEE shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to LICENSEE under LICENSEE's combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If LICENSEE is self-insured, LICENSEE shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

1.2. **Endorsements.** LICENSEE shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

1.2.1. General Liability.

1.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

1.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

1.2.1.3. insurance shall be primary non-contributing.

1.2.2. Workers Compensation.

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

1.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

1.4. **Certificates.** LICENSEE shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the LICENSEE's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to [riskmgmt@morganhill.ca.gov](mailto:riskmgmt@morganhill.ca.gov) or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill  
Attn: Risk Management  
17575 Peak Avenue  
Morgan Hill, CA 95037