

**SMALL CELL LICENSE
AGREEMENT**

BETWEEN

THE CITY OF CUPERTINO, CALIFORNIA

AND

**EXTENET
SYSTEMS
(CALIFORNIA)
LLC**

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SMALL CELL LICENSE AGREEMENT

This Small Cell License Agreement ("License") is made and entered into as of _____, 20__, by and between the City of Cupertino, California, ("City" or "Licensor") and ExteNet Systems (California) LLC, a California limited liability company ("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 approximately 3,240 street 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 Cupertino located in Santa Clara County, State of California.
- B. Licensee is a California limited liability company 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 cell antenna and related equipment 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 equipment 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 an initial period of five (5) years commencing on the Commencement Date and with automatic renewal term of two five (5) year periods ("Renewal Term"), terminating on the 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.

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 One Thousand Five Hundred Dollars (\$1500.00) ("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 Cupertino, 10300 Torre Avenue, Cupertino, CA 95014-3202.

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 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 One Thousand Five Hundred Dollars (\$1500.00) per year and the new rate commencing on the first anniversary, assuming a CPI-U of 3% would be One Thousand Five Hundred Forty Five Dollars (\$1545.00).

3.3 Market Rate Adjustment. At the start of each of the Option Terms, the rental rate shall be adjusted to equal the highest annual rental rate paid by Licensee to any City within the County of Santa Clara or to the County itself, with the exception of rental rates paid to the City of San Jose. In addition this rental rate shall be subject to the annual rent increase as described in section 3.2. Should the rent paid under this Agreement equal or exceed that paid to other jurisdictions at the start of each additional five year term, no rental adjustment at the start of the five year term shall be required.

3.4 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.

3.5 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 and related equipment including but not limited to support mast and mounts, cable equipment, amplifiers, receivers, battery units, equipment cabinets, through bolts, washers, nuts, power supply cabinets, power meters, grounding or bond wires, enclosures, cabinets, and battery back-up units (collectively "Antenna"), as approved by the City Engineer. 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 Renewal 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 Antenna replacement approval shall not be required if the replacement meets the requirements of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act. Licensee shall be solely responsible for conducting any environmental review required in association with Licensee's use of the City Poles and for all costs associated, as well as all fees, charges or other 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.

4.5.1 General Laws. Licensee shall comply with all laws and regulations applicable to this Lease. Licensee will promptly notify City of changes in the law or other conditions that may affect the Project or Licensee's ability to perform. Licensee is responsible for verifying the employment status of employees performing the Work, as required by the Immigration Reform and Control Act.

4.5.2 Labor Laws.

(a) Agreements of \$1,000 or more are subject to the requirements of the California Labor Code, including but not limited to:

(i) Prevailing wage laws under Labor Code Section 1775, which require Licensee to pay prevailing wages applicable in Santa Clara County for each craft, classification, or type of worker needed to perform the Work, including health, pension and vacation. The prevailing wage rates are on file with the City Engineer's office and are available online at <http://www.dir.ca.gov/DLSR>;

(ii) Apprenticeship requirements under Labor Code Section 1777.5 for Contracts \$30,000 or more;

(iii) Maintain certified payroll records in accordance with Labor Code Sections 1776 and 1812, and electronically submit them to the Labor Commissioner as required by the regulations of California, Department of Industrial Relations ("DIR");

(iv) Comply with DIR Monitoring, Enforcement and Registration requirements of Labor Code Section 1725.5.

(b) Licensee must compensate workers who are paid less than prevailing wages or required to work more than a legal day's work. Licensee will also be required to pay City a penalty of \$500 per worker for each day of violation.

(c) As required by Labor Code Section 1861, by signing this Lease Agreement Licensee certifies as follows: "I am aware of Labor Code Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the Work on this Lease Agreement."

4.5.3 Discrimination Laws. Licensee shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS) or any other protected classification. Licensee shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777 and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Licensee understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Licensee or Licensee's employees or sub-Licensees will not be tolerated.

4.5.4 Conflicts of Interest. Licensee, its employees, subcontractors, servants and agents, may not have, maintain or acquire a conflict of interest in relation to this Agreement in violation of law, including Government Code section 1090 and Government Code section 81000 and their accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Lease Agreement, as that term is defined by state law, or in violation of a City ordinance or policy while serving as a City Representative or for one year thereafter. Licensee, its employees, subcontractors, servants and agents warrant they are not employees of City or have any relationship with City officials, officers or employees that creates a conflict of interest. Licensee may be required to file a conflict of interest form if it makes certain governmental decisions or serves in a staff capacity, as defined in section 18700 of the California Code of Regulations. Licensee agrees to abide by City rules governing gifts to public officials and employees.

4.5.5 Remedies. Any violation of Section 4.5 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating the Lease Agreement. City reserves all rights and remedies under the law and this Lease, including seeking indemnification.

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 Licenser 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 of 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 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. Licensor 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.

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 Renewal 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 Property and property adjacent to the Pole locations 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 Compliance with Applicable codes. All work on City Poles shall be done in strict compliance with all versions or editions of the latest applicable building, technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electrical Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are

not limited to, construction, building, electrical, fire, safety, health, and land use. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

5.5.2.2 Certification. Where a certification is called for on a technological matter or issue, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of California. All other certifications shall be made by an individual authorized to make commitments for or on behalf of the Licensee.

5.5.2.3 Permits and Licenses. A holder of a Special Use Permit or Administrative Special Use Permit granted under this Agreement shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the Licensee.

5.5.2.4 Construction Schedule. A construction schedule approved by Licensee and the City setting forth in detail a description of the Improvements and all steps for construction of the Improvements, and Licensee's best estimate of the date upon which each step shall be substantially completed is attached and incorporated herein as **Exhibit "D"**.

5.5.2.5 Line Location Requests. Licensee is responsible for promptly responding to line location requests. For underground service alerts for street lighting and traffic signal conduits, City's Service Center must be called at (408) 777-3269. Government Code Section 4215 requires Licensee to notify City and Utility in writing if it discovers utilities or utility facilities not identified in the Agreement.

5.5.2.6 Pursuant to Government Code Section 7104, Licensee must stop work, notify City in writing, and wait for instructions if one of the conditions below is found at the worksite.

- (a) Material believed to be hazardous waste under Health and Safety Code Section 25117, and which requires removal to a Class I, Class II, or Class III disposal site pursuant to law;
- (b) Subsurface or latent physical conditions at the Project worksite differing from those indicated by information about the worksite made available to Licensee;
- (c) Unknown physical conditions at the Project worksite of any unusual nature, materially different from those ordinarily encountered and from those generally recognized as inherent in the character of the Work.

5.5.2.7 For contracts \$25,000 or higher that require excavation or involve trenches five feet or more in depth, Licensee must submit a detailed plan for City approval, per Labor Code Section 6705 prior to commencing work. The plan must show the design of shoring, bracing, sloping and other provisions for worker protection from caving ground and other hazards. The protective system must comply with all Construction Safety Orders. If the plan varies from shoring system standards, it must be prepared by a registered civil or structural engineer.

5.5.2.8 **PROJECT COORDINATION City Project Manager.** City assigns as the City representative for all purposes under this Agreement, with authority to require compliance with the Scope of Work. City may substitute Project Managers at any time and without prior notice to Licensee. Licensee Project Manager. Subject to City approval, Licensee assigns as its single representative for all purposes under this Agreement, with the responsibility to ensure progress with the Work. Licensee's Project Manager is responsible for coordinating and scheduling the Work and must regularly update the City Project Manager about the status and any delays with the Work, consistent with the Scope of Work. Any substitutions must be approved in writing by City.

5.5.2.9 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.

5.5.2.10 **Worker's Compensation 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, or Licensee. 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.

5.5.2.11 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.

5.5.2.12 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 URBAN RUNOFF MANAGEMENT

5.6.1 All Work must fully comply with federal, state and local laws and regulations concerning storm water management. Licensee must avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, Licensee will use only the amount of water necessary to dampen the dust. Licensee will take all steps necessary to keep wash water out of the streets, gutters and storm drains. Prior to the start of the Work, Licensee will implement erosion and sediment controls to prevent pollution of storm drains, and must upgrade and maintain these controls based on weather conditions or as otherwise required by City. These controls must be in place during the entire Lease time and must be removed at the end of construction and completion of the Work. Such controls must include, but will not be limited to, the following requirements:

(a) Install storm drain inlet protection devices such as sand bag barriers, filter fabric fences, and block and gravel filters at all drain inlets impacted by construction. During the annual rainy season, October 15 through June 15, storm drain inlets impacted by construction work must be filter-protected from onsite de-watering activities and saw-cutting activities. Shovel or vacuum saw-cut slurry and remove from the Work site;

(b) Cover exposed piles of soil or construction material with plastic sheeting. Store all construction materials in containers;

(c) Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain and at the end of each work day. When the Work is completed, wash the streets, collect and dispose of the wash water offsite in lawful manner;

(d) After breaking old pavement, remove debris to avoid contact with rainfall/runoff

(e) Maintain a clean work area by removing trash, litter, and debris at the end of each work day and when Work is completed. Clean up any leaks, drips, and other spills as they occur.

5.6.2 These requirements must be used in conjunction with the California Stormwater Quality Association and California Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, and any other applicable documents on stormwater quality controls for construction. Licensee's failure to comply with this Section will result in the issuance of noncompliance notices, citations, Work stop orders and regulatory fines.

5.7 City Access. The City or its agents, may inspect 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.

5.8 Licensee Access. Licensee may access 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, but such access outside of normal business hours must be reported to City within 48 hours of the emergency. 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. Licensee must report any damage to City Poles within 24 hours of causing or discovering the damage. Damage to City Poles caused or discovered by Licensee that may impact public safety must be reported to City immediately by Licensee.

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

5.10 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 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.

5.11 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.

5.12 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.

5.13 Preference for Municipal Facilities. In any situation where Licensee has a choice of attaching its equipment to either City Poles or third-party-owned poles in the public right-of-way, Licensee shall use good faith efforts to attach to City Poles, provided that City Poles are suitable for the Antenna and the operation of the telecommunication network.

5.14 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.

5.15 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. Licensee shall not use the Antenna or related hardware or software for data collection.

5.16 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.

5.17 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.

5.18 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 of Section 5.11 above.

5.19 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.

5.20 Bond Requirement. Licensee shall provide a bond to Licensor in the amount of fifty thousand dollars (\$50000.00), for the first twenty five (25) installed Antennas to protect Licensor in the event that Licensee fails to remove its Antennas upon termination of this License. For subsequent Antenna installations exceeding the first twenty five, a bond amount of \$2,000 per additional installed Antenna is required. 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.

5.21 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 Indemnification.

6.1.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Licensee shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers and consultants ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs and expenses (including attorney fees, legal costs and expenses related to litigation and dispute resolution proceedings) of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- 6.1.1.1 Breach of contract, obligations, representations or warranties;
- 6.1.1.2 Negligent or willful acts or omissions committed during performance of the Services;
- 6.1.1.3 Personal injury, property damage, or economic loss resulting from the work or performance of Licensee or its contractors or sub-contractors;

6.1.1.4 Unauthorized use or disclosure of City's confidential and proprietary Information;

6.1.1.5 Claim of infringement or violation of a U.S. patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

6.1.2 Licensee must pay the costs City incurs in enforcing this provision. Licensee must accept a tender of defense upon receiving notice from City of a third-party claim, in accordance with California Public Contract Code Section 9201. At City's request, Licensee will assist City in the defense of a claim, dispute or lawsuit arising out of this Agreement.

6.1.3 Licensee's duties under this section are not limited to the Contract Price, workers' compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Licensee against City or any Indemnitee.

6.2 Insurance. Licensee shall comply with the Insurance Requirements, attached and incorporated here as Exhibit 3, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance for Licensee and deducting the costs from Licensee's compensation or terminating the Agreement.

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 of Statutory Termination. 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.

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. Use of Licensee Antenna equipment by third parties or attachment of third-party owned Antenna equipment to Licensor Poles by Licensee shall not constitute an assignment or transfer of privileges for purposes of this Agreement.

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 net 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 for non-payment of rent as defined by Civil Code §1951.3, or the abandonment of the City Poles for non-use for the period of time specified in the Cupertino Municipal Code, Section 19.136.080, which shall require removal of Licensee's facilities with Licensee to bear the entire cost of removal and restoration.

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 sixty (60) 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 sixty (60) 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/Partial Invalidity. If a court finds any term or provision of this Agreement to be illegal, invalid, or unenforceable, the legal portion of said provision and all other Agreement provisions will remain in full force and effect.

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 Agreement and the attachments, documents, and statutes attached, referenced, or expressly incorporated herein, including authorized amendments or change orders constitute the final and complete Agreement between City and Licensee with respect to the Work and the Project. No oral Agreement or implied covenant will be enforceable against City. If any attachment or incorporated provisions conflict or are inconsistent with the terms of this Agreement, the Agreement terms will control. This Agreement may be modified in writing only. A major modification of the terms of this Agreement shall require the approval of the City Council.

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 Survival. The Agreement provisions which by their nature should survive the Agreement, including without limitation all warranties, indemnities, payment obligations, insurance and bonds, shall remain in full force and effect after the License ends.

20.7 Inserted Provisions. Each provision and clause required by law to be inserted in this Agreement will be deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions.

20.8 Captions. The captions, titles, and headings in this Agreement are for convenience only and may not be used in the construction or interpretation of the Agreement or for any other purpose.

20.9 Counterparts. This Agreement may be executed in counterparts, each of which is an original and all of which taken together shall form one single document.

20.10 Notices. All notices, requests, and approvals must be sent in writing to the persons below and will be considered effective on the date of personal delivery, the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

Licensee:

ExteNet Systems (California) LLC
3030 Warrenville Road, Suite 340
Lisle, Illinois 60532
Attn: Vice President
With a copy to General Counsel at same address

City:

City Manager
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

With Copy to:

Rocio Fierro
City Attorney
20410 Town Center Lane, Suite 210
Cupertino, CA 95014-3255

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. Neither acceptance of the Work nor payment thereof shall constitute a waiver of any provision. City waiver of any breach shall not constitute waiver of another provision or breach.

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 Governing Law, Venue, and Dispute Resolution. This Agreement is governed by the laws of State of California. Venue for any legal action shall be the Superior Court of the County of Santa Clara, California. The dispute resolution procedures of Public Contract Code Section 20104, incorporated here by reference, apply to this Agreement and Licensee is required to continue the Work pending resolution of any dispute. Prior to filing a lawsuit, Licensee must comply with the claim filing requirements of the California Government Code. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

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 City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Lease, the prevailing party will be entitled to reasonable attorney fees and costs.

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 to Execute. The persons signing below warrant they have the authority to enter into this Lease Agreement and to legally bind their respective Parties. If Licensee is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code Section 313.

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 Independent Contractor.

20.15.1 Status. Licensee is an independent Contractor and not an employee of City. Licensee is solely responsible for the means and methods of performing the Work and for the persons under this employment. Licensee is not entitled to worker's compensation or any other City benefits.

20.15.2 Licensee's Qualifications. Licensee warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Work in a competent and professional manner and according to the highest standards and best practices in the industry.

20.15.3 Permits And Licenses. Licensee warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Work as required by law, and have procured a City Business License. Licensee shall possess a California Contractor's

License in good standing for the following classification(s), which must remain valid for the entire Lease time.

20.15.4 Subcontractors. Only Licensee's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

20.15.5 Tools, Materials And Equipment. Licensee will supply all tools, materials and equipment required to perform the Work under this Agreement.

20.15.6 Payment of Taxes. Licensee must pay income taxes on the money earned under this Agreement. Upon City's request, Licensee will provide proof of payment and will indemnify City for violations pursuant to the indemnification provision of this Agreement.

20.16 Memorandum of Lease. Following execution of this Agreement, either party, at its sole expense shall be entitled to record a Memorandum of Lease in the official records of Santa Clara County. Upon termination or expiration of this Agreement, Licensee shall execute and record a quitclaim deed.

20.17 Estoppel Certificate. Licensee shall, from time to time, upon at least thirty (30) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing (a) certifying this Agreement is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Agreement, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (b) acknowledging that there are not to Licensee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the City Property.

20.18 The language of all parts of this Agreement shall be construed with its fair meaning and not strictly for or against the City or Licensee.

20.19 Validity Of Agreement. This Agreement is valid and enforceable only if (a) it is signed by the City Manager or an authorized designee, and (b) is approved for form by the City Attorney's Office.

CITY OF CUPERTINO, CALIFORNIA

APPROVED AS TO FORM:

ROCIO FIERRO

City Attorney

City Manager

ATTEST:

City Clerk

"City"

Licensee

ExteNet Systems (California) LLC



By: Daniel L. Timm

Title: Vice President

10/03/18

Licensee's Address:

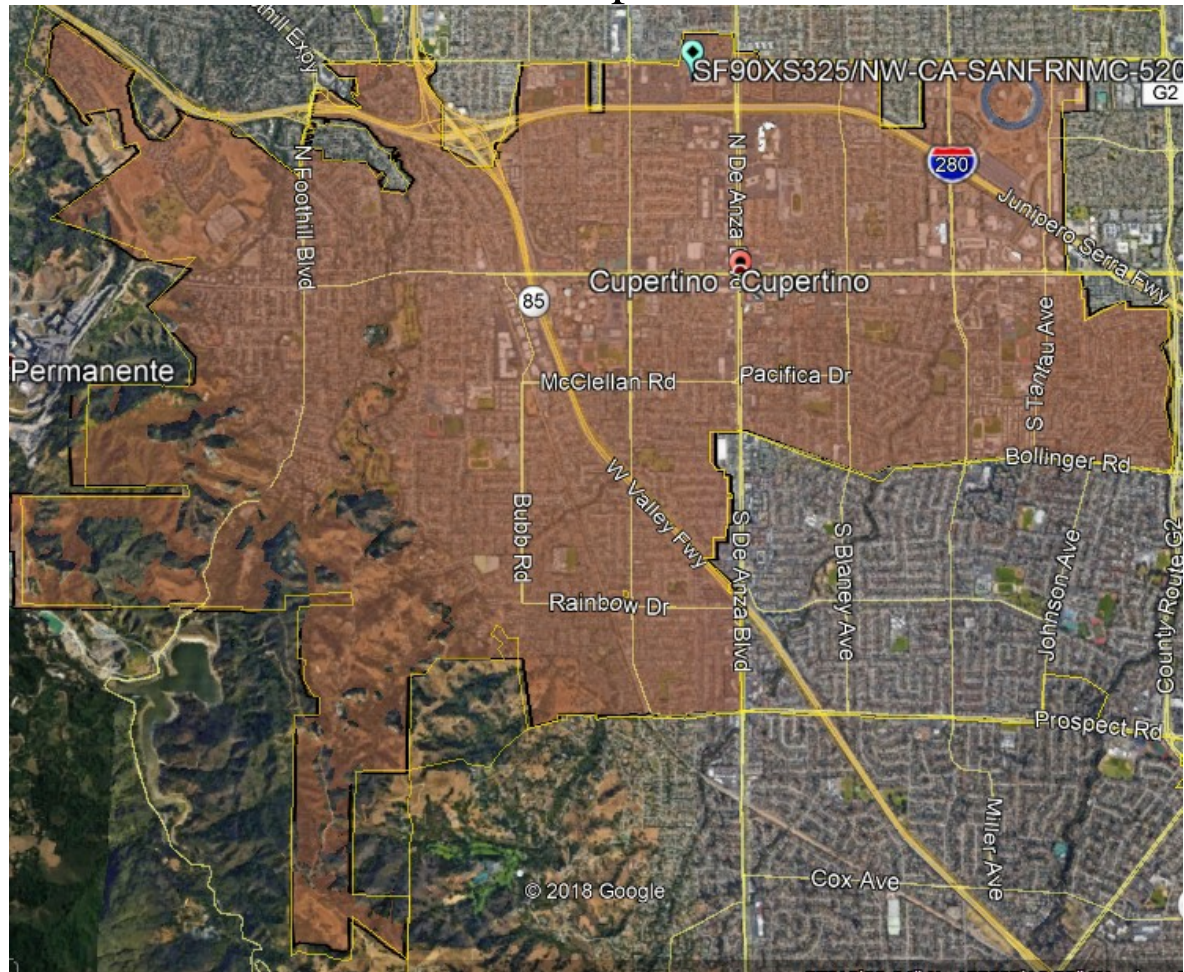
3030 Warrenville Road, Suite 340

Lisle, Illinois 60532

Attn: Vice President

Telephone: 630-505-3800

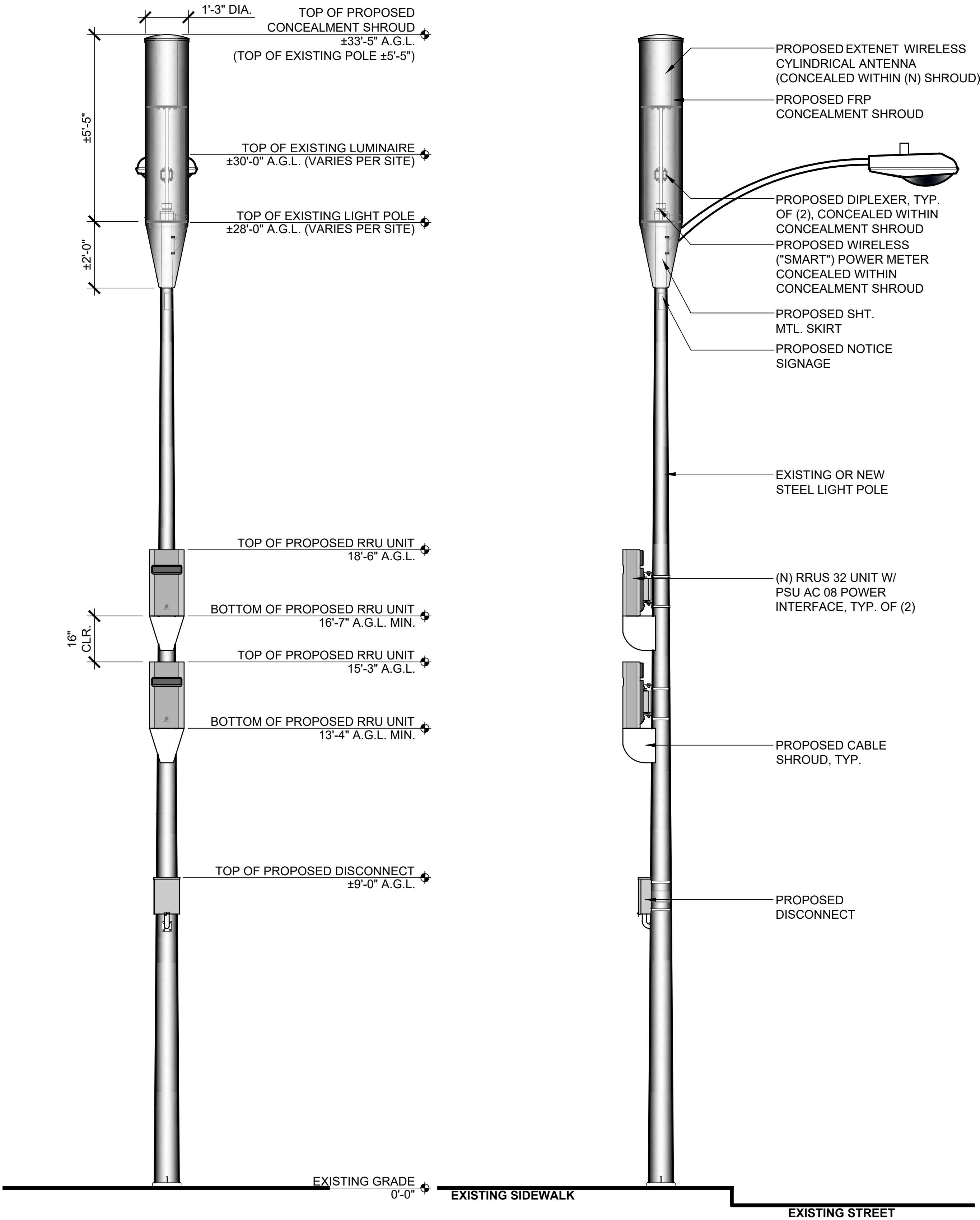
Exhibit 1: ExteNet Proposed Node Location



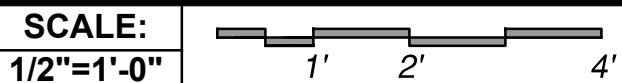
Cascade + Cand.	ExteNet Project ID	ExteNet Node Location ID	Customer Node	Candidate Letter	Jurisdiction	Latitude	Longitude	Pole Type	Antenna Location
SF90XS325M	NW-CA-SNFSPR09-SPR	NW-CA-SANFRNMC-52013	SF90XS325	M	Cupertino	37.337455	-122.036107	Metal Light	Pole Top

NOTES:

- FRP CONCEALMENT SHROUD, SKIRT, RRU UNITS AND CABLE SWEEPS SHALL BE PAINTED TO MATCH EXISTING LIGHT POLE.
- DESIGN SHOWN ASSUMES EXCLUSION OF GPS ANTENNA.
- DESIGN SHOWN IN BASED ON AMPHENOL WB080X06FX60 ANTENNA, CONCEALMENT SHROUD/ SKIRT BY WIRELESS STRUCTURES CONSULTING, ERICSSON RRUS32 UNITS.
- DESIGN AND HEIGHTS MAY VARY ON A SITE BY SITE BASIS BASED ON EXISTING SITE/ POLE CONDITIONS AND EXISTING POLE MOUNTED APPURTENANCES.
- EXISTING TRAFFIC SIGN(S) TO BE RELOCATED AS REQUIRED TO SCREEN RRU UNIT.

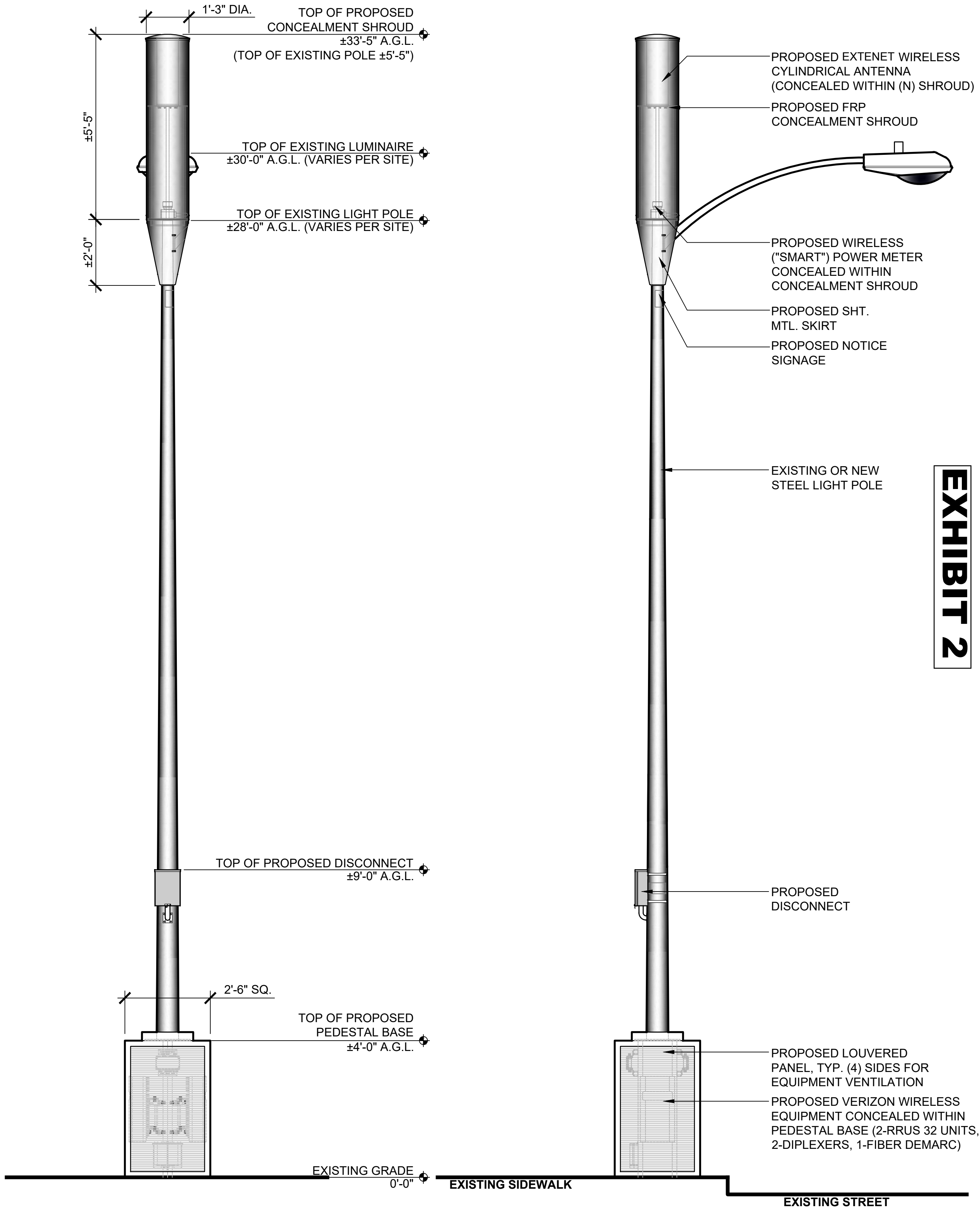


STACKED RRU UNIT ELEVATIONS



NOTES:

- FRP CONCEALMENT SHROUD, SKIRT AND PEDESTAL BASE SHALL BE PAINTED TO MATCH EXISTING LIGHT POLE.
- DESIGN SHOWN ASSUMES EXCLUSION OF GPS ANTENNA.
- DESIGN SHOWN IN BASED ON AMPHENOL WB080X06FX60 ANTENNA, CONCEALMENT SHROUD/ SKIRT BY WIRELESS STRUCTURES CONSULTING, ERICSSON RRUS32 UNITS.
- DESIGN AND HEIGHTS MAY VARY ON A SITE BY SITE BASIS BASED ON EXISTING SITE/ POLE CONDITIONS AND EXISTING POLE MOUNTED APPURTENANCES.



PEDESTAL BASE ELEVATIONS

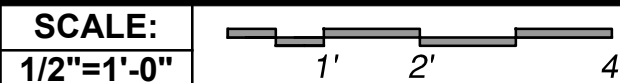


EXHIBIT "3"
Insurance Requirements

Licensee shall purchase and maintain the insurance policies set forth below at its sole cost and expense. Such policies shall be maintained for the full Term of this License. The term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the City of Cupertino, California, individually or collectively.

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.

On or before the commencement of the Term of this License, Licensee shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with this Exhibit. These certificates, which do not limit Licensee's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Cupertino by certified mail, "Attention: City Manager." Endorsements naming the City as additional insured shall be submitted with the insurance certificates. The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

(1) **Workers' Compensation:**
Statutory coverage as required by the State of California.

(2) **Liability:**
Commercial general liability coverage in the following minimum limits:
Bodily Injury:
\$2,000,000 each occurrence
\$4,000,000 aggregate - all other
Property Damage:
\$1,000,000 each occurrence
\$4,000,000 aggregate
If submitted, combined single limit policy with aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**
Comprehensive automobile liability coverage in the following minimum limits:
Bodily injury: \$1,000,000 each occurrence
Property Damage: \$1,000,000 each occurrence or
Combined Single Limit: \$1,000,000 each occurrence

2. SUBROGATION WAIVER.

Licensee agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Licensee shall look solely to its insurance for recovery. Licensee hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Licensee or City with respect to the services of Licensee, a waiver of any right to subrogation, which any insurer of the Licensee may acquire against City by virtue of the payment of any loss under the insurance.

3. ABSENCE OF INSURANCE COVERAGE.

City may direct Licensee to immediately cease all activities with respect to this License if it determines that Licensee fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this License. Any delays or expense caused due to stopping of work and change of insurance shall be considered Licensee's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Licensee.

4. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.

A Certificate of Insurance, on an Accord form, and completed coverage verification shall be provided to City by each of Licensee's insurance companies as evidence of the stipulated coverages prior to the Commencement Date of this License, and annually thereafter for the term of this License. All of the insurance companies providing insurance for Licensee shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202
