

## LIGHT POLE FACILITY ADDENDUM

This Light Pole Facility Addendum ("Addendum") is subject to and made part of the agreement entered into by the undersigned Parties, referenced as the General Terms and Conditions ("GTCs") dated \_\_\_\_\_, 20\_\_\_, which GTCs is incorporated herein by this reference. City and User may be referred to herein individually as a "Party" or collectively as the "Parties."

### 1. DEFINITIONS AND EXHIBITS

1.1 **Definitions.** For the purposes of this Addendum and all Exhibits attached hereto, each capitalized word, phrase, and derivation thereof in this Addendum shall have the meaning specified herein. Capitalized terms not defined herein shall have the meaning ascribed to them in the GTCs.

1.1.1 **"Activation Date"** shall mean the date that all parties have executed an Order authorizing User to install its Wireless Telecommunications Facilities, or any expansion thereof, on a specified Light Pole, pursuant to the terms of that Order and this Addendum.

1.1.2 **"Code"** shall mean City's Culver City Municipal Code including, but not limited to, City's zoning code and any duly adopted code.

1.1.3 **"CPUC"** shall mean the California Public Utilities Commission.

1.1.4 **"Day"** or **"Days"** shall mean calendar days unless otherwise expressly stated.

1.1.5 **"Effective Date"** shall mean the date on which the Addendum is fully executed.

1.1.6 **"Laws"** shall mean any and all applicable statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, permits, approvals or other applicable requirements of City or other governmental entity or agency having joint or several jurisdiction over User's activities under this Addendum or having jurisdiction that is applicable to any aspect of this Addendum, including the Code, that are in force on date of the execution of this Addendum, and as they may be enacted, issued, amended, or superseded during the term of this Addendum.

1.1.7 **"Light Pole(s)"** shall mean a pole, arm or fixture used primarily for street, pedestrian, or security lighting or traffic signal control that is owned by City, and located within City's public rights-of-way and that is designated or approved by City as being suitable for attachment of Wireless Telecommunications Facilities. The term includes Replacement Light Pole(s).

1.1.8 **"Network" or collectively "Networks"** shall mean the telecommunication network operated by User to serve its customers.

1.1.9 **"Order"** shall mean a type of an Order as defined in the GTCs and specifically for purposes of this Addendum includes each separate site license authorization granted by City to User with regard to a specific Wireless Telecommunications Facility installation on a specified Light Pole, substantially in the form shown on Exhibit B, which shall be subject to the terms and conditions of this Addendum.

1.1.10 **"Permit"** shall mean a permit issued by City and shall include, but is not limited to, wireless utility permits and those permits that monitor and control improvement, construction, utilities, encroachment or excavation activities, or traffic control or other work or activity, occurring upon, in or under, or otherwise affecting the City's public rights-of-way.

1.1.11 **"Rent" or "Alternate Rent"** shall mean the compensation to be paid by User to City for use of Light Poles as provided in this Addendum.

1.1.12 **"Replacement Light Pole(s)"** shall mean a new pole, arm or fixture used primarily for street, pedestrian, or security lighting of a design that is acceptable to and approved by City and is installed to replace an existing Light Pole.

1.1.13 **"Telecommunications Services" or "Services"** shall mean the transmission and reception of communications signals for the provision of personal wireless services, telecommunications services and mobile data services as defined in federal law, but specifically excluding cable services and/or video services as defined by the Digital Infrastructure and Video Competition Act (as codified in Public Utilities Code section 5800 et seq.).

1.1.14 **"Wireless Telecommunications Facilities"** shall mean antennas, communications equipment, electric and communications cables, and related accessories and improvements, and all associated equipment, located in, under, upon, adjacent to or through a Light Pole, whether referred to in the singular or collectively, to be installed, operated and used by User, as more particularly described and specified within each particular Order.

1.2 Exhibits. The following documents, which are occasionally referred to in this Addendum, are formally incorporated and made part of this Addendum by this reference:

Exhibit A: Application Form.

Exhibit B: Order Form.

To the extent reasonably feasible, the provisions of this Addendum together with the above-referenced exhibits and any approved Order shall be read together and interpreted so as to avoid any conflict between and among them. In the event of any conflict between this Addendum together with the above-referenced exhibits and any approved Order, the approved Order shall govern and prevail.

## 2. DURATION OF ADDENDUM

2.1 The initial term of this Addendum shall be for a period of ten (10) years (the "**Initial Term**"), commencing on the Effective Date and ending on the tenth anniversary thereof, unless sooner terminated as stated herein. Provided that User is not in material breach of this Addendum or any Order, this Addendum shall be automatically renewed for up to two (2) successive five (5) year renewal terms (each, a "**Renewal Term**"), with the first Renewal Term commencing immediately upon the expiration of the Initial Term, and the second Renewal Term commencing immediately upon the expiration of the first Renewal Term, unless either Party notifies the other in writing of its intent not to renew this Addendum at least thirty (30) Days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term and all Renewal Terms shall be collectively referred to herein as the "**Term**." All of the provisions of this Addendum shall be in effect during the Term.

2.2 Unless otherwise specified in an Order, the term for each Order shall begin on the Activation Date and shall continue until the earlier of the termination of the Order or the termination of this Addendum.

## 3. USER REPRESENTATIONS CONCERNING SERVICES

3.1 User represents, warrants and covenants that the Wireless Telecommunications Facilities installed pursuant to this Addendum and each Order will be utilized solely for providing Telecommunications Services, and User is not authorized to and shall not use its Wireless Telecommunications Facilities placed on Light Poles to offer or provide any other services other than the Telecommunications Services without the express written consent of City.

## 4. TERMINATION

### 4.1 Termination by User.

4.1.1 User may terminate this Addendum and all applicable Orders, at its election and without cause, by providing written notice of termination to City at least ninety (90) Days prior to the effective date of such termination, subject to meeting all financial and other obligations incurred pursuant to this Addendum and applicable Orders. Termination of this Addendum also terminates all associated Orders. In the event of such termination, User shall remove all its Wireless Telecommunications Facilities covered by the terminated Addendum and Orders in accordance with Section 7.8 and City shall not refund any Rent.

4.1.2 User shall have the right to terminate any Order without cause by providing written notice of termination to City at least thirty (30) Days prior to the effective date of such termination. In the event of such termination, User shall remove its Wireless Telecommunications Facilities covered by the terminated Order in accordance with Section 7.8 and City shall not refund any Rent.

### 4.2 Termination by City.

4.2.1 In addition to the remedies set forth in Section 4.3, City shall have the right to terminate this Addendum (i) if City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of User's Wireless Telecommunications Facilities from all Light Poles; or (ii) if User ceases to operate as a provider of Services under federal law, or if applicable, under its Certificate of Public Convenience and Necessity, or if User otherwise ceases to operate as a "telephone company" under California Public Utility Code section 7901; and City shall have the right to terminate a particular Order if City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of User's Wireless Telecommunications Facilities from the Light Pole covered by the Order. In connection with either such termination, City may require the removal of User's Wireless Telecommunications Facilities from affected Light Poles in accordance with Section 7.8, including the cost of any site remediation, at no cost or expense to City, without any liability to User related directly or indirectly to such removal. City may draw upon the bond posted by User for all removal and related costs pursuant to Section 8 to the extent not performed by User.

4.2.2 City shall additionally have the right to terminate any Order if City notifies User that the covered Wireless Telecommunications Facility appears to be inoperative or abandoned, and User does not demonstrate to the City's satisfaction that the covered Wireless Telecommunications Facility is operative or is not abandoned within ninety (90) Days following notice of termination. In the event of such termination, Section 7.8 shall apply, and City shall retain any Rent paid.

### 4.3 Termination by Either Party for Default.

4.3.1 Either City or User may terminate this Addendum (and all applicable Orders) if the uncured material breach by the other Party affects the Addendum as a whole or a substantial number of Orders, or may terminate a specific Order for an uncured material breach by the other Party. The Party asserting a breach must first provide written notice of the existence of a material breach to the breaching Party. The Party receiving notice of breach shall have forty-five (45) Days from delivery of the notice of breach to cure the material breach; provided, that if such material breach cannot reasonably be cured within such forty-five (45) Day period, then the breaching Party shall promptly commence and vigorously pursue good faith efforts to cure the material breach to completion and completes the cure within sixty (60) Days from delivery of the notice of breach.

4.3.2 Whenever User is in default of an applicable Order, after notice and applicable cure periods, and City does not terminate the Order, City may deny further Applications and Orders under this Addendum until such time as User cures all of its defaults.

## 5. SCOPE OF USE

5.1 Subject to the conditions herein including submission of an Application to use any particular Light Pole(s) and approval by City and execution of one or more Orders by the Parties, the City hereby authorizes and permits User to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, and replace Wireless Telecommunications Facilities in or on identified Light Poles, and to modify or remove Light Poles and install Replacement Poles, all for the purposes of the provision of Services.

5.1.1 Nothing in this Addendum shall be construed as a guarantee or a contractual right of User that City will consent to any Applications or issue any Orders to deploy Wireless Telecommunications Facilities on any Light Pole(s).

5.1.2 Any and all rights expressly granted to User under this Addendum shall be exercised at User's sole cost and expense. User shall be solely responsible for the payment of all costs, expenses, fees and charges in connection with User's performance under this Addendum, the GTCs, and any Orders.

5.1.3 Nothing in this Addendum may be deemed to grant, convey, create, or vest in User a real property interest in land, including any fee, leasehold interest, or easement. City makes no representation or warranty that its interest or other rights to control the use of the public rights-of-way is sufficient to permit its use for User's purposes, and User shall be deemed to gain only those rights to use as are properly in City and as City may have the undisputed right and power to give. User's use of Light Poles is subject to the prior and continuing right of City under applicable Laws to use any and all parts of the public rights-of-way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, licenses, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the public rights-of-way. This grant by City to User shall not be construed or deemed to be a sale, lease or conveyance of any interest in real or personal property to User, User Representatives, End Users, or any other third party.

5.1.4 The City is entering into this Addendum in its proprietary capacity as the owner of Light Poles and not in its capacity as a regulatory agency.

5.1.5 User acknowledges and agrees that the primary purpose of the Light Poles is to serve the public, and that its own use of any Light Poles shall not interfere with this primary purpose. User will not cause interference to City traffic, public safety or other communication signal equipment.

5.1.6 Nothing in this Addendum shall limit in any way User's obligation to obtain and pay for, at User's sole obligation, any required regulatory approvals or Permits from any City department, board or commission or other governmental agency that has regulatory authority over User's proposed activities involving use of the Light Poles.

5.1.7 Nothing in this Addendum shall limit in any way User's obligation to obtain any required proprietary approvals or Addenda to use City property other than the Light Poles covered by this Addendum.

5.1.8 **Nonexclusive Use Rights.** Notwithstanding any other provision of this Addendum, any and all rights expressly or impliedly granted to User under this Addendum and applicable Orders shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of City to use, and to allow any other person, entity, persons or entities to use, any and all parts of the public rights-of-way and Light Poles, exclusively or concurrently with any other person, entity, persons, or entities and (2) the public easement for streets and any and all other deeds, easements, licenses, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "**Encumbrances**") which may affect the public rights-of-way or Light Poles now or at any time during the Term of this Addendum, including, without limitation any Encumbrances granted, created or allowed by City at any time. Notwithstanding the foregoing, City will not knowingly grant after the date of this Addendum a permit, license or any other right to any third party if, at the time such third party applies to use a Light Pole, City knows that such third party's use will cause interference with the User's existing Wireless Telecommunications Facilities or User's use of the Light Pole.

### 5.2 Attachment to Light Poles.

5.2.1 Prior to any deployment of any Wireless Telecommunications Facilities on any Light Pole, User will submit to the authorized representative of City an Application Form (the "**Application**") substantially in the form provided in Exhibit A to this Addendum (which form may be updated by City from time to time) including the proposed design for any proposed Wireless

Telecommunications Facilities installation (in compliance with City standards), a list of all the components of its proposed Wireless Telecommunications Facilities, and identifying the location of the Light Pole that User proposes to use or replace. One Application is required per Light Pole. Such Application shall include a map or annotated aerial photograph identifying which Light Pole that User proposes to use or replace for installation of Wireless Telecommunications Facilities.

5.2.2 User shall also pay any fees established in the City's Master Fee Schedule (posted on Finance Department webpage) related to the Application submitted to City.

5.2.3 City may approve, approve with conditions, or disapprove an Application in its sole discretion. Any approved equipment shall be included as part of the applicable Order. Upon City approval of an Application, including any modification of the proposed design and location required by City, City will issue an Order and the approved plans shall be attached to the Order. User shall not install any Wireless Telecommunications Facilities on any Light Poles unless the Wireless Telecommunications Facilities are clearly described in an approved Order.

5.2.4 If User selects a Light Pole that is structurally inadequate to accommodate Wireless Telecommunications Facilities, or if a Light Pole needs replacement or repair before installation of Wireless Telecommunications Facilities, User may, at its sole cost and expense, make structural modifications to the Light Pole or remove the Light Pole and install a Replacement Light Pole at the same or a nearby location, and dedicate such Replacement Light Pole to City. User shall be responsible for all engineering and structural design costs, expenses, and fees, and for compliance with any applicable regulatory approvals or Permits from any City department, board or commission or other governmental agency with regulatory authority over the proposed installation of the Replacement Light Pole. Payment for a Replacement Light Pole does not provide User with any ownership interest in the Replacement Light Pole. Unless the Parties agree otherwise in writing, User shall provide one (1) spare pole to City for every one to ten (1-10) Replacement Light Poles authorized hereunder so that City may replace any Replacement Light Poles that are damaged beyond repair.

5.2.5 Unless the Parties otherwise agree in writing, User is solely responsible for procuring electricity for its Wireless Telecommunications Facilities and directly paying its chosen electricity provider for such services. City is not responsible for managing User's electricity needs or payments, or for supplying electricity to Wireless Telecommunications Facilities. Where available when deploying, User shall procure unmetered electricity services.

### 5.3 Access and Maintenance.

5.3.1 **Access.** User will be given reasonable access to the Light Poles authorized for use pursuant to any applicable Order for the purposes of routine installation, repair, maintenance or removal of User's Wireless Telecommunications Facilities.

a) If any routine maintenance, repair, or alteration of User's Wireless Telecommunications Facilities will disturb or block pedestrian or vehicular traffic in City public rights-of-way or result in the temporary removal of street parking or will have the potential to result in an interruption of any City services or other services related to the Light Poles, User shall provide City with a minimum of three (3) Days prior written notice of such activities. Such activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services or other services related to the Light Poles. All such work shall be at User's sole cost and expense.

b) [Intentionally omitted].

c) User shall allow a representative of City to observe any maintenance, repair or alteration work performed under this Section.

d) In the event maintenance or repair activities will disturb or block pedestrian or vehicular traffic in City public rights-of-way or result in the temporary removal of street parking or result in interruption of any City services or other services related to the Light Poles, User shall obtain all required Permits prior to commencing such maintenance or repair.

e) Prior to User accessing its Wireless Telecommunications Facilities for non-emergency purposes at any time, User shall provide notice to City at the email contact listed in Section 10.2. In the event of an emergency at any time, User will, if time permits, attempt to provide prior telephonic notice to City at the telephone number listed in Section 10.2. In the event User is unable to provide such notice, User will notify City as soon as practicable following such access.

f) Prior to City accessing or performing any work on a Light Pole on which User has installed Wireless Telecommunications Facilities, City may require User to power down or deactivate such Wireless Telecommunications Facilities. In such case, City will contact User at least three (3) Days prior to any required deactivation at the contact telephone number referenced in Section 10.3 to request deactivation. Further, User shall install a disconnect device at each Light Pole on which it installs Wireless Telecommunications Facilities which City may use to power down the Wireless Telecommunications Facility in case of emergency involving the immediate threat of harm to the public health or safety, provided City notifies User at the contact telephone number referenced in Section 10.3 as soon as is practical under the circumstances.

5.3.2 **Maintenance.** User shall, at User's sole cost and expense, maintain its Wireless Telecommunications Facilities installed on Light Poles in compliance with all applicable Laws, and in a manner so that the Wireless Telecommunications Facilities do not constitute a danger to the health, safety and welfare of the public. User shall promptly remove any graffiti on the User's Wireless Telecommunications Facilities. If City gives User written notice of a failure by User to properly maintain the Wireless

Telecommunications Facilities, User shall use its best efforts to remedy such failure within seventy-two (72) hours after receipt of such written notice. In the event User is unable or unwilling to remedy such failure within seventy-two (72) hours of receiving such written notice from City, City may authorize the remedying of the involved failure and User shall thereafter be responsible for all costs and expenses incurred by City for such remedy. City may draw upon the bond posted by User for all such remedies and related costs pursuant to Section 8 to the extent not performed by User.

5.4 Preference for Light Poles. In any situation where User has a choice of attaching its Wireless Telecommunications Facilities to either Light Poles or third-party-owned property in the public rights-of-way, User shall use good faith efforts to seek approval to attach to the Light Poles, provided that (a) such Light Poles are at least equally suitable functionally for the operation of User's Network and (b) the use fee, construction and installation costs associated with such attachment over the length of the term are comparable to the fee or cost to User of attaching to the alternative third-party-owned property.

5.5 Preference for Culver Connect Network Fiber. In any situation where User needs to use fiber optic facilities in connection with its Wireless Telecommunications Facilities, and Culver Connect Network fiber may be available at or near a Light Pole on which User desires to attach (and has been approved to attach via an approved Order) its Wireless Telecommunications Facilities, User shall use good faith efforts to consider the use of Culver Connect Network fiber, provided that (a) such fiber is at least equally suitable functionally for the operation of Wireless Telecommunications Facilities and (b) the use fee, construction and installation costs associated with such use are comparable to the fee or cost to User of using alternative third-party-owned fiber optic facilities.

5.6 Inventory and Maps. Within one year of the Effective Date and semi-annually on January 15th and July 15th thereafter, User shall provide to City a current inventory list and map identifying all of the Light Poles with User's Wireless Telecommunications Facilities. All such information must be provided in a format that is compatible with City's information technology, including but not limited to ESRI compatible GIS shapefiles

## 6. COMPENSATION FOR USE OF LIGHT POLES

6.1 Rent/Alternate Rent/Adjusted Rent. In order to compensate City for User's deployment of Wireless Telecommunications Facilities on any Light Poles, User shall pay to City, on an annual basis, an amount equal to Two Hundred and Seventy Dollars (\$270.00) per Light Pole (the "**Rent**"), as adjusted in Section 6.2. Notwithstanding the foregoing, User acknowledges that the FCC has adopted an order (FCC 18-133) (the "**FCC Order**") that relates to the Rent but the FCC Order is currently the subject of litigation. As of the date of this Addendum, City is accepting the Rent while litigation surrounding the FCC Order is ongoing. If relevant provisions of the FCC Order cease to be effective, are vacated or are otherwise invalidated, User shall automatically be required to pay One thousand five hundred Dollars (\$1500) per Light Pole per year (the "**Alternate Rent**"), as adjusted in Section 6.2, for the remainder of the Term; provided, however, that, at User's request, the Parties can meet and confer in good faith regarding whether any modification of the Alternate Rent is warranted to reflect the FCC Order ceasing to be effective, being vacated or being otherwise invalidated. Alternate Rent shall be applicable for the next calendar year after relevant provisions of the FCC Order cease to be effective. By way of example, if the FCC Order ceases to be effective in 2020, the Alternate Rent shall apply for 2021 and subsequent years. Rent may be paid in cash or equivalents, or a combination of cash and in-kind benefits as determined by the Parties in writing.

6.2 The Rent (or if applicable Alternate Rent) for each calendar year shall be subject to annual adjustments as provided in Section 6.4, and shall be due on or before January 15 of each year for all Orders. Any new Order approved during any given year shall be subject to payment of the Rent (or Alternate Rent) set forth above, as adjusted by Section 6.4 to reflect the then-current year rate. User shall make the first payment of Rent or Alternate Rent under any Order within 60 (sixty) Days of the Activation Date contained in the related Order. The amount of the first payment of Rent or Alternate Rent for any Order shall be pro-rated to cover the number of months remaining from the first day of the full month following the Activation Date of the applicable Order, regardless of the date user installs its Wireless Telecommunications Facilities, to December 31 of the same year, and shall be non-refundable. Thereafter, Rent or Alternate Rent for that Order shall be paid in advance for the next full year on or before January 1 of each year, and shall be non-refundable. If either party discovers any underpayment or error in the amount of Rent or Alternate Rent due, City shall be paid by User within 30 (thirty) Days after discovery of the underpayment, error or determination of the correct amount, including late payment charges as specified in Section 6.8. Overpayments to City, through error or otherwise, may be offset against the next Rent or Alternate Rent payment due only with the prior consent of City.

6.3 Acceptance by City of any payment of the Rent or Alternate Rent shall not be deemed a waiver by City of any breach of this Addendum occurring prior thereto, nor will the acceptance by City of any such payment preclude City from later establishing that a greater amount was actually due or from collecting any balance that is due.

6.4 Rent/Alternate Rent Adjustment. Effective on January 1 of the first year following year of execution of the Addendum and continuing annually thereafter during the Term, the Rent and Alternate Rent shall be increased by the percentage increase in the most recently published Consumer Price Index – All Urban Consumers (Los Angeles-Long Beach-Anaheim ("CPI-U")) compared to the CPI-U published twelve (12) months earlier. If the CPI-U is discontinued or changed so that it is impossible to obtain a continued measurement of price changes, the CPI-U shall be replaced with a comparable government index.

6.5 Business License Fee/Taxes. In addition to the Rent (or Alternate Rent) provided for in this Section 6, User is responsible for paying directly all applicable city, county, state, federal or other taxes and fees levied, assessed, or imposed by reason of this Addendum or those related to any of User's Wireless Telecommunications Facilities and/or related services.

6.6 Payment. The Rent (or if applicable Alternate Rent) shall be paid in the aggregate for all Orders authorized by City under this Addendum. City shall provide User with a completed, current Internal Revenue Service Form W-9 and state and local withholding forms, if required.

6.7 The Rent or Alternate Rent shall be paid by check made payable to City of Culver City (reference "Light Pole Facility Addendum") and mailed or delivered to the Finance Department, at the address provided for in Section 14 below. The place and time of payment may be changed at any time, by City, upon thirty (30) Days' written notice to User. Mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt. User assumes all risk of loss and responsibility for late payment charges if payments are made by mail. Notwithstanding the foregoing, upon written agreement of the Parties, User may pay Rent by electronic funds transfer and in such event, City agrees to provide to User bank routing information for such purpose upon request of User. At the same time as payment is sent, a notice of payment shall be sent separately to the Public Works Department (Engineering Division) at the address provided for in Section 14 below. Such notice shall reference "Light Pole Facility Addendum", the amount paid, and specify the Order(s) that are covered by the payment.

6.8 Delinquent Payment. If User fails to pay any amounts due pursuant to this Addendum within thirty (30) Days from the due date, User will pay, in addition to the unpaid fees, a sum of money equal to the Interest on the amount due for each month and/or fraction thereof during which the payment is due and unpaid.

6.9 Additional Remedies. The remedy provisions set forth hereinabove are not exclusive, and do not preclude City from pursuing any other or additional remedy in the event that payments become overdue by more than sixty (60) Days.

## 7. CONSTRUCTION

7.1 User shall comply with all applicable federal, state, and local Laws related to the construction, installation, operation, maintenance, and control of User's Wireless Telecommunications Facilities installed on or in Light Poles. All of User's construction and installation work for its Wireless Telecommunications Facilities on or in Light Poles shall be performed at User's sole cost and expense and shall be in a good and workmanlike manner and promptly completed. User shall keep the Light Poles free and clear from any liens arising out of any work performed, material furnished or obligations incurred by or for User.

7.2 Commencement of Installation. User shall commence installation of its Wireless Telecommunications Facilities approved by City no later than six (6) months after the Activation Date of an applicable Order, which deadline may be delayed only due to a force majeure event as described in the GTCs. Failure of User to commence installation of the applicable Wireless Telecommunications Facilities as provided above shall permit City to terminate the affected Order upon thirty (30) Days' notice to User unless within such thirty (30) Day period, User shall commence such installation. Upon the completion of each installation, User must promptly furnish to City as-built drawings that identify the exact location of the Wireless Telecommunications Facilities on or in the Light Pole.

7.3 Obtaining Required Permits. The attachment, installation, or location of the Wireless Telecommunications Facilities on any Light Pole may require Permits and regulatory approvals. User is solely responsible for applying for the appropriate Permits and paying any standard and customary Permit fees. Execution of this Addendum or any Order does not constitute the issuance of a Permit.

7.4 Relocation and Displacement of Wireless Telecommunications Facilities. User understands and acknowledges that City may require User to relocate one or more of its Wireless Telecommunications Facilities installations. At City's direction given with at least ninety (90) Days' prior written notice to User, User shall relocate such Wireless Telecommunications Facilities at User's sole cost and expense whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a City or other public agency project; (b) because the Wireless Telecommunications Facilities are interfering with or adversely affecting proper operation of Light Poles, traffic signals, communications, or interfering with pedestrian, bicycle or vehicular traffic; or (c) to protect or preserve the public health or safety. In any such case, City shall use reasonable efforts to afford User a reasonably equivalent alternate location. Notice to User required herein may be shortened in case of emergency, in the sole discretion of City. If User shall fail to relocate any Wireless Telecommunications Facilities as requested by City in accordance with the foregoing provisions, City shall be entitled to remove or relocate the Wireless Telecommunications Facilities at User's sole cost and expense, without further notice to User. User shall pay to City actual costs and expenses incurred by City in performing any removal work and any storage of User's property after removal within sixty (60) Days of the date of a written demand for this payment from City. To the extent City has actual knowledge thereof, City will attempt promptly to inform User of the displacement or removal of any Light Pole on which any Wireless Telecommunications Facilities are located. If the Light Pole is damaged or downed for any reason, and as a result is not able to safely hold the Wireless Telecommunications Facilities, City shall have no obligation to repair or replace such Light Pole solely for the use of User's Wireless Telecommunications Facilities. In the event of damage to a Light Pole that City determines not to repair or determines cannot be repaired within forty-five (45) days, the User may, at any time following such determination do the following: (i) User may terminate the applicable Order upon fifteen (15) days' written notice to City; (ii) if feasible and if City's determination was to repair the damaged Light Pole, User may place a temporary facility at a location comparable to User's current use of the Light Pole, until such time as the Light Pole is repaired and the Wireless Telecommunications Facility is returned to full on-air operation, which return to full operation must occur within thirty (30) days after the Light Pole is repaired; or (iii) User submit a new Application for an alternate location.

7.5 Relocations at User's Request. In the event User desires to relocate any Wireless Telecommunications Facilities from one Light Pole to another, User shall so advise City by filing a new Application to use a different Light Pole.

7.6 Damage Caused by User. User shall, at its sole cost and expense and to the satisfaction of City: (a) remove, repair or replace any of its Wireless Telecommunications Facilities that become damaged or detached; and/or (b) repair, in accordance with applicable City standards and requirements, any damage to public rights-of-way, Light Poles or other property, whether public or private, caused by User, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of Wireless Telecommunications Facilities. If User does not remove or repair such damage to its Wireless Telecommunications Facilities or to public rights-of-way, Light Poles or other property, City shall have the option, upon thirty (30) Days' prior written notice to User, to perform or cause to be performed such removal or repair on behalf of User and shall charge User for the actual costs and expenses incurred by City. If such damage causes a public health or safety emergency, as reasonably determined by City, City may immediately perform reasonable and necessary repair or removal work on behalf of User at User's cost and expense and will notify User as soon as practicable and shall not include any technical work on User's Wireless Telecommunications Facilities. Upon the receipt of a demand for payment by City pursuant to this Section, User shall, within thirty (30) Days of such receipt, reimburse City for such costs and expenses. The terms of this provision shall survive the expiration, completion or earlier termination of this Addendum.

7.7 Change in Wireless Telecommunications Facilities. If User proposes to install Wireless Telecommunications Facilities that are different in any material way from the then-existing and approved Wireless Telecommunications Facilities, then User shall first obtain City's written approval, which approval, if granted, shall take the form of an amendment to the applicable Order. Notwithstanding the foregoing, User may modify its Wireless Telecommunications Facilities with like-kind or smaller Wireless Telecommunications Facilities that do not defeat the concealment elements of said facility or increase the load on the applicable Light Pole beyond the loading that was established in the original Application and approved in the applicable Order, without prior written approval of City.

7.8 Removal of Wireless Telecommunications Facilities. Within thirty (30) Days after the expiration or earlier termination of an Order or this Addendum (together with all applicable Orders), User shall promptly, safely and carefully remove the affected Wireless Telecommunications Facilities from all Light Poles and public rights-of-way. Such obligation of User shall survive the expiration or earlier termination of this Addendum or the applicable Order. If User fails to complete this removal work pursuant to this Section, then City, upon written notice to User, shall have the right at City's sole election, but not the obligation, to perform this removal work and charge User for the actual costs and expenses, including, without limitation, reasonable administrative costs. User shall pay to City actual costs and expenses incurred by City in performing any removal work and any storage of User's property after removal within 60 (sixty) Days of the date of a written demand for this payment from City. After City receives the reimbursement payment from User for the removal work and storage performed by City, City shall promptly make available to User the property belonging to User and removed by City pursuant to this Section at no liability to City. If City does not receive reimbursement payment from User within such sixty (60) Days, or if City does not elect to remove such items after User's failure to so remove pursuant to this Section, or if User does not retrieve User's property within sixty (60) Days of such property having been made available by City after User's payment of removal reimbursement as described above, any items of User's property remaining on or about the public rights-of-way, Light Poles, or stored by City after City's removal thereof may, at City's option, be deemed abandoned and City may dispose of such property in any manner allowed by Law. Alternatively, City may elect to take title to abandoned property without the need for further action by either Party. The provisions of this Section shall survive the expiration or earlier termination of this Addendum. City may draw upon the bond posted by User for all removal and related costs pursuant to Section 8 to the extent not performed by User.

7.9 Risk of Loss. User acknowledges and agrees that User, subject to the terms of this Addendum, bears all risks of loss or damage to, or relocation or replacement of, its Wireless Telecommunications Facilities and materials installed in the public rights-of-way or on or in Light Poles pursuant to this Addendum from any cause, and City shall not be liable for any cost of replacement or of repair to damaged Wireless Telecommunications Facilities, including, without limitation, damage caused by City's removal of the Wireless Telecommunications Facilities, except to the extent that such loss or damage was caused by the willful misconduct or gross negligence of City, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors.

7.10 Unauthorized Attachments. User represents that it will not install unauthorized equipment on or in Light Poles. User's failure to comply with these limitations will constitute a material breach of the GTCs, this Addendum (and any applicable Order). For unauthorized equipment, City may, after providing written notice to User, impose liquidated damages in an amount not to exceed one thousand dollars (\$1000) and in addition, User shall, from the date of such written notice, be obligated to pay for such unauthorized equipment an amount which is three times (3x) the Rent (or Alternate Rent) (i.e. such amount divided by 365) for each Day until the breach is cured by User's removal of the unauthorized equipment to City's reasonable satisfaction or by applying for and obtaining an approved Order (or a modification to an existing Order if applicable) for such previously unauthorized equipment.

## **8. SECURITY FOR PERFORMANCE AND INSURANCE**

8.1 Performance Bond. Prior to the commencement of any work under or pursuant to this Addendum, User shall provide City with a performance bond solely for the protection of City, conditioned upon User's faithful performance of this Addendum, the GTCs and applicable Orders. Bonds shall be executed by a surety company duly authorized to do business in California, and in form acceptable to City. The amount of the performance bond shall be: (i) for 1-25 (one to twenty-five) Orders, a total sum of Fifty Thousand Dollars (\$50,000); (ii) for 25-50 (twenty-five to fifty) Orders, a total sum of One Hundred Thousand Dollars (\$100,000); and 51 (fifty-one) or more Orders, a total sum of Two Hundred Thousand Dollars (\$200,000). If User expands or reduces the number of Orders during the Term of this Addendum, User shall adjust its performance bond in accordance with the scale identified above. If User fails to comply with any terms or conditions governing this Addendum, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by City as a result, including the full amount of any compensation or costs of removal or abandonment of User's property, plus costs and reasonable attorneys' fees up to the full amount of the performance bond. User shall keep the performance bond in effect for the duration of time the Wireless Telecommunications Facilities are installed and shall remain until

the Wireless Telecommunications Facilities are completely removed from the public rights-of-way and Light Poles to the satisfaction of City.

8.2 Assessment of Bond. Upon User's failure to pay City any amount owing under this Addendum or applicable Orders beyond applicable notice and cure periods, City may draw from the performance bond for purposes including, but not limited to:

8.2.1 Reimbursement of costs or expenses borne by City to correct violations of any provisions of this Addendum or applicable Orders which are not corrected by User, after City provides notice and a reasonable opportunity to cure such violations.

8.2.2 To provide monetary remedies or to satisfy damages assessed against User due to a material breach of this Addendum or applicable Orders.

8.2.3 To cover any unpaid costs or expenses borne by City for removal or relocation of any Wireless Telecommunications Facilities.

8.3 Restoration of Bond. User must deposit a sum of money or a replacement instrument sufficient to restore the performance bond to its original amount within thirty (30) Days after written notice from City that any amount has been recovered from the performance bond. Failure to restore the bond to its full amount within thirty (30) Days will constitute a material breach of this Addendum.

8.4 Costs of Collection. If the performance bond is drawn upon, all of City's costs of collection and enforcement of the provisions relating to the bond that are specified in this Section, including reasonable attorneys' fees and costs, will be paid by User.

8.5 Required Endorsement. The performance bond is subject to the approval of City's attorney and must contain the following endorsement: "This bond may not be canceled until 60 (sixty) Days after receipt by City of Culver City, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

8.6 Reservation of City Rights. The rights reserved by City with respect to the performance bond are in addition to all other rights and remedies City may have under this Addendum or any other Law.

8.7 Admitted Surety Insurer. The surety supplying the bond shall be an "admitted surety insurer", as defined in Code of Civil Procedure section 995.120, and authorized to do business in the State of California.

8.8 Insurance. User shall be responsible for obtaining and maintaining any insurance required by Permits.

## 9. ASSIGNMENT AND SUBLICENSING

9.1 This Addendum and the rights granted herein and in each Order shall not be leased, sublicensed, shared with, conveyed or resold by User in whole or in part without City's express prior written consent. If this Addendum is assigned or otherwise transferred with City consent pursuant to this Section and subject to the assignee's execution of an assignment and assumption in form acceptable to City, this Addendum, including any amendments, shall be binding on the assignee to the full extent that it was binding upon User.

9.2 Notwithstanding the foregoing, upon thirty (30) days' prior written notice, User may assign or transfer the rights and privileges granted in this Agreement to an entity which User controls, is controlled by, or is under common control with User; so long as the successor provides written confirmation to City that it is then fully liable to the City for compliance with all terms and conditions of this Agreement.

9.3 Any unauthorized transfer or assignment of the rights granted hereunder or in any Order shall be void and of no effect. City, in its sole discretion and in addition to all other lawful remedies available to City, may collect any fees owed from User all without prejudicing any other right or remedy of City available to City. No cure or grace periods shall apply to transfers or assignment prohibited by this Addendum or to the enforcement of any provisions of this Addendum against a transferee or assignee which did not receive City's consent.

9.4 The requirement of User to include the waiver language specified in Section 6.2(b) of the GTCs in its agreements with End Users shall not apply to any of User's agreements with End Users that are mass-market retail wireless services contracts.

## 10. NOTICES AND EMERGENCY CONTACT INFORMATION

10.1 Notices to City related to this Addendum shall be provided to:

To City: City of Culver City  
Attn: Public Works Director  
9770 Culver Boulevard  
Culver City, California 90232-0507

Copy to: City of Culver City  
Attn: City Attorney  
9770 Culver Boulevard  
Culver City, California 90232-0507

10.2 For non-emergency operational notices to City, the email addresses are [charles.herbertson@culvercity.org](mailto:charles.herbertson@culvercity.org) and/or [sammy.romo@culvercity.org](mailto:sammy.romo@culvercity.org) and the telephone number for emergency notices is (310) 837-1221.

10.3 User shall be available to City employees of any City department or to City contractors, twenty four (24) hours a day, seven (7) Days a week, in the event that problems, complaints, emergencies or other unforeseen circumstances arise as a result of the attachment, installation, operation, maintenance, or removal of the Wireless Telecommunications Facilities. City may contact User 24 hours a day, 7 Days a week at the following telephone number, [REDACTED], regarding any, concerns, problems or complaints. User shall, during the Term of this Addendum, immediately notify City of any changes to the contact information provided in this Section 10.

#### 11. EXHIBITS

All exhibits referred to and attached to this Addendum are incorporated herein by reference.

**12. THE DIRECTOR OF PUBLIC WORKS OF THE CITY OF CULVER CITY OR HIS OR HER DESIGNEE IS HEREBY DESIGNATED AND AUTHORIZED TO EXECUTE ALL ORDERS AND AMENDMENTS THERETO ENTERED INTO PURSUANT TO THIS ADDENDUM.**

#### 13. RESERVATION OF CITY RIGHTS

City reserves its rights, in its sole discretion, to revise or add available Addenda or remove previously available Addenda proposed for execution by the Parties at any time for new or prospective Orders, but such new or revised Addenda will only apply prospectively to Orders executed by the Parties after the effective date of such new or revised Addenda and will have no effect on the validity of effective Addenda and Orders previously executed by the Parties.

**IN WITNESS WHEREOF**, the Parties have executed this Addendum to be effective on and as of the Effective Date set forth in Section 1.1.4 of this Addendum.

*[Signature Page Follows]*

**CITY:**

CITY OF CULVER CITY, a charter city of the State of California

**USER:**

\_\_\_\_\_

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

**Application Form**

**APPLICATION TO USE LIGHT POLE**

Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

User: \_\_\_\_\_ Application/License#: \_\_\_\_\_

Type of Light Pole	Alteration Required	Small Wireless Facility and Equipment Attachment Heights	Small Wireless Facility and Equipment Weights	Small Wireless Facility And Equipment Dimensions	Location of Any Additional Equipment
<i>[street light] [other, specify]</i>	<i>[Pole Reinforcement] [Pole Replacement] [None]</i>				<i>[Installed on Pole, specify attachment height, weight and dimensions] [Installed on/in Ground (Vault), specify dimensions] [Other Location] [Not Applicable/Needed]</i>

**APPLICANT SHALL PROVIDE THE FOLLOWING IF/AS APPLICABLE:**

- Site plan and engineering design and specifications for installation of the Wireless Telecommunications Facility, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, and electrical conduit and cabling. Where applicable, the design documents should include specifications on design, pole modification, and ADA compliance. Also indicate whether unmetered electricity is available at the site.
- Include a load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate proposed installation.
- If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specification drawings. For replacement poles, also indicate proposed location.
- The number, size, type and proximity to the facilities of all communications conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed.
- List of the contractors and subcontractors, and their contact information, authorized to work on the project.

**APPLICANT REPRESENTATIVE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**EXHIBIT B**

**Order**

1. **ORDER.** THIS IS AN ORDER AS REFERENCED IN THAT CERTAIN LIGHT POLE FACILITY ADDENDUM BETWEEN THE CITY OF CULVER CITY ("CITY") AND [REDACTED] ("USER") WITH THE EFFECTIVE DATE OF \_\_\_\_\_ ("ADDENDUM"), AND AS REFERENCED IN THAT CERTAIN GENERAL TERMS AND CONDITIONS ("GTCS") BETWEEN CITY AND USER WITH AN EFFECTIVE DATE OF \_\_\_\_\_, 20\_\_\_\_\_. USER HAS SUBMITTED AN APPLICATION FOR AN ORDER PURSUANT TO THE ADDENDUM, AND CITY HAS REVIEWED THE APPLICATION AND GRANTS APPROVAL SUBJECT TO THE TERMS OF THIS ORDER. ALL OF THE TERMS AND CONDITIONS OF THE ADDENDUM AND THE GTCS ARE INCORPORATED HEREIN BY THIS REFERENCE AND MADE A PART HEREOF WITHOUT THE NECESSITY OF REPEATING OR ATTACHING THE ADDENDUM OR THE GTCS. IN THE EVENT OF A CONTRADICTION, MODIFICATION OR INCONSISTENCY BETWEEN THE TERMS OF THE ADDENDUM, THE GTCS, AND THIS ORDER, PRECEDENCE WILL BE GIVEN TO SUCH DOCUMENT IN THE FOLLOWING ORDER: (A) THE TERMS OF THIS ORDER; (B) THE TERMS OF THE ADDENDUM; AND (C) THE TERMS OF THE GTCS.

2. **PROJECT DESCRIPTION AND LOCATION.** USER SHALL HAVE THE RIGHT TO USE THE IDENTIFIED SPACE ON THE SPECIFIC LIGHT POLE (THE "LICENSED AREA") TO INSTALL CERTAIN WIRELESS TELECOMMUNICATIONS FACILITIES. BOTH THE WIRELESS TELECOMMUNICATIONS FACILITIES TO BE INSTALLED AT THE LICENSED AREA AND THE LICENSE AREA ARE DEPICTED AND DESCRIBED IN ATTACHMENT 1 ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

3. **TERM.** THE TERM OF THIS ORDER SHALL COMMENCE ON THE ACTIVATION DATE AND CONTINUE FOR THE TERM OF THE ADDENDUM, AS DESCRIBED IN SECTION 2 OF THE ADDENDUM UNLESS EARLIER TERMINATED IN ACCORDANCE WITH THE ADDENDUM.

4. **RENT.** THE INITIAL RENT FOR THIS ORDER SHALL BE AS FOLLOWS PER YEAR:

RENT \_\_\_\_\_

RENT IS SUBJECT TO ANNUAL INCREASE AS PROVIDED IN PARAGRAPH 6.4 OF THE ADDENDUM, AND IS PAYABLE IN ACCORDANCE WITH SECTION 6 OF THE ADDENDUM.

5. **PERFORMANCE BOND.** THE ORDER [CIRCLE ONE] IS / IS NOT COVERED BY EXISTING PERFORMANCE BOND. IF NOT COVERED BY EXISTING PERFORMANCE BOND, A BOND (OR INCREASE IN BOND) IS REQUIRED PURSUANT TO SECTION 8 OF THE ADDENDUM.

6. **OTHER TERMS AND CONDITIONS.** \_\_\_\_\_

7. **USER SHALL COUNTERSIGN THE ORDER AND RETURN THE COUNTER-SIGNED ORDER TO CITY WITHIN 30 DAYS AFTER USER HAS RECEIVED THE ORDER EXECUTED BY CITY. IF NO COUNTERSIGNED ORDER IS RECEIVED BY CITY WITHIN THE 30 DAYS, THE ORDER SHALL BE VOID AND OF NO LEGAL EFFECT. IF USER STILL WANTS TO USE THE LIGHT POLE, USER WILL BE REQUIRED TO SUBMIT A NEW APPLICATION AND ASSOCIATED FEES.**

**CITY OF CULVER CITY**

**USER:**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment 1 to Order**

*[Insert site plan showing Licensed Area and detailed design drawings of the approved Wireless Telecommunications Facility, as well as an equipment inventory]*