



TO: Mayor and Town Council

April 16, 2019

SUBJECT: Ordinance No. 2019-03, adding Section 32-70.4d to the Danville Municipal Code to regulate small wireless facilities pursuant to applicable federal laws; Resolution No. 26-2019, adopting a policy regulating small cell wireless facilities in the public right-of-way; Resolution No. 27-2019, approving a pole license agreement for installation of small cell wireless facilities on Town-owned infrastructure in the public right-of-way

BACKGROUND

On August 21, 2018, the Town Council adopted Ordinance No. 2018-07, which rewrote the Town's existing wireless communication facilities ordinance. The Town Council also adopted Resolution No. 75-2018, approving design guidelines for wireless communications facilities. The key issue addressed in the ordinance and design guidelines was the regulation of small cell wireless installations, a type of wireless facility that did not exist when the prior ordinance was adopted. While these antennas are much smaller than the older generation of macro sites, they are generally located in the public right-of-way closer to residences, typically on existing utility or light poles. The ordinance contains development standards and provisions for a least intrusive means analysis for small cells aimed at minimizing impacts on neighborhoods to the extent permitted by existing federal and state laws.

Shortly after the ordinance became effective in September, the Federal Communications Commission (the "FCC") adopted a new Declaratory Ruling and Order (the "Order") expressly aimed at promoting the rapid deployment of small cell wireless facilities. The FCC's Order accomplishes this in large part by further preempting local regulation. While several lawsuits have been filed challenging the Order, both the FCC and the courts have refused to issue a stay on the implementation of the Order pending the outcome of the litigation. On December 10, 2018, the FCC clarified that provisions of the Order creating a new shot clock and capping fees would go into effect on January 14, 2019, while the provisions of the Order addressing aesthetic regulation would go into effect on April 15, 2019. These dates are not deadlines to act, but they do indicate when applicants may assert them in the application process. In order to comply with these new requirements, the Town must take action to update and modify our existing regulations.

DISCUSSION

Key Provisions of the Order

Before turning to the documents before the Town Council for adoption, it is helpful to point out the key provisions of the Order to put the changes in the correct context:

- Aesthetic regulations are legal only if they are: “1) reasonable, 2) no more burdensome than applied to other infrastructure deployments and 3) objective and published in advance.” As will be explained below, this will eliminate concepts such as “significant gap” and “least intrusive means” which the Town Council has become familiar with.
- The shot clock for small cells is shortened substantially. The new shot clock for any small cell is 60 days (on an existing pole) or 90 days (on a new pole). This compares to the 150 days previously allowed. This new, shorter shot clock is even more problematic because it will apply to all interactions between the carrier and the Town, including planning review (including any appeals), building and encroachment permits and licensing agreements where needed. This necessitates changes in process.
- The Order also addresses what local agencies can charge to process applications and charge in rent if the antenna is installed on a city owned pole. While the Order allows cities to charge “actual costs”, it sets the “safe harbor” numbers at \$100 processing fee per application and \$270 for the annual fee that can be charged for use of a Town owned pole. While the Town has previously established its actual costs for processing fees, no such analysis has previously been done for licensing fees.

The Order does not change the existing law prohibiting potential effects of radio frequency (“RF”) emissions from being considered in the decision making process.

Addressing the New Requirements

Town staff has continued to work with our outside counsel, Telecom Law, on how best to address the new requirements of the Order. Because Ordinance No. 2018-07 remains perfectly legal for applications on private property, it was determined that the most effective approach was to address the Order in two parts. The first is Ordinance No. 2019-03, which simply adds one new subsection to the Municipal Code authorizing the Town Council to adopt a policy establishing legally defensible procedures and requirements for small cell facilities in the public right-of-way (Attachment A). The ordinance itself is being proposed as an urgency ordinance pursuant to Government Code Section 36937(b), meaning that with a 4/5 vote of the Town Council, the ordinance would go into effect immediately. This will allow the Town to be prepared to accept new applications which can be filed immediately.

The second step is the policy itself, which contains standards and procedures that comply with the Order (Attachment B, Exhibit 1). This approach allows the Town to respond more quickly to any changes in the Order (either through the pending litigation or further changes from the FCC) or other new federal or state regulations or restrictions by simply amending the policy through adoption of a new resolution.

The following is a summary of the significant changes found in the new policy:

- In order to address the realities of the new 60 day shot clock, the policy would remove the Planning Commission from the process on all applications for small cell wireless facilities in the public right-of-way. All such applications would be initially reviewed and acted upon by Planning Division staff, with an appealable action letter mailed out on every decision. All appeals would go directly to the Town Council. As discussed at the January 8, 2019 Town Council study session, this is the only viable way to ensure that final decisions can be made within the 60 day shot clock while leaving any final decisions on appeal to the Town Council.
- As explained above, any aesthetic regulations must now be reasonable, objective and no more burdensome than those imposed on other similar infrastructure (a standard more specific than the general right to apply aesthetic regulation recently upheld by the California Supreme Court in the case of *T-Mobile West LLC v. City & County of San Francisco*). The Order provides very little guidance on what types of regulations would meet this new standard other than they must be technically feasible and reasonably directed to avoid the “intangible public harm” of unsightly or out-of-character deployments. The FCC also indicated that minimum spacing between locations or undergrounding requirements might violate the new standard. As also mentioned above, this provision of the Order eliminates both the “significant gap” and “least intrusive means” tests which the courts have previously applied.

While the draft policy carries over a number of provisions in the existing ordinance, it establishes the following reasonable, objective regulations for review of small cells in the public right-of-way:

- Sections 2.6(b) and (c) (starting with page 17 of the policy) identify location and structure preferences for small cells in the right-of-way. These are listed in order of preference. Section 2.6(e) contains additional placement requirements for siting of small cells. Given the realities of the existing built-out environment in Danville, these standards would minimize the impact to neighborhoods while complying with federal and state law.
- The policy also carries over and further defines applicable physical and design standards found in the existing Design Guidelines adopted by the Town Council last year.

Licensing Agreement

The Town's policy goal in evaluating proposed small cell installations is to select locations and existing infrastructure that will minimize impacts to the community. In some situations, the best means to accomplish this goal will be for the small cell to be located on street light poles or traffic signals owned by the Town rather than PG&E poles. While the Town actually owns very few street lights (the vast majority are owned by PG&E with the Town paying monthly electricity charges), they tend to be located on arterials (the most preferred location), with many located in medians.

In order for this Town-owned infrastructure to be considered as options in the appropriate circumstance, the Town would need to license those poles for use by a wireless provider, which would need to occur within the new 60 day shot clock. In addition, the Order now sets a nationwide limit on what local governments can charge for the use of their poles. The draft licensing agreement (Exhibit 1 to Attachment C) would standardize the terms of any licensing, allowing the Town to consider use of these poles when appropriate within the shot clock window. The agreement contains the following provisions:

- The wireless provider would first need to obtain the required land use permit for the proposed installation, meaning that it had been determined that the Town owned pole was the most appropriate location and structure for the proposed small cell.
- The annual fee for use of the pole is set at \$270, the "safe harbor" figure established by the FCC as the maximum price that could be charged. The agreement contains a provision that in the event that element of the Order is overturned by the courts, then the annual fee would increase to what is considered to be the fair market rate in this area of \$1,000 per year.
- The agreement contains more technical provisions such as insurance, indemnification, removal requirements, etc.

PUBLIC CONTACT

Notice of the hearing was published in a newspaper of general circulation. AT&T, Verizon and Danville Citizens for Responsible Growth have been notified of this meeting. Posting of the meeting agenda serves as notice to the general public.

FISCAL IMPACT

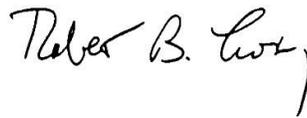
Adoption of the ordinance, policy and licensing agreement would have minimal financial impact on the Town. Because the Town has previously set application processing fees for telecommunications facilities that comply with state law limiting such fees to actual costs, there is no need to change those fees to comply with the Order. The FCC's safe harbor fee

of \$270 per pole for licensing fees is well below what other cities have been charging, but it is not anticipated that there will be very many Town-owned poles or traffic signals approved for wireless facilities. More importantly, the Town's policy has been to look for the site that will minimize impacts on the community, not to generate revenue.

RECOMMENDATION

Adopt Ordinance No. 2019-03, adding Section 32-70.4d to the Danville Municipal Code to regulate small wireless facilities pursuant to applicable federal laws; and, adopt Resolution No. 26-2019, adopting a policy regulating small cell wireless facilities in the public right-of-way; and, adopt Resolution No. 27-2019, approving a pole license agreement for installation of small cell wireless facilities on Town-owned infrastructure in the public right-of-way.

Prepared by:



Robert B. Ewing
City Attorney



David Crompton
Principal Planner

- Attachments:
- A - Ordinance No. 2019-03
 - B - Resolution No. 26-2019
 - Exhibit 1 (Small Cell Policy)
 - C - Resolution No. 27-2019
 - Exhibit 1 (Pole License Agreement)
 - D - iCommLaw letter dated 4/9/19

ORDINANCE NO. 2019-03

**ADDING SECTION 32-70.4d TO THE DANVILLE MUNICIPAL CODE TO
REGULATE SMALL WIRELESS FACILITIES PURSUANT TO APPLICABLE
FEDERAL LAWS**

The Danville Town Council does ordain as follows:

SECTION 1. FINDINGS. The Town Council finds that:

1. Pursuant to Article XI, section 7 of the California Constitution and sections 36931 et seq. of the California Government Code, the Town Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.
2. California Government Code sections 36934 and 36937 authorize the Town Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety.
3. Significant changes in federal law that affect local authority over wireless communications facilities (“WCFs”) have occurred since the Town adopted Ordinance No. 2018-07, including but not limited to:
 - On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and *de facto* moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a) and directed the Wireline Competition Bureau and the Wireless Telecommunications Bureau to hear and resolve all complaints on an expedited basis;
 - On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among other things, creates a new regulatory classification for small wireless facilities, requires State and local governments to process applications for small wireless facilities within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition;
 - The FCC Order became effective in part on January 14, 2019, and while litigation challenging the FCC Order has been filed, neither the courts nor the FCC have agreed to stay the Order. The FCC Order became fully effective on April 15, 2019.
4. In addition to the changes described above, new federal laws and regulations that would further alter local authority over WCFs are currently pending, including without limitation:
 - On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment;

- On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the “STREAMLINE Small Cell Deployment Act” (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the applicable timeframes for review, require all proceedings to occur within such timeframes, and provide a “deemed granted” remedy for a failure to act within the applicable timeframe.
5. Given the rapid and significant changes in federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with federal and State law, the Town Council desires to amend Danville Municipal Code Chapter 32-70, to allow greater flexibility and responsiveness to new federal and State laws in order to preserve the Town’s traditional authority to the maximum extent practicable.
 6. On April 16, 2019, the Town Council held a duly noticed public hearing on this Ordinance, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record, which, taken together, are an adequate and appropriate evidentiary basis for the actions taken in this Ordinance.
 7. The existence of the FCC Order and the new requirements imposed on local jurisdictions in reviewing and acting upon applications for small cell wireless facilities warrant adoption of this Ordinance and accompanying Policy as an urgency ordinance pursuant to Government Code Section 36937(b). The Town’s existing ordinance and design guidelines applicable to any wireless facility application contain processes and standards that are inconsistent with timelines and standards unique to small cell facilities as provided for in the FCC Order. The new shot clock provision of the Order became effective on January 14, 2019 and the new provisions affecting aesthetic review become effective April 15, 2019. The Town is also aware that wireless providers are preparing applications to submit in the near future.

Failure act within the prescribed shot clocks may result in either an automatic approval or significant legal presumptions against the Town that render legal defenses significantly more difficult and costly. In addition, federal law requires state and local agencies to cite their own local authority and substantial evidence for any denial. Failure to provide such authority or evidence may result in a reversal and/or mandates to approve applications by a federal court. Accordingly, the adoption of this Ordinance as an urgency ordinance is necessary to preserve the public health, safety, and welfare as, without such adoption, wireless facilities approved without updated regulations could create: (a) land use conflicts and incompatibilities between comparable facilities; (b) visual and aesthetic blight and public safety concerns arising from the excessive size, noise or lack of

camouflaging of wireless facilities; and (c) traffic and pedestrian safety hazards due to the potentially unsafe nature of unregulated siting of wireless facilities in the public rights-of-way.

8. This Ordinance is consistent with the General Plan, Danville Municipal Code, and applicable federal and State law.
9. This Ordinance will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 2. ADDING SECTION 32-70.4d TO THE DANVILLE MUNICIPAL CODE.

A new Section 32-70.4.d is hereby added to the Danville Municipal Code to read as follows:

32-70.4 Applicability and Exemptions

d. Special Provisions for Small Wireless Facilities in the Public Right-of-Way. Notwithstanding any other provision of this chapter, including any exemption under section 32-70.4.b, all small wireless facilities as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, located in the public right-of-way are subject to a permit as specified in a Town Council policy to be adopted and amended by Town Council resolution. All small wireless facilities in the public right-of-way shall comply with the Town Council's policy. If the policy is repealed, an application for a small wireless facility in the public right-of-way shall be processed pursuant to this chapter.

SECTION 3. CEQA. Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the Town Council finds that this Ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, this Ordinance is not subject to CEQA.

Even if this Ordinance qualified as a "project" subject to CEQA, the Town Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Ordinance merely amends the Danville Municipal Code to authorize the adoption of regulations related to WCFs. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new WCF or change to an existing WCF would be subject to additional environmental review on a case-by-case basis. Accordingly, the Town Council finds that this Ordinance would be exempt from CEQA under the general rule.

SECTION 4. CONFLICTS WITH PRIOR ORDINANCES. If the provisions in this Ordinance conflict in whole or in part with any other Town regulation or ordinance adopted prior to the effective date of this section, the provisions in this Ordinance will control.

SECTION 5. CODIFICATION. Section 2 of this ordinance shall be codified in the Danville Municipal Code.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Danville Town Council hereby declares that they would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases was declared invalid.

SECTION 7. PUBLICATION AND EFFECTIVE DATE. The City Clerk shall have this ordinance published in a newspaper of general circulation within 15 (fifteen) days after adoption. Pursuant to Government Code Section 36937(b), this ordinance shall become effective immediately.

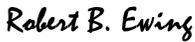
The foregoing Ordinance was approved and adopted by the Danville Town Council on April 16, 2019, by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

MAYOR

APPROVED AS TO FORM:

ATTEST:

DocuSigned by:


CITY ATTORNEY

CITY CLERK

CLERK'S CERTIFICATE

I, Marie Sunseri, City Clerk of the Town of Danville, hereby certify that the foregoing is a true and accurate copy of Ordinance No. 2019-03 of said Town and that said ordinance was published according to law.

Dated: _____

City Clerk of the
Town of Danville

RESOLUTION NO. 26-2019

ADOPTING A POLICY REGULATING SMALL CELL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

WHEREAS, pursuant to the California Constitution, Article XI, section 7; California Government Code section 37100 and other applicable law, the Town Council of the Town of Danville may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws; and

WHEREAS, within the last year, significant changes in federal laws that affect local authority over personal wireless service facilities and other related infrastructure deployments in the public rights-of-way have occurred, including, but not limited to, the following:

- On August 2, 2018, the FCC adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled *Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the “**August Order**”), that formally prohibited express and *de facto* moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis; and
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, --- FCC Rcd. ---, FCC 18-133 (rel. Sep. 27, 2018) (the “**September Order**”), which, among many other things, creates a new regulatory classification for small wireless facilities, alters existing “shot clock” regulations to require local public agencies to do more in less time, establishes a national standard for an effective prohibition that replaces the existing “significant gap” test adopted by the United States Court of Appeals for the Ninth Circuit and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and

WHEREAS, in addition to the changes described above, local authority may be further impacted by other pending legislative, judicial and regulatory proceedings, including but not limited to:

- The “STREAMLINE Small Cell Deployment Act” (S. 3157) proposed by Senator John Thune that, among other things, would apply specifically to “small wireless facilities” and require local governments to review applications based on objective standards, shorten the shot clock timeframes, require all local undertakings to

occur within the shot clock timeframes and provide a “deemed granted” remedy for failure to act within the applicable shot clock; and

- Further orders and/or declaratory rulings by the FCC from the same rulemaking proceeding as the August Order and September Order; and
- Multiple petitions for reconsideration and judicial review filed by state and local governments against the August Order and September Order, which could cause the rules in either order to change or be invalidated; and

WHEREAS, given the rapid and substantial changes in applicable law, the active and effective federal prohibition on reasonable moratorium ordinances to allow local public agencies to study these changes and develop appropriate responses and the significant adverse consequences for noncompliance with these changes in applicable law, the Town Council finds that aesthetic and operational regulations adopted through a resolution that supplements the Danville Municipal Code and that may be quickly amended is a necessary and appropriate means to protect the public health, safety and welfare from the potential harm caused by unregulated small wireless facilities and other infrastructure deployments; and

WHEREAS, on April 16, 2019, the Town Council held a duly noticed public hearing and adopted an urgency ordinance adding Section 32-70.4d to the Danville Municipal Code, authorizing the Town Council to adopt a policy regulating small cell wireless facilities located in the public right-of-way; and

WHEREAS, at the same public hearing, the Town Council considered this resolution and the draft Policy attached hereto as Exhibit 1, along with the staff report, written and oral testimony and other information in the record; now, therefore, be it

RESOLVED, that the Danville Town Council hereby adopts the Policy attached hereto as Exhibit 1, to take effect immediately, based on the following findings:

- The Town Council finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; (b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution; (c) the provisions in this Resolution and Policy No. 2019-01 are consistent with the General Plan, Danville Municipal Code and applicable federal and state law; and (d) neither this Resolution nor Policy No. 2019-01 will be detrimental to the public interest, health, safety, convenience or welfare.

- Pursuant to the California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the Town Council finds that this Resolution is not a “project” because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Even if this Resolution qualified as a “project” subject to CEQA, the Town Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. The proposed Resolution would regulate small wireless facilities and other infrastructure deployments in the public right-of-way. This Resolution does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new small wireless facility or other infrastructure deployment, or change to an existing small wireless facility or other infrastructure deployment, would be subject to additional environmental review on a case-by-case basis. Accordingly, the Town Council finds that this Resolution is not subject to CEQA or, in the alternative, is exempt from CEQA under the general rule.
- If any section, subsection, paragraph, sentence, clause, phrase or term (each a “Provision”) in this Resolution or Policy No. 2019-01, or any Provision’s application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision’s application to other persons or circumstances, shall not be affected. The Town Council declares that it would have passed this Resolution and Policy No. 2019-01, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional; and, be it further

RESOLVED, that the City Clerk shall have this Resolution and Policy No. 2019-01 published on the Town’s website and made available for inspection at the Town’s offices.

APPROVED by the Danville Town Council at a regular meeting on April 16, 2019 by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

MAYOR

APPROVED AS TO FORM:

ATTEST:

DocuSigned by:
Robert B. Ewing
895C6C40ADBF4BF...

CITY ATTORNEY

CITY CLERK

TOWN OF DANVILLE	Policy No. 2019-01
TOWN COUNCIL POLICY	Adopted: April 16, 2019
GENERAL SUBJECT: SMALL WIRELESS FACILITIES	

SECTION 1. GENERAL PROVISIONS..... 2

SECTION 1.1. PURPOSE AND INTENT 2

SECTION 1.2. GENERAL DEFINITIONS 2

SECTION 2. SMALL WIRELESS FACILITIES..... 4

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS..... 4

SECTION 2.2. SMALL CELL PERMIT APPLICATION REQUIREMENTS 5

SECTION 2.3. SMALL CELL PERMIT APPLICATION SUBMITTAL AND
COMPLETENESS REVIEW 8

SECTION 2.4. APPROVALS, DENIALS AND APPEALS; NOTICES 9

SECTION 2.5. STANDARD CONDITIONS OF APPROVAL 11

SECTION 2.6. LOCATION REQUIREMENTS..... 17

SECTION 2.7. DESIGN STANDARDS 19

SECTION 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND INTENT

- (a) The Town of Danville intends this policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the Town's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this policy are intended to, and should be applied to, protect and promote public health, safety and welfare, including the aesthetic character of the Town, its neighborhoods and community. This policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained; (2) protecting the Town's visual character from potential adverse impacts or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; and (3) protecting and preserving the Town's environmental resources.
- (b) This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the Town may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the Town to preempt any applicable federal or California law.

SECTION 1.2. GENERAL DEFINITIONS

- (a) **Undefined Terms.** Undefined phrases, terms or words in this section will have the meanings assigned to them in 1 U.S.C. § 1, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If any definition assigned to any phrase, term or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.
- (b) **Defined Terms.**

- (1) “**antenna**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.
- (2) “**approval authority**” means the Town official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications as provided in this policy. The approval authority for applications in connection with small wireless facilities shall be the Chief of Planning or his/her designee. The approval authority on appeal shall be the Town Council.
- (3) “**batched application**” means more than one application submitted at the same time.
- (4) “**collocation**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.
- (5) “**concealed**” or “**concealment**” means camouflaging techniques provided in Section 2.7, which are intended to integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) facade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.
- (6) “**decorative pole**” means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
- (7) “**FCC**” means the Federal Communications Commission or its duly appointed successor agency.
- (8) “**FCC Shot Clock**” means the presumptively reasonable time frame within which the Town generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time.
- (9) “**local street**” means the same as defined in the Town of Danville General Plan, Mobility Element, as may be amended or superseded.
- (10) “**major arterial**” means the same as defined in the Town of Danville General Plan, Mobility Element, as may be amended or superseded.
- (11) “**major collector**” means the same as defined in the Town of Danville General Plan, Mobility Element, as may be amended or superseded.

- (12) “**ministerial permit**” means any Town-issued non-discretionary permit required to commence or complete any construction or other activity subject to the Town’s jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.
- (13) “**minor arterial**” means the same as defined in the Town of Danville General Plan, Mobility Element, as may be amended or superseded.
- (14) “**minor collector**” means the same as defined in the Town of Danville General Plan, Mobility Element, as may be amended or superseded.
- (15) “**neighborhood access street**” means the same as defined in the Town of Danville General Plan, Mobility Element, as may be amended or superseded.
- (16) “**personal wireless services**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- (17) “**personal wireless service facilities**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as facilities that provide personal wireless services.
- (18) “**RF**” means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- (19) “**Section 6409**” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- (20) “**small wireless facility**” or “**small wireless facilities**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.
- (21) “**structure**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.

SECTION 2. SMALL WIRELESS FACILITIES

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable Wireless Facilities.** Except as expressly provided otherwise in this policy, the provisions in this policy shall be applicable to all existing small wireless

facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy small wireless facilities within the Town's jurisdictional and territorial boundaries within the public rights-of-way.

- (b) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to Danville Municipal Code Chapter 12, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the Public Works Director or other official responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this policy unless specifically prohibited by applicable law.
- (c) **Small Cell Permit.** A "small cell permit," subject to the approval authority's prior review and approval, is required for any small wireless facility proposed on an existing, new or replacement support structure.
- (d) **Request for Approval Pursuant to Section 6409.** Notwithstanding anything in the policy to the contrary, requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 (47 U.S.C. Section 1455(a)) will be subject to the provisions in Danville Municipal Code section 32-70.13, as may be amended or superseded.
- (e) **Other Permits and Approvals.** In addition to a small cell permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or approvals issued by other Town departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small cell permit issued by the Town for the proposed facility. Any application for any ministerial permit(s) submitted without such small cell permit may be denied without prejudice. Furthermore, any permit or approval granted under this policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

SECTION 2.2. SMALL CELL PERMIT APPLICATION REQUIREMENTS

- (a) **Small Cell Permit Application Contents.** All applications for a small cell permit must include all the information and materials required in this [section].
 - (1) **Application Form.** The applicant shall submit a complete, duly executed small cell permit application on the then-current form prepared by the Chief of Planning.

- (2) **Application Fee.** The applicant shall submit the applicable small cell permit application fee established by Town Council resolution. Batched applications must include the applicable small cell permit application fee for each small wireless facility in the batch. If no small cell permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the Town for its reasonable costs incurred in connection with the application.

- (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

- (4) **Site Survey.** For any small wireless facility proposed to be located within the public rights-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.

- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the Town to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in Section 2.4(c).
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Town. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant’s regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- (9) **Site Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the Town and located within the public rights-of-way, the applicant shall submit a partially-executed site agreement on a form prepared by the Town that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the Town’s form site agreement except as may be indicated on the form itself. Any unpermitted changes to the Town’s form site agreement shall be deemed a basis to deem the application incomplete.
- (10) **Property Owner’s Authorization.** The applicant must submit a written authorization from the support structure owner(s) that authorizes the applicant to submit and accept a small cell permit in connection with the subject support structure.

- (11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the Town's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
- (b) **Additional Requirements.** The Town Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 2.3. SMALL CELL PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- (a) **Requirements for a Duly Filed Application.** Any application for a small cell permit will not be considered duly filed unless submitted in accordance with the requirements in this Section 2.3.
- (1) **Submittal Appointment.** All applications must be submitted to the Town at a pre-scheduled appointment with the approval authority. Applicants may generally submit one application per appointment, or up to three individual applications per appointment for batched applications. Applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The approval authority shall use reasonable efforts to provide the applicant with an appointment within five working days after the approval authority receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
- (2) **Pre-Submittal Conferences.** The Town strongly encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed projects. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment

issues or concerns (if applicable); coordination with other Town departments responsible for application review; and application completeness issues. Pre-submittal conferences are especially encouraged when an applicant seeks to submit one or more batched applications so that the Chief of Planning may advise the applicant about any staffing or scheduling issues that may hinder the Town's ability to meet the presumptively reasonable timeframes under the FCC Shot Clock. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that Town staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the Town for its reasonable costs to provide the services rendered in the pre-submittal conference.

- (b) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the approval authority within 60 calendar days after the approval authority deems the application incomplete in a written notice to the applicant. As used in this subsection, a "substantive response" must include the materials identified as incomplete in the approval authority's notice.
- (c) **Additional Procedures.** The Town Council authorizes the Chief of Planning to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the Chief of Planning deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 2.4. APPROVALS, DENIALS AND APPEALS; NOTICES

- (a) **Administrative Review.** Not more than 26 shot clock days after an application is deemed complete, the approval authority shall approve, conditionally approve or deny a complete and duly filed small cell permit application through issuance of an appealable action letter, as provided for in Section 32-4.6(a)(1) of the Danville Municipal Code.
- (b) **Appealable Action Letter.** Upon issuance of an administrative decision to approve, conditionally approve or deny a small cell permit application, the Town shall mail an appealable action letter consistent with the provisions of Section 32-4.9(a) of the Danville Municipal Code.

- (c) **Required Findings.** The approval authority may approve or conditionally approve a complete and duly filed application for a small cell permit when the approval authority finds:
- (1) the proposed project meets the definition for a “small wireless facility” as defined by the FCC;
 - (2) the proposed project would be in the most preferred location within 250 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 250 feet would be technically infeasible;
 - (3) the proposed project would not be located on a prohibited support structure identified in this policy;
 - (4) the proposed project would be on the most preferred support structure within 250 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 250 feet would be technically infeasible;
 - (5) the proposed project complies with all applicable design standards in this policy;
 - (6) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
 - (7) all public notices required for the application have been given.
- (d) **Appeals.** As provided for in Sections 32-4.7 and 32-4.9(a-b) of the Danville Municipal Code, any interested party may file an appeal of the decision of the approval authority to approve, conditionally approve or deny an application for a small cell permit; provided however, that appeals from an approval shall not be permitted when based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines. All such appeals shall be heard by the Town Council, whose decision shall be final.
- (e) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this policy is intended to limit the approval authority’s ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this policy.
- (f) **Decision Notices.** Within five calendar days after the approval authority acts on a small cell permit application or before the FCC Shot Clock expires (whichever

occurs first), the approval authority shall notify the applicant by written notice. If the Chief of Planning (or Town Council on appeal) denies the application (with or without prejudice), the written notice must contain the reasons for the decision.

SECTION 2.5. STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions adopted by the approval authority for a small cell permit, all small cell permits issued under this policy shall be automatically subject to the conditions in this [section].
- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the Town to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. To the extent that this small cell permit is issued in connection with any structure owned or controlled by the Town and located in the public rights-of-way, this small cell permit shall be coterminous with the cancellation, termination or expiration of the agreement between the applicant and the Town for access to the subject Town structure.
 - (2) **Permit Renewal.** Not more than one year before this small cell permit expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this small cell permit and all applicable provisions in the Danville Municipal Code and this policy that exist at the time the decision to renew or not renew the permit is rendered. The Chief of Planning may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this policy. Upon renewal, this small cell permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the Town to establish a shorter term for public safety or substantial land use reasons.
 - (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.

- (4) **Build-Out Period.** This small cell permit will automatically expire six (6) months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use. If this build-out period expires, the Town will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small cell permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the Town, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this small cell permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all laws. No failure or omission by the Town to timely notice, prompt or enforce compliance with any applicable provision in the Danville Municipal Code, this policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee’s obligation to comply in all respects with all applicable provisions in the Danville Municipal Code, this policy, any permit, any permit condition or any applicable law or regulation.
- (7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction

work hours authorized by the Danville Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the Town or other state or federal government agency or official with authority to declare a state of emergency within the Town. The approval authority may issue a stop work order for any activities that violates this condition in whole or in part.

- (8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the Town's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the Town's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the Town's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (9) **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the Town with accurate and up-to-date contact information for a person responsible for the small wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the Town with updated contact information if either the responsible person or such person's contact information changes.
- (10) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the Town, Town Council and the Town's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the Town's approval of this small cell permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small cell permit or the small wireless facility. In the event the Town becomes aware of any claims, the Town will use best efforts to promptly notify the permittee and the property and/or support structure owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the Town shall have the right to approve, which approval shall not be

unreasonably withheld, the legal counsel providing the Town's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse Town for any costs and expenses directly and necessarily incurred by the Town in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the Town to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.

- (11) **Permit Revocation.** Any permit granted under this policy may be revoked in accordance with the provisions and procedures in this condition. The Chief of Planning may initiate revocation proceedings when the Chief of Planning has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the Chief of Planning may conduct a public hearing to revoke any permit granted under this policy, the Chief of Planning must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the Town may pursue, the Town may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this policy may be revoked only by the Town Council after a duly notice public hearing. The Town Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the Town Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the Town Council adopts a resolution to revoke a permit, the Chief of Planning shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (12) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the small cell permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the Town's regular files will control

over any conflicts between such Town -controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (13) **Abandoned Wireless Facilities.** The small wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Danville Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the Town shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the Town in connection with such removal and/or restoration activities.
- (14) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (15) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the Town to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the Town for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse Town for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the Town shall have the right to withhold any permits or other approvals in connection with the wireless facility until and

unless any outstanding costs have been reimbursed to the Town by the permittee.

- (b) **Conditions for Small Wireless Facilities in the Public Rights-of-Way.** In addition to all conditions in subsection (a), all small cell permits for small wireless facilities in the public rights-of-way issued under this policy shall be automatically subject to the conditions in this section.
- (1) **Future Undergrounding Programs.** If other public utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must underground its equipment except the antennas, any electric meter and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the Town's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the CPUC for undergrounding costs.
- (2) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (3) **Rearrangement and Relocation.** The permittee acknowledges that the Town, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the Town or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the Town (collectively, "Town work"). The Town reserves the rights to do any and all Town work without any admission on its part that the Town would not have such rights without the express reservation in this small cell permit. If the Public Works Director determines that any Town work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either

permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Public Works Director's notice, the Town may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The Town may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Public Works Director determines that the Town work is immediately necessary to protect public health or safety. The permittee shall reimburse the Town for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 2.6. LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** This subsection (a) provides guidance as to how to interpret and apply the location requirements in this Section 2.6. To better assist applicants, residents and decisionmakers understand and respond to the community's aesthetic preferences and values, subsections (b) and (c) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in ordered hierarchies. The Chief of Planning will prioritize the location preferences in subsection (b) over the support structure preferences in subsection (c). Applications that involve lesser-preferred locations or structures may be approved so long as the applicant demonstrates by clear and convincing evidence in the written record that either (1) no more preferred locations or structures exist within 250 feet from the proposed site; or (2) any more preferred locations or structures within 250 feet from the proposed site would be technically infeasible.
- (b) **Location Preferences.** The Town prefers small wireless facilities in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows (roadway types are illustrated in Figure 11 of the Town of Danville 2030 General Plan):
- (1) locations on or along major arterials;
 - (2) locations on or along minor arterials;
 - (3) locations on or along major collectors;
 - (4) locations on or along minor collectors;
 - (5) locations on or along neighborhood access streets;
 - (6) locations within 75 feet from any residential dwelling;
 - (7) locations within 50 feet from any residential dwelling.

- (c) **Preferred Support Structures.** The Town prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
 - (1) existing or replacement streetlight poles;
 - (2) existing or replacement traffic signal poles;
 - (3) existing or replacement wood utility poles;
 - (4) new, non-replacement streetlight poles;
 - (5) new, non-replacement poles for small wireless facilities.

- (d) **Prohibited Support Structures.** The Town prohibits small wireless facilities to be installed on the following support structures:
 - (1) decorative poles within the downtown business district;
 - (2) any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;
 - (3) new, non-replacement wood poles.

- (e) **Additional Placement Requirements.** In addition to all other requirements in this policy, small wireless facilities and all related equipment and improvements shall:
 - (1) when possible, be placed along rear or secondary front yard property lines that abut the public rights-of-way;
 - (2) be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
 - (3) not be placed directly in front of any door or window;
 - (4) not be placed within any sight distance triangles at any intersections;
 - (5) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
 - (6) not be placed in any location that obstructs views of any traffic signs or signals;
 - (7) not be placed in any location that obstructs illumination patterns for existing streetlights;

- (8) be placed at least 10 feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way;
- (9) be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency responder facilities;
- (10) when possible, be placed in locations adjacent to mature street trees and/or other landscaping;
- (11) when possible, be placed in a right-of-way median.

SECTION 2.7. DESIGN STANDARDS

(a) General Standards.

- (1) **Noise.** Small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations and shall not exceed, either on an individual or cumulative basis, the applicable noise limit.
- (2) **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this policy.
- (3) **Landscape Features.** Small wireless facilities shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location.
- (4) **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.

- (5) **Signage; Advertisements.** All small wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the Town, required by law or recommended under FCC, OSHA or other United States governmental agencies for compliance with RF emissions regulations.
- (6) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.
- (7) **Overall Height.** Small wireless facilities may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations, plus four feet or (B) four feet above the existing support structure.
- (8) **Antennas.**
 - (A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.
 - (B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.
- (9) **Accessory Equipment.**
 - (A) **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) shrouded on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.
 - (B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the Town's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the

sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.

- (C) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.
 - (D) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
 - (E) **Ground-Mounted Accessory Equipment.** The approval authority shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters.
 - (F) **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) seventeen (17) cubic feet in volume if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.
- (10) **Streetlights.** Applicants that propose to install small wireless facilities on an existing composite or metal streetlight must remove and replace the existing streetlight with one consistent with the utility provider or Town standards and specifications, as the case may be, that can accommodate wireless antennas and accessory equipment. To mitigate any material changes in the

streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

- (11) **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (12) **New, Non-Replacement Poles.** Applicants that propose to install small wireless facilities on a new, non-replacement pole must install a new streetlight substantially similar to the Town's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome.
- (13) **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- (14) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- (15) **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any

public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape.

- (16) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
 - (17) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
 - (18) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The approval authority shall not approve a separate ground-mounted electric meter pedestal.
 - (19) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.
- (b) **Design Guidelines.** The Chief of Planning may develop, and from time to time amend, design guidelines consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this policy for Town staff, applicants and the public. The design guidelines shall provide more detailed standards to implement the general principals articulated in this policy, and may include specific standards for particular wireless facilities or site locations, but shall not unreasonably discriminate between functionally equivalent service providers. The design guidelines, and any subsequent amendments, shall not be effective unless approved by a resolution adopted by the Planning Commission. In the event that a conflict arises between the standards specified in

this policy and the design guidelines adopted under this subsection, the standards specified in this policy shall control.

RESOLUTION NO. 27-2019

**APPROVING A POLE LICENSE AGREEMENT FOR
INSTALLATION OF SMALL CELL WIRELESS FACILITIES ON
TOWN-OWNED INFRASTRUCTURE IN THE PUBLIC RIGHT-OF-WAY**

WHEREAS, the Town owns vertical infrastructure in the public right-of-way, consisting of street lights and traffic signals; and

WHEREAS, pursuant to federal and state law, wireless providers are permitted to install small cell wireless antennas in the public right-of-way; and

WHEREAS, in reviewing such applications under applicable federal, state and Town regulations, there will be circumstances where installation of a small cell antenna on a Town-owned pole will be the best solution and minimize impacts to the community; and

WHEREAS, in order to allow for such installations if approved through the Town’s planning process and approve the installation within the applicable federal shot clock period, it is necessary for the Town to approve a standardized Pole License Agreement, establishing uniform terms for the use of Town infrastructure; now, therefore, be it

RESOLVED, by the Danville Town Council that it approves the Pole License Agreement for Installation of Small Cell Wireless facilities on Town-owned infrastructure in the public right-of-way, a copy of which is attached as Exhibit 1 and incorporated herein by this reference.

APPROVED by the Danville Town Council at a regular meeting on April 16, 2019, by the following vote:

- AYES:**
- NOES:**
- ABSTAINED:**
- ABSENT:**

MAYOR

APPROVED AS TO FORM:

ATTEST:

CITY CLERK

DocuSigned by:
Robert B. Ewing

CITY ATTORNEY

POLE LICENSE AGREEMENT

between

TOWN OF DANVILLE, A CALIFORNIA MUNICIPAL CORPORATION

and

[INSERT LICENSEE NAME], A [INSERT CORPORATE FORM]

CONTENTS

1. DEFINITIONS	2
2. LICENSE AREA.....	5
2.1. License Area Defined.....	5
2.2. Limited Rights Created.....	5
2.3. No Impediment to Municipal Functions	6
2.4. License Area Condition	6
2.5. Licensee’s Due Diligence	6
2.6. Diminutions in Light, Air or Signal Transmission or Reception	6
2.7. Certified Access Specialist Disclosure	7
3. USE OF LICENSE AREA	7
3.1. Permitted Use	7
3.2. Prohibition on Non-Small Wireless Facilities.....	7
3.3. Prohibition on Nuisances	7
3.4. Signs and Advertisements	7
4. TERM	8
5. FEES	8
5.1. Annual License Fee	8
5.2. Fee Adjustments by Town.....	8
5.3. Late Fees	9
5.4. Default Interest.....	9
5.5. Town’s Right to Cost Reimbursement.....	9
5.6. Town’s Right to Fair Market License Fees Reserved.....	9
5.7. In Lieu Fee for Landscape Restoration and Maintenance	10
6. CONSTRUCTION, INSTALLATION AND MODIFICATIONS.....	10
6.1. Regulatory Approvals.....	10
6.2. Compliance with Approved Plans.....	10
6.3. Changes or Corrections to Approved Plans	11
6.4. Licensee’s Contractors and Subcontractors.....	11
6.5. Labor and Materials	11
6.6. Damage or Alterations to Other Property	11
6.7. Underground Service Alert.....	12
6.8. Damage and Repair to Subsurface Structures.....	12
6.9. Equipment Modifications	12

- 6.10. Post-Completion Inspections 12
- 6.11. As-Built Plans and Maps 13
- 6.12. Title to Licensee’s Equipment and Other Improvements..... 13
- 7. LICENSEE’S MAINTENANCE OBLIGATIONS..... 13
 - 7.1. General Maintenance and Repair Requirements 13
 - 7.2. Damage Reports to the Town 14
 - 7.3. Licensee’s Obligation to Make Repairs 14
 - 7.4. Graffiti Abatement 14
- 8. REARRANGEMENT AND RELOCATION 15
 - 8.1. Rearrangement and Relocation for Town Work 15
 - 8.2. Rearrangement and Relocation to Accommodate Third Parties 15
 - 8.3. No Right to Rearrange or Relocate Town Property 16
- 9. COMPLIANCE WITH LAWS 16
 - 9.1. Compliance with CPUC General Orders 16
 - 9.2. Compliance with Building and Electrical Codes 16
 - 9.3. Compliance with FCC RF Exposure Standards 16
 - 9.4. Compliance with Prevailing Wage Regulations 17
- 10. PUBLIC WORKS’ OPERATIONS..... 18
 - 10.1. Town Access to License Area..... 18
 - 10.2. Town’s Maintenance, Repairs or Alterations to License Area 18
 - 10.3. Notice to Licensee for Non-Emergency Maintenance or Repairs 18
 - 10.4. Emergencies..... 19
- 11. INTERFERENCE 19
- 12. LIENS 19
- 13. UTILITIES..... 20
- 14. TAXES AND OTHER ASSESSMENTS..... 20
- 15. INDEMNIFICATION..... 21
 - 15.1. Licensee’s Indemnification Obligations 21
 - 15.2. Licensee’s Defense of the Town 21
- 16. INSURANCE 22
- 17. LIMITATIONS ON THE TOWN’S LIABILITY 22
 - 17.1. General Limitations 22
 - 17.2. Consequential, Indirect or Punitive Damages 22
 - 17.3. No Relocation Assistance 23

- 17.4. No Personal Liability for Town Personnel 23
- 18. CASUALTY 23
 - 18.1. Town’s Rights Upon a Casualty Event..... 23
 - 18.2. Licensee’s Termination Rights Upon a Casualty Event 24
 - 18.3. Statutory Waiver 24
- 19. CONDEMNATION..... 24
- 20. ASSIGNMENTS AND OTHER TRANSFERS..... 24
 - 20.1. General Restriction 24
 - 20.2. Permitted Assignments 25
 - 20.3. Effect of Assignment 25
- 21. DEFAULT 25
 - 21.1. Defaults and Cure Periods..... 25
 - 21.2. Licensee’s Remedies..... 26
 - 21.3. Town’s Remedies 26
 - 21.3.1. License Continuation..... 26
 - 21.3.2. License Termination..... 26
 - 21.3.3. Default Fees..... 26
 - 21.4. Cumulative Remedies..... 26
- 22. TERMINATION..... 27
- 23. HAZARDOUS MATERIALS..... 27
 - 23.1. Limitations on Hazardous Materials Use..... 27
 - 23.2. Notice to the Town After a Release 27
 - 23.3. Licensee’s Hazardous Material Indemnification Obligations 27
- 24. RULES AND REGULATIONS 28
- 25. PERFORMANCE BOND 28
- 26. SURRENDER OF LICENSE AREA..... 29
 - 26.1. Removal and Restoration Obligations..... 29
- 27. INSPECTIONS AND REPORTS 30
 - 27.1. License Area Inspections..... 30
 - 27.2. Records Maintenance and Audits 30
 - 27.3. Annual Capital Improvement Forecasts 30
- 28. MISCELLANEOUS PROVISIONS..... 31
 - 28.1. Notices..... 31
 - 28.2. Waivers..... 32

28.3. Integration; Amendments 32

28.4. Interpretation..... 32

 28.4.1. General 32

 28.4.2. Joint and Several Liability..... 33

 28.4.3. Captions and Other Reference Material 33

 28.4.4. Time 33

 28.4.5. Inclusive Words and/or Phrases..... 33

28.5. Successors and Assigns..... 33

28.6. Brokers 34

28.7. Governing Law; Venue 34

28.8. Litigation Fees and Costs 34

28.9. Recording 34

28.10. No Third-Party Beneficiaries..... 34

28.11. Survival..... 35

28.12. Severability 35

SCHEDULE 1..... 37

SCHEDULE 2..... 38

EXHIBIT A-1..... 39

EXHIBIT A-2..... 40

EXHIBIT B..... 41

POLE LICENSE AGREEMENT

This POLE LICENSE AGREEMENT (“License”) dated [insert] (the “Effective Date”) is between the TOWN OF DANVILLE, a California municipal corporation (the “City”) and [LICENSEE], a [insert licensee’s corporate form] (“Licensee”).

BACKGROUND

- A. Section 253 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as 47 U.S.C. § 253, preserves the Town’s authority to control access to and use of the rights-of-way within the Town’s jurisdictional boundaries, and to require reasonable compensation for such use on a competitively-neutral and nondiscriminatory basis so long as such compensation is disclosed; and
- B. California Public Utilities Code §§ 7901 and 7901.1 authorizes telephone corporations to construct “telephone lines along and upon any public road or highway” within the Town and “erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway” subject to the Town’s reasonable time, place and manner control; and
- C. On September 27, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Third Report and Order (FCC 18-133) in the rulemaking proceeding entitled *Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79 (the “Order”), which interpreted various provisions in the Telecommunications Act in a manner that, *inter alia*: (1) limited the compensation that state and local governments may receive from wireless communication and infrastructure providers for access to their public rights-of-way and government-owned infrastructure; (2) significantly curtailed state and local discretionary authority over wireless facility placement and design; and (3) imposed procedural regulations that require state and local governments to negotiate agreements such as this License and approve or deny associated permit applications within 60 or 90 days; and
- D. The Town generally desires to license its vertical infrastructure to wireless communication providers on negotiated terms and conditions when appropriate but finds that the Order’s provisions leave the Town with no incentive or time to conduct such negotiations and, as a result, the Town has adopted this License as a mandatory form agreement from which no substantive changes can be made by any licensee; and
- E. Licensee installs and maintains wireless communications facilities on existing vertical infrastructure in the public right-of-way; and
- F. Licensee warrants and represents to the Town that Licensee has the authority under applicable Laws to install and maintain telephone lines within the State of California,

which include wireless communications facilities, in the public right-of-way to provide wireless communications services; and

- G.** The Town owns as its personal property a substantial number of existing poles within the public right-of-way that are potentially suitable for installing wireless communications facilities within the Town's jurisdiction and has a duty to derive appropriate value from use of the Town's property assets for the public good; and
- H.** Licensee desires to install, maintain and operate wireless communications facilities on the Town's poles in the public right-of-way in a manner consistent with the Town's regulatory authority and Licensee is willing to compensate the Town for the right to use the Town's poles for wireless communications purposes; and
- I.** Consistent with California state law, the Town intends this License to be applicable only to a Town-owned pole, and does not intend this License to require any consideration as a precondition for any telephone corporation's access to the public rights-of-way permitted under California Public Utilities Code § 7901; and
- J.** The Town desires to authorize Licensee's access to an individual Town-owned pole based on the terms and conditions set forth in this License, and pursuant to all the applicable permits issued by the Town to protect public health and safety; and
- K.** Consistent with federal and California state law, the Town does not intend this License to grant Licensee any exclusive right to use or occupy the public rights-of-way within the Town's territorial and/or jurisdictional boundaries, and Licensee expressly acknowledges that the Town may in its sole discretion enter into similar or identical agreements with other entities, which include without limitation Licensee's competitors; and
- L.** On April 16, 2019, the Town Council of the Town of Danville adopted Resolution No. 27-2019, which approved the form and material terms for this License to be used in connection with the licensing of Vertical Infrastructure for wireless facilities, and further delegated authority to the Town Manager to enter into such agreements.

NOW THEREFORE, for good, valuable and sufficient consideration received and acknowledged by the Town and Licensee, the Town and Licensee agree as follows:

AGREEMENT

1. DEFINITIONS

"Agent" means a party's agent, employee, director, officer, contractor, subcontractor or representative in relation to this License.

"Approved Plans" means the detailed plans and equipment specifications, which include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage,

concealment elements and other improvements proposed by Licensee and approved by the Town for Licensee's construction and/or installation work in connection with the License Area, as more particularly described in **Exhibit A-2** (Approved Plans) attached hereto and incorporated herein.

"Broker" means any licensed real estate broker or other person who could claim a right to a commission or "finder's fee" in connection with the license(s) or other real estate rights contemplated or conveyed in this License.

"City Attorney" means the City Attorney of the Town of Danville, California.

"City Engineer" means the City Engineer of the Town of Danville, California.

"Claim" means any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, whether direct or indirect.

"CPUC" means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or the CPUC's duly appointed successor agency.

"Environmental Laws" means any Law in relation or connection to industrial hygiene, environmental conditions or Hazardous Materials (as defined in this License).

"Equipment" means antennas, radios and any associated utility or equipment box, and battery backup, transmitters, receivers, amplifiers, ancillary fiber-optic cables and/or wiring, and ancillary equipment used for radio communication (voice, data or otherwise) transmission and/or reception, which includes without limitation the means, devices and apparatus used to attach any Equipment to any licensed Vertical Infrastructure, and any ancillary equipment such as wiring, cabling, power feeds or any similar things, and any signage attached to such Equipment that may be approved by the Town or required by Law.

"FCC" means the Federal Communications Commission or its duly appointed successor agency.

"Hazardous Material" means any material that, due to its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any local, regional, state or federal body with jurisdiction and responsibility for issuing Regulatory Approvals in accordance with applicable Laws to pose a present or potential hazard to human health, welfare or safety, or to the environment. The term "Hazardous Material" as used in this Master License or any Site License will be broadly construed, and includes, without limitation, the following: (1) any material or substance defined as a "hazardous substance", or "pollutant" or "contaminant" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified as 42 U.S.C. §§ 9601 *et seq.*) or California Health & Safety Code § 25316; (2) any "hazardous waste" listed California Health & Safety Code § 25140; or (3) any petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

“**Indemnified Town Party**” or “**Indemnified Town Parties**” means the Town and its Agents, Invitees, elected and appointed officials and volunteers.

“**Investigate and Remediate**” means the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the License Area or that has been, is being, or is in danger of being Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

“**Invitee**” means the client, customer, invitee, guest, tenant, subtenant, licensee, assignee and/or sublicensee of a party in relation to the License Area.

“**Laws**” means all present and future statutes, ordinances, codes, orders, policies, regulations and implementing requirements and restrictions by federal, state, county and/or municipal authorities, whether foreseen or unforeseen, ordinary as well as extraordinary, as adopted or as amended at the time in question.

“**License Area**” means the same as that term is defined in Section 2.1 (License Area Defined).

“**License Fee**” means the annual fee for each licensed Vertical Infrastructure authorized under this License, as specified in **Schedule 1** (Annual License Fee).

“**Licensee’s Office**” means Licensee’s place(s) of business located at [**insert address(es)**] that contains all the records, in physical and/or electronic form, that Licensee is required to maintain under Section 27.

“**Licensee’s On-Call Representative**” means the person(s) assigned by Licensee to be on-call and available to the Town regarding the operation of Licensee’s Equipment. Such person(s) shall be qualified and experienced in the operation of Equipment and shall be authorized to act on behalf of Licensee in any emergency in and in day-to-day operations of the Equipment.

“**NESC**” means the National Electrical Safety Code, as may be amended or superseded, published by the Institute of Electrical and Electronics Engineers.

“**OSHA**” means the Occupational Safety and Health Administration of the United States Department of Labor, or OSHA’s duly appointed successor agency.

“**Preliminary Plans**” mean the detailed plans and equipment specifications, which include without limitation all equipment, mounts, hardware, utilities, cables, conduits, signage, concealment elements and other improvements proposed by Licensee but not yet approved by the Town in connection with the License Area.

“**Regulatory Approvals**” means all licenses, permits and other approvals necessary for Licensee to install, operate and maintain Equipment on the License Area.

“**Release**” when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing on, under or about the License Area, other Town Property or the environment.

“**RF**” means radio frequency or electromagnetic waves.

“**Streets**” mean any public right-of-way, street, alley, highway, sidewalk, curb, gutter, driveway, parkway or other public place primarily used or dedicated for vehicular transportation within the Town’s territorial and/or jurisdictional boundaries and subject to the Town’s management regulations. The term “Streets” does not encompass any private property, private utility easements, any public easements for pedestrian ingress and egress across private property or any other public easement not dedicated for use as a public road or highway.

“**Town Property**” means any interest in real or personal property owned or controlled by the Town, which includes without limitation any and all (1) land, air and water areas; (2) license interests, leasehold interests, possessory interests, easements, franchises and other appurtenant rights or interests; (3) public rights-of-way or public utility easements; and (4) physical improvements such as buildings, structures, infrastructure, utility and other facilities, and alterations, installations, fixtures, furnishings and additions to existing real property, personal property and improvements.

“**Vertical Infrastructure**” means that certain pole or similar structure, subject to this License, owned or controlled by the Town and located in the public rights-of-way or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control or similar functions.

2. LICENSE AREA

2.1. License Area Defined

The parties to this License define “**License Area**” to mean that certain space on that certain Vertical Infrastructure and other Town Property, which includes without limitation any conduits, chases, risers, trays, pipes, vaults, pull boxes, and hand holes, identified on the Approved Plans as occupied by the Equipment and licensed to Licensee, all as more particularly described and depicted in **Exhibit A-1** (License Area).

2.2. Limited Rights Created

This License grants Licensee only a non-possessory, non-exclusive and revocable license to enter on to and use the License Area for the Permitted Use in accordance with the terms and conditions in this License. Licensee expressly acknowledges and agrees

that: (a) this License is not and shall not be deemed to be coupled with an interest; (2) the Town retains legal possession and control over the Vertical Infrastructure for the Town's municipal functions, which will be superior to Licensee's rights and interest in the Vertical Infrastructure, if any, at all times; (3) subject to the terms and conditions in this License, the Town may terminate this License in whole or in part at any time; (4) except as specifically provided otherwise in this License, the Town may enter into any agreement with third parties to use and/or occupy the Vertical Infrastructure and/or other Town Property; and (5) this License does not create and will not be deemed to create any partnership or joint venture between the Town and Licensee.

2.3. No Impediment to Municipal Functions

Except as expressly provided otherwise in this License, this License shall not limit, alter or waive the Town's absolute right to use the License Area, in whole or in part, as infrastructure established and maintained for the Town's and the public's benefit.

2.4. License Area Condition

Licensee expressly acknowledges and agrees to enter on to and use the License Area in its "**as-is and with all faults**" condition. The Town makes no representations or warranties whatsoever, whether express or implied, as to the License Area's condition or suitability for Licensee's use. Licensee expressly acknowledges and agrees that neither the Town nor its Agents have made, and the Town expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the License Area's physical, structural or environmental condition, the License Area's present or future suitability for the Permitted Use or any other matter related to the License Area. This License shall not be deemed a warranty of title by the Town.

2.5. Licensee's Due Diligence

Licensee expressly represents and warrants to the Town that Licensee has conducted a reasonably diligent and independent investigation, either for itself or through an Agent selected by Licensee, into the License Area's condition and suitability for Licensee's intended use, and that Licensee relies solely on its due diligence for such determination. Licensee further expressly represents and warrants to the Town that Licensee's intended use is the Permitted Use as defined in this License. Any testing performed by Licensee or its Agents shall be subject to the provisions in Section 6.6 (Damage or Alterations to Other Property). In addition to any other conditions that the Town may impose on such testing, Licensee shall have the obligation to repair any damage caused by such testing and to restore all affected areas to the condition that existed immediately prior to such testing.

2.6. Diminutions in Light, Air or Signal Transmission or Reception

In the event that any existing or future structure diminishes any light, air or signal propagation, transmission or reception, whether erected by the Town or not, Licensee

shall not be entitled to any reduction in any License Fee, Regulatory Fees, Reimbursement Fees or any other sums payable to the Town under this License, the Town shall have no liability to Licensee whatsoever and such diminution will not affect this License or Licensee's obligations except as may be expressly provided in this License.

2.7. Certified Access Specialist Disclosure

Pursuant to California Civil Code § 1938, as may be amended or superseded, and to the extent applicable to this License, the Town expressly advises Licensee, and Licensee expressly acknowledges, that a Certified Access Specialist (as defined in California Civil Code § 55.53) has not inspected any License Area in whole or in part to determine whether it meets all applicable construction-related accessibility requirements.

3. USE OF LICENSE AREA

3.1. Permitted Use

Licensee may use the License Area solely to construct, install, operate and maintain Equipment for transmission and reception of wireless communications signals (the "**Permitted Use**") in compliance with all applicable Laws, which includes without limitation the Danville Municipal Code and any conditions in any Regulatory Approvals and for no other use whatsoever without the Town's prior written consent, which the Town may withhold in its sole and absolute discretion for any or no reason.

3.2. Prohibition on Non-Small Wireless Facilities

The Town intends this License to cover only wireless facilities that (a) qualify as a "small wireless facility" as that term is defined by the FCC under 47 C.F.R. § 1.6002(*l*); and (b) have been approved by the Town in accordance with all applicable provisions in the Danville Municipal Code and applicable policies and regulations. Licensee expressly acknowledges and agrees that the Permitted Use under this License does not include the right to use any Vertical Infrastructure as a support structure for a "macro cell" or a traditional wireless tower or base station.

3.3. Prohibition on Nuisances

Licensee shall not use the License Area in whole or in part in any unlawful manner or for any illegal purpose. In addition, Licensee shall not use the License Area in whole or in part in any manner that constitutes a nuisance as determined by the Town in its reasonable discretion. Licensee shall take all precautions to eliminate any nuisances or hazards in connection with its uses and activities on or about the License Area.

3.4. Signs and Advertisements

Licensee acknowledges and agrees that this License does not authorize Licensee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on the License Area, except as may be specifically authorized under this License or as may be required for compliance with any Regulatory Approvals and applicable Laws.

4. TERM

Unless earlier terminated in accordance with this License or as may be permitted under applicable Laws, the term under this License shall commence on the Effective Date and automatically expire ten (10) years from the Effective Date. Licensee may apply for a new license within not more than 30 days before this License expires or at any time after this License's expiration or earlier termination.

5. FEES

5.1. Annual License Fee

Licensee shall pay the first annual License Fee within 30 days from the Effective Date without any prior demand, deduction, setoff or counterclaim for any reason. Thereafter, Licensee shall pay the Town the License Fee on the anniversary of the Effective Date throughout the Term without any prior demand, deduction, setoff or counterclaim for any reason. The License Fee shall be (a) reasonably approximate to the Town's objectively reasonable costs consistent with applicable Laws; (b) in addition to any fees charged by the Town in connection with any permit applications, permit issuance fees, inspection fees, fines, penalties or other fees charged by the Town in connection with the Equipment and/or any related Regulatory Approvals (collectively, "**Regulatory Fees**"); and (c) in addition to any other cost-based reimbursements owed to the Town by Licensee ("**Reimbursement Fees**"). **Schedule 1** attached to this License and incorporated by this reference specifies the License Fee payable by Licensee to the Town in each year throughout the Term. Unless otherwise adjusted in accordance with this License, the License Fee shall automatically increase by 3% each year on the anniversary of the Effective Date.

5.2. Fee Adjustments by Town

At any time throughout the Term, the Town shall have the option (but not the obligation) to adjust any License Fee, Regulatory Fees and Reimbursement Fees to reflect the Town's reasonable costs incurred in connection with this License, any Regulatory Approvals issued or administered by the Town in connection with this License or the Equipment or Licensee's acts or omissions on or about the License Area and/or the Streets. The Town may exercise such option either by an ordinance approved and adopted by the Town Council (a "**Fee Ordinance**"), through the Town's Master Fee Schedule or by written notice to Licensee (the "**Adjustment Notice**"). If the adjustment concerns the annual License Fee, the Town shall have the right to substitute a new **Schedule 1** to reflect such adjustment in either a Fee Ordinance or Adjustment Notice.

Any adjustment by Fee Ordinance shall be effective at the same time such Fee Ordinance becomes effective. Any adjustment by Adjustment Notice shall be immediately effective. Licensee shall have the right to appeal any Adjustment Notice to the Town Council in the manner prescribed by the Danville Municipal Code.

5.3. Late Fees

In the event that Licensee fails to pay any License Fee or any other amount payable to the Town on the date that such amounts are due and unpaid, such amounts will be subject to a late charge equal to five percent (5%) of unpaid amounts.

5.4. Default Interest

Any License Fee, Regulatory Fees, Reimbursement Fees and all other amounts payable to the Town other than late charges will bear interest at ten percent (10%) per annum from the due date when not paid within 10 days after due and payable to the Town. Any sums received shall be first applied towards any interest, then to the late charge and lastly to the principal amount owed. Any interest or late charge payments will not alone excuse or cure any default by Licensee.

5.5. Town's Right to Cost Reimbursement

Notwithstanding anything in this License to the contrary, the Town shall be entitled to recover from Licensee the reasonable cost to furnish, provide and/or perform any services in connection with this License and any Regulatory Approvals issued or administered by the Town, which includes without limitation any costs incurred by Town staff or the Town's contractors, consultants and experts to review permit applications, issue permits or supervise or inspect any construction, installation or other work in connection with this License. Payments by Licensee for any License Fee, Regulatory Fees, and Reimbursement Fees in connection with this License or any related Regulatory Approvals issued or administered by the Town shall not relieve Permittee's obligation to reimburse the Town for any and all actual costs incurred by the Town in the future. Licensee shall reimburse the Town for all such costs within 10 business days after a written demand for reimbursement and reasonable documentation to support such costs. The provisions in this Section 5.5 shall survive this License's expiration, revocation or termination.

5.6. Town's Right to Fair Market License Fees Reserved

Licensee acknowledges that: (a) the Town is compelled by applicable Laws, which includes without limitation the Order, to accept certain cost-based rates and compensation; (b) but for such Laws, the Town would be entitled to condition its assent to any lease, license or other agreement for attachments to its Vertical Infrastructure (such as this License) on consideration that exceed the Town's costs; and (c) but for such Laws, the Town would not assent to all the terms and conditions in this License. Licensee further acknowledges that, in the event that the Order or other such laws described in this Section 5.6 are repealed, invalidated, no longer effective or otherwise not applicable to

the Town, the then-current License Fee shown in **Schedule 1** and the License Fee in all remaining years on the Term shall be automatically replaced by the amount(s) shown in **Schedule 2** (Town's Estimated Fair Market License Fees), attached hereto and incorporated herein. As an illustration, and not as a limitation, if the License Fee commenced in 2019 and the Order was invalidated in 2021, then the License Fee in 2021 would increase from \$286.44 to \$1,060.90, the License Fee in 2022 would be \$1,092.73 and so on until the License expired in 2029 or was earlier terminated in accordance with its terms.

5.7. In Lieu Fee for Landscape Restoration and Maintenance

If the installation, construction or other work on or about the License Area damages or destroys any landscape features that would require the Licensee to repair, replace and/or maintain any existing or new landscape features pursuant to the Municipal Code or other applicable Town policies, the Town may (but shall not be obligated to) enter into a written agreement with the Licensee to accept an in-lieu fee for the actual cost to repair, replace and/or maintain the existing and/or new landscape features on the Licensee's behalf. Such in-lieu fee(s) shall be established by the Chief of Planning (or his or her designee) in consultation with the Licensee and shall be reasonably related to the actual cost of any such repair, replacement and/or maintenance necessitated by the damage or destruction caused by Licensee's installation, construction or other work.

6. CONSTRUCTION, INSTALLATION AND MODIFICATIONS

6.1. Regulatory Approvals

Licensee shall not commence any installation, construction and other work on or about the License Area until and unless Licensee first obtains all necessary prior Regulatory Approvals, which includes without limitation any approvals required to provide the services offered by Licensee either to the public or Licensee's customers within the geographic area that encompasses the Town's territorial and/or jurisdictional boundaries, and any required use permits, design review permits, encroachment permits, building permits, grading permits and electrical permits. Any installation, construction or other work performed by Licensee or its Agents or Invitees without such Regulatory Approvals will be a default under this License in addition to any other liabilities or penalties the Town, in its regulatory capacity, may impose on Licensee for the same acts or omissions.

6.2. Compliance with Approved Plans

Upon the Town's approval of a construction permit for Licensee's construction and/or installation work on the License Area, the Approved Plans shall be substituted for the Preliminary Plans. Licensee shall perform all installation, construction and other work in connection with the License Area (a) in accordance with the terms and conditions in this License; (b) at Licensee's sole cost and expense, and at no cost to the Town; (3) in strict compliance with the Approved Plans; (4) in compliance with all applicable Laws, which includes without limitation all applicable provisions in the Danville Municipal Code and

any conditions in any applicable Regulatory Approvals; (5) in a safe, diligent, skillful and workmanlike manner; and (6) to the Chief of Planning's (or his or her designee's) satisfaction. After any work at the License Area concludes, Licensee shall restore the License Area and any other Town Property to the condition that existed immediately prior to the work commenced.

6.3. Changes or Corrections to Approved Plans

At all times relevant to this License, Licensee shall have the obligation to correct any errors or omissions in the Preliminary Plans (or, once approved, the Approved Plans) and related Regulatory Approval(s). Licensee shall immediately send written notice to the Town in the event that Licensee discovers any such defects. The Approved Plans and/or amendments to Approved Plans by the Town will not release or excuse Licensee's obligations under this Section 6.3.

6.4. Licensee's Contractors and Subcontractors

Licensee shall use only qualified and trained persons and appropriately licensed contractors for all installation, construction or other work performed on or about the License Area. At least five business days before any installation, construction or other work commences on or about the License Area, Licensee shall provide the Town with: (a) a schedule with all activities to be performed in connection with the installation, construction or other work; and (b) a list with all the names, contractors' license numbers and contact information for all contractors or subcontractors who will perform the installation, construction or other work on the License Area.

6.5. Labor and Materials

Licensee shall be responsible for all direct and indirect costs (labor, materials and overhead) in connection with designing, purchasing and installing all Equipment in accordance with the Approved Plans and all applicable Laws. Licensee shall also bear all costs to obtain and maintain all Regulatory Approvals required in connection with the installation, which includes without limitation all direct and indirect costs to comply with any approval conditions or mitigation measures that arise from Licensee's proposed installation. Licensee shall timely pay for all labor, materials, Equipment and all professional services related to the Permitted Use or furnished to the License Area at Licensee's direction or for Licensee's benefit. Licensee shall keep the License Area and all other Town Property free from any and all mechanics', materialmen's and other liens and claims arising out of any work performed, materials furnished or obligations incurred by or for Licensee.

6.6. Damage or Alterations to Other Property

Nothing in this License authorizes Licensee to use, occupy, remove, damage or in any manner alter any private personal or real property, wherever located, owned by the Town or any third parties. Licensee shall not remove, damage or in any manner alter any private

personal or real property, wherever located, owned by the Town or any third parties without prior written consent from property owner. The Town may withhold and/or condition its consent to any request to alter any Town Property in its sole and absolute discretion.

6.7. Underground Service Alert

Licensee warrants and represents to Town that Licensee is presently a member in good standing with the Underground Service Alert of Northern/Central California and Nevada (“**USA North 811**”). Licensee shall maintain and keep current its membership in USA North 811 throughout the Term. Prior to any excavation performed in the Streets, Licensee shall observe and perform all notice and other obligations required under applicable Laws, which includes, without limitation, California Government Code §§ 4216 *et seq.*, as may be amended or superseded.

6.8. Damage and Repair to Subsurface Structures

Any excavation performed in the Streets must be monitored by Licensee for any lateral movement, trench failures and other similar hazards. Licensee shall, at Licensee’s sole cost and expense, repair any damage (which includes without limitation any subsidence, cracking, erosion, collapse, weakening and/or any loss or reduction in lateral or subjacent support) to the Streets, any adjacent private property, any utility lines or systems (whether overhead or underground) and any sewer and/or water lines or systems resulting from or in connection with any excavation by Licensee or its Agents. All repair or restoration work performed pursuant to this Section 6.8 shall be performed under the Chief of Planning’s (or his or her designee’s) supervision and to the Chief of Planning’s (or his or her designee’s) satisfaction.

6.9. Equipment Modifications

If, after the initial construction, installation or other work is completed, Licensee proposes to modify existing Equipment or install new equipment on the existing License Area, and such proposal is different in any material way from the specifications or design configurations shown in the Approved Plans, then Licensee shall first obtain the Town’s consent to modify this License to reflect the material difference. No modification to this License shall be required for any modification to an existing Equipment that (a) involves only substituted internal components; (b) will be in compliance with applicable Laws (such as radio-frequency emission standards); (c) does not result in any change to the Equipment’s external appearance, dimensions or weight; (d) and does not cause any interference with any municipal functions or equipment. In any case, Licensee’s modification shall be performed in compliance with all applicable provisions in this License, which includes, without limitation Licensee’s obligation to obtain and pay for all Regulatory Approvals required for the proposed modification.

6.10. Post-Completion Inspections

Within five days after Licensee completes any Equipment construction, installation or other work, Licensee shall provide the Town with a written notice that confirms the precise locations and dates on which the Licensee completed the work. The Town shall have the right to inspect Licensee's Equipment at any time after Licensee completes any construction, installation or other work in connection with this License. If the Town discovers any defects or non-compliant conditions in connection with the Equipment, Licensee shall, at Licensee's sole cost and expense, correct any such defects and conditions within 15 days after written notice from the Town. Licensee shall promptly reimburse the Town for all costs incurred in connection with any inspections or re-inspections by the Town.

6.11. As-Built Plans and Maps

Within 30 days after the Town issues a certificate of completion, Licensee shall file as-built plans and maps in a format specified by the Chief of Planning (or his or her designee). In addition to any format required by the Chief of Planning (or his or her designee), all as-built plans and maps shall include digital copies in a native format compatible with the Town's document management, GIS and/or other digital information management systems. Licensee's as-built plans and maps must show the accurate location and dimensions for all Equipment. The Town shall have the right to reject any as-built plans or maps for cause, in which case Licensee shall file revised as-built plans and/or maps within 30 days after notice from the Town. The Town shall have the right to incorporate the as-built plans for the then-current description of the License Area in **Exhibit A-1** and/or the then-current Approved Plans in **Exhibit A-2**.

6.12. Title to Licensee's Equipment and Other Improvements

Except as specifically provided otherwise in this License, all Equipment and other improvements installed, constructed or placed on or about the License Area by Licensee or its Agents or Invitees will be and remain at all times Licensee's personal property. All structural improvements to any Vertical Infrastructure and any replacement Vertical Infrastructure, as approved by the Town and shown in the Approved Plans, will become Town Property and remain Town Property should Licensee vacate or abandon such License Area, unless the Town elects in a written notice to Licensee that it does not wish to take title to such structural improvements. Subject to Section 26 (Surrender of License Area), Licensee may remove its Equipment from the License Area at any time after 30 days' written notice to the Town.

7. LICENSEE'S MAINTENANCE OBLIGATIONS

7.1. General Maintenance and Repair Requirements

Licensee shall maintain all Equipment installed on, under, over, in or about the License Area in good, safe and orderly condition at all times, and shall promptly repair any damage to any Equipment whenever repair or maintenance may be required, subject to any Regulatory Approvals if required for such maintenance work. All work performed by or for

Licensee under this Section 7 shall be performed: (a) in accordance with the terms and conditions in this License; (b) at Licensee's sole cost and expense, and at no cost to the Town; (c) by only qualified, trained, experienced and appropriately licensed contractors or Licensee's Agents or other personnel; (d) in a manner and with equipment and materials that will not interfere with or impair the Town's municipal operations on or about the License Area; (e) in a safe, diligent, skillful and workmanlike manner; and (f) in compliance with all applicable Laws, which includes without limitation all applicable provisions in the Danville Municipal Code and any conditions in any applicable Regulatory Approval(s).

7.2. Damage Reports to the Town

Licensee shall promptly notify the Town if Licensee discovers damage or other alteration to the Streets, any Town Property or any personal or real property owned by third parties for any reason and through any cause. Notices shall contain the following information to the extent available at the time Licensee sends the notice: (a) the location where the event occurred; (b) a statement to describe the damage or other alteration and the surrounding circumstances; (c) the names and contact information for any persons or entities involved in the matter, as well as the names and contact information for any potential witnesses to the damage or other alteration; and (d) any other pertinent information. Licensee will not be deemed to have assumed liability for any such damage or other alteration by giving such notice, unless such damage or other alteration was caused by or arose in connection with Licensee's or its Agent's or Invitee's act, omission, negligence or willful misconduct.

7.3. Licensee's Obligation to Make Repairs

In the event that Licensee or its Agents or Invitees directly or indirectly caused such damage or other alterations, Licensee shall, at its sole cost and expense, repair such damage or other alteration and restore the affected property to the condition that existed immediately before the damage or other alteration occurred, reasonable wear and tear excepted. If Licensee fails or refuses to perform its obligations under this Section 7 within 15 calendar days after written notice from the Town, the Town may (but will not be obligated to) cause the repair and restoration to be performed at Licensee's sole cost and expense. The Town may exercise its rights to perform Licensee's obligations under this Section 7 without prior notice to Licensee when the City Engineer determines that the repair and/or restoration is immediately necessary to protect public health or safety. Licensee shall reimburse the Town for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs. In addition, Licensee shall indemnify, defend and hold any and all Indemnified Town Parties harmless from and against any Claims in connection with such performance by the Town.

7.4. Graffiti Abatement

In addition to Licensee's other maintenance obligations under this License, Licensee shall remove any graffiti or other similar markings from the License Area promptly upon actual notice (but in no event later than 48 hours after notice from the Town).

8. REARRANGEMENT AND RELOCATION

8.1. Rearrangement and Relocation for Town Work

Licensee acknowledges that the Town, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements owned by the Town or any other public agency located in, on, under or along any Street, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the Town (collectively, "**Town Work**"). The Town reserves the rights to do any and all Town Work without any admission on its part that the Town would not have such rights without the express reservation in this Permit. In the event that the City Engineer determines that any Town Work will require the Equipment to be rearranged and/or relocated Licensee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If Licensee fails or refuses to either permanently or temporarily rearrange and/or relocate the Equipment within a reasonable time after the City Engineer's notice, the Town may (but will not be obligated to) cause the rearrangement or relocation to be performed at Licensee's sole cost and expense. The Town may exercise its rights to rearrange or relocate the Equipment without prior notice to Licensee when the City Engineer determines that the Town Work is immediately necessary to protect public health or safety. Licensee shall reimburse the Town for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs. In addition, Licensee shall indemnify, defend and hold any and all Indemnified Town Parties harmless from and against any Claims in connection with rearranging or relocating the Equipment, or turning on or off any water, oil, gas, electricity or other utility service in connection with the Equipment. Within 90 days after any Equipment have been rearranged or relocated, Licensee shall file as-built plans and maps with the City Engineer in the same manner and subject to the same requirements as provided in Section 6.11 (As-Built Plans and Maps).

8.2. Rearrangement and Relocation to Accommodate Third Parties

Licensee shall reasonably cooperate with and promptly respond to requests to rearrange or relocate the Equipment to accommodate third parties authorized to use the Streets ("**Third-Party Accommodations**"). All costs to perform any Third-Party Accommodations shall be borne by the person or entity to be accommodated; provided, however, that Licensee shall be solely responsible to collect any costs incurred by Licensee from such third party and the Town shall have no liability to Licensee for any such costs. Prior to any Third-Party Accommodations performed by Licensee, Licensee shall be permitted to require (1) either a cash deposit, bond or other surety from the person or entity to be

accommodated in a commercially reasonable form and in an amount reasonably estimated by Licensee to cover the costs associated with the proposed Third-Party Accommodations; and (2) a written agreement signed by the person or entity to be accommodated to indemnify, defend and hold Licensee and its Agents harmless from and against any and all Claims that arise in connection with the proposed Third-Party Accommodations, except to the extent any Claims are directly caused by Licensee's or its Agent's negligence or willful misconduct. Nothing in this License shall be construed to require Licensee to perform any Third-Party Accommodations that would materially reduce, impair or otherwise diminish Licensee's Equipment or Licensee's operations on the License Area. Within 90 days after any Third-Party Accommodations, Licensee shall file as-built plans and maps with the City Engineer in the same manner and subject to the same requirements as provided in Section 6.11 (As-Built Plans and Maps).

8.3. No Right to Rearrange or Relocate Town Property

Nothing in this License will be construed to require the Town or authorize Licensee to change any street grade, width or location, or add, remove or otherwise change any improvements owned by the Town or any other public agency located in, on, under or along the License Area or any Street, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications, for Licensee's or any third party's convenience or necessity.

9. COMPLIANCE WITH LAWS

9.1. Compliance with CPUC General Orders

In addition to Licensee's obligation to maintain compliance with all other Laws, Licensee shall conduct all activities on the License Area in accordance with all applicable CPUC general orders, which includes without limitation CPUC General Order 95 and CPUC General Order 128 as those orders may be amended or superseded in the future, and all other rules, regulations and other requirements adopted or enacted by the CPUC.

9.2. Compliance with Building and Electrical Codes

In addition to Licensee's obligation to maintain compliance with all other Laws, Licensee shall conduct all activities on the License Area in accordance with the requirements in the California Building Code and the California Electric Code as adopted by the Town with any legally permitted amendments.

9.3. Compliance with FCC RF Exposure Standards

Licensee's obligation to comply with all Laws includes all Laws related to maximum permissible exposure to RF emissions on or about the License Area, which includes all applicable FCC standards, whether such RF emissions or exposure results from the

Equipment alone or from the cumulative effect of the Equipment added to all other sources on or near the License Area.

9.4. Compliance with Prevailing Wage Regulations

The services to be provided under the License are or may be subject to prevailing wage rate payment as set forth in California Labor Code § 1771. Accordingly, to the extent that any such services are subject to the prevailing wage rate payment requirements, Licensee shall and shall cause its Agents to comply with all applicable California Labor Code requirements pertaining to “public works,” including the payment of prevailing wages in connection with the services to be provided to the Town hereunder (collectively, “**Prevailing Wage Policies**”). Licensee shall submit and allow the Town to inspect, upon request by the Town, Licensee’s payroll records and other proof of compliance with the Prevailing Wage Policies consistent with the requirements in California Labor Code § 1776, as may be amended or superseded.

Licensee shall defend, indemnify and hold the Town and Indemnified Town Parties harmless from and against any and all present and future Claims, that arise from or in connection with Licensee’s obligation to comply with Prevailing Wage Policies and all Laws with respect to the installation, construction or other work in connection with this License, which includes without limitation any and all Claims that may be made by Licensee’s Agents or any other contractors, subcontractors or other third parties pursuant to California Labor Code §§ 1726 and 1781, as amended and added by California Senate Bill 966 (Alarcon), and as may be amended or superseded in the future.

Licensee hereby waives, releases and discharges forever the Town and Indemnified Town Parties from any and all present and future Claims that arise from or in connection with Licensee’s obligation to comply with Prevailing Wage Policies and all Laws with respect to the installation, construction or other work in connection with this License. Licensee hereby acknowledges that Licensee is aware of and familiar with the provisions in California Civil Code § 1542 which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him must have materially affected his or her settlement with the debtor.

Licensee hereby waives and relinquishes all rights and benefits which it may have under California Civil Code § 1542, as such relates to this License. Licensee’s obligations under this Section 9.4 will survive this License’s expiration or earlier termination.

To the extent applicable, as provided in SB 854 (Stats. 2014, ch. 28): (a) no contractor or subcontractor may be qualified to bid on, be listed in a bid proposal, subject to the requirements of California Public Contracts Code § 4104, or engage in the performance of any contract for public work, unless currently registered with DIR and qualified to perform public work pursuant to California Labor Code § 1725.5 (Cal. Lab. Code §

1771.1(a)); (b) no contractor or subcontractor may be awarded a public works contract unless registered with the DIR to perform public work pursuant to California Labor Code § 1725.5 (Cal. Lab. Code § 1771.1(b)); and (c) work performed on the project is subject to compliance monitoring and enforcement by DIR (Cal. Lab. Code § 1771.4).

10. PUBLIC WORKS' OPERATIONS

10.1. Town Access to License Area

Except as specifically provided otherwise in this License, the Town and its Agents have the absolute right to access any License Area, in whole or in part, at any time and with or without notice for any purpose related to its municipal functions. The Town will not be liable in any manner whatsoever, and Licensee expressly waives any Claims for inconvenience, disturbance, lost business, nuisance or other damages that may arise from the Town's or its Agents' access to the License Area, which includes, without limitation, any Equipment removed in an emergency or other exigent circumstances pursuant to Section 10.4, except to the extent that the damage is caused directly and exclusively from the Town's or its Agent's sole active negligence or willful misconduct and not contributed to by Licensee's or its Agents' or Invitees' acts, omissions or negligence.

10.2. Town's Maintenance, Repairs or Alterations to License Area

The Town may maintain, alter, add to, repair, remove from and/or improve the License Area as the Town may, in its sole discretion, deem necessary or appropriate for its streetlighting operations and other municipal functions. The Town shall not be obligated to maintain or repair the License Area, in whole or in part, solely for Licensee's benefit. Except as may be expressly provided otherwise in this License, neither any Town work on the License Area nor any condition on any License Area will: (a) entitle Licensee to any damages; (b) excuse or reduce any obligation by Licensee to pay any Fees or perform any covenant under this License; or (c) constitute or be construed as a constructive eviction or termination from the License Area.

10.3. Notice to Licensee for Non-Emergency Maintenance or Repairs

From time-to-time, the Town may find it necessary or appropriate to perform work on the License Area that temporarily affects the Equipment or requires the Equipment to be temporarily powered down. In non-emergency circumstances, the Town will use reasonable efforts to: (a) make a good-faith effort to provide prior notice to Licensee's On-Call Representative; (b) allow Licensee's On-Call Representative to observe the Town's work; and (c) avoid or minimize disrupt Licensee's ordinary operations on the License Area, taking into account any unforeseen exigencies that may threaten persons or property. The provisions in this Section 10.3 will not be construed to impede or delay the Town's authority and ability to make changes to the License Areas necessary to maintain street light services, traffic control services, any municipal utility services (to the extent permissible under applicable Laws) or any other municipal functions carried out for the public's health, safety, welfare or benefit.

10.4. Emergencies

In emergencies, and unless expressly provided in applicable Laws, the Town's work and operations will take precedence over Licensee's operations, which includes without limitation any Equipment operated on the License Area, and the Town may access the License Area in whole or in part as the Town deems necessary in its sole and absolute determination and in accordance with this Section 10.4, with or without notice to Licensee. When safe and practicable, as solely determined by the Town, the Town will notify Licensee of any emergency or other exigent circumstances that requires the Town to remove or replace any Town Property within the License Area and will allow Licensee to remove its Equipment before the Town removes or replaces such Town Property; provided, however, that the Town will remove the Equipment from the License Area when in the Town's sole determination it would: (a) be unsafe or not practicable to wait for Licensee to perform (or cause to be performed) the work; (b) result in significant delay; or (c) otherwise threaten or compromise public health, safety, welfare or public services. The Town will remove any Equipment with reasonable care and store such Equipment for retrieval by Licensee. The Town shall provide notice to Licensee as soon as reasonably practicable after such emergency and removal of any of Licensee's Equipment. Licensee shall have the right to reinstall such removed Equipment (or equivalent replacement Equipment) at Licensee's sole expense on the License Area and in accordance with the provisions in this License and all applicable Laws. Licensee expressly acknowledges that any act(s) taken by the Town pursuant to this Section 10.4, which includes without limitation any Equipment removal or storage, will not be deemed to be a forcible or unlawful entry onto the License Area or any interference with Licensee's contractual privilege to use the License Area.

11. INTERFERENCE

Licensee may not install, maintain or operate any Equipment in a manner that interferes with or impairs other communication (radio, telephone, data and/or other transmission or reception) or computer equipment lawfully used by the Town and its Agents, which includes without limitation any first responders or other public safety personnel. Such interference will be a default by Licensee, and upon notice from the Town, Licensee shall promptly eliminate such interference at no cost to the Town. Licensee will be required to use its best efforts to remedy and cure such interference without any impairment to any Town operations. If Licensee does not promptly cure such default, the parties acknowledge that continued interference may cause irreparable injury to the Town and, therefore, the Town will have the right to bring an action against Licensee to, at the Town's election, immediately enjoin such interference and/or to terminate this License. The parties acknowledge that the Licensee possesses technical expertise that puts Licensee in the best position to identify and mitigate interference sources, and Licensee shall be primarily responsible for identification and mitigation work.

12. LIENS

Licensee shall keep the License Area free and clear from any and all liens or other impositions in connection with any work performed, material furnished or obligations incurred by or for Licensee. Licensee will inform all contractors and material suppliers that provide any work, service, equipment or material to Licensee in connection with the License Area that the License Area is public property not subject to any mechanics' liens or stop notices. In the event that any Licensee contractor or material supplier files any lien or imposition that attaches to the License Area, Licensee shall promptly (but in no case later than 30 days after discovery) cause such lien or imposition to be released. In the event that Licensee does not cause such lien or imposition to be released within the 30-day period, the Town will have the right, but not the obligation, to cause such lien or imposition to be released in any manner the Town deems proper, which includes without limitation payment to the lienholder, with or without notice to Licensee. Licensee shall reimburse the Town for all costs and expenses incurred to cause such lien or imposition to be released (which includes without limitation reasonable attorneys' fees) within 10 days after Licensee receives a written demand from the Town together with reasonable documentation to support such costs and expenses.

13. UTILITIES

Licensee shall be responsible to secure its own utility services for its Permitted Use and shall not be permitted to "submeter" from any electrical service provided to the Town on any License Area without the Town's prior written consent, which the Town may withhold in its sole and absolute discretion. Licensee shall timely pay when due all charges for all utilities furnished to its Equipment on the License Area. Any interconnection between the Town's and Licensee's electrical facilities permitted by Town shall be accomplished in compliance with all applicable Laws and all utility service providers' policies for such interconnection.

14. TAXES AND OTHER ASSESSMENTS

Licensee agrees to pay when due (and prior to delinquency) any and all taxes, assessments, charges, excises and exactions whatsoever, including without limitation any possessory interest taxes, that arise from or in connection with Licensee's use within the License Area or Licensee's Equipment that may be imposed on Licensee under applicable Laws. Licensee shall not allow or suffer any lien for any taxes assessments, charges, excises or exactions whatsoever to be imposed on the License Area or Licensee's Equipment. In the event that the Town receives any tax or assessment notices on or in connection with the License Area or Licensee's Equipment, the Town shall promptly (but in no event later than 30 calendar days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to Licensee's Equipment. Licensee understands and acknowledges that this License may create a possessory interest subject to taxation and that Licensee will be required to pay any such possessory interest taxes. Licensee further understands and acknowledges that any sublicense or assignment under this License and any options, extensions or renewals in connection

with this License may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this License.

15. INDEMNIFICATION

15.1. Licensee's Indemnification Obligations

Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the Indemnified Town Parties harmless from and against any and all Claims, incurred in connection with or arising in whole or in part from any act or omission by Licensee or its Agents, licensees, customers or invitees in connection with this License or any Equipment Permit, whether any negligence may be attributed to any Indemnified Town Parties or not, whether any liability without fault is imposed or sought to be imposed on any Indemnified Town Parties or not, but except to the extent that that such Claim is directly and exclusively caused by the Town's sole gross negligence or willful misconduct. Licensee's obligations under this Section 15 includes, without limitation, all reasonable fees, costs and expenses for attorneys, consultants and experts, and the Town's actual costs to investigate and defend against any Claim. Licensee expressly acknowledges and agrees that: (a) Licensee has an immediate and independent obligation to defend any Indemnified Town Parties from any Claim that actually or potentially falls within this Section 15, even when the allegations in the Claim are or appear to be groundless, fraudulent or false; and (b) Licensee's obligations arise at the time any Indemnified Town Parties tender a Claim to Licensee and continue until such Claim's final, non-appealable resolution. Licensee's obligations under this Section 15.1 shall survive this License's revocation, termination or expiration.

15.2. Licensee's Defense of the Town

In the event that any Claim is brought against any Indemnified Town Parties in connection with any subject matter for which any Indemnified Town Parties are indemnified by Licensee under this License, Licensee shall, upon written notice and at Licensee's sole cost and expense, resist and defend against such Claim with competent and experienced legal counsel reasonably acceptable to the Town. The Town shall not unreasonably withhold or delay its consent to legal counsel selected by Licensee; provided, however, that the Town has the absolute right to reject any proposed legal counsel that: (a) has less than 10 years' direct experience representing public agencies in similar actions or proceedings as those brought against the Indemnified Town Parties; (b) is not duly licensed to practice law in the State of California by the State Bar of California; (c) has any past or pending disciplinary actions by any United States tribunal or state bar association; or (d) has any actual or potential conflicts of interest with any Indemnified Town Parties who would be represented by such proposed legal counsel. Licensee shall not, without the Town's written consent, enter into any compromise or settlement agreement on any Indemnified Town Parties' behalf that: (1) admits any liability, culpability or fault whatsoever on any Indemnified Town Parties' part; or (2) requires any Indemnified Town Party to take or refrain from any action, which includes without limitation any change in the Town's policies or any monetary payments. Nothing in this

License shall be construed to limit or preclude any Indemnified Town Parties or their respective legal counsel from cooperating with Licensee and/or participating in any judicial, administrative, alternative dispute resolution or other litigation or proceeding. Licensee's obligations under this Section 15.2 shall survive this License's revocation, termination or expiration.

16. INSURANCE

Prior to any construction, installation or other work by Licensee or its contractors or subcontractors in, on, under or above the Streets, Licensee shall comply with all insurance requirements and other obligations contained in **Exhibit B** (Licensee's Insurance Obligations), attached hereto and incorporated herein, and shall provide the Town with all required certificates, endorsements and other documentation. The Town shall have the right to amend or replace the insurance requirements and other obligations contained in **Exhibit B** on 60 days' prior written notice to Licensee. Any noncompliance with any insurance requirements in this License by Licensee or its contractors or subcontractors shall be a material default by Licensee.

17. LIMITATIONS ON THE TOWN'S LIABILITY

17.1. General Limitations

Licensee expressly acknowledges that the Town is not responsible or liable to Licensee for any Claims that arise in connection with: (a) acts or omissions by persons or entities using the Streets or other areas adjoining, adjacent to or connected with any License Area; (b) any utility service interruption; (c) theft; (d) burst, stopped or leaking water, gas, sewer, steam or other pressurized pipes; (e) fires, floods, earthquakes or other force majeure; (f) any vehicular collision on or about the License Area or other Town Property; (g) any costs or expenses incurred in connection with any relocation or rearrangement as provided in Section 8 (Rearrangement and Relocation); or (h) any costs or expenses incurred in connection with any removal or restoration as provided in this License; all except to the extent such events are caused directly and exclusively by the Town's gross negligence or willful misconduct. Licensee, in perpetuity, expressly waives and releases all Claims it may now or in the future have against any Indemnified Town Parties, whether known or unknown, whether foreseeable or unforeseeable, that arise in connection with the events described in this Section 17 as may be related to this License or locations on or about the License Area. In no event will Licensee or its Agents be personally liable to the Town for any default, breach or any other nonperformance or unpaid sum by Licensee. The provisions in this Section 17.1 shall survive this License's revocation, termination or expiration.

17.2. Consequential, Indirect or Punitive Damages

Without limiting any indemnification obligation placed on Licensee or other waivers contained in this License, Licensee fully releases, waives and discharges forever any and all Claims against the Town for consequential and incidental damages that may arise from

or in connection with this License or Licensee's use on or about the License Area, which includes without limitation any lost profits related to any disruption to Equipment, any interference with uses or operations conducted by Licensee, from any cause whatsoever, and whether or not due to the active or passive negligence or willful misconduct by the Town or any Indemnified Town Parties, and covenants not to sue for such damages the Town, the Town's departments and all Town agencies, officers, directors and employees, and all persons acting by, through or under them.

17.3. No Relocation Assistance

This License shall not create any right in Licensee to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (California Government Code §§ 7260 *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 *et seq.*), as either may be amended or superseded, or any similar Laws upon or after any termination. To the extent that any such Laws may apply, Licensee waives, releases and relinquishes forever any and all Claims that it may have against the Town for any compensation from the Town except as provided in Section 19 (Condemnation).

17.4. No Personal Liability for Town Personnel

In no event will any Town board, agency, member, officer, employee or other Agent be personally liable to Licensee, its successors or assigns, for any default, breach, other nonperformance or sum unpaid sum by the Town. The provisions in this Section 17.4 shall survive this License's revocation, termination or expiration.

18. CASUALTY

18.1. Town's Rights Upon a Casualty Event

In the event the License Area in whole or in part becomes damaged due to any cause, the Town will have no obligation whatsoever to repair or replace the damaged License Area. Within approximately 30 days after the date on which the Town discovers damage or destruction to the License Area, the Town will give Licensee notice of the Town's decision whether to repair or replace the damaged License Area and its good-faith estimate of the amount of time the will need to complete the work. If the Town cannot complete the work within 30 days after the date that the Town specifies in its notice, or if the Town elects not to do the work, then Licensee will have the right to terminate this License on 30 days' notice to the Town. If the Town elects to remove, rather than repair or replace, the damaged or destroyed License Area, then this License will automatically terminate on the last day of the month in which the removal occurs. If the acts of third parties or an act of nature or other force-majeure circumstance outside the control of Licensee or its Agents or Invitees damages or destroys the License Area to such an extent that, in the Town's reasonable determination, the Equipment on the License Area cannot be operated in a safe manner, the Town may elect to terminate this License on 30 days'

notice to Licensee and require Licensee to remove the Equipment from the damaged License Area before the termination date specified in the Town's notice.

18.2. Licensee's Termination Rights Upon a Casualty Event

In the event that the Town terminates this License pursuant to Section 18.1 (Town's Rights Upon a Casualty Event), the Town will prioritize its review any request by Licensee for a substantially similar license on a different pole as a replacement for this License.

18.3. Statutory Waiver

The parties understand, acknowledge and agree that this License fully governs their rights and obligations in the event that the License Area becomes damaged or destroyed, and, to the extent applicable, the Town and Licensee each hereby waives and releases the provisions in California Civil Code §§ 1932(2) and 1933(4) or any similar Laws.

19. CONDEMNATION

This License will automatically terminate as to the part taken or transferred on the date the permanent taking or transfer occurs. The Town will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Licensee will have no Claim against the Town for the value of any unexpired Term of this License or otherwise except that Licensee may claim any portion of the award that is specifically allocable to Licensee's loss or damage to Licensee's Equipment. The parties understand, acknowledge and agree that this Section 19 is intended to fully govern the parties' rights and obligations in the event of a permanent taking. Licensee and the Town each hereby waives and releases any right to terminate this License in whole or in part under California Code of Civil Procedure §§ 1265.120 and 1265.130 and under any similar Laws to the extent applicable to this License.

20. ASSIGNMENTS AND OTHER TRANSFERS

20.1. General Restriction

Licensee shall have no right to assign or transfer any right, title or interest, in whole or in part, in, under or through this License without the Town's prior written consent. The Town shall not unreasonably withhold its consent to any proposed assignment; provided, however, that the parties acknowledge that the Town may reasonably withhold its consent to any proposed assignment under the following circumstances: (1) the proposed assignee lacks the necessary Regulatory Approvals to conduct the Permitted Use or perform all Licensee's obligations; (2) the Town reasonably determines that the proposed assignee lacks the financial qualifications perform all Licensee's obligations; (3) Licensee refuses to reimburse the Town for the reasonable and documented costs to consider the proposed assignment and/or the proposed assignee; and/or (4) at any time in which any Default by Licensee remains uncured.

20.2. Permitted Assignments

Notwithstanding the preceding sentence, Licensee will be permitted to assign or otherwise transfer this License without the Town's prior consent but with notice to the Town, to: (a) an entity that acquires all or substantially all Licensee's assets in the market in which the Town is located (as the "market area" is or may be defined by the FCC); (b) Licensee's parent; (c) an entity that acquires a controlling interest in Licensee by a change in stock ownership or partnership interest; or (4) an entity controlled by Licensee (each a "**Permitted Assignment**"). Notwithstanding anything in this License to the contrary, a Permitted Assignment will be subject to all the following conditions: (i) the Assignee may use the License Area only for the Permitted Use and for no other purpose whatsoever; (ii) the Assignee possesses all Regulatory Approvals necessary to lawfully install, operate, and maintain Equipment on the License Area; (iii) Licensee provides the Town with notice 60 days before the effective date of such Permitted Assignment, stating the contact information for the proposed Assignee and providing financial information establishing that the proposed Assignee has the capital and fiscal qualifications greater than or equal to Licensee's as it existed on the Effective Date; (iv) Licensee is in good standing under this License; (v) the assignee shall covenant to perform all Licensee's obligations under this License and Licensee will be and remain liable jointly and severally with the assignee for all obligations to be performed by assignee; and (vi) within 30 calendar days after Licensee receives a written demand from the Town, Licensee shall reimburse the Town for all reasonable and documented costs incurred by the Town in connection with the Permitted Assignment.

20.3. Effect of Assignment

No assignment by Licensee, consent to assignment by the Town, or Permitted Assignment will relieve or release Licensee from any obligation on its part under this License, unless expressly provided in a writing signed by the Town. Any assignment that is not in compliance with this Section 20 will be void and be a material default by Licensee under this License without a requirement for notice and a right to cure. The Town's receipt or acceptance of any License Fee, Regulatory Fees, Reimbursement Fees, or other payments from a proposed assignee or transferee will not be deemed to be the Town's consent to such assignment.

21. DEFAULT

21.1. Defaults and Cure Periods

The parties agree that any failure to perform or observe any term, condition, obligation or other provision in this License shall be a default. For any monetary default, the defaulting party shall have 15 days after written notice from the non-defaulting party to perfect a cure. The defaulting party shall not be entitled to any additional time to cure a monetary default. For any non-monetary default, the defaulting party shall have 30 days after written notice from the non-defaulting party to perfect a cure; provided, however, that for any non-monetary default that cannot reasonably be cured within 30 days, the defaulting party

shall have additional time as is reasonably necessary to perfect the cure if the defaulting party commences to cure the default within the first 30 days after notice and diligently pursues the cure to completion.

21.2. Licensee's Remedies

Except as may be otherwise provided elsewhere in this License, Licensee's sole remedies for the Town's uncured default will be (1) to terminate the License on 30 days' prior written notice; and (2) an action for damages subject to the provisions in Section 17 (Limitations on the Town's Liability).

21.3. Town's Remedies

In addition to all other legal and equitable rights and remedies available to the Town, the Town will have the following remedies after an uncured default by Licensee:

21.3.1. License Continuation

Without prejudice to its right to other remedies, the Town may continue this License with the right to enforce all its rights and remedies, which includes without limitation the right to receive the License Fee and other sums as they may become due.

21.3.2. License Termination

If the Town determines, in its sole judgment, that Licensee's default materially impairs the Town's ability to perform its municipal functions or threatens public health, safety or welfare, then the Town may terminate this License on written notice to Licensee.

21.3.3. Default Fees

In addition to all other rights and remedies available to the Town, the Town may require Licensee to pay an additional fee for any and all actual costs incurred by the Town in connection with a default event to reimburse the Town's administrative cost to enforce compliance with this License (each a "**Default Fee**"). Licensee shall pay the Default Fee within 10 days after the Town's written demand for reimbursement and reasonable documentation to support such costs. If Licensee fails to timely pay the Default Fee or cure the underlying default within the applicable cure period, the Town shall have the right (but not the obligation) to send Licensee a follow-up notice and demand for an additional Default Fee that will be due and payable within 10 days. Licensee's obligation to pay Default Fees is separate and distinct from the underlying default. Default Fee payments shall not be deemed to cure the underlying default.

21.4. Cumulative Remedies

Except as otherwise provided in this License, all rights and remedies available to the Town or Licensee are cumulative, and not a substitute for, any rights or remedies otherwise available to the Town or Licensee.

22. TERMINATION

This License may be terminated as follows: (1) by a non-defaulting party upon written notice if the defaulting party remains in default beyond any applicable cure period; (2) by the Town upon written notice if Licensee attempts to assign or otherwise transfer this License in a manner that violates this License; or (3) by Licensee upon 60 days' prior written notice to the Town for any or no reason. In addition, the Town has the right to terminate this License on written notice to Licensee when the Town determines, in the Town's sole discretion, that Licensee's operations on or about the License Area adversely affect or threaten public health and safety, materially interfere with the Town's municipal functions or require the Town to maintain Vertical Infrastructure that the Town no longer needs for its own purposes.

23. HAZARDOUS MATERIALS

23.1. Limitations on Hazardous Materials Use

Licensee covenants and agrees that neither Licensee nor its Agents, clients, customers, invitees, guests, tenants, subtenants, licensees, assignees and/or sublicensees will cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed or Released in, on, under or about the License Area or any other Town Property, in whole or part, or transported to or from any Town Property in any manner that violates any Environmental Laws; provided, however, that Licensee may use Hazardous Materials in small quantities that are customarily used for routine operation, cleaning and maintenance and so long as all such Hazardous Materials are contained, handled and used in compliance with all Environmental Laws.

23.2. Notice to the Town After a Release

Licensee shall immediately notify the Town if and when Licensee learns or has reason to believe any Hazardous Material Release has occurred in, on, under or about the License Area or other Town Property. Licensee will not be deemed to have assumed liability for any such Release by giving such notice, unless such Release was caused by or arose in connection with Licensee's or its Agent's, client's, customer's, invitee's, guest's, tenant's, subtenant's, licensee's, assignee's and/or sublicensee's acts, omissions or negligence.

23.3. Licensee's Hazardous Material Indemnification Obligations

If Licensee breaches any obligations contained in this Section 23, or if any act, omission or negligence by Licensee or its Agents, clients, customers, invitees, guests, tenants, subtenants, licensees, assignees and/or sublicensees results in any contamination on or about the License Area or other Town Property, or in a Hazardous Material Release from,

on, about, in or beneath the License Areas or any other Town Property, in whole or in part, or any Environmental Law violation, then Licensee, for itself and its successors and assigns, shall indemnify, defend and hold the Town and any Indemnified Town Parties harmless, from and against any and all Claims (including damages for decrease in value of the License Area or other Town Property, the loss or restriction of the use of usable space in the License Area or other Town Property and sums paid in settlement of Claims, attorneys' fees, consultants' fees, and experts' fees and related costs) that arises during or after the Term related to or in connection with such Release or violation; provided, however, Licensee shall not be liable for any Claims to the extent such Release or violation was caused directly and exclusively by the Town's gross negligence or willful misconduct. Licensee's indemnification obligation includes all costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought or Released onto the License Area or other Town Property by Licensee or its Agents, clients, customers, invitees, guests, tenants, subtenants, licensees, assignees and/or sublicensees, and to restore the License Area or other Town Property to its condition prior to such introduction or Release, or to correct any Environmental Law violation. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Town and the other Indemnified Town Parties from any Claim that actually or potentially falls within this indemnity provision even if the allegations supporting the Claim are or may be groundless, fraudulent or false, and that said obligation arises at the time such Claim is tendered to Licensee by the Indemnified Town Party and continues until the Claim is finally resolved. Without limiting the foregoing, if Licensee or any of its Agents, clients, customers, invitees, guests, tenants, subtenants, licensees, assignees and/or sublicensees causes any Hazardous Material Release on, about, in or beneath the License Area or other Town Property, then in any such event Licensee shall, immediately, at no expense to any Indemnified Town Party, take any and all necessary actions to return the License Area and/or other Town Property, as applicable, to the condition existing prior to such Hazardous Materials Release on the License Area or other Town Property or otherwise abate the Release in accordance with all Environmental Laws, except to the extent such Release was caused directly or exclusively by the Town's gross negligence or willful misconduct. Licensee shall afford the Town a full opportunity to participate in any discussions with regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise or proceeding that involves Hazardous Material Release covered under this Section 23.

24. RULES AND REGULATIONS

At all times throughout the Term, Licensee shall faithfully comply with any and all reasonable rules, regulations and instructions that the Town may from time-to-time establish and/or amend with respect to the Permitted Use, the License Area or the Streets.

25. PERFORMANCE BOND

Before the Town issues any Regulatory Approval required to commence construction, installation or other work in connection with the Equipment, Licensee shall, at its sole cost and expense, post a performance bond from a surety and in a form acceptable to the Chief of Planning (or his or her designee) and the City Attorney in an amount reasonably necessary to cover the cost to remove the Equipment and all associated improvements and completely restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all the Equipment and all associated improvements, which includes, without limitation, all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the Equipment, plus the cost to completely restore any areas affected by the removal work to a condition that is neat, clean, safe and compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Chief of Planning (or his or her designee) shall take into consideration any information provided by Licensee regarding the cost to remove the Equipment as provided in this Section 25. The performance bond shall expressly survive the Term to the extent required to completely remove the subject Equipment and restore the affected areas in accordance with this Section 25.

26. SURRENDER OF LICENSE AREA

26.1. Removal and Restoration Obligations

Within 30 days after a written demand from the Town, Licensee shall, at Licensee's sole cost and expense, remove all Equipment and restore all affected areas to a condition compliant with all applicable Laws, in at least as good as the condition existed immediately before such Equipment were installed, reasonable wear and tear excepted, and to the Chief of Planning's (or his or her designee's) satisfaction. The Town may, in its discretion, extend the 30-day period by written notice to Licensee. If Licensee fails to timely perform its removal and restoration obligations under this License, then: (a) Licensee shall remain responsible for all its obligations under this License and liable for all Claims that may arise in connection with the Equipment through and until such Equipment are completely removed and the affected areas are completely restored; (b) the Town shall have the right (but not the obligation) to perform such obligations; (c) the Town shall have the right to store, sell or destroy any Equipment, improvements, personal property or other things installed by Licensee in connection with this License; and (d) Licensee shall reimburse the Town for all costs incurred by the Town in connection with such removal and restoration work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs. Within 90 days after any Equipment have been removed, Licensee shall file as-built plans and maps with the Chief of Planning (or his or her designee) in the same manner and subject to the same requirements as provided in Section 6.11 (As-Built Plans and Maps).

27. INSPECTIONS AND REPORTS

27.1. License Area Inspections

At all reasonable times throughout the Term, the Chief of Planning (or his or her designee), shall have the right (but not the obligation) to: (a) inspect all the Equipment, all appurtenant structures and any other equipment or improvements in the Streets constructed, installed, laid, maintained or operated by Licensee; and (b) evaluate Licensee's compliance with this License and any permit or other authorization in connection with the Equipment. In the event that any such inspection or evaluation concludes that any Equipment were installed, operated or maintained without all Regulatory Approvals or more than five percent (5%) of the Equipment were not installed, operated or maintained in compliance with this License, any as-built plans or maps associated with the Equipment or any applicable Laws, then Licensee shall reimburse the Town for the Town's reasonable, actual and documented costs and expenses to conduct the inspection and/or evaluation, which includes without limitation any costs or expenses by any third-party inspectors or consultants.

27.2. Records Maintenance and Audits

Licensee shall maintain throughout the Term (and for at least four years after this License expires or terminates) the following records in physical format at Licensee's Office and in an electronic format: (a) identification information and physical location (e.g., a physical address and/or GPS coordinates) for all Equipment within the Town's territorial and/or jurisdictional boundaries; (b) a ledger or other similar document that contains the amount, payment date and reason for all sums paid to the Town pursuant to this License; (c) true and correct copies of all as-built plans, maps and Regulatory Approvals in connection with the Equipment; (d) copies of all insurance policies, endorsements and other related documents required to be obtained and maintained under Section 16 (Insurance); and (e) all correspondence with the Town in connection with any matter related to this License. To determine whether Licensee has fully and accurately paid all sums payable to the Town under this License, if any, and to determine whether Licensee has complied with its other obligations, the Town, or its designee, will have the right (but not the obligation) to inspect, audit and make copies of Licensee's records at Licensee's Office during regular business hours on 10 days' notice to Licensee.

27.3. Annual Capital Improvement Forecasts

On or before January 1st in each year after the Effective Date, Licensee shall submit a written report to the Chief of Planning (or his or her designee) that contains: (a) a list of all permits issued by the Town in connection with this License in the last calendar year; (b) a description of all construction authorized under such permits, which includes without limitation the total length of all communication lines, wires and cables; (c) the total length of all communication lines, wires and cables actually installed under such permits; and (d) a map that depicts the accurate location for all Equipment. In addition, on or before January 1st in each year after the Effective Date, Licensee shall submit a projected capital

improvement forecast for its operations within the Town’s territorial and jurisdictional boundaries. The capital improvement forecast must include anticipated schedules for all new Equipment and repairs, replacements and modifications to existing Equipment to the extent feasible and with sufficient detail to allow the Town to coordinate its own public improvements and other capital improvement projects by third parties. To the extent that the Town and Licensee executed any license(s) for Vertical Infrastructure not subject to this License, Licensee is not required to submit separate reports for each license.

28. MISCELLANEOUS PROVISIONS

28.1. Notices

Except as may be specifically provided otherwise in this License, all notices, demands or other correspondence required to be given in connection with or pursuant to this License must be written and delivered through (i) an established national courier service that maintains delivery records and confirmations; (ii) hand delivery; or (iii) certified or registered U.S. Mail with prepaid postage and return receipt requested, and addressed as follows:

TO TOWN:

[Redacted address lines for TO TOWN]

with copies to:

[Redacted copy recipients for TO TOWN]

TO LICENSEE:

[Redacted address lines for TO LICENSEE]

with copies to:

[Redacted copy recipients for TO LICENSEE]

All notices, demands or other correspondence in connection with this License will be deemed to have been delivered: (a) two days after deposit if delivered by U.S. certified mail; (b) the date delivery is made by personal delivery or overnight delivery; or (c) the date an attempt to make delivery fails if a party changes its address without proper notice or refuses to accept delivery after an attempt. Any copies required to be given constitute an administrative step for the parties’ convenience and not actual notice. The parties may

change the notice addresses above from time-to-time through written notice to the addresses above or the then-current notice address.

28.2. Waivers

No failure by either the Town or Licensee to insist that the other strictly perform any obligation, term, covenant or condition under this License or to exercise any rights, powers or remedies in connection with the other party's failure to strictly perform such obligation, term, covenant or condition no matter how long the failure to insist on such performance or exercise such rights, powers or remedies, will be deemed to waive any default for non-performance. No behaviors, patterns or customs that may arise between the parties with respect to their performance required under this License will be deemed to waive any rights, powers or remedies the parties' may have to insist on strict performance. Neither Licensee's payment nor the Town's or its Agents' acceptance of any License Fee or any other sums due to the Town or its Agents under this License during any such default will be deemed to cure any such default, waive the Town's right to demand material compliance with such obligation, term, covenant or condition or be deemed to be an accord and satisfaction for any Claim the Town may have for further or additional sums. Any express waiver by either the Town or Licensee in connection with any default or obligation to perform any provision, term, covenant or condition under this License will: (i) be limited to the specific default or performance for which the express waiver is granted; (ii) not be deemed to be a continuing waiver; and (iii) not affect any other default or performance no matter how similar or contemporaneous such other default or performance may be. The Town's or Licensee's consent given in any specific instance in connection with or pursuant to this License will not relieve the Town or Licensee from the obligation to secure the other's consent in any other or future specific instances, no matter how similar or contemporaneous the request for consent may be.

28.3. Integration; Amendments

This License constitutes the entire agreement and understanding between the parties, and supersedes any and all prior agreements and understandings, whether written or oral, with respect to the subject matter covered in this License. This License and any default in connection with this License may not be orally changed, waived, discharged, altered, modified, amended or terminated. This License and any default in connection with this License may not be changed, waived, discharged, altered, modified, amended or terminated, except by a written instrument signed by both parties.

28.4. Interpretation

The parties acknowledge and agree that the following interpretive rules will be applicable to this License:

28.4.1. General

Whenever required by the context, the singular includes the plural and vice versa; the masculine gender includes the feminine or neuter genders and vice versa; and defined terms encompass all their correlated forms (e.g., the definition for “indemnify” applies to “indemnity,” “indemnification,” etc.).

28.4.2. Joint and Several Liability

In the event that the Town consents to enter into this License with more than one Licensee, which consent the Town may withhold or condition in the Town’s sole and absolute discretion, the obligations and liabilities imposed on Licensee under this License will be joint and several among the multiple Licensees to this License.

28.4.3. Captions and Other Reference Material

The section captions in this License and the table of contents have been included for the parties’ convenience and reference and neither the captions nor the table of contents in no way define or limit the scope or intent of any provision in this License.

28.4.4. Time

References in this License to “days” mean calendar days, unless specifically provided otherwise. A “business day” means a day other than a Saturday, Sunday or a bank or Town holiday. If the last day in any period to give notice, reply to a notice or to undertake any other action occurs on a day that is not a business day, then the last day for giving notice, replying to the notice or undertaking any other action will be the next business day. Except as modified in this Section 28.4.4, time is of the essence with respect to all provisions in this License for which a definite time for performance is specified.

28.4.5. Inclusive Words and/or Phrases

Inclusive terms and/or phrases, which includes without limitation the terms and/or phrases “including,” “such as” or similar words or phrases that follow any general or specific term, phrase, statement or matter may not be construed to limit the term, phrase, statement or matter to the stated terms, statements or matters, or the listed items that follow the inclusive term or phrase, whether any non-limitation language or disclaimers, such as “including, but not limited to” and/or “including without limitation” are used or not. Rather, the stated term, phrase, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within such term, phrase, statement or matter given its broadest interpretation.

28.5. Successors and Assigns

Except as may be expressly provided in this License, the conditions, covenants, promises and terms contained in this License will bind and inure to the benefit of the Town and Licensee and their respective successors and assigns.

28.6. Brokers

The parties represent to each other that neither has had any contact, dealings or communications with any Broker in connection with this License, whose commission, if any, would be paid pursuant to a separate written agreement between such Broker and such party with which such Broker contracted. In the event that any Broker perfects any claim or finder's fee based upon any such contact, dealings or communications, the party to such written contract with such Broker shall indemnify the other party from all Claims brought by such Broker. This Section 28.6 will survive this License's expiration or earlier termination.

28.7. Governing Law; Venue

This License must be construed and enforced in accordance with the laws of the State of California, without regard to the principles of conflicts of law. This License is made, entered and will be performed in the Town of Danville, County of Contra Costa, State of California. Any action concerning this License must be brought and heard in the California Superior Court for the County of Contra Costa.

28.8. Litigation Fees and Costs

In the event the Town or Licensee prevails in an action to enforce its rights under this License, the prevailing shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

28.9. Recording

Licensee acknowledges and agrees that: (1) this License affects the Town's personal property and therefore cannot be recorded in any official records; (2) Licensee shall not have the right to record this License, any memorandum or any short-form agreement in relation to this License; and (3) Licensee shall, at Licensee's sole cost and expense, remove any document or other instrument recorded against the Town's title to any Town Property promptly upon the Town's request or demand. In the event that this License affects or is deemed to affect any real property owned by the Town, Licensee may not record any document or instrument in connection with this License without the Town's prior written consent, which the Town may withhold in the Town's sole and absolute discretion.

28.10. No Third-Party Beneficiaries

This License is not intended to (and shall not be construed to) give any third party, which includes without limitation Licensee's customers or any other third-party beneficiaries, any right, title or interest in this License or the real or personal property(ies) that may be affected by the same.

28.11. Survival

All terms, provisions, covenants, conditions and obligations in this License will survive this License's expiration or termination when, by their sense or context, such provisions, covenants, conditions or obligations: (1) cannot be observed or performed until this License's expiration or earlier termination; (2) expressly so survive; or (3) reasonably should survive this License's expiration or earlier termination. Notwithstanding any other provision in this License, the parties' rights to enforce any and all indemnities, representations and warranties given or made to the other party under this License or any provision in this License will not be affected by this License's expiration or termination.

28.12. Severability

If any provision in this License or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (1) such provision or its application to such person, entity or circumstance will be deemed severed from this License; (2) all other provisions in this License or their application to any person, entity or circumstance will not be affected; and (3) all other provisions in this License or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by Law, except to the extent that such enforcement would (a) be manifestly unreasonable or manifestly inequitable under all the circumstances or (b) undermine one or both parties' fundamental purpose in entering this License.

[END OF AGREEMENT – SIGNATURES APPEAR ON NEXT PAGE]

The Town and Licensee executed this License as of the date last written below:

THE TOWN:

Town of Danville,
a California municipal corporation

By: _____

Its: Town Manager

Date: _____

LICENSEE:

[licensee name],
a *[licensee's corporate form]*

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Robert B. Ewing
City Attorney

ATTEST:

By: _____
Marie Sunseri
City Clerk

[END OF SIGNATURES – EXHIBITS AND SCHEDULES APPEAR ON NEXT PAGE]

SCHEDULE 1

ANNUAL LICENSE FEE

YEAR OF TERM	YEAR	ANNUAL LICENSE FEE
1	2019	\$270.00
2	2020	\$278.10
3	2021	\$286.44
4	2022	\$295.04
5	2023	\$303.89
6	2024	\$313.00
7	2025	\$322.39
8	2026	\$332.07
9	2027	\$342.03
10	2028	\$352.29

SCHEDULE 2**TOWN'S ESTIMATED FAIR MARKET LICENSE FEES**

YEAR	ANNUAL LICENSE FEE
2019	\$1,000.00
2020	\$1,030.00
2021	\$1,060.90
2022	\$1,092.73
2023	\$1,125.51
2024	\$1,159.27
2025	\$1,194.05
2026	\$1,229.87
2027	\$1,266.77
2028	\$1,304.77
2029	\$1,343.92
2030	\$1,384.23
2031	\$1,425.76
2032	\$1,468.53
2033	\$1,512.59
2034	\$1,557.97
2035	\$1,604.71
2036	\$1,652.85
2037	\$1,702.43
2038	\$1,753.51

EXHIBIT A-1

LICENSE AREA

(A site survey that depicts the location of the Vertical Infrastructure within the Town and the location of the Licensee's attachments to such Vertical Infrastructure appears behind this coversheet. Pursuant to Section 6.11 of this License, the Town shall have the right to substitute post-construction surveys and/or as-built drawings of the completed facility.)

EXHIBIT A-2

APPROVED PLANS

(Prior to the issuance of a construction permit, the Licensee shall tender its Preliminary Plans as this exhibit. After the Town issues a construction permit, the Approved Plans shall be substituted in place of the Preliminary Plans in accordance with Section 6.2 of this License. Pursuant to Section 6.11 of this License, the Town shall have the right to substitute post-construction surveys and/or as-built drawings of the completed facility in place of the Approved Plans.)

EXHIBIT B

LICENSEE'S INSURANCE OBLIGATIONS

(a) Required Insurance Policies and Limits

Licensee shall procure and keep in effect at all times during the Term, at Licensee's sole cost and expense, insurance policies with coverage and limits as stated below. The required limits may be met by a combination of primary and excess or umbrella insurance.

(1) Commercial General Liability Insurance

Licensee shall obtain and maintain commercial general liability insurance (including premises operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability meeting the indemnification provisions herein; independent contractors; and personal injury) with a combined single limit for each occurrence of not less than Five Million Dollars (\$5,000,000).

(2) Workers' Compensation Insurance

Licensee shall obtain and maintain workers' compensation insurance per California statutory limits with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) per each accident or disease.

(3) Commercial Automobile Liability Insurance

Licensee shall obtain and maintain commercial automobile liability insurance, for owned, non-owned and hired autos, with a combined single limit for bodily injury and property damage of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage.

(4) "All Risk" Property Insurance

Licensee shall obtain and maintain a property insurance policy for perils usual to a standard "all risk" insurance policy that covers all Licensee's Equipment within the Streets, and with limits equal to the cumulative replacement value for all such Equipment.

(b) Required Endorsements

Commercial General Liability Insurance and Commercial Automotive Liability Insurance policies must contain the following endorsements: (1) name the Town, its officers, agents, employees and volunteers as additional insureds; (2) that such policies are primary insurance to any other insurance available to the additional insureds with respect to any Claims that arise in connection with this License; (3) that such insurance applied separately to each insured against whom a Claim is made or brought, except with respect

to limits; (4) that such policies provide for the severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not void or otherwise reduce coverage as to any other named insured; and (5) that such policies shall afford coverage for all Claims based on acts, omissions, for bodily injury or property damage that occurred or arose (or the onset occurred or arose) in whole or in part during the policy period.

All insurance policies required to be maintained by Licensee under this License shall be endorsed to provide written notice of cancellation for any reason, including without limitation intent not to renew or reduce coverage excluding non-payment of premium to both Licensee and the Town. In the event that Licensee receives a notice of intent to cancel or notice of cancellation for any coverage required under this License, Licensee shall forward such notice to the Town within one business day and promptly take action to prevent cancellation, reinstate cancelled coverage or obtain coverage from a different insurer qualified under Section (f) to this **Exhibit B**.

All insurance policies required to be maintained by Licensee under this License shall contain a standard separation of insureds provision. No insurance policies required to be maintained by Licensee under this License may contain any special limitations on the scope of protections to the Town or any Indemnified Town Party.

(c) Claims-Made Policies

In the event that any required insurance under this License is provided under a claims-made form, Licensee shall continuously maintain such coverage throughout the Term and, without lapse, for three years after this License expires or terminates, to the effect that, should any event during the Term give rise to a Claim brought after this License expires or terminates, such Claims will be covered under Licensee's claims-made policies. The provisions in this Section shall survive this License's expiration or termination.

(d) General Aggregate Limit

The general aggregate limit for any required insurance under this License must be double the per-occurrence or Claims limits specified in Section (a) to this **Exhibit B** when coverage includes a general annual aggregate limit or provides that Claims investigation or legal defense costs will be included in such general annual aggregate limit.

(e) Certificates

On or before the Effective Date, Licensee shall deliver to the Town all insurance certificates and endorsements from Licensee's insurance providers in a form reasonably satisfactory to the Town that evidences all the required coverages under this License, together with complete copies of all policies. In addition, Licensee shall promptly deliver to the Town all certificates and policies after Licensee receives a request from the Town.

(f) Insurer Qualifications

Licensee's insurance providers must be licensed to do business in California and must meet or exceed an A.M. Best's Key Rating A-IX or its equivalent. Any other insurance providers shall require the prior approval by the Town's Risk Manager, which approval may be refused in the Town's Risk Manager's sole discretion.

(g) Waiver of Subrogation

Licensee and Licensee's insurers each hereby waives any right of recovery against the Town for any loss or damage sustained by Licensee with respect to the License Area, in whole or in part, the contents on, under, above or within the License Area or any operation therein, whether such loss is caused by the Town's fault or negligence or not, and to the extent such loss or damage is covered by insurance obtained by Licensee under this License or is actually covered by insurance obtained by Licensee. Licensee agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the License Area, but the failure to obtain any such endorsement will not affect the waivers in this Section.

(h) Prohibition Against Self-Insurance Alternatives

Licensee shall not be permitted to meet its insurance obligations under this License through self-insurance without prior written consent from the Town, which the Town may withhold in its sole discretion for any or no reason. In the event that the Town consents to allow Licensee to self-insure as an alternative insurance program, such consent will not be deemed: (1) an amendment or implied waiver to any other requirement in this License; (2) to extend to any assignee or successor to Licensee; or (3) to waive or lessen Licensee's obligation to comply with Section (i) to this **Exhibit B**.

(i) Contractor's Bonds and Insurance

Licensee shall ensure that any person or entity performing work or service on Licensee's behalf or for Licensee's benefit pursuant to this License within the Streets or on any Town Property shall secure or provide all bonds and insurance required to be secured or provided by Licensee under this **Exhibit B**, and shall provide the Town with evidence to show such bonds or insurance exist before the Town issues any permits for such work. In the event that any applicable Law imposes any bonding or insurance requirements on Licensee's contactors or subcontractors that are more protective to the Town's interests, such requirements shall control over the requirements in this **Exhibit B**.

(j) Town's Right to Terminate

The Town may elect, in its sole and absolute discretion, to terminate this License on written notice to Licensee if Licensee allows any required insurance coverage to lapse and does not reinstate the lapsed insurance coverage within three days after Licensee receives such written notice.

(k) No Limitation on Licensee's Indemnification Obligations

Licensee's insurance obligations under this **Exhibit B** in no way relieves, decreases or modifies Licensee's liability or Licensee's obligations to indemnify, protect and hold the Town and any Indemnified Town Parties harmless under any other provision in this License.

iCommLaw

1547 Palos Verdes, #298
Walnut Creek, CA 94597
Phone: (415) 699-7885
Facsimile: (925) 274-0988
anita@icommlaw.com

April 9, 2019

Via Hand Delivery and Electronic Mail

Mayor Robert Storer
Vice Mayor Karen Stepper
Council Members Newell Arnerich, Renee Morgan, Lisa Blackwell
Mr. Robert Ewing
City Attorney, Town of Danville
510 La Gonda Way
Danville, CA 94526

Re: Effect of California Supreme Court Decision and Request for Sufficient Time to Review Modification to Danville Wireless Ordinance

Dear Mayor Storer, Vice Mayor Stepper and Council Members Arnerich, Morgan and Blackwell, and Robert Ewing,

I am writing first to thank the Town Council or your thoughtful consideration and decision on March 5 to deny the Verizon Wireless application to place wireless antennas within 25 feet of a residential dwelling,¹ as urged by Danville Citizens for Responsible Growth (“DCRG”) in its appeal of Resolution No. 2018-08. DCRG believes this is exactly the role that municipalities legitimately should play in determining where federally authorized infrastructure should be placed in their communities.

Since that time, DCRG understands that Mr. Ewing is working to clarify the requirements of the Danville Wireless Ordinance (“Wireless Ordinance”). DCRG has requested, unsuccessfully, the opportunity to work with Mr. Ewing to have input into any modification. Instead, Mr. Ewing has encouraged DCRG to obtain a copy of the final draft modification when it is posted on the Town’s website on April 12, 2019, just two business days before it will apparently be voted on at the April 16, 2019 Town Council meeting.

DCRG respectfully submits that such a short review period leaves the Town Council with insufficient time to thoroughly analyze a matter of extreme importance to residents. Thus, I

¹ Land Use Permit LUP17-0035 would have allowed Verizon to install a wireless antenna array less than 25 feet from a residence located at 470 Edinburgh Circle.

write to you in advance to provide context for whatever modifications the Town Council will have to consider during the short review period.

First, and most importantly, the California Supreme Court issued an order on April 4, 2019² providing a definitive interpretation that municipalities in California have the authority under Section 7901 of the California Public Utilities Code to deny wireless antenna siting applications on the basis of aesthetics. You may recall that Verizon Wireless explicitly relied on Section 7901 as support for its argument that it had an absolute right to place its equipment in the public rights of way. The statutory language on which Verizon Wireless relied is that telephone corporations may construct lines and erect equipment along public roads in ways and locations that do not “incommode the public use of the road”³

In a case challenging San Francisco’s wireless ordinance, which limits placement of wireless equipment based on aesthetics, San Francisco had argued that it is one of the world’s most beautiful cities and that requests to place antennas on poles in certain areas would diminish that beauty. California’s highest court agreed. It held that the word “incommode” includes more than just physical alternations that would obstruct travel on a road, as T-Mobile had argued. Rather, that term may include consideration of whether equipment installed in the public right of way would be aesthetically intrusive. The California Supreme Court observed,

“Obstructing the path of travel is one way that telephone lines could disturb or give inconvenience to public road use. But travel is not the sole use of public roads; other uses may be incommoded beyond the obstruction of travel. For example, lines or equipment might generate noise, cause negative health consequences, or create safety concerns. All these impacts could disturb public road use, or disturb its quiet enjoyment.”⁴

The Court based its holding on municipalities’ “inherent local police power to determine the appropriate uses of land within its jurisdiction [which] . . . includes the authority to establish aesthetic conditions for land use.”⁵ These holdings by the California Supreme Court are directly relevant, and clearly bolster the Town Council’s already-demonstrated interest in ensuring the quality of life in Danville, including aesthetics.

Second, Mr. Ewing indicated in an email to DCRG counsel that the Town Council has no choice but to vote on modifications to the Wireless Ordinance at the April 16, 2019 meeting due to a deadline in the FCC’s small cell order. DCRG presumes Mr. Ewing is referring to the April 15, 2019 deadline by which municipalities must publish aesthetic standards applicable to small cell antennas or potentially lose the ability to do so.⁶ Mr. Ewing’s view that immediate action is

² *T-Mobile West LLC v. City & County of San Francisco* (Apr. 4, 2019, No. S238001) ___ Cal.5th ___ [2019 Cal. LEXIS 2230]. For the convenience of the Town Council, a copy of the Supreme Court decision is provided as Attachment 1.

³ Cal. Pub. Util Code §7901.

⁴ *T-Mobile West*, at *10.

⁵ *T-Mobile*, at *6.

⁶ Such standards must be published 180 days from publication of the FCC small cell order in the Federal Register. That date is April 15, 2019.

required on the Wireless Ordinance modification is curious since the Town Council vote will occur one day after the FCC deadline. Thus DCRG submits that the FCC order does not justify a rushed vote on modifications to the Wireless Ordinance.

Further, DCRG believes the Town has already complied with the FCC requirement even without a modification to the Wireless Ordinance. It appears that Mr. Ewing interprets the term "standard" to mean "ordinance." Nowhere in the FCC's small cell order does it state that municipal aesthetic rules must be codified in a formal ordinance. Indeed, counsel for DCRG is aware of numerous municipalities that have simply posted their aesthetic standards on a website. Danville already has enacted a Wireless Ordinance that sets forth the Town's aesthetic standard for wireless antennas. A modification to that Ordinance does not invalidate the existence of it.

The deadline for posting an aesthetic standard is not a basis for the Town to abandon the normal process for ordinances. It is DCRG's understanding that (except in the case of urgency ordinances) the proper process for consideration of an ordinance is to have a first reading at a Town Council meeting, followed by a vote at a subsequent Town Council meeting. Such approach is not only consistent with due process, but sensible from a substantive perspective because it gives the Town Council a reasonable period within which to evaluate a proposed ordinance.

If the modifications to the ordinance are merely to clarify that, for example, the setback between residential dwellings and wireless antennas (even in the public rights of way) must be at least 125 feet, but preferably 250 feet, it can hardly be argued that the Town failed to promulgate an aesthetic standard. Mr. Ewing's concern makes sense only if the modifications will be so substantial as to render the prior ordinance, enacted last year, to be nullified. If this is the case, DCRG sincerely hopes that the ordinance will not be weakened beyond the already modest aesthetic land use limits.

Based on Mr. Ewing's email, it appears that he expects the Town Council to vote on the clarifications to the Wireless Ordinance at the first meeting where it is presented, and after only two business days after it is made available to the Council members. DCRG cannot understand the need for such rush, and requests that the Town Council have a first reading of the modifications to the Wireless Ordinance at the April 16, 2019 meeting without taking a vote until a subsequent meeting.

DCRG also understands that the Town Council will be expected to vote at the April 16 meeting on a licensing agreement for the use of Town-owned vertical structures such as street lights and light poles for wireless antenna placement. Like the modified Wireless Ordinance, the draft agreement will not be available for review until April 12, 2019. DCRG's concerns about inadequate review time are even more profound for this licensing agreement. Presumably the license agreement must comply with the aesthetic rules in the ordinance but it is impossible to know what those rules will be until after the Town Council votes on whatever modifications will be proposed. DCRG requests that no vote be taken on the licensing agreement until after any modifications to the Wireless Ordinance are approved.

Now that the California Supreme Court has ruled that Section 7901 does not entitle wireless carriers to place their equipment any place they demand, there is simply no basis on which the Town Council should abdicate its authority and responsibility to engage in meaningful land use control over wireless antenna facilities. The California Supreme Court's order is entirely consistent with the FCC's small cell order, which explicitly allows local jurisdictions to enact aesthetic requirements that are reasonable, objective and published in advance.

DCRG submits that Danville is no less beautiful than San Francisco, and that it could be argued Danville is more idyllic due to its tree-lined streets, small town atmosphere and suburban location. Doesn't Danville deserve leadership to fight as hard as possible to ensure this doesn't change? DCRG urges the Town Council not to weaken the Wireless Ordinance and not to rush to vote on modifying the Wireless Ordinance based on a mistaken belief that a federal clock demands it.

DCRG would welcome, and hereby requests, the opportunity to discuss this matter prior to the April 16, 2019 vote. Even if the Town Council does not wish to meet with DCRG, we hereby request that this letter be placed in the record related to the modification of the Wireless Ordinance. We wish to emphasize that DCRG sincerely seeks to provide useful input to the process of establishing a fair and workable approach for wireless antenna placement.

Sincerely,



Counsel for DCRG