Agenda Item D.2
PUBLIC HEARING
Meeting Date: May 7, 2019

TO: Mayor and Councilmembers

FROM: Peter Imhof, Planning and Environmental Review Director
Charlie Ebeling, Public Works Director

CONTACT: Lisa Prasse, Current Planning Manager
Marti Milan, Principal Civil Engineer

SUBJECT: Proposed Ordinance regarding Wireless Facilities in the Public Rights-of-Way, Fee Resolution and Master License Agreement

RECOMMENDATION:

A. Adopt on a four-fifths vote, Ordinance No. 19-___ entitled "An Ordinance of the City of Goleta, California Amending Title 12 of the Goleta Municipal Code to Add Chapter 12.20 'Wireless Facilities in the Public Rights Of Way – Wireless Encroachment Permit' and Declaring the Urgency Thereof'" (Attachment 1);

B. Introduce on a simple majority and conduct the first reading by title only, waiving further reading of Ordinance No. 19- ___ entitled "An Ordinance of the City of Goleta, California Amending Title 12 of the Goleta Municipal Code to Add Chapter 12.20 'Wireless Facilities in the Public Rights Of Way – Wireless Encroachment Permit'" (Attachment 2);

C. Adopt Resolution No. 19-___ entitled "A Resolution of the City Council of the City of Goleta, California, Establishing a Fee for Processing Wireless Encroachment Permits" (Attachment 3);

D. Authorize the City Manager to enter into license agreements with wireless facilities providers using the proposed Master License Agreement template in substantial form, to be approved by the City Attorney (Attachment 4); and

E. Direct staff to file a Notice of Exemption determining that the proposed ordinances are exempt from the California Environmental Quality Act (Attachment 6).

BACKGROUND:

The demand for wireless broadband services is expected to grow exponentially over the next several years. This growth is a result of an increase in demand for wireless digital content, including streaming video, social media, Smart City applicants, robots, drones, self-driving cars, and artificial intelligence, etc. Traditionally, wireless antennas and equipment were primarily installed on large towers on private land and on the rooftops of buildings. These deployments are subject to conditional use permits reviewed by the Planning Commission pursuant to the Zoning Code.

In recent years, companies increasingly seek to install wireless facilities in the public right-of-way (ROW) on utility poles, streetlights, and new poles. To accommodate the ever-growing demand for wireless broadband telecommunications, the industry is starting to look for small cell, 5G (fifth generation of cellular mobile communications) technology, which represents a 10x improvement in capacity over existing broadband. 5G technology is distinguished from the present 4G based wireless service by use of low power transmitters with a coverage radius of approximately 400 feet; thus, 5G requires close spacing of antennas and more of them. Street light poles and other poles are therefore ideally suited for 5G antenna placement due to their sheer numbers and widespread deployment throughout municipalities. Historically, telecommunications installations in the ROW area have typically been addressed through encroachment permits after they have gone through the CUP process. However, the City's existing Municipal Code contains very few, if any, standards or regulations designed to address the unique aesthetic, safety, operational, and location issues in connection with the installation of wireless facilities in the ROW.

Regulation of the Public Right of Way

As utilities, telephone companies (which include wireless telecommunications providers) may use the public road rights-of-way to deploy facilities under their state franchise conferred by California Public Utilities Code Section 7901. That right does have some limitations. Specifically, Section 7901 provides that such use must be "in such manner and at such points as not to incommode the public use of the road." The phrase "incommode the public use" in Section 7901 means "to unreasonably subject the public use to inconvenience or discomfort; to unreasonably trouble, annoy, molest, embarrass, inconvenience; to unreasonably hinder, impede, or obstruct the public use." "[I]ncommode" is "broad enough to be inclusive of concerns related to the appearance of a facility" and, therefore, Section 7901 does not prohibit local governments from conditioning the approval of a permanent siting permit on aesthetic concerns.

In addition to Section 7901, Pub. Util. Code Section 2902 also protects a local government's right "to supervise and regulate the relationship between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets… within the limits of the municipal corporation." This provision is a further basis for a local government to restrict the location of proposed facilities due to

public safety reasons or other local concerns or even deny applications in appropriate circumstances.

Further, a local government has the right under Section 7901.1 "to exercise reasonable control as to the time, place, and manner in which roads… are accessed [by telephone companies]." The "time, place, and manner" of temporary access refers to "when, where, and how telecommunications services providers gain entry to the public road rights-of-way." This includes a requirement for obtaining encroachment permits.

There are other tangential constraints on local regulations from state and federal law. At the state level, the CPUC may have authority to invoke the statewide interest in telecommunications services to act to preempt a local ordinance for telecommunications projects. Federal law provides that a local decision to deny a wireless facility application cannot be based on concerns about Radio Frequency (RF) emissions, so long as the applicant has demonstrated that its facilities will comply with FCC standards; that is, the City's regulatory power pertaining to RF emissions is limited to ensuring that facility will comply with Federal Communication Commission (FCC) standards. Further, under federal law, cities cannot implement regulations that would prohibit or have the effect of prohibiting service – this is the purpose of the waiver request provisions in the ordinance.

Recent Federal Communication Commission Orders

In September 2018, the FCC issued a declaratory order, FCC Order 18-133 ("FCC Order") and regulations[1] regarding small cell deployment. These FCC regulations are applicable to wireless and co-mingled services and facilities and went into effect on January 14, 2019. Below is a list of some of the elements of the new regulations:

- Aesthetic requirements are not preempted if reasonable, no more burdensome than on those applied to other types of infrastructure deployments, and objective;
- The City may charge reasonable fees (Planning, Building, and Public Works) to process a request to place wireless facilities in the ROW;
- Undergrounding requirements are allowed so long as they amount to an effective prohibition;
- Any minimum spacing requirements are allowed to serve legitimate aesthetics interests, such as preventing clutter but cannot be used to effectively prevent installation;
- Right-of-way considerations must be clear between City regulatory activities and proprietary actions. The City may not use ownership of the ROW as a pretext to prohibit deployment;
- New "shot clock" timeframes for small cell projects are established. The designated timeframes are 60 days for co-location applications (installation of facilities where a pole already exists) and ninety days for new facilities (installation of a new pole in order to accommodate new facilities);
    - The City will have 10 days to determine completeness for an application – this does not start the shot clock;

[1] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Federal Communications Commission, FCC 18-133, WT Docket 17-79, WC Docket 17-84.

  - In response, the applicant submits information – the first day that the City receives the submittal starts the shot clock;
  - The City sends follow up requests for information – this tolls the shot clock; the shot clock starts again each time the applicant responds with information back to the city; and so on;
- Batched applications are treated as one application with the same shot clock;
- Batched applications for both co-located and new construction for Small Wireless Facilities use the longer 90-day shot clock;
- Attachments to <u>any</u> existing facilities makes these applications co-locations and therefore have a 60-day review. This is applicable to individual or batched applications;
- Completeness review for small wireless facilities is limited to 10 days, telecommunication projects still have a 30-day completeness review; and
- All review and permitting must be completed in the shot clock period.

Based on the FCC order, failure of the City to meet the deadline for action will be presumed to violate federal law (both a failure to act within a reasonable period of time and an effective prohibition of personal wireless services) and applications will be deemed approved. An applicant must commence a civil action to deem the application approved if the City does not meet a shot clock and the presumption that the City did not act reasonably will apply. The City may rebut the presumption by demonstrating why it was reasonable in not adhering to the shot clock and how it did not materially limit or inhibit the applicant from introducing new services or improving new services.

Further, the FCC declares that all fees (including permit fees and rental fees for use of government-owner infrastructure, such as streetlights) must be based on a reasonable approximation of the City's costs, such that only objectively reasonable costs are factored into those fees, and fees are no higher than the fees charged to similarly situated competitors in similar situations. The FCC creates "safe harbors" of presumptively reasonable fee levels that include: non-recurring fees equal to $500 for the first five applications plus $100 for each additional location, and $1,000 for each new pole. Recurring fees, such as the fee for attachment to municipal infrastructure and use of ROW, are presumed reasonable if equal to $270 per facility/ per year. The fee resolution and Master License Agreement will cover the permit fees and rental fees.

Regarding aesthetics, undergrounding, and minimum spacing, the FCC declared that such requirements will not be preempted if they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance. Staff has prepared Design Guidelines for wireless facilities and those have been available to the public on the City's website since mid-January. A copy of the current Design Guidelines is provided as part of Attachment 5.

DISCUSSION:

Ordinance to Adopt Wireless Facilities Encroachment Permit Process

To address the shot clock and limited discretion local entities have in processing small cell applications, local entities have adopted an encroachment permit process. Design and development standards are published and made public in advance so that any applicant understands the information necessary before submittal of an application. Applicants that do not meet the design and development standards can be deemed incomplete and the shot clock would not begin.

The FCC order establishes "shot clock" review time frames on two categories of wireless facilities (small cell facilities and eligible facilities requests) in the public road ROWs. The FCC Order requires that the deployment of small cell facilities not be any more burdensome than requirements imposed on other improvements/requests on ROWs, including, for example, data tracking devices that SCE or Cox Cable may want to place in the ROW. Therefore, the proposed Ordinance is meant to apply to all wireless facilities in the ROW.

Before installation in the ROW, jurisdictions may impose objective and reasonable design standards and development standards to address aesthetic and public safety concerns. For example, the aesthetic standards can establish height limitations that are reasonable. The FCC Order provides that if small cell and eligible facility requests meet certain criteria, including objective aesthetic and development standards, then the City must approve the requests. The FCC prohibits local entities from effectively prohibiting the installation of new or improved services with regulation.

The proposed Ordinance would add a new Chapter 12.20 to the Goleta Municipal Code, *Wireless Facilities in the Public Road Rights-of-Way – Wireless Encroachment Permit*. For all wireless facility installations in the ROW, this Ordinance provides, among other regulations, the permit and review procedures as well as the operation and maintenance standards. The Ordinance sets standards and requirements for obtaining an encroachment permit to install wireless facilities. The Ordinance balances the community's need for wireless services, the industry's need to deploy quickly, and the City's obligations to maintain safety and protect the aesthetic qualities of our neighborhoods. Finally, the Ordinance allows for necessary adaptability by allowing the Public Works Director to publish design and development standards and amend them from time to time.

Under the Ordinance, wireless encroachment permits are approved by the Public Works Director and may be appealed to the City Council. Any appeal of an application must be decided with the applicable shot clock. In light of this, the timeline for an applicant to file an appeal is two calendar days and the City Council must hear the appeal within the shot clock. Because all the standards and framework are set up before an application is even submitted, staff does not believe there will be many appeals or that any appeals would be complex in nature.

Once the encroachment permit is issued, the carrier may still need to obtain traffic control plans, construction permits and, if necessary, enter into the Master License Agreement to attach to city infrastructure. The Ordinance contains a comprehensive list of permit conditions that will apply to wireless encroachment permits, including insurance requirements, indemnity performance securities for removal upon abandonment, and maintenance and inspection requirements.

As the City prepares to take ownership of the Southern California Edison (SCE) street light poles and is receiving inquiries for applications to attach to these poles (and other city infrastructure in the ROW), staff recommends that the City Council adopt two ordinances enacting the proposed Wireless Facilities in the Public Road Rights-of-Way. Attachment 1 is an urgency ordinance, which if adopted by a four-fifths vote of the City Council, would become effective immediately (Government Code Section 36937).

An identical ordinance following the usual procedures of a non-urgency ordinance is provided as Attachment 2 and can be adopted by a simple majority vote. The second reading of the non-urgency ordinance could occur at the next regular meeting of May 21, 2019. The Ordinance would become effective on the 31st day following adoption, which would be June 21, 2019. This action is recommended in case a challenge is brought to the urgency clause.

Staff has developed objective Design and Development Guidelines as required by the FCC regulations. These Design and Development Guidelines have been available to the public since mid-January.

Fees

Staff recommends that the City Council adopt fees for processing of the new wireless encroachment permit associated with the proposed Ordinance. Staff proposes that fees be collected as a deposit, much like how other types of permits are processed in the City. An initial deposit amount of $2,000 would be requested. Safe harbor fees set up by the FCC Order are essentially set at $100 per small cell facility. The deposit rate of $2,000 is not unreasonably high because most applications come in batches. The true cost of staff and consultant time will be billed towards this deposit. Any funds not billed again will be returned. At the same time, any additional staff time spent beyond the $2,000 deposit will be billed to the applicant.

Expenses for processing a wireless encroachment permit application, including but not limited to review of all materials, physical inspections, the use of consultants, will be billed to the deposit. While the FCC Order establishes safe harbor fees as described above, the FCC also opined that the use of third-party consultants and contractors are reasonable so long as the fees are limited to a reasonable approximation of costs. Staff recommends developing a fee deposit for the processing of wireless encroachment permit applications for now since this is a new process and we cannot anticipate yet how much staff and consultant time would be required. The City can always amend the fee structure at a later date if there is a need to do so.

Master License Agreement

For wireless facilities that seek to be installed on City infrastructure (streetlights, traffic signal poles, etc.) in the ROW, wireless facilities providers would need to enter into a Master License Agreement with the City. This proposed agreement covers the following major components:

- Sets up the term of the Agreement to be 10 years, which is the length of any wireless encroachment permit. One automatic extension of 5 years is applied unless a party provides written notice to the other party to terminate six months prior to termination of the initial 10-year term.
- Sets up rent at the safe harbor fee of $275/pole/year while the FCC Order is in effect. The FCC Order is being challenged in federal court and the outcome of the case has not been rendered. The percentage of annual adjustment is left blank here for the parties to negotiate. The typical amounts applied are three to five percent.
- Sets up a rent of $2,500/pole/year with a 4% inflationary adjustment if the safe harbor rental fees in the FCC Order are invalidated.
- Requires each pole proposed for installation (referred to as a Supplement) be proposed and approved by the Public Works Director. Envisions a future process by which Supplements, after they have been approved for through the wireless encroachment permit process, can be added subject to an existing Master License Agreement.
- Permittees would be required to procure their own electricity and not commingle electricity usage with the City's equipment.
- A late fee and interest would apply to any failure to pay unpaid rents. The late fee and percent interest have been left blank for the parties to negotiate.
- The City may require a permittee, at its sole cost and expense, to relocate an installation for repair or building of any City project, interference with the operation of City equipment, or to preserve the public health or safety. The City would provide a reasonable alternative location. If the permittee does not remove the facilities, the City could remove the facilities and demand payment from the permittee for the expense of removal.
- Insurance and performance securities will be required.

Staff seeks the City Council's authorization to allow the City Manager to enter into license agreements with applicants using the proposed Master License Agreement in substantial form. There are certain provisions that have blanks (insurance requirements, interest rates, delinquent fees, etc.) and those are the typical terms that are negotiated by the parties. The filling in of these blanks and minor revisions to the template may be approved by the City Attorney or designee. Material revisions to the agreement would be brought back to City Council for approval. Being able to utilize the template will help the City process the permits more expeditiously and alleviate the need to bring these agreements to Council when a wireless encroachment permit is approved.

ENVIRONMENTAL REVIEW

The Ordinances are not a "project" within the meaning of Section 15378 of the CEQA Guidelines, because they have no potential for resulting in direct or indirect physical change in the environment. Rather, it is only once an application is filed that CEQA would be implicated. Further, even if they were interpreted to permit a "project," any applicable wireless facility installation would likely be exempt from CEQA review in accordance with State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

Accordingly, staff recommends that the City Council direct that a Notice of Exemption be filed with the County Clerk in accordance with CEQA Guidelines.

FISCAL IMPACTS:

There is no immediate fiscal impact associated with this item. Revenues generated by the fees associated with the wireless encroachment permits are intended to offset the staff costs associated with the review of such permits.

ALTERNATIVES:

The City Council could decline to approve an urgency ordinance or non-urgency ordinance and proposed fee resolution at this time and thus not having regulations regarding small cell wireless antennas. The consequence of not taking action will be that staff would have to process wireless facilities permits under its current CUP process, which is difficult to do under the new shorter shot clocks.

Legal Review By:

Michael Jenkins
City Attorney

Approved By:

Michelle Greene
City Manager

ATTACHMENTS:

1. An Urgency Ordinance of the City of Goleta, California Amending Title 12 of the Goleta Municipal Code to Add Chapter 12.20 entitled “Wireless Facilities in The Public Road Rights-Of-Way – Wireless Encroachment Permit”.

2. An Ordinance of the City of Goleta, California Amending Title 12 of the Goleta Municipal Code to Add Chapter 12.20 entitled “Wireless Facilities in The Public Road Rights-Of-Way – Wireless Encroachment Permit”.

3. A Resolution of the City Council of the City of Goleta, California, Establishing a Fee for Wireless Encroachment Permits.

4. Master License Agreement.

5. Design and Development Guidelines.

6. Notice of Exemption.

ATTACHMENT 1

URGENCY ORDINANCE ADDING CHAPTER 12.20 "WIRELESS FACILITIES IN THE PUBLIC ROAD RIGHTS-OF-WAY – WIRELESS ENCROACHMENT PERMIT"

ORDINANCE NO. 19-__

AN URGENCY ORDINANCE OF THE CITY OF GOLETA, CALIFORNIA AMENDING TITLE 12 OF THE GOLETA MUNICIPAL CODE TO ADD CHAPTER 12.20 "WIRELESS FACILITIES IN THE PUBLIC ROAD RIGHTS OF WAY - WIRELESS ENCROACHMENT PERMIT"

WHEREAS, the City of Goleta (the "City"), being a municipal corporation duly organized under the laws of the State of California, has the authority, pursuant to the powers delegated to it by the California Constitution, to adopt such ordinances as it deems necessary and appropriate to promote the public health, safety, and general welfare of its citizens, including the public rights-of-way; and

WHEREAS, the wireless telecommunications industry has expressed interest in submitting applications for the installation of "small cell" wireless telecommunications facilities in the City's public rights-of-way, and other California cities have already received applications for small cell facilities to be located within their public rights-of-way; and

WHEREAS, state and federal laws have changed substantially since the City last adopted regulations for wireless telecommunication facilities. Such changes include establishing "shot clocks" whereby the City must approve or deny installations within a certain period of time. Federal regulations require local governments to act on permit applications for wireless facilities within a prescribed time period, and state and federal laws permit applicants to invoke a deemed granted remedy when a failure to timely act occurs. See 47 U.S.C §332 (c) (7) (B) (iii); 47 C.F.R. §§ 1.40001, et se1.; Cal. Gov. Code §65964.1. Under federal law, a decision on certain applications must be made in as few as 60 days. Additionally, a recent order and regulations issued by the Federal Communications Commission substantially alters the regulatory frameworks for "small cell" wireless telecommunications facilities, with such regulations becoming effective on January 14, 2019; and

WHEREAS, if not adequately regulated, installation of small cell and other wireless telecommunications facilities within the public rights-of-way can pose a threat to the public health, safety and welfare, including disturbance to the public road rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal

of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towners; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilities alternative technologies capitalizing on collocation opportunities which may negatively impact the unique quality and character of the City; and

WHEREAS, the City currently regulates wireless telecommunications facilities through its zoning permit process. The existing standards need to be updated to reflect current telecommunications trends and legal requirements. Further, the primary focus of the zoning regulations is wireless telecommunication facilities located on private property, and the existing Code provisions were not specifically designed to address the unique legal and practical issues that arise in connection with wireless telecommunications facilities deployed in the public rights-of-way; and

WHEREAS, the City's public rights-of-way are a uniquely valuable public resource, closely linked with the City's natural beauty and various communities. The regulation of wireless installations in the public rights-of-way is necessary to protect and preserve the aesthetics in the community; and

WHEREAS, based on the foregoing, the City thus deems it to be necessary and appropriate to establish by urgency ordinance certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas, and other structures within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations of that authority; and

WHEREAS, on May 7, 2019, the Goleta City Council held a noticed public hearing at which time all interested persons were heard.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GOLETA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS.

The foregoing Recitals are adopted as findings of the City Council as though set forth in full within the body of this ordinance.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at the time conduct preliminary review of the application in accordance with CEQA.

Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines Section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt from CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, §15061 (b) (3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, a wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA and the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines §15302 (replacement or reconstruction), State CEQA Guidelines §15303 (new construction or conversion of small structures), and/or State CEQA Guidelines §15304 (minor alterations to land).

SECTION 3. ACTION.

Based on the findings of Sections 1 and 2 above, the City Council hereby:

A. Amends Title 12 of the Goleta Municipal Code to add Chapter 12.20 as provided in Exhibit 1 to this ordinance;
B. Directs a Notice of Exemption to be filed with the County Clerk of the County of Santa Barbara within five working days of the passage and adoption of this ordinance.

SECTION 4. SEVERABILITY.

If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court or competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 5. CERTIFICATION OF CITY CLERK.

The City Clerk shall certify to the adoption of this ordinance and, within 15 days after its adoption, shall cause it to be published in accord with California Law.

SECTION 6. EFFECTIVE DATE.

This ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of California Government Code Section 36937 (b) and therefore shall be passed immediately upon its introduction and shall become effective immediately.

INTRODUCED ON the ___ day of _____, 2019.

PASSED, APPROVED, AND ADOPTED this _____day of _____ 2019.

_____
PAULA PEROTTE, MAYOR

ATTEST:

_____
DEBORAH S. LOPEZ
CITY CLERK

APPROVED AS TO FORM:

_____
MICHAEL JENKINS
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF GOLETA)

I, Deborah S. Lopez, City Clerk of the City of Goleta, California, do hereby certify that the foregoing Ordinance No. 19-__ was introduced on _____, and adopted at a regular meeting of the City Council of the City of Goleta, California, held on the _____, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

(SEAL)

_____
DEBORAH S. LOPEZ
CITY CLERK

Exhibit 1

Chapter 12.20
WIRELESS FACILITIES IN PUBLIC ROAD RIGHTS-OF-WAY

Sections:

12.20.010 DEFINITIONS

The terms used in this Chapter shall have the following meanings:

A. **Application:** A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless encroachment permit.

B. **Applicant**: A person filing an application for placement or modification of a wireless facility in the public right-of-way.

C. **Accessory Equipment**: means any equipment serving or being used in conjunction with a Wireless Communication Facility. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, batteries, cables, cabinets, vaults, or equipment structures.

D. **Antenna:** means a device used to transmit and/or receive radio or electromagnetic waves for the provision of services including, but not limited to cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and stand mounted wireless access points.

1. This definition does not include broadcast antennas, antennas designed for amateur radio use, or over-the-air reception devices as defined in 47 Code of Federal Regulations (C.F.R) 1.4000 such as satellite dishes designed for residential or household purposes.

E. **Base Station**: shall have the meaning as set forth in 47 C.F.R. Section 1.40001(b)(1), or any successor provision.
F. **Camouflage**: means the means and methods by which a WCF is designed to be concealed and blend the installation with the surrounding environment.
G. **City Code**: means the Goleta Municipal Code.
H. **Director**: means the City of Goleta's Public Works Director or designee.
I. **Eligible Facilities Request**: shall have the meaning as set forth in 47 C.F.R. Section 1.40001(b)(3), or any successor provision.
J. **Existing Height**: means the height of the tower, base station, or existing public infrastructure as originally approved or as of the most recent modification that received regulatory approval prior to the passage of the Spectrum Act. Height shall be measured from natural grade to the top of all appurtenances.
K. **FCC**: The Federal Communications Commission or its lawful successor.
L. **Municipal Infrastructure**: City-owned or controlled property structures, objects, and equipment in the PROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, other poles, or lighting fixtures, located within the PROW.
M. **Permittee**: any person or entity granted a wireless encroachment permit pursuant to this Chapter.
N. **Personal Wireless Services**: shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).
O. **Personal Wireless Services Facility**: means a wireless facility used for the provision of personal wireless services.
P. **Public Right-of-Way, or PROW:** mean the public road right-of-way.
Q. **Small Cell Facility**: shall have the same meaning as "small wireless facility" in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):
    a. The facility—
        a. is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
        b. are mounted on structures no more than 10 percent taller than other adjacent structures, or
        c. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
    b. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

c. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
d. The facility does not require antenna structure registration under 47 C.F.R. Part 17;
e. The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
f. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

R. **Support Structure**: Any structure capable of supporting a base station.
S. **Tower**: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for personal wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
T. **Underground areas**: Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.
U. **Utility Pole**: A structure in the PROW designed to support electric, telephone and similar utility lines. A tower is not a utility pole.
V. **Wireless Communication Facility (WCF) or Wireless Facility**: means any fixed facility established for the purpose of providing wireless transmission of voice, data, images, or other information including, but not limited to, personal wireless services. A WCF can consist of one or more Antennas, Accessory Equipment and a Support Structure.
W. **Wireless Encroachment Permit**: A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the PROW and the modification of any existing support structure to which the wireless facility is proposed to be attached.
X. **Wireless Infrastructure Provider**: A person that owns, controls, operates or manages a wireless facility or portion thereof within the PROW.
Y. **Wireless Regulations**: Those regulations adopted pursuant to the provisions of this Chapter.

12.20.020 PURPOSE

The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the PROW of the City consistent with the City's obligation to promote the public health, safety, and welfare, to manage the PROW, and to ensure that the public is not inconvenienced by the use of the PROW for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable federal and State law regarding the placement of personal wireless services facilities in its PROW. This Chapter shall be interpreted consistent with those provisions.

12.20.030 SCOPE

A. **In General.** There shall be a type of encroachment permit entitled a "Wireless Encroachment Permit," which shall be subject to all the same requirements as an encroachment permit would under Chapter 12.20 of the Goleta Municipal Code in addition to all the requirements of this Chapter. Unless exempted, every person who desires to place a wireless facility or modify an existing wireless facility in the PROW must obtain a wireless encroachment permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the PROW by state or federal law, no other wireless facilities shall be permitted pursuant to this Chapter.

B. **Exemptions.** This Chapter does not apply to:
   1. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.

C. **Other applicable requirements.** In addition to the wireless encroachment permit required herein, the placement of a wireless facility in the PROW requires the person(s) who will own or control those facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited, applicable law governing radio frequency (RF) emissions.

D. **Pre-existing Facilities in the PROW.** Any wireless facility already existing in the PROW as of the date of this Chapter's adoption shall remain subject to the provisions of the City Code in effect prior to this Chapter, unless and until an extension of such facility's then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code that it was previously reviewed under.

E. **Public use**. Except as otherwise provided by California law, any use of the PROW authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

12.20.040 ADMINISTRATION

A. **Public Works Director**. The Director is responsible for administering this Chapter. As part of the administration of this Chapter, the Director may:

1. Interpret the provisions of this Chapter;
2. Develop and implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
3. Develop and implement acceptable designs and development standards for wireless facilities in the PROW, considering the zoning districts bounding the PROW;
4. Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
5. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Chapter;
6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
8. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
9. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
10. Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. **Appeals**.

1. Any person adversely affected by the decision of the Public Works Director on a wireless encroachment permit pursuant to this Chapter may appeal the decision to the City Council (Appeal Body), which may decide the issues *de novo,* and whose written decision will be the final decision of the City and not be subject to further administrative appeal. An appeal must be filed within two business days after the publication of the determination letter and shall state the specific reason for the appeal. The Director may extend the time for an aggrieved party to file an appeal but an extension may

not be granted where extension would result in approval of the application by operation of law.

2. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law unless an extension of the time requirements of rendering a decision is mutually agreed upon.
3. As section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the Director's decision premised on the environmental effects of radio frequency emissions will not be considered.

12.20.050 GENERAL STANDARDS FOR WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

A. **Generally.** Wireless facilities in the PROW shall meet the minimum requirements set forth in this Chapter, Design and Development Guidelines issued by the Director pursuant to this Chapter, and state and federal wireless regulations, in addition to the requirements of any other applicable law.

B. **Regulations.** The wireless regulations and decisions on applications for placement of wireless facilities in the PROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

C. **Minimum Standards**. Wireless facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the PROW, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way; and is consistent with the City of Goleta's Small Cell Design Guidelines.

D. Location Preferences. All applicants should, to the extent feasible, collocate new facilities and substantial changes to existing facilities with existing facilities. Collocations should, to the extent feasible, be

proposed on structures in accordance with the preferences contained in the associated design and development standards for Wireless Facilities in the PROW promulgated by the Director pursuant to this Chapter.

E. **Design Standards.** Wireless encroachment permits shall incorporate specific concealment elements to minimize visual impacts and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law and in accordance with the design and development standards for Wireless Facilities in the PROW promulgated by the Director pursuant to this Chapter.

12.20.060 APPLICATION

A. **Submission.** Applicant shall submit both paper copy and an electronic copy of all application materials to the City of Goleta, Public Works Department, 130 Cremona Drive, Suite B, Goleta CA 93117.

B. **Content.** The applicant for a wireless encroachment permit shall submit an application on a Director-approved form to the Public Works Department, which may be updated from time to time, and all required fee(s) and deposit, documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law and the City Code. In the event a state or federal law prohibits the collection of any information required by this section, the Director is authorized to omit, modify or add to that request from the City's application form with the written approval of the City Attorney, which approval shall be a public record.

C. **Fees.** The application shall be accompanied by the application processing fee or deposit established by resolution of the City Council pursuant to this Chapter. The City Council shall determine, or cause to be determined, the amount, type, and other terms of such fee(s) from time to time by means of resolution. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a wireless encroachment permit unless paid as a refundable deposit. All fees must be paid in full before any permit shall be issued from the City. Application processing fees must be paid at the time that the application is submitted. These fees are for permit processing and issuance only and are in addition to any other applicable fee or any separate payment that may be required for rent of City infrastructure.

D. **Waivers**. Requests for waivers from any requirement of this section shall be made in writing to the Director. The Director may grant or deny a request for a waiver pursuant to this subsection. The Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case

basis, and (2) narrowly-tailored to minimize deviation from the requirements of the City Code.

E. **Shot Clock.** The City acknowledges there are federal and state shot clocks which may be applicable to an application for a proposed wireless facility. As such, the applicant is required to provide the City written notice when it believes any applicable shot clock is about to expire, which the applicant shall ensure is received by the City (e.g., overnight mail) no later than 20 days prior to the alleged expiration.

12.20.070 ADMINISTRATIVE REVIEW

A. The following wireless encroachment permit applications are subject to administrative review:
   1. Routine maintenance to an existing WCF.
   2. Eligible facilities requests.
B. The Director may designate staff to review and approve applications for administrative review. These applications are reviewed as an “over the counter” permit.
C. Administrative review approval shall be granted if the Director, or designee, finds that:
   1. Application is complete;
   2. The proposed facility meets the definition for the type of activity proposed;
   3. The proposed facility complies with the requirements of the City Code and all other applicable laws.
D. Following administrative review and approval of a wireless encroachment permit is issued, the applicant may pursue construction and other permits and inspections as required. A wireless encroachment permit issued under this section is not valid without all required construction and other permits and any required license under Section 12.20.110.

12.20.080 DISCRETIONARY REVIEW

A. The following applications are subject to discretionary review:
   1. Small cell facilities.
B. Applications for discretionary review shall require noticing as follows:
   1. The Director shall provide notice by First Class mail for all application at least 10 calendar days before a decision on the applications is made to property owners and, if feasible, tenants, located within 300 feet from each antenna location being proposed. The notice shall describe the proposal and the 14-day comment period. The Director will accept comments from the public during the comment period.
C. The Director, or designee, is the review authority for discretionary review applications.

D. Determination. Following the fourteen-day comment period, the Director shall review the application, pertinent documentation and public comments, and issue a decision and mail it to the applicant and any person that submitted written comments on the application. The following findings are prerequisites of an approval.
   1. The proposed facility complies with all of the applicable provisions the City Code.
   2. The proposed facility will not incommode the public use of the PROW.
   3. The proposed construction plan and schedule will not unduly interfere with the public's use of the PROW.
   4. The proposed facility will comply with any standards adopted by the Director under Section 12.20.040(A).
   5. The proposed facility is in compliance with all federal and state standards and laws.

E. The permit issued under this section is not valid without all required traffic control plans, construction and other permits and any required license under Section 12.20.110.

12.20.090 INCOMPLETE APPLICATIONS AND APPLICATIONS DENIED WITHOUT PREJUDICE

A. The Director shall review all applications and provide written notice of incompleteness, including the materials omitted, in conformity with state, local, and federal law.

B. The Director shall deny, in writing, an application without prejudice if the City has sent the applicant a communication requiring a response from the applicant and more than 60 days lapse without a response from the applicant. Once an application has been denied without prejudice, it may not be reopened and a new application must be made. No refunds of fees will be provided for applications denied without prejudice pursuant to this section.

12.20.100 INDEPENDENT CONSULTANTS

A. **Independent Consultants**. The Director or the Appeal Body, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

Where the City determines that it requires expert assistance in evaluating an application, the City may hire a consultant and the fee

charged by the consultant shall be reimbursed to the City by the applicant regardless of the outcome of the application.

12.20.110 MUNICIPAL INFRASTRUCTURE

The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to an agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement.

12.20.120 CONSTRUCTION AND OTHER PERMITS

Concurrent with the processing of and any required license, an applicant may begin the process of applying for other required and/or traffic control plans and any other permit required by law. These permits shall not be issued until the two (2) day appeal period as referenced in Section 12.20.040 has passed, or the decision on the wireless encroachment permit application becomes final.

12.20.130 INSPECTION AND REPORTING

The owner of the WCF when directed by the City must perform an inspection of the WCF and submit a report to the Director on the condition of the system to include any identified concerns and corrective action taken. Further, as the City performs maintenance on City infrastructure additional maintenance concerns may be identified. These will be reported to the owner of the WCF. The City shall give the applicant 30 days to correct the identified maintenance concerns after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. Prior to the issuance of a permit under this Chapter, the owner of the WCF shall sign an affidavit attesting to understanding the City's requirement for performance of annual inspections and reporting.

12.020.140 REVOCATION AND APPEAL OF REVOCATION

Any permit or other authorized use of the PROW granted under this Chapter may be revoked or modified for cause in accordance with the provisions of this Section.

A. Revocation proceedings may be initiated by the Director.
B. Public Notice, Hearing and Action. After conducting a duly-noticed public hearing, the Director shall act on the proposed revocation.
C. Required Findings. The Director may revoke or modify the permit if it makes any of the following findings:
    1. The permittee obtained the approval by means of fraud or misrepresentation of a material fact;

2. The permittee substantially expanded or altered the use or structure beyond what is set forth in the permit or substantially changed the installation's character;
3. The use in question has ceased to exist or has been suspended for time periods based on the type of facility outlined in Section 12.20.150 (A) (21).
4. Failure to comply with any condition of a permit issued;
5. Failure to comply with this Chapter;
6. A substantive change of law affecting a utility's authority to occupy or use the PROW of the City's ability to impose regulations relating such occupation or use;
7. A facility interference with a City project;
8. A facility's interference with vehicular or pedestrian use of the PROW; or
9. Failure to make a safe and timely restoration of the PROW.

D. Notice of action. The Director shall issue a written determination of revocation and mail the determination to the WCF owner within 10 calendar days of such determination.

E. A permittee whose permit or right has been revoked may have the revocation reviewed, upon written appeal, to the Appeal Body as follows:
   1. File such appeal with the City Clerk within fourteen (14) calendar days of the revocation, and
   2. Provide a statement of any reasons why the permittee believes that the revocation should be reviewed.

12.20.150 CONDITIONS OF APPROVAL

A. **Generally.** In addition to any supplemental conditions imposed by the Director or Appeal Body, all permits granted pursuant to this Chapter shall, must comply with all the policies and standards promulgated by the Director pursuant to this Chapter and be subject to the following conditions, unless modified by the approving authority. Further, if an application were ever deemed approved by application of law, these same conditions would be applicable:
   1. *Code Compliance*. The permittee shall at all times comply with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of PROW. The Permittee is responsible for obtaining permits from other permitting agencies, including but not limited to the California Coastal Commission, California Fish and Wildlife, Santa Barbara Flood Control District, and the Regional Water Quality Control Board.
   2. *Permit Duration.* A wireless encroachment permit shall be valid for the same time period as the time period associated with the lease agreement, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of the lease agreement term, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding

a wireless encroachment permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.

3. *Timing of Installation*. The installation and construction authorized by a wireless encroachment permit shall begin within ninety (90 days) after its approval, or it will expire without further action by the City. The installation and construction authorized by a wireless encroachment permit shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within thirty (30) days following the day construction commenced.
4. *Commencement of Operations*. The operation of the approved facility shall commence no later than thirty (30) days after the completion of installation, or the wireless encroachment permit will expire without further action by the City.
5. *As-Built/Record Drawings.* The Permittee shall submit an as-built/record drawing within ninety (90) days after installation of the facility. As-built record drawings shall be provided in an electronic format acceptable to the City.
6. *Inspections; Emergencies*. The Director may enter onto the facility area to inspect the facility anytime during an emergency and provide notice to the permittee within 48 hours of an emergency. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the Director. The Director reserves the right to enter or direct his or her designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The Director shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
7. *Reporting; Ongoing.* The Permittee shall submit annually, at a minimum, report regarding the maintenance status of the system as outlined in Section 12.20.130. The Permittee shall submit the operation status of WCF attached to traffic signal on a quarterly basis (every 3 months) and yearly (every 12 months) for WCF attached to street lights. All reports must be submitted to the Director.

8. *Contact*. The permittee shall always maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person.
9. *Insurance.* Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of at least $1,000,000 per occurrence for bodily injury and property damage and at least $5,000,000 general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
10. *Indemnities*. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
11. *Performance Security.* Prior to issuance of a wireless encroachment permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance surety in the form of a letter of credit or other security acceptable to the Director for the removal of the facility in the event that the use is abandoned, or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal

to $5,000 per street light and/or public/private poles and $20,000 per traffic signal during the timeframe of the lease. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.

12. *Adverse Impacts on Adjacent Properties*. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.
13. *Noninterference.* Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the Permittee shall provide the City with documentation establishing to the city's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within PROW or city utility easement to be affected by Permittee's facilities.
14. *No Right, Title, or Interest.* The permission granted by a wireless encroachment permit shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, or any part thereof, shall vest or accrue in Permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.
15. *No Possessory Interest.* No possessory interest is created by a wireless encroachment permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a wireless encroachment permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee’s right to possession, occupancy, or use

of any public property pursuant to any right of possession, occupancy, or use created by this permit.

16. *General Maintenance*. The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the permittee within forty-eight (48) hours after notification from the City.
17. *RF Exposure Compliance*. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
18. *Testing*. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that falls or is observed on a weekday. In addition, testing is prohibited on weekend days and in the evenings between 4:30 pm to 8:30 am.
19. *Modifications*. No changes shall be made to the approved plans without review and approval in accordance with this Chapter.
20. *Conflicts with Improvements*. For all facilities located within the PROW, the permittee shall remove or relocate, at its expense and without expense to the city, any or all of its facilities when such removal or relocation is deemed necessary by the city by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
21. *Abandonment.* If a facility located on a traffic signal is not operated for a continuous period of ninety (90) days or if a facility located on a streetlight or public/private pole is not operated for a continuous period of ninety (90) days, the wireless encroachment permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the ninety (90) days (i) the Director or Appeal Body has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No

later than ninety (90) days from the date the facility is determined to have ceased operation, or the permittee has notified the Director or Appeal Body of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.

22. *Encourage Co-location*. Where the facility site is capable of accommodating a co-located facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow co-location of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
23. *Records.* The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
24. *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.
25. *Other Permits*. The applicant is responsible for obtaining permits from permitting agencies, including but not limited to California Coastal Commission, California Fish and Wildlife, US Fish and

Wildlife, Santa Barbara County Flood Control District, and Regional Water Quality Control Board. Failure to comply with other permitting agency requirements/permits may be grounds for revocation of this Encroachment Permit.

26. *Lease Agreement*. Prior to the wireless encroachment permit becoming effective, the applicant must execute a Lease Agreement or other agreement as determined appropriate by and with the City of Goleta prior to constructing, attaching, or operating a facility within the City's PROW. A wireless encroachment permit is not a substitute for such agreement.
27. *Use of Generators*. Generators that support wireless facilities are prohibited from being placed in PROW and within setback areas on adjacent private properties.
28. *Electrical Source*. Wireless infrastructure providers must have their own electrical metering/source for their use of electricity.
29. *Prevention of Graffiti*. Installation design must prevent creating an attractive nuisance and must deter incidents of graffiti, vandalism and unauthorized access such as climbing.
30. *Existing Trees.* All existing trees in the PROW must be protected in place. If a street tree is removed or damaged because of the installation or maintenance of the small cell antenna, then the affected street tree must be replaced at a three (3) to one (1) ratio with City approved street trees type in a location(s) determined by the City.
31. *Compliance with Americans with Disabilities Act*. Wireless facilities cannot endanger public/property, impeded the flow of vehicular or pedestrian traffic, impair the use of poles, traffic signs, traffic signals, outdoor dining areas, emergency facilities or result in a failure to comply with the Americans with Disabilities Act.
32. *Signs*. Installation of signs are prohibited, except those that contain safety warnings or decals that indicate ownership or equipment as outlined in Section A of this document.
33. *Landscaping*. Wireless infrastructure providers are required to maintain or enhance existing landscaping consistent with surrounding vegetation.
34. *Passive cooling*. In residential areas, only passive cooling systems are permitted. If a fan is needed in non-residential areas, a cooling fan with a noise profile that does not exceed 50 decibels must be used.
35. *No Lighting unless FAA Required*. No facility may be illuminated unless specifically required by the Federal Aviation Administration (FAA) or other government agency. Beacon lights are not permitted unless required by the FAA or other government agency.
36. *Height Calculations*. Legally required lightning arresters and beacons must be included when calculating the height of facilities.

37. *Shielding of Lights*. Any required lighting must be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhood.
38. *Use of Motion Sensitive Lights.* Unless otherwise required under FAA or Federal Communications Commission (FCC) regulations, applicants may install only timed or motion-sensitive light controllers and must deflect lights to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.

B. **Eligible Facilities Requests**. In addition to the conditions provided in Section 12.20.150 of this Chapter and any supplemental conditions imposed by the Director or Appeal Body, as the case may be, all permits for an eligible facility requests granted pursuant to this Chapter shall be subject to the following additional conditions, unless modified by the approving authority:
   1. *Permit subject to conditions of underlying permit.* Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
   2. *No permit term extension*. The city's grant or grant by operation of law of an eligible facility request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city's grant or grant by operation of law of an eligible facility request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
   3. *No waiver of standing*. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. **Small Cell Facilities Requests**. In addition to the conditions provided in Section 12.20.150 of this Chapter and any supplemental conditions imposed by the Public Works Director or the Appeal Body, as the case may be, all permits for a small cell facility granted pursuant to this Chapter shall be subject to the following condition, unless modified by the approving authority:
   i. *No waiver of standing*. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules

related to small cell facilities, or any modification to those FCC orders or rules.

12.20.160 BREACH; TERMINATION OF PERMIT

A. **For breach.** A wireless encroachment permit may be revoked for failure to comply with the conditions of the permit or applicable law. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

B. **For installation without a permit.** A wireless facility installed without a wireless encroachment permit (except for those exempted by this Chapter must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the PROW need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

C. **Municipal Infraction.** Any violation of this Chapter will be subject to the same penalties as a violation of the Chapters 1.02 and 12.13 of the Goleta Municipal Code and the associated lease agreement.

12.20.170 INFRASTRUCTURE CONTROLLED BY CITY

The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement.

12.20.180 NONDISCRIMINATION

In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or PROW user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the PROW.

ATTACHMENT 2

ORDINANCE ADDING CHAPTER 12.20 “WIRELESS FACILITIES IN THE PUBLIC ROAD RIGHTS-OF-WAY – WIRELESS ENCROACHMENT PERMIT”

ORDINANCE NO. 19-__

AN ORDINANCE OF THE CITY OF GOLETA, CALIFORNIA AMENDING TITLE 12 OF THE GOLETA MUNICIPAL CODE TO ADD CHAPTER 12.20 "WIRELESS FACILITIES IN THE PUBLIC ROAD RIGHTS OF WAY - WIRELESS ENCROACHMENT PERMIT"

WHEREAS, the City of Goleta (the "City"), being a municipal corporation duly organized under the laws of the State of California, has the authority, pursuant to the powers delegated to it by the California Constitution, to adopt such ordinances as it deems necessary and appropriate to promote the public health, safety, and general welfare of its citizens, including the public rights-of-way; and

WHEREAS, the wireless telecommunications industry has expressed interest in submitting applications for the installation of "small cell" wireless telecommunications facilities in the City's public rights-of-way, and other California cities have already received applications for small cell facilities to be located within their public rights-of-way; and

WHEREAS, state and federal laws have changed substantially since the City last adopted regulations for wireless telecommunication facilities. Such changes include establishing "shot clocks" whereby the City must approve or deny installations within a certain period of time. Federal regulations require local governments to act on permit applications for wireless facilities within a prescribed time period, and state and federal laws permit applicants to invoke a deemed granted remedy when a failure to timely act occurs. See 47 U.S.C §332 (c) (7) (B) (iii); 47 C.F.R. §§ 1.40001, et se1.; Cal. Gov. Code §65964.1. Under federal law, a decision on certain applications must be made in as few as 60 days. Additionally, a recent order and regulations issued by the Federal Communications Commission substantially alters the regulatory frameworks for "small cell" wireless telecommunications facilities, with such regulations becoming effective on January 14, 2019; and

WHEREAS, if not adequately regulated, installation of small cell and other wireless telecommunications facilities within the public rights-of-way can pose a threat to the public health, safety and welfare, including disturbance to the public road rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal

of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towners; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilities alternative technologies capitalizing on collocation opportunities which may negatively impact the unique quality and character of the City; and

WHEREAS, the City currently regulates wireless telecommunications facilities through its zoning permit process. The existing standards need to be updated to reflect current telecommunications trends and legal requirements. Further, the primary focus of the zoning regulations is wireless telecommunication facilities located on private property, and the existing Code provisions were not specifically designed to address the unique legal and practical issues that arise in connection with wireless telecommunications facilities deployed in the public rights-of-way; and

WHEREAS, the City's public rights-of-way are a uniquely valuable public resource, closely linked with the City's natural beauty and various communities. The regulation of wireless installations in the public rights-of-way is necessary to protect and preserve the aesthetics in the community; and

WHEREAS, based on the foregoing, the City thus deems it to be necessary and appropriate to establish by ordinance certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas, and other structures within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations of that authority; and

WHEREAS, on May 7, 2019, the Goleta City Council held a noticed public hearing at which time all interested persons were heard.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GOLETA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS

The foregoing Recitals are adopted as findings of the City Council as though set forth in full within the body of this ordinance.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at the time conduct preliminary review of the application in accordance with CEQA.

Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines Section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt from CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, §15061 (b) (3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, a wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA and the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines §15302 (replacement or reconstruction), State CEQA Guidelines §15303 (new construction or conversion of small structures), and/or State CEQA Guidelines §15304 (minor alterations to land).

SECTION 3. ACTION

Based on the findings of Sections 1 and 2 above, the City Council hereby:

A. Amends Title 12 of the Goleta Municipal Code to add Chapter 12.20 as provided in Exhibit 1 to this ordinance;
B. Directs a Notice of Exemption to be filed with the County Clerk of the County of Santa Barbara within five working days of the passage and adoption of this ordinance.

SECTION 4. SEVERABILITY

If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court or competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 5. CERTIFICATION OF CITY CLERK

The City Clerk shall certify to the adoption of this ordinance and, within 15 days after its adoption, shall cause it to be published in accord with California Law.

SECTION 6. EFFECTIVE DATE

This ordinance shall become effective on the 31st day after its passage.

INTRODUCED ON the ___ day of _____, 2019.

PASSED, APPROVED, AND ADOPTED this _____day of _____ 2019.

_____
PAULA PEROTTE, MAYOR

ATTEST:

_____
DEBORAH S. LOPEZ
CITY CLERK

APPROVED AS TO FORM:

_____
MICHAEL JENKINS
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF GOLETA)

I, Deborah S. Lopez, City Clerk of the City of Goleta, California, do hereby certify that the foregoing Ordinance No. 19-__ was introduced on _____, and adopted at a regular meeting of the City Council of the City of Goleta, California, held on the _____, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

(SEAL)

_____
DEBORAH S. LOPEZ
CITY CLERK

Exhibit 1

Chapter 12.20
WIRELESS FACILITIES IN PUBLIC ROAD RIGHTS-OF-WAY

Sections:

12.20.010 DEFINITIONS

The terms used in this Chapter shall have the following meanings:

A. **Application:** A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless encroachment permit.
B. **Applicant**: A person filing an application for placement or modification of a wireless facility in the public right-of-way.
C. **Accessory Equipment**: means any equipment serving or being used in conjunction with a Wireless Communication Facility. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, batteries, cables, cabinets, vaults, or equipment structures.
D. **Antenna:** means a device used to transmit and/or receive radio or electromagnetic waves for the provision of services including, but not limited to cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and stand mounted wireless access points.

1. This definition does not include broadcast antennas, antennas designed for amateur radio use, or over-the-air reception devices as defined in 47 Code of Federal Regulations (C.F.R) 1.4000 such as satellite dishes designed for residential or household purposes.

E. **Base Station**: shall have the meaning as set forth in 47 C.F.R. Section 1.40001(b)(1), or any successor provision.
F. **Camouflage**: means the means and methods by which a WCF is designed to be concealed and blend the installation with the surrounding environment.
G. **City Code**: means the Goleta Municipal Code.
H. **Director**: means the City of Goleta's Public Works Director or designee.
I. **Eligible Facilities Request**: shall have the meaning as set forth in 47 C.F.R. Section 1.40001(b)(3), or any successor provision.
J. **Existing Height**: means the height of the tower, base station, or existing public infrastructure as originally approved or as of the most recent modification that received regulatory approval prior to the passage of the Spectrum Act. Height shall be measured from natural grade to the top of all appurtenances.
K. **FCC**: The Federal Communications Commission or its lawful successor.
L. **Municipal Infrastructure**: City-owned or controlled property structures, objects, and equipment in the PROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, other poles, or lighting fixtures, located within the PROW.
M. **Permittee**: any person or entity granted a wireless encroachment permit pursuant to this Chapter.
N. **Personal Wireless Services**: shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).
O. **Personal Wireless Services Facility**: means a wireless facility used for the provision of personal wireless services.
P. **Public Right-of-Way, or PROW:** mean the public road right-of-way.
Q. **Small Cell Facility**: shall have the same meaning as "small wireless facility" in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):
    1. The facility—
        a. is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
        b. are mounted on structures no more than 10 percent taller than other adjacent structures, or
        c. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
    2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
4. The facility does not require antenna structure registration under 47 C.F.R. Part 17;
5. The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

R. **Support Structure**: Any structure capable of supporting a base station.

S. **Tower**: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for personal wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

T. **Underground areas**: Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

U. **Utility Pole**: A structure in the PROW designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

V. **Wireless Communication Facility (WCF) or Wireless Facility**: means any fixed facility established for the purpose of providing wireless transmission of voice, data, images, or other information including, but not limited to, personal wireless services. A WCF can consist of one or more Antennas, Accessory Equipment and a Support Structure.

W. **Wireless Encroachment Permit**: A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the PROW and the modification of any existing support structure to which the wireless facility is proposed to be attached.

X. **Wireless Infrastructure Provider**: A person that owns, controls, operates or manages a wireless facility or portion thereof within the PROW.

Y. **Wireless Regulations**: Those regulations adopted pursuant to the provisions of this Chapter.

12.20.020 PURPOSE

The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the PROW of the City consistent with the City's obligation to promote the public health, safety, and welfare, to manage the PROW, and to ensure that the public is not inconvenienced by the use of the PROW for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable federal and State law regarding the placement of personal wireless services facilities in its PROW. This Chapter shall be interpreted consistent with those provisions.

12.20.030 SCOPE

A. **In General.** There shall be a type of encroachment permit entitled a "Wireless Encroachment Permit," which shall be subject to all the same requirements as an encroachment permit would under Chapter 12.20 of the Goleta Municipal Code in addition to all the requirements of this Chapter. Unless exempted, every person who desires to place a wireless facility or modify an existing wireless facility in the PROW must obtain a wireless encroachment permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the PROW by state or federal law, no other wireless facilities shall be permitted pursuant to this Chapter.

B. **Exemptions.** This Chapter does not apply to:
   1. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.

C. **Other applicable requirements.** In addition to the wireless encroachment permit required herein, the placement of a wireless facility in the PROW requires the person(s) who will own or control those facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited, applicable law governing radio frequency (RF) emissions.

D. **Pre-existing Facilities in the PROW.** Any wireless facility already existing in the PROW as of the date of this Chapter's adoption shall remain subject to the provisions of the City Code in effect prior to this Chapter, unless and until an extension of such facility's then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code that it was previously reviewed under.

E. **Public use**. Except as otherwise provided by California law, any use of the PROW authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

12.20.040 ADMINISTRATION

A. **Public Works Director**. The Director is responsible for administering this Chapter. As part of the administration of this Chapter, the Director may:

1. Interpret the provisions of this Chapter;
2. Develop and implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
3. Develop and implement acceptable designs and development standards for wireless facilities in the PROW, considering the zoning districts bounding the PROW;
4. Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
5. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Chapter;
6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
8. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
9. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
10. Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. **Appeals**.

1. Any person adversely affected by the decision of the Public Works Director on a wireless encroachment permit pursuant to this Chapter may appeal the decision to the City Council (Appeal Body), which may decide the issues *de novo,* and whose written decision will be the final decision of the City and not be subject to further administrative appeal. An appeal must be filed within two business days after the publication of the determination letter and shall state the specific reason for the appeal. The Director may extend the time for an aggrieved party to file an appeal but an extension may

not be granted where extension would result in approval of the application by operation of law.

2. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law unless an extension of the time requirements of rendering a decision is mutually agreed upon.
3. As section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the Director's decision premised on the environmental effects of radio frequency emissions will not be considered.

12.20.050 GENERAL STANDARDS FOR WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

A. **Generally.** Wireless facilities in the PROW shall meet the minimum requirements set forth in this Chapter, Design and Development Guidelines issued by the Director pursuant to this Chapter, and state and federal wireless regulations, in addition to the requirements of any other applicable law.

B. **Regulations.** The wireless regulations and decisions on applications for placement of wireless facilities in the PROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

C. **Minimum Standards**. Wireless facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the PROW, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way; and is consistent with the City of Goleta's Small Cell Design Guidelines.

D. **Location Preferences.** All applicants should, to the extent feasible, collocate new facilities and substantial changes to existing facilities with existing facilities. Collocations should, to the extent feasible, be

proposed on structures in accordance with the preferences contained in the associated design and development standards for Wireless Facilities in the PROW promulgated by the Director pursuant to this Chapter.

E. **Design Standards.** Wireless encroachment permits shall incorporate specific concealment elements to minimize visual impacts and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law and in accordance with the design and development standards for Wireless Facilities in the PROW promulgated by the Director pursuant to this Chapter.

12.20.060 APPLICATION

A. **Submission.** Applicant shall submit both paper copy and an electronic copy of all application materials to the City of Goleta, Public Works Department, 130 Cremona Drive, Suite B, Goleta CA 93117.

B. **Content.** The applicant for a wireless encroachment permit shall submit an application on a Director-approved form to the Public Works Department, which may be updated from time to time, and all required fee(s) and deposit, documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law and the City Code. In the event a state or federal law prohibits the collection of any information required by this section, the Director is authorized to omit, modify or add to that request from the City's application form with the written approval of the City Attorney, which approval shall be a public record.

C. **Fees.** The application shall be accompanied by the application processing fee or deposit established by resolution of the City Council pursuant to this Chapter. The City Council shall determine, or cause to be determined, the amount, type, and other terms of such fee(s) from time to time by means of resolution. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a wireless encroachment permit unless paid as a refundable deposit. All fees must be paid in full before any permit shall be issued from the City. Application processing fees must be paid at the time that the application is submitted. These fees are for permit processing and issuance only and are in addition to any other applicable fee or any separate payment that may be required for rent of City infrastructure.

D. **Waivers**. Requests for waivers from any requirement of this section shall be made in writing to the Director. The Director may grant or deny a request for a waiver pursuant to this subsection. The Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case

basis, and (2) narrowly-tailored to minimize deviation from the requirements of the City Code.

E. **Shot Clock.** The City acknowledges there are federal and state shot clocks which may be applicable to an application for a proposed wireless facility. As such, the applicant is required to provide the City written notice when it believes any applicable shot clock is about to expire, which the applicant shall ensure is received by the City (e.g., overnight mail) no later than 20 days prior to the alleged expiration.

12.20.070 ADMINISTRATIVE REVIEW

A. The following wireless encroachment permit applications are subject to administrative review:
   1. Routine maintenance to an existing WCF.
   2. Eligible facilities requests.
B. The Director may designate staff to review and approve applications for administrative review. These applications are reviewed as an "over the counter" permit.
C. Administrative review approval shall be granted if the Director, or designee, finds that:
   1. Application is complete;
   2. The proposed facility meets the definition for the type of activity proposed;
   3. The proposed facility complies with the requirements of the City Code and all other applicable laws.
D. Following administrative review and approval of a wireless encroachment permit is issued, the applicant may pursue construction and other permits and inspections as required. A wireless encroachment permit issued under this section is not valid without all required construction and other permits and any required license under Section 12.20.110.

12.20.080 DISCRETIONARY REVIEW

A. The following applications are subject to discretionary review:
   1. Small cell facilities.
B. Applications for discretionary review shall require noticing as follows:
   1. The Director shall provide notice by First Class mail for all application at least 10 calendar days before a decision on the applications is made to property owners and, if feasible, tenants, located within 300 feet from each antenna location being proposed. The notice shall describe the proposal and the 14-day comment period. The Director will accept comments from the public during the comment period.
C. The Director, or designee, is the review authority for discretionary review applications.

D. Determination. Following the fourteen-day comment period, the Director shall review the application, pertinent documentation and public comments, and issue a decision and mail it to the applicant and any person that submitted written comments on the application. The following findings are prerequisites of an approval.
   1. The proposed facility complies with all of the applicable provisions the City Code.
   2. The proposed facility will not incommode the public use of the PROW.
   3. The proposed construction plan and schedule will not unduly interfere with the public's use of the PROW.
   4. The proposed facility will comply with any standards adopted by the Director under Section 12.20.040(A).
   5. The proposed facility is in compliance with all federal and state standards and laws.

E. The permit issued under this section is not valid without all required traffic control plans, construction and other permits and any required license under Section 12.20.110.

12.20.090 INCOMPLETE APPLICATIONS AND APPLICATIONS DENIED WITHOUT PREJUDICE

A. The Director shall review all applications and provide written notice of incompleteness, including the materials omitted, in conformity with state, local, and federal law.

B. The Director shall deny, in writing, an application without prejudice if the City has sent the applicant a communication requiring a response from the applicant and more than 60 days lapse without a response from the applicant. Once an application has been denied without prejudice, it may not be reopened and a new application must be made. No refunds of fees will be provided for applications denied without prejudice pursuant to this section.

12.20.100 INDEPENDENT CONSULTANTS

A. **Independent Consultants**. The Director or the Appeal Body, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

Where the City determines that it requires expert assistance in evaluating an application, the City may hire a consultant and the fee charged by the consultant shall be reimbursed to the City by the applicant regardless of the outcome of the application.

12.20.110 MUNICIPAL INFRASTRUCTURE

The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to an agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement.

12.20.120 CONSTRUCTION AND OTHER PERMITS

Concurrent with the processing of and any required license, an applicant may begin the process of applying for other required and/or traffic control plans and any other permit required by law. These permits shall not be issued until the two (2) day appeal period as referenced in Section 12.20.040 has passed, or the decision on the wireless encroachment permit application becomes final.

12.20.130 INSPECTION AND REPORTING

The owner of the WCF when directed by the City must perform an inspection of the WCF and submit a report to the Director on the condition of the system to include any identified concerns and corrective action taken. Further, as the City performs maintenance on City infrastructure additional maintenance concerns may be identified. These will be reported to the owner of the WCF. The City shall give the applicant 30 days to correct the identified maintenance concerns after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. Prior to the issuance of a permit under this Chapter, the owner of the WCF shall sign an affidavit attesting to understanding the City's requirement for performance of annual inspections and reporting.

12.020.140 REVOCATION AND APPEAL OF REVOCATION

Any permit or other authorized use of the PROW granted under this Chapter may be revoked or modified for cause in accordance with the provisions of this Section.

A. Revocation proceedings may be initiated by the Director.
B. Public Notice, Hearing and Action. After conducting a duly-noticed public hearing, the Director shall act on the proposed revocation.
C. Required Findings. The Director may revoke or modify the permit if it makes any of the following findings:
    1. The permittee obtained the approval by means of fraud or misrepresentation of a material fact;

2. The permittee substantially expanded or altered the use or structure beyond what is set forth in the permit or substantially changed the installation's character;
3. The use in question has ceased to exist or has been suspended for time periods based on the type of facility outlined in Section 12.20.150 (A) (21).
4. Failure to comply with any condition of a permit issued;
5. Failure to comply with this Chapter;
6. A substantive change of law affecting a utility's authority to occupy or use the PROW of the City's ability to impose regulations relating such occupation or use;
7. A facility interference with a City project;
8. A facility's interference with vehicular or pedestrian use of the PROW; or
9. Failure to make a safe and timely restoration of the PROW.

D. Notice of action. The Director shall issue a written determination of revocation and mail the determination to the WCF owner within 10 calendar days of such determination.

E. A permittee whose permit or right has been revoked may have the revocation reviewed, upon written appeal, to the Appeal Body as follows:
   1. File such appeal with the City Clerk within fourteen (14) calendar days of the revocation, and
   2. Provide a statement of any reasons why the permittee believes that the revocation should be reviewed.

12.20.150 CONDITIONS OF APPROVAL

A. **Generally.** In addition to any supplemental conditions imposed by the Director or Appeal Body, all permits granted pursuant to this Chapter shall, must comply with all the policies and standards promulgated by the Director pursuant to this Chapter and be subject to the following conditions, unless modified by the approving authority. Further, if an application were ever deemed approved by application of law, these same conditions would be applicable:
   1. *Code Compliance*. The permittee shall at all times comply with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of PROW. The Permittee is responsible for obtaining permits from other permitting agencies, including but not limited to the California Coastal Commission, California Fish and Wildlife, Santa Barbara Flood Control District, and the Regional Water Quality Control Board.
   2. *Permit Duration.* A wireless encroachment permit shall be valid for the same time period as the time period associated with the lease agreement, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of the lease agreement term, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding

a wireless encroachment permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.

3. *Timing of Installation*. The installation and construction authorized by a wireless encroachment permit shall begin within ninety (90 days) after its approval, or it will expire without further action by the City. The installation and construction authorized by a wireless encroachment permit shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within thirty (30) days following the day construction commenced.
4. *Commencement of Operations*. The operation of the approved facility shall commence no later than thirty (30) days after the completion of installation, or the wireless encroachment permit will expire without further action by the City.
5. *As-Built/Record Drawings.* The Permittee shall submit an as-built/record drawing within ninety (90) days after installation of the facility. As-built record drawings shall be provided in an electronic format acceptable to the City.
6. *Inspections; Emergencies*. The Director may enter onto the facility area to inspect the facility anytime during an emergency and provide notice to the permittee within 48 hours of an emergency. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the Director. The Director reserves the right to enter or direct his or her designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The Director shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
7. *Reporting; Ongoing.* The Permittee shall submit annually, at a minimum, report regarding the maintenance status of the system as outlined in Section 12.20.130. The Permittee shall submit the operation status of WCF attached to traffic signal on a quarterly basis (every 3 months) and yearly (every 12 months) for WCF attached to street lights. All reports must be submitted to the Director.

8. *Contact*. The permittee shall always maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person.
9. *Insurance.* Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of at least $1,000,000 per occurrence for bodily injury and property damage and at least $5,000,000 general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
10. *Indemnities*. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
11. *Performance Security.* Prior to issuance of a wireless encroachment permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance surety in the form of a letter of credit or other security acceptable to the Director for the removal of the facility in the event that the use is abandoned, or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal

to $5,000 per street light and/or public/private poles and $20,000 per traffic signal during the timeframe of the lease. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.

12. *Adverse Impacts on Adjacent Properties*. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.
13. *Noninterference.* Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the Permittee shall provide the City with documentation establishing to the city's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within PROW or city utility easement to be affected by Permittee's facilities.
14. *No Right, Title, or Interest.* The permission granted by a wireless encroachment permit shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, or any part thereof, shall vest or accrue in Permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.
15. *No Possessory Interest.* No possessory interest is created by a wireless encroachment permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a wireless encroachment permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee’s right to possession, occupancy, or use

of any public property pursuant to any right of possession, occupancy, or use created by this permit.

16. *General Maintenance*. The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the permittee within forty-eight (48) hours after notification from the City.
17. *RF Exposure Compliance*. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
18. *Testing*. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that falls or is observed on a weekday. In addition, testing is prohibited on weekend days and in the evenings between 4:30 pm to 8:30 am.
19. *Modifications*. No changes shall be made to the approved plans without review and approval in accordance with this Chapter.
20. *Conflicts with Improvements*. For all facilities located within the PROW, the permittee shall remove or relocate, at its expense and without expense to the city, any or all of its facilities when such removal or relocation is deemed necessary by the city by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
21. *Abandonment.* If a facility located on a traffic signal is not operated for a continuous period of ninety (90) days or if a facility located on a streetlight or public/private pole is not operated for a continuous period of ninety (90) days, the wireless encroachment permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the ninety (90) days (i) the Director or Appeal Body has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No

later than ninety (90) days from the date the facility is determined to have ceased operation, or the permittee has notified the Director or Appeal Body of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.

22. *Encourage Co-location*. Where the facility site is capable of accommodating a co-located facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow co-location of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
23. *Records.* The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
24. *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.
25. *Other Permits*. The applicant is responsible for obtaining permits from permitting agencies, including but not limited to California Coastal Commission, California Fish and Wildlife, US Fish and

Wildlife, Santa Barbara County Flood Control District, and Regional Water Quality Control Board. Failure to comply with other permitting agency requirements/permits may be grounds for revocation of this Encroachment Permit.

26. *Lease Agreement*. Prior to the wireless encroachment permit becoming effective, the applicant must execute a Lease Agreement or other agreement as determined appropriate by and with the City of Goleta prior to constructing, attaching, or operating a facility within the City's PROW. A wireless encroachment permit is not a substitute for such agreement.
27. *Use of Generators*. Generators that support wireless facilities are prohibited from being placed in PROW and within setback areas on adjacent private properties.
28. *Electrical Source*. Wireless infrastructure providers must have their own electrical metering/source for their use of electricity.
29. *Prevention of Graffiti*. Installation design must prevent creating an attractive nuisance and must deter incidents of graffiti, vandalism and unauthorized access such as climbing.
30. *Existing Trees.* All existing trees in the PROW must be protected in place. If a street tree is removed or damaged because of the installation or maintenance of the small cell antenna, then the affected street tree must be replaced at a three (3) to one (1) ratio with City approved street trees type in a location(s) determined by the City.
31. *Compliance with Americans with Disabilities Act*. Wireless facilities cannot endanger public/property, impeded the flow of vehicular or pedestrian traffic, impair the use of poles, traffic signs, traffic signals, outdoor dining areas, emergency facilities or result in a failure to comply with the Americans with Disabilities Act.
32. *Signs*. Installation of signs are prohibited, except those that contain safety warnings or decals that indicate ownership or equipment as outlined in Section A of this document.
33. *Landscaping*. Wireless infrastructure providers are required to maintain or enhance existing landscaping consistent with surrounding vegetation.
34. *Passive cooling*. In residential areas, only passive cooling systems are permitted. If a fan is needed in non-residential areas, a cooling fan with a noise profile that does not exceed 50 decibels must be used.
35. *No Lighting unless FAA Required*. No facility may be illuminated unless specifically required by the Federal Aviation Administration (FAA) or other government agency. Beacon lights are not permitted unless required by the FAA or other government agency.
36. *Height Calculations*. Legally required lightning arresters and beacons must be included when calculating the height of facilities.

37. *Shielding of Lights*. Any required lighting must be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhood.
38. *Use of Motion Sensitive Lights.* Unless otherwise required under FAA or Federal Communications Commission (FCC) regulations, applicants may install only timed or motion-sensitive light controllers and must deflect lights to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.

B. **Eligible Facilities Requests**. In addition to the conditions provided in Section 12.20.150 of this Chapter and any supplemental conditions imposed by the Director or Appeal Body, as the case may be, all permits for an eligible facility requests granted pursuant to this Chapter shall be subject to the following additional conditions, unless modified by the approving authority:
    1. *Permit subject to conditions of underlying permit.* Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
    2. *No permit term extension*. The city's grant or grant by operation of law of an eligible facility request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city's grant or grant by operation of law of an eligible facility request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
    3. *No waiver of standing*. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. **Small Cell Facilities Requests**. In addition to the conditions provided in Section 12.20.150 of this Chapter and any supplemental conditions imposed by the Public Works Director or the Appeal Body, as the case may be, all permits for a small cell facility granted pursuant to this Chapter shall be subject to the following condition, unless modified by the approving authority:
    1. *No waiver of standing*. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules

related to small cell facilities, or any modification to those FCC orders or rules.

12.20.160 BREACH; TERMINATION OF PERMIT

A. **For breach.** A wireless encroachment permit may be revoked for failure to comply with the conditions of the permit or applicable law. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

B. **For installation without a permit.** A wireless facility installed without a wireless encroachment permit (except for those exempted by this Chapter must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the PROW need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

C. **Municipal Infraction.** Any violation of this Chapter will be subject to the same penalties as a violation of the Chapters 1.02 and 12.13 of the Goleta Municipal Code and the associated lease agreement.

12.20.170 INFRASTRUCTURE CONTROLLED BY CITY

The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement.

12.20.180 NONDISCRIMINATION

In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or PROW user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the PROW.

ATTACHMENT 3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GOLETA, CALIFORNIA, ESTABLISHING A FEE FOR WIRELESS ENCROACHMENT PERMITS.

RESOLUTION NO. 19-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GOLETA, CALIFORNIA, ESTABLISHING A FEE FOR WIRELESS ENCROACHMENT PERMITS

WHEREAS, Ordinance 19-XX amends Title 20 of the Goleta Municipal Code to add Chapter 12.20 which creates a regulations for the installation of wireless services in the City's public rights-of-way (ROW); and

WHEREAS Section 12.20 of the Goleta Municipal Code requires approval of a wireless encroachment permit to install and operate wireless facilities in the ROW; and

WHEREAS the City Council wishes to establish a fee to process wireless encroachment permits; and

WHEREAS the purpose of the setting of fees is to cover the City's costs for processing applications for wireless encroachment permits; and

WHEREAS the fee amounts established herein are based upon the reasonable cost of providing the services and regulatory activity; and

WHEREAS, on May 7, 2019, the City Council held a duly noticed public hearing at which time all interested parties were heard.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLETA, AS FOLLOWS:

SECTION 1. Findings. The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. Administration. The collection, processing, and other acts contemplated in this Resolution shall be administered by the Public Works Director, who is hereby authorized to take all actions on behalf of the City with regard to this Resolution.

SECTION 3. Fee. At the time of applying for a wireless encroachment permit, an applicant shall pay a fee (or deposit) in the amount set forth in the schedule below. If a deposit is required, the applicant shall be refunded the balance of the deposit remaining after the application is fully processed (if any). The City may request the applicant replenish the deposit with additional funds to cover any additional costs to process the application.

Permit	Deposit
Wireless Encroachment Permit	$2,000

SECTION 4. Severability. If any provision of this Resolution or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Resolution that can be given effect without the invalid provision or application, and to this extent, the provisions of this Resolution are severable. The City Council declares that it would have adopted this Resolution irrespective of the invalidity of any portion thereof.

SECTION 5. Certification of Resolution. The City Clerk shall certify to the passage, and adoption of this resolution and enter it into the book of original resolution.

SECTION 5. **Records**. The documents and materials associated with this Resolution that constitute the record of proceedings on which the City Council's findings and determinations are based are located at 130 Cremona Drive, Suite B, Goleta, CA 93117.

SECTION 7. Publication of Resolution. The City Clerk shall certify the adoption of this Resolution and cause it or a summary of it to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of Goleta, and shall post a certified copy of this Resolution, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

SECTION 8. Effective Date. This Resolution becomes effective upon adoption. The proposed development review fees will come effective sixty (60) days after adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this __ day of _____ 2019.

_____
PAULA PEROTTE, MAYOR

ATTEST:

_____
DEBORAH S. LOPEZ
CITY CLERK

APPROVED AS TO FORM:

_____
MICHAEL JENKINS
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF GOLETA)

I, DEBORAH S. LOPEZ, City Clerk of the City of Goleta, California, DO HEREBY CERTIFY that the foregoing Resolution No. 19-__ was duly adopted by the City Council of the City of Goleta at a regular meeting held on the ___ day of _____, 2019 by the following vote of the Council:

AYES:

NOES:

ABSENT:

(SEAL)

_____
DEBORAH S. LOPEZ
CITY CLERK

ATTACHMENT 4

Master License Agreement

CITY OF GOLETA MUNICIPAL FACILITY LICENSE AGREEMENT FOR WIRELESS FACILITIES ATTACHING TO CITY INFRASTRUCTURE IN THE PUBLIC RIGHT OF WAY

THIS MUNICIPAL FACILITY LICENSE AGREEMENT (the "Agreement") is dated as of _____, 20___ (the date fully executed by all parties, referred to herein as "Effective Date"), and entered into by and between the City of Goleta, a California municipal corporation (the "Licensor"), and _____, a _____ ("Licensee"). Licensor and Licensee are referred to herein collectively as the "Parties" or individually as a "Party."

Recitals

A. WHEREAS, the Licensor is the owner of certain Municipal Facilities (as defined below) located in the Rights-of-Way (as defined below) of the City of Goleta ("City");

B. WHEREAS, Licensee is authorized to conduct business as a telephone corporation in the State of California;

C. WHEREAS, Licensee desires to use space on certain of the Licensor's Municipal Facilities in the Rights-of-Way to construct, attach, install, operate, and maintain of its Equipment (as defined below) ;

D. WHEREAS, Licensor is willing to allow Licensee to use and physically occupy portions of the Municipal Facilities in the Rights-of-Way subject to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. DEFINITIONS. The following definitions shall apply generally to the provisions of this Agreement:

1.1 "Equipment" means the equipment cabinets, antennas, utilities, and fiber optic cables, wires, and related equipment, whether referred to individually or collectively, to be installed on a Municipal Facility and operated by Licensee under a particular Supplement.

1.2 "Hazardous Substance" means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including, but not limited to, petroleum products and asbestos.

1.3 "Laws" means any and all applicable statutes, codes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, court orders, or other requirements of the Licensor or other governmental agency having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

1.4 "License Fee" means the compensation paid under any Supplement for use of the Municipal Facilities.

1.5 "Make-Ready Work" means the work required on or in a Municipal Facility to create space for the Equipment, and/or replacing and/or reinforcing the existing Municipal Facility to accommodate Equipment including, but not limited to, rearrangement or transfer of existing Equipment and the facilities of other entities, and Municipal Facility relocation and replacement if applicable.

1.6 "Municipal Facilities" means Licensor-owned structures, objects, and equipment in the ROW, including, but not limited to, street lights , traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW, and may refer to such facilities in the singular or plural, as appropriate to the context in which used. The term includes Replacement Facilities referred to in Section 4.1.3.

1.7 "Person" means and includes any individual, partnership of any kind, corporation, limited liability company, association, joint venture, or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns, or any combination of such persons.

1.8 "PUC" means the California Public Utilities Commission.

1.9 "Right(s)-of-Way" or "ROW" means the improved or unimproved surface or subsurface of any public street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. Right-of-Way includes public streets, roads, lanes, alleys, sidewalks, medians, parkways, public utility easements, and landscaped lots. The Public Right-of-Way does not include private streets.

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

1.11 "Supplement" shall mean each separate authorization, granted by Licensor to Licensee with regard to a specific Equipment installation, the form of which is attached hereto as Exhibit A, each and every of which shall be subject to the terms and conditions of this Agreement.

1.12 "Transfer" means any transaction in which the rights and/or obligations held by Licensee under this Agreement or a Supplement are transferred, directly or indirectly, in whole or in part to a party other than Licensee.

2. TERM; SUPPLEMENT TERM.

2.1 Term. The initial term of this Agreement shall be for a period of 10 years (the "Initial Term"), commencing on the Effective Date, unless sooner terminated as stated herein. Provided that Licensee is not in default of the Agreement or any Supplement following written notice and the expiration of any applicable cure period, this Agreement shall be automatically renewed for one (1) five (5) year renewal term ("Renewal Term"), unless either party gives the

other party written notice of the intent not to renew this Agreement at least six (6) months prior to the expiration of the Initial Term or any Renewal Term, as applicable. The Initial Term and all Renewal Terms shall be collectively referred to herein as the "Term." Any holding over after the termination or expiration of the Term shall constitute a default by Licensee, notwithstanding that Licensor may elect to accept one or more payments of fees from Licensee after such default occurs.

2.2 Supplement Term. Unless otherwise specified in a Supplement, the initial term for each particular Supplement shall begin on its effective date ("Supplement Effective Date") and shall end upon the expiration of the Term, unless such individual Supplement is earlier terminated or this Agreement is extended or terminated, as provided for herein (the "Supplement Term"). All of the provisions of this Agreement shall be in effect during the Supplement Term. The expiration or termination of the Agreement shall immediately terminate all Supplements. Any holding over after the expiration of the Supplement Term shall constitute a default by Licensee, notwithstanding that Licensor may elect to accept one or more payments of fees from Licensee after such default occurs.

3. REPRESENTATION CONCERNING SERVICES; NO AUTHORIZATION TO PROVIDE OTHER SERVICES. Licensee represents, warrants, and covenants that its Equipment installed pursuant to this Agreement and each Supplement will be utilized solely for providing the Services, and Licensee is not authorized to and shall not use its Equipment installed on Municipal Facilities to offer or provide any other services not specified herein without Licensor consent. At any time that Licensee ceases to operate as a provider of Services under federal or state law, it shall provide written notice of the same to Licensor within seven (7) days of such cessation, at which time the Licensor shall have the option, in its sole discretion and upon six (6) months' written notice to Licensee, to terminate this Agreement and to require the removal of Licensee's Equipment from the ROW and from Municipal Facilities, including the cost of any site remediation, at no cost to the Licensor, without any liability to Licensee related directly or indirectly to such termination.

4. SCOPE OF AGREEMENT. Licensee may only use Municipal Facilities pursuant to an approved Supplement. Any and all rights expressly granted to Licensee under this Agreement shall be exercised at Licensee's sole cost and expense, and shall be subject to the restrictions set forth herein

4.1 Attachment to Municipal Facilities. Subject to the conditions herein, Licensor hereby authorizes and permits Licensee to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment on identified Municipal Facilities located in the ROW for the purpose of providing Services.

4.1.1 Licensee will submit to the authorized representative of the Licensor an application as provided by the City on it's website, which may be updated from time to time by the Public Works Director("Application") hereto including a proposed design for any proposed Equipment installations that identifies both the Equipment and the Municipal Facilities Licensee proposes to use. One Application is required per Municipal Facility.

4.1.2 Licensor may approve, approve with conditions, or disapprove an Application in its sole discretion; provided however, that Licensor shall not unreasonably delay its decision. Any approved Equipment shall be included as part of the applicable Supplement.

4.1.3 If Licensee submits an Application to use a Municipal Facility that is structurally inadequate to accommodate its proposed Equipment, Licensor may permit the replacement of the Municipal Facility (a "Replacement Facility") with one that is acceptable to and approved by the Licensor as part of the applicable Supplement. Any Replacement Facility shall be installed and maintained in accordance with Section 6 of this Agreement.

4.2 Unmetered electricity only. Licensee is solely responsible for procuring electricity for its Equipment and directly paying its chosen electricity provider for such services. The Licensor is not responsible for managing Licensee's electricity needs, payments, or for supplying electricity to the Equipment. Notwithstanding the foregoing, Licensee shall procure only unmetered electricity services.

4.3 Additional Authority. Nothing in this Agreement shall limit in any way Licensee's obligation to obtain any additional required regulatory approvals or permits from any City department, board, commission, or other governmental agency that has regulatory authority over the Licensee's proposed activities involving use of the Municipal Facilities in the ROW.

4.4 No Interference. Licensee acknowledges and agrees that the primary purpose of the Municipal Facilities is to serve the Licensor and the public. In the performance and exercise of its rights and obligations under this Agreement, Licensee shall not interfere in any manner with Licensor's own services or the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the Licensor, electroliers, cable television, location monitoring services, public safety and other then existing telecommunications equipment, utilities, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable laws or this Agreement. If such interference should occur, Licensee shall discontinue using the Equipment, methodology, or technology that causes the interference until such time as Licensee takes corrective measures to eliminate such interference. In the event that such interference does not cease promptly, Licensee acknowledges that continuing interference may cause irreparable injury and harm, and therefore, in addition to any other remedies, and without limitation of any other remedy, Licensor shall be entitled to seek temporary and permanent injunctions against the breach of this Subsection. Notwithstanding the foregoing, Licensor and Licensee agree to work in good faith with each other and any other affected party to resolve any interference to or by Licensee.

4.5 Permits; Default. In addition to any other remedies available hereunder, whenever Licensee is in default of this Agreement or an applicable Supplement, after notice and applicable cure periods, Licensor may deny further encroachment, excavation, or similar permits for work in connection with installations under this Agreement until such time as Licensee cures all of its defaults.

4.6 Compliance with Laws. Licensee shall comply with all Laws in the exercise and performance of its rights and obligations under this Agreement.

4.7 Non-Exclusive Use Rights. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Licensee under this Agreement

shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the Licensor to use, and to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities, exclusively or concurrently with any other person or persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title (collectively, "Encumbrances") which may affect the ROW or Municipal Facilities now or at any time during the term of this Agreement, including, without limitation any Encumbrances granted, created, or allowed by the Licensor at any time.

5. COMPENSATION. Licensee shall be solely responsible for the payment of all fees in connection with Licensee's performance under this Agreement, including, but not limited to, those set forth below.

5.1 One Time Fees. The Licensor activities described in Section 5.1 are "One-Time Fees" that reimburses the City for its costs associated with reviewing and approving applications to attach Equipment on identified Municipal Facilities located in the ROW, this Agreement and Supplements to this Agreement for additional locations. The Licensor shall track its time spent reviewing the Licensee submittals for Licenses, Supplements and associated permit activities described below, and charge its hourly rate for any time spent above the amount to be recovered by any established fee. The fee amounts shall be assessed and administered consistent with standard Licensor practice and fee schedule(s) as currently adopted and subsequently amended or replaced, in a manner consistent with applicable law.

5.1.1 Permit Fees. Licensee shall be responsible for paying all costs associated with City review, processing and inspection as part of all permit applications filed for the installation, modification, maintenance and removal of Equipment on identified Municipal Facilities located in the ROW.

5.1.2 License and Supplement Fee. Licensee shall be responsible for paying all costs associated with City review and processing of this License and any Supplements thereto (or any amendment thereto) and/or the other administrative review, consultation and inspection described in this License, including review of Company submittals (the "License Fees").

5.2 License Fees

5.2.1 Rent. Licensee acknowledges that the FCC has adopted a Declaratory Ruling (FCC 18-133) that relates to the rent which went into effect on January 14, 2019 but that Declaratory Ruling is currently the subject of litigation. Paragraphs 5.2.2, 5.2.3 and 5.2.4 govern the payment of rent and how it may be impacted by the Declaratory Ruling and the resolution of related litigation during the Term and any renewal terms.

5.2.2 During any period in which the FCC Declaratory Ruling (FCC 18-133) is in effect and during any period in which the Alternate Rent provisions in paragraph 5.2.3 are not applicable, the Licensee shall pay Rent as described in this

paragraph. Licensee shall pay to the Licensor the base amount of two hundred and seventy dollars ($270.00) per calendar year for each location covered by a Supplement. The base amount under all Supplements shall be subject to an annual adjustment of ___ percent (__%) applied on each anniversary of the Effective Date. Any new Supplements entered into during a given year shall commence at the rent, as adjusted by this Section to reflect the then-current rate. (the "Rent"). Rent for the first calendar year of a Supplement for each location shall be pro-rated based on the number of days covered from the Supplement Effective Date to December 31. The first payment of Rent shall be paid on the Supplement Effective Date. Every payment of Rent, after the first payment, shall be due and payable in advance on January 1 of each calendar year throughout the term of each such Supplement. There shall be no refunds of Rent paid due to the termination or expiration of the License for any reason.

5.2.3 Alternate Rent. In the event the relevant provisions of the FCC Declaratory Ruling cease to be effective, (for example, because they are stayed after having gone into effect, or they are vacated or invalidated and have not been replaced by the FCC with an alternative provision setting a specific amount as Rent), the Licensee shall automatically and immediately be obligated to pay Alternate Rent as described in this paragraph and paragraph 5.2.3, if applicable. For each location covered by a Supplement, Licensee shall pay to the Licensor alternate rent in the base amount of two thousand five hundred dollars ($2,500.00) per calendar year. The base amount under all Supplements shall be subject to an annual adjustment of percent (4%) applied on each anniversary of the Effective Date. ("Alternate Rent"). Alternate Rent for the first calendar year of a Supplement for each individual location shall be pro-rated based on the number of days covered from the Supplement Effective Date to December 31. The first payment of Alternate Rent shall be paid on the Supplement Effective Date. Every payment of Alternate Rent, after the first payment, shall be due and payable in advance on January 1 of each calendar year throughout the term of each such Supplement. There shall be no refunds of Alternate Rent paid due to the termination or expiration of the License for any reason.

5.2.4 The Licensor agrees that irrespective of whether the relevant provisions of the FCC Declaratory Ruling (FCC 18-133) cease to be effective, no Alternate Rent shall be due for any periods during which the relevant provisions of the FCC Declaratory Ruling were in effect. However, if Licensee has paid Rent pursuant to the provisions of Section 5.2.2 above for a calendar year, and the relevant provisions of the FCC Declaratory Ruling subsequently cease to be effective during the same calendar year, the Licensee shall pay the difference between the Rent and the Alternate Rent for the period from the date the relevant provisions of the FCC Declaratory Ruling ceased to be effective, until December 31 of that year ("Rent Adjustment"). Such Rent Adjustment shall be paid to Licensor on January 1 of the following year.

5.2.5 Receipt of any Rent or Alternate Rent by the Licensor, with knowledge of any breach of this License by Licensee, or of any default on the part of Licensee in

the observance or performance of any of the conditions or covenants of this License, shall not be deemed a waiver of any provision of this License

5.3 Payment.

5.3.1 Licensee shall make the first payment of the License Fee under any Supplement within forty-five (45) days of the Supplement Effective Date (as defined therein). The amount of the first payment of the License Fee for any Supplement shall be prorated to cover the period from the Supplement Effective Date of the applicable Supplement to the next anniversary of the Effective Date of this Agreement. Thereafter, the License Fee shall be paid in advance for each Municipal Facility used on or before each anniversary of the Effective Date. Acceptance by Licensor of any payment of the License Fee shall not be deemed a waiver by Licensor of any breach of this Agreement occurring prior thereto, nor will the acceptance by Licensor of any such payment preclude Licensor from later establishing that a greater amount was actually due or from collecting any balance that is due. As a prerequisite to the payment of License Fee, Licensor hereby agrees to provide to Licensee certain documentation (the "License Documentation") evidencing Licensor's interest in, and right to receive payments under, this Agreement, including without limitation: (i) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to Licensee, for any party to whom License Fee payments are to be made pursuant to this Agreement; and (ii) other documentation requested by Licensee in Licensee's reasonable discretion. From time to time during the Term of this Agreement and within thirty (30) days of a written request from Licensee, Licensor agrees to provide updated License Documentation in a form reasonably acceptable to Licensee.

5.3.2 The License Fee shall be paid by check made payable to the City and mailed or delivered to the _____ Department, at the address provided for in Section 10 below. The place and time of payment may be changed at any time by Licensor upon thirty (30) days' written notice to Licensee. Mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt. Licensee assumes all risk of loss and responsibility for late payment charges if payments are made by mail. Notwithstanding the foregoing, upon agreement of the parties, Licensee may pay the License Fee by electronic funds transfer, and if agreed, the Licensor will provide to Licensee bank routing information for such purpose upon request of Licensee.

5.4 Delinquent Payment. A ____ percent (____%) late fee shall be added to the License Fee if not received by Licensor within _____ calendar days after the due date. In addition, all unpaid fees shall accrue interest on the amount due at the rate of ____ percent (____%) until paid in full. All late fees and interest payments shall be treated as part of, and subject to the same terms as, the License Fee under this Agreement.

5.5 Additional Remedies. The late fee set forth in Section 5.6 above is not exclusive, and does not preclude the Licensor from pursuing any other or additional remedies in the event that payments become overdue by more than thirty 30 days.

6. CONSTRUCTION. Licensee shall comply with all applicable federal, state, and local codes related to the construction, installation, operation, maintenance, and control of Licensee's

Equipment installed on Municipal Facilities. Licensee shall not attach, install, maintain, or operate any Equipment on Municipal Facilities without the prior written approval of an authorized representative of the Licensor for each location as evidenced in a signed Supplement. Licensee shall keep the Municipal Facilities free and clear from any liens arising out of any work performed, material furnished, or obligations incurred by or for Licensee.

6.1 Installation and Operation. Within thirty (30) days of the completion of each installation], Licensee shall promptly furnish to Licensor a current list and map that identifies the exact location of all Licensee's Equipment in or on the Municipal Facility. That information must be provided in a format that is compatible with Licensor's information technology, including but not limited to ESRI compatible GIS shapefiles, which Licensor shall provide to Licensee upon request.

6.2 Design Standards. The Equipment and any Replacement Facility shall comply with the design standards set forth in [Insert cite to relevant Code provisions], or any applicable successor provision(s). In the event such standards change, by means of repeal, replacement, or otherwise, Licensee shall modify existing Equipment to conform with such changed standards within sixty (60) days of receiving notice of such changed standards. All future Supplements and modifications to existing Equipment shall be subject to then-current design standards in the [Insert City/Town Code Name]. By entering into this Agreement, Licensee agrees that the design standards required by this Section are technically feasible and reasonably directed at accomplishing the aesthetic goals of Licensor.

6.3 Obtaining Required Permits. Licensee acknowledges that in addition to a signed Supplement, each installation of Equipment and maintenance thereof shall also be subject to then-current City permitting requirements as set out in the City's Municipal Code. Licensee agrees to comply with the current applicable ordinances regarding such installations and maintenance as well as any future regulations that may be adopted by the City related to such installations and maintenance. Licensee shall apply for the appropriate permits and pay any standard and customary permit fees.

6.4 Relocation and Displacement of Equipment.

6.4.1 This Agreement creates no right for Licensee to receive any relocation assistance or payment for any reason under the Relocation Assistance Act, the Uniform Relocation Assistance Act, or under any existing or future law upon any termination of tenancy.

6.4.2 Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Equipment installations. Licensee shall at Licensor's direction and upon ninety (90) days' prior written notice to Licensee, relocate such Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (b) because the Equipment is interfering with or adversely affecting proper operation of Licensor-owned Municipal Facilities; or (c) to protect or preserve the public health or safety, including, but not limited to, the safe or efficient use of rights-of-way. In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. If

Licensee shall fail to relocate any Equipment as requested by the Licensor within the prescribed time, Licensor shall be entitled to remove or relocate the Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the Licensor.

6.4.3 To the extent the Licensor has actual knowledge thereof, the Licensor will attempt promptly to inform Licensee of the displacement or removal of any Municipal Facility on which any Equipment is located.

6.5 Relocations at Licensee's Request. In the event Licensee desires to relocate any Equipment from one Municipal Facility to another, Licensee shall so advise Licensor. Licensor will use reasonable efforts to accommodate Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement. Licensor may require Licensee to submit an application and/or enter into a new Supplement for the prospective relocation site. Licensee shall be liable for all costs of relocation, including any costs which Licensor may incur.

6.6 Make Ready

6.6.1 Make Ready Work and Costs.

(a) Licensee shall bear responsibility for all Make-Ready Work. If a Person other than Licensee or Licensor would have to rearrange or adjust any of its facilities in order to accommodate new Equipment, Licensee shall be responsible, at Licensee's sole expense, to coordinate such activity. Licensee shall be responsible for directly paying such other Person for its charges for the same. If Licensee is requested by another Person, in comparable circumstances, to relocate or adjust any Equipment to accommodate that Person's facilities, subject to Licensor's written approval of such relocation, Licensee shall reasonably cooperate with such request.

(b) Construction, installation, and operation of the Equipment shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with NESC, and with Licensor's regulatory rules and engineering standards; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant at the time of Licensee's Application.

6.6.2 Notification of Completion of Installation. Within twenty (20) business days of completing the installation of Equipment on each Municipal Facility, Licensee shall notify Licensor of such completion.

6.7 Replacement Facilities

6.7.1 Ownership of Replacement Facilities. Licensor shall own any approved Replacement Facility. Where needed, Licensee shall cooperate with Licensor to transfer ownership and any associated warranties of any Replacement Facility from Licensee to Licensor without charge to Licensor.

6.7.2 Replacement Facility Installation. If Licensee is performing Make-Ready Work, Licensee shall be responsible for providing and installing any approved Replacement Facility.]

6.8 Damage, Maintenance & Repair.

6.8.1 Licensor shall, at Licensee's sole cost and expense: (a) remove, repair, or replace any Equipment that is damaged or becomes detached; and/or (b) repair any damage to ROW, Municipal Facilities, or other property, whether public or private, caused by Licensee, its agents, employees, or contractors in their actions relating to the Equipment. Licensor will conduct this work at Licensee's expense, and coordinate with Licensee so that Licensee may (if needed) reattach any Equipment.

6.8.2 In the event a Replacement Facility needs to be replaced, repaired, or cleared from the ROW for emergency purposes, Licensor will conduct this work at Licensee's expense (which shall be limited to Licensor's reasonable costs), and coordinate with Licensee so that Licensee may (if needed) reattach any Equipment. For any one (1) Replacement Facility installed pursuant to a Supplement, Licensee shall provide Licensor with ____ additional Replacement Facility of the same make and model for Licensor's inventory.

6.8.3 If Licensor does not remove, repair, replace, or otherwise remediate such damage to its Equipment, a Replacement Facility, the ROW, Municipal Facilities, or other property as required in this Section 6.8, the Licensee shall have the option to perform or cause to be performed such removal, repair, or replacement at its sole cost and expense.

6.8.4 Upon the receipt of a demand for payment by the Licensor pursuant to this Section 6.8, Licensee shall within thirty (30) days of such receipt reimburse the Licensor for such costs.

6.9 Change in Equipment. If Licensee desires to install Equipment which is different in any material way from the then-existing and approved Equipment, then Licensee shall first obtain the written approval for the use and installation of such Equipment from an authorized representative of the Licensor. Any such approval shall take the form of an amendment to the applicable Supplement. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide "load" (structural) calculations for all Equipment changes. In addition to the foregoing, Licensee shall comply with any other applicable City permitting or approval process for the Equipment change.

6.10 Unauthorized Equipment. If Licensor discovers any Equipment has been installed on Municipal Facilities without authorization pursuant to a Supplement, Licensor may send an invoice to Licensee for a sum equal to five (5) times the then-current License Fee as compensation for the unauthorized attachments, and, within sixty (60) days from the date of such invoice, Licensee shall (i) pay the invoiced amount to Licensor and submit an Application for the unauthorized Equipment, or (ii) produce documentation showing Licensor's prior approval of the Equipment identified in the invoice. If, in accordance with this Section, Licensee fails to pay all fees and submit the Application or submit documentation satisfactorily showing Licensor's prior approval within sixty (60) days of Licensor's invoice, Licensor may remove the unauthorized

Equipment at Licensee's expense. If Licensor removes such unauthorized Equipment, such Equipment shall become the property of Licensor, who shall have sole rights over such Equipment's disposition. Licensor's removal of unauthorized Equipment shall not release Licensee from its obligation to pay those invoiced fees accruing pursuant to this Section.

6.11 Termination of a Supplement.

6.11.1 Licensee shall have the right to terminate any Supplement on thirty (30) days' notice to Licensor. In the event of such termination, removal of Equipment associated with the terminated Supplement shall be governed by Section 6.12 below and Licensor shall retain any License Fee paid, without refund or setoff.

6.11.2 Licensor shall have the right to terminate any Supplement in any of the following circumstances: if Licensor determines the covered Equipment has been inoperative, or abandoned, for ninety (90) consecutive days; if Licensee's operation under a particular Supplement is deemed by Licensor to endanger or pose a threat to the public health, safety, or welfare or interfere with the normal day-to-day operation of any Licensor department or service; or Licensor is mandated by law, a court order or decision, or the federal, state, or local government to take certain actions that will cause or require the removal of an Equipment. Licensor shall provide written notice to Licensee regarding its intent to terminate the applicable Supplement pursuant to this Section, after which Licensee shall have thirty (30) days to cure. If Licensee does not cure within thirty (30) days following notice, Licensor may then terminate the applicable Supplement upon written notice to Licensee.

6.12 Removal of Equipment. Within thirty (30) days after the expiration or earlier termination of a Supplement, Licensee shall promptly, safely, and carefully remove the Equipment covered by the terminated or expired Supplement from the applicable Municipal Facility and ROW. Within thirty (30) days after the expiration or earlier termination of this Agreement, Licensee shall promptly, safely, and carefully remove all Equipment from all applicable Municipal Facilities and ROW. If Licensee fails to complete removal work pursuant to this Section, then the Licensor, upon written notice to Licensee, shall have the right at the Licensor's sole election, but not the obligation, to perform this removal work and charge Licensee for the actual costs and expenses, including, without limitation, reasonable administrative costs. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the Licensor. After the Licensor receives the reimbursement payment from Licensee for the removal work performed by the Licensor, the Licensor shall promptly make available to Licensee the property belonging to Licensee and removed by the Licensor pursuant to this Section at no additional liability to the Licensor. If the Licensor does not receive reimbursement payment from Licensee within such thirty (30) days, or if Licensor does not elect to remove such items at the Licensor's cost after Licensee's failure to so remove pursuant to this Section, or if Licensee does not remove Licensee's property within thirty (30) days of such property having been made available by the Licensor after Licensee's payment of removal reimbursement as described above, any items of Licensee's property remaining on or about the ROW, Municipal Facilities, or stored by the Licensor after the Licensor's removal thereof may, at the Licensor's option, be deemed abandoned and the Licensor may dispose of such property in any manner by allowed for by Law. Alternatively, the Licensor may elect to take title to the abandoned

property, and Licensee shall submit to the Licensor an instrument satisfactory to the Licensor transferring to the Licensor the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.13 Risk of Loss. Licensee acknowledges and agrees that Licensee, subject to the terms of this Agreement, bears all risks of loss, damage, relocation, or replacement of its Equipment and materials installed in the ROW or on Municipal Facilities pursuant to this Agreement from any cause, and Licensor shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the Licensor's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or gross negligence of the Licensor, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Section 7.3 below.

6.14 Hazardous Substances. Licensee agrees that Licensee, its contractors, subcontractors, and agents, will not use, generate, store, produce, transport, or dispose any Hazardous Substance on, under, about or within the area of a ROW or Municipal Facility in violation of any Law. Except to the extent of the gross negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend, and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services.

6.15 Inspection. Licensor may conduct inspections of Equipment on Municipal Facilities. Except in circumstances where Licensor has special reason to be concerned about potential violations or in case of an emergency, Licensor will give Licensee thirty (30) days' prior written notice of such inspections, and Licensee shall have the right to be present at and observe any such inspections. Licensee shall pay Licensor for its reasonable costs for safety inspections performed for the purpose of determining if a safety violation of which Licensor has provided notice to Licensee has been corrected by Licensee.

6.16 Access. Prior to Licensee accessing its Equipment for non-emergency purposes, Licensee shall a Public Works encroachment permit, at least forty eight (48) hours in advance, to the Licensor at the following email address: publicworkspermits@cityofgoleta.org In the event of an emergency at any time, Licensee will, if time permits, attempt to provide prior telephonic notice to the Licensor at the following telephone number: (805) 961-7575.

7. INDEMNIFICATION AND WAIVER. Licensee agrees to indemnify, defend, protect, and hold harmless the Licensor, its council members, officers, employees, agents and contractors from and against any and all claims, demands, losses, including pole warranty invalidation, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") to the extent arising from, resulting from, or caused by Licensee's activities undertaken pursuant to this Agreement, including, without limitation, the construction, design, use, or operation of the Equipment or provision of the Services,

except to the extent arising from or caused by the gross negligence or willful misconduct of the Licensor, its council members, officers, employees, agents, or contractors.

7.1 Waiver of Claims. Licensee waives any and all claims, demands, causes of action, and rights it may assert against the Licensor on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the control of the Licensor.

7.2 Waiver of Subrogation. Licensee hereby waives and releases any and all rights of action for negligence against Licensor which may hereafter arise on account of damage to Equipment, Municipal Facilities, or to the ROW, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Licensee. This waiver and release shall apply between the parties and shall also apply to any claims under or through either party as a result of any asserted right of subrogation. All such policies of insurance obtained by Licensee concerning the Municipal Facilities, Equipment, or the ROW shall waive the insurer's right of subrogation against the Licensor.

7.3 Limitation on Consequential Damages. Neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

8. PERFORMANCE SECURITY. In order to secure the performance of its obligations under this Agreement, Licensee will provide the following security instrument to the Licensor:

8.1 Performance Security.

Prior to the commencement of any work under this Agreement, Licensee must provide a security in the form of a letter of credit, or another form of security as required by the City, running to the Licensor according to this Section. The amount of the security in the security shall be based on the number of attachments in the following amounts:

Number of Municipal Facilities	Required Security
1-50	$10,000
51-100	$20,000
101-300	$30,000
310-1000	$40,000

The performance security is conditioned upon the faithful performance by Licensee of all the terms and conditions of this Agreement and upon the further condition that, if Licensee fails to comply with any terms or conditions governing this Agreement, there shall be recoverable jointly and severally from the principal and surety of the security any damage or loss suffered by the Licensor as a result, including, without limitation, the full amount of any compensation, indemnification, or costs of removal or abandonment of Licensee's property, plus costs and reasonable attorneys' fees up to the full amount of the performance security**.** Licensee shall keep the performance security in place during the term of this Agreement.

8.2 Assessment of the Bond. The performance security may be assessed by the Licensor for any failure by Licensee to pay Licensor an amount owed under this Agreement, including, but not limited to:

(a) Reimbursement of costs borne by the Licensor to correct violations of the Agreement not corrected by Licensee, after Licensor provides notice and a reasonable opportunity to cure such violations. This shall include, without limitation, removal of Equipment.

(b) Providing monetary remedies or satisfying damages assessed against Licensee due to a material breach of this Agreement.

8.3 Restoration of the Security. Licensee must deposit a sum of money or a replacement instrument sufficient to restore the security to its original amount within thirty (30) days after written notice from the Licensor that any amount has been recovered from the security. Failure to restore the letter of credit to its full amount within thirty (30) days will constitute a material breach of this Agreement. Licensee will be relieved of the foregoing requirement to replenish the letter of credit during the pendency of an appeal from the Licensor's decision to draw on the letter of credit.

8.4 Required Endorsement. The security is subject to the approval of the Licensor and must contain the following endorsement:

> *"This security may not be canceled until sixty (60) days after receipt by the Licensor, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."*

8.5 Reservation of Licensor Rights. The rights reserved by Licensor with respect to the security are in addition to all other rights and remedies Licensor may have under this Agreement or any other Law.

8.6 Admitted Surety Insurer. The financial institution supplying the security shall be an "admitted surety insurer", as defined in California Code of Civil Procedure Section 995.120 and authorized to do business in the State of California.

8.7 Cash Deposit. In lieu of obtaining a security, Licensee shall have the right to instead deposit a cash deposit with Licensor securing Licensee's obligations under this Agreement.

9. INSURANCE. Licensee shall obtain and maintain at all times during the Term (a) Commercial General Liability insurance with a limit of one million ($1,00,000) per occurrence for bodily injury and property damage and five million ($5,000,000) general aggregate including premises-operations, contractual liability, personal injury, and products completed operations; (b) Commercial Automobile Liability insurance covering all owned,-owned, and hired vehicles with a limit of _____($_____) each accident for bodily injury and property damage; and (c) Environmental Liability Insurance with a limit of _____ ($_____) per each occurrence, including coverage for sudden and accidental pollution arising out of handling hazardous materials or wastes, non-hazardous materials or waste, that, when released into the environment, violate Law . The required insurance policies shall name the Licensor, its elected/appointed officials, commission members, officers, representatives, agents, and employees

as additional insured as respects any covered liability arising out of Licensee's performance of work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Upon receipt of notice from its insurer, Licensee shall use its best efforts to provide the Licensor with thirty (30) days prior written notice of cancellation. Licensee shall be responsible for notifying the Licensor of such change or cancellation. Licensee's indemnity and other obligations shall not be limited by the foregoing insurance requirements. If Licensee fails, for any reason, to obtain or maintain insurance coverage required by this Agreement or fails to furnish certificates of insurance as detailed in Section 9.1, such failure shall be deemed a material breach of this Agreement, giving Licensor, in its discretion, the option to terminate this Agreement and obtain damages therefor.

9.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Agreement, Licensee shall file with the Licensor the required certificate(s) of insurance with blanket additional insured endorsements, which shall state the following:

(a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that Licensee's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the Licensor may possess, including any self-insured retentions the Licensor may have; and any other insurance the Licensor does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(c) that Licensee's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the Licensor.

The certificate(s) of insurance with endorsements and notices shall be mailed to the Licensor at the address specified in Section 10 below.

9.2 Workers' Compensation Insurance. Licensee shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than _____ ($_____) and shall furnish the Licensor with a certificate showing proof of such coverage.

9.3 Insurer Criteria. Any insurance provider of Licensee shall be admitted and authorized to do business in the State of California and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "VII."

9.4 Severability of Interest. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

10. NOTICES.

10.1 Method and Delivery of Notices. All notices pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered

or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:

If to the Licensor: _____
[INSERT ADDRESS]
Attn: _____
*Email:*_____

If to Licensee: *[Licensee ADDRESS]*

10.2 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the mail, or the next business day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth in this Section.

11. DEFAULT; CURE; REMEDIES.

11.1 Licensee Default and Notification. This Agreement is granted upon each and every condition herein, and each of the conditions is a material and essential condition to the granting of this Agreement. Except for causes beyond the reasonable control of Licensee, if Licensee fails to comply with any of the conditions and obligations imposed hereunder, and if such failure continues for more than thirty (30) days after written demand from the Licensor to commence the correction of such noncompliance on the part of Licensee, the Licensor shall have the right to revoke and terminate this Agreement by written notice to Licensee, if such failure is in relation to the Agreement as whole, or any individual Supplement, if such failure is in connection solely with such Supplement, in addition to any other rights or remedies set forth in this Agreement or provided by law.

11.2 Cure Period. If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under Licensee's control, the period of time in which Licensee must cure the violation shall be extended for such additional time reasonably necessary to complete the cure, provided that: (a) Licensee has promptly begun to cure; (b) Licensee is diligently pursuing its efforts to cure; and (c) Licensee provides a timeline to complete its cure efforts and responds within twenty-four (24) hours of any status request by Licensor. Licensor may not maintain any action or effect any remedies for default against Licensee, unless and until Licensee has failed to cure the breach within the time periods provided in these Sections 11.1 and 11.2.

11.3 Licensor Default. If Licensor breaches any covenant or obligation of Licensor under this Agreement in any manner, and if Licensor fails to commence to cure such breach within thirty (30) days after receiving written notice from Licensor specifying the violation (or if Licensor fails thereafter to diligently prosecute the cure to completion), then Licensee may enforce any and all of its rights and/or remedies provided under this Agreement or by Law[.

12. ASSIGNMENT AND CUSTOMER EQUIPMENT. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties.

12.1 Licensee shall not assign this Agreement or its rights or obligations to any firm, corporation, individual, or other entity, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, upon thirty (30) days' written notice, either party may assign this Agreement or its rights or obligations to (a) any entity that controls, Licensee may assign or transfer the rights and privileges granted herein to any parent or subsidiary of Licensee, to an entity with or into which Licensee may merge or consolidate, to an entity which Licensee is controlled by, or is under common control of a party; or (b) in connection with the sale or other transfer of such entity or to any purchaser of all or substantially all of Licensee's assets in the FCC market area where the Equipment is located with prior notice to Licensor but without the requirement for Licensor approval, so long as the successor provides written confirmation to Licensor that it is then fully liable to the Licensor for compliance with all terms and conditions of this Agreement. The Licensee shall reimburse the Licensor for all direct and indirect costs and expenses reasonably incurred by the Licensor in considering a request to transfer or assign this Agreement.

12.2 Licensee need not own all components of Equipment subject to this Agreement, and may permit its customers to maintain ownership of Equipment components. However, (1) all Equipment must be wholly under the control and management of Licensee; and Licensee shall be liable for all acts or omissions, and all harms associated with the Equipment whether the same are its acts or omissions, or the acts or omissions of the owner of the Equipment; and (2) Licensee acknowledges and agrees that no rights of ownership in Equipment by Licensee's customers shall permit any such customer to enter upon, or use the any portion of the Municipal Facilities or the Equipment, in any other manner or at any other place, including to add to, or modify or install Equipment, which shall be Licensee's sole responsibility. Further, Licensee may not install Equipment it does not own on Municipal Facilities, unless the entity for on whose behalf the Equipment has been installed acknowledges and agrees, in a form acceptable to the Licensor, that the Licensor has not granted it a consent to be in the ROW for any purpose; that it is bound by Licensee's representations, obligations and duties hereunder; that it shall have no rights or claims against the Licensor of any sort related to the Equipment or Municipal Facilities; that its Equipment may be subject to taxes, fees or assessments as provided in the Laws or the Agreement, and that Licensor may treat any Equipment owned by such entity as if it were owned by Licensee for all purposes (including, but not limited to, removal and relocation); and the Equipment may only be used for the purposes and uses permitted herein. Such acknowledgement may be provided for all Equipment on Municipal Facilities, and need not be provided separately, site by site.

13. RECORDS; AUDITS.

13.1 Records Required by Code. Licensee will maintain complete records pursuant to all applicable Laws.

13.2 Additional Records. The Licensor may require such additional reasonable non-confidential information, records, and documents from Licensee from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Agreement.

13.3 Production of Records. Licensee shall provide such records within twenty (20) business days of a request by the Licensor for production of the same, unless additional time is reasonably needed by Licensee, in which case, Licensee shall have such reasonable time as needed

for the production of the same. If any person other than Licensee maintains records on Licensee's behalf, Licensee shall be responsible for making such records available to the Licensor for auditing purposes pursuant to this Section.

13.4 Public Records. Licensee acknowledges that information submitted to Licensor may be open to public inspection and copying under the Law.

14. MISCELLANEOUS PROVISIONS. The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

14.1 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

14.2 Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

14.3 Contacting Licensee. Licensee shall be available to the staff employees of any Licensor department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The Licensor may contact by telephone the Licensee's network control center operator at telephone number _____.

14.4 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Santa Barbara County, California.

14.5 Change Of Law.

During the Initial Term, in the event that any legislative, regulatory, judicial, or other action ("New Law") affects the rights or obligations of the Parties or any term of the Agreement, the Parties agree that the Agreement shall nonetheless remain in effect until the end of the Initial Term unless mutually agreed to in writing by the Parties.

14.6 Force Majeure. Except for payment of amounts due, neither Party shall have any liability for its delays or its failure of performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes reasonably beyond its control, whether or not similar to the foregoing.

14.7 Attorneys' Fees. Should any dispute arising out of this Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

14.8 "AS IS" condition of Municipal Facilities. Municipal Facilities licensed to Licensee pursuant to this Agreement are licensed to and accepted by Licensee "as is" and with all faults. The Licensor makes no representation or warranty of any kind as to the present or future condition of or suitability of the Municipal Facilities for Licensee's use and disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Municipal Facilities and their merchantability or fitness for a particular purpose. Licensee is solely responsible for investigation and determination of the condition and suitability of any Municipal Facility for Licensee's intended use.

14.9 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in Section 4.2 above. This Agreement shall not be revocable or terminable except as expressly permitted herein.

14.10 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.11 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. In witness whereof, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

14.12 Non-Exclusive Remedies. No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

14.13 No Third-Party Beneficiaries. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Licensor with respect to third parties shall remain as imposed by state law.

14.14 Construction of Agreement. The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

14.15 Effect of Acceptance. Licensee (a) accepts and agrees to comply with this Agreement and all Laws; (b) agrees that this Agreement was entered into pursuant to processes

and procedures consistent with Law; and (c) agrees that it will not raise any claim to the contrary or allege in any claim or proceeding against the Licensor that at the time of acceptance of this Agreement any provision, condition or term of this Agreement was unreasonable or arbitrary, or that at the time of the acceptance of this Agreement any such provision, condition or term was void or unlawful or that the Licensor had no power or authority to make or enforce any such provision, condition, or term.

14.16 Time is of the Essence. Time is of the essence with regard to the performance of all of Licensee's obligations under this Agreement.

14.17 Taxes. Licensee shall be responsible for payment of all fees and taxes charged in connection with the right, title, and interest in and construction, installation, maintenance, and operation of Equipment for the purposes set forth herein.

14.18 Tax Notice. Licensor hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Licensee acknowledges, that this Agreement may create a possessory interest and Licensee may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107.6. Licensee shall pay directly to the appropriate authority, when due, all real and personal property taxes, fees, and assessments, assessed against the area licensed and the Equipment.

14.19 Counterparts. This Agreement (and any Supplement) may be executed in multiple counterparts, including by electronic means, each of which shall be deemed an original, and all such counterparts once assembled together shall constituted one integrated instrument.

[signature page to follow]

SIGNATURE PAGE TO MUNICIPAL FACILITY LICENSE AGREEMENT

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be legally executed as of the Effective Date.

Licensor:

CITY OF _____

By:_____
Name: _____
Title: _____

ATTEST:

_____
_____, Clerk

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: _____
City Attorney

Licensee:

_____

By:_____
Name: _____
Title: _____

Exhibits:

Exhibit A – Supplement

EXHIBIT A

FORM OF SUPPLEMENT

SUPPLEMENT

This Supplement ("Supplement"), is approved by Licensor this _____ day of _____, 20____ (the date executed by all parties, referred herein as "Supplement Effective Date").

1. Supplement. Licensee has submitted an application for approval to use a Municipal Facility pursuant to that certain Municipal Facility License Agreement between Licensor, _____, and Licensee, _____, dated _____, 20__ ("Agreement"). Licensor has reviewed the Application to Use Municipal Facility and grants approval subject to the terms of this Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification, or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein. IF THE SUPPLEMENT IS NOT COUNTER-SIGNED BY LICENSEE AND RETURNED TO LICENSOR WITHIN 30 DAYS AFTER LICENSOR HAS GRANTED APPROVAL, THE SUPPLEMENT SHALL BE VOID AND OF NO LEGAL EFFECT. IF LICENSOR STILL WANTS TO USE THE MUNICIPAL FACILITY, LICENSOR WILL BE REQUIRED TO SUBMIT A NEW APPLICATION AND ASSOCIATED FEES.

2. Licensed Area Description and Location. Licensee shall have the right to use the space on the specific Municipal Facility (the "Licensed Area") depicted in Attachment 1 attached hereto to install Equipment as further listed in Attachment 2 attached hereto.

3. Equipment. The Equipment to be installed at the Licensed Area is described in Attachment 2 and depicted in Attachment 1.

4. Term. The term of this Supplement shall commence on the Supplement Effective Date and continue for in the Term of the Agreement.

5. License Fee. The initial License Fee for this Supplement shall be as follows per year: _____. License Fee is subject to annual increase and is payable in accordance with Section 5 of the Agreement.

6. Performance Security. The amount of the Performance Security shall be _____.

7. Miscellaneous._____.

[signature page follows]

IN WITNESS THEREOF, the parties hereto have caused this Supplement to be legally executed in duplicate, effective upon execution by both parties.

Licensor:

_____

By:_____
Name: _____
Title: _____
Date: _____

Licensee:

Accepted:

_____

By:_____
Name: _____
Title: _____
Date: _____

Attachments:
Attachment 1 – Licensed Area
Attachment 2 – Equipment List and Description

Attachment 1

Licensed Area

[site plan showing licensed area of applicable Municipal Facility and showing proposed Equipment installation]

Attachment 2

Equipment List and Description

ATTACHMENT 5

Design and Development Guidelines.

CITY OF GOLETA
DESIGN AND DEVELOPMENT STANDARDS FOR WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

SECTION 1. PURPOSE. The purpose of these design standards (Standards) is to establish aesthetic and location criteria for wireless facilities in the public right-of-way of the City of Goleta ("City"). These Standards can be amended by the City from time to time.

SECTION 2. DESIGN AND DEVELOPMENT STANDARDS FOR ALL FACILITIES. The following design and development standards shall apply to all wireless facilities in the public right-of-way:

A. Visual Criteria.

1. Generally. Wireless facilities shall be designed in the least visible means possible and be aesthetically compatible with the surrounding area and structures (e.g., color, materials, size, and scale). The City recommends that applicants avoid locations where equipment would be close to windows (especially residential windows), in front of historically/architecturally significant buildings, or in locations where they would disturb views as outlined in the General Plan.

2. Materials and Colors. The materials used shall be non-reflective and non-flammable. Colors and materials of the Antennas, Equipment, Brackets, and Cabling (including shroud and fiber termination enclosure) must be designed, textured, and colored to match the existing pole for aesthetic consistency.

3. Concealment. The wireless facility and pole-mounted equipment should be camouflaged or concealed to blend the facility with surrounding materials and colors of the support structure on which the facility is installed. Concealment elements include, but are not limited to, the following:

   a. Radio frequency (RF) transparent screening or shrouds;

   b. Matching the color of the existing support structure by painting, coating, or otherwise

coloring the wireless facility, equipment, mounting brackets, and cabling;

c. Placing cables and wires inside the pole or beneath conduit of the smallest size possible;

d. Placing facilities at property lines, rather than in front of buildings or residences;

e. Not installing facilities in front of windows;

f. Minimizing the size of the site; and

g. Using paint of durable quality.

B. Location.

1. The City has a preference for the use of existing infrastructure.

2. Discouraged Locations/Zones. Installations on residential streets are discouraged.

3. Curb Setback Requirements. New or replacement poles shall be a minimum of 24 inches from the face of the curb.

4. Strand-Mounted Facilities. Strand-mounted facilities are only prohibited in all residential areas, including, but not limited to, residential streets, residential alleys, or residential backyard easements.

C. Prohibition of Generators. Generators are prohibited in the right-of-way and within setback areas on adjacent private properties.

D. Electric Service. Permittees must have their own electrical metering and source for their electricity. The City strongly encourages site operators to use flat-rate electric service when it would eliminate the need for a meter. Where meters are required, use the narrowest electric meter and disconnect available.

E. Power. A small cell facility on a City-owned wireless support structure/pole may not be used the same power source that provides power for the original purpose of the wireless support structure/pole

F. Security. All equipment and facilities shall be installed in a manner to avoid being an attractive nuisance and to prevent unauthorized access, climbing, and graffiti.

G. Safety. All wireless facilities in the right-of-way, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the right-of-way; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the right-of-way. Further, all wireless facilities and associated equipment in the right-of-way shall comply with Americans with Disabilities Act (ADA) requirements.

H. Noise. In residential areas, only passive cooling systems are permitted unless it can be demonstrated that passive cooling is infeasible. If active cooling features are necessary, they must not exceed either individually or cumulatively 50 dBA. In non-residential areas, wireless facilities and all accessory equipment and transmission equipment must not exceed either individually or cumulatively 60 dBA.

I. Lighting. No facility shall be illuminated unless specially required by the Federal Aviation Administration (FAA) or other government agency. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding area property.

J. Signs. Only signage required by state, federal, local, or electrical utility regulations is allowed. The following is required with regards to radiofrequency (RF) and Node signage:

    a. Utilize the smallest and lowest visibility (e.g. yellow instead of blue) RF warning sticker required. Place the RF sticker as close to the antennas as possible, facing directly out toward the street, or directly away from the street if there is no window within 25 feet of the pole.

    b. Avoid the use of large and highly visible Node (site) identification tags. Use sticker colors that are more muted or the same color as the approved equipment color but with white color lettering. Consider placing the Node ID sticker on the underside of the equipment enclosure

so that it is only visible when standing next to the pole and looking up. If the node ID sticker cannot be placed on the underside of the main equipment area, then place the sticker on the side of the enclosure facing in the direction of travel.

K. Landscaping. In addition to any landscaping used for concealment or screening purposes, the applicant shall propose and install additional landscaping to replace any existing landscaping displaced during construction or installation of the applicant's facility in the right-of-way. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site.

L. Modifications. Any modifications to existing facilities or equipment or collocations shall not defeat the concealment elements of the existing structure/facility.

SECTION 3. DESIGN AND DEVELOPMENT STANDARDS FOR POLE-MOUNTED FACILITIES. In addition to the generally applicable standards set forth in Section 2 of these interim Standards, the design and development standards for pole-mounted facilities in the ROW are as follows:

A. Definition of Pole-Mounted Facility. For purposes of this Resolution, the term "pole-mounted facility" means a wireless facility that is, or is proposed to be, attached to, contained in or on, or otherwise mounted to, in, or on a pole.

B. Poles, Generally. For facilities installed on any pole:

1. Antennas. Antennas and radio relay units (RRUs) shall be pole top-mounted in a shroud. RRUs attached to the side of the pole are discouraged, but if they are required due to technical reasons, should use the smallest RRU volume feasible and be close together with minimal distance from the pole.

2. Dimensions. Maximum dimensions for antennas must not be more than six (6) cubic feet in volume, including any enclosure for the antenna. The maximum height of the shroud and antenna is four (4) feet above the pole. Legally required lightning arresters and beacons must be included when calculating the height of

facilities. The shroud diameter should have nearly the same diameter as the pole.

3. Accessory Equipment. Undergrounding equipment, including RRUs that cannot be placed with the antenna in the shroud, is strongly preferred. Equipment that cannot be undergrounded, should be pole-mounted according to these Design Standards. Ground-mounted equipment is prohibited unless required for technical reasons. If required, ground-mounted equipment shall incorporate camouflaging and shrouding to match the colors, appearance, and materials of existing facilities and screen facilities from public view as much as is technically feasible. Further, if ground-mounted equipment is required, it must be enclosed in cabinets, sized only for the needed equipment and camouflaged using paint that matches the surrounding environment.

4. Cables and Wiring. All cables and wiring must be within the structure in a separate conduit from any City wiring/cables, or if not feasible, within conduit on the exterior of the structure. The conduit must be a color that matches the pole and of the smallest size technically feasible.

5. Small cell facilities must be installed at least eight (8) feet above the ground. If a small cell facility attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the City may require the attachment to be installed no less than sixteen (16) feet above the ground and two (2) feet from the face of the curb.

6. No protrusion from the outer circumference of the existing structure or pole must be more than two (2) feet.

7. Pole Owner Authorization. Proof of authorization from the pole owner is required. If the City owns the pole, then the applicant must enter into an agreement with City to install the pole-mounted facility.

C. Traffic Signal Poles. Installations on traffic signal poles is prohibited.

D. Utility Poles. All installations shall fully comply with the California Public Utilities Commission ("CPUC") General Orders, including, but not limited to General Order 95 ("GO 95"). None of the design standards are meant to conflict with or cause a violation of GO 95, including, but not limited to, its standards for a safe installation on a utility pole. Accordingly, the Standards can be adjusted at the City's discretion to ensure compliance with CPUC rules on safety.

1. Dimensions. Installations on utility poles shall also be pole top-mounted in a shroud. Further, they shall have a maximum height of 72 inches and a maximum diameter of 14.5 inches, including the shroud.

E. Replacement Poles. If an applicant proposes a replacement pole to accommodate the facility:

1. Placement. The base of the replacement pole shall be a minimum of 24 inches away from the face of the curb. Further, a replacement pole must be in the same location as the pole that it is replacing or as close to the original location as possible, taking into account pole owner safety-related requirements and all applicable location and placement standards herein.

2. Design. Replacement poles should match the design (e.g. color, dimensions, height, style, and materials) of the majority of the existing poles in the area or the pole if it is the only pole in the area that is being replaced to the greatest extend feasible. The maximum pole height is 29 feet (3 feet above the City Standard streetlight pole), excluding wireless equipment.

3. Subject to City's approval and execution of a separate agreement, wireless infrastructure providers may remove an existing City-owned streetlight and replace it with an integrated streetlight pole that contains all the wireless infrastructure (in a separate conduit) and provider's equipment concealed within its interior, so long as the replacement streetlight/pole is substantially similar in type, height, color, and texture to the City's streetlight that is being replaced. After installation, integrated streetlights become the property of the City.

F. New Poles.

1. Waiver Required. New poles are prohibited, unless a waiver is approved by the City to prevent a prohibition of service.

2. Design. New poles shall have the same maximum height as existing poles in the surrounding area and a maximum diameter of four (4) inches greater than a City standard street light pole. The poles should be designed so that the cables and wiring can be contained inside the poles, and wooden poles are prohibited. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, distribution pattern/spacing, and alignment. If the new pole can be a Marbelite pole, then it does not need to match the materials of existing poles in the surrounding area. No new poles shall be closer than 250 feet from any other poles.

ATTACHMENT 6

NOTICE OF EXEMPTION

NOTICE OF EXEMPTION (NOE)

To: ☐ Office of Planning and Research
P.O. Box 3044, 1400 Tenth St. Rm. 212
Sacramento, CA 95812-3044

X Clerk of the Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street, Room 407
Santa Barbara, CA 93101

From: City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

Subject: Filing of Notice of Exemption

Project Title: City of Goleta Small Cell Wireless Ordinances, Review Fees, and Design Guidelines

Project Applicant: City of Goleta

Project Location (Address and APN): City-wide

Description of Nature, Purpose and Beneficiaries of Project:

The City of Goleta is adopting an ordinance to govern the placement of Small Cell Wireless Antenna facilities within public rights-of-way in accordance with recent Federal Communications Commission regulations and orders. Public rights-of-way are a uniquely valuable public resource, closely linked with the City's natural beauty and various communities. The regulation of wireless installations in the public rights-of-way is necessary to protect and preserve the aesthetics in the community. In addition, the City is adopting fees to cover the cost of processing such facilities. The beneficiaries of the project are the Wireless Telecommunication providers and ultimately the citizens of Goleta.

Name of Public Agency Approving the Project: City of Goleta

Name of Person or Agency Carrying Out the Project: City of Goleta, Public Works Department

Exempt Status: *(check one)*

☐ Ministerial (Sec. 15268)
☐ Declared Emergency (Sec. 15269 (a))
☐ Emergency Project (Sec. 15269 (b) (c))
☐ Categorical Exemption: *(Insert Type(s) and Section Number(s))*
x Other Statutory Exemption: (Insert Type(s) and Section Number(s)) Section 15378 (not a project); and Section 15061 (b) (3) (if a project, does not have the potential to create a significant impact on the environment.

Reason(s) why the project is exempt:

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of

property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA.

Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines Section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt from CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines §15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility o review in accordance with CEQA.

City of Goleta Contact Person and Telephone Number:

Lisa Prasse Title Date

If filed by the applicant:

1. Attach certified document of exemption finding
2. Has a Notice of Exemption been filed by the public agency approving the project?
   ☐Yes ☐No

Date received for filing at OPR: _____

Note: Authority cited: Section 21083 and 211110, Public Resources Code
Reference: Sections 21108, 21152.1, Public Resources Code