

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF MILPITAS, CALIFORNIA AND MOBILITIE, LLC FOR THE USE OF MUNICIPAL FACILITIES TO INSTALL SMALL CELL ANTENNAS AND ASSOCIATED EQUIPMENT**

This Agreement is made and entered into by and between the **City of Milpitas, California**, a California municipal corporation (“Licensor”) and **Mobilitie, LLC**, a Nevada limited liability company (“Licensee”). Licensor and Licensee may be referred to herein individually as a “Party” or collectively as the “Parties.”

**RECITALS**

This Agreement is made with reference to the following Recitals, each of which is deemed to be a material term and provision of this Agreement:

- A. Licensor is the owner of certain Municipal Facilities (as defined below).
- B. Licensee is duly organized and existing under the laws of the State of Nevada, is authorized to conduct business in the State of California, and holds a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission to provide telecommunications services.
- C. Licensee desires to use space on certain of Licensor’s Municipal Facilities located in the public rights of way and public utilities easements within the jurisdictional limits of the City of Milpitas to locate, place, attach, install, operate, control, and maintain Small Cell Equipment (as defined below) on Licensor’s Municipal Facilities.
- D. Licensee will agree to comply with Licensor’s requirements as provided herein.
- E. Licensee is willing to compensate Licensor in exchange for a right to use and physically occupy portions of the Municipal Facilities as provided herein.

**AGREEMENT**

1. **Definitions and Exhibits.**

1.1. Definitions. For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and derivations shall have the meaning given herein.

- (a) *Code* means Licensor’s Municipal Code.
- (b) *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.
- (c) *Interference* means physical interference and radio frequency interference.

(d) *Laws* means any and all applicable federal, state or local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity or agency (including the Federal Communications Commission (“FCC”) or any successor agency) having joint or several jurisdiction over Licensee’s activities under this Agreement or having jurisdiction that is applicable to any aspect of this Agreement, including the Code (as defined above), that are in force on date of the execution of this Agreement, and as they may be enacted, issued or amended during the term of this Agreement.

(e) *Permit* means a permit issued under the Code, which includes zoning and land use planning permits such as conditional use permits, and those permits that monitor and control improvement, construction or excavation activities, or other work or activity, occurring upon or otherwise affecting the City PROW or public utility easements.

(f) *Physical interference* means where equipment, vegetation or a structure causes reduced use of another’s prior mounted equipment, or an obstruction in a necessary line-of-sign path.

(g) *PROW* (or public right-of-way) shall mean the right-of-way of any street, as defined in the California Vehicle Code used by the general public, owned and/or controlled by the City and part of the City system of streets located within the territorial limits of the City.

(h) *Radio frequency interference* means the radiation or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent equipment.

(i) *Site Supplement* means each separate site license authorization granted by Licensor, pursuant to Section 2 below, and substantially in the form shown on Exhibit A, which shall be subject to the terms and conditions of this Agreement.

(j) *Small Cell Equipment* means compact communications antennas, transmitters, wires, fiber optic cables and other wireless communications equipment (in addition to control boxes, cables and conduit power sources) utilizing small cell technology in compliance with applicable FCC requirements that is used to provide wireless communications, and is specifically identified and described in Exhibit 1 attached to each approved Site Supplement (as defined below). It does not include separate or additional Wi-Fi equipment, unless specifically authorized in an approved Site Supplement.

(k) *Municipal Facilities* means City-owned structures located within the PROW and public utility easements that are designated or approved by Licensor as being suitable for placement of Small Cell Equipment including but not limited to those Licensor-owned street lights defined in Section X-1-3.04 of the Code, traffic light poles, and other similar structures. The term includes Replacement Poles as defined in Section 6 below.

(l) *Term* means the period that this Agreement is in effect as described in Section 3.1 of this Agreement.

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

- (a) Exhibit A: Site Supplement.
- (b) Exhibit B: Minimum Limits of Insurance.

In the event of any conflict or ambiguity between this Agreement together with the above-referenced exhibits, and any approved Site Supplement, the approved Site Supplement (but only with respect to the subject matter addressed therein) shall govern and prevail.

## 2. License Grant and Terms.

2.1. Scope. Licensor, acting in its proprietary capacity as the owner of Municipal Facilities in the PROW and public utility easements, does hereby grant to Licensee a nonexclusive license to use the Municipal Facilities identified in Exhibit 1 to each approved Site Supplement to attach, install, operate, maintain, remove, reattach, reinstall, and replace the Small Cell Equipment identified in Exhibit 1 to each such Site Supplement. This grant is subject to the terms, conditions and other provisions set forth in this Agreement.

2.2. Use of Licensor Municipal Facilities. An approved Site Supplement allows Licensee to access, occupy and use allocated available space on each of the identified Municipal Facilities in Exhibit 1 to the corresponding Site Supplement to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Small Cell Equipment, as identified in such Exhibit 1. Licensee shall have access to the Municipal Facilities upon which Small Cell Equipment is installed 24 hours a day, 7 days a week.

2.3. Limitations on Use. Except as otherwise expressly provided herein, the Site Supplement does not authorize Licensee to:

(a) Install, occupy or use any City-owned poles, improvements or structures of any kind, whether within or without the PROW, other than the items identified as Municipal Facilities shown in Exhibit 1 attached to an approved Site Supplement;

(b) Enter upon the PROW or public utility easements and attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate, and/or replace any item of Small Cell Equipment in or on new or existing poles or other structures located within the PROW or public utility easements and not owned by Licensor; and

(c) Install, operate and maintain ground based, pad mounted equipment cabinets and/or power pedestals needed for the operation of Small Cell Equipment attached to any of the Municipal Facilities.

2.4 Alterations/Unauthorized Equipment. Licensee represents that it will not install unauthorized equipment. If Licensee proposes to install equipment which is different in any

material way from the then-existing and approved Small Cell Equipment, then Licensee shall first apply for and obtain the written approval for the use and installation of the unauthorized equipment from an authorized representative of the Licensor via a new or amended Site Supplement. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide “load” (structural) calculations for all Municipal Facilities upon which it intends to attach Small Cell Equipment or modify approved Small Cell Equipment in the PROW or public utility easements. Notwithstanding the foregoing, Licensee may modify its Small Cell Equipment with like-kind Small Cell Equipment without prior written approval of the Licensor including, without limitation, substitution of internal components that does not result in any change to the external appearance, dimensions, or weight of the attachment or that involves replacement with an attachment that is the same, or smaller in weight and dimensions as the approved attachment. Licensee’s failure to comply with these limitations will constitute a material breach of this Agreement. For unauthorized equipment Licensor, after providing written notice to Licensee, may impose liquidated damages in an amount not to exceed \$1,000, and in addition, Licensee shall from the date of such written notice be obligated to pay for such unauthorized equipment an amount which is five times the applicable Per Pole Fee in Section 4 until the breach is cured by Licensee by removing the unauthorized equipment or applying for and obtaining a Site Supplement (or a modification to an existing Site Supplement if applicable) for such unauthorized equipment.

3. **Term of Agreement; Cancellation; Termination; Removal or Abandonment at Expiration.**

3.1. Agreement Term. This Agreement shall be in effect for a period of twenty (20) years commencing on the first day of the month following mutual execution of this Agreement (“Commencement Date”), and expiring on the day before the twentieth (20<sup>th</sup>) anniversary of the Commencement Date unless sooner cancelled or terminated as provided herein (the “Initial Term”). Provided that Licensee is not in material breach of the Agreement or any Site Supplement, the Initial Term will be extended for up to five (5), successive, five (5) year periods (each, a “Renewal Term”) with the first five year extension commencing immediately upon the expiration of the Initial Term, and each additional five year extension commencing immediately upon the expiration of the preceding Renewal Term unless notice of non-extension is provided by either Party to the other Party at least ninety (90) days prior to the commencement of the succeeding Renewal Term, as applicable. The Initial Term and all Renewal Terms shall be collectively referred to herein as the “Term.” All of the provisions of this Agreement shall be in effect during the Term and any extension of the Term. Any holding over after the 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.

3.2 Licensee Cancellation. Licensee may cancel any Site Supplement at any time by providing the Licensor with thirty (30) days express written notice of cancellation. Any prepaid Fees shall be retained by Licensor. This Agreement and all Site Supplements may only be cancelled or terminated as provided in this Agreement or any Site Supplement.

3.3. Abandonment. If Licensee abandons the use of any Municipal Facility location for a period of six (6) or more consecutive months or if the Agreement terminates or expires, the Small Cell Equipment for such Municipal Facilities shall be removed by Licensee at the expense of

Licensee within ninety (90) days of receipt of written notice from Licensor. In the event Licensee is unable or refuses to remove such Small Cell Equipment when requested by Licensor, Licensor may authorize removal and Licensee shall be responsible for all costs incurred for such removal.

3.4 Performance Bond. Before any construction begins by Licensee, and if requested by Licensor, Licensee shall provide the Licensor with a performance bond. The amount of the performance bond shall be: Three Thousand Five Hundred Dollars (\$3,500) per Site Supplement. The performance bond shall be solely for the protection of the Licensor, conditioned upon the faithful performance of the required construction, maintenance and removal work. Bonds shall be executed by an “admitted surety insurer”, as defined in Code of Civil Procedure §995.120 authorized to do business in the State of California and acceptable to the Licensor, and the bonds shall be kept in place for the duration of the Agreement. If Licensee expands the number of Site Supplements during the Term of this Agreement, Licensee shall adjust its performance security in accordance with the scale identified above. The performance bond is conditioned upon the 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 bond any damage or loss suffered by Licensor as a result, including the full amount of any compensation, or costs of removal or abandonment of Licensee’s property, plus costs and reasonable attorneys’ fees up to the full amount of the performance bond. Licensee will keep the performance bond in place during the term of this Agreement.

3.5 Assessment of the Bond. Upon Licensee’s failure to pay Licensor any amount owing under this Agreement after any applicable notice and cure periods, the performance bond may be assessed by Licensor for purposes including, but not limited to:

(a) Reimbursement of costs borne by Licensor to correct violations of the Agreement not corrected by Licensee, after Licensor provides notice and a reasonable opportunity to cure such violations.

(b) To provide monetary remedies or to satisfy damages assessed against Licensee due to material breaches of this Agreement.

(c) To collect fees and charges that have not been paid by Licensee when owed.

3.6 Restoration of the Bond. Licensee must deposit a sum of money or a replacement instrument sufficient to restore the performance bond to its original amount within 30 days after written notice from Licensor that any amount has been recovered from the performance bond. Failure to restore the bond to its full amount within 30 days will constitute a material breach of this Agreement. Licensee will be relieved of the foregoing requirement to replenish the bond during the pendency of an appeal from Licensor’s decision to draw on the performance bond.

3.7 Costs of Collection. If the performance bond is drawn upon, all of Licensor’s reasonable costs of collection and enforcement of the provisions relating to the bond that are specified in this section, including reasonable attorneys’ fees and costs, will be paid by Licensee.

3.8 Required Endorsement. The performance bond is subject to the reasonable approval of Licensor's attorney and must contain the following endorsement:

"This bond may not be canceled until sixty (60) days after receipt by City of Milpitas, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

3.9 Reservation of Licensor Rights. The rights reserved by Licensor with respect to the performance bond are in addition to all other rights and remedies Licensor may have under this Agreement or any other law.

4. Fees and Charges. Licensee shall be solely responsible for the payment of all costs, fees and charges in connection with Licensee's performance under this Agreement, including those set forth as follows:

4.1. License Fee. Licensee shall pay to Licensor an annual fee equal to \$1,500.00 for the use of each Municipal Facility authorized for installation of Small Cell Equipment by Licensee pursuant to a Site Supplement ("Per Pole Fee"). Effective on the first anniversary of the Commencement Date of the Term, and continuing annually thereafter during the Term, the Per Pole Fee shall be increased by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-San Jose MSA that occurred during the previous one year period as measured in the month two months prior to the anniversary of the Commencement Date. The amount to be paid with respect to each year of the Term ("Aggregate Annual License Fee") will be calculated based on an amount equal to the sum of the number of (a) Municipal Facilities upon which Small Cell Equipment was installed, and (b) Municipal Facilities which were not initially installed but contained Small Cell Equipment, during the preceding 12 months multiplied by the then-current Per Pole Fee; provided, however, and notwithstanding the foregoing to the contrary, the Aggregate Annual License Fee shall be prorated with respect to each Municipal Facility for any months during which the applicable Site Supplement was not in force. The Aggregate Annual License Fee for the first year after the Commencement Date is due and payable in arrears and not later than 30 days after the first anniversary of the Commencement Date. Thereafter, the Aggregate Annual License Fee is due and payable each year in advance (based on the number of Municipal Facilities upon which Small Cell Equipment was installed at the end of the prior year) not later than 45 days after the anniversary of the Commencement Date. If Licensee discovers any error in the amount of compensation due, Licensee shall notify Licensor and the Parties shall work together in good faith to adjust the amount due. Licensee shall pay Licensor within 30 days after discovery of the error or determination of the correct amount. Upon agreement of the Parties, Licensee may pay the Aggregate Annual License Fee by electronic funds transfer and in such event, Licensor agrees to provide to Licensee bank routing information for such purpose upon request of Licensee.

4.2. Permit. No payment is collected under this Agreement for any Permit issued in connection with the installation of Small Cell Equipment at any Municipal Facility. Permit requirements, fees and charges are solely governed by the requirements imposed by the Code.

4.3 Taxes. Licensee shall pay all applicable city, county and state taxes levied, assessed, or imposed by reason of this Agreement or those related to any of Licensee's Small Cell Equipment and/or provided services.

4.4. Electric meter. Licensee shall install or cause to be installed a separate electric meter on the Municipal Facility. Licensee shall be responsible for paying all charges for any electricity furnished by a utility Licensee furnishing service to the Small Cell Equipment.

4.5. Payments Made. All fees and/or additional payments shall be payable to Licensor at: City of Milpitas, Accounts Payable, 455 East Calaveras Blvd., Milpitas, CA 95035; or to such other persons or at such other places as Licensor may designate in writing. All payments shall be in lawful money of the United States of America.

5. **Additional Licenses and Permits Required by Code.** All of the Small Cell Equipment will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable Laws. Licensee or its designee is required to apply for and obtain all Permits required by the Code for installation of wireless communications facilities and for work performed within the PROW and public utility easements, and the Small Cell Equipment must be installed and the PROW or public utility easement used according to the plans submitted by Licensee and approved by the Licensor in issuing such Permits. Execution of this Agreement or any Site Supplement does not constitute the issuance of a Permit. Nothing in this Agreement shall limit in any way Licensee's obligation to obtain any required regulatory approvals from any Licensor department, board or commission or other governmental agency that has regulatory authority over the Licensee's proposed activities involving use of the Municipal Facilities in the PROW and public utility easements and Licensee's obligation to obtain any required proprietary approvals or agreements to use Licensor property other than Municipal Facilities covered by this Agreement. All work performed pursuant to the rights granted by this Agreement is subject to the prior review and approval of the Licensor in accordance with its customary permitting procedures.

6. **Basic Design and Installation Requirements for Using Municipal Facilities.** All of Licensee's construction and installation work for its Small Cell Equipment on the Municipal Facilities shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner and promptly completed. When Licensee and Licensor have agreed on an existing Municipal Facility location as a suitable site for Licensee's Small Cell Equipment, but the existing Municipal Facility needs to be replaced to accommodate the Small Cell Equipment, then the Site Supplement shall so specify and Licensee shall pay all costs related to replacing the Municipal Facility, including but not limited to installation of the replacement pole (the "Replacement Pole"), transfer of the streetlight fixtures, and/or other items attached to the existing Municipal Facility to the Replacement Pole, and removal and salvage of the existing Municipal Facility to the Licensor. Payment of the pole replacement costs does not provide Licensee with any ownership interest in the Replacement Pole. Licensor will be deemed to own the original Municipal Facility and the Replacement Pole. The installation or attachment of the Small Cell Equipment using the Replacement Pole shall be at Licensee's sole cost and expense.

7. **Common Conditions or Requirements Applicable to Site Supplements Issued Under this Agreement.**

7.1. Small Cell Equipment Locations. For each installation, Licensee or its designee shall submit plans and specifications for Licensor review and approval which shall, at a minimum, identify the Municipal Facility Licensee proposes to use and the basic design and location of the Small Cell Equipment. If any ground based equipment is proposed in connection with the operation of Small Cell Equipment on an individual Municipal Facility, the request must identify the ground based equipment and the plan must also depict such equipment. Upon Licensor approval, the approved plans are inserted in Exhibit 1 attached to a Site Supplement. Any approved Site Supplement shall also include a list of approved Small Cell Equipment in Exhibit 1 to each Site Supplement. If Licensee desires to change or add new locations, Licensee will submit a proposed Site Supplement indicating the additional Municipal Facilities that it wishes to use.

7.2. Damage to Licensor Property. If Licensee damages or disturbs the surface or subsurface of any PROW, public utility easement or adjoining property, Municipal Facility, pole, streetlight fixture, traffic signal, or other public improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to Licensor, repair the damage or disturbance.

7.3. Public Emergency. In the event of an emergency or to protect the public health or safety, prior to the Licensor accessing or performing any work on a Municipal Facility on which Licensee has installed Small Cell Equipment, Licensor may require Licensee to deactivate such Small Cell Equipment if any of Licensor's employees or agents must move closer to the Small Cell Equipment than the FCC recommended minimum distance. In such case, Licensor will attempt to contact Licensee at [877-244-7889] to request immediate deactivation. Further, Licensee shall install a disconnect device at each Municipal Facility on which it installs Small Cell Equipment pursuant to a Site Supplement so that in case of emergency or to protect the public health or safety where Licensee is not able to immediately deactivate the Small Cell Equipment, Licensor may disconnect such Small Cell Equipment from its power source and safely shut it down.

7.4. Pole Replacement.

(a) Subject to Section 7.4(f), if a Municipal Facility needs replacement or repair due to a traffic accident or deterioration, Licensee shall have the right to immediately replace the same at Licensor's reasonable cost, not to exceed the charges the City would normally have incurred from its third party vendor. In such event, Licensor shall reimburse Licensee within thirty (30) days of Licensee's receipt of an invoice. However, in the event Licensee elects in writing to have Licensor replace the Municipal Facility, Licensor shall perform such replacement within thirty (30) days thereafter, and Licensee shall cooperate with Licensor to temporarily relocate its Small Cell Equipment, if necessary. Upon completion of the replacement, Licensor shall notify Licensee in order for Licensee to install its Small Cell Equipment.

(b) At Licensee's option, Licensee may provide to Licensor, at Licensee's cost, a spare pole sufficient to serve as a replacement pole, which will be stored at Licensor's Public Works Yard (the "Yard") at no cost to Licensee, and which will be available for use by Licensor and Licensee to replace the Municipal Facility as provided in this Section 7.4.



(c) In the event Licensee provides a spare pole, and elects in writing to have Licensor perform the replacement, Licensor will use the spare pole to replace the damaged existing pole within thirty (30) days of notice of the need for the replacement, and shall deliver the damaged pole and any damaged Small Cell Equipment to the Yard.

(d) Licensor will contact Licensee to pick up the damaged Small Cell Equipment and Licensee can reinstall its Small Cell Equipment once the replacement pole is installed and functioning as a Municipal Facility.

(e) Licensee shall have the right to temporarily use a Municipal Facility for its operation during the replacement period at a location reasonably acceptable to both Licensor and Licensee.

(f) In the event Licensor is responsible for replacing the Municipal Facility with a Replacement Pole, Licensor shall only be responsible for the cost of a standard pole, and Licensee shall be responsible for the cost of the Replacement Pole in excess of the cost of a standard pole.

#### 7.5. Removal and Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Small Cell Equipment installations as provided in this Section 7.5(a). Licensee shall at Licensor's direction and upon one hundred eighty (180) days prior written notice to Licensee, relocate such Small Cell Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (i) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (ii) because the Small Cell Equipment is interfering with or adversely affecting proper operation of Licensor-owned Poles, traffic signals, communications, or other Municipal Facilities; or (iii) Licensor is abandoning or removing the Municipal Facility. In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. Licensee acknowledges that if Licensor is permanently removing the Municipal Facility due to an undergrounding project, Licensee may be required to seek an appropriate location outside the PROW. Nothing in this Agreement gives the Licensee the authorization to install a new dedicated pole in the PROW or public utility easement as a result of any relocation requirement. If Licensee shall fail to relocate any Small Cell Equipment as requested by the Licensor in accordance with the foregoing provision, Licensor shall be entitled to remove or relocate the Small Cell 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.

(b) In the event Licensee desires to relocate any Small Cell 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.

(c) In lieu of the relocation of Licensee's Small Cell Equipment in the case of an abandonment of a Municipal Facility as provided in Section 7.5(a)(iii), unless the Municipal Facility is needed for a legitimate Licensor purpose, Licensor may, in its sole discretion, allow Licensee to purchase the Municipal Facility, and continue to use the same pursuant to the then existing Site Supplement, at a commercially reasonable price commensurate with its then existing value. Licensee and Licensor shall document any such transfer of ownership via a bill of sale. In the event that Licensee acquires a Municipal Facility pursuant to this Section 7.5(c), no Aggregate Annual License Fee shall be due or payable with respect to such acquired site and said fee shall be prorated in accordance with Section 4.1 above.

7.6. Non-exclusiveness. The rights and privileges granted to Licensee under this Agreement, and each Site Supplement described herein, are nonexclusive.

7.7. Non-interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and radio frequency interference) resulting from Licensee's installation, operation and/or maintenance of its Small Cell Equipment:

(a) RF Interference. Consistent with applicable Laws, Licensee shall ensure that the Small Cell Equipment will not cause radio frequency interference with wireless communication facilities or devices, cable television, broadcast radio or television systems, or satellite broadcast systems existing at the time of installation of the Small Cell Equipment. Further, Licensee shall ensure that the Small Cell Equipment will not cause any radio frequency interference with Licensor traffic, public safety or other communications signal equipment existing at the time of installation of the Small Cell Equipment.

(b) Existing Uses. Licensee acknowledges and agrees that the primary purpose of the Municipal Facilities is to serve the public. Licensor is willing to permit the installation of Licensee's Small Cell Equipment on Municipal Facilities only where such use will not interfere with the existing and future primary service requirements and facilities, or the primary service requirements of Licensor and others authorized to use the Municipal Facility as of the date of the applicable Site Supplement. Licensee shall not materially interfere in any manner with the existing uses of the Municipal Facilities or other Licensor property including PROW and public utility easements, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner(s) of the affected property or properties.

(c) Licensor Communications. Licensee shall not materially interfere in any manner with current or future Licensor public safety communication.

(d) Licensor Interference. Licensor reserves the right, but not the obligation, to maintain and operate its Municipal Facilities in such reasonable manner as will best enable Licensor to fulfill its own service requirements or obligations.

(e) **Remedies.** Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone to Licensee's Network Operations Center at [877-244-2889] or to Licensor at [408-586-3051], the interfering party shall or shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section 7 and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

8. **Damage to Licensee's Small Cell Equipment.** In the event of any damage to Licensee's Small Cell Equipment, Licensor shall have no liability or responsibility to repair the same unless such damage arose from the willful misconduct of Licensor, its employees, agents, or contractors; provided however, in such case, Licensor's liability shall be limited to the cost to repair or replace the same.

9. **Title and Ownership.**

9.1. **Title to the Small Cell Equipment.** Title to the Small Cell Equipment, exclusive of the Municipal Facility (original or replacement) used for support, shall remain with Licensee or its Carriers (defined below) and shall constitute Licensee's personal property and equipment, and not fixtures or improvements attached to the land.

9.2. **No Ownership in Licensor Property.** Neither this Agreement, nor any license issued herein, nor any Permit separately issued for installation of any Small Cell Equipment, regardless of the payment of any fees and charges, shall create or vest in Licensee any ownership or property rights in any portion or elements of the Municipal Facilities, the underlying real property on which any Licensor-owned poles or any Small Cell Equipment is located, or any portion of the PROW or public utility easements. Additionally, except as otherwise expressly provided herein, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest or right to the benefit of any Licensor property or portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to construct, retain, extend, place, or maintain any poles or other facilities for the benefit of Licensor which are not needed for Licensee's own service requirements.

9.3 **"As Is" Condition.** Subject to Section 9, Licensee accepts the Municipal Facilities identified in any Site Supplement, or any Replacement Pole, in its "AS IS" condition, without representation or warranty of any kind by Licensor, or any Licensor officer, agent, or employee as to the present or future condition of or suitability of the Municipal Facilities for Licensee's intended use, and subject to all applicable laws, rules and ordinances governing the use of the Municipal Facilities for Licensee's intended purpose. Licensor disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Municipal Facilities and the 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.

10. **Maintenance and Repair.** Subject to Section 7.2, Licensor shall maintain and keep the Municipal Facility containing Small Cell Equipment in good condition and in accordance with Licensor's standard maintenance requirements, at its sole cost and expense. Licensee shall keep the

Small Cell Equipment and other improvements by Licensee on the Municipal Facility, if any, in good repair.

11. **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 Municipal Facility or the PROW or public utility easement in which it is located in violation of any applicable federal, state, county, or local law or regulation. Except to the extent of the 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.

12. **Indemnity.** To the fullest extent permitted by law, Licensee shall indemnify, defend with counsel of the Licensor's choosing, and hold harmless Licensor, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (collectively, "Claims") which relate to (i) Licensor's approval of this Agreement and any Site Supplement(s), and (ii) Licensee's, and its employees', contractors', agents' or Carriers', construction, operation, use, or related activity under this Agreement; provided, however, the foregoing indemnity shall not apply to the extent such Claims are the result of the negligence or willful misconduct of Licensor. This indemnification shall include, but not be limited to, damages awarded against Licensor, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Licensee, Licensor, and/or the parties initiating or bringing such proceeding. Licensee shall indemnify Licensor for all of Licensor's costs, reasonable attorneys' fees, and damages which Licensor incurs in enforcing the indemnification provisions set forth in this condition. Licensee shall pay to Licensor upon demand or, as applicable, to counsel of Licensor's choosing, any amount owed pursuant to the indemnification requirements prescribed herein.

13. **Insurance Requirements.**

13.1. **Licensee's Insurance.** Licensee shall procure and maintain insurance in the amounts and form specified in attached Exhibit B.

13.2. **Certificates.** If a Certificate of Insurance or Self-Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, Licensee must forward renewal or replacement Certificates to Licensor within fifteen (15) business days after the renewal date containing all the necessary insurance provisions.

14. **Assignment/Subletting.**

14.1. Except as expressly provided herein, this Agreement and each site license granted pursuant to individual Site Supplements herein is personal to Licensee and for Licensee's use only. Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder; provided, however, the Parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Small Cell Equipment deployed by Licensee on any Municipal Facility or in any PROW or public utility easement pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Small Cell Equipment shall be treated as Licensee's Small Cell Equipment for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such Small Cell Equipment; (ii) Licensor's sole point of contact regarding such Small Cell Equipment shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Small Cell Equipment. This Agreement and the related rights, duties, and privileges may not be assigned or otherwise transferred in whole or in part without the express written consent of Licensor; provided, however, Licensee shall have the right to assign this Agreement to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Licensee, or to any entity into which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee that are subject to this Agreement. If the Agreement is assigned or otherwise transferred with Licensor consent pursuant to this Section, this Agreement, including any amendments, shall be binding on the assignee to the full extent that it was binding upon Licensee.

14.2. Any non-permitted transfer or assignment of the right to attach Small Cell Equipment to a Municipal Facility shall be void and not merely voidable. Licensor may, in its sole discretion and in addition to all other lawful remedies available to Licensor under this Agreement, may collect any fees owed from Licensee all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provisions of this Agreement against a transferee or assignee who did not receive Licensor's consent.

15. **Default.** It is a "Default" if (i) either Party fails to comply with this Agreement or any Site Supplement and does not remedy the failure within thirty (30) days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted thirty (30) days and diligently pursue the cure to completion within ninety (90) days after the initial written notice, or (ii) Licensee fails to comply with this Agreement or any Site Supplement and the failure interferes with Licensor's use of its Municipal Facility in a manner not covered by Section 7.3, and Licensee does not remedy the failure within twenty (20) days after written notice from Licensor or, if the failure cannot reasonably be remedied in such time, if Licensee does not commence a remedy within the allotted twenty (20) days and diligently pursue the cure to completion within thirty (30) days after the initial written notice.

16. **Termination/Revocation.** In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such Default, the non-defaulting Party may terminate this Agreement if the Default affects all Site Supplements and the Agreement as a whole, or any Site Supplement subject to the Default, and/or

pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the State of California.

17. **Surrender**. Within sixty (60) days of the expiration of this Agreement or upon the earlier termination thereof, Licensee shall remove all Small Cell Equipment, at its sole expense, shall repair any damage to the Municipal Facilities or the PROW or public utility easement caused by such removal, and shall restore the Municipal Facilities to the condition in which they existed prior to the installation of the Small Cell Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted.

18. **Notices**. Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

Licensee                      Mobilitie, LLC  
Attn: Legal Department  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660

With a copy to:              Mobilitie, LLC  
Attn: Asset Management  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660

Licensor                      City of Milpitas  
455 East Calaveras Blvd.  
Milpitas, CA 95035  
Attn: City Manager

With copy to:                Best Best & Krieger, LLP  
2001 North Main Street  
Suite 390  
Walnut Creek, CA 94596  
Attention: City Attorney, City of Milpitas

Each Party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States registered or certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement.

19. **Miscellaneous.**

19.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all negotiations, understandings or agreements. Any amendments to this Agreement must be in writing and executed by both Parties.

19.2. Severability. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.3. Governing Law. This Agreement shall be governed by the laws of the State of California without regard to choice of law rules.

19.4. Exhibits. All Exhibits referred to and attached to this Agreement are incorporated herein by reference.

19.5. Authority to Execute. Any individual executing this Agreement on behalf of or as representative for a corporation or other person, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, and this Agreement is binding upon such Party in accordance with its terms. Licensor hereby designates, and authorizes, the City Manager to execute all Site Supplements and amendments thereto entered into under this Agreement. This designation and authorization may be changed by Licensor upon written notice to Licensee.

19.6. No Waiver. A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

19.7. Force Majeure. With respect to any provisions of this Agreement, the violation or non-compliance of any term of this Agreement which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a Party, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such Party's reasonable control.

19.8 Limitation of Liability. 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.

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





**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2017 (the “Execution Date”).

**LICENSOR:**

City of Milpitas, a California municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**LICENSEE:**

Mobilitie, LLC, a Nevada limited liability company

By: \_\_\_\_\_  
Print \_\_\_\_\_ Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
\_\_\_\_\_

**APPROVED AS TO FORM:**

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

**EXHIBIT A**

**Form of Site Supplement**

**Supplement**

1. Supplement. This is a Site Supplement as referenced in that certain NON-EXCLUSIVE LICENSE AGREEMENT FOR THE USE OF CITY-OWNED MUNICIPAL FACILITIES TO INSTALL SMALL CELL ANTENNAS AND ASSOCIATED EQUIPMENT, between Licensor and Licensee dated \_\_\_\_\_, 2017 ("Agreement"). Licensee has submitted an application for a Site Supplement pursuant to the Agreement, and Licensor has reviewed the application and grants approval subject to the terms of this Site 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 Site Supplement, the terms of this Site Supplement shall govern. Capitalized terms used in this Site Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations. Licensee shall have the right to attach Small Cell Equipment to the designated space on the specific Municipal Facility as further described in Exhibit 1 attached hereto (the "Licensed Area").

3. Small Cell Equipment. The Small Cell Equipment to be installed at the Licensed Area is listed and depicted on plans included in Exhibit 1 attached hereto.

4. Term. The term of this Site Supplement shall be as set forth in Section 3.1 of the Agreement.

5. Fees. The initial annual Per Pole Fee for the term of this Supplement shall be \_\_\_\_\_, as determined in accordance with the Agreement, and as adjusted by Section 4.1 of the Agreement.

6. Site Supplement Commencement Date. The first day of the month following the date Licensee has commenced installation of its Small Cell Equipment at the Licensed Area. If Licensee does not commence installation of its Small Cell Equipment within one hundred and twenty (120) days of the date of approval shown below, the Site Supplement shall be void unless Licensor extends the time for commencing installation of Small Cell Equipment in writing.

7. Miscellaneous.\_\_\_\_\_.

[Signature page follows]

APPROVED as of the date shown below.

LICENSOR:

City of Milpitas, a California municipal corporation

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

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

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

DATE: \_\_\_\_\_

ACCEPTED BY LICENSEE:

LICENSEE:

Mobilitie, LLC, a Nevada limited liability company

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

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

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

**Exhibits:**

Exhibit 1

**Exhibit 1**

**Licensed Area, Small Cell Equipment List and Plans**

## EXHIBIT B

### **Licensee's Minimum Insurance Requirements**

#### **1. General.**

A. Prior to performing work under this Agreement, Licensee shall furnish Licensor a certificate of insurance on a standard insurance industry ACORD form. The insurance coverage required must be issued by an insurance Licensee licensed, authorized or permitted to transact business in the State of California, possessing a current A.M. Best, Inc. rating of A-VII or better, and coverage shall be reasonably satisfactory to Licensor.

B. Licensee shall, and shall require any of its contractors to obtain and maintain substantially the same coverage as required of Licensee, procure and maintain, until all of their obligations have been discharged the insurances set forth below. Licensee shall ensure that the Licensor is an additional insured on insurance required from Licensee's contractors. For CGL coverage Licensee's contractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

C. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

D. Licensor in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

#### **2. Scope and Limits of Insurance.** Licensee shall provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance with a limit of \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned

vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

D.

D. Contractors' Pollution Legal Liability. Licensee must maintain Contractors' Pollution Legal Liability insurance with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Licensor for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

### **3. Additional Policy Provisions Required.**

A. Miscellaneous Provisions.

(1) Licensee's insurance coverage must be primary insurance with respect to Licensor, its officers, officials, and employees. Any insurance or self-insurance maintained by Licensor, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) Licensee hereby agrees to waive rights of subrogation which any insurer of Licensee may acquire from Licensee by virtue of the payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers'

Compensation policy shall be endorsed with a waiver of subrogation in favor of the Licensor for all work performed by the Licensee, its employees, agents and subcontractors. The policies must contain a severability of interest clause and waiver of subrogation against Licensor, its officers, officials, and employees, for losses arising from work performed by Licensee for Licensor.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for the duration of this Agreement. Licensee must submit an annual Certificate of Insurance evidencing Commercial General Liability insurance during this period evidencing the insurance requirement and, including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the Licensor with thirty (30) days prior written notice of cancellation. Such notice shall be sent directly to Licensor at 455 East Calaveras Blvd, Milpitas, CA 95035, Attn: City Manager.

B. Licensor as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability include the Licensor, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability arising out of activities performed by Licensee.