

License Agreement

Between the City of Lompoc and Dish Wireless LLC for Installation of a Wireless Telecommunications Facility on City-Owned Property

This License Agreement for installation and use of a wireless telecommunications facility (this “**Agreement**”) is made as of _____, 2022_ (the “**Effective Date**”), by and between the CITY OF LOMPOC, a California municipal corporation (“**City**”), and Dish Wireless L.L.C., a Colorado limited liability company (“**Licensee**”), referred to herein each as a “**Party**” and collectively the “**Parties.**”

RECITALS

A. City owns the real property described in the attached **Exhibit A** commonly known as 1050 W Cypress Avenue, Lompoc, CA 93436, located at Ryon Memorial Park in the City of Lompoc, County of Santa Barbara, State of California, and designated by the Santa Barbara County Assessor’s Office as Assessor’s Parcel Number: 091-110-015 (the “**Property**”).

B. City, acting in its governmental capacity, approved Conditional Use Permit No. 21-03 (“**CUP**”) to Licensee on January 26, 2022, for a wireless telecommunications facility to be affixed to a proposed light pole with supporting ground equipment at the Property. This Agreement is entered into pursuant to condition of approval P29 of the CUP, and is intended to license the use of the Premises in a manner that comports with the CUP, including all conditions of approval thereof.

C. Licensee desires to license a portion of the Property to construct, install and operate a Wireless Telecommunications Facility (as defined herein).

AGREEMENT

NOW THEREFORE, this Agreement is entered by and between the City and Licensee effective as of the Effective Date listed above.

1. PREMISES

1.1 Licensed Premises. Subject to the CUP and during the Agreement Term (as defined in Section 2.3 below) City licenses to Licensee, and Licensee hereby licenses from City, that portion of the Property sufficient for the placement of the Wireless Telecommunications Facility (defined in Section 4.1.1) and depicted in **Exhibit B** (“**Licensed Premises**”). The Licensed Premises is comprised of an area measuring approximately __ feet by __ feet, and ____ square feet in total.

1.2 Conduit Easement Area. City also grants to Licensee during the Agreement Term a non-exclusive easement, which shall be irrevocable during the Agreement Term, but which shall automatically terminate upon expiration or termination of the Removal Period (as defined in Section 27 below), to install, operate, maintain, repair and/or replace utility and/or fiber wires, cables, conduits and pipes under those portions of the Property depicted on the attached **Exhibit C** as the “**Conduit**”

Easement Areas” connecting the Licensed Premises with the nearest points of utility and/or fiber service to the Licensed Premises, all according to plans and specifications approved in writing in advance by City. Upon completion of Licensee’s initial installations in the Conduit Easement Areas, Licensee, at Licensee’s sole cost and expense, shall provide City with as-built drawings of the utility wires, cables, conduits and pipes in the Conduit Easement Areas, which drawings shall thereafter define the Conduit Easement Areas. There shall be no change to any Conduit Easement Area without prior written approval of the City.

- 1.3 Access Easement Areas. City also grants to Licensee during the Agreement Term the non-exclusive right, which right shall be irrevocable during the Agreement Term, but which shall automatically terminate upon expiration or termination of the Removal Period, for ingress to and egress from the Licensed Premises, on foot or motor vehicle, including half-ton or less trucks, over and across the portions of the Property depicted on the attached **Exhibit D** as the “**Access Easement Areas.**” Licensee shall be permitted to access the Licensed Premises from the nearest public right-of-way between the hours of 7am and 5pm, Monday through Friday; provided that in an emergency Licensee may access the Licensed Premises at any time reasonably necessary to address the emergency. In the event the City makes repairs to or constructs improvements over portions of the Access Easement Areas or the road leading to the entrance of the Property, which may temporarily prevent access to the Premises, City shall provide alternative access to the Premises to the extent it is necessary for Licensee to perform emergency work during such access area maintenance or repair.
- 1.4 Premises. The Licensed Premises, Conduit Easement Areas and the Access Easement Areas are collectively referred to herein as the “**Premises.**”
- 1.5 No Representations. Licensee hereby accepts the Premises in their current “AS-IS” condition. City makes no representations or warranties, express or implied, regarding title to the Property. Licensee takes its interest under this Agreement subject to all matters of record and all title matters that would be revealed by a diligent inspection of the Property. Licensee will defend, indemnify and hold City harmless from and against any claims, liabilities, damages, costs and expenses resulting from or relating to any violation by Licensee of any such title matters. Licensee shall use Dig Alert and is responsible for coordinating with the owners of any existing utilities or fiber on, under or over the Property. Prior to being granted access to the Premises, Licensee shall obtain in writing from the Santa Barbara County Flood Control District (“**District**”) all applicable approvals or permissions required by the District, as well as any and all approvals or permissions required by any other holder of an interest in the Premises. City agrees to cooperate with Licensee in City’s capacity as a real property owner, to obtain all such approvals or permissions, provided that City’s cooperation shall be at no expense to City and shall be limited to signing applications for approvals and permits that require a signature from the owner of the Property.

2. TERM

- 2.1 Initial Term. The term of this Agreement shall be for five (5) years (the “**Initial Term**”) commencing on the first (1st) day of the month following Licensee’s commencement of construction (the “**Commencement Date**”). Licensee’s payment of the Monthly Rent required under Section 3 below shall commence on the Commencement Date.
- 2.2 Extension Terms. Provided Licensee is not in default beyond any applicable cure period under the terms of this Agreement as of the end of the Initial Term or the end of the then-current Extended Term (defined herein), as applicable, this Agreement shall automatically be extended for five (5) additional five (5) year terms (individually, an “**Extended Term**,” and collectively, the “**Extended Terms**”), unless Licensee terminates it at the end of the then-current Initial Term or Extended Term by giving City written notice of the intent to terminate at least six (6) months prior to the end of the then-current Initial Term or Extended Term, on the same terms and conditions as set forth in this Agreement (unless expressly provided otherwise in this Agreement). Licensee shall have no other right to extend the Agreement Term beyond the Extended Terms. The Initial Term plus all available Extended Terms total thirty (30) years.
- 2.3 Agreement Term. The “**Agreement Term**” shall mean the Initial Term, any Extended Terms, and any month-to-month tenancy authorized in writing by City pursuant to Section 26 below.
- 2.4 Expiration or Revocation of CUP. Notwithstanding any other provision of this Agreement, this Agreement will automatically terminate on the date that the CUP expires or on the effective date of any earlier termination or revocation of the CUP unless an application for renewal or extension of the CUP is in was filed prior to the expiration of the CUP and Licensee is actively pursuing approval of the CUP. Should Licensee delay in its response to City’s requests for further information or documentation, in excess of three (3) months, said application will be deemed withdrawn and the existing CUP will be deemed expired. Nothing in this Agreement shall be deemed to obligate the City to renew or extend the expiration date of the CUP.

3. MONTHLY RENT

- 3.1 Initial Year. Licensee shall pay to City in advance as “**Monthly Rent**,” without deduction, setoff, prior notice or demand, the sum of One Thousand Seven Hundred and 00/100 Dollars (\$1,700.00) per month on or before the first (1st) day of each calendar month, commencing on the Commencement Date. Monthly Rent for any partial month shall be prorated at the rate of one-thirtieth (1/30th) of the Monthly Rent per day. Monthly Rent is subject to adjustment as provided in Section 3.2 below. Licensee acknowledges that the Monthly Rent shall be paid without regard to operation of the Wireless Telecommunications Facility.

- 3.2 Annual Adjustment. Beginning on the first (1st) day of the month in which the first (1st) anniversary of the Commencement Date occurs and on the first (1st) day of the month of each subsequent anniversary of the Commencement Date during the Agreement Term, the Monthly Rent shall be increased based on the following formula: Increased Monthly Rent = current Monthly Rent x 103.5%.
- 3.3 Administrative Fee. For purposes of offsetting costs to City in negotiating and administering this Agreement, and not as additional rent, within forty-five (45) days after the Effective Date, Licensee shall pay City a one-time administrative fee in the amount of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) (“**Administrative Fee**”). The Administrative Fee does not include fees assessed by City for Governmental Approvals (defined herein). Licensee shall also pay all applicable fees and taxes related to any Governmental Approvals. In the event this Agreement is terminated prior to the expiration of the Initial Term or any Extended Term, Licensee shall not be entitled to a refund or credit of any portion of the Administrative Fee.
- 3.4 Payment. Licensee shall make all payments due under this Agreement payable to the City, delivered by mail to City of Lompoc, Attn: Treasurers Department, 100 Civic Center Plaza, Lompoc, CA 93436, or to such other address or to such other persons as City may from time to time designate in writing at least fifteen (15) days prior to any Monthly Rent payment date. Alternatively, Monthly Rent may be delivered by electronic payment if City provides required documentation for electronic payment. Licensee shall require receipt of a validly completed IRS approved W-9 form (or its equivalent) prior to paying any Monthly Rent or any other amount(s) due under this Agreement.
- 3.5 Late Payment. Licensee shall pay City liquidated damages of five percent (5%) of any Monthly Rent or any other required payment if such payment is not paid to City on or before the tenth (10th) day after the date on which it is due. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Licensee. In no event shall the late charge exceed the maximum allowable by Law (as defined in Section 28.12 below). Acceptance of the late charge by City shall not constitute a waiver of Licensee’s default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

4. USE; APPROVALS; REQUIRED IMPROVEMENTS; TERMINATION.

- 4.1 Subject to the CUP and all conditions thereof, and all applicable Laws, the Licensed Premises may be used by Licensee for Licensee’s Wireless Telecommunications Facility (as defined below). The Conduit Easement Areas may be used by Licensee for underground utility and fiber connections to the Licensed Premises. Subject to reasonable rules promulgated by City in writing from time to time, which rules shall be provided to Licensee in writing at least 30 days in advance of their effective date, the Access Easement Areas may be used by Licensee for reasonable physical access to the Licensed Premises by Licensee’s personnel, vehicles and equipment,

and Licensee's personnel may temporarily park motor vehicles, including half-ton or less trucks, on City's Property in the parking lot adjacent to the Licensed Premises to the extent such vehicles are used in conjunction with constructing and maintaining Licensee's Wireless Telecommunications Facility, and as necessary and consistent with the authorized use of the Premises. Licensee shall use the Premises as set forth in this Section 4.1 and only for the purpose of constructing, using, modifying, repairing, replacing, maintaining, operating, and removing Licensee's Wireless Telecommunications Facility, and for no other use ("Permitted Use").

- 4.1.1 **"Wireless Telecommunications Facility"** means those certain equipment and structures, such as an antenna support structure, antennas and microwave dishes, air-conditioned equipment shelters and base station equipment, cable, wiring, power sources (including a generator and emergency back-up batteries), related equipment and structures, and walls and fencing, to the extent such equipment and structures are described and depicted in Exhibit E, **"Approved Plans and Equipment Details."**
- 4.1.2 Licensee shall not deviate from any Exhibits in any manner without City's prior, written consent, in accordance with Section 6 below, unless City's consent is not required by the provisions of Section 6.
- 4.1.3 Licensee shall install the improvements described in the Exhibits at Licensee's sole cost and expense.
- 4.1.4 Above ground or overhead utility wires, cables, conduits or pipes shall not be used to connect utilities or fiber across the Property to the Premises.
- 4.1.5 Any and all antennas, antenna support structure, and any portions of the Wireless Telecommunications Facility visible from any public place, shall be of a "stealth" design utilizing natural colors, and/or camouflaged, and shall be approved in writing, in advance, by the City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided such design is approved by the appropriate zoning and permitting agency governing the Licensed Premises. Any approved design shall include use of material coatings providing not less than twenty (20) years of natural color-fast quality. To ensure compliance with this requirement and in addition to the maintenance requirements set forth in Section 9 below, not more than once every five (5) years, City may require Licensee to repaint or otherwise re-coat the antennas, supporting structure and any portions of the Wireless Telecommunications Facility visible from any public place, so as to match the original color(s), and to replace or repair any stealthing or camouflaged material that is missing, discolored, or otherwise in poor condition compared to its original quantity and quality. City in its proprietary capacity hereby approves the design of the Licensed Premises described and depicted in the Exhibits attached hereto.

- 4.1.6 Subject to the provisions of Section 10 and any other applicable portions of this Agreement, City retains the absolute right to grant the right to use or occupy any portion of the Property, excluding the Licensed Premises, to any other person or entity.
- 4.2 Prior to using the Premises for any Permitted Use, Licensee shall obtain and maintain all governmental licenses, permits, approvals or other relief required of Licensee by any Law or deemed necessary or appropriate by Licensee for its use of the Premises, including, without limitation, applications for zoning variances, zoning ordinances, amendments, conditional use permits, special use permits, and construction permits (collectively, “**Governmental Approvals**”), including, without limitation, all Governmental Approvals from City in its governmental capacity required by Law. Licensee agrees that this Agreement does not exempt it from compliance with any Law or Government Approval. City shall bear no responsibility or liability under this Agreement for Licensee’s inability to make use of the Premises for failure to obtain or maintain any required Governmental Approval; provided however, that City shall cooperate with Licensee, in City’s proprietary capacity as a real property owner at no expense to City, in obtaining and maintaining the Governmental Approvals. In the event that (i) any of such applications for such Governmental Approvals are finally rejected; (ii) any Governmental Approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such Governmental Approvals may not be obtained in a timely manner; (iv) Licensee determines that any soil boring tests are unsatisfactory; (v) Licensee determines that the Premises is no longer technically compatible for its use; or (vi) Licensee, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, Licensee shall have the right to terminate this Agreement. Notice of Licensee’s exercise of its right to terminate shall be given to City in writing in accordance with Section 24 below, and shall be effective as set forth in Section 24, or upon such later date as designated by Licensee. All rents paid to said termination date shall be retained by City.
- 4.3 Except as allowed by Section 6 below, without the prior written consent of City, which consent may not be unreasonably withheld, delayed, or conditioned, Licensee shall not at any time during the Agreement Term: (i) add or expand utilities, equipment, antennas and/or conduits to the Wireless Telecommunications Facility beyond what is identified in Exhibits; (ii) sublet any portion of the Wireless Telecommunications Facility or Premises to a third party; or (iii) otherwise allow a third party to use the Wireless Telecommunications Facility or Premises. Licensee acknowledges that City may withhold consent in its reasonable discretion for any such activities which will materially and adversely impact the Property or the use thereof by City and/or other licensees, and may require payment of reasonable additional rent as a condition of any consent to sublet or otherwise allow a third party to use the Wireless Telecommunications Facility as provided herein.

5. **PERFORMANCE AND REMOVAL BOND.** In order to secure the performance of its obligation under this Agreement, Licensee shall provide the following security interest to the City:

5.1 **Performance and Removal Bond Required.** Prior to the commencement of any construction on the Premises, Licensee shall pay for and provide City with a Bond, in a form approved by the City Manager or designee, and naming City as obligee in an amount equal to One Hundred Thousand and 00/100 Dollars (\$100,000.00), to guarantee and assure Licensee's faithful performance of Licensee's obligations under this Agreement, including without limitation, removal obligations and payment of the Monthly Rent (the "**Bond**").

5.1.1 The Bond shall be solely for the protection of City, 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 Section 995.120, authorized to do business in the State of California and reasonably acceptable to City.

5.1.2 The 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 City 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 Bond.

5.1.3 Such Bond shall remain in effect until all of the following have occurred: (i) this Agreement has been terminated or expired, and (ii) Licensee has complied with all removal and restoration requirements set forth in Section 27 of this Agreement.

5.2 **City's Right to Draw on Bond.** After City provides Licensee written notice and a reasonable opportunity to cure, City shall have the right to draw on the Bond in the event of a default or breach by Licensee or in the event Licensee fails to meet and fully perform any of its obligations under this Agreement. If the Bond is drawn upon, all of City's reasonable costs of collection and enforcement of the provisions relating to the Bond that are specified in this Section 5, including reasonable attorneys' fees and costs, may be recovered from the Bond.

5.3 **Restoration of the Bond.** Licensee must deposit a sum of money or a replacement instrument sufficient to restore the Bond to its original amount within forty-five (45) days after notice from City that any amount has been recovered from the Bond. Failure to restore the Bond to its full amount within forty-five (45) days will constitute a breach of a material condition of this Agreement.

5.4 **Required Endorsement.** The Bond is subject to the reasonable approval of City's risk management and must contain the following endorsement:

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

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

6. **ALTERATIONS AND IMPROVEMENTS.** No other alterations, additions or changes shall be made to the Premises unless and until Licensee first obtains City’s written approval of such, which approval may not be unreasonably withheld, conditioned, or delayed; however, City’s consent shall not be required for equipment repairs or replacements of equipment that are “like kind” (i.e., substantially the same size, dimension and weight), and provided such replacements do not materially and adversely impact the structural integrity of the Licensed Premises. Licensee shall provide City with written notice within (20) business days’ of such replacement(s) together with a written description of the replacements performed. No additional antennas or other equipment shall be installed without City’s consent in accordance with this Section 6. The foregoing shall not affect the obligation of Licensee to obtain Governmental Approvals from City in its governmental capacity, if required under applicable Laws.

7. **CONDITIONS OF CONSTRUCTION.**

- 7.1 All work by Licensee on the Premises shall comply with such reasonable rules as City may promulgate in writing from time to time, and City shall provide Licensee a written copy of said rules at least thirty (30) days in advance of their effective date.
- 7.2 Licensee shall give written notice to City upon commencement of construction.
- 7.3 Installation and construction of the Wireless Telecommunications Facility shall be accomplished in such a manner that will not materially interfere with or be a source of danger to persons or property on or near the Property or surrounding properties. Nor shall installation and construction materially interfere with the services provided by the City, resources provided to the City, and/or the City’s or public’s use of City Property.
- 7.3.1 Licensee may perform and obtain, at Licensee’s sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Premises, as necessary to determine if Licensee’s use of the Premises will be compatible with Licensee’s engineering specifications, system, design, operations or Governmental Approvals. Licensee shall obtain all required Governmental Approvals and notify City in writing prior to any soil borings, percolation tests, or any other invasive tests on the Premises. Licensee shall promptly repair any damage to the Premises and the Property caused by Licensee’s tests, inspections and investigations, and restore the Premises and the Property to as good a condition as existed immediately before such damage

or alteration occurred. Licensee is responsible for the removal and disposal (in accordance with applicable law) of any soil resulting from Licensee's tests, inspections and investigations.

- 7.3.2 The plans and designs for the construction and installation of the Wireless Telecommunications Facility shall be subject to the prior written approval of City. City, in its proprietary capacity, hereby approves the plans and designs for the Wireless Telecommunications Facility attached hereto as Exhibits, and such approval does not substitute for or replace required Governmental Approvals. The determination of whether the Wireless Telecommunication Facility is in compliance with this Agreement and the plans and designs shall be made in writing by City.
- 7.3.3 Any design or installation method which will materially interfere with or limit City's use of the Property shall be prohibited unless approved in writing in advance by City. City's approval or disapproval of the design or installation of the Wireless Telecommunications Facility shall not alter or diminish any responsibility, liability, or indemnity assumed by Licensee under this Agreement.
- 7.3.4 During the installation and construction period, Licensee shall provide temporary chain-link fencing of at least six (6) feet in height around the Licensed Premises; provided such fencing material is approved by the appropriate zoning and permitting agency governing the Licensed Premises. Licensee shall be permitted to temporarily store construction materials and equipment on the Property near the Premises at the location(s) mutually agreed upon by the Parties for a period not to exceed six (6) months commencing on the date Licensee commences construction at the Property.
- 7.3.5 Once the construction and installation work has begun, Licensee shall prosecute all construction and installation to completion with due diligence and in no case longer than nine (9) months.
- 7.3.6 All work on the Premises shall be performed in a good and workmanlike manner, shall substantially comply with the plans and specifications submitted to City, and shall comply with all applicable Laws. Licensee shall pay for all costs and expenses associated with construction and installation done by Licensee, or on behalf of Licensee, on the Premises as permitted or required by this Agreement.

8. UTILITIES AND SERVICES. Licensee shall make all arrangements for and directly pay for all utilities, fiber and services furnished to or used by it, including, without limitation, electricity, gas, water and telephone service (if any), and for all connection charges. Licensee shall install, at Licensee's sole cost and expense, a separate meter for each utility it utilizes. If Licensee fails to pay when due any charge, lien or expense for any such utility or service, City may in its sole discretion pay the same, and any amount so paid by City shall be paid by Licensee to City

within sixty (60) days after City gives Licensee written demand, including reasonable supporting documentation.

- 8.1 Licensee may, at its expense, and with City's prior written consent, which consent shall not be unreasonably delayed, conditioned, or denied, install, operate and maintain a temporary transportable power generator and related transportable fuel storage tank at the Licensed Premises.

9. MAINTENANCE

- 9.1 Licensee, at its sole cost and expense, shall at all times maintain in good order, condition, cleanliness, and repair, reasonable wear and tear and casualty damage excepted, any improvements made by Licensee pursuant to this Agreement, and the Licensed Premises and every part of the Licensed Premises, including all equipment within the Licensed Premises. If Licensee fails to make required repairs to any improvements or landscaping within thirty (30) days after Licensee receives written notice of said failure from the City, City shall have the right to make the required repairs and Licensee shall pay the reasonable cost and expenses thereof within thirty (30) days after Licensee's receipt from the City of written demand with supporting documentation. All repairs and maintenance work by Licensee on the Premises shall comply with such reasonable rules as City may promulgate in writing from time to time regarding construction and maintenance in or on the applicable Property; provided that City has provided Licensee a written copy of said rules at least thirty (30) days in advance of their effective date. All routine maintenance work shall be conducted between the hours of 7am and 5pm and shall not be unreasonably loud or disruptive. In the event any such routine maintenance is unreasonably loud or disruptive, the City may provide Licensee notice of the same by calling Licensee's Network Operations Center at 866-624-6874 and Licensee shall cease such unreasonably loud or disruptive maintenance promptly following receipt of notice of the same as set forth in this Section 9.1. When the Licensee must conduct emergency maintenance work outside of the time set out above, the Licensee shall notify the City by telephone at 805-736-2341 (or such other phone number as the City provides to Licensee) as soon as reasonably practicable.
- 9.2 Licensee shall also promptly repair at its sole cost and expense any damage to the Property caused by Licensee or its employees, agents, contractors or sublicensees, and restore the Property to as good a condition as existed immediately before such damage occurred. In the event Licensee fails to repair such damage within thirty (30) days after Licensee's receipt of City's written notice of such damage, City may repair the damage and Licensee shall reimburse the City for the reasonable costs of repair within thirty (30) days after Licensee's receipt of City's written notice, which shall include an invoice and reasonable supporting documentation.
- 9.3 Notwithstanding any other provision of this Agreement, if the Wireless Telecommunications Facility creates an imminent and substantial risk of harm to persons or property, City may (but is not obligated to) require Licensee to power

down the Wireless Telecommunications Facility or the equipment causing the risk, and if Licensee fails to do so with the time required by City, City may take any actions necessary to mitigate the risk and Licensee shall pay the reasonable cost and expenses of City's actions within sixty (60) days after written demand.

10. INTERFERENCE

- 10.1 Licensee shall use the Licensed Premises in a manner which does not create a danger to, or interfere with, the Property or any use or occupancy of the Property by City, the public, or any other licensee or lessee whose use or occupancy of the Property predates that of Licensee. Licensee shall not do or permit anything to be done in or about the Premises that exceeds the use of the Licensed Premises as set forth in Section 4.1, nor shall conduct any activities that cause an unreasonable risk of harm to persons or property or cancellation of the policies of insurance required to be maintained by Licensee pursuant to this Agreement. Licensee shall not cause, maintain or permit any nuisance in, on or about the Property. Licensee shall not commit or allow to be committed any waste in or upon the Licensed Premises.
- 10.2 Licensee shall not install on the Licensed Premises equipment of the type and frequency which will cause harmful interference, which is measurable in accordance with then existing industry standards, to any equipment of other licensees or users of the Property which existed on the Property prior to the Effective Date or to any equipment of City regardless of location. In the event Licensee desires to add additional equipment to the Licensed Premises, after obtaining City's written approval pursuant to Section 6, such additional equipment shall not cause harmful interference with equipment then existing as of the date of installation of other licensees or users of the Property, or any equipment of City regardless of location. If such interference with other licensees or users of the Property, or any equipment of City continues for more than forty-eight (48) hours following Licensee's receipt of notification thereof, Licensee shall cease operating, and/or relocate, the source of the interference, or reduce the power sufficiently to minimize the interference until such interference can be remedied.

Following the Effective Date, City agrees not to install or to permit others to install any structure or equipment, which could block or otherwise interfere with any transmission or reception by the Wireless Telecommunications Facility. If such interference with the Wireless Telecommunications Facility continues for more than forty-eight (48) hours following City's receipt of notification thereof, City shall cause any interfering party to cease operating, and/or relocate, the source of the interference, or to reduce the power sufficiently to minimize the interference until such interference can be remedied.

- 10.3 Prior to commencing full operation of the Wireless Telecommunications Facility, as the Wireless Telecommunications Facility exists or may be permitted to exist pursuant to this Agreement, Licensee shall conduct radio interference testing and resolve any interference caused to then-existing equipment of other licensees or users of the Property, or to equipment of City regardless of location. Thereafter,

Licensee shall resolve any radio interference caused by the Wireless Telecommunications Facility to equipment of any other licensees or users of Property existing as of the Effective Date, or to equipment of City regardless of location, and shall work in good faith to resolve radio interference problems caused by subsequent licensees or users of Property.

- 10.4 If any modification of the Wireless Telecommunications Facility occurring after the initial installation causes such interference, and after City has notified Licensee in writing of such interference, Licensee will promptly take all steps reasonably necessary to correct and eliminate the interference, including, without limitation, at Licensee's option, powering down the interfering equipment and later powering up such equipment for intermittent testing. In no event will City be entitled to terminate this Agreement or relocate the equipment as long as Licensee is making a good faith effort to remedy the interference issue.
- 10.5 The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section 10 and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

11. ASSIGNMENT AND SUBLETTING

- 11.1 Licensee shall not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Agreement or any interest herein, or any right or privilege to this Agreement, or sublicense all or any portion of the Licensed Premises (in accordance with Section 11.4 below), or allow any other person (the employees, agents, servants and contractors of Licensee excepted) to occupy or use the Licensed Premises, or any portion thereof, without first obtaining the consent of City, which consent may not be unreasonably withheld, conditioned or delayed; provided however, that City may require payment of a commercially reasonable monthly fee if additional space is required by the third party sublicensee as a condition of approving Licensee's request to sublet a portion of the Licensed Premises, as provided in Section 11.4 below.

Notwithstanding the foregoing, City consent shall not be required if Licensee delivers to City written notice of the applicable transaction within thirty (30) days after its effective date, together with written evidence that the assignee is: (i) a corporation, partnership, or limited liability company (a "**Parent**") having, directly or indirectly, a majority (51% or greater) ownership interest in Licensee; (ii) a corporation or other entity with which Licensee and/or any Parent may merge or consolidate; (iii) a purchaser of substantially all of the outstanding ownership units or assets of Licensee and/or any Parent; or (iv) any transferee of Licensee's Federal Communications Commission cellular license in the market defined by the FCC in which the Property is located.

- 11.2 City's consent to one assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting,

occupation or use by another person. Neither the City's consent to any subletting or assignment, nor any subletting or assignment not requiring consent, shall relieve Licensee from liability under this Agreement. Any assignment, sublicense or transfer shall be subject to all of the terms, covenants and conditions of this Agreement and the assignee, sublessee or transferee shall expressly assume for the benefit of City the obligations of Licensee under this Agreement by a document reasonably satisfactory to City.

- 11.3 Any assignment or subletting in violation of this Section 11 shall be void, and shall, at the option of City, constitute a default under this Agreement.
- 11.4 If City consents to Licensee sublicensing a portion of the Premises in accordance with this Section 11, Licensee may only sublicense space in the Licensed Premises. In the event a third party sublicensee requires additional space outside of the Licensed Premises to accommodate its telecommunications equipment, such third party shall be required to enter into an agreement directly with the City for said additional space with the fees for such additional space paid directly by the third party to City, and the City will not be entitled to collect any additional monthly fee from Licensee. Any sublicense that is entered into shall be subject to and subordinate to the provisions of this Agreement.

12. **[RESERVED]**

13. **ENVIRONMENTAL LIABILITY AND HAZARDOUS SUBSTANCES**

- 13.1 Except as permitted by any applicable Laws (as defined in Section 28.12 below), Licensee shall not cause or permit any **Hazardous Substances** (as defined below) to be used, stored, generated or disposed of, on or in the Property by Licensee, Licensee's agents, employees, servants or contractors without first obtaining City's written consent and following any and all requirements of applicable Laws, including any permitting requirements.
- 13.2 If Hazardous Substances are used, stored, generated, or disposed of, on or in the Licensed Premises, or if the Property becomes contaminated in any manner for which Licensee is legally liable, Licensee shall indemnify and hold harmless the City Indemnitees from any and all claims against City (including, without limitation, a decrease in value of the Property, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, reasonable attorneys', consultants', and experts' fees) arising during or after the Agreement Term to the extent arising as a result of that contamination, except to the extent caused by City or City's agents, employees or contractors or other third parties. This indemnification includes, without limitation, any and all reasonable costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Licensee causes or permits the presence of any Hazardous Substance on the Property which results in contamination, Licensee

shall promptly, at Licensee's sole cost and expense, take any and all necessary actions to return the applicable Property to the condition existing prior to the presence of any such Hazardous Substance on the Property or as close as reasonably possible to such prior condition and in any event, to a condition which complies with Law and requires no further action or remediation. Licensee shall first obtain City's approval for any such remedial action, which City agrees not to unreasonably withhold, condition or delay. The provisions of this Section 13 shall be in addition to, and do not limit, the obligations set forth in Section 14 of this Agreement, or other obligations and liabilities Licensee may have to City at law or in equity and shall survive the expiration or earlier termination of this Agreement.

- 13.3 For purposes of this Agreement, the term "**Hazardous Substance**" means any substance, chemical, pollutant or waste that is hazardous, toxic, dangerous, ignitable, reactive or corrosive and that is regulated by any local government, the State of California, or the United States Government. "Hazardous Substance" also includes, without limitation, any and all materials or substances that are defined by Law as "hazardous waste," "extremely hazardous waste" or a "hazardous substance." "Hazardous Substance" also includes, but is not limited to, asbestos, polychlorobiphenyls and oil, petroleum and their by-products.
- 13.4 City represents, warrants, and covenants that to the best of City's actual knowledge without the duty to investigate or conduct due diligence it has not caused, knowingly permitted, or failed to remediate in accordance with Applicable Law (at City's sole cost and expense) any Hazardous Substance placed, stored, treated, released, spilled, transported, or disposed of on, under, at, or from the Property. City understands and agrees that notwithstanding anything contained in this Agreement to the contrary, in no event shall Licensee have any liability whatsoever with respect to any Hazardous Substance that was on, about, adjacent to, under, or near the Licensed Premises prior to the Effective Date, or that was generated, possessed, used, stored, released, spilled, treated, transported, manufactured, refined, handled, produced, or disposed of on, about, adjacent to, under, or near the Property by: (1) City, its agents, employees, contractors, or invitees; or (2) any third party who is not an employee, agent, contractor, or invitee of Licensee.

14. **INSURANCE AND INDEMNIFICATION**

- 14.1 Insurance Coverages. Without limiting Licensee's indemnification of City, and prior to commencement of any services under this Agreement, Licensee shall obtain, provide and maintain at its own expense during the Agreement Term, policies of insurance of the type and amounts described below and in a form satisfactory to City.
- (a) General liability insurance. Licensee shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability

that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

- (b) Automobile liability insurance. Licensee shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Licensee arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.
- (c) Workers’ compensation insurance. Licensee shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000).
- (d) Subcontractors. Licensee shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

14.2 General Insurance Requirements.

- (a) Proof of insurance. Licensee shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsements must be approved by City’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the Agreement Term.
- (b) Duration of coverage. Licensee shall maintain the required insurance policies for the Agreement Term.
- (c) Primary/noncontributing. Coverage provided by Licensee shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.
- (d) City’s rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Licensee or City will withhold amounts sufficient to pay premium from Licensee payments. In the alternative, City may

terminate this Agreement after City provides notice to Licensor and Licensee fails to promptly secure the City required insurance.

- (e) Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or that is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
- (f) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Licensee or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Licensee hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- (g) Enforcement of contract provisions (non-estoppel). Licensee acknowledges and agrees that any actual or alleged failure on the part of the City to inform Licensee of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- (h) Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any Party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- (i) Notice of cancellation. Licensee agrees to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage .
- (j) Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.
- (k) Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

- (l) Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.
- (m) Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.
- (n) Timely notice of claims. Licensee shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Licensee's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
- (o) Additional insurance. Licensee shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

14.3 Indemnification. To the full extent permitted by law, Licensee agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, volunteers and agents against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (collectively herein "**Claims**") that may be asserted or claimed by any person, firm or entity caused by with the negligent performance of the work, operations or activities performed under this Agreement by Licensee, its officers, employees, agents, subcontractors, invitees, or any individual or entity for which Licensee is legally liable (collectively, "**Indemnitors**"), or arising from Indemnitors' reckless or willful misconduct, or arising from Indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except Claims occurring as a result of City's sole negligence or willful acts or omissions. The indemnity obligation shall be binding on successors and assigns of Licensee and shall survive termination or expiration of this Agreement.

15. RESERVATIONS. City reserves (and may grant) such easements through the Property (including the Conduit Easement Areas and the Access Easement Areas) that City deems necessary or desirable, including, without limitation, the right to construct, improve, use, maintain and repair utilities, services, pipes and conduits, so long as such easements do not unreasonably interfere with the use of the Premises by Licensee (except that, in the case of an emergency, City will be entitled to interfere with Licensee's use to the extent necessary, in City's good faith discretion, to properly address the emergency).

16. RIGHT OF ACCESS

16.1 City and City's officers, employees, consultants, and agents shall, upon not less than seventy-two (72) hours prior written notice to Licensee, except in the event of emergency in which case no prior notice shall be required (but City shall notify Licensee of such access as soon as possible thereafter), have at all reasonable times the right to enter the Licensed Premises, in the presence of a Licensee representative, for the purpose of inspecting the same, posting notices of non-responsibility or any other notices required by Law for the protection of City, and doing any work that City is permitted or required to perform under this Agreement. Any inspection of the Licensed Premises shall be performed while in the presence of a Licensee representative provided Licensee makes a Licensee representative available for that purpose. Licensee shall provide City with keys allowing access to any locked portions of the Licensed Premises, excepting secured equipment cabinets; provided, however, that City shall not be permitted to use such keys to access the Licensed Premises except after giving the notice required by this Section 16 or in the event of an emergency. In conducting its activities on the Licensed Premises as allowed in this Section 16, City shall use good faith efforts to attempt to minimize the inconvenience, annoyance or disturbance to Licensee, provided that the City shall not be liable therefor. Licensee shall not be entitled to an abatement or reduction of Monthly Rent if City exercises any rights reserved in this Section 16.

16.2 Licensee shall provide to City, and maintain current, an emergency telephone number at which a live person is available twenty-four (24) hours per day, seven (7) days per week who is capable of providing an immediate response by Licensee in the case of an emergency. The initial emergency contact telephone number is 866-624-6874, which may be changed by Licensee upon written notice to City.

17. TAXES AND ASSESSMENTS

17.1 Licensee shall pay or cause to be paid, before delinquency, any and all taxes, assessments or charges levied or assessed against Licensee's interest in the Licensed Premises, upon all of Licensee's improvements, equipment, furniture, fixtures, and any other personal property of Licensee located in or on the Licensed Premises, or which may become a lien against the Licensee's interest in the Licensed Premises or its property. Licensee shall cooperate with the Santa Barbara County Assessor in providing any information necessary for the Assessor to make a property tax determination.

17.2 If for any reason the Wireless Telecommunications Facility is assessed for tax purposes as part of the Property, Licensee shall reimburse City for any increase in City's taxes directly attributable to the Wireless Telecommunications Facility. Reimbursement shall be due thirty (30) days following Licensee's receipt of a written request and reasonable evidence of how the increase is directly attributable to the Wireless Telecommunications Facility.

18. LICENSEE'S DEFAULT. The occurrence of any one (1) or more of the following events shall constitute a default and breach of this Agreement by Licensee:

- 18.1 The vacating or abandonment of the Premises by Licensee, provided that so long as Licensee continues to pay the Monthly Rent Licensee shall not be deemed to vacate or abandon the Premises;
- 18.2 Licensee's failure to make any payment of Monthly Rent or any other payment required to be made by Licensee hereunder, as and when due, if such failure continues for a period of thirty (30) days after written notice thereof is given to Licensee by City;
- 18.3 Licensee's failure to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Licensee, other than described in Section 18.2 above, if such failure continues for a period of thirty (30) days after City gives written notice of such failure to Licensee; provided, however, that if the nature of Licensee's default is such that more than thirty (30) days are reasonably required for its cure, then Licensee shall not be deemed to be in default if Licensee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion in good faith; or
- 18.4 Licensee's making of any general assignment or general arrangement for the benefit of creditors; or unless prohibited by Bankruptcy Law or other paramount Law, the filing by or against Licensee of a petition to have Licensee adjudged a bankrupt, or a petition or reorganization or arrangement under any Law relating to bankruptcy (unless, in the case of a petition filed against Licensee, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Licensee's assets located at the Licensed Premises or of Licensee's interest in this Agreement, where possession is not restored to Licensee within sixty (60) days; or the attachment, execution, or other judicial seizure of substantially all of Licensee's assets located at the Licensed Premises or of Licensee's interest in this Agreement, where such seizure is not discharged within sixty (60) days; or
- 18.5 A violation of Section 11 above.

Any notice required to be given by City under this Section 18 shall be in lieu of and not in addition to any notice required under Section 1161 of the California Code of Civil Procedure.

19. DEFAULT BY CITY. City shall not be in default unless City fails to perform obligations required of City under this Agreement within thirty (30) days after Licensee gives City written notice specifying wherein City has failed to perform such obligation; provided, however, that if the nature of City's obligation is such that more than thirty (30) days are required for performance then City shall not be in default if City commences performance within such thirty (30) day period and thereafter prosecutes such cure to completion in good faith.

20. REMEDIES ON DEFAULT

- 20.1 Upon a default, and after receipt of written notice of such default by the defaulting Party, and expiration of the defaulting Party's cure period as provided in this Agreement, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to obtaining required insurance policies. The reasonable costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon receipt of an invoice from the non-defaulting Party that describes and documents the costs and expenses with particularity. The defaulting Party shall pay to the non-defaulting Party upon demand the full invoiced amount thereof With interest thereon beginning on the thirty-first (31st) day after receipt of the invoice at five percent (5%). Notwithstanding the foregoing, nothing in this Agreement will be deemed to permit Licensee to withhold or offset Monthly Rent or any other amounts owed to Licensor.
- 20.2 In the event of an uncured default by either Party with respect to a material provision of this Agreement which remains uncured beyond all applicable cure periods, the non-defaulting Party may, in addition to any other remedies which may be available hereunder and all rights described in California Civil Code Section 1951.4, terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, that the non-defaulting Party shall use reasonable efforts to mitigate its damages in connection with a default by the defaulting Party.

21. LIMITATION OF LIABILITY. In no event shall either Party be liable to the other Party or any of the other Party's officers, partners, affiliates, subsidiaries, customers, lessees, licensees, sublessees, sublicensees, assignees, agents, representatives, contractors, servants, volunteers or employees for any lost revenue, lost profits, anticipated profits, penalties of any kind or description, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, or monetary damages of any kind, 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.

22. RECONSTRUCTION AND/OR RELOCATION.

- 22.1 In the event the Licensed Premises, or Licensee's improvements on the Licensed Premises, are damaged by fire or other perils covered by extended coverage insurance, Licensee agrees to repair the damage, and this Agreement shall remain in full force and effect. In the event the improvements are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, either Party shall have the option to give notice to the other Party at any time within sixty (60) days after such damage, terminating this Agreement as of the date specified in such notice (which date shall be no more than thirty (30) days after the giving of such notice). In the event of giving such notice, this Agreement shall

expire and all interest of Licensee in the Premises shall terminate on the date so specified in such notice and the Monthly Rent, reduced by a proportionate reduction, based upon the extent, if any, to which such damage interfered with the business carried on by Licensee in the Premises, shall be paid up to the date of such termination.

22.2 It is understood and agreed that no more than one time during the Agreement Term and only after expiration of the first Extended Term, City may need to redevelop the Property. In the event City redevelops the Property, Licensee agrees that City may require Licensee to relocate the Premises to other locations on the Property, such location being at City's sole and absolute discretion (the "**Replacement Premises**"); provided, however, the Replacement Premises shall be similar to the current Licensed Premises in size and compatible for the Wireless Telecommunications Facility, in Licensee's reasonable discretion. Licensee also agrees that it shall cause such relocation to be accomplished within eighteen (18) months after City delivers to Licensee written notice from City requesting Licensee to relocate, including obtaining all Governmental Approvals required for the relocation. Licensee further agrees that any and all costs attributable to such relocation shall be borne and paid for by Licensee; provided, however, in lieu of relocating, Licensee shall have the option of terminating this Agreement by providing City with written notice of its election to do so and removing all component parts of the Wireless Telecommunications Facility from the Licensed Premises prior to the date City required Licensee to complete the relocation of the Wireless Telecommunications Facility. Licensee shall be permitted to operate a temporary facility at the Property (e.g. cell on wheels) in a location reasonably approved by City during any such relocation; provided that Licensee has obtained all required Governmental Approvals for the temporary facility. Licensee hereby WAIVES ALL RELOCATION RIGHTS AND BENEFITS UNDER CALIFORNIA LAW IN CONNECTION WITH ANY SUCH RELOCATION OR AGREEMENT TERMINATION.

23. **EMINENT DOMAIN.** If all or any part of the Premises is taken or appropriated by any authority under the power of eminent domain, either Party shall have the right, at its option, within sixty (60) days after such taking, to terminate this Agreement upon thirty (30) days' notice. If neither Party elects to terminate as herein provided, the rent thereafter to be paid shall be equitably reduced. In the event of any taking or appropriation whatsoever, City shall be entitled to any and all awards and/or settlements that may be given (other than awards for the taking and/or relocation of Licensee's personal property and/or trade fixtures), and Licensee shall have no claim against City for the value of any unexpired Term of this Agreement.

24. **NOTICE.** Except as otherwise required by Law, any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and delivered: (a) in person, by certified mail, postage prepaid, return receipt requested, or (b) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and addressed to the Parties at the addresses stated below, or at such other address as either Party may hereafter notify the other in writing as aforementioned:

Licensee: DISH Wireless L.L.C.
 Attn: Lease Administration
 5701 South Santa Fe Blvd.
 Littleton, Colorado 80120

City: City of Lompoc
 Attn: City Clerk
 100 Civic Center Plaza
 Lompoc, CA 93436

With a copy to the City Attorney:

Aleshire & Wynder LLP
Jeff Malawy
18881 Von Karman Avenue
Suite 1700
Irvine, CA 92612

Service of any such notice or other communications so made shall be deemed effective on the day of actual delivery (whether accepted or refused), as shown by the addressee's return receipt if by certified mail, and as confirmed by the courier service if by courier; provided, however, that if such actual delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or demand so made shall be deemed effective on the first business day following the day of actual delivery. No communications via facsimile or electronic mail shall be effective to give any notice, request, direction, demand, consent, waiver, approval or other communications under this Agreement.

25. SUCCESSORS. Each and every one of the terms, covenants, and conditions of this Agreement shall inure to the benefit of and shall bind, as the case may be, not only the Parties, but each and every one of the heirs, executors, administrators, successors, assigns, and legal representatives of the Parties; provided, however, that any subletting or assignment by Licensee of the whole or any part of the Premises or any interest therein shall be subject to the provisions of Section 11 above.

26. HOLDING OVER. If Licensee, with City's written consent, remains in possession of the Licensed Premises after expiration or termination of the Agreement Term, such possession by Licensee shall be deemed to be a month-to-month tenancy, terminable on thirty (30) days' written notice given at any time by either Party, at a monthly rental equal to one hundred twenty-five percent (125%) of the Monthly Rent in effect immediately prior to expiration or termination. All provisions of this Agreement except those pertaining to Monthly Rent and term shall apply to the month-to-month tenancy.

27. SURRENDER. City agrees and acknowledges that all of the Wireless Telecommunication Facility, including, without limitation, antenna structures, equipment, conduits, fixtures and personal property of Licensee installed or placed by Licensee in the Premises shall remain the property of Licensee ("**Licensee's Property**"), and Licensee shall have the right to remove Licensee's Property at any time during the Agreement Term, whether or not such items are

considered fixtures and attachments to real property under applicable laws, provided that Licensee promptly repairs any damage caused by or related to such removal. At the expiration or within ninety (90) days after the earlier termination of the Agreement Term (“**Removal Period**”), Licensee shall surrender the Premises to City in the same condition as received unless otherwise agreed to by the City, reasonable wear and tear excepted (and if applicable, with the Licensee’s Property removed and all damage caused thereby, or related thereto, repaired, and any foundation removed down to two feet (2’) below grade level). If such Removal Period causes Licensee to remain on the Premises after expiration or earlier termination of this Agreement, the provisions of Section 26 above shall apply until such time as the removal of the Wireless Telecommunications Facility is completed. If improvements or equipment remain after the Removal Period ends, City may, upon thirty (30) days written notice to Licensee, remove and dispose of such improvements, equipment, or both, without liability to Licensee, and repair the Licensed Premises. Licensee shall reimburse City for such removal, disposal, and repair within thirty (30) days after written demand from City, including reasonable supporting documentation. The obligations set forth in this Section 27 shall survive the expiration or earlier termination of this Agreement.

28. GENERAL PROVISIONS

- 28.1 Exhibits. All Exhibits referenced in this Agreement are incorporated as though set forth in full in this Agreement.
- 28.2 Waiver. The waiver by City or Licensee of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition contained in this Agreement. The subsequent acceptance of Monthly Rent under this Agreement by City shall not be deemed to be a waiver of any preceding default by Licensee of any term, covenant or condition of this Agreement, other than the failure of Licensee to pay the particular rental so accepted, regardless of City’s knowledge of such preceding default at the time of the acceptance of such Monthly Rent.
- 28.3 Modification. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Parties or their respective successors in interest.
- 28.4 Joint Obligation. If more than one person or entity comprises Licensee, the obligations hereunder imposed shall be joint and several as to each such person or entity.
- 28.5 Construction; Captions. The Parties agree that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting Party in accordance with California Civil Code Section 1654, and that each Party to this Agreement waives the effect of such statute. The captions and section titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. Unless

otherwise specified herein, any term referencing time, days, or period for performance shall be deemed calendar days and not work days.

- 28.6 Time. Time is of the essence with respect to the performance of this Agreement and each and all of its provisions in which time is a factor.
- 28.7 Signs. Except for signs required to be placed on the Premises under Applicable Law, Licensee shall not, without City's prior written approval, install or affix any lighting fixtures, shades, awnings, or decorations (including, without limitation, exterior painting), advertising signs, other signs, lettering, placards or the like, on the improvements made by Licensee, the Premises, or the Property.
- 28.8 Prior Agreements; Effective Agreement. This Agreement contains all of the agreements of the Parties with respect to the subject matter covered in this Agreement. All prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties, oral or written, relating to the subject matter covered by this Agreement, are merged into and superseded by this Agreement. This Agreement shall not be effective or binding on any Party until approved by the City Council of the City and fully executed by both Parties.
- 28.9 Inability to Perform; Force Majeure. The time stated in this Agreement for the performance of any act (other than the payment of money) by either Party shall be extended for the period of time that the Party shall be delayed or prevented from performing by reason of strikes, acts of nature, or any causes beyond the reasonable control of the Party ("**Force Majeure**") claiming the extension (excluding inability to make payments), provided that the Party claiming the extension has notified the other of such delay or prevention within fifteen (15) days of the inception thereof, and has thereafter notified the other Party of the status of such delay or prevention not less often than once every fifteen (15) days.
- 28.10 Partial Invalidity. Any provision of this Agreement which shall be held by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect; provided however, in the event a court of competent jurisdiction in a final judicial action determines that any provision providing for the payment of or the amount of Monthly Rent is invalid, void, or illegal, the City in its sole and absolute judgment may, within one-hundred twenty (120) days of such decision, unilaterally terminate this Agreement by written notice to Licensee.
- 28.11 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.
- 28.12 Compliance with Laws. The Parties agree to comply with all Laws in the exercise of their rights and performance of their obligations under this Agreement. "**Laws**" or "**Law**" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative

orders, certificates, orders, directives, judgments, decrees, permits, approvals or other applicable requirements of City in its governmental capacity or other governmental entity or agency having joint or several jurisdiction over the Parties, the Premises, the operations of Licensee on the Premises or having jurisdiction that is applicable to any aspect of this Agreement (including, without limitation, Federal Communications Commission (FCC) Radio Frequency (RF) sign posting requirements, and FCC regulations relating to RF emissions) that are in force on the Effective Date and as they may be enacted, issued or amended during the Agreement Term. City shall be entitled to conduct its own testing and/or not more than once per year, upon forty-five (45) days prior written notice to Licensee, require Licensee to employ the services of an independent RF Engineer to test RF emission levels attributable to the Wireless Telecommunications Facility and to certify Licensee's compliance with this Section 28.12.

- 28.13 Governing Law and Venue. This Agreement shall be interpreted and enforced according to, and the Parties rights and obligations, including any non-contractual claims, shall be governed by the domestic law of the State of California, without regard to its laws regarding choice of applicable Law. Any proceeding or action to enforce this Agreement shall occur in the federal court with jurisdiction over Santa Barbara County and the state courts located in Santa Barbara County, California.
- 28.14 Estoppel. Each Party agrees to furnish to the other such truthful estoppel information in a form mutually agreeable to the Parties, as the other may reasonably request within forty-five (45) calendar days of the Party's receipt of such request.
- 28.15 Attorneys' Fees. If legal action is brought by either Party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to recover reasonable attorneys' fees and court costs.
- 28.16 Survival of Terms. All of the terms and conditions in this Agreement related to payment, removal due to termination or expiration, insurance, indemnification, hazardous substances, limits of City's liability, attorneys' fees and waiver shall survive expiration or earlier termination of this Agreement.
- 28.17 Authority of Licensee. The person executing this Agreement on behalf of Licensee represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Licensee, in accordance with the formation and organizational documents of Licensee, and that this Agreement is binding upon Licensee.
- 28.18 City's Approvals. Neither City's execution of this Agreement nor any consent or approval given by City hereunder in its proprietary capacity as the owner of the Property shall waive, abridge, impair or otherwise affect City's powers and duties as a governmental body. Any requirements under this Agreement that Licensee obtain consents or approvals of City are in addition to and not in lieu of any requirements of Law that Licensee obtain governmental approvals or permits.

28.18.1 The City Manager shall have the authority, but not the obligation, to give all consents and approvals on behalf of City.

28.19 No Third Party Beneficiaries. The Parties shall not be obligated or liable under this Agreement to any Party other than each other. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

28.20 Memorandum of Agreement. Concurrently with its execution and delivery of this Agreement, Licensee shall also execute and deliver to City a Memorandum of Agreement (the “**Memorandum**”) in the form attached hereto as **Exhibit G** (duly acknowledged by a notary) which City shall then execute (duly acknowledged by a notary) and either Party may record the Memorandum in the official records of Santa Barbara County, California (the “**Official Records**”). Licensee shall, within thirty (30) days following expiration or termination of this Agreement, execute and deliver to City a quitclaim deed (or other document reasonably acceptable to City) and termination of the Memorandum with respect to the Premises, in recordable form, designating City as grantee. In no event shall this Agreement be recorded in the Official Records.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY:

**CITY OF LOMPOC,
a municipal corporation**

Dean Albro, City Manager

ATTEST:

Stacey Haddon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Jeff Malawy, City Attorney

LICENSEE:

**DISH WIRELESS L.L.C.,
a Colorado limited liability company**

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Two corporate officer signatures required when Licensee is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. LICENSEE'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On _____, 2022 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
TITLE(S)	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	DATE OF DOCUMENT
<input type="checkbox"/> OTHER _____	_____
_____	_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On _____, 2022 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
TITLE(S)	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	DATE OF DOCUMENT
<input type="checkbox"/> OTHER _____	_____
_____	_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

Legal Description of Property

Block 346 of City of Lompoc, in the County of Santa Barbara, State of California, as per map filed in Book 1, Page 45 of Maps and Surveys in the office of the County Recorder of said County excepting therefrom the southerly 40 feet.

EXHIBIT B

Depiction of Licensed Premises

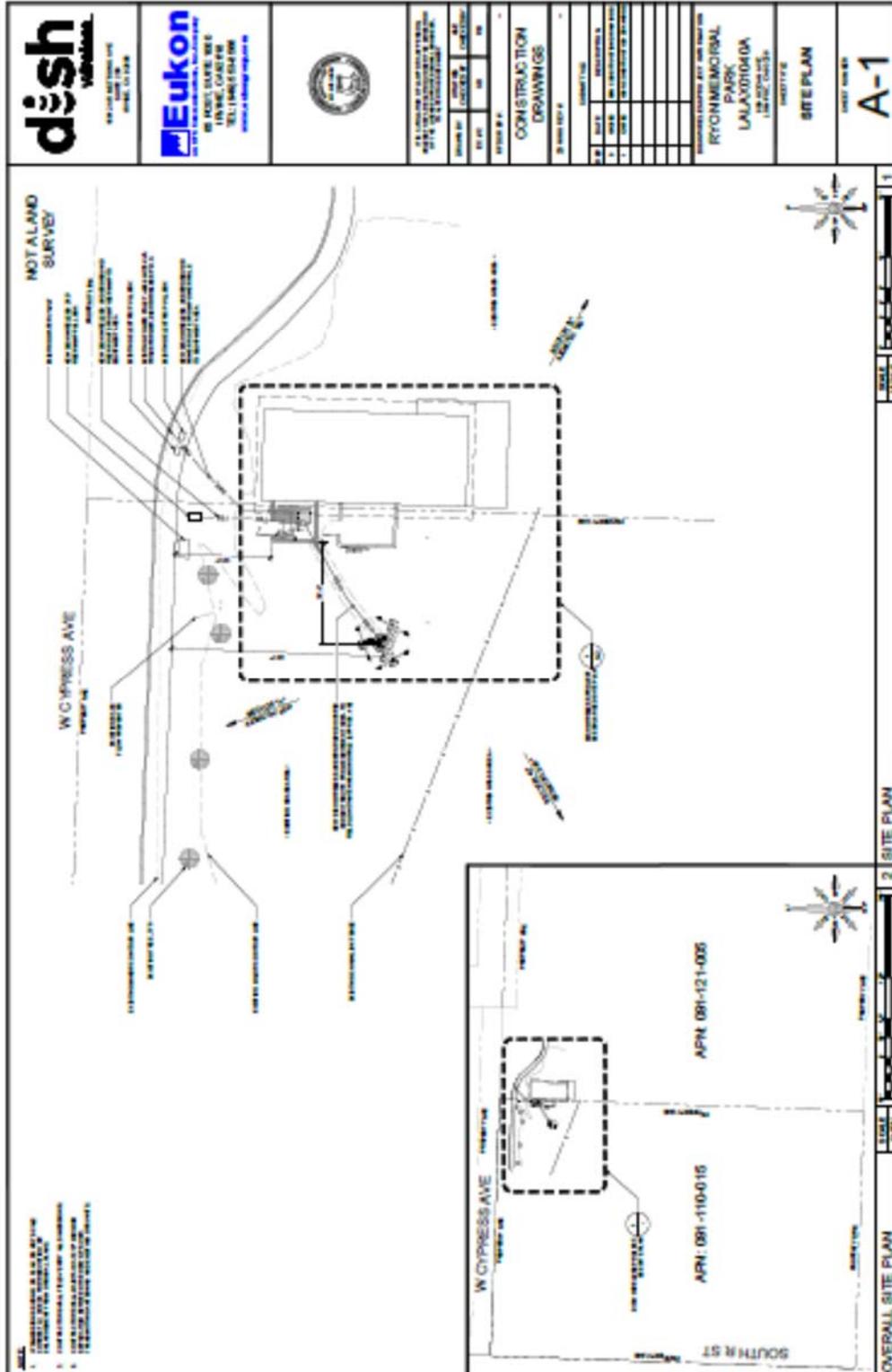


EXHIBIT D

Depiction of Access Easement Areas

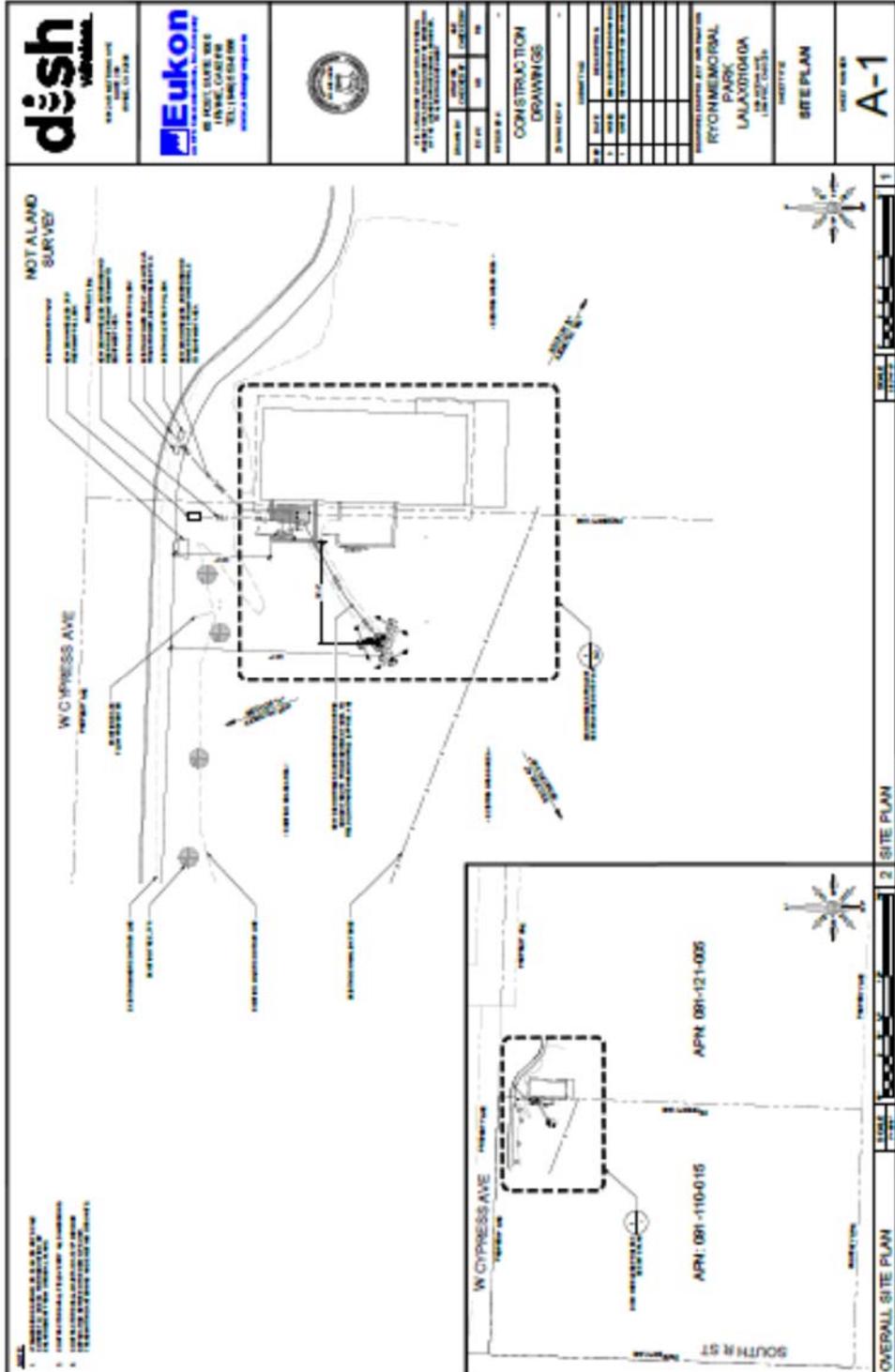


EXHIBIT E

Approved Plans and Equipment Details

EXHIBIT G

Memorandum of Agreement

RECORDING REQUESTED
BY; AND WHEN
RECORDED RETURN TO
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436

APN: 091-110-015

[Space Above For Recorder's Use Only]

The undersigned City declares that this Memorandum of Agreement is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this "**Memorandum**") is dated as of _____, 20__, and is executed by the CITY OF LOMPOC, a California municipal corporation ("**City**"), with a mailing address of Attn: City Clerk, 100 Civic Center Plaza, Lompoc, CA 93436, and DISH WIRELESS L.L.C., a Colorado limited liability company ("**Licensee**"), with a mailing address of 9601 South Meridian Boulevard, Englewood, Colorado 80112.

1. Licensee and City have entered into that certain License Agreement (the "**Agreement**") dated _____, 20__ ("**Effective Date**"), for the purpose of Licensee's installation, operation, maintenance, and management of a wireless communications facility. All of the foregoing, in addition to the provisions set forth in the Agreement, are incorporated by reference and made a part herein.

2. City is the owner of the real property located in the City of Lompoc, County of Santa Barbara, State of California, which real property is described in Exhibit "1" attached hereto and made a part hereof, designated by the Santa Barbara County Assessor's Office as Assessor's Parcel Number: 091-110-015 (the "**Property**").

3. City has licensed to Licensee space for Licensee's installation of a wireless telecommunications facility on the Property in the locations as described or depicted on Exhibit "2" attached hereto and made a part hereto (the "**Premises**") that includes certain rights of way or grants of easements for access and utilities as more particularly described in the Agreement (which may or may not be described or depicted in Exhibit 2), which easements are in effect, or may be acquired, or granted, throughout the term of the Agreement as renewed or extended subject to the terms and conditions as set forth in the Agreement.

4. The Agreement has an initial term of five (5) years commencing on the first (1st) day of the month following Licensee's commencement of construction activities (the

“**Commencement Date**”). Under certain conditions stated in the Agreement, Licensee shall have the right, at its election, to extend the term of the Agreement for five (5) additional five (5) year terms. If all options to renew are exercised, the Agreement will have a term of thirty (30) years from the Commencement Date.

5. This Memorandum is prepared for the purpose of giving record notice of the Agreement and in no way modifies the terms and conditions of the Agreement. In the event any provision of this Memorandum is inconsistent with any term or condition of the Agreement, the term or condition of the Agreement shall prevail. The Agreement contains and sets forth additional rights, terms, conditions, and obligations not enumerated within this Memorandum which govern the Agreement.

6. Duplicate copies of the originals of the Agreement are in the possession of City and Licensee at the addresses set forth above and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto.

7. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

[Reminder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Agreement as of the date first written above.

CITY:

**CITY OF LOMPOC,
a municipal corporation**

Dean Albro, City Manager

ATTEST:

Stacey Haddon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Jeff Malawy, City Attorney

LICENSEE:

**DISH WIRELESS L.L.C.,
a Colorado limited liability company**

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

EXHIBIT 1

Legal Description of Property

Block 346 of City of Lompoc, in the County of Santa Barbara, State of California, as per map filed in Book 1, Page 45 of Maps and Surveys in the office of the County Recorder of said County excepting therefrom the southerly 40 feet.

