

DAS / SMALL CELL LICENSE AGREEMENT

BETWEEN

THE CITY OF ROCHESTER HILLS

and

MOBILITIE, LLC

**THIS LICENSE AGREEMENT (“AGREEMENT”) DATED AS OF THIS \_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_, IS ENTERED INTO BY AND BETWEEN THE CITY OF ROCHESTER HILLS, A MICHIGAN MUNICIPAL CORPORATION (“CITY”), AND MOBILITIE, LLC, A LIMITED LIABILITY COMPANY (“LICENSEE”).**

**WHEREAS**, the CITY has made significant investments of time and resources in the acquisition and maintenance of the public ways, and such investment has enhanced the utility and value of the public ways; and

**WHEREAS**, the public ways within the CITY are used by and useful to private enterprises including LICENSEE and others engaged in providing telecommunications services to citizens, institutions, and businesses located in the CITY; and

**WHEREAS**, the right to access and/or occupy portions of such public ways for limited times, for the business of providing telecommunications services, is a valuable economic privilege; and

**WHEREAS**, beneficial competition between providers of communications services can be furthered by the CITY’S provision of grants of location and rights to use the public ways on non-discriminatory and competitively neutral terms and conditions; and

**WHEREAS**, LICENSEE is a private enterprise engaged in installing, operating, and maintaining facilities for carriers to provide various telecommunications services within the CITY by means of fiber connected Distributed Antenna Systems or other Small Cell Facilities (DAS/Small Cells or DAS Small Cells Networks); and

**WHEREAS**, LICENSEE desires to physically install and occupy portions of the public way to install wireless facilities as specifically enumerated herein, or to utilize CITY owned light, traffic signal or other CITY owned poles for use of LICENSEE’S DAS/Small Cells; and

**WHEREAS**, LICENSEE agrees to compensate the CITY for installation and/or operation of all antennas, supporting structures for antennas, equipment shelters, poles or houses associated with DAS/Small Cells in exchange for a grant of location and the right to use and physically occupy portions of the public way for the limited purposes and times set forth below;

**WHEREAS**, the CITY grants this License pursuant to its authority to manage its public

rights-of-way and public places;

NOW THEREFORE BE IT RESOLVED, in consideration of the terms and conditions contained in this Agreement, the CITY and LICENSEE agree:

**1.0 DEFINITIONS**

Except as otherwise defined herein, the following terms shall, when capitalized, have the meanings given below:

1.1 “Agency” means any governmental agency or quasi-governmental agency other than CITY, including, but not limited to, the Federal Communications Commission (FCC) and the Michigan Public Service Commission.

1.2 “Grant” when used with reference to grant or authorization of the CITY, means the prior written authorization of the CITY (and/or its various boards and commissions) unless another person or method for authorization is specified herein or under applicable law. Grant does mean not “Approval” as contemplated in various FCC determinations related to subsequent collocation requests which are expressly not granted by this License.

1.3 “Business Day” means any Day other than a Saturday, Sunday, or Day observed as an official holiday by the CITY.

1.4 “Day” means any calendar day, unless a Business Day is specified. For the purposes hereof, if the time in which an act is to be performed falls on a Day other than a Business Day, the time for performance shall be extended to the following Business Day. For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first Day and including the last.

1.5 “FCC” means the Federal Communications Commission.

1.6 “Hazardous Material” means any substance, waste or material which, because of its quantity, concentration or physical or chemical characteristics is in fact or deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

1.7 “Law” or “Laws” means any federal, state or local statute, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order, or other lawful requirement in effect either at the time of execution of this Agreement or at any time during the period the DAS/Small Cells are located in the Public Rights-of Ways.

1.8 “DAS/Small Cells” means any and all telecommunication facilities or related equipment installed and/or operated by LICENSEE for the provision of

commercial mobile radio service (“CMRS”) carriers and including cables, antennas, brackets, devices, conduits, poles, shelters, houses, cabinets and all other related equipment to be deployed, installed and/or operated by LICENSEE as described in Exhibit A attached hereto.

1.9 “Person” means an individual, a corporation, a partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business association or government agency.

1.10 “Public Ways” or “Public Rights-of-Way” means the areas in, upon, above, along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, boulevards, buildings and any other public places owned by and within the CITY as the same now or may hereafter exist and which are under the permitting jurisdiction of the CITY.

1.11 “Release” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any improvements constructed hereunder by or on behalf of LICENSEE.

1.12 “Services” means those services provided by or through DAS/Small Cells by LICENSEE as specifically identified in the attached detailed plans and specifications. (See Exhibit A) If the CITY grants the provision of any other services by LICENSEE, then upon such grant, the definition of “Services” shall automatically be revised to include any such grant of additional services.

1.13 “Poles” means light poles, wooden power poles, traffic light poles, highway sign poles, utility poles, lighting fixtures or other similar poles located in the Public Way owned by the LICENSEE or other third parties and may refer to such facilities in the singular or plural, as appropriate to the context in which used. The term “poles” excludes any historically or architecturally significant poles owned by the CITY located on public ways or, other similar street features.

## **2.0 TERM OF AGREEMENT**

The term of this Agreement shall commence on the date of execution by the CITY (“Commencement Date”) and shall remain in effect for ten (10) years, at which point the Agreement shall automatically renew on a year-to-year basis unless either party provides the other party with 180 days written notice of cancellation.

Upon written application to CITY delivered no later than one year before the end date of the term of this License, the LICENSEE may request to amend this License to

extend the end date to a proposed new date. Assuming the LICENSEE has met all conditions of the License and performed to CITY's satisfaction in providing the Services in the CITY, and assuming that CITY believes extension of the term of this License would be in the public interest, the term end date of this License may be extended.

### **3.0 DESCRIPTION OF WORK**

3.1 Installation of DAS/Small Cells Networks. During the term of this Agreement, LICENSEE is authorized, on a non-exclusive basis, to locate and install antennas, supporting structures for antennas, equipment shelters, poles or houses associated with DAS/Small Cell Networks including utility poles, light poles, or to attach to third party -owned poles to house and operate a DAS/Small Cells Network in the utility public right of way, as more particularly identified in Exhibit A. This agreement does not give any rights to use any poles not owned by the CITY. Prior to initial installation of the DAS/Small Cells equipment upon any pole or property, LICENSEE shall obtain written authorization from the CITY for such installation upon such specific property or pole and shall provide the CITY with written evidence of such authorization, if received from a third party.

3.1.1. Location of DAS/Small Cells Networks. The CITY may grant or deny the location and installation of any DAS/Small Cells equipment on a pole prior to installation, based on reasonable proprietary and or regulatory factors, such as the location of other present or future communications facilities upon which collection shall be a first priority, efficient use of scarce physical space to avoid premature exhaustion, potential inference with other communications facilities and services, the public safety of the motoring public and other users of the rights of way and other critical public services; provided, however, that such grant shall not be unreasonably conditioned, withheld, or delayed.

3.1.2 Map and List of DAS/Small Cells Equipment. LICENSEE shall maintain in a form acceptable to the CITY, a current map and list of the location of all Facilities used by LICENSEE for its DAS/Small Cells Network pursuant to this Agreement and located in public ways; LICENSEE shall provide such list to the CITY within ten (10) Business Days upon receipt of request for same; and LICENSEE shall, whether or not requested by the CITY, provide an updated list and map promptly after any change is made in regard to the locations of the specific poles specified by LICENSEE in such lists and maps, LICENSEE shall obtain all required permits and grants of the CITY and any of its departments or agencies, and any other Agency with jurisdiction over the DAS/Small Cells, services or the property on which the DAS/Small Cells are or will be located, prior to performing any work under this Agreement and shall comply with all of

the terms and conditions set forth in these permits, LICENSEE shall not mount, construct, install, maintain, locate, operate, place, protect, reconstruct, reinstall, remove, repair, or replace any DAS/Small Cells on any pole, except as expressly authorized by and in strict compliance with this Agreement, and shall not without further and separate authorization, otherwise locate more than one DAS/Small Cell with ancillary equipment or other related structure on any single pole.

3.1.3 Changes to DAS/Small Cells Networks or Their Location on Poles Located on Public Ways. LICENSEE may, without the CITY'S approval, modify its equipment to the extent that: (i) such modification to the attachment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the attachment, as approved by CITY; or (ii) such modification involves replacement of the attachment with an attachment that is the same, or smaller in weight and dimensions as the approved attachment. LICENSEE will notify the CITY of any such modification within fifteen (15) days after modification is made. For all other modifications, if LICENSEE proposes to install different but comparable equipment, or if the DAS/Small Cells or its location on the poles located on public Rights-of-Way deviate in any material way from the specifications attached hereto as Exhibit A, then LICENSEE shall first obtain a grant for the use and installation of the comparable equipment or for any such deviation in the DAS/Small Cells Network from the owners of the poles located on Public Rights-of-Way and shall provide the CITY with written evidence of such authorization. The CITY may not unreasonably deny use of the different but comparable equipment, or non-material deviation from the specifications set forth in Exhibit A with regard to the placement of the DAS/Small Cells equipment on the poles located on public ways, pursuant to the factors enumerated under Section 3.1.1 and such grant shall not be unreasonably conditioned, withheld, or delayed.

3.2 Provision of Service. The DAS/Small Cells Network installed pursuant to this Agreement shall be used for the rendering of communication services, including telecommunication wireless services. If LICENSEE proposes to make a material change to the nature and character of the services not expressly permitted under this Agreement, LICENSEE shall notify the CITY in writing of this intended change not less than one hundred and eighty (180) days prior to the proposed date of change to Service. The CITY may either (i) accept the proposed change in Service on mutually agreeable terms and conditions or (ii) require that the Services not be changed but rather continue to be provided as contemplated herein.

3.3 Restoration of Work Site Areas. Upon completion of each task or phase

of work to be performed by LICENSEE under this Agreement, LICENSEE shall promptly restore all work site areas to a condition reasonably satisfactory to the CITY and in accordance with construction standards as specified by the CITY, ordinary wear and tear not caused by LICENSEE or the DAS/Small Cells Networks excepted. The provisions of this paragraph shall survive the expiration, completion or earlier termination of this Agreement.

3.4 Removal of DAS/Small Cells Network. Upon one hundred and eighty (180) days' written notice by the CITY pursuant to the expiration or earlier termination of this Agreement for cause, LICENSEE shall promptly, safely and carefully remove the DAS/Small Cells Network from all poles and other places located in Public Rights-of-Way. Such obligation of LICENSEE shall survive the expiration or early termination of this Agreement. If LICENSEE fails to complete this removal work within the one hundred and eighty (180) days subsequent to the issuance of notice pursuant to this Section 3.4, then the CITY, upon written notice to LICENSEE, shall have the right at the CITY's reasonable election) but not the obligation, to perform this removal work and charge LICENSEE for the actual costs and expenses, including) without limitation, reasonable administrative costs. LICENSEE shall pay to the CITY the reasonable costs and expenses incurred by the CITY in performing any removal work and any storage of LICENSEE's property after removal (including any portion of the DAS/Small Cells Networks) within fifteen (15) Business Days of the date of a written demand for this payment from the CITY. The CITY may, in its discretion, obtain reimbursement for the above by making a claim under LICENSEE's performance bond. After the CITY receives the reimbursement payment from LICENSEE for the removal work performed by the CITY, the CITY shall promptly return to LICENSEE the property belonging to LICENSEE and removed by the CITY pursuant to this Section 3.4 at no liability to the CITY. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3.5 Risk of Loss or Damage. LICENSEE acknowledges and agrees that LICENSEE bears all risk of loss or damage of its equipment and materials, including, without limitation, the DAS/Small Cells Networks, installed in the Public Rights-of-Way pursuant to this Agreement from any cause, and the CITY shall not be liable for any cost of repair to damaged DAS/Small Cells Networks, including, without limitation, damage caused by the CITY's removal of DAS/Small Cells Networks, except to the extent that such loss or damage was caused by the negligence or willful misconduct of the CITY, including without limitation, each of its commissions, boards, departments, officers, agents, employees and contractors.

3.6 Removal or Relocation of DAS/Small Cells Network at CITY's Request. LICENSEE understands and acknowledges that the CITY, in an emergency, may require LICENSEE to remove or relocate LICENSEE's DAS/Small Cell Network upon

short notice. Otherwise, the CITY shall provide one hundred and eighty (180) days' notice whenever the CITY reasonably determines that the removal or relocation is needed: (1) to facilitate or accommodate the construction, completion, repair, relocation or maintenance of a CITY project; (2) because the DAS/Small Cells Network interferes with or adversely affects proper operation of the light poles, traffic signals, CITY-owned communications systems or other CITY facilities; (3) because of a transfer or vacation of the public right of way by the CITY; (4) because there is a change in use of the public right of way by the CITY provided such use similarly affects similarly Licensed users in the public right of way; (5) because there is damage to and/or removal of the light pole; or (6) to preserve and protect the public health and safety, in a manner not inconsistent with 47 USC § 332(c)(7). LICENSEE shall at its own cost and expense remove, relocate and/or adjust the DAS/Small Cells Network, or any part thereof, to such other location or locations in the Public Rights-of-Way, or in such manner, as appropriate, as may be designated or granted, in writing and in advance, by the CITY. Prior to any relocation, the CITY and LICENSEE will identify a mutually agreeable, alternative location that technologically and functionally meets LICENSEE's needs, including by way of example, but not limited to, coverage gap and height. Such removal, relocation, adjustment shall be completed within the time prescribed by the CITY in its written request and in accordance with the terms of this Agreement. LICENSEE shall not be in default hereunder if it has taken appropriate action as directed by the CITY to obtain such grant. If LICENSEE fails to remove, relocate, adjust or support any portion of the DAS/Small Cells Network as described by the CITY within the prescribed time, CITY may undertake any reasonable, necessary, and appropriate action, as stated in Section 3.4.

#### **4.0 PERMIT, LIMITATIONS AND RESTRICTIONS**

**4.1 Limited Authorization.** This Agreement does not authorize the placement of DAS/Small Cells Networks or any other equipment on sites, structures or facilities other than those specifically identified herein. Placement of the DAS/Small Cells Networks shall comply with the terms of the CITY's conditions of access in effect as of the date of execution hereof and as are applied equally to all Persons using the Public Rights-of-Way under grant by the CITY. The Agreement does not relieve LICENSEE of its burden of seeking any necessary permission from other governmental agencies which may have jurisdiction regarding LICENSEE's proposed use. LICENSEE further acknowledges that it cannot use any historically or architecturally significant poles located on the public rights-of-way or other street furniture, except as may be otherwise expressly authorized in a specific permit issued by the CITY.

**4.2 No Authorization to Provide Other Services.** LICENSEE represents, warrants and covenants that its DAS/Small Cells Networks installed pursuant to this Agreement will be utilized for the rendering of communication and telecommunication

services, including wireless services, and LICENSEE is not authorized to and shall not use the DAS/Small Cells Networks to offer or provide any other services not specified herein.

4.3 Reservation of Powers. The CITY reserves any and all powers it may have, or in the future under applicable local, state, or federal law, to regulate the DAS/Small Cells Networks, their use, or the use of the Public Rights-of-Way or of other CITY property. LICENSEE shall be subject to all present and future ordinances of the CITY. Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the CITY or of the CITY's right to require LICENSEE to secure the appropriate permits or authorizations for exercising the rights set forth in this Agreement.

4.4 All Permitted Activities Fees at LICENSEE's Sole Expense. Notwithstanding any other provision of this Agreement, the construction, operation, maintenance, removal and replacement of DAS/Small Cells Networks, and all other activities permitted hereunder and all fees or obligations of LICENSEE under this Agreement, shall be LICENSEE's sole responsibility at LICENSEE's sole cost and expense.

4.5 Permit. LICENSEE shall obtain, at its sole expense, all applicable permits as are required by CITY or any other Agency to perform the work and ongoing use, as described in this Agreement, of poles located on the Public Rights-of-Way.

4.6 No Real Property Interest Created. Neither LICENSEE's use of the Public Rights-of-Way, nor anything contained in this Agreement, shall be deemed to grant, convey, create, or vest in LICENSEE a real property interest in any portion of the Public Rights-of-Way or any other CITY property, including but not limited to, any fee or leasehold interest in any land or easement. LICENSEE, on behalf of itself and any permitted successor, lessee, or assign, recognizes and understands that this Agreement may create an interest subject to taxation and that LICENSEE, its successor, lessee or assign may be subject to the payment of such taxes.

4.7 All Rights Nonexclusive. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to LICENSEE under this Agreement shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the CITY to use, and to allow any other Person or Persons to use, any and all parts of the Public Rights-of-Way, exclusively or concurrently with any other Person or Persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "Encumbrances") which may affect the Public Rights-of-Way now or at any time during the term of this Agreement, including without limitation any Encumbrances granted, created or allowed by the CITY at any time.

4.8 Collocation. This License does not grant or approve any collocation rights to any person or entity, related or unrelated to the LICENSEE. LICENSEE is authorized to install one (1) DAS/Small Cell with ancillary equipment per site. Additional DAS/Small Cell facilities or other equipment require new and additional licensure at the CITY's reasonable discretion. This Agreement authorizes LICENSEE to allow third parties to attach additional equipment to LICENSEE's DAS/Small Cell Network when technically and structurally feasible at a cost and at terms to be determined between LICENSEE and said third parties. The CITY retains its police powers over the third parties, with terms to be determined between the CITY and any such third parties.

## **5.0 WAIVERS AND INDEMNIFICATION**

5.1 Non-Liability of CITY Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other agent of the CITY shall be personally liable to LICENSEE, its successors and assigns, in the event of any default or breach by the CITY or for any amount which may become due to LICENSEE, its successors and assigns, or for any obligation of CITY under this Agreement.

5.2 Mutual Indemnity. To the extent permitted by law, each party, and their successors and assigns, shall hold harmless, defend, protect and indemnify the other party, including, without limitation, each of its commissions, departments, officers, agents, employees and contractors, from and against any and all actions, losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs, judgments or suits (collectively, "Claims") of any kind allegedly arising directly or indirectly from:

(i) any act by, omission by, or negligence of a party or its contractors, or the officers, agents, or employees of any of them, while engaged in the performance of the work or conduct of the activities authorized by this Agreement, or while in or about the Public Rights-of-Way or any other CITY property for any reason connected in any way whatsoever with the performance of the work, conduct of the activities or presence of the DAS/Small Cells Networks authorized by this Agreement, or allegedly resulting directly or indirectly from the presence, construction, installation, maintenance, replacement, removal or repair of the DAS/Small Cells Networks to the extent caused by that party;

(ii) any accident, damage, death or injury to any contractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work, conduct of the activities or presence of the DAS/Small Cells Networks authorized by this Agreement, or while in or about the Public Rights-of-Way, for any reason connected with the performance of the work or conduct of the activities authorized by this Agreement, or arising from liens or claims for services rendered or labor or materials

furnished in or for the performance of the work authorized by this Agreement;

(iii) any accident, damage, death or injury, to real or personal property, good will, and Person(s) in, upon or in any way allegedly connected with the work or activities authorized by this Agreement or the presence of the DAS/Small Cells Networks from any cause or claims arising at any time including, without limitation, injuries or damages allegedly caused, directly or indirectly, in whole or in part, by radio wave transmission or electromagnetic fields emitted by the DAS/Small Cells Networks;

(iv) any Release, or threatened Release, of any Hazardous Material caused in whole or in part by either party in, under, on or about the property subject to this Agreement or into the environment, or resulting directly or indirectly from the DAS/Small Cells Networks or the work or activities authorized by this Agreement;

(v) any violation by LICENSEE of the terms and conditions hereof or any permit or grant issued by any Agency in connection with the DAS/Small Cells Networks or Services or pursuant hereto, or any misrepresentation made herein or in any document given by LICENSEE in connection herewith; and

(vi) any direct or indirect interference by LICENSEE or the DAS/Small Cells Networks, except to the extent that such Claims arise from interference with use or placement of facilities in the public way caused by the negligence or willful misconduct of the CITY, including without limitation, each of its commissions, boards, departments, officers, agents, employees and contractors.

5.3 Scope of Indemnity. To the fullest extent permitted by law, each party shall hold harmless, indemnify and defend the other party as required in this Section 5, excluding any claims resulting from the negligence or willful misconduct of the CITY, including without limitation, each of its commissions, departments, officers, agents, employees and contractors. Each party specifically acknowledges and agrees that it has an immediate and independent obligation to defend the CITY from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered in writing to the other party and continues at all times thereafter. The indemnification obligations assumed under this Agreement shall survive expiration or other termination of this Agreement.

5.4 No Liability for Damage, Death or Bodily Injury. Neither CITY nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of LICENSEE, its officers, agents, employees, contractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the DAS/Small Cells Networks or activities authorized by this Agreement, the condition of any CITY property subject to this Agreement or LICENSEE's use of any

CITY property, except as otherwise provided herein.

5.5 No Liability for Consequential, Special, or Incidental Damages. The parties mutually and expressly acknowledge and agree that the parties will not be liable for any consequential, special, or incidental damages, including, but not limited to, lost profits and loss of good will, arising out of termination of this Agreement or disruption to the DAS/Small Cells Networks or LICENSEE's permitted activities hereunder. The parties would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential, special, or incidental damages due to the acts or omissions of each other. Accordingly, without limiting any mutual indemnification obligations or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, the parties fully release, waive and discharge forever as against each other any and all claims, demands, rights, and causes of action for consequential, special, and incidental damages (including without limitation, lost profits and loss of good will), and covenants not to sue for such damages, their departments, boards, commissions, officers and employees, as applicable, and all persons acting by, through or under each of them, arising out of this Agreement or the work and activities authorized hereunder, including, without limitation, any interference with uses conducted by LICENSEE pursuant to this Agreement, regardless of the cause, and whether or not due to the negligence or gross negligence of CITY or its agents.

5.6 No Interference. LICENSEE shall not unreasonably interfere in any manner with the existence and operation of any and all public and private facilities existing now or in the future, including but not limited to sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, telecommunications facilities, utility, and municipal property without the express grant of the owner(s) of the affected property or properties, except as permitted by applicable Laws or this Agreement. LICENSEE shall be responsible for repair and restoration of any damage caused by such interference, to the extent it is caused by LICENSEE, to facilities belonging to the CITY. The CITY agrees to require the inclusion of the same prohibition on interference as that stated above in all similar type agreements CITY may enter into after the date hereof.

## **6.0 INSURANCE**

6.1 Amounts and Coverages. LICENSEE will maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

6.1.1 Workers' Compensation, with Employer's Liability limits of not less than One million dollars (\$1,000,000) each accident.

6.1.2 Commercial General Liability Insurance with limits not less than five million dollars (\$5,000,000) each occurrence Combined Single Limit for

Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Owners and Contractors' Protective, Broadform Property Damage, Products Completed Operations.

6.1.3 Business Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including owned, non-owned and hired auto coverage, as applicable.

6.2 Required Provisions. General Liability and Automobile Liability Insurance shall be endorsed to provide for the following:

6.2.1 Name as additional insureds: the CITY, its officers, agents and employees.

6.2.2 That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

6.3 Advance Notice of Cancellation. All policies shall be endorsed to provide: thirty (30) days advance written notice to CITY of cancellation or intended non-renewal, mailed to the following address:

City Clerk  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309  
Phone: (248) 841-2461 Fax: (248) 656-4744  
Email: bartont@rochesterhill.org

6.4 Claims-Made Policies. Should any of the required insurance be provided under a claims-made form, LICENSEE shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the Agreement expiration, to the effect that should any occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

6.5 General Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

6.6 Receipt of Certificates of Insurance. Certificates of insurance, in the form and with insurers reasonably satisfactory to the CITY, evidencing all coverages above shall be furnished to the CITY before commencing any operations under this Agreement, with complete copies of policies promptly upon the CITY's written request.

6.7 Effect of Approval of Insurance. Approval of the insurance by the CITY shall not relieve or decrease the liability of LICENSEE hereunder.

6.8 Effect of Lapse of Insurance. This Agreement shall terminate immediately, after written notice to LICENSEE and an opportunity to cure of 10 (10) business days, upon any lapse of required insurance coverage.

## **7.0 LICENSE FEE, RECORD and DEPOSITS**

In connection with the work to be performed and activities to be conducted by LICENSEE under this Agreement:

7.1 Right-of-Way Fees for Installation and operation of DAS/Small Cells related Metro Act exempt facilities including antennas, supporting structures for antennas, poles equipment shelters or houses. Initial Entry Fee: In order to compensate the CITY for LICENSEE's initial entry upon and deployment of DAS/Small Cells related Metro Act exempt facilities including antennas, supporting structures for antennas, poles equipment shelters or houses within the Public Rights-of-Way, LICENSEE shall pay to the CITY one or more of the following:

(i) A one-time payment of One Thousand Dollars (\$1,000).

(ii) An annual fee based on the number of LICENSEE owned poles that contain LICENSEE's DAS/Small Cell facilities and related structures and equipment. As compensation for the use of any and all structures in the CITY Rights of Way or public places including light poles or other structures and facilities owned, in whole or in part, whether held in fee or in trust or other form of proprietary interest, by the CITY ("CITY Facility"), LICENSEE shall pay to the CITY an annual fee (the "Annual Fee") in the amount identified in the schedule set forth immediately below, per site for the use of each such facility or structure located in the CITY Right of Way or public place and upon which a DAS/Small Cell Network antenna, or any supporting structure thereof, has been installed pursuant to this Agreement. In the event LICENSEE attaches its DAS/Small Cell facilities and related equipment to any third party owned poles, these poles shall be excluded from the Annual Fee calculation. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of sites on CITY-owned rights of way or other property locations or equipment or Facilities on which LICENSEE's equipment was currently existing during the preceding year, multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable

within 30 days of the end of each year.

**The parties to this Agreement do not intend, and this Agreement does not grant, the utilization of any jointly owned or third party owned properties in fulfillment of this Agreement subject to collocation priority requirements as referenced in Sections 3.1.1 and 4.8.**

This Agreement anticipates and authorizes only one (1) DAS/Small Cell with ancillary equipment per pole or structure and that all DAS/Small Cell with ancillary equipment, installed by LICENSEE in CITY Rights of Way or public places shall be subject to a License fee as identified in this section. Subject to collocation priority requirements as referenced in Sections 3.1 and 4.8.

**Schedule of Annual Fees:**

USE OF LICENSEE OWNED POLES IN RIGHTS OF WAY OR PUBLIC PLACES  
-- \$750.00

**The parties to this agreement do not intend, and this agreement does not grant, the utilization of any CITY-owned public places, buildings or structures other than certain poles in the CITY Rights of Way as specifically identified in Exhibit A.**

7.2 Retention of Records. LICENSEE shall at all times keep and maintain full, true and correct business and financial records associated with this Agreement.

7.3 Late Payment Charge. If LICENSEE fails to pay any amounts payable under this Agreement within thirty (30) days following the due date thereof, and after written notice of such non-payment, such unpaid amount shall be subject to a late payment charge equal to five (5%) of the unpaid amount in each instance. The late payment charge has been agreed upon by the CITY and LICENSEE, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that the CITY will incur as a result of any such failure by LICENSEE, the actual costs thereof being extremely difficult if not impossible to determine.

7.4 Other Payments and Documentation. In addition to all other fees to be paid to the CITY hereunder, LICENSEE shall timely pay to the CITY all applicable deposit fees, permit fees, engineering fees and other fees or amounts, required to be paid by LICENSEE to the CITY in connection with obtaining permits or performing work under this Agreement, and as required by any federal, state or local law, statute, ordinance, rule or regulation. LICENSEE therefore acknowledges and agrees that this Agreement alone is not sufficient in and of itself authorization from the CITY for the installation and operation of the DAS/Small Cells Networks and that additional documentation may be required by the CITY.

7.5 Security Deposit/Bond. Prior to performing any work necessary under this Agreement, LICENSEE will deliver to the CITY a valid performance bond in the sum of ten thousand dollars (\$10,000.00), issued by a surety company acceptable to the CITY's Controller in the form attached hereto as Exhibit B. LICENSEE agrees and acknowledges that it will obtain a bond which allows for the use of the bond to cover all costs associated with the project not covered by any insurance policies including but not limited to: charges by the CITY to remove DAS/Small Cells Networks and unpaid permit and administrative fees. LICENSEE shall keep such bond, at its expense, in full force and effect (The bond can be renewed from year to year) until the thirtieth (30th) day after the Expiration Date or other termination hereof, to insure the faithful performance by LICENSEE of all of the covenants, terms and conditions of this Agreement. Such bond shall provide thirty (30) days prior written notice to the CITY of cancellation or material change thereof. In the event of any non-extension of the bond, LICENSEE shall replace such security with another form permitted hereunder at least ten (10) days prior to expiration and if LICENSEE fails to do so the CITY shall be entitled to present its written demand for payment of the entire face amount of such bond and to hold the funds so obtained as the Security Deposit required hereunder. Any unused portion of the funds so obtained by the CITY shall be returned to LICENSEE upon replacement of the bond or deposit of cash security in the full amount required hereunder.

## **8.0 WORK STANDARDS**

8.1 Performance of Work. LICENSEE shall use and exercise due care, caution, skill and expertise in performing all work under this Agreement and shall take all reasonable steps to safeguard and maintain in clean and workmanlike manner, all work site areas, including, without limitation, the light poles located on Public Rights-of-Way and other existing facilities and property. All work to be undertaken by LICENSEE in the Public Rights-of-Ways shall at all times be performed by workers in accordance with generally-accepted industry practice.

8.2 Work Plan. Prior to performing any work necessary under this Agreement, LICENSEE shall present a map and written proposal describing the work to be performed and the facilities, methods and materials (if any) to be installed ("Work Plan") to the CITY for review and will not perform any work until it has received CITY Authorization of the Work Plan. In addition, prior to conducting any work in the Public Rights-of-Way, LICENSEE shall provide to the CITY a current emergency response plan identifying staff who have authority to resolve, twenty-four (24) hours a day, seven (7) days a week, problems or complaints resulting, directly or indirectly, from the DAS/Small Cell Network installed pursuant to this Agreement. As soon as is reasonably practical following installation of the DAS/Small Cells Network, LICENSEE shall deliver as-built drawings to CITY Hall.

8.3 No Underground Work Without Written Authorization. LICENSEE hereby represents, warrants and covenants that LICENSEE shall perform no excavation, trenching, coring, boring, or digging into the ground or installation of any equipment or other material into the ground, or any other underground work in connection with the work to be performed or Services to be provided by LICENSEE under this Agreement, except to the extent expressly approved by the CITY. LICENSEE further represents, warrants and covenants that it shall not otherwise disturb or disrupt the operation or maintenance of any sanitary sewers, storm drains, gas or water mains, or other underground conduits, cables, mains, or facilities.

8.4 Repair or Replacement of Damaged Facilities or Property. Upon written request, LICENSEE agrees to repair or replace to CITY's reasonable satisfaction any CITY-owned facilities or CITY-owned property that the CITY determines has been damaged, destroyed, defaced or otherwise injured as a result of the work performed or Services provided by LICENSEE under this Agreement. LICENSEE shall perform such work at no expense to the CITY, except to the extent such damage, destruction, defacement, or injury was caused by the negligence or willful misconduct of CITY.

8.5 Modification of Work Plans. If during the term of this Agreement, the CITY determines that the public health or safety requires a modification of or a departure from the Work Plan submitted by LICENSEE and granted, the CITY shall have the authority to identify, specify and delineate the modification or departure required, and LICENSEE shall perform the work allowed under this Agreement in accordance with the CITY-specified modification or departure at LICENSEE's sole expense. The CITY shall provide LICENSEE with a written description of the required modification or departure, the public health or safety issue necessitating the modification or departure, and the time within which LICENSEE shall make, complete or maintain the modification or departure required.

## **9.0 TERMINATION**

9.1 Immediate Termination upon Notice in Certain Circumstances. In addition to all other remedies provided by Law or in equity, either party may terminate this Agreement immediately upon written notice to the other party in the event of either of the following:

9.1.1 By CITY after reasonable advance written notice to LICENSEE and after opportunity to meet with representatives of the CITY, if the CITY reasonably determines that LICENSEE's continued use of the Public Rights-of-Way will adversely affect public health or safety;

9.1.2 By either party (the "Non-Defaulting Party") if the other party has failed to perform any of its material obligations under this Agreement; provided,

however, that if the Defaulting Party's failure to perform under or comply with this Agreement is capable of being cured, and if a specific notice or cure period or time for performance of such obligation is not otherwise specified in this Agreement, then the Non-Defaulting Party shall provide the Defaulting Party with a notice of the Defaulting Party's failure to perform or comply and provide the Defaulting Party with thirty (30) days from the date of the notice to cure the failure to perform or comply to the Non-Defaulting Party's reasonable satisfaction, which will be extended by sixty (60) days if the Defaulting Party provides the Non-Defaulting Party with Notice pursuant to this Agreement of the start of efforts to cure any alleged breach within thirty (30) days from the date of the Non-Defaulting Party's notice; provided, further, that upon the occurrence during the term of this Agreement of two (2) defaults of the same obligation by either Party, the Non-Defaulting Party shall not be required to provide any notice regarding the Defaulting Party's failure to perform such obligation, and any subsequent failure by the Defaulting Party after the Defaulting Party has received two such notices shall constitute a default by the Defaulting Party hereunder without any requirement on the part of the Non-Defaulting Party to give the Defaulting Party notice of such failure or an opportunity to cure.

9.1.3 LICENSEE may remove its DAS/Small Cells or DAS Small Cell Networks for convenience at any time without any further obligation to pay corresponding fees for that site after the month during which removal of the Facilities at that site was completed. Furthermore, LICENSEE may terminate this Agreement as to any specific site at any time without any further obligation to pay fees for that site after termination and removal of the Facilities at that site was completed.

9.2 Effect of Termination. In the event of termination of this Agreement, LICENSEE shall immediately cease all work being performed under this Agreement, excepting only that work necessary for LICENSEE to remove all DAS/Small Cells Networks from the Public Rights-of-Way as provided in Section 3.4 above. Termination of this Agreement by the CITY shall constitute the withdrawal of any grant, consent or authorization of the CITY for LICENSEE to perform any construction or other work under this Agreement in the Public Rights-of-way or on public property excepting only that work necessary for LICENSEE to remove all DAS/Small Cells Networks and leave all work site areas in a clean and safe condition and in accordance with Section 3. Upon any such early termination, the CITY shall promptly remit to LICENSEE a prorated portion of the annual License fee paid to the CITY, if any.

## **10.0 NOTICES**

Except as otherwise expressly provided in this Agreement, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested,

postage prepaid, or reliable commercial overnight courier, return receipt requested, with postage prepaid, to:

**CITY**

City Clerk  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309  
Phone: (248) 841-2461 Fax: (248) 656-4744  
Email: bartont@Rochester Hills.org

With a copy to CITY Attorney:  
John D. Staran, Esq.  
Hafeli Staran & Christ, P.C.  
2055 Orchard Lake Road, Sylvan Lake, MI 48320  
Phone: (248) 731-3088 Fax: (248)731-3081  
Email: jstaran@hsc-law.com

LICENSEE  
Mobilitie, LLC  
Asset Management and Legal Departments  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660  
(877) 999-7070  
Emails:  
assetmgmt@mobilitie.com  
[legal@mobilitie.com](mailto:legal@mobilitie.com)  
24/7 Emergency Contact Information  
Network Operations Center (NOC)  
(877) 244-7889  
mnoc@mobilitie.com

or to such other address as either CITY or LICENSEE may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change.

**11.0 COMPLIANCE WITH LAWS**

11.1 LICENSEE shall comply with all present and future Laws.

11.2 All facilities installed pursuant to this Agreement shall be constructed to

comply with all lawful federal, state and local construction and applicable telecommunications requirements.

## **12.0 MISCELLANEOUS**

**12.1 Amendments.** Neither this Agreement nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the parties hereto.

**12.2 Representations and Warranties.** Each of the persons executing this Agreement on behalf of LICENSEE does hereby covenant, represent and warrant that, to the best of his or her knowledge, (a) LICENSEE is a duly authorized and existing Nevada corporation, that is qualified to do business in the State of Michigan, and has full right and authority to enter into this Agreement, (b) each and all of the persons signing on behalf of LICENSEE are authorized to do so, (c) all financial statements and reports previously provided to the CITY by LICENSEE are true and complete in all material respects and accurately reflect the financial condition of LICENSEE as of the date such statements were provided to the CITY, and LICENSEE's financial condition as of the date it executes this Agreement is not materially worse than that reflected in the most recent of such financial statements and reports, and (d) the DAS/Small Cells Networks installed pursuant to this Agreement shall comply with all applicable FCC standards regarding radio frequencies and electromagnetic field emissions. Upon the CITY's written request, LICENSEE shall provide the CITY with evidence reasonably satisfactory to the CITY confirming the foregoing representations and warranties.

LICENSEE further warrants all the work performed by it or its contractors, against workmanship and product defects and any and all related costs, fees and damages to appurtenant or otherwise affected CITY facilities and property.

**12.3 Interpretation of Agreement.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

**12.4 Assignment; Successors and Assigns.** Neither this Agreement nor any part of LICENSEE's rights hereto may be assigned, pledged or hypothecated, in whole or in part, without the express written consent of the CITY, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of LICENSEE hereunder to a parent, subsidiary, successor, or financially viable affiliate shall not be deemed an assignment for the

purposes of this Agreement, provided that LICENSEE deliver to the CITY the following: (1) Bond issued in the name of transferee; (2) Assignment and Assumption Agreement between CITY and transferee; (3) Certificate of Insurance naming transferee as insured. In the event LICENSEE files a petition in bankruptcy pursuant to 11 USC §§ 101, et seq., the assignment of this Agreement shall be governed by the provisions of the Bankruptcy Code. An assignment of this Agreement is only enforceable against the CITY if LICENSEE or its trustee in bankruptcy complies with the provisions of 11 USC § 365, including obtaining the authorization from the Bankruptcy Court. CITY hereby expressly reserves all of its defenses to any proposed assignment of this Agreement. Any person or entity to which the Bankruptcy Court authorizes the assignment of this Agreement shall be deemed without further act to have assumed all of the obligations of LICENSEE arising under this AGREEMENT on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to CITY an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to CITY, shall be the exclusive property of CITY, and shall not constitute property of LICENSEE or of the estate of LICENSEE within the meaning of the Bankruptcy Code.

12.4.1 The parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, DAS/Small Cells or DAS Small Cells Networks deployed by LICENSEE in the Public Rights-of-Way 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 facilities shall be treated as LICENSEE'S DAS Small Cells or DAS Small Cells Networks 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 Facilities, (ii) CITY'S sole point of contact regarding such DAS Small Cells or or DAS Small Cells Networks shall be LICENSEE , and (iii) LICENSEE shall have the right to remove and relocate the DAS Small Cells or or DAS Small Cells Networks. CITY acknowledges that LICENSEE may include third party-owned equipment in its initial installation of LICENSEE'S DAS Small Cells or DAS Small Cells Networks and that such inclusion shall not be considered a sublicense to a third party subject to the provisions of this Section.

12.5 Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by Law.

12.6 Governing Law. This Agreement shall be construed and enforced in accordance with the Laws of the State of Michigan. Venue for any litigation or alternative dispute resolution relating to or arising under this Agreement shall be in Oakland County, Michigan.

12.6.1 If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of the rights or obligations of the parties under this Agreement shall change after the effective date stated in the first paragraph of this Agreement and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

12.7 Entire Agreement. This Agreement, including the Exhibits hereto, which are made a part of this Agreement, contains the entire agreement between the parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Agreement and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

12.8 Time of Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified.

12.9 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Agreement shall be cumulative, except as may otherwise be provided herein.

12.10 Relationship of Parties. The CITY is not, and none of the provisions in this Agreement shall be deemed to render the CITY, a partner in LICENSEE's business, or joint venture or member in any joint enterprise with LICENSEE. Neither party shall act as the agent of the other party in any respect hereunder and neither party shall have any authority to commit or bind the other party without such party's prior written consent as provided herein. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

12.11 Non-Discrimination. LICENSEE agrees and shall require all agents conducting business in Michigan on its behalf to agree not to discriminate on the basis

of race, sex, religious creed, national origin, sexual preference, color, disability or age in connection with this Agreement.

**LICENSEE**

\_\_\_\_\_

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

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

Dated: \_\_\_\_\_

**CITY OF ROCHESTER HILLS**

\_\_\_\_\_

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

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

Dated: \_\_\_\_\_

**EXHIBITS**

Exhibit A DAS/Small Cells Network Plans and Specs  
Exhibit B Bond

**Exhibit A**

Public Right-of-Way to be Used by Telecommunication Facilities