



**ENGINEERING & OPERATIONS  
BOARD OF DIRECTORS' MEETING  
MOULTON NIGUEL WATER DISTRICT  
27500 La Paz Road, Laguna Niguel  
December 14, 2015  
8:30 AM  
Approximate Meeting Time: 3 Hours**

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE NOVEMBER 16, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

3. PUBLIC COMMENTS

*Persons wishing to address the Board of Directors on matters not listed on the Agenda may do so at this time. "Request To Be Heard" forms are available at the entrance to the Board Room. Comments are limited to five minutes unless further time is granted by the Presiding Officer. Submit form to the Recording Secretary prior to the beginning of the meeting.*

*Those wishing to address the Board of Directors on any item listed on the Agenda should submit a "Request To Be Heard" form to the Recording Secretary before the Presiding Officer announces that agenda item. Your name will be called to speak at that time.*

#### **DISCUSSION/ACTION ITEMS**

4. COMMUNICATIONS FACILITIES LICENSE PROGRAM UPDATE

It is recommended that the Board of Directors approve the resolution entitled "Adopting the 2015 Communication Facilities License Program Policy and Procedures for Communication Facilities Licenses with Moulton Niguel Water District Properties" and authorize the General Manager or her designee to implement the program and execute agreements on behalf of the District.

5. ON-CALL ENGINEERING SERVICE CONTRACT AMENDMENT

It is recommended that the Board of Directors approve Amendment No. 1 with Lee & Ro, Inc. for \$250,000 for a total contract value not-to-exceed \$750,000 and approve Amendment No. 1 with AKM Consulting Engineers for \$250,000 for a total contract value not-to-exceed \$750,000.

6. REBATE APPLICATION FOR TURF REMOVAL

It is recommended that the Board of Directors consider the rebate application for the identified projects per the attached staff report without a limitation on the maximum allowable acreage and direct staff accordingly.

## **INFORMATION ITEMS**

7. Drought Emergency Regulations Update
8. Operations Center Consolidation Improvement Project Update
9. Future Agenda Items (Any items added under this section are for discussion at future meetings only)
10. Late Items (Appropriate Findings to be Made)
  - a. Need to take immediate action; and
  - b. Need for action came to District's attention after Agenda Posting. [Requires 2/3 vote (5 members) or unanimous vote if less than 2/3 are present]

## **CLOSED SESSION**

### 11. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Government Code Section 54956.9)

Name of case: San Juan Hills Golf Club, LP v. City of San Juan Capistrano, San Juan Basin Authority, et al. Case No. 30-2014-00742347

### 12. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9

Receipt of claim: Naghmeh and Ali Reza Sarabi

### 13. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9

Receipt of claim: Quail Creek-La Paz Condominium Association

## **ADJOURNMENT**

The Board of Directors' Meeting Room is wheelchair accessible. If you require any special disability related accommodations (i.e., access to an amplified sound system, etc.), please contact the Moulton Niguel Water District Secretary's office at (949) 831-2500 at least forty-eight (48) hours prior to the scheduled meeting. This agenda can be obtained in alternate format upon written request to the Moulton Niguel Water District Secretary at least forty-eight (48) hours prior to the scheduled meeting.

Agenda exhibits and other writings that are disclosable public records distributed to all, or a majority of, the members of the Moulton Niguel Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection at the District Office, 27500 La Paz Road, Laguna Niguel, CA ("District Office"). If

such writings are distributed to members of the Board less than seventy-two (72) hours prior to the meeting, they will be available in the reception area of the District Office at the same time as they are distributed except that, if such writings are distributed immediately prior to, or during the meeting, they will be available in the Board meeting room and on the District website at [www.mnwd.com](http://www.mnwd.com).





**DRAFT  
MINUTES OF THE REGULAR MEETING OF THE  
ENGINEERING & OPERATIONS BOARD OF DIRECTORS OF THE  
MOULTON NIGUEL WATER DISTRICT**

**November 16, 2015**

A Regular Meeting of the Engineering & Operations Board of Directors of the Moulton Niguel Water District was held at the District offices, 27500 La Paz Road, Laguna Niguel, California, at 8:30 AM on November 16, 2015. There were present and participating:

**DIRECTORS**

Duane Cave	Director
Scott Colton	Vice President/Chair
Richard Fiore	Director
Donald Froelich	President
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President

Also present and participating were:

**STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC**

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Marc Serna	Director of Engineering & Operations
Gina Hillary	Director of Human Resources
Jeff Ferre	Best, Best, & Krieger (General Counsel)
Paige Gulck	Board Secretary
Trevor Agrelius	MNWD
Drew Atwater	MNWD
Tim Bonita	MNWD
Johnathan Cruz	MNWD
Brad Daley	MNWD
Todd Dmytryshyn	MNWD
Ray McDowell	MNWD
Todd Novacek	MNWD
Eva Plajzer	MNWD
Megan Schneider	MNWD
Rod Woods	MNWD

Andrew Zelinko

MNWD

1. CALL MEETING TO ORDER

*The meeting was called to order by Scott Colton at 8:30 a.m.*

2. APPROVE THE MINUTES OF THE OCTOBER 12, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

*MOTION DULY MADE BY DUANE CAVE AND SECONDED BY DONALD FROELICH, MINUTES OF THE OCTOBER 12, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, AND LARRY LIZOTTE, ALL VOTING 'AYE'. DIRECTOR GARY KURTZ ABSTAINED. DIRECTOR BRIAN PROBOLSKY WAS ABSENT.*

3. PUBLIC COMMENTS

*None.*

**DISCUSSION/ACTION ITEMS**

4. **EFFLUENT TRANSMISSION MAIN (ETM) REPLACEMENT CONSTRUCTION CONTRACT AWARD**

It is recommended that the Board of Directors award the construction services contract for the 30-inch ETM Replacement at San Juan Creek Project No. 2009.115 to Vadnais Trenchless Services, Inc. in the amount of \$3,051,180; authorize the General Manager to execute the contract; and authorize the General Manager or designee to approve change orders up to 10% of the contract value.

*Rod Woods presented the Effluent Transmission Main Replacement Construction Contract Award. Discussion ensued regarding the grant awarded for the project and scope of work.*

*MOTION DULY MADE BY DUANE CAVE AND SECONDED BY DONALD FROELICH, ITEM 4 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, AND LARRY LIZOTTE, ALL VOTING 'AYE'. DIRECTOR BRIAN PROBOLSKY WAS ABSENT.*

5. EFFLUENT TRANSMISSION MAIN (ETM) REPLACEMENT CONSTRUCTION MANAGEMENT AND INSPECTION (CM&I) AGREEMENT AWARD

It is recommended that the Board of Directors approve the Professional Services Agreement for construction management and inspection (CM&I) services for the 30-inch ETM Replacement at San Juan Creek Project No. 2009.115 to MWH Constructors, Inc. in the amount of \$306,026; authorize the General Manager to execute the agreement; and authorize the General Manager or designee to approve change orders up to 10% of the contract value.

*Rod Woods presented the Effluent Transmission Main Construction Management & Inspection Agreement Award. Discussion ensued regarding length of the project.*

*MOTION DULY MADE BY DONALD FROELICH AND SECONDED BY DUANE CAVE, ITEM 5 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, AND LARRY LIZOTTE, ALL VOTING 'AYE'. DIRECTOR BRIAN PROBOLSKY WAS ABSENT.*

6. EFFLUENT TRANSMISSION MAIN (ETM) REPLACEMENT ENGINEERING SERVICES AGREEMENT

It is recommended that the Board of Directors approve Amendment No. 2 to the Professional Services Agreement with Dudek for a not-to-exceed fee of \$67,425 for a total contract value not-to-exceed \$296,166; authorize the General Manager to execute Amendment No. 2 to the Professional Services Agreement; and authorize the General Manager or designee to approve amendments up to 10% of the value of the amendment.

*Rod Woods presented the Effluent Transmission Main Replacement Engineering Services Agreement. Discussion ensued regarding the project budget.*

*Brian Probolsky arrived at 9:05 a.m.*

*MOTION DULY MADE BY DUANE CAVE AND SECONDED BY GARY KURTZ, ITEM 6 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.*

7. RECYCLED WATER SYSTEM EXTENSION CONSTRUCTION CONTRACT AWARD

It is recommended that the Board of Directors award the construction services contract for the Recycled Water Extension Project No. 2014.011 to Ferreira Construction Co. Inc. in the amount of \$1,739,593; authorize the General Manager to execute the contract;

and authorize the General Manager or designee to approve change orders up to 10% of the contract value.

*Marc Serna presented the Recycled Water System Extension Construction Contract Award. Discussion ensued regarding connections to the system.*

*MOTION DULY MADE BY BRIAN PROBOLSKY AND SECONDED BY LARRY LIZOTTE, ITEM 7 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.*

**8. TOWERS FOR WIRELESS NETWORK CONSTRUCTION CONTRACT AWARD**

It is recommended that the Board of Directors award the construction services contract for the Towers for Wireless Network Project No. 2006.038 to Southern Contracting Company in the amount of \$340,500; authorize the General Manager to execute the contract; and authorize the General Manager or designee to approve change orders up to 10% of the contract value.

*Eva Plajzer presented the Wireless Network Construction Contract Award. Discussion ensued regarding project budget.*

*MOTION DULY MADE BY DONALD FROELICH AND SECONDED BY BRIAN PROBOLSKY, ITEM 8 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.*

**9. BOOM LIFT AND TRAILER PURCHASE FOR FISCAL YEAR 2015-16**

It is recommended that the Board of Directors approve the purchase of a 2016 articulated boom lift and trailer from Diamond A Equipment for the amount of \$123,000.

*Todd Novacek presented the Boom Lift and Trailer Purchase.*

*MOTION DULY MADE BY LARRY LIZOTTE AND SECONDED BY GARY KURTZ, ITEM 9 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.*



**INFORMATION ITEMS**

**10. Water Usage Update**

*Drew Atwater presented the monthly water usage update. The District's usage for the month of October was reduced by 17% compared to October 2013.*

**11. Quarterly Capital Improvement Program Report**

*Joone Lopez presented the Quarterly Capital Improvement Program Report.*

**12. Quarterly Communications License Program Report**

*Joone Lopez presented the Quarterly Communications License Program Report.*

**13. Future Agenda Items (Any items added under this section are for discussion at future meetings only)**

*None.*

**14. Late Items (Appropriate Findings to be Made)**

*Staff has none.*

**CLOSED SESSION**

**15. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9

Receipt of claim: Quail Creek-La Paz Condominium Association

Receipt of claim: Randell E. Miller

*The Board went into closed session at 10:20 a.m. pursuant to Government Code Section 54956.9(d)(2) to consider the claim of Randell E. Miller. The Board did not address the first item regarding receipt of claim from Quail Creek-La Paz Condominium Association. The Board came out of closed session at approximately 10:38 a.m. and legal counsel made the following report:*

***MOTION DULY MADE BY DIRECTOR CAVE, SECONDED BY DIRECTOR KURTZ, THE BOARD REJECTED THE CLAIM OF RANDELL E. MILLER, AS DIRECTED BY THE DISTRICT'S INSURANCE CARRIER, AND DIRECTED STAFF TO PROVIDE THE APPLICABLE NOTICE TO THE CLAIMANT. THE BOARD ALSO DIRECTED STAFF TO CONTINUE THE DIALOGUE WITH THE CLAIMANT AND TO***

**#2.**

*CONTINUE TO WORK WITH THE CLAIMANT TOWARD A RESOLUTION OF THE MATTER. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.*

**ADJOURNMENT**

*The meeting was adjourned at 10:39 a.m.*

Respectfully submitted,

Paige Gulck  
Board Secretary

DRAFT



# Moulton Niguel Water District

## STAFF REPORT

**TO:** Board of Directors                      **MEETING DATE:** December 14, 2015

**FROM:** Marc Serna, Director of Engineering and Operations  
Eva Plajzer, Assistant Director of Engineering

**SUBJECT:** Communication Facilities License Program Update

**DIVISION:** District-wide

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### SUMMARY:

Issue: Staff prepared updates to the existing Communication Facilities Program Policy and Procedures

Recommendation: It is recommended that the Board of Directors approve the resolution entitled “Adopting the 2015 Communication Facilities License Program Policy and Procedures for Communication Facilities Licenses within Moulton Niguel Water District Properties” and authorize the General Manager or her designee to implement the program and execute agreements on behalf of the District.

Fiscal Impact: The District collects about \$1.7 million annually in lease payments from cell carriers. This policy will not have a fiscal impact on existing agreements. Future license agreements will be negotiated on a case by case basis to give the District the best market value for the agreement.

### BACKGROUND:

In the 1990s, the District approved the first communication facility to be constructed at one of the District’s sites. As the communication industry grew, the District was approached about the use of District sites for communication facilities. The District’s Board of Directors approved its first Communication Facility Lease Policy in 2000 with a primary objective to provide an economic benefit to the District’s ratepayers through a monthly lease program. However, the District’s first responsibility is to provide water and wastewater services to its customers, and any program should not interfere with the District’s mission-critical activities. With these objectives in place, the District implemented the 2000 Communication Facility Lease Policy (2000 Lease Policy) for many communication facilities on January 1, 2001.

## #4.

### Communication Facilities License Program Update

December 14, 2015

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Since the initial implementation of the program in 2001, the number of cell carrier agreements has grown to 56 with various amendments on several of those agreements. These agreements cover cell carrier facilities at 17 of the District sites.

On March 15, 2012, the Board of Directors adopted the Communication Facilities License Program Policy and Procedures for Communication Facilities Licenses within Moulton Niguel Water District Properties (2012 License Program). This was an update to the 2000 Lease Policy that included change of agreements from leases to licenses, ability to negotiate an annual license fee for every agreement based on market forces; annual payments of licenses, in lieu of monthly payments; a fee structure to reimburse the District for costs associated with processing of cell carrier submittals; and detailed instruction to cell carriers on how to work with and on District sites. The 2012 License Program allowed for gradual transfer of leases to licenses upon expiration of the existing leases. Over the next 12 months, 28 leases will be expiring and require negotiation to licenses.

The District's staff administers the existing agreements, develops new agreements, and revises existing agreements as required. The administration of the 2012 License Program includes implementation of Board policy, point of contact with the existing or proposed cell carriers, plan check review of the cell carrier proposed improvement documents, review and approval of new lease agreements or lease amendments, inspection of cell carrier's construction activities, and oversight of the monthly lease payments. The District performs these functions with existing staff or consultants as required.

#### **DISCUSSION:**

As part of the ongoing implementation of the 2012 License Program, staff identified areas of policy, procedure, and license template improvements. Some of the improvements include:

- Clarification of language for license transfers and insurance requirements
- Addition of decommissioning section
- Change to a fixed 4% escalation of annual rates
- Clarification of requirements to obtain approval from District for site improvements
- Enhanced site access and safety measures
- Adjustment in application fees for improvements

These adjustments to the policy, procedures, and license template will expedite the anticipated volume of agreement renewals from the various cell carriers.

Communication Facilities License Program Update

December 14, 2015

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Attachments:

1. A Resolution Adopting the 2015 Communication Facilities License Program – Policy and Procedures for Communication Facilities Licenses within Moulton Niguel Water District Properties with Exhibit A Communication Facilities License Program October 2015.
2. 2012 License Policy (Redlined)



RESOLUTION NO. 15-\_\_\_\_\_

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
MOULTON NIGUEL WATER DISTRICT  
ADOPTING THE 2015 COMMUNICATION FACILITIES LICENSE  
PROGRAM POLICY AND PROCEDURES FOR COMMUNICATION  
FACILITIES LICENSES WITHIN MOULTON NIGUEL WATER DISTRICT  
PROPERTIES**

**WHEREAS**, the Moulton Niguel Water District (“District”) previously adopted Resolution No. 96-32 on January 18, 1996, setting forth the District’s Policy and Procedure for Communications Facilities Licenses (“*License Policy*”);

**WHEREAS**, the Board of Directors of the District on March 16, 2000, rescinded the *License Policy* by adoption of Resolution No. 00-05 entitled “Resolution of the Board of Directors of the Moulton Niguel Water District Adopting a Communication Facilities Lease Policy,” which by its terms adopted a revised policy for leasing District sites to communication facility providers (“*2000 Lease Policy*”) in order to gain longer-term commitments from users and commensurate revenues;

**WHEREAS**, the Board of Directors of the District on March 15, 2012, rescinded the *2000 Lease Policy* by adoption of Resolution No. 12-03 entitled “Resolution of the Board of Directors of the Moulton Niguel Water District Adopting Communication Facilities License Program,” which by its terms adopted a revised policy for issuing licenses on District properties to communication facility providers (“*2012 License Policy*”);

**WHEREAS**, the Board of Directors has determined to review and update the *2012 License Policy* in an ongoing effort to balance the District’s interest in maximizing additional revenues from proliferating requests for site use from communications providers, with due consideration for protecting against interference with the District’s use of its facility sites for its core business; and

**WHEREAS**, after due consideration of the policy goals set forth above, and after consultation with experts in public agency contracts with communications facilities providers, the Board of Directors has determined to replace the *2012 License Policy* with an updated and revised “Communications Facilities License Program - Policy and Procedures for Communication Facilities Licenses within Moulton Niguel Water District Properties,” dated October 2015 (“*2015 License Program*”) that includes additional technical program requirements for secure installation and operations in order to generate revenues from such arrangements commensurate with neighboring public entities and to manage such use of District facility sites in a prudent fashion.

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**NOW, THEREFORE,** the Board of Directors of the Moulton Niguel Water District does hereby **RESOLVE, DETERMINE AND ORDER** as follows:

**Section 1.** The Board of Directors hereby rescinds District Resolution No. 12-03, provided, all lease agreements previously entered into by the District under all previous policies shall remain valid and enforceable in accordance with their terms until termination or expiration of said lease agreements.

**Section 2.** The Board of Directors hereby approves and adopts the “*Communications Facilities License Program - Policy and Procedures for Communication Facilities Licenses within Moulton Niguel Water District Properties,*” dated October 2015 (“*2015 License Program*”), attached to this Resolution as **Exhibit A**, which program includes a form of license agreement for the installation and operation of communications facilities on District sites which shall govern all licenses granted under the *2015 License Program* and a form of amendment which shall govern any amendments granted under the *2015 License Program* to existing leases or licenses entered into by the District under all previous policies.

**Section 3.** Pursuant to the *2015 License Program*, the Board of Directors hereby delegates authority to the General Manager, or designee, to implement the *2015 License Program* as to all applicants, to be effective the date of adoption of this Resolution, and to enter into license agreements and amendments under the *2015 License Program*, including the negotiation and determination of annual license fees for each license in accordance with the terms and conditions of such program. The foregoing delegation of authority is predicated on Staff’s periodic reporting to the Board of Directors as deemed necessary by Staff on the status of the *2015 License Program* including any new licenses, the sites, applicants, and annual license fee amounts negotiated, as well as a summary of any input on the *2015 License Program* received from communication facility providers.

**ADOPTED, SIGNED and APPROVED** this 14<sup>th</sup> day of December, 2015.

**MOULTON NIGUEL WATER DISTRICT**

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President/Vice President  
MOULTON NIGUEL WATER DISTRICT and the  
Board of Directors thereof

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Secretary/Assistant Secretary  
MOULTON NIGUEL WATER DISTRICT and the  
Board of Directors thereof

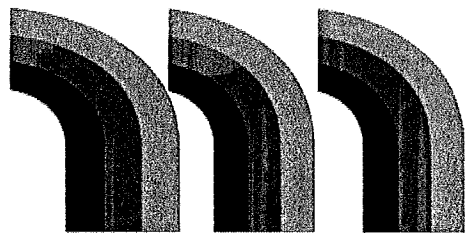


**APPROVED AS TO FORM:**

Best Best & Krieger LLP  
Legal Counsel - Moulton Niguel Water District

By \_\_\_\_\_





**Moulton Niguel Water**

**Communication Facilities License Program**

**Policy and Procedures**

**for**

**Communication Facilities Licenses**

**within**

**Moulton Niguel Water District Properties**

**March 2012**

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## Appendices

- Appendix A: Communication Facility License Agreement Template
- Appendix B: Amendment to Communication Facility License Agreement Template
- Appendix C: Application Form
- Appendix D: Fee Schedule
- Appendix E: Signature Block Sample
- Appendix F: Construction Notes

**1. Introduction**

Moulton Niguel Water District (“District” or “MNWD”) has a history dating back to 1986 of allowing installation of communication facilities on its properties compatible with District use. The District last amended its Policy and Procedures for Communication Facilities on District sites in March 2000 with Resolution No. 00-05. This revised Program of Policies and Procedures (“Program”) will revise the current program that permits leases to a license policy and further define and also revise the District’s policies and procedures for granting communication licenses and approving licensee improvements.

Under this Program, the District will balance its interest in maximizing additional revenues from wireless communication companies with due consideration for operational needs related to use of District’s facility properties, flexibility to allow changes-in-use of its facilities, and adequate protection against safety concerns related to use of the sites for communications facilities.

The terms and requirements set forth in this Program shall apply to all existing communication facilities leases and arrangements, except those terms that relate only to new applicants/new licenses.

**2. Cell Carrier Facility Development Guidelines and Requirements**

All cell carrier facilities on District properties shall be installed, modified, or altered, according to this Program, and shall comply with the policies, procedures, guidelines and requirements outlined in this section and elsewhere in this Program. These Program guidelines and requirements apply to all sites and communications facilities installation, work and operations, whether under new licenses, or pursuant to existing lease arrangements.

**2.1 Universal Installation Requirements**

The following requirements apply to all sites, and any reference to “license” or “licensee” shall also be deemed to mean “lease” and “lessee,” as applicable:

1. No work shall commence prior to execution by the District of a License Agreement or License Agreement Amendment, as applicable.
2. No work shall commence prior to delivery to the District of a certificate of insurance for the licensee and also for any contractor to be engaged in the installation of the communications

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facility, along with additional insured endorsements and other insurance required under the License Agreement.

3. No work shall commence prior to the District receiving and accepting a set of working drawings and/or plans for the proposed communications facility signed by a licensed professional engineer.
4. No work shall commence prior to the issuance of a consent letter by District. The District will issue a consent letter once all the requirements of this Program have been met by the applicant and the District has determined that work may commence.
5. No work shall commence prior to a pre-installation site walk.
6. No work shall commence without advance notice of proposed work on or installation of the communications facility. After the licensee receives a consent letter, the District's inspector shall be notified at least two (2) working days prior to beginning any work or installation.
7. The District reserves the right to withdraw its approval to commence work if the licensee or its contractor(s) have failed to satisfy the Program terms, at the sole discretion of the District.
8. No work shall be performed on the roof of any District reservoir. District staff will determine work limits at all District facilities and sites.
9. Any proposal for work upon a District facility must include stamped engineering drawings and/or a letter from a licensed engineer describing the work and assurance to the District that any equipment mounted to a reservoir or other District facility will not compromise the structural integrity of that facility.
10. Licensee's personnel, including contractors and subcontractors, must ensure that the District site and facility is accessible at all times to District personnel, in accordance with the details under Section 2.3.
11. A pre-installation conference of representatives of licensee, its contractors and District shall be held on site at least one (1) week prior to beginning installation at which time the work schedule and 24-hour contact information shall be provided to the District.

12. The licensee shall be responsible for any damage due to installation or other activities to the existing site and District facilities and upon request by the District shall promptly return damaged facilities and/or sites to existing condition, or better, at no cost to the District, and licensee shall ensure its contractors comply with the foregoing.
13. All new and existing facilities and equipment owned by the licensee shall be properly tagged identifying the licensee's name and 24-hour phone number.
14. The licensee and its contractors shall have a copy of the drawings and/or plans approved by the District's Director of Engineering & Operations (or designee) on-site at all times.
15. The licensee and its contractors are both responsible to ensure the District site and facilities cannot be accessed by the public at all times while installation work is occurring. .
16. The licensee or its contractors shall provide the District with two (2) sets of approved installation plans prior to scheduling inspection, and submit as-built drawings to the District upon completion of the installation and related work.
17. Trenching as part of any work or installation must conform to the requirements of Section 2.6 Trench Details.
18. The licensee and its contractors shall comply with all local, state, and federal health and safety requirements pertaining to the construction, installation, operation and maintenance of the cell carrier facility. Requirements of the Occupational Safety and Health Administration (OSHA) shall be adhered to at all times, including any safety and injury prevention program in place that is required under applicable laws and regulations. A copy of such program, if required by law or regulation, shall be on site at all times and employees and contractors of the licensee shall be trained accordingly.

## **2.2 Requirements for Proposed Drawings, Plans**

Any drawings and/or plans submitted for review to the District in conjunction with a proposed or existing communications facility must contain the following:

### **2.2.1 Signature Block**

The title page of each drawing and/or plan set shall have a signature block for the District's Director of Engineering & Operations (or designee) with a date. Please see sample signature block in Appendix E.

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## 2.2.2 Drawing/Plan Notes

Each drawing and/or plan set should include MNWD notes on the first or second page of the drawing and/or plan set. Appendix F lists the required drawing and/or plan notes.

## 2.2.2. MNWD Contact

The title page of each drawing and/or plan set shall have a District contact listed for engineering and inspection. The licensee shall obtain the current contact information from the District by calling 949-425-3532.

## 2.2.3 MNWD Facility Name

Each document submitted to the District for review should have the District's Facility Name listed in addition to the licensee's designation for the site.

## 2.3 District Personnel Access

Licensee and its contractors shall maintain access to the site at all times for District personnel. Open trenches shall be properly plated at the end of each working day to allow for 24-hour MNWD access to the site.

## 2.4 DIG ALERT

The licensee's contractors shall notify underground service alert (DIG ALERT) at least two (2) working days prior to beginning construction at 1-800-422-4133. Any MNWD facilities to be crossed shall be potholed to verify location prior to working in the vicinity of MNWD facilities.

## 2.5 Coating Requirements

For any work on a District reservoir, the licensee's contractors shall coordinate with the District inspector for coating requirements and coating inspections prior to any work on a reservoir tank.

## 2.6 Trench Detail

Trench details must show:

- a. Depth and width of the trench
- b. Backfill material list
  - o Paved areas - one-sack cement slurry shall be used to within 1-inch of existing pavement
  - o In unpaved areas - suitable native material shall be used with 90% minimum compaction; a compaction report must be provided to the District
- c. All hardscape to be saw cut.



- d. Minimum 30- inch depth to top of conduit or as directed by District.
- e. AC replacement - 1st lift ¾- inch mix, relative compaction 95%, no more than 3- inch placed at any one time. 2nd lift, ½- inch fine, no more than 1- ½ inch lift.
- f. Slurry seal the entire work area for the full width of the access road or as directed by District's inspector after work is completed.

## **2.7 Softscape Replacement**

Drawings and/or plans must depict the replacement or repair of all landscaped areas. If work will be performed in unpaved areas, these notes must be present on the site plan (see, Appendix F):

- 1. Protect all landscaping in place.
- 2. Only remove trees and shrubs as marked on drawings and/or plans.
- 3. Any disturbed or damaged landscaping shall be replaced in-kind with 5-gallon minimum shrubs and 15-gallon minimum trees, as directed by the District inspector.
- 4. Areas exposed or disturbed by the work or installation shall be covered with District-approved mulch to a depth of 2-inches.
- 5. Contact the District's landscape manager prior to installation for landscaping requirements.

## **2.8 Work Hours**

The licensee must obtain approved work hours from the municipality which permitted the communications facility, in accordance with the permit terms, which are further subject to the District's approval. The District reserves the right to restrict work hours at its sites depending on District needs.

## **2.9 Site Restoration**

Sites shall be repaved per Section 2.6 Trench Details or restored per 2.7 Softscape replacement. Any other features disturbed, removed, or damaged by licensee or its contractors shall be replaced with new features, or repaired, as determined by the District inspector. The site shall be restored to a condition equal or better.

**3. License Fee and Term**

The following license fee and term/option term provisions of this Program will be incorporated in each communication facility License Agreement, as applicable:

1. The license term shall be for ten (10) years, and at the option of applicant for an additional five (5) year period (fifteen (15) years aggregate) provided Licensee is not currently in default under the License Agreement.
2. The license fee amount for the ten (10) year license period shall be negotiated between the District and the licensee and is payable in annual payments by all licensees. Payment schedule for license fees is listed in the Agreement in Appendix A.
3. Annual license fees shall begin immediately payable upon execution of a license or amendment.
4. License fee amounts will be subject to an automatic yearly increase equal to the greater of 3%, or the "CPI" (Consumer Price Index as published by the United State Department of Labor, Bureau of Labor Statistics for All Consumers for the Los Angeles-Long Beach area), per annum during the ten (10) year license period and during any option period, as applicable.
5. All applicant communications facility License Agreements shall contain the terms as outlined in this Program, and shall be in substantially the form of the Communications Facility License Agreement attached in Appendix A.
6. The Board of Directors may delegate authority individually to the General Manager and the Director of Engineering & Operations, or their designees, to review and approve all license applications and to enter into License Agreements in accordance with this Program, including determination of the negotiated annual license fee.
7. Any existing leases for communication facilities may be replaced with a license permitted under this Program and in accordance with the terms hereof upon the expiration of the term of the current communications facility arrangement, as determined by the District; or, upon a lessee's request, provided such lessee is not in default under the terms of such existing communications facility arrangement and as determined by the District.

8. This Program may be amended from time to time by the MNWD Board of Directors in its discretion.
9. The terms and procedures outlined in this Program shall apply to existing communication facility arrangements for the purpose of addressing amendments or changes to such existing communications facility arrangements. See, Appendix B for the form of amendments to License Agreements.

#### **4. Communications Facility License Application Procedures**

Applicants to the District seeking placement of communications facilities on District properties must submit an application with the applicable fee. The application form is provided in Appendix C and the Appendix D contains the application fee schedule.

1. The application shall include the following information:
  - a. licensee corporate name, state of incorporation, trade name if any;
  - b. licensee corporate address and local address (if different);
  - c. contact information for licensee personnel responsible for the application;
  - d. contact information for licensee representatives responsible for the application;
  - e. drawings and/or plans depicting the location and dimensions of the proposed communication facilities, equipment specifications, engineering calculations showing that equipment will not impact District facilities as applicable, geotechnical reports, and any other information as necessary to determine full scope of the work;
  - f. map depicting the location of the proposed communications facility;
  - g. radio frequency usage;
  - h. emissions information;
  - i. radio frequency analysis showing the current usage at the proposed site along with the new usage and providing detailed information regarding any precautions necessary for District employees to be aware of in the normal course of their business due to the placement of licensee's transmitters or equipment;

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- j. check payable to District based on the application fee schedule in Appendix D;
  - k. list of any other facilities of licensee previously installed on District property including the site number and location;
  - l. proposed date of installation;
  - m. description and listing of the various local, State of California and federal public agency approvals required with expected approval date;
  - n. copy of any license or registration required of licensee to do business in California; FCC license;
  - o. list of previous applications to District from the licensee in the last 12 months; and
  - p. any other information pertinent to the applicant, or as may be requested by District staff and/or District representative.
2. Applicants shall coordinate with respective agencies of the County of Orange, adjacent cities or any similarly involved public agencies as required by the permitting public agencies.
  3. All land use approvals, parcel map requirements, permits or any other regulations and conditions required by the County of Orange, the California Public Utilities Commission, the Federal Communications Commission or other municipalities and governmental agencies shall be satisfied by the applicant at its cost. Applicant shall provide the District with copies of any and all permits granted for installation and operation of the communications facilities.

### **5. Communications Facility Application Review**

The following steps make up the Application Review process:

1. Staff shall verify that the interest of the District in the land proposed to be used in conjunction with the communications facilities is not restricted to reservoir purposes only (or pump/lift station or other specified facility purposes, as the case may be), or that the language in any deed granting the site to the District may be construed to allow no other uses than those uses "incidental" to reservoir (pump/lift station) purposes.

2. Staff shall review the contents of applicant's submission and determine whether the application is complete. Staff shall endeavor to complete such initial review for completeness within thirty (30) calendar days.
3. Upon a determination by Staff that the application is incomplete, Staff shall advise the applicant in writing of the deficiencies in the application, or request such additional information which, in the sole discretion of the District, shall make the application complete. Applicants shall then have thirty (30) calendar days to complete the submission requirements. Should the applicant fail to submit the supplemental information within this time frame, the application shall be deemed withdrawn. Re-submission shall require a new application and application fees.
4. Upon a finding that the application is complete, Staff shall notify the applicant in writing.
5. Upon notification to the applicant that the application is complete, Staff or its agent shall review the application to determine whether the application meets all policies and requirements outlined in this Program document or as otherwise incorporated by reference herein.
6. Staff shall consider the safety of District employees and all invitees and authorized volunteers in evaluation of new communications facility arrangements.

## **6. Site Access and Security- installation and subsequent maintenance, operations**

### **6.1 Obtaining Keys**

Work on site, such as improvements installation, maintenance and operation, will require use of a District issued cyber key. Licensee shall pay the District a Cyber Key Deposit in the amount of Five Hundred Dollars (\$500.00). The key may be terminated at the sole discretion of the District in the event licensee or its employees, representatives, agents or contractors, or any of them, do not strictly adhere to all rules and requirements pertaining to the access of the site or safety at the site, including the requirements under this Program.

The District will require a copy of licensee's safety rules and regulations for accessing any District facility for any purpose and the release of the District's cyber key.

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## 6.2 Security Measures

The District is subject to local, State, and Federal law, including Homeland Security regulations. The District reserves the right to require security measures to comply with applicable laws and District requirements. In addition:

1. Rules and guidelines for each District site are at the sole discretion of the District and must be adhered to by each licensee.
2. Rules and guidelines may be established for each District site based on the unique characteristics of the site.
3. Each licensee will be required to have a cyber key. The cyber key tracks access to each District site for the District; notwithstanding the foregoing, in all cases, a licensee will be responsible for the activities of all their employees, agents, representatives and contractors while at a District site.
4. Wherever possible, each licensee shall design their equipment area to allow for private access without going through the main gate of the District facility site.

## 6.3 Ongoing Operations

1. Ongoing operations and maintenance of the licensee's facility shall comply with all applicable local, state, and federal laws and regulations and the requirements of an executed license agreement.

**Appendix A**  
**Communication Facility License Agreement**  
**Template**

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**MOULTON NIGUEL WATER DISTRICT  
COMMUNICATIONS FACILITY LICENSE AGREEMENT  
( X SITE)**

THIS License Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, (“execution date”) by and between **MOULTON NIGUEL WATER DISTRICT**, a California water district existing and operating pursuant to Division 13 of the California Water Code (“District”), and \_\_\_\_\_, a California \_\_\_\_\_ (“Licensee”). District and Licensee are sometimes referred to in this License Agreement individually as “party” or jointly as “parties.” The term “license” used in herein means this License Agreement and any amendments to this License Agreement as may be executed between the parties in accordance with the terms herein.

**RECITAL**

District adopted a revised “Communications Facilities License Program - Policy and Procedures for Communications Facilities Licenses within Moulton Niguel Water District Properties” dated January 2012 (the “Program”). This License Agreement is being entered into by District and Licensee in accordance with the Program to allow Licensee non-exclusive use of District’s \_\_\_\_\_ Site located at [address] \_\_\_\_\_, as more particularly described in **Exhibit A** hereto (“Site”), for installation and operation of Licensee’s federally licensed Communications Facility (as defined and described under Section 1 hereof), such use to be consistent with the terms of the Program and this license. Licensee acknowledges it has received a complete copy of the Program from District and read and reviewed the Program, which is incorporated in this License Agreement by this reference as though fully set forth herein. Licensee covenants and warrants it has fully complied with the Program and all conditions contained therein precedent to execution of this License Agreement, and further covenants it shall comply with all terms, conditions and requirements of the Program, and the terms of this license, in connection with the Communication Facility, and in the exercise of this license. Licensee further acknowledges and agrees that the Program may be revised from time to time by the District, and all changes or revisions to the Program will be automatically incorporated in this license, without any formal amendment of this License Agreement.

**LICENSE**

**Section 1. Non-exclusive License.** Subject to the terms and conditions hereinafter set forth, District agrees to permit Licensee to locate and operate its Communication Facility, as particularly described in **Exhibit B** hereto, on a portion of the Site. The plot plan attached as **Exhibit B** depicts the dimensions and location of the Communications Facility relative to the Site space to be used by Licensee under this license. The term “Communications Facility” as used in this license shall include all facilities, structures and equipment and underground utilities that Licensee erects, installs and/or uses on the Site, as listed in **Exhibit B**. The license granted hereunder includes non-exclusive ingress and egress to the Site, seven (7) days a week, twenty-four (24) hours a day, via foot or motor vehicle (but not including vehicles with more than xxx axles/more than xxx feet in length) via the access area delineated as such in **Exhibit A**, in order to install, maintain and service the Communications Facility. Entrance to the Site will be permitted by providing Licensee with two (2) cyber keys to the locked gate enclosing the Site,



Licensee to assume full responsibility for safeguarding such keys, with no duplicates to be made by Licensee except upon prior written approval of District, which approval shall not be unreasonably withheld. Licensee’s attention is drawn to additional terms in the Program (i.e. Section 6 thereof) governing the use of these cyber keys as well as other required security measures related to this license and use of the Site by Licensee.

**Section 1B. Access Easement.**[alternative insert where District has only easement for Site access] District permits Licensee and its agent limited ingress to and egress from the Site on a non-exclusive basis to install, maintain and service the Communications Facility, subject to the additional limitations set forth hereafter. Licensee expressly acknowledges that access to the Site is permitted through Licensee’s use of District’s existing access easement to the Site (“Access Easement”). Lessee assumes the risk of any challenge, claim, litigation or damage, etc., asserted in connection with Lessee’s use of the Access Easement for ingress and egress to the Site and releases District from any and all responsibility, claim, damage, etc., related to or in connection with Licensee’s use of the Access Easement. Licensee agrees to indemnify District in connection with Licensee’s use of the Access Easement as set forth more specifically in Section 13 of this License Agreement.

**Section 2. Permitted Use of Space.** Licensee may install the Communications Facility on the space on the Site in accordance with the plot plan and dimension sketch of the Communications Facility in **Exhibit C** hereto. Licensee may not erect any other facilities or use any other equipment of any kind not otherwise described in **Exhibit B** and depicted on **Exhibit C** without execution of an amendment to this License Agreement, if agreed upon by District, including the provision for an increased license fee, and any other applicable fee under the Program, as determined by District. Any amendment shall be entered into only if Licensee complies with all terms of the Program for such additional facilities, including but not limited to securing any permits or other approvals from the County of Orange, municipalities, or other federal, State of California (“State”) or local agencies, as applicable.

**Section 3. License Term.** This license shall be for a term of ten (10) years, referred to as the “License Term,” commencing on the execution date as defined above. Provided Licensee is not in default under this license, Licensee shall have an option to renew this license after the expiration of the License Term for an additional five (5) year period, subject to all terms and conditions of this license. Licensee shall provide District with sixty (60) days written notice prior to expiration of the License Term of its intent to exercise the five (5) year option, referred to, respectively, as the “Option” and the “Option Period” herein.

**Section 4. Annual License Fee; Increases.** Licensee agrees to pay District the total sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) per year as the annual license fee for this license, payable in advance on the execution date and thereafter annually at least thirty (30) days in advance of a date twelve months from the execution date and every anniversary date thereof during the License Term, which amount shall be increased annually every anniversary date during the License Term (and the Option Period, if applicable) in an amount equal to the greater of (i) three percent (3%), or (ii) the Consumer Price Index (All Items, Base 1982-1984 = 100) as published by the United States Department

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of Labor, Bureau of Labor Statistics for All Consumers for the Los Angeles-Long Beach area ("CPI") ("License Fee").

If the Licensee exercises the Option pursuant to this license, effective on the commencement of the Option Period, the License Fee for the Option Period shall be equal to the License Fee paid in the year immediately preceding the date the Option Period commences, increased by the greater of (i) the average annual increase, if any, in the CPI during the three-year period prior to commencement of the Option Period, or (ii) three percent (3%). The License Fee shall thereafter increase annually during the Option Period as set forth in the prior paragraph above.

**Section 5. Use Beyond the License Term.** If the Communications Facility or any part thereof is still on the Site, or Licensee is still conducting any activities or operations on the Site, after expiration of the License Term, or the Option Period, the District can terminate and revoke this license at any time upon sixty (60) days written notice, or as otherwise provided for under this License Agreement. During any such occupation of the Site by Licensee after expiration of the License Term or Option Period, Licensee shall pay a monthly fee, or a portion thereof for use of the Site, based on the pro rata portion of annual License Fee amount in effect at expiration, payable on the first day of each month.

**Section 6. Temporary Relocation.** Licensee understands and agrees that from time to time during the License Term and/or the Option Period, that District will be required to remove the Communications Facility (i.e. antennae, pole) installed on the X Site in order for District to conduct repair and maintenance in connection with the X Site. Licensee agrees to relocate the Communications Facilities at its cost in such cases during the period of repair and/or maintenance to another temporary location. District will use good faith efforts to provide temporary space on the Site, or another mutually acceptable location of District's, provided Licensee is in compliance with all laws, permits, and other applicable rules and regulations of any public entity required for the relocation site and is not in default under this license. Licensee will pay for all costs of such compliance. Except in case of emergency (as determined by District in its sole discretion), District will use its best efforts to give Licensee at least sixty (60) days prior written notice of the necessity to relocate the Communications Facilities for the temporary period. Notwithstanding any relocation or any lack of prior notice, Licensee's obligation for payment of the License Fee shall remain unchanged and unaffected.

Licensee shall have a right to terminate this license upon thirty (30) days prior written notice to District if any temporary relocation exceeds sixty (60) days, or upon District requiring Licensee to relocate the Communications Facility more than one (1) time during the License Term, or more than one (1) time during any Option Period. If the license is terminated for such reason, the portion of the License Fee for the unused time period will be refunded on a proportionate basis, but Licensee is not entitled to reimbursement or payment by District of any further expenses or costs it may incur by reason of its election to terminate this license.

**Section 7A. District's Termination.** In addition to other rights of termination and revocation the District has under this License Agreement, District may terminate and revoke this license prior to expiration of the License Term or Option Period, if applicable, on any one of the following conditions:

- (a) District determines that the space on the Site utilized by Licensee for the Communications Facility is necessary for its own operations.
- (b) Upon the sale or conveyance of the Site. District may terminate and revoke this license under subsection (a) above or this subsection (b) by giving Licensee twelve (12) months prior written notice and returning to Licensee any proportionate amount of the License Fee. Upon termination and revocation under these subsections (a) or (b), District shall make a good faith effort to relocate the Communications Facility to another of District's sites, provided Licensee fully complies with the Program as to such relocated site and assumes all costs of any such relocation.
- (c) A challenge to District's grant of ingress and egress to Licensee over the Access Easement referenced above in Section 1B. District will make a good faith effort to give Licensee at least sixty (60) days prior written notice of termination and revocation under this subsection (c).
- (d) District's determination of documented health and safety concerns as a result of the installation or operation of the Communications Facility, whether alone or in conjunction with other existing communications facilities on the Site. District may terminate and revoke this license under this subsection (d) immediately and without any prior notice in the case of an emergency, to be determined by District in its sole discretion; in all other cases, District will make good faith efforts to give Licensee no less than sixty (60) days prior written notice.
- (e) Licensee fails to pay the annual license fee as agreed by the terms of this license, or fails to perform or observe any of the other material covenants or conditions of this license, which the parties agree include but are not limited to insurance requirements, emissions testing and compliance with FCC requirements and all other laws and regulations, the non-interference covenant as to Prior Users, environmental covenant, and the installation and maintenance requirements for the Communications Facility and Licensee's use of the Site. Upon any such failure by Licensee, District may, after giving sixty (60) days prior written notice to Licensee terminate and revoke this license and seek other remedies, as appropriate, under the laws of the State; provided, however, should Licensee within sixty (60) days from the date of Licensee's receipt of notice of default(s) remedy said default or defaults, District shall not be privileged to terminate or revoke this license for the defaults set forth in said notice.

The parties agree that upon District's exercise of termination and revocation rights in this license there is a presumption that the termination and revocation is in accordance with the terms hereof, and exercised in good faith, and in a fair and reasonable manner. In the event Licensee disputes District's right to terminate or revoke this license in any proceeding, action, or otherwise, Licensee has the burden of proving District has breached the terms hereof, or that District has not exercised termination and revocation rights in good faith, fairly or in a reasonable manner.

**Section 7B. Licensee's Limited Termination Right.** It is understood and agreed that Licensee's ability to use the Site is contingent upon Licensee continually maintaining in full force and effect, after the execution date, all the certificates, permits, and other approvals that are required by any federal, State, or local authorities. In the event that any certificate, permit, license, or approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority so that Licensee is unable to use the Site for intended purposes, this license shall terminate upon thirty (30) days written notice to District, except that Licensee's obligations to remove the Communications Facility and restore the Site pursuant to the terms of this license including Section 8 hereof, and the indemnity obligation under Section 13 shall survive in accordance with the terms of this license. See also, Licensee's right of termination under Section 10(c).

**Section 8. Licensee's Installation, Ownership and Maintenance of Facilities; FCC Regulations, Emissions Testing, Compliance with Law.**

- (a) Licensee shall install and construct the Communications Facility in accordance with this License Agreement, and Licensee's attention is directed to the terms of the Program that set forth specific requirements for such installation and work on the Site (see, Section 2 of the Program). It is expressly understood and agreed that any and all fixtures and equipment of whatsoever nature at any time constructed or placed on the Site by Licensee shall be and remain the property of Licensee.
- (b) Licensee shall have the right at any time during Licensee's use of the Site, or within a reasonable time thereafter, to remove any and all fixtures and equipment owned or placed by Licensee in, under, or upon the Site, but Licensee shall not be obligated to do so. Upon termination of this license by expiration of the License Term, or the Option Period, or otherwise as permitted by the terms hereof, Licensee shall remove the Communications Facility including all fixtures and equipment and shall restore the portion of the Site used by Lessee to the condition existing on the execution date, at Licensee's sole cost, except in cases where the restoration required is due to acts of God, or natural disasters beyond Licensee's control (i.e. landslides, earthquakes, floods).
- (c) Licensee, at Licensee's cost and expense at all times during the License Term, agrees to keep and maintain, or cause to be kept and maintained, the Communications Facility in a state of good appearance and repair, reasonable wear and tear excepted. Licensee shall pay, when due, all claims for labor or materials furnished to or for Licensee for the use on the Site which claims are or may be secured by any mechanic's or materialmen's liens against the Communications Facility, or space utilized on the Site, or any interest of Licensee therein. Licensee agrees that District has no obligation to repair and maintain the Site, the space utilized by Licensee, or the Communications Facility.
- (e) Licensee shall, at its own cost, protect, replace and provide any landscaping of the Communications Facility on the Site that District shall reasonably require during the

initial installation of such facilities and thereafter during Licensee's use of the Site. Licensee's attention is called to Section 2 of the Program for specific requirements.

- (f) Licensee agrees to be solely responsible for payment of all utilities costs and applicable personal property and/or property taxes on all facilities erected by Licensee on the licensed space as well as any property or other tax on the interest of Licensee under this license. Pursuant to Revenue and Taxation Code Section 107.6, District advises Licensee that the interest created under this license may be subject to property taxation, and that Licensee may be subject to the payment of property taxes levied on the license or other interests created hereunder.
- (g) Upon completion of the installation of the Communications Facility, Licensee shall arrange for a Radio Frequency ("RF") emissions test to be performed by a FCC-certified third party reasonably approved by District, in accordance with FCC Regulations, which results shall be provided to District in a written report including the monitoring results prior to commencement of any operations or use of the Communications Facility by Licensee. Licensee shall be responsible for all costs of the RF test, the written report and the monitoring results. During the License Term and Option Period, Licensee shall conduct all RF tests or other emissions tests as required by FCC Regulations and shall provide all results to District within thirty (30) days of completion in a written report. Failure of the RF test to meet FCC Regulations and emission standards shall be a material breach of these license terms and cause for termination and revocation.
- (h) In addition to compliance with specific laws otherwise described in this License Agreement, Licensee covenants to comply, and will ensure that its contractors and representatives will comply, with all FCC Regulations, and all other local, State and federal laws, ordinances, rules and regulations, including health and safety requirements, pertaining to the construction, installation, operation and maintenance of the Communications Facility and work on the Site during the License Term and Option Period, and in conjunction with any activities undertaken on the Site by Licensee either prior to the execution date, or after expiration of this license. Requirements of the Occupational Safety and Health Administration (OSHA) shall be adhered to at all times during any activities on the Site by Licensee and its contractors or other representatives. The Licensee shall have a safety and injury prevention program in place for the construction, installation, operation and maintenance of the Communications Facility and work on the Site, as may be required by laws or regulations. If required by law or regulation, a copy of any such program shall be on the Site at all times.

**Section 9. (reserved)**

**Section 10. Prior Communications Facilities on Site, District Communications Systems; Non-interference Covenant.**

- (a) Licensee acknowledges and understands that the communications facilities providers listed in **Exhibit D** hereto (referred to as the "Prior User(s)") has(ve) entered into an agreement(s) (the "Prior Use Agreement(s)") with District, pursuant to which the Prior User(s) has(ve) been permitted to install and operate communications equipment on the Site. Licensee warrants that, prior to the execution and delivery of this License Agreement, Licensee has reviewed the Prior Use Agreement(s) together with all amendments or modifications thereto; and has visually inspected the communications facilities installed and operated by the Prior Users.

Licensee covenants that it shall operate the Communications Facility and related equipment in a manner that will not cause harmful interference to (i) any current or future communications equipment operated and/or owned by the District within the District, or (ii) any current communications equipment operated and/or owned by the Prior User(s), provided that the Prior User(s) operates its communications equipment in accordance with the terms of the Prior Use Agreement(s). All operations by Licensee shall be lawful and in compliance with all regulations and requirements of the Federal Communications Commission and the California Public Utilities Commission, as well as any other State, federal or local regulations and requirements. If the Communications Facility cause harmful interference to the communications equipment operated and/or owned by District under (i) above or the Prior User(s) under (ii) above, and such interference cannot be eliminated within a reasonable time by Licensee, District may terminate this license by providing the sixty (60) days written notice.

- (b) Licensee further acknowledges that District assumes no risk or liability for any interference with Licensee's use of the Site which results from the operation of communications equipment on the Site by the Prior User(s) under the Prior Use Agreement(s) including, but not limited to, frequency interference, and agrees that District shall be held harmless for any such interference, pursuant to the indemnification terms set forth in Section 13 herein.
- (c) Subsequent to the installation of the Communications Facility, District will not knowingly permit any subsequent users to install new equipment on the Site if such equipment will cause harmful interference with the Communications Facility. If any such subsequent users cannot correct any harmful interference within ten (10) business days of Licensee's written notification thereof to District, Licensee may terminate this license upon sixty (60) days written notice to District, or seek injunctive or other legal relief against/from such subsequent users. Upon such termination, District shall return any unearned License Fee to Licensee. Licensee agrees that upon any such action against subsequent users seeking to enjoin harmful interference, or upon termination hereunder, the recovery of any unearned portion of the License Fee shall be Licensee's sole and

exclusive remedy and recovery as against District, and Licensee hereby waives any other rights or remedies it may have at law or in equity against District related thereto. The parties recognize and agree that it is the intention of this Section 10 that District not become embroiled in any disputes or proceedings between Licensee and subsequent users, and/or expend funds as a result thereof; therefore, Licensee agrees to pay all of District's costs and attorney's fees that may be incurred by District related to any disputes or proceedings between Licensee and subsequent users.

- (d) Nothing contained in this Section 10 or elsewhere in this license is intended to confer any rights or remedies under, or by reason of this license on, or waive any claims against, or adversely affect any rights of, any person or entity other than the parties hereto.

**Section 11. Environmental.** Licensee shall not bring upon, or permit any other person or entity to bring upon, the Site any hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof), except for the limited purpose of (i) providing materials or substances for emergency power generators or backup batteries required to operate the Communications Facility on a temporary emergency basis or (ii) using small quantities of solvents to clean the Communications Facility. In the event (i) or (ii) of the preceding sentence is applicable, Licensee shall use the materials and substances and solvents in compliance with all applicable laws and regulations. Notwithstanding the foregoing, Licensee is prohibited from storing any such materials and substances or solvents at the Site, or disposing of any by-products or waste from such fuels, substances and materials and solvents at the Site.

**Section 12. Insurance.** Licensee agrees to maintain in full force and effect a suitable policy or policies of Commercial General Liability insurance throughout the duration of the license. Such insurance shall be in amounts not less than \$5,000,000 per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to the Communications Facility and Site (with the ISO CG 2501 or insurer's equivalent endorsement provided to District), or the general aggregate limit shall be twice the required occurrence limit of \$5,000,000. Coverage shall be broad enough to insure the indemnity obligation set forth in this license under Section 13. Licensee also agrees to maintain in full force and effect Automobile Liability coverage (equivalent in coverage to ISO form CA 00 01) of not less than \$1,000,000 combined single limit, each accident, covering all owned, hired and non-owned autos; and, workers' compensation insurance and employer's liability insurance with respect to all employees, if any, engaged in the performance of work on the Site. Coverage must include a waiver of subrogation endorsement in favor of District.

All insurance required under this lease shall be issued as a primary policy and contain an endorsement requiring thirty (30) days written notice from the insurer to both parties hereto before cancellation or change in coverage, scope or amount of any policy. District, its directors, officers, agents, employees, volunteers and consultants, shall be designated as additional named insureds by separate endorsement under the foregoing policies. Concurrently with the execution of this License Agreement and prior to installing the Communications Facility or any portion thereof on the Site,

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Licensee will provide District with a certificate(s) verifying such insurance and the terms described herein, as well as the additional insured and/or other specified endorsement(s), and shall provide proof of continuing insurance as required herein on an annual basis thereafter in conjunction with payment of the annual license fee. Licensee shall ensure, in accordance with the Program, that its contractors performing any installation of the Communications Facility, including modifications to the facility as applicable or other work on the Site, will provide insurance that satisfies the same terms and conditions set forth in this Section 12, in accordance with the Program, and shall ensure that all insurance certificates and endorsements are provided by its contractors.

**Section 13. Indemnification.** Licensee shall be responsible, and District shall not be answerable or accountable in any manner, for any loss or expense by reason of any damage or injury to person or property, or both, arising out of the acts of Licensee, its agents, officers, employees, or invitees (collectively with Licensee referred to in this Section 13 as "Licensee") resulting from Licensee's activities on the Site or on and over the Access Easement, the design or installation of the Communications Facility and any related equipment, including but not limited to razor ribbon, the operation, maintenance or removal of its Communications Facility, any harmful interference caused by Licensee which interferes with the ability of the Prior Users to operate their communications equipment in accordance with the terms of the Prior Use Agreements, and, any other use of and operations on the Site or the Access Easement by Licensee, or otherwise pursuant to this license.

To the fullest extent permitted by law, Licensee shall indemnify and defend District and its directors, officers, agents, employees, volunteers, and invitees (collectively with District referred to as "District" in this Section 13) against and will hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, attorneys fees, obligations or liabilities, including but not limited to liability associated with existence and maintenance of razor ribbon, that may be asserted or claimed by any person, firm, association, entity, corporation, political subdivision, or other organization arising out of or in connection with (i) Licensee's activities on the Site or on and over the Access Easement; (ii) any breach or default in the performance of any obligation on Licensee's part to be performed under this license; (iii) the design or installation of the Communications Facility and any related equipment; (iv) the operation, maintenance, or removal of the Communications Facility; (v) any harmful interference caused by Licensee which interferes with the ability of the Prior Users to operate their communications equipment in accordance with the terms of the Prior Use Agreements; and (vi) any other use of and operations on the Site or the Access Easement, or pursuant to this license, by Licensee, whether or not there is concurrent passive negligence on the part of District, and in connection therewith:

- (a) Licensee shall defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities, and will pay all costs and expenses, including attorneys' fees incurred in connection therewith, using counsel satisfactory to District.
- (b) Licensee shall promptly pay any judgment rendered against Licensee or District covering such claims, damages, penalties, obligations and liabilities arising out of or in connection



with such use of and operations on the Site by Licensee, and agrees to save and hold District harmless therefrom.

- (c) In the event District is made a party to any action or proceeding filed or prosecuted against Licensee for such damages or other claims arising out of Licensee’s use of and operations on the Site, Licensee agrees to pay District any and all costs and expenses incurred by District in such action or proceeding together with reasonable attorneys’ fees.
- (d) Licensee’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Licensee or District.

Licensee’s indemnification obligation hereunder and the provisions of this Section 13 shall survive any termination, revocation, expiration, or assignment of this License.

**Section 14. Arbitration of Disputes.** The parties desire to quickly and cost-effectively resolve any disputes arising out of or relating to the interpretation or enforcement of this License Agreement including, but not limited to, the arbitrability of such disputes. Therefore, each party shall use its best efforts to resolve informally any such disputes. If, not less than ten (10) calendar days after first making informal attempts to resolve any such dispute, the attempts have been unsuccessful, either party may thereafter initiate binding arbitration as specified below:

A. All disputes pursuant to this License Agreement shall be resolved by binding arbitration conducted within the County of Orange (“Arbitration”) and may be initiated by a party by providing written notice to the other party (“Arbitration Notice”). The Arbitration Notice must: (i) contain a description of the dispute; (ii) specify the disputed amount, if any; and (iii) specify the remedy sought. The dispute shall then be resolved by a mutually agreed upon retired judge of the Superior Court for the County of Orange (“Arbitrator”), in accordance with the provisions set forth in this License Agreement. If the parties are unable to agree on the Arbitrator within ten (10) days after receipt of the Arbitration Notice, they shall request that the presiding judge of the Superior Court for the County of Orange designate the Arbitrator. The parties shall, initially, equally bear the cost of any such Arbitration; however, the prevailing party shall be entitled to recover such initial costs, in addition to other costs as specified herein, as an item of damage and/or recoverable cost. In addition to any other damages, award, or other relief, such prevailing party shall be entitled to recover its reasonable costs and expenses, including, but not limited to, attorneys’ fees, disbursements, and court costs.

Upon selection or designation of an Arbitrator, the parties shall execute a submission agreement in the form provided by the Arbitrator. The submission agreement shall set forth the rights and responsibilities of the parties with respect to the conduct of the Arbitration, as set forth herein, and shall contain the following elements in addition to any other rules and procedures for the Arbitration that are established by the Arbitrator.

B. The Arbitration hearing shall commence no later than sixty (60) days from the effective date of the submission agreement.

## #4.

C. Discovery in aid of Arbitration shall be allowed in accordance with Code of Civil Procedure ("CCP") Section 1283.05, which is hereby incorporated into, made a part of, and made applicable to this License Agreement pursuant to CCP Section 1283.1. The Arbitrator's permission shall not be required to take any deposition(s) or propound any written discovery.

D. The Arbitrator shall follow and comply with all applicable substantive and procedural State case and statutory law in arriving at a decision.

E. The Arbitrator shall issue a written statement of decision, explaining the factual and legal basis for the decision with respect to each of the principal controverted issues, and shall deliver such statement of decision to the parties via registered or certified U.S. mail, return receipt requested.

F. All applicable evidentiary privileges and the work-product doctrine shall be available for purposes of the Arbitration and Arbitration hearing, and shall not be deemed to have been waived by entering into this License Agreement or by any conduct or actions of the parties undertaken in connection with any subsequent Arbitration pursuant hereto.

G. Any petition by a party to confirm, correct or vacate a decision of the Arbitrator must be filed within forty-five (45) days following the receipt of the decision via registered or certified U.S. mail.

H. Not less than ten (10) calendar days prior to commencement of the Arbitration hearing, each party must make a full disclosure to the other party of: (i) all documents to be presented by such party as evidence during the Arbitration hearing; and (ii) any witness to be called by such party during the Arbitration hearing. Except for purposes of impeachment, only documents and witnesses so disclosed may be presented and called during the Arbitration hearing, or may be considered by the Arbitrator in reaching a decision.

I. Either party may apply to a court in the County of Orange having jurisdiction hereof and seek injunctive relief to maintain the status quo until the arbitration award is rendered or the dispute is otherwise resolved.

J. FINALITY OF AWARD: THE AWARD OF THE ARBITRATOR(S) SHALL BE FINAL AND BINDING UPON THE PARTIES WITHOUT APPEAL OR REVIEW EXCEPT AS PERMITTED BY CCP SECTION 1285 *et. seq.* EITHER PARTY MAY APPLY TO ANY COURT OF GENERAL JURISDICTION FOR ENTRY AND ENFORCEMENT OF JUDGMENT BASED ON SAID AWARD.

K. Notwithstanding the foregoing, at Licensee's option, the following claims, disputes, and other matters in question need not be resolved by arbitration: any action by Licensee seeking an injunction or temporary restraining order against subsequent users under Section 10 of this License Agreement.

**Section 15. Program Fees Deposit.** If not already paid by Licensee to District under the Program requirements, then concurrently with the execution of this License Agreement, Lessee shall pay to Lessor the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) covering fees set forth under the terms of the Program.

**Section 16. Entire Agreement; Amendment.** This License Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This license may not be changed except in writing executed by both parties.

**Section 17. Paragraph Heading and Construction.** The section headings contained in this License Agreement shall not be considered to be a part hereof for purposes of interpreting or applying this license, but are for convenience only.

**Section 18. Governing Law/Venue.** This license shall be governed by and construed in accordance with the laws of the State. Any lawsuit brought in connection with this license (as may be permitted hereunder) shall be brought in the appropriate court of the County of Orange, California and the parties agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

**Section 19. Binding on Successors; No Third Party Beneficiaries.** This License Agreement, and all of the provisions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns. No customer, other person or entity other than Parties shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement, either express or implied, is intended to confer upon any customer or other person or entity, other than the parties and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**Section 20. Independent Contractors.** Licensee's contractors, agents and representatives are independent contractors of Licensee, and are not employees or independent contractors of the District while on the Site, or while engaged in any work on the Site, including the construction, installation, maintenance or operation of the Communications Facility.

**Section 21. Limited Assignment.**

- (a) This License Agreement, or the license interest of Lessee in the Site, shall not be assigned by Lessee voluntarily or by operation of law except as allowed under subsection (b) hereof.
- (b) Licensee may, without District's consent but upon at least sixty (60) days prior written notice to District, from time to time assign this License Agreement in its entirety (i) to any entity which has, directly or indirectly, a 51% or greater interest in lessee (a "Parent"), or to any entity in which Licensee or a Parent has a 51% or greater interest (an "Affiliate"); (ii) to any entity with which Licensee and/or any Affiliate may merge or consolidate; or (iii) to a buyer of substantially all of the outstanding ownership units or assets of Licensee or any Affiliate. Any such assignment shall not be effective until the assignee executes and delivers to District (A) a representation that assignee is Licensee's successor under the License Agreement pursuant to clause (i), (ii) or (iii) of this Section

**#4.**

20(b); and (B) assignee’s written assumption of all Licensee’s obligations under this License Agreement arising from and after the effective date of assignment.

- (c) Notwithstanding subsection (a) above, Licensee may, without District’s approval and in Licensee’s sole discretion, from time to time grant to any person or entity a financing security interest in some or all of the Communications Facility.

**Section 22. Waiver of District’s Lien.** Subject to Licensee’s obligations otherwise set forth in this License Agreement (i.e. see, Section 8),

- (a) District waives any lien rights it may have concerning the Communications Facility which are deemed Licensee’s personal property and not fixtures, and Licensee has the right to remove the same at any time without District’s consent; and,
- (b) District acknowledges that Licensee has entered into or may enter into a financing arrangement including promissory notes and financial and security agreements for the financing of the Communications Facility (the “Collateral”) with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, District (i) disclaims any interest in the Collateral, as fixtures or otherwise; and (ii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any License Fee due or to become due and that such Collateral may be removed at any time without recourse to arbitration or other legal proceedings.

**Section 23. Attorney’s Fees.** Should either party be compelled to institute arbitration or legal or other proceedings against the other for or on account of its failure or refusal to perform or fulfill any of the covenants or conditions of this License Agreement on its part to be performed or fulfilled, then the prevailing party in such action or proceeding shall receive from the other party attorney’s fees and costs as adjudged reasonable by the arbitrator, or court.

**Section 24. Notice.** Any notice, request, information or other document to be given hereunder to any of the parties by any other parties shall be in writing and shall be deemed given and served upon delivery, if delivered personally, or three (3) days after mailing if sent by certified mail, postage prepaid, as follows:

If to Licensee:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

If to Licensor:

Moulton Niguel Water District

27500 La Paz Road

Laguna Niguel, CA 92677

Attn.: Director of Engineering & Operations

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Either party may change the address or persons to which notices are to be sent to it by giving the written notice that such change of address or persons to the other party in the manner provided for giving notice.

**Section 25. Counterparts.** This License Agreement may be executed in counterparts, each of which shall be deemed to be an original.

**Section 26. Recital/ Exhibits.** The parties agree the Recital is true and correct and is incorporated as part of this License Agreement. The following exhibits are incorporated in this License Agreement:

- Exhibit A**      Site- Legal Description
- Exhibit B**      Description - Communications Facility
- Exhibit C**      Dimension Sketch, Plot Plan - Communications Facility
- Exhibit D**      List of Prior User(s)

**Section 27. Authorized Representatives.** Each person executing this License Agreement represents and warrants he/she has been duly authorized to execute the same

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement as of the day and year first written above.

**“District”:**

**MOULTON NIGUEL WATER DISTRICT**

By: \_\_\_\_\_  
General Manager

**“Licensee”:**

\_\_\_\_\_

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

**#4.**

**Appendix B**

**Amendment to Communication Facility License  
Agreement Template**

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Edit as appropriate. Select if it's a license or lease amendment. Delete as needed.

**AMENDMENT NO. \_\_\_\_ TO COMMUNICATION FACILITY LEASE/LICENSE**

**(cell carrier name & MNWD site name)**

This Amendment No. \_\_\_\_ to Lease/License (this "**\_\_\_\_Amendment**") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Moulton Niguel Water District ("**District**") a California water district existing and operating pursuant to Division 13 of the California Water Code, and \_\_\_\_\_ ("**Lessee/Licensee**"), with reference to the facts set forth in the Recitals below:

**RECITALS**

- A. District is the owner of that certain real property located at \_\_\_\_\_ ("**Lessor's/Licensor's Property**"); and
- B. District and Lessee/Licensee are parties to that certain Lease/License dated \_\_\_\_\_ (the "**Lease/License**"), pursuant to which Lessee/Licensee District from District the Premises, as more particularly described in the Lease/License. For purposes of this \_\_\_\_ Amendment, such Premises shall be referred to as the "**Existing Premises;**" and
- C. On (Insert date of First Amendment, if applicable), the Parties executed Amendment No. \_\_\_\_\_ to the Agreement to (insert description of First Amendment, if applicable); and
- D. The District's "Communications Facilities License Program – Policy and Procedures for Communication Facilities Licenses Within Moulton Niguel Water District Properties dated March 2012, as if may be revised from time-to-time, is incorporated by this amendment to the [Lease/License], if not already made a party thereof.
- E. (Insert Recitals for all other Amendments as applicable, using the above format); and

**FOR EXPANSION OF SPACE ADD THE FOLLOWING RECITAL:**

F. District and Lessee/Licensee have agreed to amend the Lease/License in order to (i) expand the Existing Premises, (ii) allow Lessee/Licensee to install, operate, maintain, repair and replace a [describe proposed work to be completed], (iii) revise the rent calculation for the term of the Lease/License (the "**Term**") to account for the expansion of the Existing Premises, and (iv) make certain other modifications to the Lease/License, all as set forth more fully below; and

**FOR ADDITIONAL ANTENNAS ADD THE FOLLOWING RECITAL:**

G. District and Lessee/Licensee desire to amend the Agreement to allow for the installation of additional antennas, associated cables and other communications instruments; and

**FOR SITE IMPROVEMENTS ADD THE FOLLOWING RECITAL:**

## #4.

H. District and Lessee/Licensee desire to amend the Agreement to permit Lessee/Licensee to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services; and

**FOR EXTENSION OF THE LEASE TERM ADD THE FOLLOWING RECITAL:**

I. District and Lessee/Licensee desire to amend the Agreement to extend the term of the Agreement for (a period of \_\_\_\_, until \_\_\_\_ or another time period – please select one or modify as needed); and

**FOR ADDITIONAL RENT ADD THE FOLLOWING RECITAL:**

J. District and Lessee/Licensee desire to modify, as set forth herein, the Rent payable under the

Agreement. In addition to Lessee's annual rent obligations for the Existing Premises, lessee/licensee shall pay and additional rent in the amount of \$\_\_\_\_\_ (\$xxxx.xx); and

### **AGREEMENT**

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Defined Terms.** Any capitalized terms used in this Amendment No. \_\_\_\_ that are not defined herein shall have the meanings given those terms in the Lease/License or all previous amendments. Unless the context clearly indicates otherwise, all references to the "Lease/License" in the Lease/License and in this Amendment No. shall hereinafter be deemed to refer to the Lease/License, as amended hereby.

**FOR EXPANSION OF EXISTING PREMISES ADD THE FOLLOWING PARAGRAPH:**

**Expansion of Existing Premises.** The description of the leased/licensed space contained in the Lease/License is hereby amended to hereinafter include additional ground space measuring approximately [incorporate this information]\_\_\_\_\_ (the "**Additional Space**"), all as more particularly described and depicted in the site drawing attached hereto as Exhibit A-1 and made a part hereof, together with such additional space as may be required for the installation of conduit and equipment, which shall be located within a non-exclusive utility easement to connect the Existing Premises with the Additional Space. The parties acknowledge and agree that the attached Exhibit A-1 is intended to supplement the site drawing attached as Exhibit A-2 to the Lease/License. Commencing on execution of this Amendment, the Additional Space shall hereinafter be referred to collectively as the "Communications Facility."

**FOR SITE IMPROVEMENTS ADD THE FOLLOWING PARAGRAPH:**

**Site Improvements.** District acknowledges and agrees that Lessee/Licensee intends to construct and install certain improvements on the leased/licensed space, which include, but are not limited to, [describe



proposed work to be completed]\_\_\_\_\_ (collectively, the "improvements"). District hereby consents to the construction, installation, operation, maintenance, repair and replacement of the improvements as the same may be modified, added to and/or substituted from time to time during the Term, as it may be extended. District further acknowledges and consents to the improvements as substantially depicted on Exhibit A-2.

**FOR ADDITIONAL RENT ADD THE FOLLOWING PARAGRAPH:**

4. **Additional Rent.** In addition to Lessee's/Licensee's annual rent obligations for the leased/licensed space, Lessee/licensee shall pay additional rent in the amount of \_\_\_\_\_ (\$XXXX.XX) per month, commencing upon execution of the Amendment No. \_\_\_\_\_. Commencing on [New Rent Commencement Date], the total Rent payable under the Agreement No. \_\_\_\_ shall be \$[New Base Rent] per [month/annually,] and shall continue during the Term, subject to adjustment, if any, as provided below.

**FOR ADDITIONAL ANTENNAS ADD THE FOLLOWING PARAGRAPH:**

5. **Additional Antennas.** In addition to the other antennas permitted in the Agreement, District consents to the installation and operation of additional antennas, associated cables and equipment as more completely described on attached Exhibit A-2. Landlord's execution of this Amendment will signify Landlord's approval of Exhibit A-2. Exhibit A-2 hereby replaces Exhibit XX to the Agreement/Amendment No. \_\_\_\_ dated \_\_\_\_\_.

**District Notices.** District and Lessee/Licensee notice addresses for purposes of the Lease/License are as follows:

District: Moulton Niguel Water District  
P.O. Box 30203  
Laguna Niguel, 92607-0203  
Attention: \_\_\_\_\_.

Lessee/Licensee: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**Continued Effect.** Except as specifically modified by this Amendment No. \_\_\_\_, all of the terms and conditions of the Lease/License and previous Amendments shall remain in full force and effect. In the event of a conflict between any term or provision of the Lease/License and this Amendment No. \_\_\_\_, the terms and provisions of this Amendment No. \_\_\_\_ shall control. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Amendment No. \_\_\_\_.

[Signature page follows]

**#4.**

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IN WITNESS WHEREOF, District and Lessee/Licensee have caused this Amendment No.\_\_\_\_ to be executed by each party's duly authorized representative effective as of the date first above written.

**DISTRICT:**  
**MOULTON NIGUEL WATER DISTRICT,**  
A California water district existing and operating pursuant

to Division 13 of the California Water Code

By: \_\_\_\_\_  
General Manager or designee

ATTEST:

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

**LESSEE:**

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

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

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

*Proper notarial acknowledgment of execution by Lessee must be attached.*

**#4.**

**Appendix C**  
**Application Form**

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MNWD

WIRELESS TELECOMMUNICATION APPLICATION

Required for all New/ Existing Wireless Telecommunication Facilities

The purpose of this form is to ensure that the goals and objectives outlined in Telecommunications Policies and Procedures will be met with each submitted project. Specifically, this form shall be used to ensure each application for installation of or modification to wireless communication infrastructure on MNWD property demonstrates that reasonable design and site location alternatives have been explored and evidence of such is presented to the approving authority prior to the final tower, location, and design being approved. An application shall not be deemed complete nor processed until the entire application is submitted in full and accepted by the MNWD staff.

MNWD Location:

\_\_\_\_\_

Proposed Cell Carrier: \_\_\_\_\_

Carrier Site Name/Number: \_\_\_\_\_

New Build: \_\_\_\_\_ Modified Build: \_\_\_\_\_ (Y/N)

Proposed Design or Modification:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Height: \_\_\_\_\_ Material: \_\_\_\_\_ Color: \_\_\_\_\_

Antenna Size & Diameter:

\_\_\_\_\_

Parabolic/ Microwave dish (Y/N): \_\_\_\_\_

Size and Diameter: \_\_\_\_\_

**#4.**

Brief description of project: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Equipment:**

Location of the proposed equipment (and existing equipment, if applicable): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Size: \_\_\_\_\_ Square Feet: \_\_\_\_\_ Interior/ Exterior: \_\_\_\_\_

Enclosure material: \_\_\_\_\_ Height of enclosure: \_\_\_\_\_

Proposed screening material: \_\_\_\_\_

Site access to equipment: \_\_\_\_\_

Aesthetic mitigation measures: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

**Appendix D**  
**Fee Schedule**

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**Moulton Niguel Water District  
Communication License Program  
Application Fee Schedule<sup>1</sup>**

1. Application for a new license at a site - \$3,500.00
2. Application for license amendment - \$1,250.00
3. Application for a consent letter for minor improvements (no excavation, no plans) - \$500.00
4. Application for a consent letter for major improvements (site excavation, plan approval) - \$750.00
5. Application for a letter of authorization to commence zoning and permitting - \$200.00
6. Specialty field inspections - \$75 per hour (coating, welding, compaction, etc), billed to licensee upon completion of installation

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<sup>1</sup> These processing application fees are in addition to the 'annual license fee' required under the License Agreement/Amendment.



**Appendix E**  
**Signature Block Sample**

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# #4.

Signature Block Sample – required on all title pages of drawings submitted to MNWD for approval for communication license holder’s site improvements.

<b>Moulton Niguel Water District</b>	
Director of Engineering and Operations _____	Date _____
MNWD Site Name: _____	

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**Appendix F**  
**Construction Notes**

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## #4.

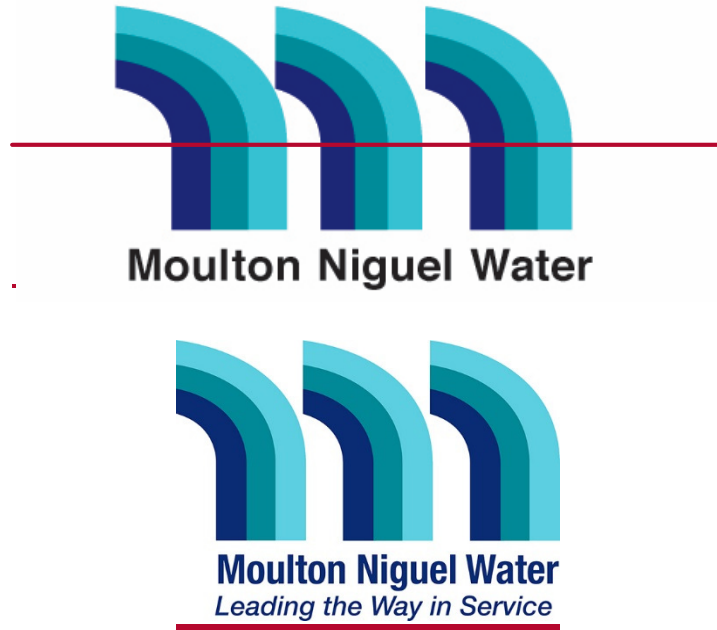
These construction notes must appear on the notes sheet of every plan sheet submitted for District's review and approval:

MNWD construction notes:

1. The Moulton Niguel Water District inspector shall be notified at least two (2) working days prior to beginning of construction. Call (949) 425-3532 to arrange for inspection.
2. A preconstruction conference of representatives from applicable agencies shall be held on site at least one (1) week prior to beginning construction at which time a construction schedule and 24-hour contact information shall be provided to MNWD.
3. Contractor shall maintain access to the site at all times for Moulton Niguel Water District personnel. Open trenches shall be properly plated at the end of each working day to allow for 24-hour MNWD access to the site.
4. The Contractor and Cell Carrier shall be responsible for any damage due to construction activities to the existing site and shall return damaged facilities to existing condition or better at no cost to the District.
5. The Contractor shall notify underground service alert (DIG ALERT) at least two (2) working days prior to beginning construction at 1-800-422-4133. Any MNWD facilities to be crossed or paralleled within five feet shall be potholed to verify location prior to working in the vicinity of MNWD facilities.
6. The Contractor shall contact the District coating representative (inquire for current name) for coating requirements and inspections at (xxx) xxx-xxxx prior to any work on a steel tank.
7. All new and existing facilities owned by the represented cellular carrier shall be properly tagged identifying the owner's name and 24-hour phone number.
8. The Contractor shall have a copy of plans approved by the MNWD Director of Engineering and Operation and a Consent Letter on-site at all times.
9. The Contractor is responsible to ensure the site is secure at all times, during both working and non-working hours.
10. The Contractor shall provide the District with two (2) sets of approved construction plans prior to scheduling inspection, and submit as-built drawings to the District upon completion of the job.
11. The contractor shall saw cut all pavement. Backfill shall be one sack slurry or aggregate base to within 1" of existing AC.
12. The contractor shall provide a minimum cover of 30-inches on top of all conduits.
13. The contractor shall replace asphalt pavement with: 1st lift - 3/4" mix, relative compaction 95%, no more than 3" placed at any one time. 2nd lift - 1/2" fine, no more than 1 1/2" lift.

14. The contractor shall slurry seal the entire work area and any damaged areas curb to curb. The contractor may be required to slurry seal additional areas as required by District inspector.
  - 14B. If applicable, see, Section 2.7 Softscape Replacement.
15. The contractor and license holder shall perform a final walkthrough to for release.





**Communication Facilities License Program**  
**Policy and Procedures**  
**for**  
**Communication Facilities Licenses**  
**within**  
**Moulton Niguel Water District Properties**

**#4.**

March 2012

**DRAFT**

November 2015

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## Appendices

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**1. Introduction**

Moulton Niguel Water District (“District” or “MNWD”) has a history dating back to 1986 of allowing installation of communication facilities on its properties compatible with District use. The District last amended its Policy and Procedures for Communication Facilities on District sites in March ~~2000~~2012 with Resolution No. ~~00-0512-03~~. This revised Program of Policies and Procedures (“Program”) ~~will revise the current program that permits leases to a license policy and further definedefines~~ and ~~also reviserevises~~ the District’s policies and procedures for granting communication licenses and approving licensee improvements.

Under this Program, the District will balance its interest in maximizing additional revenues from wireless communication companies with due consideration for operational needs related to use of District’s facility properties, flexibility to allow changes-in-use of its facilities, and adequate protection against safety concerns related to use of the sites for communications facilities.

The terms and requirements set forth in this Program shall apply to all ~~existing~~ communication facilities leases, licenses and arrangements, ~~except those.~~ All new applications for communication facilities shall comply with the terms that relate onlyas outlined in this Program, and the authorizations to new applicants/new licenses.-use District property shall be in substantially the form of the Communication Facility License Agreement attached in Appendix A.

Any existing leases for communication facilities may be replaced with a Communication Facility License Agreement permitted under this Program upon the expiration of the current communications facility arrangement, as determined by the District; or, earlier upon request, provided such lessee is not in default under the terms of such existing communications facility arrangement as determined by the District.

The terms and procedures outlined in this Program shall also apply to amendments or changes to existing communications facility arrangements. See Appendix B for the form of amendments to License Agreements.

**This Program may be amended from time to time by the MNWD Board of Directors in its sole discretion. If the revision, in MNWD’s sole discretion, is material we will notify current lessees and licensees in writing of the revised Program. However, it is the responsibility of all applicants to comply with the most current version of the Program.**

## **2. License Agreements and Amendments**

1. All new applications for communications facilities shall be authorized in substantially the form of the Communications Facility License Agreement attached in Appendix A.
2. Key terms of the license agreement in Appendix A include:
  - a. The license term shall be for ten (10) years, and at the option of applicant for an additional five (5) year period (fifteen (15) years aggregate) provided Licensee is not currently in default under the License Agreement.
  - b. The license fee amount for the ten (10) year license period shall be negotiated between the District and the licensee and is payable in advance in annual payments. Payment schedule for license fees is listed in the Agreement in Appendix A.
  - c. Annual license fees shall begin immediately and be payable within 45 days of license agreement or amendment execution.
  - d. License fee amounts will be subject to an automatic yearly increase equal to 4 percent per annum during the ten (10) year license period and during any option period, as applicable. In addition, if applicable, a one-time catch-up inflation adjustment shall be made for the first year of the option period based on the consumer price index as described in Section 4 of the license agreement.
  - e. Should the agreement lapse, the District shall charge a holdover fee of 150% of the then current monthly fee rate.
3. The Board of Directors may delegate authority individually to the General Manager and the Director of Engineering & Operations, or their designees, to review all license applications and to enter into License Agreements and Amendments in accordance with this Program, including determination of the negotiated annual license fee.

### **3. Cell Carrier Facility Development Guidelines and Requirements**

All ~~cell carrier~~wireless communications facilities on District properties shall be installed, operated, maintained, modified, ~~or~~and altered, according to this Program, and shall comply with the policies, procedures, guidelines and requirements outlined in this section and elsewhere in this Program. These Program guidelines and requirements apply to all sites and communications facilities installation, work and operations, whether under new licenses, or pursuant to existing lease arrangements.

#### **3.1 Universal Installation Requirements**

The following requirements apply to all ~~sites~~wireless communications facilities on District property, and any reference to “license” or “licensee” shall also be deemed to mean “lease” and “lessee,” as applicable.

##### **No work shall commence 3.1.1 New Site Build and Site Modifications**

1. ~~Prior to execution by the~~any formal request for a new unmanned wireless communications facility, or modifications to an existing facility, the applicant must submit a site application and the appropriate fees for consideration. The applicant is encouraged to engage the District early in the processes and perform an assessment site walk to determine if proposed improvements are feasible.
2. ~~Prior to commencement of any work by the licensee at a District property, the District must have:~~
  - a. Executed License Agreement or License Agreement Amendment, as applicable.
  - b. ~~No work shall commence prior to delivery to the District of a~~ Certificate of insurance with the proper entity name for the licensee and ~~also~~ for any contractor to be engaged in the installation of the communications facility, along with additional insured endorsements and other insurance required under the License Agreement.
  - c. ~~No work shall commence prior to the District receiving and accepting a~~ Set of working drawings and/or plans for the proposed communications facility signed and stamped by a licensed professional engineer, and received and accepted by the District.
  - d. Proof that licensee has complied with all applicable zoning and planning approvals from appropriate jurisdictions.

## #4.

~~2.3.~~ No work shall commence prior to the issuance of a consent letter by the District. The District will issue a consent letter once all the requirements of this Program have been met by the applicant and the District has determined that work may commence. The consent letter shall accompany the drawings and/or plans reviewed and accepted by the District.

~~3.~~ No work shall commence prior to a pre-installation site walk.

4. No work shall commence without advance notice of proposed work on, or installation of, the communications facility. After the licensee receives a consent letter and accepted plans, the licensee or its contractor shall:

a. Contact the District's inspector to schedule a pre-construction conference. The conference shall be held at least one week prior to start of construction and attended by representative(s) of licensee, its contractor(s), the District's inspector and, if necessary, the District's coatings representative. A 24-hour contact information shall be provided to the District's inspector at the pre-construction conference.

a.b. If there are any changes to the construction schedule after a pre-construction conference was held, the District's inspector shall be notified at least two (2) working days prior to beginning any work or installation.

~~4.5.~~ The District reserves the right to not issue or withdraw its approval to commence work if the licensee or its contractor(s) have failed to satisfy the Program terms, at the sole discretion of the District.

6. If the District's facilities require maintenance work that may interfere with the Licensee's activities at the Site, The District reserves the right to require Licensee to postpone Licensee's activities at the Site until such District work is completed. The District will, wherever possible, give advance notice and coordinate its activities with the Licensee.

~~5.7.~~ No work shall be performed on the roof of any District reservoir. District staff will reserves the right to determine any work limits/limitations at all District facilities and sites.

~~6.8.~~ Any proposal for work upon a District facility must include stamped engineering drawings/structural analysis and ~~/or~~ a signed letter from a licensed engineer describing the work and assurance to the District that any equipment mounted to a reservoir or other

District facility will not compromise the structural integrity of that facility. and that mounts can adequately support the weight of all equipment.

~~7.9.~~ Licensee’s personnel, including contractors and subcontractors, must ensure that the District site and District facility is accessible at all times to District personnel, in accordance with the details under Section ~~23~~.3.

~~8.~~ ~~A pre-installation conference of representatives of licensee, its contractors and District shall be held on-site at least one (1) week prior to beginning installation at which time the work schedule and 24-hour contact information shall be provided to the District.~~

~~9.10.~~ The licensee shall be responsible for any damage due to ~~installation~~any construction work or other activities to the existing site and District facilities and upon request by the District shall promptly return damaged facilities and/or sites to at least pre-existing condition, or better, at no cost to the District, and licensee shall ensure its contractors comply with the foregoing. In the event licensee does not comply, District may perform the necessary repairs and bill licensee which licensee shall pay within thirty (30) days.

~~10.11.~~ All new and existing communication facilities and equipment owned by the licensee shall be properly tagged identifying the licensee’s name, site name and/or number and 24-hour Emergency phone number.

~~11.12.~~ The licensee and its contractors shall have a copy of the District accepted drawings and/or plans approved by the District’s Director of Engineering & Operations (or designee) on-site at all times, while construction activities are occurring.

~~12.13.~~ The licensee and its contractors are both responsible to ensure the District site and facilities cannot be accessed by the public at all times while installation work is occurring. -

~~13.14.~~ The licensee or its contractors shall provide the District with two (2) sets of ~~approved installation~~District accepted plans prior to scheduling a final inspection, ~~and submit as-built with field mark-ups, if any. These plans will represent “record drawings to”~~ for the District to close-out the project upon completion of the installation and/or related work activity.

~~14.15.~~ Trenching, as part of any work or installation, must conform to the requirements of Section ~~23~~.6 Trench Details.

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16. The licensee and its contractors shall comply with all local, state, and federal health and safety requirements pertaining to the construction, installation, operation and maintenance of the cell carrier facility. Requirements of the Occupational Safety and Health Administration (OSHA) & FCC shall be adhered to at all times, including any safety and injury prevention program in place that is required under applicable laws and regulations. A copy of such program, if required by law or regulation, shall be on site at all times and employees and contractors of the licensee shall be trained accordingly.



**3.1.2 Maintenance**

Maintenance at licensee facilities is divided into two categories: routine and non-routine. If Licensee has uncertainty which category proposed work is defined as, licensee should contact the District.

Routine maintenance is defined as the following:

1. Any work performed by licensee to repair or service their facility which does not require entitlements from a jurisdictional body; and,
2. Any work within the equipment space that does not extend beyond the licensed area, in any direction, and does not require any excavation; and,
3. In the case of antennas, like-for-like replacement is acceptable, subject to the conditions of approvals imposed on the original antenna installation.

Non-routine maintenance is defined as the following:

1. If the sizes, weight, shape, appearance or other similar characteristics of a replacement component are changed, the licensee shall be required to submit a site application and plans for District review and approval (Consent Letter).
2. In the event work performed by licensee is expected to impact the use of District property, including property access, obstructing driving lanes, or similar impacts licensee must notify the District and submit a site application and plans for District review and approval (Consent Letter).

**3.2 Requirements for Proposed Drawings, and Plans**

The requirements for submitting drawings and plans is for the purpose of evaluating the location and other aspect of the project as it relates to the continued on-going operations of the District's facility. Any drawings and/or plans submitted for review to the District in conjunction with a proposed or existing communications facility must contain the following:

**23.2.1 Signature Block**

The title page of each drawing and/or plan set shall have a signature block for the District's Director of Engineering & Operations (or designee) with a date. Please see sample signature block in Appendix E.

## #4.

### **23.2.2 Drawing/Plan Notes**

Each drawing and/or plan set should include MNWD notes ~~on the first or second page of the drawing and/or plan set-~~ pursuant to Appendix F ~~lists the required drawing and/or plan notes-~~ MNWD Construction Notes, General Notes, Plan Notes & Requirements.

### **23.2.2. MNWD Contact**

The title page of each drawing and/or plan set shall have a District contact listed for engineering and inspection. The licensee shall obtain the current contact information from the District ~~by calling 949-425-3532.~~

### **23.2.3 MNWD Facility Name**

Each document submitted to the District for review should have the District's Facility Name listed prominently in addition to the licensee's designation for the site, and the site's APN(s).

### **23.2.4 MNWD Project Number**

Each document submitted to the District for review shall have the District's project number that has been assigned upon the submission of site application fee prominently displayed on the plans.

### **3.2.5 Equipment Table**

Each document submitted to the District for review shall have the equipment schedule, showing what equipment is licensed approved, zoning approved, number of antennas, type and size of the antennas, number of remote radio units (heads) according the sample table depicted in Exhibit E.

## **3.3 District Personnel Access**

Licensee and its contractors shall ~~maintain~~ensure their activities do not block access to the site at ~~all times~~any time for District personnel, except with District's consent. Open trenches shall be properly plated at the end of each working day to allow for 24-hour MNWD access to the site.

## **23.4 DIG ALERT**

The ~~licensee's~~licensee or its contractors shall notify underground service alert (DIG ALERT)), in accordance with the law, at least two (2) working days prior to beginning construction at 1-800-422-4133. Any MNWD facilities to be crossed shall be potholed to verify location prior to working in the vicinity of MNWD facilities.

**23.5 Coating Requirements**

For any work on a District reservoir, the licensee’s/licensee or its contractors shall coordinate with the District’s inspector and coatings representative for coating requirements and coating inspections prior to any work on a reservoir tank. The licensee is responsible for any inspection fees associated with the District’s coating inspector.

**23.6 Trench Detail**

Trench details must show:

- a. Depth and width of the trench
- b. Backfill material list
  - (i.) Paved areas - one-sack cement slurry shall be used to within 1-inch of existing pavement
  - (ii.) In unpaved areas – suitable native material shall be used with 90% minimum compaction; a compaction report must be provided to the District
- c. All hardscape to be saw cut.
- d. Minimum 30- inch depth to top of conduit or as directed by District.
- e. AC replacement - 1st lift ¾- inch mix, relative compaction 95%, no more than 3- inch placed at any one time. 2nd lift, ½- inch fine, no more than 1- ½ inch lift.
- f. Slurry seal the entire work area for the full width of the access road/paved areas or as directed by District’s inspector after work is completed.

**23.7 Softscape Replacement**

Drawings and/or plans must depict the replacement or repair of all landscaped areas. If work will be performed in unpaved areas, these notes must be present on the site plan (see, Appendix F):

- 1. Protect all landscaping in place.
- 2. Only remove trees and shrubs as marked on drawings and/or plans.
- 3. Any disturbed or damaged landscaping shall be replaced in-kind with 5-gallon minimum shrubs and 15-gallon minimum trees, as directed by the District inspector.
- 4. Areas exposed or disturbed by the work or installation shall be covered with District-approved mulch to a depth of 2-inches.
- 5. Contact the District’s landscape manager prior to installation for landscaping requirements.

### **23.8 Work Hours and Lighting**

The licensee must obtain approved work hours and lighting restrictions, especially during night work, from the municipality which permitted the communications facility, ~~in accordance with the permit terms~~, which are further subject to the District's approval. The District reserves the right to restrict work hours at its sites depending on District needs. The use of night time flood lighting is strictly prohibited. In the event licensee determines that it is absolutely necessary, licensee may submit a lighting plan and schedule. District will review and determine at its sole discretion whether to allow the lighting.

### **23.9 Site Restoration**

Sites shall be repaved per Section ~~23.6~~ Trench Details or restored per ~~2Section 3.7~~ Softscape Replacement. Any other features disturbed, removed, or damaged by licensee or its contractors shall be replaced with new features, or repaired, as determined by the District inspector. The site shall be restored to a condition equal or better.

## **3. License Fee and Term**

~~The following license fee and term/option term provisions of this Program will be incorporated in each communication facility License Agreement, as applicable:~~

- ~~1. The license term shall be for ten (10) years, and at the option of applicant for an additional five (5) year period (fifteen (15) years aggregate) provided Licensee is not currently in default under the License Agreement.~~
- ~~2. The license fee amount for the ten (10) year license period shall be negotiated between the District and the licensee and is payable in annual payments by all licensees. Payment schedule for license fees is listed in the Agreement in Appendix A.~~
- ~~3. Annual license fees shall begin immediately payable upon execution of a license or amendment.~~
- ~~4. License fee amounts will be subject to an automatic yearly increase equal to the greater of 3%, or the "CPI" (Consumer Price Index as published by the United State Department of Labor, Bureau of Labor Statistics for All Consumers for the Los Angeles-Long Beach area), per annum during the ten (10) year license period and during any option period, as applicable.~~

5. ~~All applicant communications facility License Agreements shall contain the terms as outlined in this Program, and shall be in substantially the form of the Communications Facility License Agreement attached in Appendix A.~~
6. ~~The Board of Directors may delegate authority individually to the General Manager and the Director of Engineering & Operations, or their designees, to review and approve all license applications and to enter into License Agreements in accordance with this Program, including determination of the negotiated annual license fee.~~
7. ~~Any existing leases for communication facilities may be replaced with a license permitted under this Program and in accordance with the terms hereof upon the expiration of the term of the current communications facility arrangement, as determined by the District; or, upon a lessee's request, provided such lessee is not in default under the terms of such existing communications facility arrangement and as determined by the District.~~
8. ~~This Program may be amended from time to time by the MNWD Board of Directors in its discretion.~~
9. ~~The terms and procedures outlined in this Program shall apply to existing communication facility arrangements for the purpose of addressing amendments or changes to such existing communications facility arrangements. See, Appendix B for the form of amendments to License Agreements.~~

**4. — Communications Facility License Application Procedures**

~~Applicants to the District seeking placement of communications facilities on District properties must submit an application with the applicable fee. The application form is provided in Appendix C and the Appendix D contains the application fee schedule.~~

1. ~~The application shall include the following information:~~
  - a. ~~licensee corporate name, state of incorporation, trade name if any;~~
  - b. ~~licensee corporate address and local address (if different);~~
  - c. ~~contact information for licensee personnel responsible for the application;~~
  - d. ~~contact information for licensee representatives responsible for the application;~~

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- e. ~~drawings and/or plans depicting the location and dimensions of the proposed communication facilities, equipment specifications, engineering calculations showing that equipment will not impact District facilities as applicable, geotechnical reports, and any other information as necessary to determine full scope of the work;~~
  - f. ~~map depicting the location of the proposed communications facility;~~
  - g. ~~radio frequency usage;~~
  - h. ~~emissions information;~~
  - i. ~~radio frequency analysis showing the current usage at the proposed site along with the new usage and providing detailed information regarding any precautions necessary for District employees to be aware of in the normal course of their business due to the placement of licensee's transmitters or equipment;~~
  - j. ~~check payable to District based on the application fee schedule in Appendix D;~~
  - k. ~~list of any other facilities of licensee previously installed on District property including the site number and location;~~
  - l. ~~proposed date of installation;~~
  - m. ~~description and listing of the various local, State of California and federal public agency approvals required with expected approval date;~~
  - n. ~~copy of any license or registration required of licensee to do business in California; FCC license;~~
  - o. ~~list of previous applications to District from the licensee in the last 12 months; and~~
  - p. ~~any other information pertinent to the applicant, or as may be requested by District staff and/or District representative.~~
2. ~~Applicants shall coordinate with respective agencies of the County of Orange, adjacent cities or any similarly involved public agencies as required by the permitting public agencies.~~
3. ~~All land use approvals, parcel map requirements, permits or any other regulations and conditions required by the County of Orange, the California Public Utilities Commission, the Federal Communications Commission or other municipalities and governmental agencies~~

shall be satisfied by the applicant at its cost. Applicant shall provide the District with copies of any and all permits granted for installation and operation of the communications facilities.

### **5. Communications Facility Application Review**

The following steps make up the Application Review process:

1. Staff shall verify that the interest of the District in the land proposed to be used in conjunction with the communications facilities is not restricted to reservoir purposes only (or pump/lift station or other specified facility purposes, as the case may be), or that the language in any deed granting the site to the District may be construed to allow no other uses than those uses “incidental” to reservoir (pump/lift station) purposes.
2. Staff shall review the contents of applicant’s submission and determine whether the application is complete. Staff shall endeavor to complete such initial review for completeness within thirty (30) calendar days.
3. Upon a determination by Staff that the application is incomplete, Staff shall advise the applicant in writing of the deficiencies in the application, or request such additional information which, in the sole discretion of the District, shall make the application complete. Applicants shall then have thirty (30) calendar days to complete the submission requirements. Should the applicant fail to submit the supplemental information within this time frame, the application shall be deemed withdrawn. Re-submission shall require a new application and application fees.
4. Upon a finding that the application is complete, Staff shall notify the applicant in writing.
5. Upon notification to the applicant that the application is complete, Staff or its agent shall review the application to determine whether the application meets all policies and requirements outlined in this Program document or as otherwise incorporated by reference herein.
6. Staff shall consider the safety of District employees and all invitees and authorized volunteers in evaluation of new communications facility arrangements.

**6. Site Access and Security -installation and subsequent maintenance, operations**

**64.1 Obtaining Keys**

Work on site, such as ~~improvements~~ installation, maintenance, modifications and operation, will require use of a District issued cyber key. Licensee shall pay the District a Cyber Key Deposit in the amount of Five Hundred Dollars (\$500.00~~)-~~) per key issued. If a key is lost or damaged, the deposit will be forfeited and a new deposit will be necessary for each additional key. The key may be terminated at the sole discretion of the District in the event licensee or its employees, representatives, agents or contractors, or any of them, do not strictly adhere to all rules and requirements pertaining to the access of the site or safety at the site, including the requirements under this Program. Additional keys may be obtained as needed with applicable deposit fees.

The District ~~will~~may require a copy of licensee's safety rules and regulations and/or Policies for accessing any District facility for any purpose ~~and the release of the District's cyber key.~~

**64.2 Security Measures and Access Regulations**

The District is subject to local, State, and Federal law, including Homeland Security regulations. The District ~~reserves the right to require~~requires security measures and access regulations to comply with applicable laws and District requirements. ~~In addition~~ as follows, but not limited to:

1. Rules and guidelines for each District site are at the sole discretion of the District and must be adhered to by each licensee. Site-specific rules and regulations, and updates to them, will be effective upon written notice to licensee. Failure to follow the District's rules and guidelines are cause for revocation of the cyber keys.
2. Rules and guidelines may be established for each District site based on the unique characteristics of the site.
3. Each licensee will be required to have a cyber key. The cyber key tracks access to each District site for the District; notwithstanding the foregoing, in all cases, a licensee will be responsible for the activities of all their employees, agents, representatives and contractors while at a District site.
4. Licensee will be responsible for maintenance of the key. The key must be uploaded at District Operations facility on a periodic basis. If the key is not uploaded on a periodic basis, it will stop allowing access to the sites for the Licensee.



5. The Licensee shall provide the District a list of key holders and who will have access to the sites. No persons may access the sites except listed key holders and persons accompanying them on an as needed basis to perform work.
6. Licensee may not make any other attempt to enter a District property other than through the use of the cyber key.
7. Licensee may not leave the District property open and unattended for any reason.
8. In the event licensee discovers vandalism, whether to the Licensee's facilities or District property, Licensee must report it to the District immediately.
9. It is the responsibility of the Licensee to ensure the District property is properly locked upon leaving for any reason.
10. If District personnel are at a facility when Licensee arrives, it is the responsibility of Licensee to announce their presence and to let them know when they leave.
11. Licensee agrees to monitor the use of the cyber keys and to keep them in a safe and secure place at all times. Repeated loss of cyber keys may result in forfeiture of the use of the keys resulting in escorted access for a fee.
12. The District may in its sole discretion allow a licensee or its contractor to access a District property without a cyber key but reserves the right to charge an hourly fee for such access.
- 4.13. Wherever possible, each licensee shall design their equipment area on District property to allow for private access without going through the main gate of the District facility site.
14. Licensee shall provide at least 24 hours' prior written notice to the District when any activities by Licensee or its contractors will be occurring at a District site. The notification shall be by email sent to [cellsitenotices@mnwd.com](mailto:cellsitenotices@mnwd.com).
15. Employees of Licensee and its contractors accessing a District property shall carry name badges and picture identification and must present such to a District employee when requested. Persons without proper identification may be required to leave the site.
16. All vehicles of Licensee or its contractors shall be marked as such and be distinguishable from general public vehicles when on District sites.

17. The District may charge an escorted access fee for any requests by Licensee employees or contractors for access that are not due to a malfunctioning key.

#### **4.3 Ongoing Operations**

1. Ongoing operations and maintenance of the licensee's facility shall comply with all applicable local, state, and federal laws and regulations and the requirements of ~~an~~ this Program and the applicable executed license agreement.
  
2. In the event Licensee installs any equipment outside the parameters of the License agreement without the prior written authorization of the District, the District may, at its sole discretion, terminate the agreement with the Licensee, or charge an unauthorized facility fee equivalent to 200% (two hundred percent) of the rent that would have been due to the District for a similar increase in use had the District's prior consent been properly obtained. For the purposes of calculating the rent due for such unauthorized equipment, the District will assume the equipment was in place for the period which is the shorter of: two years prior to the date of discovery or the period from the effective date of the applicable license agreement to the date of discovery.

## **5. Decommission or Termination Process**

Any Licensee that decides to decommission its Wireless Communications Facilities on any of District's properties must follow the process described herein.

Licensee shall submit a letter to the District, by certified mail or equivalent, indicating Licensee's intention to decommission its Wireless Communications Facility ("WCF") located on District property. The letter shall include Licensee's site name & number, District facility name, site address, contact person, mailing address, e-mail address, and intended time-frame for the decommission activity.

The District shall provide Licensee a return letter acknowledging Licensee's intention to decommission its WCF and directing Licensee to initiate the application process, payment of appropriate fees, and submission of necessary decommission plans.

Once fees are paid and decommission plans are approved, the Licensee shall remove all installed equipment and return the site to pre-existing conditions or better.

**#4.**

**Appendix A**

**Communication Facility License Agreement  
Template**

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**MOULTON NIGUEL WATER DISTRICT  
COMMUNICATIONS FACILITY LICENSE AGREEMENT**

~~(X-[CARRIER] [SITE])~~

THIS LICENSE AGREEMENT (“License”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, (“Execution Date”) by and between **MOULTON NIGUEL WATER DISTRICT**, a California water district existing and operating pursuant to Division 13 of the California Water Code (“District”), and \_\_\_\_\_, a **California** \_\_\_\_\_ (“Licensee”). District and Licensee are sometimes referred to in this License Agreement individually as “party” or jointly as “parties.” The term “License” used in herein means this License Agreement and any amendments to this License Agreement as may be executed between the parties in accordance with the terms herein.

**RECITAL**

**RECITALS**

District adopted a revised “Communications Facilities License Program - Policy and Procedures for Communications Facilities Licenses within Moulton Niguel Water District Properties” dated ~~January 2012~~ 2015 (the “Program”).

District is the owner of that certain real property located at [insert name of District site and address of site], as legally described in Exhibit “A” attached hereto (“Site”).

**[ALTERNATIVE LANGUAGE FOR RENEWALS]**

Licensee (or its predecessor in interest) entered into that certain [insert name of lease agreement] with District dated \_\_\_\_\_, (“Original Agreement”), under which Licensee currently has installed and is operating Licensee’s federally licensed communications facility at the Site.

District and Licensee desire to enter into this new License to replace the Original Agreement.]

This License ~~Agreement~~ is being entered into by District and Licensee in accordance with the Program to allow Licensee ~~non-exclusive use of District’s \_\_\_\_\_ Site located at [address] \_\_\_\_\_, as more particularly described in **Exhibit A** hereto (“Site”), use of designated portions of the Site,~~ for installation and operation of Licensee’s federally licensed Communications Facility (as defined and described under Section 1 hereof), ~~such use to be consistent with the terms of the Program and this license. Licensee acknowledges it has received a complete copy of the Program from District and read and reviewed the Program, which is incorporated in this License Agreement by this reference as though fully set forth herein. Licensee covenants and warrants it has fully complied with the Program and all conditions contained therein precedent to execution of this License Agreement, and further covenants it shall comply with all terms, conditions and requirements of the Program, and the terms of this license, in connection with the Communication Facility, and in the exercise of this license. Licensee further acknowledges and agrees that the Program may be revised from time to time by the District, and all changes or revisions to the Program will be automatically incorporated in this license,~~

~~without any formal amendment of this License Agreement, and Exhibit B hereto), such use to be consistent with the terms of the Program and this License.~~

LICENSE

**Section 1. Non-exclusive License.** Subject to the terms and conditions hereinafter set forth ~~and the requirements of the Program,~~ District ~~agrees to permit grants~~ Licensee ~~a non-exclusive license to locate and install,~~ operate ~~and maintain~~ its Communication Facility, as particularly described in **Exhibit B** hereto, on a portion ~~or portions~~ of the Site ~~as designated and approved by District.~~ The plot plan attached as **Exhibit BC** depicts the dimensions and ~~approved~~ location of the Communications Facility ~~relative to on~~ the Site ~~space~~ to be used by Licensee under this License  ~~(“Licensed Area”). The Licensed Area includes (i) designated space on the District’s existing surface infrastructure; (ii) approximately \_\_\_\_\_ square feet of designated surface ground space; and (iii) utility routes all as depicted in Exhibit C.~~ Notwithstanding District’s approval of Licensee’s use of the Licensed Area of the Site, nothing in this License may be deemed to grant, convey, create, or vest in Licensee a real property interest in land, ~~including any fee, leasehold interest, or easement.~~ The term “Communications Facility” as used in this License shall include all ~~antennas,~~ facilities, structures and equipment and ~~underground~~ utilities that Licensee erects, installs and/or uses on ~~or under~~ the Site, as ~~authorized and~~ listed in **Exhibit B**, ~~as may be modified from time to time in accordance with this License and the Program. In the event of a material conflict between the terms of this License and the Program (excluding Appendix A – Communications Facility License Agreement Template), the more stringent terms shall prevail.~~

~~Section 1B. Access License~~ The License granted hereunder includes non-exclusive ingress and egress to the ~~Site Licensed Area,~~ seven (7) days a week, twenty-four (24) hours a day, via foot or motor vehicle (but not including vehicles with more than ~~xxx~~ axles/more than ~~xxx~~ feet in length) via the access area delineated as such in **Exhibit AC**, in order to install, ~~operate, and~~ maintain ~~and service~~ the Communications Facility. ~~Entrance~~All access to the Site ~~will be permitted~~ Licensed Area by ~~providing~~ Licensee ~~with two (2) cyber keys to the locked gate enclosing the Site, Licensee to assume full responsibility for safeguarding such keys, with no duplicates to be made by Licensee except upon prior written approval of District, which approval shall not be unreasonably withheld. Licensee’s attention is drawn to additional terms in the~~ be subject in each instance to the Program (i.e. Section 6 thereof) ~~rules and regulations governing the use of these cyber keys~~ access, as well as ~~other required security measures related to this license and use of the Site by Licensee.~~

~~Section 1B. Access Easement.~~ ~~[alternative insert where District has only easement for Site access]~~ District permits Licensee and its agent limited ingress to and egress ~~any additional Site-specific rules from the Site on a non-exclusive basis to install, maintain and service the Communications Facility, subject to the additional limitations set forth hereafter. time to time in effect at the Site, of which District shall inform Licensee in writing.~~ **[IF APPLICABLE INCLUDE]** Further, Licensee expressly acknowledges that ~~access to~~ District ~~accesses~~ the Site ~~is permitted through Licensee’s use of~~ District’s existing access easement ~~to the Site (“over third party property to the Site (“Access Easement”), and nothing herein shall be deemed to be a representation or warranty by District that its interest or other rights to use of the Access Easement”). Lessee~~ is sufficient to permit its use for Licensee’s purposes, and Licensee shall be

deemed to gain only those rights to use as are properly in District and as District may have the undisputed right and power to give Licensee. Licensee assumes the risk of any challenge, claim, litigation or damage, etc., asserted in connection with Lessee's/Licensee's use of the Access Easement for ingress and egress to the Site and releases District from any and all responsibility, claim, damage, etc., related to or in connection with Licensee's use of the Access Easement. Licensee agrees to indemnify District in connection with Licensee's use of the Access Easement as set forth more specifically in Section 13 of this License Agreement. If the District's continued use of the Access Easement is challenged or threatened in any way by the Licensee's use of the Access Easement, upon notice from the District the Licensee shall cease ingress and egress to the Site until such time as Licensee is able to obtain any necessary approvals, licenses or easements from the third party property owner at its sole cost and expense.]

**Section 2. Permitted Use ~~of Space~~.** Licensee may install, operate and maintain the Communications Facility ~~on~~ in the space on the Site/Licensed Area in accordance with the plot plan and dimension sketch of the Communications Facility in Exhibit C hereto, and the Program. Licensee may replace portions of its Communications Facility as part of Routine Maintenance (as defined in the Program) without the District's prior consent to the extent permitted by the Program. Licensee may not erect perform Non-Routine Maintenance (as defined in the Program) or install any other facilities or use any other equipment of any kind not otherwise described in Exhibit B and depicted on Exhibit C without execution of an amendment to this License Agreement, if agreed upon the District's prior written consent which may be granted or denied in the District's sole discretion. Applications for consent will only be considered by District, including the provision for an increased license fee, and any other applicable fee under the Program, as determined by District. Any amendment shall be entered into only if Licensee complies if submitted in accordance with all terms the procedures and requirements of the Program for such. Licensee acknowledges that the primary purpose of the Site is to provide water and/or wastewater services to District's customers, and Licensee's use of the Site shall be subject to District's paramount rights ("Paramount Rights") to use the Site for any and all current and future uses necessary for District's water or wastewater storage, conveyance or treatment purposes, including, but not limited to maintenance, repair, installation, construction, and replacement of any existing facilities or the construction or installation of any additional facilities or equipment, including but not limited to securing any permits or other approvals from the County of Orange, municipalities, or other federal, State of California ("State") or local agencies, as applicable additional subsurface and surface infrastructure. If District determines that Licensee is physically interfering with such use, District shall notify Licensee and Licensee shall cease such physical interference within twenty four (24) hours. In case of an emergency, District may take steps to eliminate such physical interference without prior notice to Licensee and Licensee shall reimburse District for any and all costs incurred to eliminate such physical interference.

**Section 3. License Term; Option.** This license shall be for a term of ten (10) years, referred to as the "License Term," commencing on the Execution Date as defined above. Provided Licensee is not in default under this License, Licensee shall have an option ("Option") to renew this License after upon the expiration of the License Term for ~~one (1)~~ additional five (5) year period, ("Option Period"), subject to all terms and conditions of this License. Licensee shall provide District with ~~sixty (60) days~~ written notice of its intent to exercise the Option at least sixty (60) days prior to expiration of the License Term ~~of its~~

~~intent to exercise the five (5) year option, referred. If Licensee fails to, respectively, as provide timely notice, the "Option" Option expires on the date that is sixty (60) days prior to the expiration of the License Term and the "Option Period" herein. any use or occupation of the Site by Licensee after the expiration of the License Term shall be subject to Section 5 below.~~

**Section 4. Annual License Fee; Increases-; Late Payments.** For the first year of the License Term, Licensee ~~agrees to shall~~ pay District the total sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) ~~per year as ("Annual License Fee") not later than forty-five(45) days after the Execution Date.~~ The Annual License Fee for ~~this license, subsequent years shall be~~ payable annually in advance on the ~~execution date and thereafter annually at least thirty (30) days in advance of a date twelve months from the execution date and every anniversary date thereof during of~~ the License Term, which ~~amount Execution Date, and shall be increased increase~~ annually ~~every anniversary date~~ during the License Term (and the Option Period, if applicable) ~~in effective as of each anniversary of the Execution Date, by~~ an amount equal to ~~the greater of (i) three four percent (3%), or (ii) 4%~~ over the amount of the Annual License Fee in effect immediately prior to such increase. In addition, the Annual License Fee payable for the first year of the Option Period shall be increased by the amount (if any) which (i) the amount calculated by increasing the first Annual License Fee paid in the License Term by the increase in the Consumer Price Index (All Items, Base 1982-1984 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics for All Urban Consumers for the Los Angeles-~~Long Beach area ("Riverside-Orange County (CPI) ("License Fee").~~

~~\_\_\_\_\_ If the Licensee exercises the Option pursuant to this license, effective on the commencement -U) over the License Term as measured in the month three months prior to the expiration of the License Term exceeds (ii) [\$ \_\_\_\_\_ insert the amount of the Annual License Fee payable for the first year of the Option Period, the License Fee for the Option Period shall be equal as calculated using the 4% annual escalator]. The Annual License Fee shall be payable without offset or deduction by check sent to the License Fee paid in the year immediately preceding the date the Option Period commences, increased by the greater of (i) the average annual increase, if any, in the CPI during the three-year period prior to commencement of the Option Period, District's address specified below or (ii) three to any other person or firm as District may, from time to time, designate in writing at least sixty (60) days in advance of any Annual License Fee due date. If, at any time, Licensee fails to make timely payment, interest shall accrue on the past due amount at the rate of one and one half percent (3%). The License Fee shall thereafter increase annually during the Option Period as set forth in the prior paragraph above. 1 1/2%) per month or the maximum allowable by law, whichever is less, until paid in full. This right to collect interest is in addition to all rights of District to terminate this License for non-payment pursuant to Section 7A of this License.~~

**Section 5. Use Beyond the License Term Holdover.** If the Communications Facility or any part thereof is still on the Site, or Licensee is still conducting any activities or operations on the Site, ~~after expiration of the License Term, or the Option Period, the District can terminate and revoke this license at any time upon sixty (60) days written notice, or as otherwise provided for under this License Agreement. During any such occupation of the Site by Licensee after expiration of the License Term or Option Period, Licensee shall pay a monthly fee, or a portion thereof for use of the Site, based on the pro rata portion of annual License Fee amount in effect at expiration, payable on the first day of each month. or is otherwise~~



using the Site without a written agreement with the District after expiration of the License Term, or, if applicable, the Option Period, such possession or use shall be deemed a holdover use under the same terms and conditions of this License, except that the Annual License Fee shall be 150% of the Annual License Fee in effect at the expiration of the License Term or, if applicable, the Option Period, and shall be payable in advance in equal monthly installments. Nothing contained herein shall grant Licensee the right to holdover after the expiration of the License Term or, if applicable, the Option Period and notwithstanding the payment of rent during the holdover period, District shall have the right to require Licensee to vacate the Site at any time upon thirty (30) days written notice..

**Section 6. Temporary Relocation.** Licensee understands and agrees that from time to time during the License Term and/or the Option Period, ~~that District will be required~~may require Licensee to remove and/or relocate all or portions of the Communications Facility ~~(i.e. antennae, pole) installed on~~from the X Site Licensed Area temporarily at Licensee's expense in order for District to ~~conduct repair and maintenance in connection with the X Site.~~ Licensee agrees to relocate the Communications Facilities at its cost in such cases during the period of repair and/or maintenance to another temporary location.~~exercise its Paramount Rights at the Site.~~ District shall use its best efforts to give Licensee at least sixty (60) days prior written notice of the necessity to relocate the Communications Facility for the temporary period, and will use good faith efforts to provide temporary space ~~on~~at the Site, or another mutually acceptable District location ~~of District's, for such temporary relocation;~~ provided Licensee is ~~in compliance~~not in default under this License. Licensee shall be responsible at its cost for obtaining any necessary permits and otherwise complying with all laws, permits, and other ~~applicable~~ rules and regulations of any public entity ~~required for~~applicable in connection with the temporary relocation site and is ~~not in default under this license.~~ Licensee will pay for all costs of such compliance. ~~Except its Communication Facility. Licensee acknowledges that~~ in case of emergency (as determined by District in its sole discretion), ~~District will use its best efforts to give Licensee at least sixty (60) days prior written notice of the necessity to relocate the Communications Facilities for the temporary the notice period. for temporary relocation may be shortened.~~ Notwithstanding any relocation or any ~~lack of prior notice,~~ Licensee's obligation for payment of the License Fee shall remain unchanged and unaffected. ~~shortened notice period, the License shall continue without abatement of the Annual License Fee unless District is unable to provide space for temporary relocation and as a result Licensee is required to cease to operate its Communications Facility for a period of more than fourteen (14) days in which event Licensee shall be entitled to an abatement of the Annual License Fee equivalent to the number of full days in excess of fourteen (14) days during which Licensee was unable to operate its Communications Facility multiplied by 1/365 of the Annual License Fee applicable during such period. The District will calculate and refund such abatement amount within sixty (60) days after the end of the temporary relocation period.~~

At the end of the temporary relocation period, Licensee shall at its cost return the relocated Communications Facility to the Licensed Area, unless the parties mutually agree that the Communications Facility may remain at the temporary location in which case the parties shall memorialize such agreement by an amendment to this License. Licensee shall have a right to terminate this License upon thirty (30) days prior written notice to District if any temporary relocation exceeds ~~sixty (60)~~ninety (90) days, or ~~upon~~if ~~the~~ District ~~requiring~~requires Licensee to relocate the Communications Facility more than one (1) time

## #4.

during the License Term, or more than one (1) time during ~~any~~the Option Period. If the License is terminated for such reason, the ~~portion~~District shall refund unused months of the Annual License Fee ~~for the unused time period will be refunded~~ on a proportionate basis, but Licensee ~~is~~shall not be entitled to reimbursement or payment by District of any further expenses or costs it may incur by reason of its election to terminate this License hereunder.

**Section 7A. District's Termination.** In addition to other rights of termination and revocation the District has under this License ~~Agreement~~, District may terminate and revoke this License prior to expiration of the License Term or Option Period, if applicable, ~~on~~in any ~~one~~of the following ~~conditions~~circumstances:

- (a) By giving Licensee twelve (12) months prior written notice, if District determines in its sole discretion that the ~~space on the Site utilized by Licensee for the Communications Facility~~Licensed Area is necessary for ~~its own operations~~.
- ~~(b) Upon the exercise of its Paramount Rights at the Site or the sale or conveyance~~District decides to sell or otherwise dispose of its ownership of the Site. ~~District may terminate and revoke this license under subsection (a) above or this subsection (b) by giving Licensee twelve (12) months prior written notice and returning to Licensee any proportionate amount of the License Fee. Upon~~ Upon notice of termination and revocation under ~~these subsections (a) or (b)~~this subsection (a), District shall make a good faith effort to permit Licensee to relocate the Communications Facility to another of District's sites prior to termination of the License, provided Licensee fully complies with the Program as to such relocated site and assumes all costs of any such relocation.
- ~~(c) A challenge to District's grant of ingress and egress to~~ (b) By giving Licensee ~~over the Access Easement referenced above in Section 1B. District will make a good faith effort to give Licensee at least sixty (60) days prior written notice, if Licensee fails to maintain and repair the Communications Facility according to the requirements of the License and the Program and fails to cure such non-compliance in response to any District request for such repairs within the time specified in such written request. Further, if the District in its sole discretion determines that the Communications Facility is in a state of~~ termination and revocation under this subsection (c).
- ~~(d) District's determination of documented disrepair which imminently endangers the health and safety concerns as a result of District employees and other users of the installation or operation of the Communications Facility, whether alone or in conjunction with other existing communications facilities on the Site,~~ District may terminate ~~and revoke this license under this subsection (d)~~the License and take steps to address the situation immediately ~~and without any prior notice in the case of an emergency, to be determined by District in its sole discretion; in all other cases, District will make good faith efforts to give to~~ Licensee no less than sixty (60) days prior written notice.
- ~~(e) and~~ Licensee shall reimburse District for any and all costs incurred to take such action.

~~(c) If Licensee fails to pay the Annual License Fee as agreed by the terms of this license, or when due, District may, after giving ten (10) days prior written notice to Licensee terminate and revoke this License and seek other remedies, as appropriate, under the laws of the State, unless Licensee cures such default by payment of the Annual License Fee and accrued interest charges within such notice period.~~

~~(d) If Licensee fails to perform or observe any of the other material covenant terms or conditions of this License, which the parties agree include but are not limited to insurance requirements, emissions testing and compliance with FCC requirements and all other laws and regulations, the non-interference covenant as to Prior Users, environmental covenant, and the installation and maintenance requirements for the Communications Facility and Licensee’s use of the Site. Upon any such failure by Licensee, District may, after giving sixty (60) Sections 2, 8, 10, 11, 12 and 13, District may, after giving thirty (30) days prior written notice to Licensee terminate and revoke this License and seek other remedies, as appropriate, under the laws of the State; provided, however, should Licensee within sixty (60) days from the date of Licensee’s receipt of notice of default(s) remedy said, unless Licensee cures such default or defaults, District shall not be privileged to terminate or revoke this license for the defaults set forth in said within such notice period.~~

The parties agree that ~~upon District’s exercise of termination and revocation rights in this license there is a presumption that~~ it is presumed that any termination and revocation is exercised in good faith, in accordance with the terms hereof, and ~~exercised in good faith, and~~ in a fair and reasonable manner. In the event Licensee disputes District’s right to terminate or revoke this License in any proceeding, action, or otherwise, Licensee has the burden of proving District has breached the terms hereof, or that District has not exercised termination and revocation rights in good faith, fairly or in a reasonable manner.

**Section 7B. Licensee’s Limited Termination Right.** It is understood and agreed that Licensee’s ability to use the Site is contingent upon Licensee continually maintaining in full force and effect, after the Execution Date, all the certificates, permits, and other approvals that are required by any federal, State, or local authorities. In the event that any certificate, permit, license, or approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority so that Licensee is unable to use the Site for intended purposes, the Licensee may terminate this License ~~shall terminate~~ upon thirty (30) ninety (90) days written notice to District, except that those terms that by their nature survive termination such as Licensee’s obligations to remove the Communications Facility and restore the Site ~~pursuant to the terms of this license including Section 8 hereof~~, and the indemnity obligation ~~under Section 13~~ shall survive in accordance with the terms of this License. ~~See also, Licensee’s right of termination under Section 10(c).~~

**Section 8. Licensee’s Installation, Ownership, Operation and Maintenance of Facilities; FCC Regulations, Emissions Testing, Compliance with Law.**

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(a) Licensee shall install ~~and~~, construct and maintain the Communications Facility in accordance with this License ~~Agreement~~, and ~~Licensee's attention is directed to~~ the terms of the Program that set forth specific requirements for such installation and work on the Site ~~(see, Section 2 of the Program)~~.

~~(b)~~ It is expressly understood and agreed that any and all fixtures and equipment of whatsoever nature at any time constructed or placed on the Site by Licensee shall be and remain the ~~property of Licensee~~ personal property of Licensee. Licensee shall have the right at any time during the License Term, and the Option Period, if applicable, to remove any and all fixtures and equipment owned or placed by Licensee in, under, or upon the Licensed Area.

~~(b)~~ Licensee shall have the right at any time during Licensee's use of the Site, or within a reasonable time thereafter, to remove any and all fixtures and equipment owned or placed by Licensee in, under, or upon the Site, but Licensee shall not be obligated to do so. Upon termination of this license by expiration of the License Term, or the Option Period, or otherwise as permitted by the terms hereof, Licensee shall remove the Communications Facility including all fixtures and equipment and shall restore the portion of the Site used by Lessee to the condition existing on the execution date, at Licensee's sole cost, except in cases where the restoration required is due to acts of God, or natural disasters beyond Licensee's control (i.e. landslides, earthquakes, floods).

(c) Licensee, at Licensee's cost and expense ~~at all times during the License Term, agrees to~~ shall keep and maintain, or cause to be kept and maintained, the Communications Facility in a state of good appearance and repair, reasonable wear and tear excepted. Licensee shall pay, when due, all claims for labor or materials furnished to or for Licensee for the use on the ~~Site~~ Licensed Area which claims are or may be secured by any mechanic's or materialmen's liens against the Communications Facility, or ~~space utilized on the Site~~ Licensed Area, or any interest of Licensee therein. Licensee agrees that District has no greater obligation to repair and maintain the Site, due to Licensee's presence at the Site than it would have in the space utilized by Licensee ordinary course of its business, and District has no obligation to repair or maintain the Licensed Area, or the Communications Facility.

~~(ed)~~ Licensee shall, at its own cost, protect, replace and provide any landscaping ~~of~~ required in its permits to shield the Communications Facility on the Site ~~that District and shall reasonably require during the initial installation of such facilities and thereafter during promptly replace any District landscaping damaged by Licensee's use of the Site. Licensee's attention is called to Section 2~~ activities consistent with the requirements of the Program.

~~(e) Licensee shall have a separate meter installed for specific requirements Licensee's electrical power consumption, whereupon Licensee shall be solely responsible for payment of all utilities costs.~~

~~(f) Licensee agrees to be solely responsible for payment of all utilities costs and applicable personal property and/or property taxes on all facilities erected by Licensee on the licensed space as well as any property or other tax on the interest of Licensee under this license. Pursuant to Revenue and Taxation Code Section 107.6, District advises Licensee that the interest created under this license may be subject to property taxation, and that Licensee may be subject to the payment of property taxes levied on the license or other interests created hereunder.~~

(g) Upon completion of the installation of the Communications Facility, Licensee shall arrange for a Radio Frequency ("RF") emissions test to be performed by a FCC-certified third party reasonably approved by District, in accordance with FCC Regulations, which results shall be provided to District in a written report including the monitoring results prior to commencement of any operations or use of the Communications Facility by Licensee. Licensee shall be responsible for all costs of the RF test, the written report and the monitoring results. During the License Term and Option Period if applicable, Licensee shall conduct all RF tests or other emissions tests as required by FCC Regulations and shall provide all results to District within thirty (30) days of completion in a written report. ~~Failure of the All~~ RF test ~~to results shall~~ meet FCC Regulations and ~~emission~~emissions exposure limits. If results indicate RF emissions exceed the applicable FCC exposure limits or fail to meet applicable FCC standards, such failure shall be a material breach of these license termsthis License, and cause forsubject the License to termination and revocation procedures pursuant to Section 7A.

(h) In addition to compliance with specific laws otherwise described in this License Agreement, Licensee ~~covenants toshall~~ comply, and will ensure that its contractors and representatives will comply, with all ~~FCC Regulations~~regulations and requirements of the Federal Communications Commission and the California Public Utilities Commission, and all other local, State and federal laws, ordinances, rules and regulations, including health and safety requirements, pertaining to the construction, installation, operation and maintenance of the Communications Facility and work on the Site during the License Term and Option Period, and in conjunction with any activities undertaken on the Site by Licensee either prior to the Execution Date, or after expiration of this License. Requirements of the Occupational Safety and Health Administration (OSHA) shall be adhered to at all times during any activities on the Site by Licensee and its contractors or other representatives. The Licensee shall have a safety and injury prevention program in place for the construction, installation, operation and maintenance of the Communications Facility and work on the Site, ~~as may beif~~ required by laws or regulations. If required by law or regulation, a copy of any such program shall be on the Site at all times.

~~Section 9. (reserved)~~

Section 9. Removal/Restoration/Bond. Licensee shall remove all of the Communication Facility at its sole expense upon the expiration or earlier termination of the License. Licensee shall repair any damage to the Licensed Area caused by such removal and shall return the Licensed Area to the condition which existed before the Execution Date, reasonable wear and tear excepted. On or before the Execution Date, Licensee shall obtain a faithful performance bond, in the amount of *[amount to be determined based on two quotes for removal costs obtained by Licensee]* Thousand Dollars (\$XX,000.00), from a bond company duly licensed to do business in California in favor of District (the "Bond"). The Bond shall secure Licensee's removal of its equipment from the Licensed Area following the expiration or earlier termination of the License, and shall be maintained in force by Licensee throughout the License Term and Option Period if applicable. Licensee agrees to deliver to District a copy of the Bond prior to commencement of construction activities on the Licensed Area. Prior to the commencement of any Option Period, District and Licensee shall review the amount of the Bond to assess whether the amount of the Bond is reasonably sufficient to cover removal and restoration costs. If it is reasonably determined to be insufficient, Licensee shall obtain and maintain in force a Bond for such additional amount that District reasonably determines to be sufficient.

**Section 10. Prior Communications Facilities on Site, District Communications Systems; Non-interference ~~Covenant.~~**

- (a) Licensee acknowledges and understands that the communications facilities providers listed in **Exhibit D** hereto (referred to as the "Prior User(s)") has(ve) entered into an agreement(s) (the "Prior Use Agreement(s)") with District, pursuant to which the Prior User(s) has(ve) been permitted to install and operate communications equipment on the Site. Licensee represents and warrants that, prior to the execution ~~and delivery~~ of this License ~~Agreement,~~ Licensee has ~~reviewed the Prior Use Agreement(s) together with all amendments or modifications thereto; and has visually inspected the communications facilities installed and operated by~~ determined that the Prior Users ~~present no material interference with Licensee's intended use within the Licensed Area.~~
- (b) Licensee ~~covenants that it~~ shall operate the Communications Facility ~~and related equipment~~ in a manner that will not cause harmful interference to (i) any ~~current or future~~ communications equipment operated and/or owned by the District as of the Effective Date, or (ii) any ~~current~~ communications equipment operated and/or owned by the Prior User(s); as of the Effective Date, provided that the Prior User(s) operates its communications equipment in accordance with the terms of the Prior Use Agreement(s). ~~All operations by Licensee shall be lawful and in compliance with all regulations and requirements of the Federal Communications Commission and the California Public Utilities Commission, as well as any other State, federal or local~~

~~regulations and requirements. If the Communications Facility causes~~ the Licensee's Communications Facility causes harmful interference to the communications equipment operated and/or owned by District under (i) above or the Prior User(s) under (ii) above, ~~and such interference cannot be eliminated within a reasonable time by Licensee, District may terminate this license by providing the sixty (60) days written notice~~ Licensee will take all steps necessary to correct and eliminate the interference, including but not limited to, at Licensee's option, powering down such equipment and later powering up such equipment for intermittent testing. If such interference cannot be corrected within two (2) days after Licensee is advised of such interference, District may require that Licensee cease (or cause the cessation of) operation of the interfering equipment until such interference can be so corrected at which time the operation of such equipment may resume.

- (~~b~~) Licensee further acknowledges that District assumes no risk or liability for any interference with Licensee's use of the Site which results from the operation of communications equipment on the Site by the Prior User(s) under the Prior Use Agreement(s) ~~including, but not limited to, frequency interference,~~ and agrees that District shall be held harmless ~~for from claims due to~~ any such interference, pursuant to the indemnification terms set forth in Section 13 herein.
- (~~e~~) ~~d~~ District reserves the right to license other portions of the Site to third parties during the term of this License. Subsequent to the installation of the Communications Facility, District will not knowingly permit ~~any subsequent users to install~~ the installation of new equipment on the Site if such equipment will cause harmful interference with the Communications Facility. If any such harmful interference occurs, Licensee shall use its best efforts to resolve the interference issues in cooperation with the owner and operator of the new equipment without involving District personnel. If any such subsequent users cannot correct ~~any such~~ harmful interference within ten (10) business days of Licensee's written notification thereof to District, Licensee may terminate this License upon sixty (60) days written notice to District and obtain a refund of prepaid unused amounts of the Annual License Fee, or seek injunctive or other legal relief against/from such subsequent users. ~~Upon such termination, District shall return any unearned License Fee to Licensee. Licensee agrees that upon any such action against subsequent users seeking to enjoin harmful interference, or upon termination hereunder, the recovery of any unearned portion of the License Fee~~ The refund shall be Licensee's sole and exclusive remedy and recovery as against District, and Licensee hereby waives any other rights or remedies it may have at law or in equity against District related thereto. The parties recognize and agree that it is the intention of this Section 10 that District not become embroiled in any disputes or proceedings between Licensee and subsequent users, and/or expend funds as a result thereof; therefore, Licensee agrees to pay all of District's costs and attorney's fees that may be incurred by District related to any disputes or proceedings between Licensee and subsequent users.

~~(d) Accordingly, Licensor agrees that any other person or entity who may install equipment subsequent to the Execution Date in and/or on the Site will be permitted to install only such communications equipment that is of the type and frequency that will not cause any interference to Licensee or persons or entities claiming through or under Licensee. In the event any such person or entity's equipment causes such interference, District will cause the interfering party to take all steps necessary to correct and eliminate the interference or such interfering party will be required to cease operations until such interference is removed.~~

~~(e) Nothing contained in this Section 10 or elsewhere in this License is intended to confer any rights or remedies under, or by reason of this License on, or waive any claims against, or adversely affect any rights of, any person or entity other than the parties hereto.~~

~~**Section 11. Environmental.** Licensee shall not bring upon, or permit any other person or entity to bring upon, the Site any hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof), except for the limited purpose of (i) providing materials or substances for emergency power generators or backup batteries required to operate the Communications Facility on a temporary emergency basis or (ii) using small quantities of solvents to clean the Communications Facility. In the event (i) or (ii) of the preceding sentence is applicable, Licensee shall use the materials and substances and solvents in compliance with all applicable laws and regulations. Notwithstanding the foregoing, Licensee is prohibited from storing any such materials and substances or solvents at the Site, or disposing of any by-products or waste from such fuels, substances and materials and solvents at the Site.~~

~~**Section 11. Environmental.**~~

~~(a) For purposes of this License, the term "Hazardous Substances" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq.,~~



all as amended (the above cited California state statutes are hereinafter collectively referred to as the "State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

- (b) Except as otherwise specifically permitted under the terms of this License, Licensee shall not use, create, generate, store, deposit, dispose of or allow any Hazardous Substances on, under, about or within the Premises or Licensed Land in violation of any federal, state, or local law, rule, regulation, order, decree or other requirement listed in this Section 11. Storage batteries for emergency power and fuel for temporary generators during power outages may only be used or stored on-site with the prior written approval of District. On site use, but not storage, of ordinary paints, solvents and similar substances commonly used in small quantities and necessary for maintenance of the Licensee's Facilities are excepted from the preceding prohibition of use by Licensee of Hazardous Substances on Licensed Area, so long as Licensee complies with all applicable federal, state and local laws rules and regulations governing the use of such items.
- (c) No permanent underground or above ground storage tanks shall be installed on Licensed Area.
- (d) District or its officers, employees, contractors, or agents shall at all times have the right to go upon and visually inspect Licensed Area the operations conducted thereon to assure compliance with the requirements herein stated. This inspection may also include taking samples for chemical analysis of substances and materials present and/or testing soils on Licensed Area and taking photographs. Except in case of emergency, District will not take samples or test soils on Licensed Area without providing Licensee with notice and the opportunity to have a representative present.
- (e) Licensee shall, within forty-eight (48) hours of the discovery by Licensee of the presence of, or believed presence of, a Hazardous Substance as defined herein, give written notice to District in the event that Licensee knows or has reasonable cause to believe that any release of Hazardous Substance has come or will come to be located on, under, about or within the Licensed Area. The failure to disclose in a timely manner the release of a Hazardous Substance by Licensee, including but not limited to, an amount which is required to be reported to a state or local agency pursuant to law (e.g., California's Hazardous Materials Storage and Emergency Response Act, Health and Safety Code Section 25550 et seq.) shall be grounds for termination of this License by District in

addition to actual damages and other remedies provided by law. Licensee shall immediately clean up and completely remove all Hazardous Substances placed by Licensee on, under, about or within Licensed Area, in a manner that is in all respects safe and in accordance with all applicable laws, rules and regulations.

(f) In the event Hazardous Substances are discovered, Licensee shall disclose to District the specific information regarding Licensee's discovery of any Hazardous Substances placed on, under, about or within Licensed Area by Licensee, and provide written documentation of its safe and legal disposal.

(g) Breach of any of these covenants, terms, and conditions, and Licensee's failure to cure within thirty (30) days of Licensee's receipt of written notice from District, shall give District the authority to either immediately terminate this License or to shut down Licensee's operations thereon, at the sole discretion of District. In either case, Licensee will continue to be liable under this License to remove and mitigate all Hazardous Substances placed by Licensee on, under, about or within Licensed Area or Site. Licensee shall be responsible for, and bear the entire cost of removal and disposal of, all Hazardous Substances introduced to Licensed Area by Licensee during Licensee's period of use and possession of Licensed Area. Upon termination of this License, Licensee shall, in accordance with all laws, remove from Licensed Area any equipment or improvements placed on Licensed Area by Licensee that may be contaminated by Hazardous Substances.

**Section 12. Insurance.** Licensee agrees to maintain in full force and effect a suitable policy or policies of Commercial General Liability insurance throughout the duration of the license. Such insurance shall be in amounts not less than \$5,000,000 per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to the Communications Facility and Site (with the ISO CG 2501 or insurer's equivalent endorsement provided to District), or the general aggregate limit shall be twice the required occurrence limit of \$5,000,000. Coverage shall be broad enough to insure the indemnity obligation set forth in this license under Section 13. Licensee also agrees to maintain in full force and effect Automobile Liability coverage (equivalent in coverage to ISO form CA 00 01) of not less than \$1,000,000 combined single limit, each accident, covering all owned, hired and non-owned autos; and, workers' compensation insurance and employer's liability insurance with respect to all employees, if any, engaged in the performance of work on the Site. Coverage must include a waiver of subrogation endorsement in favor of District.

All insurance required under this lease shall be issued as a primary policy and contain an endorsement requiring thirty (30) days written notice from the insurer to both parties hereto before cancellation or change in coverage, scope or amount of any policy. District, its directors, officers, agents, employees, volunteers and consultants, shall be designated as additional named insureds by separate endorsement under the foregoing policies. Concurrently with the execution of this License Agreement and prior to installing the Communications Facility or any portion thereof on the Site, Licensee will provide District with a certificate(s) verifying such insurance and the terms described herein, as well as the additional insured and/or other specified endorsement(s), and shall provide proof of continuing insurance

as required herein on an annual basis thereafter in conjunction with payment of the annual license fee. Licensee shall ensure, in accordance with the Program, that its contractors performing any installation of the Communications Facility, including modifications to the Communications Facility as applicable or other work on the Site, will provide insurance that satisfies the same terms and conditions set forth in this Section 12, in accordance with the Program, and shall ensure that all insurance certificates and endorsements are provided by its contractors.

**Section 13. Indemnification.** Licensee shall be responsible, and District shall not be answerable or accountable in any manner, for any loss or expense by reason of any damage or injury to person or property, or both, arising out of the acts of Licensee, its agents, officers, employees, or invitees (collectively with Licensee referred to in this Section 13 as "Licensee") resulting from Licensee's activities on the Site or on and over the Access Easement, the design or installation of the Communications Facility and any related equipment, including but not limited to razor ribbon, the operation, maintenance or removal of its Communications Facility, any harmful interference caused by Licensee which interferes with the ability of the Prior Users to operate their communications equipment in accordance with the terms of the Prior Use Agreements, and, any other use of and operations on the Site or the Access Easement by Licensee, or otherwise pursuant to this license.

To the fullest extent permitted by law, Licensee shall indemnify and defend (using counsel reasonably satisfactory to District) District and its directors, officers, agents, employees, contractors, volunteers, and invitees (collectively with District referred to as "District" in this Section 13) against and will hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, ~~attorneys fines, attorney's fees, administrative and judicial proceedings and orders, judgments, obligations or liabilities, including but not limited to liability associated with existence and maintenance and all costs and expenses incurred in connection therewith, including attorneys' fees and costs of razor ribbon, that may be asserted or claimed by any person, firm, association, entity, corporation, political subdivision, or other organization~~ defense (collectively, the "Losses") arising ~~out of from, resulting from~~ or ~~in connection with (i) caused by~~ Licensee's activities ~~on the Site or on and over the Access Easement; (ii) any breach or default in the performance of any obligation on Licensee's part to be performed under this license; (iii) the design or installation of the Communications Facility and any related equipment; (iv) the operation, maintenance, or removal of the Communications Facility; (v) any harmful interference caused by Licensee which interferes with the ability of the Prior Users to operate their communications equipment in accordance with the terms of the Prior Use Agreements; and (vi) any other use of and operations on the Site or the Access Easement, or undertaken~~ pursuant to this license, ~~by Licensee Agreement including activities undertaken by its employees, officers, agents and contractors, whether or not there is concurrent passive negligence on the part of District, and in connection therewith:~~

~~(a) Licensee shall defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities, and will pay all costs and expenses, including attorneys' fees incurred in connection therewith, using counsel satisfactory to District.~~

~~(b) Licensee shall promptly pay any judgment rendered against Licensee or except to the extent that such claim is proximately caused by the active negligence or willful misconduct~~

~~of District or its officers, agents, employees, contractors or subcontractors who are directly responsible to District covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such use of and operations on the Site by Licensee, and agrees to save and hold District harmless therefrom.~~

~~(c) In the event District is made a party to any action or proceeding filed or prosecuted against Licensee for such damages or other claims arising out of Licensee's use of and operations on the Site, Licensee agrees to pay District any and all costs and expenses incurred by District in such action or proceeding together with reasonable attorneys' fees.~~

~~(d) Licensee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Licensee or District.~~

Licensee's indemnification obligation hereunder and the provisions of this Section 13 shall survive any termination, revocation, expiration, or assignment of this License.

~~**Section 14. Arbitration of Disputes.** The parties desire to quickly and cost-effectively resolve any disputes arising out of or relating to the interpretation or enforcement of this License Agreement including, but not limited to, the arbitrability of such disputes. Therefore, each party shall use its best efforts to resolve informally any such disputes. If, not less than ten (10) calendar days after first making informal attempts to resolve any such dispute, the attempts have been unsuccessful, either party may thereafter initiate binding arbitration as specified below:~~

~~A. All disputes pursuant to this License Agreement shall be resolved by binding arbitration conducted within the County of Orange ("Arbitration") and may be initiated by a party by providing written notice to the other party ("Arbitration Notice"). The Arbitration Notice must: (i) contain a description of the dispute; (ii) specify the disputed amount, if any; and (iii) specify the remedy sought. The dispute shall then be resolved by a mutually agreed upon retired judge of the Superior Court for the County of Orange ("Arbitrator"), in accordance with the provisions set forth in this License Agreement. If the parties are unable to agree on the Arbitrator within ten (10) days after receipt of the Arbitration Notice, they shall request that the presiding judge of the Superior Court for the County of Orange designate the Arbitrator. The parties shall, initially, equally bear the cost of any such Arbitration; however, the prevailing party shall be entitled to recover such initial costs, in addition to other costs as specified herein, as an item of damage and/or recoverable cost. In addition to any other damages, award, or other relief, such prevailing party shall be entitled to recover its reasonable costs and expenses, including, but not limited to, attorneys' fees, disbursements, and court costs.~~

~~Upon selection or designation of an Arbitrator, the parties shall execute a submission agreement in the form provided by the Arbitrator. The submission agreement shall set forth the rights and responsibilities of the parties with respect to the conduct of the Arbitration, as set forth herein, and shall contain the following elements in addition to any other rules and procedures for the Arbitration that are established by the Arbitrator.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ The Arbitration hearing shall commence no later than sixty (60) days from the effective date of the submission agreement.~~

~~\_\_\_\_\_ C. \_\_\_\_\_ Discovery in aid of Arbitration shall be allowed in accordance with Code of Civil Procedure (“CCP”) Section 1283.05, which is hereby incorporated into, made a part of, and made applicable to this License Agreement pursuant to CCP Section 1283.1. The Arbitrator’s permission shall not be required to take any deposition(s) or propound any written discovery.~~

~~\_\_\_\_\_ D. \_\_\_\_\_ The Arbitrator shall follow and comply with all applicable substantive and procedural State case and statutory law in arriving at a decision.~~

~~\_\_\_\_\_ E. \_\_\_\_\_ The Arbitrator shall issue a written statement of decision, explaining the factual and legal basis for the decision with respect to each of the principal controverted issues, and shall deliver such statement of decision to the parties via registered or certified U.S. mail, return receipt requested.~~

~~\_\_\_\_\_ F. \_\_\_\_\_ All applicable evidentiary privileges and the work-product doctrine shall be available for purposes of the Arbitration and Arbitration hearing, and shall not be deemed to have been waived by entering into this License Agreement or by any conduct or actions of the parties undertaken in connection with any subsequent Arbitration pursuant hereto.~~

~~\_\_\_\_\_ G. \_\_\_\_\_ Any petition by a party to confirm, correct or vacate a decision of the Arbitrator must be filed within forty five (45) days following the receipt of the decision via registered or certified U.S. mail.~~

~~\_\_\_\_\_ H. \_\_\_\_\_ Not less than ten (10) calendar days prior to commencement of the Arbitration hearing, each party must make a full disclosure to the other party of: (i) all documents to be presented by such party as evidence during the Arbitration hearing; and (ii) any witness to be called by such party during the Arbitration hearing. Except for purposes of impeachment, only documents and witnesses so disclosed may be presented and called during the Arbitration hearing, or may be considered by the Arbitrator in reaching a decision.~~

~~\_\_\_\_\_ I. \_\_\_\_\_ Either party may apply to a court in the County of Orange having jurisdiction hereof and seek injunctive relief to maintain the status quo until the arbitration award is rendered or the dispute is otherwise resolved.~~

~~\_\_\_\_\_ J. \_\_\_\_\_ FINALITY OF AWARD: THE AWARD OF THE ARBITRATOR(S) SHALL BE FINAL AND BINDING UPON THE PARTIES WITHOUT APPEAL OR REVIEW EXCEPT AS PERMITTED BY CCP SECTION 1285 *et. seq.* EITHER PARTY MAY APPLY TO ANY COURT OF GENERAL JURISDICTION FOR ENTRY AND ENFORCEMENT OF JUDGMENT BASED ON SAID AWARD.~~

~~\_\_\_\_\_ K. \_\_\_\_\_ Notwithstanding the foregoing, at Licensee’s option, the following claims, disputes, and other matters in question need not be resolved by arbitration: any action by Licensee seeking an injunction or temporary restraining order against subsequent users under Section 10 of this License Agreement.~~

**Section 14. Dispute Resolution**

- (a) Dispute Resolution Process. Any claim, controversy, or dispute arising out of or relating to this License, or to the threatened, alleged, or actual breach thereof by any party, shall be resolved exclusively as set forth in this Section 14.
- (b) Invocation. Subject to the requirements of sub-sections (c) and (d) below, the resolution procedures shall be invoked when a party sends a written notice to the other party following the occurrence of any claim, controversy, or dispute arising out of or relating to this License, or to the threatened, alleged, or actual breach thereof. The notice shall describe the nature of the dispute and the party's position with respect to such dispute.
- (c) Field/Technical Representatives. Prior to invoking resolution procedures, the parties shall expeditiously schedule consultations or a meeting between field/technical representatives designated by each party in an effort to resolve the dispute informally.
- (d) Reference to Management Representatives. If the field/technical representatives appointed by each party are unable to resolve the dispute within fifteen (15) days, the management representatives designated by each party shall attempt to resolve such dispute through consultation and negotiation, within thirty (30) days (or such longer period as mutually agreed by the parties). The management representatives may request the assistance of an independent mediator if they believe that such a mediator would be of assistance to the efficient resolution of the dispute. Unless otherwise agreed, the cost of the mediator will be shared equally by the parties.
- (e) Binding Arbitration. If the management representatives cannot resolve the dispute as set forth herein, the matter shall be resolved by binding arbitration in the County of Orange, California, pursuant to the rules of Judicial Arbitration and Mediation Services ("JAMS"), as amended or as augmented in this Agreement (the "Rules"). Arbitration shall be initiated as provided by the Rules, although the written notice to the other party initiating arbitration shall also include a description of the claim(s) asserted and the facts upon which the claim(s) are based. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all claims subject hereto, including any award of attorney's fees and costs. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. All disputes shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify JAMS and request selection of an arbitrator in accordance with the Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a court would have for the particular claim(s) asserted. In no event shall the arbitrator award punitive damages of any kind. The parties acknowledge that one of the purposes of utilizing arbitration is to avoid lengthy and expensive discovery and allow for prompt resolution of the dispute. The arbitrator shall have the power to limit or deny a request for documents or a deposition if the arbitrator determines that the request exceeds

those matters which are directly relevant to the claims in controversy. The document demand and response shall conform to Code of Civil Procedure section 1282.6. The deposition notice shall conform to Code of Civil Procedure section 1283. The parties may make a motion for protective order or motion to compel before the arbitrator with regard to the discovery, as provided in Code of Civil Procedure. Notwithstanding the election by the parties to arbitrate their disputes, nothing contained herein shall prevent a party from filing an action in a court of competent jurisdiction to seek any form of equitable remedy or relief.

**Section 15. Program Fees–Deposit.** If not already paid by Licensee to District under the Program requirements, then concurrently with the execution of this License Agreement, Lessee shall pay to Lessor the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) covering applicable fees set forth under the terms of the Program.

**Section 16. Entire Agreement; Amendment.** This License Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and ~~preliminary~~ agreements made prior to the date hereof. In the event there is an existing lease or license between Licensee (or its predecessor-in-interest) and District covering the Leased Area, it is agreed and understood that this License shall cancel, supersede and terminate said prior lease or license as of the Execution Date of this License. This License may not be ~~changed~~ modified except in a writing executed by both parties.

**Section 17. Paragraph Heading and Construction.** The section headings contained in this License ~~Agreement~~ shall not be considered to be a part hereof for purposes of interpreting or applying this License, but are for convenience only.

**Section 18. Governing Law/Venue.** This License shall be governed by and construed in accordance with the laws of the State ~~of California without regard to its conflicts of laws rules.~~ Any lawsuit brought in connection with this License (as may be permitted hereunder) shall be brought in the appropriate court of the County of Orange, California and the parties agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

**Section 19. Binding on Successors; No Third Party Beneficiaries.** This License ~~Agreement~~, and all of the provisions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns. No customer, other person or entity other than parties shall be deemed to be a third party beneficiary hereof, and nothing in this ~~Agreement~~ License, either express or implied, is intended to confer upon any customer or other person or entity, other than the parties and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this ~~Agreement~~ License.

**Section 20. Independent Contractors.** Licensee’s contractors, agents and representatives are independent contractors of Licensee, and are not employees or independent contractors of the District while on the Site, or while engaged in any work on the Site, including the construction, installation, maintenance or operation of the Communications Facility.

**Section 21. Limited Assignment/ No Sub-licensing.**

(a) This License ~~Agreement~~, or the license interest of LesseeLicensee in the Site, shall not be assigned by ~~Lessee voluntarily or by operation of law~~ Licensee except with the prior written consent of District which consent may be withheld in the Licensor's sole discretion, notwithstanding sections 1995.260 and 1995.270 of the California Civil Code, and as they may be amended, or as allowed under subsection (b) hereof.

(b) Licensee may, without District's consent but upon at least sixty (60) days prior written notice to District, from time to time assign this License ~~Agreement~~ in its entirety (i) to any entity which has, directly or indirectly, a 51% or greater interest in lesseeLicensee (a "Parent"), or to any entity in which Licensee or a Parent has a 51% or greater interest (an "Affiliate"); ~~(ii) to any entity with which Licensee and/or any Affiliate may merge or consolidate; or (iii) to a buyer of substantially all of the outstanding ownership units or assets of Licensee or any Affiliate.~~). Any such assignment shall not be effective unless and until the assignee executes and delivers to District (A) a representation that assignee is Licensee's successor under the License Agreement pursuant to clause (i), (ii) or (iii) of this Section 20(b); and (B) assignee's written assumption of all Licensee's obligations under this License ~~Agreement arising from and after the effective date of assignment.~~

~~(c) Notwithstanding subsection (a) above, Licensee may, without District's approval and in Licensee's sole discretion, from time to time grant to any person or entity a financing security interest in some or all of the Communications Facility.~~

~~(c) Sub-licensing is strictly prohibited.~~

~~(d) Any attempted or unauthorized assignment or sub-license shall be void and shall be cause for immediate termination of this License by District. The acceptance of Annual License Fees by District from any person other than Licensee or an authorized assignee shall not be deemed to be a waiver by District of any provision hereof. Consent to one assignment shall not be deemed consent to any subsequent assignment.~~

~~(e) Applications for consent to assignments shall be submitted to the District in accordance with the requirements set out in the Program.~~

**Section 22. Waiver of District's Lien.** Subject to Licensee's obligations otherwise set forth in this License ~~Agreement (i.e. see, Section 8),~~

~~(a) District waives any lien rights it may have concerning the Communications Facility which are deemed Licensee's personal property and not fixtures, and Licensee has the right to remove the same at any time without District's consent; and,~~

~~(b) District acknowledges that Licensee has entered into or may enter into a financing arrangement including promissory notes and financial and security agreements for the financing of the Communications Facility (the "Collateral") with a third party financing~~



~~entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, District (i) disclaims any interest in the Collateral, as fixtures or otherwise; and (ii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any License Fee due or to become due and that such Collateral may be removed at any time without recourse to arbitration or other legal proceedings.~~

**Section 23. Attorney's Attorneys' Fees.** Should either party be compelled to institute arbitration or legal or other proceedings against the other for or on account of its failure or refusal to perform or fulfill any of the covenants or conditions of this License ~~Agreement~~ on its part to be performed or fulfilled, then the prevailing party in such action or proceeding shall receive from the other party attorney's fees and costs as adjudged reasonable by the arbitrator, or court.

**Section 24. Notice.** Any notice, request, information or other document to be given hereunder to any of the parties by any other parties shall be in writing and shall be deemed given and served upon delivery, if delivered personally, or three (3) days after mailing if sent by certified mail, postage prepaid, as follows:

If to Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

If to Licensor:

Moulton Niguel Water District  
27500 La Paz Road  
Laguna Niguel, CA 92677

Attn.: Director of Engineering & Operations

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Either party may change the address or persons to which notices are to be sent to it by giving the written notice that such change of address or persons to the other party in the manner provided for giving notice.

**Section 25. Counterparts.** This License ~~Agreement~~ may be executed in counterparts, each of which shall be deemed to be an original.

**Section 26. ~~Recital/ Exhibits.~~** ~~The parties agree the Recital is true~~ **Representations and**  
~~correct~~ **Warranties.**

- (a) Each party represents and is incorporated as part of warrants that this License constitutes a legal, valid and binding obligation of such party, and is enforceable against such party in accordance with the terms set forth in the License.
- (b) Licensee represents and warrants that it has received a complete copy of the Program from District, has read and understood the requirements of the Program, and is able to and will fully comply with the Program and the terms of this License, in connection with the Communication Facility, and in the exercise of its rights and obligations under this License.
- (c) Licensee acknowledges and agrees that the Program may be revised from time to time by the District, and all changes or revisions to the Program (except for Appendix A – Communications Facility License Agreement— Template) will automatically apply to this License upon written notice of the revised Program by District in accordance with Section 24, without the need for any formal amendment of this License.
- (d) Licensee acknowledges and agrees that Licensee is not entitled to relocation assistance, or any other benefits under the Uniform Relocation Assistance Act, or any other applicable provision of law upon termination of this License.

**Section 27. NO WARRANTY**

LICENSEE’S RIGHT TO USE THE LICENSED AREA, DISTRICT IMPROVEMENTS AND THE SITE IS STRICTLY ON AN “AS IS” BASIS WITH ALL FAULTS. DISTRICT MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE PRESENT OR FUTURE CONDITION OF OR SUITABILITY OF THE SITE, DISTRICT IMPROVEMENTS OR THE LICENSED AREA FOR LICENSEE’S USE AND DISCLAIMS ANY AND ALL WARRANTIES EXPRESS OR IMPLIED WITH RESPECT TO THE PHYSICAL, STRUCTURAL, OR ENVIRONMENTAL CONDITION OF THE SITE, DISTRICT IMPROVEMENTS, AND LICENSED AREA AND THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE IS SOLELY RESPONSIBLE FOR INVESTIGATION AND DETERMINATION OF THE CONDITION AND SUITABILITY OF THE SITE, DISTRICT IMPROVEMENTS, AND LICENSED AREA FOR LICENSEE’S INTENDED USE.

**Section 28 Taxes.** District hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Licensee acknowledges that this License may create a possessory interest and Licensee may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107. Licensee shall pay, when due, all real and personal property taxes, fees and assessments, assessed against the Licensed Area and the Communications Facility.

**Section 29. Time.** Time is of the essence of this License.

**Section 30 Survival.** All terms that by their nature should survive termination of this License shall survive, including but not limited to payment of amounts owed and indemnification obligations.

Section 31. The following exhibits are incorporated in this License Agreement:

**Exhibit A** Site- Legal Description

**Exhibit B** Description - Communications Facility (equipment list)

**Exhibit C** ~~Dimension Sketch, Plot Plan – Communications Facility~~ Licensed Area (Survey & Design Drawings)

**Exhibit D** List of Prior User(s)

~~Section 27. Authorized Representatives.~~ Section 32. Binding Authority/Authorized Representatives. Each of the parties represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its obligations hereunder and that those obligations will be binding upon that party without the approval or consent of any other person or entity. Each person executing this License Agreement represents and warrants he/she has been duly authorized to execute the same.

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement as of the day and year first written above.

**“District”:**

**MOULTON NIGUEL WATER DISTRICT**

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

General Manager

**“Licensee”:**

\_\_\_\_\_

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

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

**#4.**



**Appendix B**  
**Amendment to Communication Facility License**  
**Agreement Template**

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Edit as appropriate. Select if it's a license or lease amendment. Delete as needed.

AMENDMENT NO. [redacted] TO COMMUNICATION FACILITY LEASE/LICENSE

(cell carrier name & MNWD site name)

This Amendment No. [redacted] to Lease/License (this "[redacted] Amendment") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Moulton Niguel Water District ("District") a California water district existing and operating pursuant to Division 13 of the California Water Code, and [redacted] ("Lessee/Licensee"), with reference to the facts set forth in the Recitals below:

RECITALS

A. District is the owner of that certain real property located at [redacted] ("~~Lessor's/Licensor's Property~~ District's Site"); and B. District and Lessee/Licensee are parties to that certain Lease/License dated [redacted] (the "~~Lease/License Agreement~~"), pursuant to which Lessee/Licensee ~~District from District~~ currently has installed and is operating Licensee's federally licensed communications facility at the Premises, as more particularly described in the Lease/License. For purposes of this [redacted] Amendment, such Premises shall be referred to as the "~~Existing Premises Site~~;" and

C. On (Insert date of First Amendment, if applicable), the Parties executed Amendment No. [redacted] to the Agreement to (insert description of First Amendment, if applicable); and

~~D. The District's D. (Insert Recitals for all other Amendments as applicable, using the above format) (the Agreement and the amendments collectively are referred to herein as the "Agreement"); and~~

~~E. District has adopted a revised "Communications Facilities License Program -- Policy and Procedures for Communication Communications Facilities Licenses within Moulton Niguel Water District Properties" dated March 2012, as if may be revised from time to time, is incorporated by this amendment to the [Lease/License], if not already made a party thereof. 2015 (the "Program").~~

~~E. (Insert Recitals for all other Amendments as applicable, using the above format); and~~

**FOR EXPANSION OF SPACE ADD THE FOLLOWING RECITAL:**

F. ~~District and Lessee/Licensee have agreed~~ desires to amend the Lease/License Agreement in order to (i) expand ~~the Existing Premises~~, (ii) allow ~~Lessee/Licensee~~ its use of the Site to install, operate, maintain, repair and replace a [describe proposed work to be completed], (iii) ~~revise as specified in the~~ rent calculation for the term of the Lease/License (the "~~Term~~") to account for the expansion of the Existing Premises, and (iv) ~~make certain other modifications to the Lease/License~~, all as set forth more fully below ~~attached Exhibit~~; and

**FOR ADDITIONAL ANTENNAS ADD THE FOLLOWING RECITAL:**

G. ~~District and Lessee/Licensee desire~~ desires to amend the Agreement to allow for the installation of additional antennas, associated cables and other communications ~~instrument~~ equipment as specified in the attached Exhibit; and

**FOR SITE IMPROVEMENTS ADD THE FOLLOWING RECITAL:**

H. ~~District and Lessee/Licensee desire~~ desires to amend the Agreement to permit Lessee/Licensee to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated ~~application~~ requirement, including but not limited to emergency 911 communication services; and

**FOR EXTENSION OF THE LEASE TERM ADD THE FOLLOWING RECITAL:**

I. ~~District and Lessee/Licensee desire~~ desires to amend the Agreement to extend the term of the Agreement for (a period of \_\_\_\_\_, until \_\_\_\_\_ or another time period – please select one or modify as needed); and

**FOR ADDITIONAL RENT ADD THE FOLLOWING RECITAL:**

J. ~~District and Lessee/Licensee desire~~ desires to modify, as set forth herein, the Rent payable under the Agreement. In addition to Lessee’s annual rent obligations for the Existing Premises, lessee/licensee shall pay and additional rent in the amount of \$ \_\_\_\_\_ (\$xxxx.xx); and

K. District is willing to agree to such amendment(s) upon the terms and conditions specified herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Defined Terms.** Any capitalized terms used in this Amendment No. \_\_\_\_\_ that are not defined herein shall have the meanings given those terms in the ~~Lease/License or all previous amendments Agreement.~~ Unless the context clearly indicates otherwise, all references to the “Lease/License Agreement” in the ~~Lease/License and in~~ this Amendment No. shall hereinafter be deemed to refer to the Lease/License Agreement, as amended hereby.

**FOR EXPANSION OF EXISTING PREMISES ADD THE FOLLOWING PARAGRAPH:**

**#. Expansion of ~~Existing Premises Use of Site.~~** The description of the leased/licensed space (“Existing Space”) contained in the Lease/License Agreement is hereby amended to hereinafter include additional ground space measuring approximately [incorporate this information] \_\_\_\_\_ (the **“Additional Space”**), all as more particularly described and depicted in the site drawing attached hereto as Exhibit A-1 and made a part hereof, together with such additional space as may be required for the installation of conduit and equipment,

**#4.**

which shall be located within a non-exclusive utility easement to connect the Existing PremisesSpace with the Additional Space. The parties acknowledge and agree that the attached Exhibit A-1 is intended to supplement the site drawing attached as Exhibit A-2 to the Lease/License Agreement. Commencing on execution of this Amendment, the Additional Space and the Existing Space shall hereinafter be referred to collectively as the "Communications Facility Existing Space."

**FOR SITE IMPROVEMENTS ADD THE FOLLOWING PARAGRAPH:**

**#. Site Improvements.** District acknowledges and agrees that Lessee/Licensee intends to construct and install certain additional improvements on the leased/licensed Existing space, which include, but are not limited to comprise, [describe proposed work to be completed] \_\_\_\_\_ as substantially depicted on Exhibit A-2 (collectively, the "Improvements"). District hereby consents to the construction, installation, operation, maintenance, repair and replacement of the Improvements as the same may be modified, added to replaced and/or substituted from time to time during the Term, as it may be extended. District further acknowledges and consents to the improvements as substantially depicted on Exhibit A-2.

**FOR ADDITIONAL RENT ADD THE FOLLOWING PARAGRAPH:**

**FOR ADDITIONAL RENT ADD THE FOLLOWING PARAGRAPH:**

**4.#. Additional Rent.** In addition to Lessee's/Licensee's annual rent existing obligations for under the leased/licensed space Agreement, Lessee/licensee shall pay additional rent in the amount of \_\_\_\_\_ (\$XXXX.XX) per month, commencing upon execution of the Amendment No. \_\_\_\_\_. Commencing on [New Rent Commencement Date], the total Rent payable under the Agreement No. \_\_\_\_\_ shall be \$[New Base Rent] per [month/annually,] and shall continue during the Term, subject to adjustment, if any, as provided below in the Agreement.

**FOR ADDITIONAL ANTENNAS ADD THE FOLLOWING PARAGRAPH:**

**5.#. Additional Antennas.** In addition to the other existing antennas permitted in the Agreement, District consents to the installation and operation of additional antennas, associated cables and equipment as more completely described on attached Exhibit A-2. Landlord's District's execution of this Amendment will signify Landlord's District's approval of Exhibit A-2. Exhibit A-2 hereby replaces Exhibit XX to the Agreement/Amendment No. \_\_\_\_\_ dated \_\_\_\_\_.

**District Notices.#. District Notices.** District and Lessee/Licensee notice addresses for purposes of the Lease/License Agreement are as follows:

**District:** Moulton Niguel Water District  
P.O. Box 30203  
Laguna Niguel, 92607-0203  
**Attention:** \_\_\_\_\_.

**Lessee/Licensee:** \_\_\_\_\_  
\_\_\_\_\_



Attention: \_\_\_\_\_

**#. License Program.** Lessee/Licensee represents and warrants that it has received a complete copy of the Program from District, has read and understood the requirements of the Program, and is able to and will fully comply with the Program (excluding Appendix A – Communications Facility License Agreement Template) and the terms of this Agreement, in connection with the Communication Facility, and in the exercise of its rights and obligations under the Agreement from and after the date of this Amendment. Further, Lessee/Licensee acknowledges and agrees that the Program may be revised from time to time by the District, and all changes or revisions to the Program (excluding Appendix A – Communications Facility License Agreement Template) will be automatically apply to this Agreement upon written notice of the revised Program by District, without the need for any formal amendment of this Agreement.

**#. Continued Effect.** Except as specifically modified by this Amendment No. \_\_\_\_\_, all of the terms and conditions of the ~~Lease/License and previous Amendments Agreement~~ shall remain in full force and effect. In the event of a conflict between any term or provision of the ~~Lease/License Agreement~~ and this Amendment No. \_\_\_\_\_, the terms and provisions of this Amendment No. \_\_\_\_\_ shall control. In the event of a material conflict between the terms of this Agreement and the Program (excluding Appendix A – Communications Facility License Agreement Template), the more stringent terms shall prevail. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Amendment No. \_\_\_\_\_.

[Signature page follows]

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IN WITNESS WHEREOF, District and Lessee/Licensee have caused this Amendment No. to be executed by each party's duly authorized representative effective as of the date first above written.

**DISTRICT:**

**MOULTON NIGUEL WATER DISTRICT,**  
A California water district existing and operating pursuant to Division 13 of the California Water Code

By: \_\_\_\_\_  
General Manager or designee

ATTEST:

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

**LESSEE:**

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

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

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

*Proper notarial acknowledgment of execution by Lessee/Licensee must be attached.*

**#4.**

**Appendix C**

**Application Form**

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**Appendix C**  
**Moulton Niguel Water District**  
**Communication License Program**  
**Application Procedures and Forms**

**Contents**

Section C-1. Communications Facility License Application Procedures..... 1  
Section C-2. Communications Facility Application Review ..... 3

Form C-1: Application Form

Form C-2: Letter of Authorization

Form C-3: Letter of Consent

**Section C-1. Communications Facility License Application Procedures**

Applicants to the District seeking placement of communications facilities on District properties must submit an application with the applicable fees by separate checks for each required fee, payable to MNWD. The application form is provided in this Appendix and Appendix D contains the application fee schedule, which may be amended from time to time.

1. The applicant shall complete all necessary information on the application. Page 1 of the application shall be completed in its entirety. The applicant must provide this information:
  - a. licensee corporate name, state of incorporation, doing business as or trade name if any;
  - b. licensee corporate address and local address (if different);
  - c. contact information for licensee personnel responsible for the application;

## #4.

- d. drawings and/or plans depicting the location and dimensions of the proposed communication facilities, equipment specifications, engineering calculations showing that equipment will not impact District facilities as applicable, geotechnical reports, and any other information as necessary to determine full scope of the work;
  - e. map depicting the location of the proposed communications facility;
  - f. radio frequency analysis showing the current usage at the proposed site along with the new usage and providing detailed information regarding any precautions necessary for District employees to be aware of in the normal course of their business due to the placement of licensee's transmitters or equipment;
  - g. list of any other facilities of licensee previously installed on District property including the site number and location;
  - h. proposed date of installation;
  - i. structural analysis for brackets;
  - j. description and listing of the various local, State of California and federal public agency approvals required with expected approval date;
  - k. copy of any license or registration required of licensee to do business in California; and pertinent FCC license(s); and
  - l. any other information pertinent to the applicant, or as may be requested by District staff and/or District representative.
2. Applicants shall coordinate and comply with requirements of public agencies of the County of Orange, adjacent cities or any other public agencies as required by the permitting public agencies.
  3. All land use approvals, parcel map requirements, permits or any other regulations and conditions required by the County of Orange, the California Public Utilities Commission, the Federal Communications Commission or other municipalities and governmental agencies shall be satisfied by the applicant at its cost. Applicant shall provide the District with copies of any and all entitlement permits granted for installation and any conditions of approval for the operation of the communications facilities.

4. Applicant may make application at any time for a new License Agreement, with the understanding that the time remaining on the current agreement will not be added to the term of the new agreement. It is recommended, Licensee makes application for a new License Agreement at least one year prior to the end of the current agreement to ensure sufficient time for reviews and approvals.

## **Section C-2. Communications Facility Application Review**

The following steps make up the Application Review process:

1. Staff shall review the contents of applicant's submission and determine whether the application is complete.
2. Once a completed application is received and application fees are paid, if the applicant's proposed improvements are outside any existing areas used by the applicant, Staff will verify that the property interest of the District at the locations proposed to be used in conjunction with the proposed development is not restricted to reservoir purposes only (or pump/lift station or other specified facility purposes, as the case may be), or uses "incidental" to reservoir (pump/lift station) purposes.
3. Upon a determination by Staff that the application is incomplete, Staff shall advise the applicant in writing of the deficiencies in the application, or request such additional information which, in the sole discretion of the District, would make the application complete. Applicants shall respond to the District and complete the submission requirements as soon as possible. Should the applicant fail to submit the supplemental information within a one year time frame, the application may be deemed abandoned at the District's discretion. Re-submission shall require a new application and application fees.
4. Staff or its agent shall review the application to determine whether the application meets all policies and requirements outlined in this Program document or as otherwise incorporated by reference herein.
5. Staff shall consider the safety of District employees and all invitees and authorized volunteers in evaluation of new communications facility applications.

## #4.

6. The District will not issue its consent letter for the construction of a site or for proposed improvements, unless and until all items requested by the District are provided and approved. These items include, but not limited to, the following:
  - a) Executed License Agreement or License Amendment
  - b) Adjoining land owners' Approval / Consent (when applicable)
  - c) Zoning Approval Documentation (when applicable)
  - d) Approved Construction Drawings (for District Signature)
  - e) Structural Analysis Report & Structural Mount Letter (when mounting to District tank facilities)
  - f) Building Permit / Encroachment Permit - Ready to Issue Memo (or Memo with supporting documentation indicating a permit is not require)
7. Upon receipt of the Consent Letter and signed drawings, Licensee has one year to complete its project, any extension to this time frame is at the discretion of the District. If not complete within one year, Licensee will be required to refile with the District for its project including all fees necessary to review the project.
8. The District reserves the right to deny any application at its sole discretion without liability.



MNWD

WIRELESS TELECOMMUNICATION APPLICATION

Required for all New/ Existing Wireless Telecommunication Facilities

The purpose of this form is to ensure that the goals and objectives outlined in Telecommunications Policies and Procedures will be met with each submitted project. Specifically, this form shall be used to ensure each application for installation of or modification to wireless communication infrastructure on MNWD property demonstrates that reasonable design and site location alternatives have been explored and evidence of such is presented to the approving authority prior to the final tower, location, and design being approved. An application shall not be deemed complete nor processed until the entire application is submitted in full and accepted by the MNWD staff.

NEW SUBMITTAL: \_\_\_\_\_ (Y/N) RE-SUBMITTAL: \_\_\_\_\_ (Y/N)
RESUBMITTAL NO.: \_\_\_\_\_ PREV. SUB. DATE: \_\_\_\_\_

MNWD Site Name: \_\_\_\_\_

Site Address: \_\_\_\_\_

APN# \_\_\_\_\_

Carrier: \_\_\_\_\_ Local Address: \_\_\_\_\_

Carrier Site Name/Number: \_\_\_\_\_

New Build: \_\_\_\_\_ Modified Build: \_\_\_\_\_

Proposed Design or Modification:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

Height: \_\_\_\_\_ Material: \_\_\_\_\_ Color: \_\_\_\_\_

Antenna Size HxWxD: \_\_\_\_\_ Number /Weight: \_\_\_\_\_

Microwave dish (Y/N): \_\_\_\_\_ Number / Size: \_\_\_\_\_

RRH (Remote Radio Heads) (Y/N): \_\_\_\_\_ Number / Size: \_\_\_\_\_

Surge suppressors (Y/N): \_\_\_\_\_ Number / Size: \_\_\_\_\_

TMA/LNA (Y/N): \_\_\_\_\_ Location: \_\_\_\_\_ Number / Size: \_\_\_\_\_

# #4.

Brief description of project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Equipment:

Location of the proposed equipment (and existing equipment, if applicable): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Size: \_\_\_\_\_ Square Feet: \_\_\_\_\_ Interior/ Exterior: \_\_\_\_\_  
Enclosure material: \_\_\_\_\_ Height of enclosure: \_\_\_\_\_  
Proposed screening material: \_\_\_\_\_  
Site access to equipment: \_\_\_\_\_  
Aesthetic mitigation measures: \_\_\_\_\_  
\_\_\_\_\_

## *Correspondence regarding this application should be sent to:*

Agent Name: \_\_\_\_\_  
Agent Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

• **X** \_\_\_\_\_  
Applicant Signature \_\_\_\_\_ Date

<u>MNWD only</u>	
Payment Received: \$ _____	Date: _____
Original Submittal Date: _____	
Re-submittal No.: _____	Date: _____
Tracking No.: _____ (Original Receipt No.)	
Rev. 7/2012	-118-



MOULTON NIGUEL WATER DISTRICT  
WIRELESS TELECOMMUNICATION APPLICATION

*Required for all New & Existing Wireless Telecommunication Facilities*

*(Check all that apply)*

- Application for Renewal or New License
- Application for License Amendment
- Application for Consent Letter for minor improvements (no excavation/plan approval)
- Application for Consent Letter for major improvements (site excavation/plan approval)
- Specialty field inspection (coating, welding, compaction, etc.), billed to licensee upon completion of construction
- Application for site decommission
- Application for insurance compliance, name change, assignment, change of ownership or entity

**Please see the Fee Schedule in Appendix D of the MNWD Communication Facilities License Program**  
*(Payments should be made payable to MNWD and shall accompany this application)*

Total Fee: \$ \_\_\_\_\_

Check #: \_\_\_\_\_

MNWD Site Name: \_\_\_\_\_

Site Address: \_\_\_\_\_

APN#: \_\_\_\_\_

Wireless Service Provider Name (Carrier): \_\_\_\_\_

Carrier's Local Address: \_\_\_\_\_

Carrier Site Number/Name: \_\_\_\_\_

***Correspondence regarding this application should be sent to:***

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

Agent Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

# #4.

\_\_\_\_\_ New Build      \_\_\_\_\_ Modified Build      \_\_\_\_\_ Decommission

Detailed description of project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Equipment:**

(mark all that apply)

Antenna(s) (Y/N): \_\_\_\_\_      Number / Size: \_\_\_\_\_

Microwave dish (Y/N): \_\_\_\_\_      Number / Size: \_\_\_\_\_

RRH (Remote Radio Heads) (Y/N): \_\_\_\_\_      Number / Size: \_\_\_\_\_

Surge Suppressors (Y/N): \_\_\_\_\_      Number / Size: \_\_\_\_\_

TMA/LNA (Y/N): \_\_\_\_\_      Number / Size: \_\_\_\_\_

Trenching (Y/N): \_\_\_\_\_      Location/Length: \_\_\_\_\_

Location of the proposed BTS equipment (and existing equipment, if applicable): \_\_\_\_\_  
\_\_\_\_\_

Interior/ Exterior: \_\_\_\_\_      Size: \_\_\_\_\_      Square Feet: \_\_\_\_\_

Enclosure material: \_\_\_\_\_

Proposed screening material: \_\_\_\_\_

Site access to equipment: \_\_\_\_\_

Aesthetic mitigation measures: \_\_\_\_\_  
\_\_\_\_\_

<u>MNWD only</u>	
Payment Received: _____	Date: _____
Original Submittal Date: _____	
Re-submittal No.: _____	Date: _____



**LETTER OF AUTHORIZATION**  
**TO PROCEED WITH ZONING AND PERMITTING**  
**FOR WIRELESS COMMUNICATIONS FACILITY INSTALLATION**

Description of proposed communications facility installation (include site name/number):

**MNWD Submittal Number:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**Carrier's Site ID:** \_\_\_\_\_

**APN#:** \_\_\_\_\_ **MNWD site name:** \_\_\_\_\_

**Carrier:** \_\_\_\_\_

**California Address:** \_\_\_\_\_

**Carrier's Agent:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Email:** \_\_\_\_\_

I hereby authorize Carrier and/or its agent to proceed to secure any permits or entitlements required by the appropriate jurisdiction associated with the installation of a wireless communications facility or appurtenances on the property described above. This authorization is not an agreement to lease or license space or rights to the Carrier and does not represent an agreement to do so. This authorization does not entitle the Carrier to use space of or initiate any type of construction on Moulton Niguel Water District property. The pursuit of required governmental approvals shall be at no cost to Moulton Niguel Water District.

**Signed:** \_\_\_\_\_

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

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

**THIS AUTHORIZATION EXPIRES 12 MONTHS FROM THE DATE OF SIGNATURE, UNLESS EXTENDED BY THE DISTRICT.**

**Additional Comments:** \_\_\_\_\_

\_\_\_\_\_

#4.



**CONSENT LETTER**

**FOR WIRELESS COMMUNICATIONS FACILITY INSTALLATION**

Description of improvements
-----------------------------

**MNWD Submittal Number:**

**Street Address:** \_\_\_\_\_

**Carrier's Site ID:** \_\_\_\_\_

**APN#:** \_\_\_\_\_ **MNWD site name:** \_\_\_\_\_

**Carrier:** \_\_\_\_\_

**California Address:** \_\_\_\_\_

**Carrier Agent:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_ **Email:** \_\_\_\_\_

Carrier and/or its agent is authorized to proceed with the construction and/or installation, modification, upgrade, removal or maintenance described above. Attached hereto as Exhibit A is a drawing or drawings depicting the installation before the project and as-complete following the activity authorized by this Consent Letter. Attached hereto as Exhibit B is a construction schedule and a list of personnel expected to complete the project. Carrier hereby represents that all contractors are properly insured, bonded, and licensed according to the applicable laws of the State of California.

This authorization is not an agreement to amend the lease or license agreement, and is no extension of any rights or obligations other than those itemized in the existing lease or license agreement. This authorization does not entitle Carrier to use space of Moulton Niguel Water District other than for construction staging. This consent letter is provided on the condition that the project work shall be at no cost whatsoever to Moulton Niguel Water District.

Carrier and/or its agent must notify MNWD inspector, Peggy Toal 949-425-3530, at least 2 working days before construction begins to coordinate a preconstruction meeting at the site.

**MNWD CONSENT APPROVAL**

Name \_\_\_\_\_ Title \_\_\_\_\_ Signed \_\_\_\_\_ Date \_\_\_\_\_

**PROJECT COMPLETION**

This authorization expires 12 months from the date of the MNWD Consent Approval signature. Any work not completed within this time frame may be stopped and subject to resubmittal fees unless prior authorization has been granted by MNWD to continue/complete the work. Once the Carrier deems the project complete the Carrier will provide "as-built" drawings, sign this form below and deliver to MNWD for final sign-off.

**Carrier Agent's Name & Title** \_\_\_\_\_ **Signed** \_\_\_\_\_ **Date** \_\_\_\_\_

**MNWD Name & Title** \_\_\_\_\_ **Signed** \_\_\_\_\_ **Date** \_\_\_\_\_

|

#4.

**Procedures and Forms**

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**Appendix D**  
**Fee Schedule**

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**Moulton Niguel Water District  
Communication License Program  
Application Fee Schedule<sup>1</sup>**

Checks for site application fees should be made payable to the Moulton Niguel Water District. Separate checks must be made specifically for each District property and for each type of fee. Prior to cashing the checks, the District will review each application and determine whether the required application fees have been submitted. If a fee has been submitted that is not necessary, the District will return the check. If fees are missing, the District will advise the applicant. Once a fee is accepted, it is non-refundable and not assignable to another site or application. Failure to diligently pursue an application once submitted (for example, by not responding to a District request for information for several months) may result in denial of the application and require resubmittal.

Types of fees:

1. Application for a renewal or new License at a site - \$3,500.00 nonrefundable deposit and full reimbursement of District out-of-pocket and attorney fees above that amount.
2. Application for License Amendment - \$1,250.00 nonrefundable deposit and full reimbursement of District out-of-pocket and attorney fees above that amount.
3. Application for a Consent Letter for minor improvements (no excavation, ~~no plans~~) - \$) - \$1,500.00 flat fee.
4. Application for a Consent Letter for major improvements (site excavation, ~~plan approval~~) - \$) - \$1,750.00 flat fee.
5. Application for a letter of authorization to commence zoning and permitting - \$~~200~~500.00 flat fee.
6. Specialty field inspections - \$75 per hour (coating, welding, compaction, etc), billed to licensee upon completion of installation.
7. Application for site decommission - \$2,000.00 nonrefundable deposit and full reimbursement of District out-of-pocket and attorney fees above that amount.
8. Application for insurance compliance, name change, assignment, change of ownership or entity - \$600.00 nonrefundable deposit and full reimbursement of District out-of-pocket and attorney fees above that amount.

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<sup>1</sup> These processing application fees are in addition to the 'annual license fee' required under the License Agreement/Amendment.

**Appendix E**

**Signature Block Sample and Equipment Table  
Samples**

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**#4.**

**Signature Block Sample –and Equipment Schedule**

Required on all title pages of drawings submitted to MNWD for approval for communication license holder’s site improvements.

<b>Moulton Niguel Water District</b>	
Director of Engineering and Operations	Date
<u>or</u> <u>Assistant Director of Engineering</u>	
MNWD Site Name: _____	

<b><u>EQUIPMENT SCHEDULE</u></b>				
	<b><u>ZONING</u> <u>APPROVED</u></b>	<b><u>LICENSED</u> <u>APPROVED</u></b>	<b><u>EXISTING ON</u> <u>SITE</u></b>	<b><u>NEW</u> <u>MOD</u></b>
<b><u># OF</u> <u>ANTENNAS</u></b>	-	-	-	-
<b><u>ANTENNA</u> <u>SIZE</u></b>	-	-	-	-
<b><u>EQUIPMENT</u> <u>AREA</u></b>	-	-	-	-
<b><u>RRU'S /</u> <u>LOCATION</u></b>	-	-	-	-

**Appendix F**  
**Construction Notes**

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## #4.

These construction notes must appear on the notes sheet of every plan sheetset submitted for District's review and approval:

### **MNWD construction notes:**

1. The Moulton Niguel Water District inspector shall be notified at least two (2) working days prior to beginning of construction. Call (949) 425-~~3532~~3530 to arrange for inspection.
2. A preconstruction conference of representatives from applicable agencies shall be held on site at least one ~~(1)~~ week prior to beginning construction at which time a construction schedule and 24-hour contact information shall be provided to MNWD.
3. Contractor shall maintain access to the site at all times for Moulton Niguel Water District personnel. Open trenches shall be properly plated at the end of each working day to allow for 24-hour MNWD access to the site.
4. The Contractor and Cell Carrier shall be responsible for any damage due to Construction activities to the existing site and shall return damaged facilities to existing condition or better at no cost to the District.
5. The Contractor shall notify underground service alert (DIG ALERT) at least two (2) working days prior to beginning construction at 1-800-422-4133. Any MNWD facilities to be crossed or paralleled within five feet shall be potholed to verify location prior to working in the vicinity of MNWD facilities. Contractor is responsible for providing gate access to DIG ALERT inspection(s).
6. The Contractor shall contact the District coating representative (inquire for current name) for coating requirements and inspections at (XXX) XXX-XXXX prior to any work on a steel tank. District coating representative shall to be present during the preconstruction conference if proposed project involves any work on the steel tank. The Contractor is responsible for paying District coating representative for their services.
7. All new and existing facilities owned by the represented cellular carrier shall be properly tagged identifying the owner's/owner's name and 24-hour phone

number. Contractor to ensure that RF and emergency contact signage is correct and meets the requirements from the City and FCC.

8. The Contractor shall have a copy of plans approved by the MNWD Assistant Director of Engineering and ~~Operation and~~ a Consent Letter on-site at all times.

9. The Contractor is responsible to ensure the site is secure at all times, during both working and non-working hours.

10. The Contractor shall provide the District with two (2) sets of approved construction plans prior to scheduling inspection, and submit ~~as-built~~record drawings to the District upon completion of the job.

11. The contractor shall saw cut all pavement. Backfill shall be one sack slurry or aggregate base to within 1" of existing AC.

12. The contractor shall provide a minimum cover of 30-inches on top of all conduits.

13. The contractor shall replace asphalt pavement with: 1st lift - 3/4" mix, relative compaction 95%, no more than 3" placed at any one time. 2nd lift - 1/2" fine, no more than ~~1-11~~1/2" lift.

14. The contractor shall slurry seal the entire work area and any damaged areas curb to curb. The contractor may be required to slurry seal additional areas as required by District inspector.

14B. If applicable, see, Section 23.7 Softscape Replacement of the Policy and Procedures for Communication Facilities.

15. The contractor and license holder shall perform a final walkthrough to for release. and provide the District a copy of the District signed plans with field mark-ups (record drawings).







# Moulton Niguel Water District

## STAFF REPORT

**TO:** Board of Directors                      **MEETING DATE:** December 14, 2015

**FROM:** Marc Serna, Director of Engineering and Operations  
Eva Plajzer, Assistant Director of Engineering

**SUBJECT:** Agreement Amendment for On-Call Professional Engineering Services

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### **SUMMARY:**

Issue: Staff requests an amendment to the professional services agreement for Lee & Ro, Inc. and AKM Consulting Engineers to increase the contract amount.

Recommendation: It is recommended that the Board of Directors approve Amendment No. 1 with Lee & Ro, Inc. for \$250,000 for a total contract value not-to-exceed \$750,000 and approve Amendment No. 1 with AKM Consulting Engineers for \$250,000 for a total contract value not-to-exceed \$750,000

Fiscal Impact: The amendments will be funded with projects from the Capital Improvement Program and the Operating Budget as needed for engineering services.

### **BACKGROUND:**

The Moulton Niguel Water District (District) has a substantial Capital Improvement Program (CIP) planned over the next 10 years. The CIP requires appropriate engineering resources to assess and plan projects, prepare design and construction documents, and provide engineering services during construction. In addition to the Capital Improvement Program, engineering support is required in other aspects of District operations to provide technical support via operational studies and analysis.

## #5.

### Personnel & Salary Policy Revisions and MOU Side Letters

December 14, 2015

Page 2 of 3

In February 2014, the District issued a Request for Proposals for On-Call Professional Engineering Services to support the engineering needs of the CIP and operations. The District received 17 proposals. As part of a comprehensive selection process, On-Call Professional Services agreements were issued in May 2014 to three firms: AKM Consulting Engineers, Lee & RO, Inc., and Tetra Tech. The agreement duration was three years with a not-to-exceed amount of \$500,000 per agreement.

The On-Call agreements allow staff to issue individual task orders to the selected firms for the various projects identified in the CIP and for operations engineering support. Each task order is funded by a CIP project or dedicated operating funds. Depending on the type of project and experience level of the selected firm, fee proposals from all or just the qualified firm are requested. To-date, \$1,020,418 has been expended on 28 task orders for various projects. Table 1 summarizes the expenditures under the agreements.

<b>Table 1 On-Call Professional Engineering Services Agreement Expenditure Summary</b>						
Consultant	Contracted Amount	Number of Task Orders Issued	Total Value of Task Orders	Remaining Contractual Amount	Proposed Amendment	Revised Contracted Amount
AKM Consulting Engineers	\$500,000	10	\$319,455	\$180,545	\$250,000	\$750,000
Lee & RO, Inc	\$500,000	6	\$323,573	\$176,427	\$0	\$500,000
Tetra Tech, Inc	\$500,000	12	\$377,390	\$122,610	\$250,000	\$750,000
Total	\$1,500,000	28	\$1,020,418	\$479,582	\$500,000	\$2,000,000

### **DISCUSSION:**

Staff anticipates that additional task orders will need to be issued against the on-call agreements until the end of the contracts in June 30, 2017. The CIP has 15 projects scheduled over the next two years that will need design services utilizing this on-call program. At this time, less than \$500,000 of contractual capacity is remaining under the agreements. Staff is requesting that the contractual capacity of the On-Call program be increased by \$500,000 to \$2,000,000. Staff anticipates that another Request for Proposals (RFP) for these type of services will be issued to the engineering consulting community in spring of 2017 to continue engineering support to the CIP and operations.

Personnel & Salary Policy Revisions and MOU Side Letters

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Staff has evaluated the types of projects that are scheduled in the CIP and determined that AKM Consulting Engineers and Lee & Ro, Inc have the necessary capacity to accomplish these projects and is requesting that their agreements be increased by \$250,000 each.

Attachments:

1. Amendment No. 1 – Lee & Ro
2. Amendment No. 1 – AKM Consulting Engineers



**AMENDMENT NO. 1 TO AGREEMENT  
FOR ON-CALL PROFESSIONAL ENGINEERING SERVICES FOR CAPITAL IMPROVEMENT  
PROGRAM IMPLEMENTATION  
CONTRACT NO. OM13-14.020  
(LEE & RO, INC.)**

This Amendment No. 1 (the "Amendment") is entered into and effective as of \_\_\_\_\_, 2015, amending the agreement dated May 1, 2014 (the "Agreement") by and between the Moulton Niguel Water District, a California Water District ("MNWD"), and Lee & Ro, Inc., ("Engineer") (collectively, the "Parties") for the On-Call Professional Engineering Services for Capital Program Implementation. All capitalized terms not defined herein shall have the meanings set forth in the Agreement.

**RECITALS**

A. WHEREAS, the Parties entered into the Agreement on May 1, 2014, for a not-to-exceed Agreement amount of \$500,000; and

B. WHEREAS, the Parties desire to increase the not-to-exceed Agreement amount by \$250,000, to a total of \$750,000 for Services provided by Engineer to MNWD pursuant to the Agreement.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, MNWD and Engineer agree as follows:

1. The maximum amount of the Agreement is hereby increased by an amount of Two Hundred Fifty Thousand Dollars (\$250,000). With this Amendment, the total Agreement amount shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000).

2. All other provisions of the Agreement will remain in full force and effect. In the event of any conflict or inconsistency between the Agreement and this Amendment, the terms of this shall control.

3. All requisite insurance policies to be maintained by the Engineer pursuant to the Agreement, as may have been amended from time to time, will include coverage for this Amendment.

4. The individuals executing this Amendment and the instruments referenced in it on behalf of Engineer each represent and warrant that they have the legal power, right and actual authority to bind Engineer to the terms and conditions of this Amendment.

LEE & RO, INC.

MOULTON NIGUEL WATER  
DISTRICT, a California Water District

By:

By:

\_\_\_\_\_  
(sign here)

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
(print name/title)



**AMENDMENT NO. 1 TO AGREEMENT  
FOR ON-CALL PROFESSIONAL ENGINEERING SERVICES FOR CAPITAL IMPROVEMENT  
PROGRAM IMPLEMENTATION  
CONTRACT NO. OM13-14.020  
(AKM CONSULTING ENGINEERS)**

This Amendment No. 1 (the "Amendment") is entered into and effective as of \_\_\_\_\_, 2015, amending the agreement dated May 1, 2014 (the "Agreement") by and between the Moulton Niguel Water District, a California Water District ("MNWD"), and AKM Consulting Engineers, ("Engineer") (collectively, the "Parties") for the On-Call Professional Engineering Services for Capital Program Implementation. All capitalized terms not defined herein shall have the meanings set forth in the Agreement.

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3. All requisite insurance policies to be maintained by the Engineer pursuant to the Agreement, as may have been amended from time to time, will include coverage for this Amendment.

4. The individuals executing this Amendment and the instruments referenced in it on behalf of Engineer each represent and warrant that they have the legal power, right and actual authority to bind Engineer to the terms and conditions of this Amendment.

AKM CONSULTING ENGINEERS

MOULTON NIGUEL WATER  
DISTRICT, a California Water District

By:

By:

\_\_\_\_\_

\_\_\_\_\_

(sign here)

General Manager

\_\_\_\_\_

(print name/title)







# Moulton Niguel Water District

## STAFF REPORT

**TO:** Board of Directors                      **MEETING DATE:** December 14, 2015

**FROM:** Matt Collings, Assistant General Manager

**SUBJECT:** Rebate Applications for Turf Removal

**DIVISION:** District-wide

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### SUMMARY:

Issue: The District has received an exemption request for a rebate application that exceeded the maximum allowable acreage for turf removal as defined in the approved Board policy.

Recommendation: It is recommended that the Board of Directors consider the rebate application for the identified project without a limitation on the maximum allowable acreage for the project and direct staff accordingly.

Fiscal Impact: Sufficient funds are available within the Water Use Efficiency Fund to fund the identified rebate application. Additional information is provided within the staff report.

### BACKGROUND:

More than half of the water used at the District is for outdoor landscapes. Water efficient landscapes can decrease water use up to 70 percent through a combination of proper plant selection and irrigation technology. However, the cost of installing climate-applicable plants is sometimes an obstacle to turning traditional grass landscapes into more water-efficient environments. The District’s turf replacement program is designed to help residents, businesses, and public agencies make that conversion.

The proposed project was submitted on October 19, 2015, and based on that time frame, is eligible to receive \$2 per square foot from the District. The program provides limitations on the amount of turf removal and/or synthetic turf installation that qualifies for the rebate. The relevant cap for the applicant is 10,000 square feet for District funding.

## #6.

### Rebate Applications for Turf Removal

December 14, 2015

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All rebates from the District are funded through the Water Efficiency Fund using the incremental revenue generated from the higher consumption tiers (Tiers 3, 4 and 5) in the water budget-based rate structure.

#### **DISCUSSION:**

In recent months, the District has expanded its outreach efforts to promote water use efficiency in response to the drought emergency. Customers have responded with requests for nearly 5 million square feet of turf removal and more than 600,000 square feet of synthetic turf installation. The District has received one additional request from a customer to remove 11,350 square feet of turf for one account. Table 1 identifies the customer and the rebate requests for each of the programs by account.

Table 1 – Rebate Requests

Customer	Division	Proposed Turf Removal (Sq. Feet)	Proposed Synthetic Turf Installation (Sq. Feet)	Proposed Rebate Value (\$)
Kite Hill Community Association – Acct #96-51653	6	11,350	0	\$22,700
<b>Total</b>		<b>11,350</b>	<b>0</b>	<b>\$22,700</b>

The values provided above are based on estimates from each of the project proponents and may vary as each project becomes more defined. The proposed rebate incentives for the identified project would be funded from the Water Efficiency Fund.

Staff is recommending the Board remove the maximum allowable acreage to allow the General Manager or her designee to consider each application based on the overall project objectives, various funding sources, and current available budget for rebate funding. Removal of the maximum acreage by the Board of Directors does not constitute an approval of the rebate application, but allows each application to be considered for the full amount of turf removal or synthetic turf installation.