

ATTACHMENT 4

MASTER AGREEMENT FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF WI-FI EQUIPMENT

THIS LICENSE AGREEMENT ("Agreement") is made and entered into on this _____ day of _____, 201____, by and between _____, a _____ ("LICENSEE"), and the City of Manteca, a municipal corporation ("LICENSOR"), upon and in consideration of the covenants, terms and conditions below.

A. RECITALS.

(i) LICENSEE installs, owns and operates WiFi networks and related facilities. LICENSEE intends to construct a "WiFi" network within the City of Manteca, solely as a provider of WiFi services and not as an operator of a small cell wireless facility.

(ii) LICENSEE's proposed WiFi network requires the installation of certain equipment, including antennas, on portions of existing structures and property owned by LICENSOR, at certain locations throughout the City.

(iii) LICENSOR is willing to permit LICENSEE to utilize specified portions of LICENSOR's structures and property in order to construct, operate and maintain LICENSEE's WiFi network and related facilities for the purposes and upon the terms and conditions set forth herein.

B. AGREEMENT.

NOW, THEREFORE, the parties hereto agree as follows:

1. Whenever in this Agreement the words or phrases set forth in this Section are used, they shall have the following meanings:

a. "Property" shall mean LICENSOR's property at locations initially set forth in and more fully described in Exhibit "A" attached hereto. Additional locations can be subsequently added in batches as addendums to Exhibit "A", with LICENSOR's approval of traffic control plans, installations in the Public Right of Way, equipment specifications, aesthetics, and locations of LICENSOR owned assets within the City limits for the current agreement period or renewed agreement period if initial agreement is extended.

b. "WiFi Facility" shall mean a communications facility or facilities constructed for the sole purpose of providing "WiFi" services and consisting of a WiFi communications enclosure and related equipment, with an omni-directional antenna and power cabling, as more fully described and shown in Exhibit "B" attached hereto.

2. In consideration of LICENSEE providing free WiFi internet access and related benefits in specific locations detailed in Exhibit "A" to the public providing LICENSOR a secure City services communications loop, and providing free broadband wireless access and new tower assembly, where required, LICENSOR hereby grants LICENSEE a revocable license, subject to all terms and conditions contained in this

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Agreement, to install, maintain and operate each WiFi Facility upon the Property as shown in Exhibit A. Each WiFi Facility shall be constructed and maintained in strict accordance with design, plans and specifications approved in writing, in advance, by LICENSOR. Any change in design or any overall dimension of any WiFi Facility shall require the LICENSOR's prior, written consent. Rights conveyed by this license include the right of LICENSEE to access each WiFi Facility twenty-four (24) hours a day, seven (7) days a week upon twenty-four (24) hours telephonic notice to LICENSOR. Licensee will be responsible for securing power for its facilities by making arrangements with the local electrical power provider. Separate metering will be required so that the Licensee can be billed directly for power usage. LICENSEE agrees to provide communication lines needed to operate the WiFi Facility. The WiFi services provided to the public pursuant to this Agreement, including technical specifications such as available bandwidth and uptime availability standards are more fully described in Exhibit "C" hereto.

3. The term of this Agreement and license is five (5) years unless sooner terminated as provided herein, or extended by written agreement of the parties.

4. LICENSEE shall not assign or transfer, or sublicense any rights under this Agreement, in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of LICENSOR.

5. This Agreement does not constitute a sale, lease, or conveyance of any interest in any property owned or controlled by LICENSOR, or any transaction other than a license to conduct the permitted activities upon certain property owned or controlled by LICENSOR as expressly provided herein, and LICENSEE shall not acquire any rights whatsoever other than those of a licensee having only those rights specifically delineated herein.

6. Nothing herein shall be deemed to grant LICENSEE any rights pursuant to California Public Utilities Code Section 7901. For purposes of this Agreement, LICENSEE agrees that no WiFi Facility permitted pursuant to this Agreement shall be construed as constituting a "small cell wireless facility" under State or federal law or regulation.

7. LICENSEE shall:

a. Install, operate and maintain each WiFi Facility in accordance with any and all applicable Federal, State and Local statutes, rules and regulations, and at all times maintain a current and valid FCC license authorizing such operation;

b. Restore the affected area of the Property to its original condition following expiration or termination of this Agreement;

c. Remove or relocate, at the request and with the cooperation of LICENSOR and without expense to LICENSOR, any WiFi Facility if and when made necessary by needed repair work to, or other public use of, the Property. If the WiFi Facility is relocated to a different location on the Property, then this Agreement and license shall continue in full force and effect, subject to amendment to reflect the new location.

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d. Ensure the facilities being installed are small and not obstructive to view, or traffic of any kind, and the design of which is approved in advance by the LICENSOR. When possible, facilities should match the color of the vertical asset they are being attached to as closely as reasonably possible, especially for the black decorative poles in the City.

8. To the maximum extent permitted by law, LICENSEE shall defend and pay attorneys' fees, indemnify and hold LICENSOR, its elected officials, officers, employees, agents and contractors free and harmless with respect to any and all claims and liabilities arising out of the acts or omissions of LICENSEE, or those of LICENSEE's owners, employees, contractors, or agents, in connection with LICENSEE's use of the Property. This indemnification shall include and apply to, without limitation: (1) claims for injury to or death of any person; (2) property damage; (3) performance or failure to perform the obligations under this Agreement by LICENSEE, or its contractors, subcontractors, agents, employees, or other persons acting on LICENSEE's behalf; (4) the design, placement, maintenance, repair, or condition of any WiFi Facility; (5) all claims, demands, damage, causes of action, proceedings, loss, liability, costs and expenses (including reasonable attorneys' fees) of any kind alleging injury to or death of persons or damage to public or private property including environmental damage that arises from or is directly attributable to, any WiFi Facility or any release, remediation, and/or clean-up costs caused by any release of hazardous materials or contaminants from any Facility during operations and/or after abandonment; and (6) all other claims of any nature whatsoever which may be attributable to LICENSEE, except and to the extent caused by the LICENSOR's sole negligence or willful misconduct.

LICENSOR shall have no responsibility to repair or replace any damaged or stolen equipment comprising any WiFi Facility unless caused by the intentional acts or willful misconduct of LICENSOR or anyone acting on behalf of LICENSOR.

9. LICENSEE shall assume all responsibility for damages to property or injuries to persons, including accidental death, which may arise from or be related to LICENSEE's performance under this Agreement, or by anyone LICENSEE has directly or indirectly employed, and whether such damage or injury shall accrue or be discovered before or after termination of this Agreement, the following provisions shall apply:

Prior to exercising any rights under this Agreement, LICENSEE shall secure and keep in full force and effect at all times during the term of this Agreement, a policy or policies of commercial general liability, automobile liability insurance and such other insurance as the LICENSOR may from time to time require, written by a company or companies authorized to do business within the State of California and approved by the LICENSOR, which reasonable approval may not be withheld. Said policies shall name the City of Manteca, its duly elected or appointed officers, agents, and employees as additional insureds, under the policies in the following amounts which may be adjusted from time to time to reflect changes of circumstances and the rate of inflation:

a. Commercial General Liability Insurance in an amount no less than Two Million Dollars (\$2,000,000) per occurrence Four Million (\$4,000,000) general aggregate combined single limit covering bodily injuries, including accidental death, to any one or more persons; and property damage insurance; and

b. Automobile Liability Insurance endorsed for all owned and non-owned vehicles with a combined single limit of at least Two Million Dollars

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(\$2,000,000) per occurrence for personal injuries, including accidental death, to any one or more persons; and for property damage.

c. Claims made policies are not acceptable. When an umbrella or excess coverage is in effect, it must follow the form of the underlying coverage.

d. All policies shall contain a "Severability of Interest" clause and a "Primary Coverage" clause for any loss arising from or caused in whole by LICENSEE's performance under this Agreement and any License. In addition, all policies shall contain a statement of obligation on the carrier's part to notify the LICENSOR at least thirty (30) days in advance of any policy cancellation by the insurer except for non-payment of premium, of coverage. All policies shall be endorsed to waive all rights of subrogation.

e. Prior to utilizing the Property for any reason and on an annual basis, LICENSEE shall furnish the LICENSOR with a certificate of insurance and an additional insured endorsement, both documents countersigned by the insurance carrier or its authorized representative.

f. Neither the LICENSOR nor any of its insurers shall be required to contribute to any loss. The policies required herein shall contain a severability of interest clause. The issuing company shall deliver to the LICENSOR thirty (30) days' advanced written notice of any policy cancellation, termination, or reduction in the amount of coverage.

LICENSEE shall secure and maintain at all times during the term of this Agreement workers' compensation and employer's liability insurance, as required by state law, but at least in an amount not less than One Million Dollars (\$1,000,000) per accident. LICENSEE shall furnish the LICENSOR with a certificate showing proof of such coverage. The policy shall waive all rights of subrogation.

10. This Agreement and license may be terminated, with or without cause, by either party upon sixty (180) days written notice to the other, or with cause immediately upon a failure to cure any breach of which the other party has been given at least five (5) business days prior written notice. Any notices permitted or required hereunder, may be given at the addresses set forth for notices in Section 9 of this Agreement.

11. All notices required or permitted under this Agreement, shall be served personally or by placing said notice, postage prepaid, in the United States mail, and addressed to each party's representative as follows:

Licensor: City of Manteca c/o City Manager 1001 W. Center Street Manteca, CA 95337 Facsimile: (209) 923-8960	Licensee: _____ _____ _____ _____
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Service by mail shall be deemed effective at the end of the third business day following the date of mailing. Any change in address of either of the parties shall be reported forthwith to the other party at the address set forth hereinabove.

12. This Agreement shall be governed by the laws of the State of California. Venue for any action arising out of this Agreement shall be the San Joaquin County Superior Court.

13. If any term, covenant, condition or provision in this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

14. This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

15. This Agreement and attached Exhibits, each of which is incorporated by reference herein, constitutes the entire agreement between the parties with respect to the subject matter herein. In the event of any conflict or inconsistency between this Agreement and any Exhibit, the provisions of this Agreement shall govern. No representation or promise, express or implied, that is not set forth herein shall be binding or have any force or effect. Notwithstanding the foregoing, this Agreement may be modified to more fully effectuate its purposes, by written agreement of the parties' representatives.

16. The License granted herein is non-exclusive.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

LICENSOR:

LICENSEE

City of Manteca, a Municipal Corporation

By: _____
Tim Ogden
City Manager

By: _____

Approved as to Form:

By: _____

By: _____

Attest:

By: _____

[Two signatures required if corporation]

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EXHIBIT A

WIFI FACILITY LOCATION(S) ADDENDUM

I. LICENSOR hereby acknowledges LICENSEE will install FACILITIES on LICENSOR assets listed below.

1. LOCATIONS:

Type of Asset	Address/Location Description	Type of WiFi FACILITY	Free WiFi or Fee Based

2. FEE SCHEDULE FOR VERTICAL ASSETS

<u>Street Light Attachments</u>	<u>Pole A - Vendor Only</u>	<u>Pole B - Shared Pole</u>
Building Inspection Fees		
Tower/Antenna Building Permit \$726.00	\$ 726.00	\$ 726.00
Plan Retention	\$ 36.30	\$ 36.30
SMIP	\$ 10.00	\$ 10.00
SB1473	\$ 4.00	\$ 4.00
Planning Permit Review	\$ 249.00	\$ 249.00
Building Subtotal:	\$ 1,025.30	\$ 1,025.30
Permitting Fees		
Encroachment Permit w/Traffic Control 1 Day (\$89 ea. added day)	\$ 305.00	\$ 305.00
Building and Permitting Fees Subtotal:	\$ 1,330.30	\$ 1,330.30
Annual Rent	\$ 250.00	
Grand Total Year One Cost	\$ 1,580.30	\$ 1,330.30

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<u>Tower / Vertical Asset Attachments</u>		Tower/Asset A - Vendor Only	Tower/Asset B - Serving Public WiFi
Fee Type			
Building Inspection Fees			
Tower/Antenna Building Permit	\$ 726.00	726.00	\$ 726.00
Plan Retention	\$	36.30	\$ 36.30
SMIP	\$	10.00	\$ 10.00
SB1473	\$	4.00	\$ 4.00
Planning Permit Review	\$	249.00	\$ 249.00
Building Subtotal:	\$	1,025.30	\$ 1,025.30
Permitting Fees			
Encroachment Permit	\$	159.00	\$ 159.00
Building and Permitting Fees Subtotal:	\$	1,184.30	\$ 1,184.30
Annual Rent	\$	250.00	\$ 125.00
Total Year One Cost	\$	1,434.30	\$ 1,309.30

3. *Note: fee schedule is subject to change. Please visit the city website to verify current fee schedules in the Community Development Planning Division and Building Safety Division pages.

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EXHIBIT B DESCRIPTION OF WIFI FACILIT(IES)

To be submitted by LICENSEE and to include:

1. List of Equipment
2. Equipment Specs
3. Wind Load Calculations

EXHIBIT C
TECHNICAL SPECIFICATIONS OF WIFI SERVICES

1. PUBLIC WIFI BANDWIDTH CONSIDERATION.
 - 1.1 Free Limited WiFi. In consideration of the City's grant of a license to the Licensee, the Licensee shall provide free limited WiFi as follows:
 - a. Minimum of 5-Mbps per attached client device, and a minimum of 75-Mbps of tot available aggregate bandwidth per City Asset
 - 1.2 Installation of Licensee Facility for Commercial Use. Licensee shall install up to two (2) [facilities] on any City Assets where no other similar facility is installed within the Public Right of Way to be used by Licensee for commercial use as follows:
 - a. High speed wireless delivery to Licensee's customers via either a multi-point [facility] or a point-to-point backhaul [facility]
Reporting on quarterly usage including bandwidth utilized, connection type, peak users, time of day metrics, etc.
2. REPORTING
 - 2.1 Reporting on quarterly usage including bandwidth utilized, connection type, peak users, time of day metrics, or any other data the LICENSEE wishes to provide.