



CITY OF SAN DIEGO
MASTER USE AND OCCUPANCY AGREEMENT

between

THE CITY OF SAN DIEGO

and

for

Small Cell Installations on City-owned Poles

**CITY OF SAN DIEGO
MASTER SMALL CELL
USE AND OCCUPANCY AGREEMENT**

This CITY OF SAN DIEGO MASTER USE AND OCCUPANCY AGREEMENT (“Master Agreement”) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (“CITY”), and _____, a _____ limited liability company (“PERMITTEE”), hereinafter collectively referred to as the “Parties,” to be effective on the first day of the first month following the date of execution by CITY (“Effective Date”), once the Master Agreement is signed by the San Diego City Attorney.

RECITALS

- A. CITY is the record owner of certain public rights-of-way within the City of San Diego.
- B. PERMITTEE desires to erect, maintain and operate within the CITY’s public rights-of-way Small Cell wireless communication facilities, including utility lines, transmission lines, electric light poles to support antennas, electronic equipment, and transmitting and receiving antennas, which facilities are more fully defined below as “Communications Equipment.”
- C. PERMITTEE represents that it is designated by the California Public Utilities Commission (“PUC”) as a “_____”; and PERMITTEE further represents that, pursuant to that designation, PERMITTEE qualifies as a “Public Utility” under the California Public Utilities Code.
- D. CITY is willing to grant PERMITTEE this Master Agreement for the right to use portions of CITY’s public right-of way for the construction, operation and maintenance of the Communications Equipment (defined below), including attaching the Communications Equipment to CITY Street Light or Signalized Poles in order to allow PERMITTEE to provide better service to its wireless customers.
- E. Notwithstanding anything to the contrary contained in this Master Agreement, no provision contained herein shall be construed to mean that PERMITTEE is paying a use fee for any ground space portion of the public right-of-way.

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS.

As used in this Master Agreement, the terms listed below are defined as follows:

- 1.1. “Approved Site” – a Site (defined below) for which all approvals required for construction or installation to commence have been obtained.

- 1.2. “Communications Equipment” – includes, but is not limited to, PERMITTEE’S antennas, mounting brackets, equipment enclosures, AC disconnects, flexible metal conduits, grounding plates, grounding wires, grounding pipes, coils, NEMA boxes, and fiber optic cables installed by PERMITTEE, more particularly described in Exhibit B as may be updated from time to time at CITY’s sole discretion.
- 1.3. “Emergency” – imminent danger to the public health, safety or welfare or property.
- 1.4. “Hazardous Substances” – those hazardous substances listed by the Environmental Protection Agency (“EPA”) in regularly released reports and any other substances incorporated into the State of California’s list of hazardous substances, and all types of petroleum-related substances and their chemical constituents.
- 1.5. “Permit Areas” – Up to a maximum of **500** various CITY-owned Sites (defined below), more particularly described in Exhibit A and described in Exhibit B as updated from time to time.
- 1.6. “PERMITTEE’s Operations” – PERMITTEE’s development, occupancy, use, and/or maintenance of the Permit Areas.
- 1.7. “Signalized Pole” - any pole equipped with either vehicle signal indications, pedestrian signal indications, pedestrian pushbuttons, emergency vehicle preemption equipment, or any other components that comprise any part of a traffic signal/traffic control device that serves to control and direct traffic, including pedestrian traffic, by display of steady or flashing lighted indications.
- 1.8. “Site” – a Street Light Pole (defined below) or a Signalized Pole (defined above), where the Communications Equipment may be installed pursuant to this Master Agreement.
- 1.9. “Street Light Pole” – any Caltrans Type 15 pole (rounded, metal) street light pole that has a luminaire arm and luminaire for the purpose of providing roadway lighting in accordance with City Standard Drawing SDE-101 the ownership of which shall be retained by the CITY.

2. USE OF PERMIT AREAS.

PERMITTEE shall use the Permit Areas solely for the purposes, with proper permits and approvals obtained, of installing, constructing, modifying, operating, maintaining, and removing, all at PERMITTEE’s sole cost and expense, the Communications Equipment (“Permit Use”) only as described in Exhibit B.

- 2.1. Primary Purpose of Sites. Any Street Light Pole is for the primary purpose of providing lighting and in some instances traffic control, and any Signalized Pole is for the primary purpose of traffic control, but either may have the secondary purpose of accommodating PERMITTEE’s Operations at the Permit Area.
- 2.2. Other Uses. PERMITTEE shall not operate the Communications Equipment or use the Permit Areas for other related or incidental activities of any kind without CITY’s prior written consent, which consent shall be in CITY’s sole discretion. Communications Equipment shall not interfere with the operation of the Street Light, or cause visual impairment, distraction, or

confusion to motorists.

- 2.3. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance, as defined in California Civil Code Section 3479.
- 2.4. No Limitation. Nothing contained in this Master Agreement shall be construed as a limitation, restriction or prohibition against CITY entering into agreements with other parties regarding the use of the Permit Areas, Sites or other facilities or the CITY issuing permits for the use of its rights-of-way.

3. RIGHT TO ENTER AND OCCUPY.

Subject to the terms and conditions of this Master Agreement, CITY hereby grants permission to PERMITTEE, its officers, employees, agents, and contractors to enter upon and occupy the Permit Areas solely for the purpose of the Permit Use.

- 3.1. License Only. This Master Agreement is a license to use CITY-owned property. It is not a lease.

4. TERM.

The term of this Master Agreement (“Term”) shall not exceed ten (10) years, commencing on the Effective Date. “Agreement Year” shall mean each twelve (12) month period during the Term, commencing on the month and day of the Effective Date and continuing to the same month and day of the following year, minus one (1) calendar day.

- 4.1. Holdover. Any holding over by PERMITTEE after expiration or termination shall not be considered as a renewal or extension of this Permit. The occupancy of the of the Site after expiration or termination shall continue, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover at will. Calculation of all prorated rents under this section shall be based on a 30-day month. Notice of any such increase in rent shall be given in writing at least thirty (30) days prior to becoming effective.

5. ANNUAL USE FEE.

PERMITTEE shall pay to CITY an Annual Use Fee for the first year will be in the amount of \$270.00 per Approved Site (“Annual Fee”). The Annual Fee will be calculated from the Effective Date, and shall be paid within thirty (30) calendar days of the Effective Date for the first Permit Year. The Annual Fee will be prorated for any Site that was not an Approved Site for the entire twelve-month period. Calculation of all prorated rents under this section shall be based on a 30-day month.

- 5.1. Time and Place of Payment. The Annual Use Fee is due in advance on or before the first day of each Agreement Year during the Term (referred to hereinafter as the “Annual Payment”). The Annual Use Fee check shall be made payable to “City Treasurer” and delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, California 92101, or mailed with an invoice to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

PERMITTEE shall include CITY’s customer project account number for PERMITTEE on each of the checks used for the Annual Payment so CITY can apply the Annual Payment to the appropriate account. The place of payment may be changed at any time by CITY upon thirty (30) calendar days written notice to PERMITTEE. Mailed Annual Payments shall be deemed paid upon the date the payments are postmarked by the postal authorities. If a postmark is illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. PERMITTEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 5.2. Delinquent Payments. If PERMITTEE fails to pay the Annual Payment when due, PERMITTEE shall pay, in addition to the unpaid Annual Payment, five percent (5%) of the delinquent Annual Payment. If any portion of the Annual Payment is still unpaid fifteen (15) calendar days after the first day of the Permit Year, PERMITTEE shall pay an additional five percent (5%), for a total of ten percent (10%) of the delinquent Annual Payment, which is agreed by the Parties to be appropriate to compensate CITY for loss resulting from fee delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payments of the Annual Use Fee be less than \$25 (Twenty-Five Dollars). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE’s default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.
- 5.3. Financial Records. PERMITTEE shall maintain, in accordance with generally accepted accounting practices, complete and accurate financial records showing all Gross Revenue, as well as any taxes, levies, fees, retail discounts, promotions, non-collectable amounts, refunds, rebates, and non-operating revenues, which are exempted from Gross Revenue under Section 1.4 of this Master Agreement. PERMITTEE shall make all such financial records available to CITY for inspection at a reasonable location and time so that CITY can determine PERMITTEE’s compliance with this Master Agreement. PERMITTEE shall maintain all such financial records for a minimum period of five (5) years past the expiration or earlier revocation or termination of this Master Agreement. This section shall survive the expiration or earlier revocation or termination of this Master Agreement.

6. INSURANCE.

PERMITTEE shall not begin any work on any portion of the Permit Areas until it has: (a) provided to CITY insurance certificates reflecting evidence of all insurance required below; however, CITY reserves the right to request, and PERMITTEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed with CITY that all policies contain the specific provisions required below. PERMITTEE's liabilities, including, but not limited to, PERMITTEE's indemnity obligations, under this Master Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Master Agreement and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by CITY. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the Term.

6.1. Types of Insurance: At all times during the term of this Master Agreement, the PERMITTEE shall maintain insurance coverage as follows:

- a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability. For all of PERMITTEE's automobiles including owned, hired and non-owned automobiles, PERMITTEE shall keep in full force and effect automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto).
- c. Workers' Compensation. For all of PERMITTEE employees who are subject to this Master Agreement and to the extent required by the applicable state or federal law, PERMITTEE shall keep in full force and effect a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

6.2. Deductibles: All deductibles on any policy shall be the responsibility of PERMITTEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

6.3 Acceptability of Insurers: Except for the State Compensation Insurance Fund, all insurance required by this Master Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only

if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

- 6.4. Modification: To assure protection from and against the kind and extent of risk existing with PERMITTEE's Operations, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to the Site.
- 6.5. Accident Reports: PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Areas or otherwise related to PERMITTEE's Operations. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 6.6. Required Endorsements: The following endorsements to the policies of insurance are required to be provided to CITY before any work is initiated under this Master Agreement.

6.6.1.1. Commercial General Liability Insurance Endorsements:

- i. Additional Insured: To the fullest extent allowed by law, including, but not limited to, California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf, (b) PERMITTEE's products, (c) PERMITTEE's work, including, but not limited to, PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf, or (d) premises owned, leased, controlled or used by PERMITTEE.
- ii. Primary and Non-Contributory Coverage: The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives with respect to the operations of the named insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.
- iii. Severability of Interest. The policy or policies must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect

to the limits of the insurer's liability and shall provide cross-liability coverage.

6.6.2. Automobile Liability Insurance Endorsements:

- i. Additional Insured. To the fullest extent allowed by law, including, but not limited to, California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of PERMITTEE.
- ii. Severability of Interest. The policy or policies must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7. **PERMITTEE'S RISK.**

PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's Operations and any damages to the improvements on, under, or in the vicinity of the Permit Areas resulting directly or indirectly thereby.

8. **ACCEPTANCE OF PERMIT AREAS.**

PERMITTEE represents and warrants that PERMITTEE has independently inspected the Site and Pole Attachment Area and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Site and Pole Attachment Area and their suitability for the Allowed Uses. PERMITTEE acknowledges and agrees that PERMITTEE is not relying on any representation by CITY as to the condition of the Site or Pole Attachment Area or their suitability for the Allowed Uses, and PERMITTEE agrees that PERMITTEE is relying solely on its independent inspections, tests, investigations, and observations in entering into this Permit. PERMITTEE acknowledges that the Site and Pole Attachment Area are in the condition called for herein, that CITY has performed all work with respect to the Site and Pole Attachment Area that is necessary and/or required by this Permit, and that PERMITTEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Site and/or Pole Attachment Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation, PERMITTEE'S employees, from and defects within the Site and Pole Attachment Area, and shall be solely responsible therefor. PERMITTEE has been given the opportunity to investigate the Site and Pole Attachment Area for the presence of any Hazardous Substances, including, without limitation, the opportunity to perform soil borings and other tests. PERMITTEE shall notify CITY if PERMITTEE'S investigations indicate the presence of any substances on the Site and Pole Attachment Area. PERMITTEE waives any claims against CITY which may result from the presence of Hazardous Substances on the Site and Pole Attachment Area.

9. **DEVELOPMENT OF SITES AND MODIFICATION OF PERMIT AREA.**

- 9.1. Approved Sites. Prior to the execution of this Master Agreement, and at any time during the first five (5) years of the Term of this Master Agreement that PERMITTEE desires to add Sites to the Permit Area up to the maximum number of 500 Sites, PERMITTEE shall provide to CITY's Real Estate Assets Department a list of Approved Sites that PERMITTEE request be included in the Permit Area of this Master Agreement. A list of all Approved Sites shall be attached hereto as Exhibit A, which shall be updated chronologically as Exhibit A-1, Exhibit A-2, etc., as PERMITTEE obtains additional Approved Sites, without the necessity of a formal amendment, provided that the Communications Equipment being installed on the Approved Sites complies with the Master Structural Plan attached as Exhibit B, or any approved updates thereto PERMITTEE acknowledges and understands that all requests for amendments to the Master Agreement, including those related to adding Approved Sites on which the Communications Equipment does not comply with the approved Master Structural Plan will be subject to appropriate environmental review subject to the California Environmental Quality Act.
- 9.2. Master Structural Plan. In lieu of site plans for each individual Approved Site, PERMITTEE shall provide to CITY, prior to the execution of this Master Agreement, a proposed Master Structural Plan which contains full and complete design plans that show all of the equipment that PERMITTEE proposes to install or construct in the Permit Area, which shall be attached as Exhibit B. Upon approval of the Master Structural Plan, PERMITTEE shall provide an approved Master Structural Plan to CITY which shall replace the proposed Master Structural Plan as Exhibit B. Within fourteen (14) calendar days of the completion of the installation and development of an Approved Site, PERMITTEE shall notify CITY's Real Estate Assets Department in writing that the Approved Site is installed and operating. If during the Term of this Master Agreement, PERMITTEE desires to modify the equipment that is being placed on an Approved Site from what is shown in the approved Master Structural Plan, PERMITTEE shall do the following:
- 9.2.1. Minor Modifications. If the new equipment is the same size or smaller in all dimensions and weighs the same or less than the equipment previously approved through the Master Structural Plan, PERMITTEE may submit a form factor drawing with sufficient information for READ to determine the actual size, weight, location, and aesthetics of the new equipment in the Permit Area. PERMITTEE acknowledges that this form factor drawing, which may be sufficient for the City as the property owner to approve the amendment may not be sufficient for DSD to review and approve construction permits, and this requirement does not relieve PERMITTEE of its obligations to provide DSD staff with all required information for review and issuance of regulatory permits (construction, right-of-way, or any other type of permit determined necessary by DSD). Subject to the foregoing, the CITY will either consent to or deny consent, in its reasonable discretion, to the requested Minor Modification in writing within thirty (30) days of receiving the form factor drawing, provided that any applicable review required by CEQA has been completed and any associated appeal periods have run without an appeal being filed.

9.2.2. Major Modifications. If the new equipment is larger in any dimension than the previously approved equipment, or if the new equipment weighs more than the previously approved equipment, PERMITTEE shall prepare a new Master Structural Plan and submit that plan at the time the application for amendment of the MUOA is submitted to READ. Subject to the foregoing, the CITY will either consent to or deny consent, in its sole discretion, to the requested Major Modification in writing within thirty (30) days of receiving the form factor drawing, provided that any applicable review required by CEQA has been completed and any associated appeal periods have run without an appeal being filed.

9.3. PERMITTEE shall not develop any Approved Site in the Permit Areas unless and until this Master Agreement) has been executed (or if applicable, amended) by the Parties, and approved by the San Diego City Attorney. PERMITTEE shall develop each Site in the Permit Areas in accordance with the Master Structural Plan and any modifications authorized for the specific Approved Site(s). CITY may, in its sole discretion, authorize changes to the Master Structural Plan, or specific site plans, provided the principal components thereof are not modified, and a document evidencing approved changes is filed with READ.

10. IMPROVEMENTS AND ALTERATIONS.

Other than as approved by the site plans depicted in Exhibit B, PERMITTEE shall not construct any improvements, structures, or installations in the Permit Areas, or make any alterations to the Permit Areas (with the exception of necessary maintenance and/or repairs that does not include swapping out or replacing any of the Communications Equipment) without CITY's prior written consent, which consent shall be in CITY's sole discretion. This includes modifications that are considered "eligible facilities" under Section 6409 of the Middle Class Tax Relief and Job Creation Act. PERMITTEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations in the Permit Areas without CITY's prior written consent, which consent shall be in CITY's sole discretion. CITY shall not be obligated by this Master Agreement to make, or assume any expense for, any improvements or alterations.

10.1 Alterations to Communications Equipment. PERMITTEE shall not make any alterations, additions or improvements to the Communications Equipment, except for routine maintenance that does not include swapping out or replacing any of the Communications Equipment, unless: (1) PERMITTEE obtains CITY's prior written consent, which consent shall be in CITY's sole discretion; (2) the alterations, additions or improvements do not damage or interfere with any adjacent improvements in the Permit Areas; and (3) the alterations, additions or improvements comply with the requirements set forth in Exhibit C. Nothing in this section shall be construed to eliminate PERMITTEE's obligation to obtain development related permits and approvals for any alterations to the Communications Equipment that may be required by CITY's Development Services Department or any other governmental agency. CITY, in its proprietary capacity, through READ, retains the right to deny any request for modification or alteration of a Site as a proprietary right, even if CITY's DSD is required by federal law to approve or permit such request.

- 10.2. Information to Permitting Authorities. In obtaining any required permits for improvements, structures, installations, and/or alterations in the Permit Areas, PERMITTEE shall inform permitting authorities, in writing, that the Permit Areas are CITY-owned property.
- 10.3. Repair and Restoration. Nothing in this section shall relieve PERMITTEE of any obligation under this Master Agreement to maintain the Permit Areas in a decent, safe, healthy, and sanitary condition, as required in Section 19 of this Master Agreement.
- 10.4. Emergency. In the event of an Emergency, as soon as practicable thereafter and not later than two (2) business days after having taken such action, PERMITTEE shall advise CITY in writing of the emergency work performed or the action taken with respect to any emergency modification or alteration of PERMITTEE's Communications Equipment. PERMITTEE shall acquire any necessary permits, if any, to cover the emergency work performed.
- 10.5. Accidental Damage by CITY. In the event CITY should cut or damage PERMITTEE's communication line, PERMITTEE agrees to perform all repairs expeditiously, no later than twenty-four (24) hours from notice of cut. Simultaneously, CITY agrees to cease any and all work to the affected portion of the Permit Areas for a maximum of twenty-four (24) hours or until PERMITTEE completes all repairs, whichever is less.

11. COMPETENT MANAGEMENT.

Throughout the Term, PERMITTEE shall provide competent management of the Permit Areas for the Permit Use to the reasonable satisfaction of CITY. "Competent management" shall mean demonstrated ability in the management and operation of wireless communication facilities and related activities in a responsible manner and in accordance with industry standards.

12. COMPLIANCE WITH LAWS AND POLICIES.

- 12.1. General. PERMITTEE's Operations shall, at all times, comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments, at PERMITTEE's sole cost and expense. Upon receipt of the same, PERMITTEE shall comply with any and all notices issued by CITY under the authority of all laws, statutes, ordinances, or regulations.
- 12.2. Nondiscrimination/Equal Opportunity. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status, or disability in PERMITTEE's Operations.

13. WATER QUALITY ASSURANCES.

CITY and PERMITTEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Site and Permit Area in a manner which aids in the

protection of the City of San Diego's precious water resources. It is PERMITTEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Section 43.0301 to 43.0312).

Therefore, PERMITTEE shall at a minimum implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code Section 43.0307(a).

It is ultimately PERMITTEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, PERMITTEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

14. TELECOMMUNICATIONS PROVISIONS.

14.1. Entire Installation. PERMITTEE warrants that the Communications Equipment listed in Exhibit B constitutes the entire installation at each Site within the Permit Areas. PERMITTEE shall update Exhibit B from time to time as any changes to the Communications Equipment are made, or within thirty (30) calendar days after CITY's demand for such an update. No changes to the Communications Equipment shall be made without first obtaining written approval by CITY.

14.2. Radio Frequency Radiation. PERMITTEE shall maintain any radio frequency ("RF") radiation associated with the Communications Equipment within the levels allowed by federal regulations set forth in Section 1.1310 of CFR 47 and OET Bulletin 65. Any portion of the Permit Areas casually accessible by the general public or by any worker at ground level shall be maintained below limits stated for General Population/Uncontrolled Exposure. PERMITTEE shall report to CITY any portion of the Permit Areas discovered by PERMITTEE to exceed these federally mandated limits. PERMITTEE shall defend and hold CITY harmless for any liabilities, fines or other penalties claimed or imposed against CITY that result from the existence of excessive levels of radiation that are caused in whole or in part, or contributed to, by PERMITTEE's Operations. Hazardous RF radiation levels may be encountered when climbing on antenna structures (refer to FCC OET Bulletin 65). Any equipment installed within the Permit Areas may, at times, require shutdown to allow maintenance on antenna structures. PERMITTEE shall allow shutdown periods when required for this maintenance, provided CITY shall use reasonable efforts to ensure that these shutdowns do not occur during peak hours of operation. Protection of employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the General Population/Uncontrolled Exposure limits must be clearly identified as required by CAL-OSHA. PERMITTEE shall provide CITY with written shutdown procedures, contact names, and telephone numbers. PERMITTEE shall notify CITY, in writing, of any changes to the shutdown procedures, contact names, or telephone numbers at least ten (10) calendar days prior to such a change. Once the installation is complete, the PERMITTEE shall perform an on-air test and provide documentation to demonstrate that the communications equipment is

operating within federally mandated limits. After the initial test, the PERMITTEE shall perform an on-air test within fifteen days of CITY requesting such a test.

- 14.3. Radio Frequency Interference. PERMITTEE warrants that all Communications Equipment installations, modifications, operation, and maintenance will not result in degraded performance or RF interference to any existing authorized uses within the Permit Areas by fulfilling the requirements of Exhibit C, which may be updated from time to time in CITY's sole discretion.
- 14.4. Industry Standards. PERMITTEE shall perform all Communications Equipment installations, modifications, operation, and maintenance in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© Manual, or any succeeding regulations or standards. In addition to the requirements of the Motorola R56© publication, installations on CITY property shall comply with the following supplemental requirements:
 - 14.4.1. PERMITTEE shall remove all of its trash and debris from the Permit Areas at the end of each workday and on completion of each project;
 - 14.4.2. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements and General Orders promulgated by the CPUC; and
 - 14.4.3. All transmitters shall have all necessary protection, such as cavity filtering and transmitter isolators, to eliminate any RF degradation of the receive signal to any other user within the Permit Areas.
- 14.5. Collocation. PERMITTEE shall not access any other wireless communication facility or CITY-owned communications equipment (including any towers) within the Permit Areas without CITY's prior written consent.
- 14.6. Interference with CITY Operations or Public Use. PERMITTEE's Operations shall not unreasonably interfere with CITY operations or public use of CITY-owned property.

15. WASTE, DAMAGE, OR DESTRUCTION.

PERMITTEE shall immediately give notice to CITY of any fire or any other damage that occurs on or within the Permit Areas that occurs either during or after the completion of construction of approved improvements. PERMITTEE shall not commit, or allow to be committed, any waste or injury or any public or private nuisance in connection with the Permit Use. PERMITTEE shall keep the Permit Areas clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If any portion of the Permit Areas is damaged by any cause that puts any portion of the Permit Area into a condition which is not decent, safe, healthy, and sanitary, PERMITTEE shall make, or cause to be made, full repair of the damage and restore the Permit Areas to the condition which existed prior to the damage; or, at CITY's option, PERMITTEE shall clear and remove from the Permit Areas all debris resulting from the damage and restore the Permit Areas in accordance with plans and specifications previously submitted to and approved by CITY, in writing, in order to replace in kind and scope the operation which existed prior to the damage. PERMITTEE shall commence preliminary steps toward performing repairs

and/or restoration of the Permit Areas as soon as practicable, but no later than ten (10) calendar days after the occurrence of the fire or damage, and shall complete the required repairs and/or restoration of the Permit Areas within sixty (60) calendar days after such occurrence. Failure to timely repair damage to the Site and/or Permit Areas will be considered a default under the Master Agreement.

16. HAZARDOUS MATERIALS.

PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Permit Areas by any of PERMITTEE's officers, employees, agents, contractors, invitees and guests. PERMITTEE and PERMITTEE's officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Areas without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- 16.1. Release. For all purposes of this Master Agreement, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
- 16.2. Remediation. If PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Areas results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to CITY's satisfaction for unrestricted reuse of the Permit Areas, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 16.3. Removal. If PERMITTEE or PERMITTEE's officers, employees, agents, contractors, invitees and guests have received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Areas, PERMITTEE shall remove all Hazardous Substances in any type of container, equipment or device from the Permit Areas immediately upon or prior to the expiration or earlier termination of this Master Agreement. CITY reserves the right to conduct inspections of the Permit Areas and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Permit Areas. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 16.4. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Areas, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary

CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

- 16.5. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath any portion of the Permit Areas, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Areas.
- 16.6. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Areas resulted in any Hazardous Substance being released on, from or beneath any portion of the Permit Areas, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's occupancy, use, development, maintenance, or restoration of any affected portion of the Permit Areas, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Areas, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Areas and compliance with environmental laws and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

17. SIGNS.

PERMITTEE shall only post signs required by federal, state, or local regulations, including, without limitation, safety signs required by OSHA, FAA, CPUC and/or FCC. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising within the Permit Areas without CITY's prior written consent, which consent

shall be in CITY's sole discretion. If any such unauthorized item is found within the Permit Areas, PERMITTEE shall remove the item, at PERMITTEE's sole cost and expense, upon forty-eight (48) hours notice by CITY, or CITY may then enter the Permit Areas and remove the item at PERMITTEE's sole cost and expense. PERMITTEE shall post a clearly marked sign at each Site within the Permit Areas indicating PERMITTEE's name and emergency telephone number.

18. MAINTENANCE OF PERMIT AREAS.

PERMITTEE shall, at its sole cost and expense, continuously maintain the Permit Areas throughout the Term. In doing so, PERMITTEE shall, at its sole cost and expense, make all repairs, restoration, and replacements (including structural repairs and restoration of damaged or worn improvements) necessary to maintain and preserve the Permit Areas in a decent, safe, healthy, and sanitary condition. All such maintenance, repairs, restoration, and replacements shall be completed to the satisfaction of CITY, in conformance with the depiction of the Permit Areas set forth in Exhibit A, the approved site plans set forth in Exhibit B, and in compliance with all applicable codes and standards of CITY, state, and federal agencies.

18.1. CITY Maintenance. CITY reserves the right to perform any needed routine maintenance within the Permit Areas at any time without providing notice to PERMITTEE, including, but not limited to, the replacement of light bulbs on a Street Light Pole. However, should CITY perform non-routine maintenance, including, but not limited to, the replacement of a Street Light Pole, CITY shall provide PERMITTEE with at least forty-eight (48) hours notice prior to commencing the work (except in the event of an emergency, in which case, no prior notice shall be required, but CITY shall give PERMITTEE notice as soon as reasonably possible thereafter), and PERMITTEE shall comply with all applicable safety requirements issued by CITY to ensure the safety of CITY personnel performing such maintenance within the Permit Areas. In the event CITY's non-routine maintenance includes replacing a Street Light Pole, CITY shall give fifteen (15) days advance notice to PERMITTEE so that PERMITTEE may remove its Communications Equipment prior to the replacement of the Street Light Pole.

18.2. Maintenance Procedures for Parties. The Parties shall comply with the emergency maintenance procedures set forth in Exhibit D, including the requirement to notify the other party, in writing, of any changes to its emergency contacts and telephone numbers. PERMITTEE shall provide and install an emergency shut-off switch which will terminate electrical service to PERMITTEE's equipment, with the switch to be used only as set forth in Exhibit D.

19. ENTRY AND INSPECTION.

CITY may, at any time, enter the Permit Areas for the purpose of viewing and ascertaining the condition of the Permit Areas, or to protect CITY's interest in the Permit Areas, or to inspect the operations conducted within the Permit Areas. If CITY's entry or inspection discloses that any portion of the Permit Areas is not in a decent, safe, healthy, and sanitary condition, CITY may, after ten (10) calendar days written notice to PERMITTEE, have any necessary maintenance work done

in order to keep the Permit Areas in a decent, safe, healthy, and sanitary condition, all at PERMITTEE's sole cost and expense, and PERMITTEE shall promptly pay any and all costs incurred by CITY in having the necessary maintenance work done. If at any time CITY determines that any portion of the Permit Areas is not in a decent, safe, healthy, and sanitary condition, CITY may, in its sole discretion, without additional notice, require PERMITTEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate, in CITY's opinion, to correct the unsatisfactory condition. PERMITTEE shall pay all costs associated with the bond. The rights reserved in this section shall not create any obligation on CITY or increase CITY's obligations elsewhere in this Master Agreement. As part of its standard practice, PERMITTEE shall schedule a pre-construction inspection and post-construction inspection for each Site within the Permit Areas.

20. UTILITIES.

PERMITTEE shall order, obtain, and pay for all utilities, including installation and service charges, in connection with PERMITTEE's Operations. All utilities shall be installed underground unless such existing utilities are aerial and shall be used for PERMITTEE's Operations only.

21. TAXES.

PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Areas, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE's Operations, including any licenses or permits. PERMITTEE acknowledges that this Master Agreement may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, assessments, and/or fees shall not reduce any payment due CITY.

22. SUPERIOR INTERESTS.

This Master Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits, licenses, easements, and rights-of-way pertaining to the Permit Areas, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow PERMITTEE's use of the Permit Areas, relative to any such superior interest. If PERMITTEE's use of the Permit Areas is or becomes inconsistent or incompatible with a preexisting superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

23. ENCUMBRANCES.

PERMITTEE shall not permit any encumbrance related to PERMITTEE's Operations. CITY may, in its reasonable discretion, consent to such an encumbrance if exclusively related to PERMITTEE's development of the Permit Areas. If an encumbrance is placed on any portion of the Permit Areas,

PERMITTEE shall diligently seek and obtain, at its sole cost and expense, the removal of the encumbrance as soon as possible upon completion of the development, if the encumbrance was authorized by CITY, or, if unauthorized, immediately upon CITY's demand.

- 23.1. Liens. PERMITTEE shall, at all times, protect, defend, indemnify, and hold CITY harmless from and against any and all claims for labor or materials in connection with PERMITTEE's Operations, and all costs of defending against such claims, including, without limitation, reasonable attorneys' fees. If PERMITTEE's Operations result in a lien or notice of lien being filed against any portion of the Permit Areas, PERMITTEE shall, within ten (10) calendar days after such filing, either: (a) take all actions necessary to record a valid release of the lien; or (b) deliver to CITY a bond, cash, or other security acceptable to CITY in an amount sufficient to pay in full all claims of all persons seeking relief under the lien.

24. ASSIGNMENT AND SUBLICENSING.

- 24.1. Assignment. This Master Agreement shall not be assigned by PERMITTEE without the express written consent of CITY, which consent shall be in CITY's sole discretion. Notwithstanding the foregoing, the transfer of the rights and obligations of PERMITTEE to a parent, subsidiary, or other affiliate of PERMITTEE or to any successor in interest or entity acquiring fifty-one percent (51%) or more of PERMITTEE's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Master Agreement and therefore shall not require the consent of CITY, provided that PERMITTEE reasonably demonstrates to CITY's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of PERMITTEE immediately prior to the transfer; (ii) any such transferee assumes all of PERMITTEE's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with PERMITTEE's management team, in the provision of telecommunications or similar services, evidence an ability to operate PERMITTEE's network. PERMITTEE shall give at least thirty (30) days prior written notice (the "Exempted Transfer Notice") to CITY of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why PERMITTEE believes the Exempted Transfer Criteria have been satisfied. CITY shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that PERMITTEE gives CITY its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until CITY has received from PERMITTEE any and all additional information CITY may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as CITY gives PERMITTEE notice in writing of the additional information CITY requires within fifteen (15) days after CITY's receipt of the original Exempted Transfer Notice. If CITY fails to act upon PERMITTEE's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by CITY that PERMITTEE has in fact established compliance with the Exempted Transfer Criteria to CITY's satisfaction.

- 24.2. Sublicensing. PERMITTEE shall not sublicense, in whole or in part, the Site, or any right or appurtenant privilege to the Site, or attempt to transfer any other interest or right to use the Permit Area, in whole or in part, the Site or any right or appurtenant privilege to the Site, without CITY'S prior written consent, which consent shall be in CITY'S sole discretion and shall require additional compensation.
- 24.3. Provisions Binding on Successors. Except as otherwise provided in this Master Agreement, all of the terms, covenants, and conditions of this Master Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

25. INDEMNIFICATION.

PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Master Agreement or PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Areas, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

26. OTHER GOVERNMENTAL ACTIONS.

By entering into this Master Agreement, neither CITY nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development, occupancy, use, or maintenance of the Permit Areas. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required for PERMITTEE's Operations. PERMITTEE shall diligently seek, at its sole cost and expense, all entitlements and actions from both CITY and other governmental agencies with jurisdiction over the Permit Areas, as may be necessary for PERMITTEE's Operations.

27. CITY'S RESERVATION OF RIGHTS.

- 27.1. Resources. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Permit Areas.
- 27.2. Use. CITY may grant and use easements or establish and use rights-of-way over, under, along, and across the Permit Areas for utilities, thoroughfares, or access as CITY deems advisable, in its sole discretion, for the public good.

27.3. Entry. CITY may enter the Permit Areas at any time to develop or make repairs to municipal resources and services.

28. REASSIGNMENT OF SPACE.

CITY may reassign PERMITTEE to an equivalent amount of space in a different location within the Permit Areas or different Site, if and when reasonably necessary. PERMITTEE will, at the direction of CITY, relocate its Communications Equipment at PERMITTEE's sole cost and expense. This section shall not apply to underground vault sites. PERMITTEE shall cooperate with CITY and its contractors during any such relocation or any renovation, repair, or other alteration of the Permit Areas. During physical relocation of the Communications Equipment to the relocation site, CITY will work with PERMITTEE to attempt to secure an alternative CITY-approved site for PERMITTEE to operate temporary installed communications equipment, which will be installed and maintained at PERMITTEE's sole cost and expense. CITY warrants that every effort will be made to ensure continuous, uninterrupted broadcast and/or receiving capability during any such activity. If any relocation is not satisfactory to PERMITTEE, then PERMITTEE may, in its sole discretion, terminate this Master Agreement or the specific Approved Site or Permit Area upon thirty (30) calendar days written notice to CITY, without further obligation therefor.

29. REVOCATION AND TERMINATION.

29.1. Revocation by CITY.

29.1.1. Revocable License. This Master Agreement is not a lease; it is a license to use CITY-owned property. As such, the Parties hereby acknowledge and agree that CITY, as the licensor, may revoke this Master Agreement at will and at any time during the Term. However, CITY agrees that CITY will not exercise its right to revoke this Master Agreement at will unless CITY determines, in its sole discretion, that PERMITTEE is in default of this Master Agreement, the events of default being set forth in this section. Upon default, CITY may thereafter, in its sole discretion, exercise its right to revoke this Master Agreement at will and at any time during the Term. If CITY exercises its right to revoke this Master Agreement, CITY will provide PERMITTEE written notice of the revocation, and upon PERMITTEE's receipt of the notice, PERMITTEE shall immediately cease PERMITTEE's Operations and remove PERMITTEE's improvements and personal property from the Permit Areas (pursuant to Section 31 of this Permit).

29.1.2. Events of Default. Each of the following shall constitute an event of default under this Master Agreement:

29.1.2.1. PERMITTEE's failure to make any payment required under this Master Agreement when due, if the failure continues for twenty (20) calendar days following written notice of the failure by CITY;

29.1.2.2. PERMITTEE's breach of any of its obligations under this Master Agreement,

other than those requiring payment to CITY, and PERMITTEE either:

- 29.1.2.2.1. fails to cure the breach within thirty (30) calendar days following written notice from CITY; or,
 - 29.1.2.2.2. if such breach is not curable within thirty (30) calendar days following written notice from CITY, fails to immediately commence to cure the breach and to diligently pursue the cure to completion.
 - 29.1.2.3. PERMITTEE voluntarily files any petition under any bankruptcy or insolvency act or law;
 - 29.1.2.4. PERMITTEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) calendar days of filing;
 - 29.1.2.5. PERMITTEE is adjudicated a bankrupt;
 - 29.1.2.6. PERMITTEE makes a general assignment for the benefit of creditors; and
 - 29.1.2.7. PERMITTEE uses any portion of the Permit Areas for any unauthorized purpose.
- 29.2. Termination by PERMITTEE. PERMITTEE may terminate this Master Agreement, or remove any specific Site and/or Permit Area thereby terminating PERMITTEE's right to use said Site or Permit Area, for any reason upon thirty (30) days prior written notice to CITY. Upon PERMITTEE's termination of this Master Agreement, or removal of a specific Site or Permit Area from this Master Agreement, PERMITTEE shall immediately cease PERMITTEE's Operations and remove PERMITTEE's improvements and personal property from the affected Permit Areas (pursuant to Section 31 of this Master Agreement).
- 29.3. No Obligation. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of CITY's revocation or PERMITTEE's termination of this Master Agreement. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY's revocation or PERMITTEE's termination of this Master Agreement.
- 29.4. Cumulative Remedies. CITY's rights and remedies under this Master Agreement are cumulative and shall not limit or otherwise waive or deny any of its respective rights or remedies at law or in equity.
- 29.5. Waiver. The property constituting the Permit Areas is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Master Agreement, in one or more instances, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in writing and executed by CITY to constitute a valid and

binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Master Agreement, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any Annual Use Fee shall not be a waiver of any default preceding such payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may, at any and all times, require the cure of the default.

- 29.6. Effect of Termination of Specific Approved Site or Permit Area. Following the early revocation or termination of a specific Approved Site or Permit Area by either CITY or PERMITTEE, no Annual Use Fee will be due to the CITY for that Approved Site or Permit Area.

30. REMOVAL OF IMPROVEMENTS AND PERSONAL PROPERTY.

- 30.1. Improvements. Upon the expiration, revocation or termination of this Master Agreement or upon the termination of a specific Site or Permit Area, PERMITTEE shall, at PERMITTEE's sole cost and expense, remove the Communications Equipment, its improvements, trade fixtures, structures, installations, and/or additions as soon as practicable, but in no event later than sixty (60) calendar days after the expiration or earlier revocation or termination of this Master Agreement. If any removal of such improvements, trade fixtures, structures, installations, and/or additions by PERMITTEE results in damage to any portion of the Permit Areas, PERMITTEE shall repair all such damage at PERMITTEE's sole cost and expense. If PERMITTEE fails to remove any such improvements, trade fixtures, structures, installations, and/or additions identified by CITY, CITY may, at its option, remove them at PERMITTEE's sole cost and expense.
- 30.2. Personal Property. Upon expiration of this Master Agreement (without the Parties' execution of a new permit for the Permit Areas) or upon earlier revocation or termination of this Master Agreement or any specific Site or Permit Area, PERMITTEE shall remove machines, appliances, equipment (other than trade fixtures), and other items of personal property installed by PERMITTEE as soon as practicable, but in no event later than sixty (60) calendar days after the expiration or earlier revocation or termination of this Master Agreement. If any removal of such personal property by PERMITTEE results in damage to any portion of the Permit Areas, PERMITTEE shall repair all such damage at PERMITTEE's sole cost and expense. Any such items which PERMITTEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense.
- 30.3. Intentionally omitted.
- 30.4. Performance Bond. PERMITTEE shall obtain and provide CITY on a yearly basis proof of security in the form of a performance bond in the amount of \$1,000.00 (One Thousand Dollars) per Site, in favor of CITY, to cover the cost to dismantle or remove PERMITTEE's improvements, trade fixtures, structures, installations, additions, and personal property,

including machines, appliances, equipment (“Removal Performance Bond”) constructed, installed or erected by PERMITTEE or PERMITTEE’s sublicensees, contractors, or subcontractors within the Permit Areas. The Removal Performance Bond shall be for a term of one (1) year and shall be continuously renewed, extended or replaced so that it remains in place for the entire Term of this Master Agreement or until PERMITTEE’s secured removal obligations are performed to the satisfaction of CITY, whichever is sooner. In order to ensure continuous renewal of the Removal Performance Bond with no lapse, each bond shall be extended or replaced at least one month in advance of its expiration date. Removal costs may, at CITY’s sole discretion, be reevaluated at the conclusion of the fifth (5th) year of the Term of this Master Agreement to ensure sufficient funds for removal. PERMITTEE shall adjust the amount of the Removal Performance Bond at CITY’s request. Failure to secure the Removal Performance Bond and all renewals and extensions thereof shall constitute breaches of the PERMITTEE under this Master Agreement.

31. NOTICES.

Any notice required or permitted to be given under this Master Agreement shall be in writing and may be served personally, sent by United States mail, postage prepaid, or sent by reliable overnight courier, addressed to the Parties as follows, or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated, in writing, by the respective party:

If to PERMITTEE:

Attn: _____

Maintenance contact phone # _____

Agreement Contact phone # _____

If to CITY:

City of San Diego
Real Estate Assets Department
Attn: Real Estate Assets Director
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4155

Contact phone # 619-236-6020

If to CITY’s Transportation Stormwater:

City of San Diego
Streets Division

Attn: Deputy Director
2781 Caminito Chollas
San Diego, CA 92105

- 31.1. Address Changes. Any party entitled or required to receive notice under this Master Agreement may, by like notice, designate a different address to which notices shall be sent.
- 31.2. When Effective. Notice shall be effective upon personal service, or five (5) calendar days after deposit in the United States mail.

32. MISCELLANEOUS PROVISIONS.

- 32.1. Governing Law. This Master Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 32.2. Entire Understanding. This Master Agreement contains the entire understanding of the Parties. CITY and PERMITTEE agree that there is no other written or oral understanding between them with respect to PERMITTEE's Operations. Each party has relied on its own examination of the Permit Areas, advice from its own attorneys, and the warranties, representations, and covenants within the Master Agreement itself. Each party agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Master Agreement. The failure or refusal of any party to read this Master Agreement or other documents, inspect the Permit Areas, and obtain legal or other advice relevant to this transaction shall constitute a waiver of any objection, contention, or claim that might have been based on such actions.
- 32.3. No Affiliation. Nothing contained in this Master Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between the Parties, or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
- 32.4. Standard of Conduct. PERMITTEE and its employees shall, at all times, conduct themselves and PERMITTEE's Operations in a creditable manner and in accordance with industry standards.
- 32.5. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Master Agreement.
- 32.6. Unavoidable Delay. If the performance of any act required of CITY or PERMITTEE under this Master Agreement is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, that party shall be excused from performing that act for a period equal to the period of the prevention or delay. If CITY or PERMITTEE claims the existence of such a delay, the party claiming the delay shall notify the other party, in writing, of that fact within ten (10) calendar

days after the beginning of any such claimed delay.

- 32.7. CITY's Consent or Approval. Whenever required under this Master Agreement, CITY's consent or approval shall mean the written consent or approval of CITY's Mayor or his designee, unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made at the Mayor's discretion, unless otherwise expressly provided.
- 32.8. Permit Modifications. This Master Agreement shall not be modified, altered, or amended unless the modification, alteration, or amendment is in writing and signed by the Parties.
- 32.9. Cost Recovery. CITY collects various fees to offset the administrative costs incurred for CITY staff services. CITY shall process each of PERMITTEE's service requests upon receipt of PERMITTEE's payment of the applicable fee. The fee schedule, which is on file with the Office of the City Clerk, may be updated from time to time in CITY's sole discretion.
- 32.10. Survival. Any obligation under this Master Agreement that requires a party's performance of that obligation after the expiration or earlier revocation or termination of this Master Agreement shall survive such expiration, revocation, or termination.
- 32.11. Number and Gender. In this Master Agreement, words in the singular number shall include the plural, and *vice versa*, as appropriate to the context. Words of either gender shall include the other gender.
- 32.12. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by PERMITTEE pursuant to this Master Agreement is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
- 32.13. Authority to Execute and Deliver Permit. Each individual executing this Master Agreement on behalf of another person or legal entity represents and warrants that he or she is authorized to execute and deliver this Master Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Master Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Master Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association, in good standing in its home state, and that such entity is qualified to do business in the State of California.
- 32.14. Exhibits Incorporated. All exhibits referenced in this Master Agreement are incorporated into the Master Agreement by this reference.

IN WITNESS WHEREOF, this Master Agreement is executed by CITY and PERMITTEE, to be effective as of the Effective Date.

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

By _____
Cybele L. Thompson
Director, Real Estate Assets

Date: _____

PERMITTEE: _____
By _____
Print Name: _____
Title: _____

ENVIRONMENTAL ANALYSIS SECTION:

Date: _____

By _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Date: _____

MARA W. ELLIOTT, City Attorney

By _____
Name: _____
Title: _____

Exhibit A: Approved Site List of Permit Areas

Exhibit B: Master Structural Plan

Exhibit C: Interference Protection Requirements

1. **Interference.** Anytime during the term of this Master Agreement, PERMITTEE may be required to provide an intermodulation report (“Report”) to CITY. This Report shall include the calculation parameters used to compile the Report, all intermodulation “hits,” a brief description of the results of the intermodulation calculations, a list of possible interference situations that may result from the proposed equipment, transmission frequencies that are currently being operated on-site, and similar or other relevant data from the licensees and/or users operating on-site. The information required to compile this report, including transmit frequencies currently operated on-site, may require collection of data from other licensees operating on-site. A list of other licensees within the Permit Areas can be obtained from CITY. CITY is not responsible for any omitted data provided for the purpose of creating this Report. If required, the Report shall be provided to CITY’s General Services Department, Communications Division, and Senior Communications Engineer.
2. **Pre-installation Notification.** PERMITTEE shall notify all licensees and/or users operating within the Permit Areas of any proposed installation and/or modification at least fourteen (14) calendar days prior thereto. A list of all licensees and/or users operating within the Permit Areas may be obtained from CITY and used to compile a notification list. The notification shall be in the form of a letter to each listed licensee and/or user operating within the Permit Areas, giving a technical data summary of the proposed new and/or modified equipment and/or installation to be installed within the Permit Areas, and shall specify the approximate date of the installation or modification. An additional notification letter shall be sent to CITY’s Communication Engineer at CITY’s General Services Department, Communications Division. This letter shall include a list of all licensees and/or users notified. PERMITTEE shall make complete arrangements and conduct all tests and operations in accordance with all applicable Federal (including FCC) Rules and Regulations.
3. **Radio Frequency Interference to CITY Radio Equipment.** The radio equipment use proposed by PERMITTEE shall not directly or indirectly result in degraded technical performance of CITY’s existing radio equipment installed within the Permit Areas or used in the general area. Resulting degraded technical performance in this instance includes, but is not limited to: (a) detectable or measurable received intermodulation; (b) audio distortion or noise; and (c) receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test.
4. **Modifications to Equipment.** Modifications to transmitting equipment (including, but not limited to, those which change effective radiated power, transmitter frequency, transmitter modulation, and/or transmitter spurious and harmonic emissions) may require re-notification to existing licensees and/or users operating within the Permit Areas, as well as a new Report.
5. **Resulting Interference.** Should an interference problem occur within the Permit Areas (or surrounding area) as a result of any new and/or modified equipment and/or installation, PERMITTEE shall initiate mutually agreeable actions among the affected parties to mitigate or resolve the interference problem. If harmful interference cannot be resolved, CITY may recognize the right of other authorized users and, in CITY’s sole discretion, withhold consent or disallow use of the new and/or modified equipment and/or installation, pending settlement of the interference problems between PERMITTEE and other authorized users.

6. No Obligation by CITY for Loss. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of the foregoing interference protection requirements, and PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY's enforcement thereof.

Exhibit D: Emergency Maintenance Procedures

If PERMITTEE discovers that any of the Communications Equipment is damaged, PERMITTEE shall immediately notify **CITY's Station 38 at (619) 527-7660**.

If CITY discovers that any of the Communications Equipment is damaged, CITY shall immediately notify **PERMITTEE's Network Operation Call Center at (____) ____-____**.

CITY may require any replacement Communications Equipment to be relocated, as provided for in this Master Agreement.

If the Communications Equipment causes any interference to CITY's telecommunications equipment and/or system, CITY may require such Communications Equipment to be removed permanently and replaced at another location, as provided for in this Master Agreement.

If CITY's telecommunications and/or lighting systems require emergency repair or maintenance by CITY, CITY shall employ use of PERMITTEE's emergency shut off switch, per Section 19.2, and notify PERMITTEE immediately at the number above.

PERMITTEE shall not unreasonably interfere with pedestrian or vehicle traffic while installing or maintaining the Communications Equipment.

If a party changes its emergency contact telephone information, that party shall immediately notify the other party of the new contact information at the telephone number provided above, and, within ten (10) calendar days, provide the other party with written notice of the new contact information, in accordance with this Master Agreement.