

**NON-EXCLUSIVE INSTALLATION AND PROPERTY USE
AGREEMENT BETWEEN THE CITY OF SAN LEANDRO AND**

This Non-Exclusive Installation and Property Use Agreement (this “**Agreement**”) is made and entered into by and between the City of San Leandro, a municipal corporation (the “**City**”), and _____ a _____ (the “**Company**”), upon execution by the City on the ___ day of _____, 2012 (“**Effective Date**”).

RECITALS

- A. **WHEREAS**, the City is the owner of that certain real property located at _____, San Leandro, California, more particularly described in the “**Property Description**,” attached hereto as Exhibit A and incorporated herein by this reference (the “**Property**”); and
- B. **WHEREAS**, the Company desires to construct and install, at no cost to the City, new monopole and antennae facilities, exclusively for the purpose of the operation of telecommunications, more particularly described in the “**Telecom Facilities**” description, attached hereto as Exhibit B; and
- C. **WHEREAS**, the Telecom Facilities shall provide services to both the City and the Company, as more particularly described in Exhibit C (the “**Services**”); and
- D. **WHEREAS**, in order to provide the Services, the Company desires to obtain from the City and the City desires to grant to the Company the right to use certain portions of the Property, which portions are further described in Exhibit D (the “**Licensed Areas**”); and
- E. **WHEREAS**, the City desires to have the Services available in the City in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals.

All the recitals above are true and correct and incorporated herein.

2. Use of the Property.

2.1 Subject to the limits herein stated, the right of entry granted herein is a right to enter onto the Property for the purposes of installation, construction, operation, repair, maintenance, replacement or upgrading of the Telecom Facilities on the Property in accordance with the Plans and Specifications attached hereto as Exhibit E, and the terms and conditions expressed in this Agreement, in order to provide the

Services. (The activities set forth in this Section 2.1 shall hereinafter be referred to as the “**Project**”). Said use shall be on a non-exclusive basis.

2.2 This Agreement shall not be construed to permit construction, installation, maintenance or use of the Telecom Facilities on any property other than the Licensed Areas.

3. No Warranty of Suitability of Property.

It is the Company’s election to install and maintain the Telecom Facilities at the Property and the Company does so solely at its own risk. The City makes no representations or warranties regarding the suitability, condition or fitness of the Property for the installation, maintenance or use of the Telecom Facilities and the Company does so at its own risk. The Company acknowledges and agrees that the Company is accepting the Property in an “AS IS” condition and that the City has not agreed to undertake or provide any improvements to the Property.

4. Term of the Use Agreement.

4.1 Term. The term of this Agreement (“**Term**”) shall commence upon the Effective Date and continue for five (5) years, expiring at 11:59 p.m. on the fifth (5th) June 30 (“**Expiration Date**”), unless earlier terminated pursuant to the terms of this Agreement. The initial period (“**Initial Period**”) of the Term shall be from the Effective Date to the following June 30. The anniversary date (“**Anniversary Date**”) shall thereafter be July 1.

4.2 Option to Extend. The Company shall have the option to extend the Term for one additional five (5) year period (“**Option Period**”) on the same terms, covenants and conditions that are contained in this Agreement. The Company may exercise its Option Period by giving the City written notice no later than one hundred and eighty (180) days prior to the Expiration Date. The City shall increase the Use Charge during the Option Period in the manner as provided in Section 5, below.

5. Use Charge.

5.1 Charge and Payment. Commencing upon the Effective Date, the Company shall pay the City the sum of _____ Dollars (\$_____) for the Initial Period, calculated in accordance with the City’s Rate Schedule as shown in Exhibit F and subject to an annual adjustment effective each Anniversary Date as provided below (“**Use Charge**”). The Use Charge shall be due and payable in full on the Anniversary Date without offset, in advance.

All payments shall be made to:

City of San Leandro
Department of Finance
City Hall
835 E. 14th Street
San Leandro, CA 94577

5.2 Initial payment by the Company for adjustments made for addition of antennae, pursuant to Exhibit F shall be due and payable at the address set forth above on the date the City approves placement of said additional antennae on the Telecom Facilities and shall be prorated to reflect the remainder of the year of the Term (“**Term Year**”).

5.3 Adjustment of Use Charge.

a. The Use Charge shall be increased on each Anniversary Date. For the first adjustment, the amount will be prorated by the number of months in the Initial Period. The Use Charge shall be up to the maximum amount set forth below, to equal the greater of: (1) a four percent (4%) increase over the then current Use Charge, or (2) the annual Consumer Price Index adjustment as published by the United States Department of Labor, Bureau of Labor Statistics for All Consumers for the San Francisco-Oakland-San Jose Metropolitan area (hereinafter “**CPI**”). The percentage change in the CPI shall be based on the annual average change for the last two years (January through December).

b. If the Department of Labor discontinues publishing the index mentioned above, the City may use a comparable index to calculate the percentage change in the CPI.

c. Should the Company enter into an agreement for the same, or substantially similar Telecom Facilities with another Governmental Entity for use of any structure owned by such Governmental Entity anywhere in the San Francisco-Oakland-San Jose Metropolitan Area as defined by the Bureau of Labor Statistics for its CPI Index which agreement requires the Company to pay higher use rates (“**Higher Use Rate**”) than the rate then in effect hereunder, the Company shall notify the City within thirty (30) days of the effective date of such agreement. In the event the Company enters into such an agreement, the Company shall begin paying such Higher Use Rate to the City within sixty (60) days of such demand. The first payment shall be made in one lump sum to the City and shall be equal to the Higher Use Rate for the period beginning on the commencement date of the agreement with the Governmental Entity and ending on the following Anniversary Date less the amount then already paid for the same period. For each Anniversary Date thereafter, the Company shall pay annually to the City the Higher Use Rate. The provisions of this Section 5.3c shall not apply to extensions of existing contracts between Governmental Entities and the Company, which are in effect as of Effective Date. For purposes of this Section 5.3c,

“**Governmental Entity**” shall mean any federal, state or local government agency thereof, including, but not limited to, federal and state governments or federal and state governmental entities, all county and municipal governments, successor agencies, and governmental transit authorities. Failure to notify the City of or pay Higher Use Rates is hereby deemed a material breach of this Agreement and is grounds for termination in accordance with Section 21.1(a).

6. Right of Entry For Construction of Telecom Facilities.

The right of entry herein is given subject to the following terms and conditions of this Agreement, including but not limited to:

6.1 The Company has determined that no underground utilities or other hazards exist in the area proposed for installation of the Telecom Facilities.

6.2 The Company has submitted Plans and Specifications for the proposed Telecom Facilities to the City, at the address set forth in Section 32 herein. The Company shall supply the City any additional information it may need before approving the Plans and Specifications. No entry shall be made until the City has approved such Plans and Specifications for the Telecom Facilities.

6.3 The City has received a schedule for the proposed work related to the construction of the Telecom Facilities, and a list of the names of all agents and contractors authorized by the Company to enter the Property. Said schedule shall be delivered to the City no later than fifteen (15) days prior to entry upon the Property by the Company.

6.4 The Company shall be responsible for coordination of work to avoid any utility conflicts, or conflicts with any Property facilities and/or operations; additionally the Company shall be responsible for assuring that no digging is done on a site with archeological or historical significance.

6.5 The Company shall obtain and maintain any and all necessary permits from the relevant agencies and comply with all current laws, ordinances, orders, rules, regulations and permits with respect to its performance of the activities relevant to this right of entry. The Company shall timely pay to the City all applicable deposit fees, permit fees and other fees or amounts required to be paid by the Company to the City in connection with obtaining permits or performing work under this Agreement, including without limitation any fees as required by any federal, state or local law, statute, ordinance, rule or regulation. Approval of Plans and Specifications (Exhibit E) and permits by City Departments shall not release the Company from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the Plans and Specifications. The Company agrees to perform any work in furtherance of the Plans, Specifications and permits at the Company’s sole expense and in accordance with and in a manner the City is satisfied conforms to Plans, Specifications and permits as may be approved by the City in furtherance of this Agreement.

6.6 The Company and its employees, agents, contractors and subcontractors shall properly and lawfully transport and dispose of any and all drill cuttings, purged water and Hazardous Materials generated by the work of such parties on the Property.

6.7 The City shall have access to inspect any work conducted by the Company while the installation of the Telecom Facilities is being carried out.

7. Relocation and Removal of Telecom Facilities.

7.1 At any time during the Term of this Agreement, the City may require relocation of the Telecom Facilities to a location designated by the City, provided that the City shall provide the Company with a one hundred twenty (120) day prior written notice that the Telecom Facilities must be relocated.

7.2 If the Company fails to remove or relocate the Telecom Facilities or repair or restore the affected areas of the Property within the one hundred and twenty (120) day period, the City Manager, in his or her sole discretion and without limitation with respect to any other rights or remedies which he/she may have, may terminate this Agreement, effective no earlier than seven (7) days after the date of notice of termination and the City may remove any of the Company's property, including the Telecom Facilities from the Property.

7.3 If the City removes the Telecom Facilities pursuant to this Section, the Company shall pay to the City all costs associated with the City's removal of the Telecom Facilities, including any storage costs and costs to repair and restore the Property, within ten (10) days after receipt by the Company of an itemized bill therefor.

8. Title to the Telecom Facilities and Improvements to Property.

8.1 Title to the Telecom Facilities shall be and remain with the Company in accordance and compliance with all of the terms of this Agreement. Title to any other improvements to the Property required for the placement of the Telecom Facilities shall be and remain with the City.

9. Environmental Indemnity.

9.1 The Company shall indemnify, defend (with counsel approved by the City) and hold the City and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively the "Indemnitees") harmless from and against all Claims arising during the Term of this Agreement and resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, transport, storage or disposal of any Hazardous Materials (as defined in Exhibit G) on, under, in or about, or the transportation of any such Hazardous Materials to or from the Property during the Term, (ii) the failure of the Company, the Company's employees, agents, contractors, and subcontractors or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws (as defined in Exhibit G), or (iii) the breach by the Company of any of its covenants contained in this Section. The foregoing indemnity shall further apply to any contamination of any

property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws and shall include, without limitation, any Claims arising in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work ordered by a court or required by any federal, state, or local governmental agency or political subdivision. This Section shall survive the expiration or earlier termination of this Agreement.

9.2 The Company shall obtain all required regulatory and governmental permits and licenses necessary to perform the work hereunder and shall take all required steps to minimize dust and noise in conformance with neighborhood and governmental standards.

10. Compliance With Applicable Laws and Approvals.

10.1 The Company shall construct, install, operate, maintain, repair, upgrade and remove the Telecom Facilities in accordance with all applicable federal, state and local governmental laws, rules and regulations now in existence or as hereafter enacted or amended. Without limiting the foregoing, the Company shall obtain, maintain and fully comply with the City's General Plan, the City's Zoning Ordinance, and any and all permits or approvals required from the City.

10.2 The Company acknowledges and agrees that the City requires users of communications services such as the Services to pay to the City a utility users' tax pursuant to Chapter 2 of Title 4 of the San Leandro Municipal Code, as the same may be amended from time to time. Without limiting the other provisions of this Section, the Company agrees that the Company shall collect from the users of the Services and remit to the City said utility users' tax all in the manner described in, and in compliance with, Chapter 2 of Title 4 of the San Leandro Municipal Code.

11. Maintenance and Repair.

11.1 The Company shall maintain and repair the Telecom Facilities, at no cost to the City (except as specifically provided otherwise in this Agreement) and to the City's reasonable satisfaction, any and all damage to the Property that may result from any installation, relocation or removal of the Telecom Facilities or the Company's exercise of any of the rights and privileges hereby granted, including, without limitation, damage to the electrical system in the Property. Upon removal of the Telecom Facilities and termination of this Agreement, the Company shall restore the Property to at least as good condition and repair as before the Company's use thereof, except for ordinary wear and tear.

11.2 The Company agrees to and shall: (1) keep the Telecom Facilities and the Property in neat, clean, graffiti-free and orderly condition at all times; (2) not cause rubbish, garbage or debris to accumulate or remain on or around the Telecom Facilities or the Property at any time; (3) not commit, suffer or allow any acts to be done at or

around the Telecom Facilities or the Property in violation of any law, regulation, permit or rule; and (4) not use or allow the use of the Telecom Facilities or the Property for any illegal or immoral purpose.

11.3 The Company shall mark cabling every eighteen inches (18") with identifying ownership markings and identify the Telecom Facilities with similar ownership markings. Prior to installation, the Company shall submit plans and specifications to the City for approval of any proposed cable runs.

12. Access to Property After Installation of Telecom Facilities.

12.1 The Company will be given reasonable access to the Property between the hours of 6:00 a.m. to 6:00 p.m. to repair, maintain or remove the Telecom Facilities, provided the Company provides the City with at least five (5) days prior written notice of the times that the Company will need access to that portion of the Property and at least forty-eight (48) hour's actual prior oral notice to the City of the times that the Company will need access to any other portion of the Property. The City's Public Works Director ("**Property Manager**") or his/her designee shall be the City's contact for these purposes, unless the City otherwise indicates in writing.

12.2 If an emergency repair of the Telecom Facilities is necessary, the Company may be allowed reasonable access to the Property between 6:00 p.m. and 6:00 a.m., provided that the Company obtains the Property Manager's prior permission to enter the Property. The City shall provide the Company with the phone number of the Property Manager, which number shall permit contact with the Property Manager, or his/her designee, twenty-four (24) hours per day. Any City employee overtime required for obtaining access for Company's emergency repair will be at the sole cost and expense of the Company, as provided in Section 12.4.

12.3 The Company shall allow a representative of the City to observe any repair, maintenance or removal work performed on the Property.

12.4 The Company shall pay all costs, including overtime, incurred by the City to provide a representative to observe any work at the Licensed Areas or any other portion of the Property. The City shall invoice the Company, and all payments for such costs are due and payable upon receipt of invoice.

13. Right of City Access to Property.

The City reserves the right of its authorized officers, employees, agents or contractors, to enter into and access the Property at any time. Without limiting the foregoing, the City and the Company agree that the City may: (1) inspect the Property and the Telecom Facilities for the Company's compliance with the terms of this Agreement; and (2) make repairs, alterations or additions to the Property or maintain or use the Property in any manner not prohibited by the terms of this Agreement, all without a claim by the Company for any loss of occupation or use of, or any abatement of the Use Charge, for use of the Property.

14. No Liability For Damage to Telecom Facilities.

14.1 The Indemnitees (as defined in Section 9.1) shall not be liable for any damage from any cause whatsoever to the Telecom Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Telecom Facilities or from vandalism or unauthorized use of the Telecom Facilities, except as such damage is solely caused by the gross negligence or willful misconduct of the City, its officers or employees. The Company shall take reasonable precautions against damage to or unauthorized use of the Telecom Facilities.

15. Plans and Specifications and Permits.

15.1 The City shall have the right of prior review and approval of all Plans and Specifications (Exhibit E) and shall have the right to inspect the Telecom Facilities at any time during and after installation. The Company shall not commence installation or alteration of the Telecom Facilities, or any portion thereof, until the City has approved the Plans and Specifications and the Company has obtained all applicable permits. Approval of Plans, Specifications and permits shall not release the Company from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the Plans, Specifications and/or permits. The Company shall be responsible for notifying the City and all other relevant parties immediately upon discovery of such omissions and/or errors.

15.2 The Company agrees to perform any work in furtherance of the Plans, Specifications and permits at Company's sole expense and in accordance with and in a manner that the City is satisfied conforms to the Plans, Specifications and permits as may be approved by the City in furtherance of this Agreement.

15.3 The Company will submit four (4) sets of such Plans and Specifications to the City at the address set forth for Notices in Section 32 herein, which the City shall use for description and acceptance of the Telecom Facilities. The Company shall supply the City any additional information it may request before approving the Plans and Specifications, including but not limited to a Radio Frequency Report, and before/after photo simulations. Submitted plans will be analyzed by City staff for aesthetic and height compatibility with onsite and nearby uses.

15.4 Subsequent to the City's written approval of the Plans, the Company shall apply for and obtain all applicable permits as are required by the City to perform the work described in this Agreement and shall comply with all of the terms and conditions set forth in such permits, including, without limitation, allowing City personnel to inspect the installation of the Telecom Facilities on City property. The Company shall arrange for, obtain and bear costs of all: (1) permits and licenses (including without limitation any fees as required by any federal, state or local law, statute, ordinance, rule or regulation); (2) plan check and inspection fees; (3) environmental impact reports; (4) site preparation; and (5) surface treatment and relocation of any facilities on the Property, as necessary or required for health or safety in the construction or alteration

of the Property. As a condition of this Agreement, the Company agrees to perform the covenants and conditions contained in any permit issued or to be issued to the Company by the City.

15.5 The Company shall not commence physical installation of the Telecom Facilities before written approval of Plans and Specifications pursuant to Section 6.5 and obtaining approval of all applicable permits pursuant to Section 6.5. Approval of Plans and Specifications by City Departments shall not release the Company from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in Plans and Specifications. The Company agrees to perform any work at the Company's sole cost and at Company's sole expense and in accordance with and in a manner the City is satisfied conforms to Plans and Specifications as may be approved by the City in furtherance of this Agreement.

16. Frequency Interference.

16.1 The Company will not cause, permit or allow the installation, operation, maintenance or use of the Telecom Facilities or any other equipment installed pursuant to this Agreement to interfere with: (1) any City use of the Property; (2) City equipment used at the Property; (3) City communications; and/or (4) any pre-existing third party uses of the Property (or any other City property) including uses of communications equipment, that were authorized or planned by the City prior to the execution of this Agreement. The Company shall immediately provide, in writing, to the City at the address set forth for Notices in Section 32, herein, the frequencies utilized in the operation of the Telecom Facilities. The Company shall also provide the City, at the same address, with written notice of any intended changes in those frequencies, a description of those frequencies and the dates that those frequency changes are anticipated to occur, at least thirty (30) days prior to the date that those frequency changes are anticipated to occur. The Company shall not begin any work on the Property pursuant to this Agreement until the frequencies have been approved in writing by the City Manager or his/her designee.

16.2 The Company shall ensure that its use of the Telecom Facilities does not interfere with any communication transmissions in the vicinity of the Property, including without limitation, the City's public safety transmissions, police and fire communications, the City's internal communications, or communications used by the City or the City's pre-existing communications tenants. The Company shall operate the Telecom Facilities in such a manner that all communications sent or received by the Telecom Facilities shall be separated from all City communications frequencies, including without limitation, City communications listed in the preceding sentence, by at least 1 megahertz.

16.3 If the Company's construction, installation, maintenance, operation, use or removal of the Telecom Facilities violates this provision, the Company shall immediately eliminate such violation or interference. If the Company fails to immediately eliminate such violation or interference, the City may, in addition to and without compromising any other remedy available to the City, immediately cut off power to the Telecom

Facilities in the manner set forth in Section 17, below. The City shall immediately provide notice to the Company of any interference or the exercise of the City's shut off rights pursuant to this Subsection.

16.4 The Company shall use its best efforts to operate its communications equipment in a manner that is consistent with all applicable frequencies assigned to it by the Federal Communications Commission ("FCC") and in compliance with all applicable FCC rules and regulations.

17. Emergency.

17.1 The Company understands that emergency situations may develop from time to time that require power to the Telecom Facilities to be shut off. Notwithstanding Section 16, the Company agrees that in the event that the City determines, in its sole discretion that such an emergency situation exists, and there are frequency interferences of any nature between the City's communication equipment and that of the Company, the City shall have the right to shut off immediately any power to the Telecom Facilities and any equipment of the Company's located on the Property for the duration of the emergency. The Company agrees not to hold the City responsible or liable for and shall protect, defend, indemnify and hold the City harmless pursuant to Section 22 for any damage, loss, claim or liability of any nature suffered as a result of the loss of the use of the Telecom Facilities or other communication facilities at the Property or affected by the power outage at the Property.

17.2 The Company agrees to install a master power "cut-off" switch on its equipment for the purpose of assisting the City in such an emergency.

17.3 Unless otherwise specifically provided in a notice of termination of this Agreement, the City's exercise of the right to shut off any power to the Telecom Facilities pursuant to this Section is not intended to constitute a termination of this Agreement by either party. The Company and the City shall meet after the City determines that an emergency situation has ended to establish the time and manner in which power shall be restored to the Telecom Facilities.

17.4 The City shall have the right to determine what constitutes an "emergency situation" pursuant to this Section.

18. Inspection.

The Property, including (if any) the keys thereto, shall be at all times under control of the City, whose officials, employees and agents shall have the right to enter the Property, and all portions thereof, for purposes of inspection (and other purposes contemplated by this Agreement) at all times during the period covered by this Agreement.

19. Utilities.

The Company shall be solely responsible for ensuring that the Property has adequate electrical power and any other utility service necessary or useful to operation of the Telecom Facilities. The City is not obligated to make electricity or other utilities available if there is an interruption in such service to the Property.

20. Licensing and Authorization.

[Applicable only if the Company operates its TELECOM FACILITIES in such a way as to require licensure by the Federal Communications Commission].

The Company represents that it is licensed by the FCC to operate the Telecom Facilities and provide the Services, and the Company agrees to provide documentation evidencing such licensing and authorization within ten (10) days of a written request by the City for such documentation.

21. Termination and Remedies.

21.1 Termination With Cause. Except as otherwise provided in this Agreement, the City shall have the right to terminate this Agreement immediately if any of the following Events of Default should occur:

a. The Company fails to cure a material breach (the materiality of which shall be determined in the City's sole discretion) of any term or condition hereof, within thirty (30) days after the City has notified the Company of such breach; or

b. Said cure cannot reasonably be completed within thirty (30) days and the Company has not commenced curative action within said thirty (30) days and thereafter diligently (in the City's sole opinion) prosecuted such cure to completion; or

c. The Company's operation is deemed by the City to endanger or pose a threat to the public health, safety or welfare, including, without limitation, and as an example, if operation of the Telecom Facilities adversely interferes with, or otherwise adversely affects the City communications or operations; or

d. The City is mandated by law, a court order or decision, or a federal, state or local government to take certain actions that will cause or require the removal of the Telecom Facilities from the Property; or

e. The removal of the Telecom Facilities from the Property is needed to accommodate the construction, installation, operation, repair, maintenance or improvement of a project funded in whole or in part by the City.

21.2 Termination without Cause. City may terminate this Agreement without cause upon one hundred eighty days' (180) prior written notice to Company.

21.3 Removal of Telecom Facilities Upon Termination. If this Agreement is terminated by either party earlier than the expiration of the Term, the City has the option to require the Company to remove the Telecom Facilities and repair and restore the

Property as it existed prior to the commencement of the Company's right to use the Property prior to the expiration of this Agreement, no later than termination of the Agreement, provided that termination due to required relocation of the Telecom Facilities shall be governed by Section 7. Removal of the Telecom Facilities shall be at Company's sole cost and expense, except as specifically provided otherwise in this Agreement.

21.4 Prorated Use Charge Reimbursement. In the event of the early termination of this Agreement (for reasons other than those listed in Sections 21.1 and 5.3(c)), the City will reimburse the Company the unused portion of the Use Charge after proration and proper computation.

21.5 Remedies. Upon the occurrence of an Event of Default, the City, in addition to any other rights or remedies available to City at law or in equity or as provided above, shall have the right to: (i) cure the breach underlying the Event of Default for the account and at the expense of Company; provided that City by prior notice shall first allow Company a reasonable opportunity to cure, except in cases of emergency, where City may proceed without prior notice to Company. Company shall, upon demand, immediately reimburse City for all costs, including costs of settlements, defense, court costs, and attorney fees, that City may incur in the course of any cure. No remedy specified in this Agreement shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy provided hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy provided by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations set forth herein.

22. Indemnification

22.1 To the fullest extent provided by law, the Company shall protect, defend, indemnify, and hold harmless the City, its officers, officials, employees and agents against any claim, loss, liability suits, actions, judgments, costs, expenses (including without limitation attorneys' fees), damages, and causes of action (all of the foregoing, collectively "**Claims**") arising from, or related to, any damage, injury or loss caused by, or resulting from, the installation, maintenance, operation or use of the Telecom Facilities, the provision of the Services, or resulting in any way from the Company's occupation or use of the Property, including, without limitation, that which is due, in whole or in part, to the willful misconduct or negligent acts (active or passive) or omissions of the Company, its officers, employees, consultants or agents. Company's obligation to indemnify and hold harmless excludes only Claims that are due to the gross negligence, or willful misconduct of the City and/or its employees. All of the Company's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement.

22.2 In an action or claim against the City in which the Company is defending the City, the City shall have the right to approve legal counsel providing the City's defense.

23. No Abrogation Of Legal Responsibilities.

The City's execution of this Agreement shall not abrogate, in any way, the Company's responsibility to comply with all permitting requirements or to comply with all current laws, ordinances, orders, rules, regulations and permits with respect to its performance of the activities permitted under this Agreement.

24. Rights Upon Property Subordinate.

The right to enter and use the Property herein granted by the City to the Company, and all rights and privileges hereunder, are and shall be subordinate to any right of the City to use and occupy the Property. In the event of conflict between the Company's right to use the Property and the City's desired use thereof after the Effective Date, the City may require the Company to redesign, adjust, relocate or remove the Telecom Facilities. The Company's right to install, maintain and operate the Telecom Facilities, or to remove the Telecom Facilities, shall be subject at all times to such rights as the City may have to require the removal or relocation of the Telecom Facilities at the sole cost and expense of the Company under the terms stated in this Agreement.

25. Assignment.

The Company shall not voluntarily or by operation of law, assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of the Company's interest in this Agreement or in the Property, without the City's prior written consent, which will not be unreasonably withheld, delayed or conditioned; provided, however, the Company shall have the right to sublease or assign its rights under this Agreement to any of its subsidiaries, affiliates or successor legal entities or to any entity acquiring substantially all of the assets of the Company.

26. No Interest In Property.

Nothing herein shall be deemed to create a lease or easement to any property, or to grant any interest in the Property other than a non-exclusive real property license to enter upon and use the Property, revocable as set forth herein.

27. Not Agent of City.

Neither anything in this Agreement nor any acts of the Company shall authorize the Company or any of its employees, agents, contractors or subcontractors to act as agent, contractor, joint venturer or employee of the City for any purpose.

28. Reservation of Rights.

The Company understands, acknowledges and agrees that any and all authorizations granted to the Company under this Agreement are nonexclusive and shall remain subject to all prior and continuing regulatory and proprietary rights and powers of the City to regulate, govern and use City property, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect City property. The City and the Company agree that nothing contained in, or contemplated by, this Agreement is intended to confer, convey, create or grant to the Company any perpetual interest in any City property or in any of City's public rights of way.

29. Taxes.

29.1 The Company shall pay before delinquency any and all taxes, assessments, licenses, fees and other public charges which may be levied, assessed or imposed upon any of the Company's interests herein, upon the Company's businesses or the Company for the privilege of conducting business, or upon any property of the Company at the Property. The Company is advised that this Agreement may, but is not intended to, create a possessory interest in the Property, for which the Company may be subject to payment of possessory interest taxes therefor, for which the City shall not be liable. Payment of any possessory interest tax shall not reduce in any way any charges or other fees required to be paid by the Company hereunder.

29.2 The Company shall not permit or suffer any liens to be imposed upon the Property or any portion thereof, without promptly discharging the same, provided, however, that the Company may, if it so desires, contest the legality of same following prior written notice to the City. In the event of a contest or a lien, the Company shall provide a bond in an amount and in a form acceptable to the City immediately following request therefor by the City.

30. Insurance.

30.1 The Company, at the Company's own expense throughout the Term of this Agreement, as extended, shall comply with the insurance requirements attached hereto as Exhibit H and incorporated by reference herein. The procuring of the policy or policies of insurance required by Exhibit H shall neither be construed to limit the Company's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding the policy or policies of insurance, the Company shall be obligated for the full and total amount of any damage, injury or loss caused by its negligence or willful misconduct arising out of this Agreement or the Company's use of the Property.

30.2 The Company shall deposit with the City, on or before the Effective Date, certificates of insurance and the required endorsements in forms reasonably satisfactory to the City, indicating compliance with the insurance provisions of this Agreement. The Company shall keep the insurance in effect, and the certificates evidencing the insurance on deposit with the City during the Term of this Agreement and as the same may be extended.

31. Conflict of Interest.

The Company shall avoid all conflict of interest or the appearance of conflict of interest in the performance of this Agreement.

32. Notices.

32.1 Except as otherwise specifically set forth and allowed under this Agreement, all notices herein required to be given or which may be given by either party to the other shall be deemed to have been fully given when served personally on the City or the Company, or when made in writing and deposited in the United States mail, certified mail, return receipt requested, postage prepaid and addressed as follows:

To CITY: City of San Leandro
Engineering and Transportation Department
City Hall
835 E. 14th Street
San Leandro, CA 94577
Attn: Administrative Services Manager

With copies to: Public Works Department
City of San Leandro
City Hall
835 E. 14th Street
San Leandro, CA 94577
Attn: Facilities & Open Space Manager

Office of the City Attorney
City of San Leandro
City Hall
835 E. 14th Street
San Leandro, CA 94577

To COMPANY: _____

Attn: _____

32.2 Either party may change its address for notice by notifying the other party in the manner provided in this Paragraph.

33. Governing Law.

This Agreement shall be construed by and in accordance with the laws of the State of California.

34. Miscellaneous.

34.1 Joint and Several Obligation. If more than one entity is designated in, or signatory to, this Agreement, the obligations hereunder imposed upon the Company shall be joint and several; and the term the Company as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

34.2 Agreements. This instrument contains all of the agreements and conditions entered into and made by and between the parties with respect to the property and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in interest.

34.3 Conditions of Notice. Whenever, in this Agreement the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent unless the terms of this Agreement specifically allow an oral approval or consent of a party.

34.4 Time of Essence. Time is, and shall be, of the essence for each term and provision of this Agreement.

34.5 Terms, Conditions and Covenants. Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for the City's entry into this Agreement and any breach hereof by the Company shall be deemed to be a material breach. Each term and provision of this Agreement performable by the Company shall be construed to be both a covenant and a condition.

34.6 Headings. The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

34.7 Severability. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or the Company in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

34.8 Incorporation of Exhibits. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly

executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.

34.9 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

34.10 Construction of Agreement. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.

34.11 Days. Days, unless otherwise specified, shall mean calendar days.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

APPROVED AS TO FORM

“CITY”
City of San Leandro,
a municipal corporation

RICHARD D. PIO RODA
Assistant City Attorney

By: _____
Name: _____
Title: _____

Date: _____

APPROVED:

“COMPANY”

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

PROPERTY DESCRIPTION

[INSERT PROPERTY DESCRIPTION]

EXHIBIT B

TELECOM FACILITIES DESCRIPTION

[INSERT DESCRIPTION OF ALL INSTALLED EQUIPMENT]

EXHIBIT C
SERVICES

EXHIBIT D
LICENSED AREAS

EXHIBIT E
PLANS AND SPECIFICATIONS

EXHIBIT F

RATE SCHEDULE

RATE SCHEDULE FOR ATTACHMENT OF TELECOMMUNICATION EQUIPMENT TO CITY OF SAN LEANDRO OWNED PROPERTIES ¹

1-3 Antennae and/or foundation/surface area containing equipment or cabinet that is less than 250 sq. ft.	\$2,250 per month with annual increases as indicated below
4-6 Antennae and/or foundation/surface area containing equipment or cabinet that is 250-499 sq. ft.	\$3,500 per month with annual increases as indicated below
7-10 Antennae and/or foundation/surface area containing equipment that is 500-2,000 sq. ft. (in no case will more than 10 antennae or 2,000 sq. ft. be allowed)	\$5,000 per month with annual increases as indicated below
A non-refundable application fee must be paid to the City before any requests for new or expanded sites will be considered	\$1,000

¹ The rates noted above are for Fiscal Year 2011-2012 ending June 30, 2012; rates increase annually by the greater of four percent (4%) or the annual average change in the Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics for All Consumers for the San Francisco-Oakland-San Jose Metropolitan area (hereinafter "CPI"). The CPI rose less than 4% for the 12 month period ending April 2011.

EXHIBIT G

HAZARDOUS MATERIALS

I. Definition Of Hazardous Materials.

A. Hazardous Materials. As used herein, “**Hazardous Materials**” means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

B. Hazardous Materials Laws. As used herein “**Hazardous Materials Laws**” means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section A, above, as any of the foregoing may be amended from time to time.

EXHIBIT H

INSURANCE REQUIREMENTS

The Company shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the Company, its agents, representatives, employees or contractors.

I. Minimum Scope of Insurance.

A. Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001 including Fire Legal Liability; and
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance; and
4. Property insurance against all risks of loss to any the Company improvements or betterments, the Company stock, equipment, furniture and fixtures.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

II. Minimum Limits of Insurance.

A. The Company shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; Fire Legal Liability \$1,000,000; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident: and
4. Property insurance against all risks of loss including but not limited to fire, vandalism and malicious mischief, and other perils at the City's discretion, in an

amount equal to one hundred percent (100%) of the replacement cost of all the Company-owned furniture, fixtures, stock and equipment, including fixtures, improvements and betterments installed by the Company, on the Property.

III. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

IV. Other Insurance Provisions.

A. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages.

a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Company; products and completed operations of the Company; premises owned, leased or used by the Company; or automobiles owned, leased, hired or borrowed by the Company. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.

b. The Company's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the Company's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.

d. Coverage shall state that the Company'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.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

2. Workers' Compensation, Employers' Liability and Property Insurance.

Coverage shall contain a waiver of subrogation in favor of the City, its officials employees, agents and contractors

3. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

V. Acceptability of Insurance.

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

VI. Verification of Coverage.

The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required endorsements shall be attached to the certificate of insurance which shall be provided by the Company's insurance the Company as evidence of the stipulated coverages. This proof of insurance shall then be delivered as follows:

Proof of insurance shall be mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Leandro – Finance Department
Risk Management
835 E. 14th Street
San Leandro, CA 94577

VII. Contractors.

The Company shall include all of its contractors as insureds under its policies or shall obtain separate certificates and endorsements for each of their contractors.