



**City of Albuquerque  
Planning Dept.**

**Small Cell Street Light/Utility  
Pole Program  
Permit and Agreement**

Date Received \_\_\_\_\_ Approved \_\_\_\_\_

The City of Albuquerque requires any Small Wireless Facility to be registered and permitted in order to operate in the public right-of-way, pursuant to Ordinances § 5-10-1 et. seq. This Small Wireless Facility Permit and Agreement must be completed, agreed to, and submitted to the City Planning Department for review. The City Planning Director (or their designee) will review the completed application and determine whether it meets the City's minimum requirements for permitting and operation. The Planning Director shall, in the director's sole discretion, either approve or deny the Permit and Agreement. Where the Permit is denied, an explanation of the decision shall be provided.

It is unlawful for any Small Wireless Facility Operator to install or operate a Small Wireless Facility except in conformance with this Permit and the requirements of §5-10-1 et. seq.

**Operator Information**

|                      |        |        |
|----------------------|--------|--------|
| Operator:            |        |        |
| Contact:             |        | Phone: |
| Address:             |        | Email: |
| City                 | State: | Zip:   |
| Local Contact/Agent: |        | Phone: |
| Email:               |        |        |

**Application Information:**

|   |
|---|
| Proposed Number of Small Wireless Facilities on City of Albuquerque Street Light Poles: |
| Proposed Number of Small Wireless Facilities on PNM Street Light Poles:                 |
| Proposed Number of Small Wireless Facilities on PNM Utility Poles:                      |
| Proposed Number of Small Wireless Facilities on third-party private property poles:     |
| Total Proposed Small Wireless Facilities:   |

|   | Site Latitude<br>(XX.XXXXX) | Site Longitude<br>(xx.xxxxx) | Pole Owner<br>(City,<br>PNM,3 <sup>rd</sup> ,new) | City Use: SWF No. #<br>(City batch #-year-<br>batch site #) |  |
|---|-----------------------------|------------------------------|---|---|--|
| 1 |                             |                              |   |   |  |
| 2 |                             |                              |   |   |  |
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**Application Checklist**

In determining whether to approve Operator's Application to install Equipment at any Site, the City will consider: (a) whether the Premises at which the Equipment will be installed can support the Equipment, if applicable; (b) impacts to the City transit and municipal operations; (c) aesthetic impacts of the Equipment, including but not limited to noise and visual clutter; (d) whether the City intends to utilize the Premises for transit or municipal purposes for the foreseeable future. The following documents must be submitted to the City in order for this Permit Application to be considered complete and ready for review.

- ☐ Permit and Agreement, completed in full and signed by a representative of the Operator.
- ☐ Operator's proof of identity, Articles of Incorporation, Partnership agreement, and LLC documents, etc.
- ☐ Copy of Operator's active City Business Permit and proof of good standing with the Secretary of State.
- ☐ Proof of insurance. See Section XV of this Permit and Agreement for insurance requirements.
- ☐ List of Small Wireless Facility ("SWF") locations associated with this Permit and Agreement, identified with the location (latitude and longitude), stating whether the street light pole is owned by the City of Albuquerque, PNM or privately owned, and/or a utility pole owned by PNM or privately owned.
- ☐ Structural analysis and construction drawings, stamped and sealed by a qualified, New Mexico licensed engineer demonstrating that the installation complies with applicable design codes. Batch packets to include the following:
  - Cover sheet
  - Photo sheet using aerial photo showing dots where each SWF is proposed, and numbering each (to correspond to the numbering above, in table.)
  - Sheet showing table of latitudes and longitudes corresponding to each SWF in the batch with the numbering above, in table.



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- Elevations sheet showing the light pole without and with SWF, drawn to scale with heights clearly labeled-bottom of antenna, COR, and top of antenna, table of colors, attachment bolt pattern and specs, and finishes for each type of SWF proposed in the batch.
  - Photo sim for each type of SWF proposed in the batch
  - Antenna sheet showing configuring (looking down at equipment) and providing antenna specs for each type proposed in the batch
  - Detailed sheet for ground equipment for each type proposed in the batch.
  - Detailed equipment drawing providing the discrete dimensions and volume of every component of the proposed small wireless facility, including electronic equipment component or cabinet (e.g. radio transmission; backhaul; interconnection; etc.); support structures added to each site (e.g., new and replacement poles; all cable trays; etc.); all conduits, above and below ground, any cables not within conduit, and interconnecting equipment, etc.); all surface-mounted and sub-surface structures not already disclosed; all electric utility and grounding equipment associated with each SWF; foundations; and all other elements of the SWF not disclosed in any of the above.
- ☐ If the SWF is proposed on a City-owned streetlight, no further DMD approval is needed.
- ☐ If the SWF is proposed on a streetlight where none currently exists, the following requirements shall be required with the application:
- Authorization form demonstrating approval for the City streetlight location from Municipal Development Department ("DMD").
- ☐ If the SWF is proposed on a PNM streetlight, the Operator shall provide with the application:
- PNM Authorization/Consent;
  - Any other documents required by PNM
- ☐ If the SWF is proposed on a privately owned/non-PNM, non-City streetlight, the Operator shall provide with the application:
- Documentation demonstrating consent of the property owner to allow the SWF on property;
  - Documentation demonstrating property ownership of the property where the SWF will be located;
  - Documentation demonstrating authority of the owner to sign consent documents (ex: LLC operating agreements, HOA board minutes with accompanying board signature authorization, Articles of Incorporation, etc.)
- ☐ Regardless of the ownership of the pole, documentation demonstrating consent of the property owner of the location for the ground equipment, if any. The property owner could be the City, PNM or a private property owner.
- ☐ Letter of intent to exchange any City infrastructure in lieu of fees and/annual rates.
- ☐ Application appointment \_\_\_\_\_(date and time).



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**Small Cell Street Light/Utility Pole  
Program Permit and Agreement**

**I. Definitions**

For the purposes of this Permit and Agreement ("Agreement"), the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific article or paragraph herein. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. Operator: wireless provider as described in Ordinances § 5-10-3.
- B. Small wireless facility: a wireless facility that meets each of the following conditions:
  - (1) Each antenna associated with the deployment is no more than three cubic feet in volume, or could fit inside an enclosure with a volume of three or fewer cubic feet;
  - (2) It is mounted on a structure fifty feet or less in height including its antennas or on structures no more than ten percent taller than any adjacent utility pole, wireless support structure or electric transmission structure;
  - (3) Its deployment does not require the extension or replacement of any existing structures to a height of more than fifty feet, or by more than ten percent taller than any adjacent utility pole, wireless support structure or electric transmission structure, whichever is greater; and
  - (4) It is in all respects in compliance with federal regulations including those at 47 C.F.R. § 1.6002;
  - (5) Having equipment fixed to a structure that enables wireless communications between user equipment and communications network including:
    - (a) Equipment associated with wireless communications;
    - (b) Radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment regardless of technological configuration; and
  - (6) Does not include:
    - (a) The structure or improvements on, under or within which the equipment is collocated;
    - (b) A wireline backhaul facility, coaxial cable or fiber-optic cable between wireless support structures or utility poles; or
    - (c) Coaxial or fiber-optic cable otherwise not immediately adjacent to or directly associated with an antenna.
- C. Utility Pole:
  - (1) A pole or similar structure, located in the Public Right-of-way ("ROW") used in whole or in part for communications services, electricity distribution, or lighting and for the purposes of this agreement;
  - (2) Does not include a Wireless Telecommunications Facility as described in the **Integrated Development Ordinance** ("IDO") except for the sub-category of Small-Cell WTF.
- D. Right-of-way:
  - (1) The area on, below or above a public roadway, highway, street, sidewalk (only as defined by the Traffic Code), ally or utility easement and as described in the IDO as Public Right-of-way;



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- (2) For the purposes of this Agreement, Right-of-way does not include the area on, below or above:
- (a) A federal interstate highway,
  - (b) A state highway or route under the jurisdiction of the New Mexico Department to Transportation
  - (c) A private easement
  - (d) A utility easement that does not authorize the deployment sought by a wireless provider
  - (e) Any other City owned property not expressly included in this Section D.(1), above, such as but not limited to parks, open space, city facilities, bike paths as defined by the Traffic Code or multi-use trails as defined by the (IDO).
- E. Stealth or Concealment: the City has adopted design standards for SWFs. The intent of these design standards is to establish objective camouflage and concealment elements for SWFs. The City may waive or impose additional standards if doing so is conducive to site being the least intrusive, maximally blending with the natural and built environment of the City, and protecting the aesthetic character of the City. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the supporting structure for pole attachments and the surrounding area for ground equipment. The SWF shall be of the least intrusive design possible and occupy the least amount of space in the ROW possible but in no event shall exceed the limits prescribed.
- F. Collocation of Equipment means a site comprised of more than one Operator holding a permit or the same Operator with a separate permit on a Utility Pole.
- G. Equipment: Antennas, transmitters, receivers, power supplies, radio transceivers, coaxial or fiber-optic cables, ancillary fiber optic cables and wiring, and support/structural elements necessary for the transmission and reception of radio communication signals for cellular phones and related data transmission installed on a Site. Equipment is limited to that approved for a particular Site Location in a Site Permit, including any design or Equipment modifications required by other necessary approvals, subject to the final approval of City, including type of antenna and any associated utility or equipment box, power meter and /or power feed, battery backup, and ancillary equipment and infrastructure listed in a Site Permit. It does not include the structure on which the equipment is collocated.
- H. Site: Any Utility Pole or wireless support structure, if existing, permitted for SWF equipment attachment.
- I. Premises: pole site location and the ground equipment.
- J. Default Interest: Any fees, if not paid within fifteen (15) days following the due date, shall bear interest from the due date until paid at the rate of fifteen percent (15%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law. Payment of interest and late charges shall not excuse or cure any default by Operator.

## II. Scope

- A. Subject to the terms, covenants and conditions set forth in this Permit and Agreement ("Agreement"), the City of Albuquerque ("City") permits \_\_\_\_\_ ("Operator") a non-exclusive, terminable Permit to use the Site(s) specified in this Agreement, subject to and conditioned upon Operator obtaining all necessary permits and approvals for the installation of its Equipment on said Site(s). Such permit to use any site shall terminate upon the earlier termination or expiration of this Agreement. This Agreement applies only to Site(s) identified herein. This



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Agreement shall not be construed to authorize installation of Equipment or other materials on any Site or other City-owned facility other than those specified in the approved Site(s). Sites permitted and controlled by this Agreement are shown on the attached Exhibit A.

- B. Operator acknowledges and agrees that this Agreement does not constitute, create or effect a lease, possessory interest, easement or franchise or any other real property interest in the Site or any Site or any portion of the City's ROW, and such real property interest shall not be created or granted under this Agreement. Operator further acknowledges and agrees that in the absence of this Agreement, Operator would not have a right to install Equipment or otherwise access Sites owned by the City.
- C. This Agreement grants Operator only a nonexclusive, revocable license to: (1) enter onto the Premises; (2) install Equipment specifically approved for the applicable Site(s) and Premises and other items as may be approved by the City in its sole discretion in writing as a modification to the applicable Site; and, (3) operate, maintain, repair, replace (as authorized by City) said Equipment. The City may revoke and terminate said Agreement or permit in whole or in part at any time in accordance with the provisions of this Agreement.
- D. Without limiting the foregoing uses, Operator shall not use or occupy any of the Site(s) in any unlawful manner or for any illegal purposes or any manner that constitutes a nuisance. Operator shall take all precautions to eliminate any nuisance or hazards in connection with the use of the Site.
- E. Operator's rights hereunder are subject to current and future building restrictions, codes, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency now or hereafter having jurisdiction over the Premises or Operator's use thereof.
- F. The permit created for Operator's use of Site(s)/Premises that is created under this Agreement grants to Operator only a non-exclusive permit (authorization) to install approved Equipment on an approved Site. The City shall have the right to grant, renew and extend rights and privileges to others (who are not parties to this Agreement), by contract or otherwise, to use any Site(s) covered by this Agreement. Nothing contained in this Agreement shall be construed as a limitation, restriction or prohibition against the City entering into agreements with other parties regarding use of City Sites or other facilities or the City issuing permits for the use of its Right-of-way on or about the same area of the Premises. The City, in negotiating such third party agreements, shall give due and reasonable regard to the Operator's interest in the Premises, but such interest shall not be treated as superior to any other interest, except as determined by the City in its reasonable discretion.
- G. Nothing in this Agreement may be construed to create a partnership or joint venture between the City and Operator.
- H. Operator's sole remedy for City's breach or threatened breach of this Agreement shall be the return of unused recurring fees.
- I. Collocation of Equipment is permitted only if authorized in writing by the City under an agreement.
- J. Operator expressly acknowledges and agrees that each and any of the Sites or other portion of the Premises that may be licensed to Operator under this Agreement are permitted to and accepted by Operator in their "as-is, with all faults" condition. The City makes no representation or warranty of any kind as to the condition or suitability of said Premises for Operator's use. Any permit to use said Premises is subject to and conditioned upon Operator's proposed use of the Premises, meeting all City requirements, including, but not limited to, design review, engineering, radio interference, and zoning ordinances.
- K. Operator represents and warrants to City that Operator has conducted a reasonably diligent investigation, either independently or through agents of Operator's choosing, of the condition of the



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Premises and of the suitability of the Premises for Operator's intended use, and Operator is relying solely on its independent investigation.

- L. Operator agrees that neither City nor any of its employees or agents have made, and City disclaims, any representations or warranties, express or implied, with respect to the physical, structural or environmental condition of the Premises or the present or future suitability of the Premises for the installation of Equipment, operation of a Site or other conduct of Operator's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties or merchantability or fitness for a particular purpose.
- M. Operator shall not place or install on a Site any Equipment, structure or other improvement the weight of which will exceed the approved load bearing capacity of a Site or the size of which shall exceed the approved wind shear strength of the Site, as those factors are determined by the City and set out in Approved/Permitted Plans.
- N. The light poles and utility poles will vary in shapes, size and appearance, with some poles unique or specific to a neighborhood or area. Should a replacement of the structure at a pole be necessary and supplied by Operator, Operator shall be required to obtain prior written City approval of the design of the replacement structure for the Site, approval of which will not be unreasonably withheld if the design meets all City regulations and requirements.
- O. Nothing in this Agreement may be construed to create a partnership or joint venture between the City and Operator.
- P. Nothing in this Agreement may be constructed to limit, alter, or waive a right of the City to use the Premises or any portion thereof for their primary intended use as infrastructure established and maintained for the benefit of the City.
- Q. Operator shall not remove, damage or alter in any way improvements or property belonging to the City, including but not limited to Sites and supporting infrastructure, without the express written permission of the City and other authorized third-party users that have a right to use the Premises or other agencies that may have jurisdiction over said improvements or property. Operator shall repair any damage or alteration to the City's property and/or improvements and third-party property and/or improvements to as good as or better than existed before the damage or alteration.
- R. Compliance with Laws.
  - (1) Operator, at Operator's expense, shall install, maintain and promptly repair any damage to the Equipment installed on a Site, including the means and devices used to attach said Equipment to the Site, as well as any peripherals and ancillary improvements, including but not limited to wiring, cabling and power feeds. Operator shall install, use and maintain said Equipment, peripherals and ancillary improvements in strict compliance with all present and future statutes, ordinances, codes, orders, regulations and implementing requirements of federal, state, county and municipal authorities (collectively, "Laws") relating to the Premises or the use or occupancy thereof, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and radio signal transmission. Any work or installations made or performed by or on behalf of Operator or any person or entity claiming through or under Operator pursuant to the provision of this Agreement shall be made in conformity with and subject to applicable Laws, regulations, ordinances and any additional requirements of the City. In making any application to City's Planning Department and Department of Municipal Development for Site Location, Operator agrees to act as both "Operator" and "Agent."
  - (2) The parties acknowledge and agree that Operator's obligation to comply with all Laws as provided herein is a material part of the bargained-for consideration under this Agreement





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and each approved Site Permit, irrespective of the degree to which such compliance may interfere with Operator's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Operator's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Operator from its obligations hereunder, or shall give Operator any right to terminate this Agreement or any Site License in whole or in part or to otherwise seek redress against the City. If any federal, state, county, or municipal laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof that govern any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change. Except as expressly provided herein, Operator waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Agreement or any Site Permit, to receive any abatement, diminution, reduction or suspension of payment of Fees, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

- (3) Operator shall comply with all Laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off the Premises, including without limitation, all applicable standards adopted by the Federal Communications Commission ("FCC"), whether such RF or EMF presence or exposure results from Operator's Equipment alone or from the cumulative effect of Operator's Equipment added to all other sources on a Site or the Premises. If a third party seeking to co-locate its Equipment on a Site covered by this Agreement after the Commencement Date causes an increase in RF or EMF levels on a Site or the Premises such that the cumulative level exceed allowable levels, and if the cumulative effect of all users of a Site or the Premises or any part thereof, including Operator's use hereunder and other Operator(s) whose use predated the Commencement Date exceeds such standards, Operator shall have the right to terminate the Site Permit or applicable Site Permit without penalty upon ninety (90) days prior written notice to City.
- S. Operator represents and warrants that prior to and as a condition of installation of Equipment on a Site, Operator will acquire all licenses, permits, and other approvals required under all federal, state, and local laws for the operation of Operator's Equipment on the Site. Operator shall maintain all such licenses, permits or other approvals for Equipment installed on a Site throughout the Term of this License and for as long as Equipment is installed on the Site.
- T. Operator acknowledges and agrees that no advertising of any kind is allowed on the Premises or any Site. Advertising does not include the installation of the name/identification plate.
- U. Nothing contained in this Agreement shall be construed to require the City to grant a Site Permit where the placement of Operator's Equipment would interfere with existing City's services or facilities or equipment or other City services, or would interfere with the use of City Site(s) by others, or would create a hazardous or unsafe condition.





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### III. Terms

- A. This Agreement will remain in effect for a period of ten (10) years from the date of the execution of the Agreement by the City, (hereinafter referred to as the "Term"), unless terminated and/or revoked pursuant to the requirements in Section IV of this Agreement. The Operator may, upon a new application (which may include all documentation of a new application) and City approval, renew and extend this Agreement, for an additional ten years, for a total of twenty (20) years by notifying the City in writing and submitting a complete and new application no later than 180 days prior to the expiration of the then-current Term of this Agreement.
- B. The City maintains the right to review the Operator's compliance on an annual basis.

### IV. Termination

This Agreement may be revoked or terminated under any of the following conditions:

- A. The City may revoke and terminate this Agreement if the Operator fails to perform on or comply with any material term, condition, or covenants of this Agreement, subject to the Operator's ability to cure such default within ten (10) days after receipt of written notice of such failure from the City unless a shorter period to cure is necessitated by public health and safety. However, no such failure will be deemed to exist provided that the Operator cures such default within the noticed period to cure and provided that, if such period to cure is extended by mutual agreement, such efforts to cure are prosecuted diligently to completion.
- B. The City retains the right and privilege to cut or move any small wireless facility located within the ROW of the City, as the City may determine to be necessary, appropriate and useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the Operator and provide the Operator an opportunity to move its own facility prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility. If a relocation is necessary, Operator may terminate this Agreement.
- C. The City may revoke and terminate this Agreement at any time for any reason or no reason upon advanced written notice at least ninety (90) days in advance of termination of any or all of the Sites and Premises listed in this Agreement or termination of the entire Agreement. If a Site or the whole Agreement is terminated by the City and the Operator is not in default, the City and Operator will work together in good faith to replace the Site locations that are acceptable to both the City and the Operator.
- D. The Operator may terminate this Agreement for any reason or no reason with 90 days written notice to City. Upon termination by Operator, no proration of Annual Rate will be granted.
- E. An order of a court of competent jurisdiction may terminate this Agreement.

Should the City or Operator wish to remove one or more Sites or premises as listed in the attachments to this Agreement, both parties may agree in writing to do so without terminating the whole of this Agreement.

### V. Surrender of Premises and Site

Upon the Expiration Date or other termination of this Agreement or any individual Site Permit, Operator shall peaceably remove its Equipment from Sites and the Premises, quit and surrender to City the Site and Premises in good order and condition, normal wear and tear excepted, free of debris and hazards, after having made the last necessary repair required by Operator under this Section V (and damage caused by casualty or condemnation excepted). The Premises and Site shall be surrendered free and clear of all liens



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and encumbrances. Operator shall, immediately before the Expiration Date or other termination of this Agreement, remove all of Operator's Equipment and repair any damage resulting from the removal. Operator's obligations under this Section shall survive the Expiration Date or other termination of this Agreement. Any items of Operator's Equipment that remains on a Site or otherwise on the Premises after the Expiration Date of this Agreement may, at the option of the City, be deemed abandoned and in such case may be disposed of by City in any lawful manner after the City has issued a 60-day notice to Operator to remove the Equipment.

If, after termination and within twenty (20) days after being directed to do so by the City, the Operator fails to remove any of the Operator's property from the public right-of-way and restore the right-of-way or City real property, the City may perform the work and the Operator shall reimburse the City for the costs of such work within thirty (30) days after the City submits a bill to the Operator.

Termination of this Agreement for any reason shall not release the Operator from any liability or obligation relating to the construction, installation, operation, maintenance, repair, or removal of the Operator's property or any other term of this Agreement. The provisions of this subsection shall survive the expiration or termination of this Permit.

## **VI. Agreement and Approvals**

- A. The City is entering into this Agreement in its capacity as a property owner and in its capacity as a regulatory government agency. Nothing in this Agreement shall limit in any way the Operator's or Operator's agents' obligations to obtain any required regulatory approvals from the City or any other governmental authority, board, council, or commission that may have proprietary or regulatory authority over public rights-of-way and real property where Operator's SWF is located. By entering into this Agreement, the City is not modifying or limiting in any way the Operator's obligations to cause the public rights-of-way or City real property to be used or occupied in accordance with all laws and any provisions as provided herein.
- B. Installation of the Equipment must begin within one hundred eighty (180) days of the permit issuance, unless delay is approved by City and an extension is granted. If the Installation of the Equipment is not begun within the 180 days, the issued permit for an individual premises is void and terminated. Extensions of the 180 days will only be granted in writing and for lack of commercial power or fiber at the site.

## **VII. Replacement of Light Pole/Utility Pole**

For a Site that is a City-owned street light pole, if Operator determines that an existing light pole is not structurally sufficient for Operator's Equipment and Operator still desires to use the location of the Site, Operator, at Operator's sole discretion, may request to replace the light pole for a specific location for the Operator to use for collocation purposes. Once the City determines, at City's sole discretion, that the location Site is acceptable to the City, as described in this Agreement, the City, at City's sole discretion, may accept the street light pole as a replacement pole. The City's consideration of whether to accept a new pole will include, but will not be limited to, the appearance of the surrounding light poles compared to the offered light pole, future City plans for energy efficiency and smart street light poles. Upon City's acceptance, in writing, and delivery and installation of the replacement street light pole, the street light pole will become the sole property of the City and Operator will have no further claim, title or interest in the replacement street light pole beyond the applicable Site Permit.



## VIII. Installation of Equipment

- A. **Approved Plans and Specifications.** Following City's approvals of a Permit, and Operator obtaining necessary regulatory permits for the proposed installation, Operator shall be authorized to install approved Equipment and related improvements at the Site Location listed in the Site Permit in accordance with the plans and specifications approved by the City for permitting.
- B. **Cost of Equipment and Installation.** Operator shall be responsible for all direct and indirect costs (labor, materials and overhead) for designing, purchasing, and installing its Equipment in accordance with the Approved Permitted Plans and all applicable laws. Operator shall further be responsible for and shall bear all costs of obtaining all permits and licenses required in connection with said Equipment installation, and Operator shall satisfy any condition or mitigation measures required in connection therewith. Operator shall timely pay for all labor, materials, and Equipment and all professional services related to Operator's installation and operation of the Equipment.
- C. **Standard of Work.** All installation of Equipment shall be performed and diligently pursued to completion in a skillful and workman-like manner only by qualified persons and appropriately licensed contractors. No less than 10 calendar days before commencing installation of Equipment on any Site, Operator shall provide the City (1) a schedule of all installation activities; (2) a list of the names, places of business, insurance carriers and policies, and license numbers of all contractors who will perform the Installation work. In performing installation and/or removal of Equipment, Operator shall leave the Premises in as good or better condition as prior to said installation or removal work. Operator's Equipment as installed shall be high quality, safe, fire resistant, modern in designed, and attractive in appearance, all as approved by City.
- D. **Coordination of Work.** Operator shall be responsible for coordination of its Equipment installation work to avoid any interference with existing utilities, substructures, facilities and/or City operations. Operator shall be the City's point of contact for all Equipment installation and except in case of emergency, all communications concerning Equipment installation shall be through Operator's field representatives.
- E. **Construction and Parking Regulations.** During construction, Operator must abide by all City, and other regulatory bodies' standard construction regulations, including but not limited to construction hours, waste management, noise abatement, barricade permit regulations and traffic management ordinances and regulations. Operator must pay all parking meter fees and citation fines incurred by Operator and/or its contractors for vehicle parking.
- F. **Identification of Permitted Equipment:** Operator shall place one identification plate on the pole at each Site, which plate shall be approximately 1" X 3" and shall be approved in advance by City, in order to identify Operator's Equipment, having the name of Operator and telephone number at which Operator's on-call representative can be reached for emergencies.
- G. **Operator shall provide to the City as-built drawings, maps of installations, and narrative descriptions of all equipment installed in both CAD and PDF file formats as required by the Planning Department.**
- H. **Operator's installation of Equipment at any Site is subject to the prior approval of the City, in its capacity as owner of the Premises, under a Site Permit, as provided in this Agreement and the applicable Site License. In determining whether to approve Operator's Application to install Equipment at any Site, the City will consider: (a) whether the Premises at which the Equipment will be installed can support the Equipment, if applicable; (b) impacts to the City transit and municipal operations; (c) aesthetic impacts of the Equipment, including but not limited to noise and visual clutter; (d) whether the City intends to utilize the Premises for transit or municipal purposes for the foreseeable future.**



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- I. In reviewing a Site License application, the City will include any and all necessary City Departments, including but not limited to the departments of Planning, Parks, Transit and Municipal Development.
- J. Without the prior written consent of the City, at City's sole discretion, Operator shall not place or install on a Site any Equipment, structure or other improvement the weight of which will exceed the approved load bearing capacity of a Site or the size of which shall exceed the approved wind sheer/load strength of the Site, as those factors are determined by the City and set out in Approved/Permitted plans.
- K. Operator shall not do anything, or permit anything to be done by anyone under Operator's control, in or about the Premises, which would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability by reason of Operator's use of the Premises. Operator, at Operator's expense, shall comply with all reasonable rules, orders, regulations or requirements of City's Director of Municipal Development, Director of Planning and City Engineer.
- L. Operator shall install or cause to be installed at every Site a disconnect device such as a fused linkage, cut-off switch or similar mechanism. The disconnect device must disable and de-energize the Equipment, so that City personnel performing maintenance on the Site may quickly and safely shut down the Equipment. The disconnect device must be clearly identified and easily accessed, and the operation of the cut-off switch must be obvious and intuitive. The City will instruct its Site personnel to use the disconnect device to deactivate the Equipment while performing work in proximity to said Equipment. Operator shall provide the City with information and diagrams describing the use, function and operation of the disconnect device. Operator will make every attempt to keep the disconnect device similar on all Sites.

**IX. Repairs and Maintenance**

- A. In the case of a knock down or any other maintenance of the Site or Equipment at the Premises, City shall have no obligation to replace, rebuild or repair said Site, even if any equipment or street pole at the Site had been donated to City by Operator. If City, in City's sole and absolute discretion, determines to repair or rebuild, City shall give Operator written notice of its determination and its good faith estimate of the amount of time to repair or rebuild. If such repairs or rebuilding cannot be completed within two hundred ten (210) days after the date of such damage or destruction or if City elects not to repair or rebuild as provided above, then Operator shall have the right, at its election, to terminate the applicable Site Permit(s) upon thirty (30) days prior written notice to City. If City, at City's sole discretion, determines not to repair or replace a Site, and upon approved application, Operator may give prior written notice and make application to replace the Site under the existing Permit and Agreement. Operator shall not make any repairs to a light pole, except with the express written authorization of the City. The City shall not be responsible to repair any condition of a Site or light pole where that condition pre-existed Operator's installation of its Equipment and such condition could have otherwise been discovered by Operator through a reasonably diligent inspection of the Premises prior to Operator's submittal of the Site Permit application. Operator shall give the City written notice of the need for any repair to a Site, but Operator's agreement to provide written notice shall in no event be interpreted as an assumption of liability for any life-threatening or hazardous conditions unless Operator would otherwise be responsible for such conditions hereunder.
- B. If a light pole or Site requires repairs or maintenance, City may elect to terminate that portion of the relevant Agreement, and remove that Site/light pole in lieu of making such corrections or repairs. In



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such instance, however, Operator may elect to make an application to replace the light pole. Within 30 days of notice that a light pole will be removed, the Operator may make an application to replace the light pole. If no application is received, then the City may accept any other application from any other wireless provider for that location.

**C. Operator Repairs.**

- (1) Operator shall at its sole expense maintain Operator's Equipment, including but not limited to any device or equipment used to attach or install Operator's Equipment to a Site. Operator shall make all repairs and replacements: (i) at Operator's expense and at such time and, when required hereunder, in such manner as reasonably approved by City; (ii) by duly licensed and bonded contractors or mechanics; (iii) in a manner and using equipment and materials which will not interfere with or impair City's operations; and, (iv) in accordance with any and all applicable laws, rules and regulations of the City or other governmental authorities having jurisdiction over the Premises or Operator's activities.
- (2) Operator shall not be required to seek the City's written approval for any repair, maintenance, replacement or other installations of Equipment beyond the normal compliance with local, state and federal regulations and requirements, in the event that (i) the Equipment in question was previously contained in the Approved Plans, and (ii) the repair, maintenance, replacement or the installation is otherwise reasonably consistent with Approved Plans, taking into consideration availability of the specific Equipment and advancements in technology. Operator hereby waives any right it may have to make repairs at City's expense under any applicable law, statute or ordinance now or hereafter in effect.
- (3) Operator shall give no less than 48-hour notice to City, for any non-emergency repairs, maintenance, replacement, removal or the installation of Equipment. For emergencies, which shall include non-functioning equipment, Operator shall give City no less than 2-hour notice with the nature of the emergency repairs required. Operator is also required to give all other notices and obtain all other permissions for any work done on the Site, including obtaining proper barricade permits, notifying all local utility agencies and obtaining all required utility spotting.
- (4) Operator shall keep the Premises and Site free from any liens arising out of any work performed, material furnished or obligations incurred by or for Operator. Operator shall inform each and every contractor and material supplier that provides any work, service, equipment or material to Operator in any way connected with Operator's use of Site and Premises that the Site and Premises are public property and is not subject to mechanics lien or stop notice. In the event Operator does not, within thirty (30) days following the attempt of any contractor, service provider, equipment or material supplier to impose any such lien, cause said lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Operator upon demand. Operator shall not create, permit or suffer any other encumbrances affecting any portion of the Premises.

- D. Emergency Repairs Identified by the City.** If the City informs the Operator there is an emergency condition with their equipment on a pole, Operator has no more than one (1) hour to respond and



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begin securing the Site. If Operator does not respond within the one hour time limit, or, in the sole determination of the City, it is not practicable to wait for Operator to perform the work or where such delay would cause significant delay to or otherwise compromise public safety or services, the City or its agent may remove the Equipment from the Site, and City may dispose of the Equipment without liability to Operator. The City may hold the Equipment for retrieval by Operator, which may reinstall said Equipment or equivalent at Operator's expense. The City's removal of Operator's Equipment in emergency or exigent circumstances shall not be deemed to be a forcible or unlawful entry into or an interference with Operator's Permit to the Premises. The City will not be liable if the equipment is destroyed or disposed of by City or its agent. the City, at its sole discretion and with no duty to do so, may secure the Site and City shall not be liable in any manner, and Operator hereby waives any claims, for any inconvenience, disturbance, interruption of service, loss of business, nuisance or other damages arising out of City's entry onto the Premises, except damages resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Operator, its Agents or Invitees.

- E. Notwithstanding the forgoing, the City's liability under this Agreement shall in all cases be subject to, and shall not exceed the statutory dollar limits provided in NMSA (1978) Section 41-4-1 et. seq., or the Annual Permit Fee, whichever is less, as it may apply to the City at the time of any occurrence or claim. The provisions of this subsection shall survive the expiration or termination of this License.
- F. The Sites will vary in shapes, size and appearance, with some Sites unique or specific to a neighborhood or area. Should a replacement of the structure or equipment at a Site be necessary and supplied by Operator, Operator shall be required to obtain written City approval of the design of the replacement structure and equipment for the Site, approval of which will not be unreasonably withheld.

**X. Utilities and Site Access**

- A. Operator shall furnish, at its cost, any and all utilities or services necessary or appropriate for Operator's use of the Premises and Site, including but not limited to any power feed and/or separate meters required to operate the Equipment. Operator shall install a utility meter at the Premises. Operator shall be solely responsible directly to the serving utilities for all utilities required for Operator's use of the Premises and Site. Operator agrees to promptly pay for all such utilities. Operator shall not: (a) connect or use any electrical equipment that exceed the capacity of the electrical system available; or (b) connect any apparatus, machine or devise to the electric service except in the manner for which such service is designed, except for such modifications to the Premises as may be shown on the Approved Plans and for any other such modifications that are made at Operator's sole cost and are approved in writing in advance by City. Operator's access or use of conduit and other infrastructure owned by entities other than the City requires approval of those entities.
- B. Notwithstanding the provisions of Section X.A., above, in the event any governmental entity promulgates or revises any statute, ordinance or building, fire or other code or imposes mandatory or voluntary controls or guidelines on City or the Premises or any Site, relating to the use or conservation of energy or electricity, or in the event City is required or elects to make alterations to the Premises or any Site to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Operator to any damages, relieve Operator of the obligation to pay the full Annual Rate and additional charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a





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constructive or other eviction of Operator, provided that Operator can still operate the Premises as intended.

- C. City's Access to the Premises. City and its designated agents shall have the right to enter the Premises and any Site at any time without notice for any purpose.
- D. Emergency Access. If safe and practicable, the City may allow Operator to remove its equipment prior to removing or replacing a Site in an emergency situation or other exigent circumstances. But if, in the sole determination of the City, it is not practicable to wait for Operator to perform the work or where such delay would cause significant delay to or otherwise compromise public safety or services, the City or its agent may remove the Equipment from the Site, and City may dispose of the Equipment without liability to Operator. The City may hold the Equipment for retrieval by Operator, which may reinstall said Equipment or equivalent at Operator's expense on the repaired or replaced Site. The City's removal of Operator's Equipment in emergency or exigent circumstances shall not be deemed to be a forcible or unlawful entry into or an interference with Operator's permit to the Premises or a Default of this Agreement. The City will not be liable if the equipment is destroyed or disposed of by the City or its agents.
- E. No Liability. City shall not be liable in any manner, and Operator hereby waives any claims, for any inconvenience, disturbance, interruption of service, loss of business, nuisance or other damages arising out of City's entry onto the Premises, except damages resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Operator, its Agents or Invitees. Notwithstanding the forgoing, the City's liability under this Agreement shall in all cases be subject to, and shall not exceed the statutory dollar limits provided in NMSA (1978) Section 41-4-1 et. seq., as it may apply to the City at the time of any occurrence or claim. The provisions of this subsection shall survive the expiration or termination of this Agreement.
- F. Operator is not entitled to any abatement of Fees if City exercises any rights reserved in this Agreement.

## **XI. Alterations**

- A. Operator's Alterations. Operator shall not make or permit any alteration to a Site or anything that is part of, installed on, or appurtenant to a Site (collectively, "Existing Site Conditions"), except with the City's prior written consent in each instance which may be withheld in City's sole discretion. All alterations shall be done at Operator's sole expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics, and subject to all other conditions that City may reasonably impose. The City may in its sole discretion repair or replace any Site damaged by Operator's installation or removal of Equipment, and Operator shall reimburse the City its costs for said Site repair or replacement within thirty (30) days of invoice.
- B. Installation of Equipment. Operator shall not deviate from the Equipment installation plans, including but not limited to the type(s) and design of the Equipment to be installed as approved under a Permit without express written authority of the City's Department of Municipal Development, the Real Property Division and the City Planning Department.
- C. Title to Improvements and Removal of Operator's Equipment. Except as otherwise provided in this Agreement, the City has no claim of ownership of Operator's Equipment installed at and affixed to a Site except for any structural improvements to the Site, or a replacement of the Site's structure, as approved by City, and donated to the City, that shall become City's property and remain on the Site should Operator vacate or abandon use of the Site. Operator shall not grant to any vendor of





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installed Equipment or contractor that installs Equipment any security interest or other lien in said Equipment, structural improvements and other equipment affixed to or installed on a Site. Operator may at any time, including any time it vacates a Site (excluding the structural improvements referenced above), remove all of Operator's Equipment from the Site, subject to the provision of Section XVII (Surrender of Premises). Notwithstanding anything to the contrary in this Agreement, City can elect at any time prior to the Expiration Date or anytime after termination of this Agreement to require Operator to remove within sixty (60) days of the Expiration Date or any earlier termination date of this Agreement in accordance with Section XVII (Surrender of Premises) at Operator's sole expense, all or part of any structure improvements to the Site made by City or Operator that were made to provide sufficient support for Operator's Equipment.

- D. CITY'S CONTROL OF SITES. City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to all or any part of a Site or the Premises, for any purpose including but not limited to maintenance or improvement of municipal services, service public and private utilities, City compliance with mandatory regulations or voluntary controls or guidelines, subject to the following terms and conditions. In performing such work, City shall make good faith efforts to give Operator notice of such work and shall make reasonable efforts not to disrupt Operator's normal use of Operator's Equipment on the Site, but the City's authority and ability to make changes to any Site necessary to maintain municipal service needs shall not be impeded or delayed in any way. The making of any such alterations, additions, repairs, deletions or improvements shall in no event entitle Operator to any damages, relieve Operator of the obligation to pay the full Rent and additional charges or to perform each of its other covenants hereunder or constitute or be construed as a constructive termination of this Agreement, provided that Operator can still operate the Operator's Equipment as a Site.
- E. Operator On-Call Representative. Operator shall at all times have a representative assigned on-call and available to the City. The Operator's representative shall be qualified and experienced in the operations of the Equipment, and shall be authorized to act on behalf of the Operator in any emergency and day-to-day operations of the Equipment. The contact information for Operator's representative is listed in Section XI.F. If the City performs maintenance, repair or other activities at a Site that may impair the operation of Operator's Equipment on said Site, the City will attempt to contact Operator at the telephone number printed on the identification plate installed on the Site and provide notice to the Operator using the contact information set forth in this Agreement at least ten (10) days prior to the City's maintenance or repair work, except in the case of emergency maintenance or repair. The City shall not be required to delay repair or maintenance activities pending discussion with or arrival of Operator's on-call representative.
- F. Emergencies. In the event of an emergency, the City's work and needs shall take precedence over any operation of Operator. The parties shall notify each other of any emergency situation at the emergency phone numbers listed below:
  - i. City:
  - ii. Operator:
- G. Access to Site Not Guaranteed. This Agreement does not grant Operator a permanent right of access to any Site other than those specifically covered under a Site License. The City reserves to itself the right in its absolute discretion to terminate a Site Permit prior to its expiration or to terminate all Permits at any time, subject to the provisions of this Agreement.



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- H. Nothing contained in this Agreement shall be construed to require City to construct, retain, extend, place or maintain any Site or other facilities that are not needed for the City municipal operations.
- I. The City reserves the right to remove any Site(s) from service as infrastructure support if the City determines that said Site(s) are unnecessary for municipal service operations. If the City removes a Site from infrastructure support, the City may dismantle, abandon, sell or demolish the Site. The City will assist Operator in locating a replacement Site for installation of Operator's Equipment, subject to the required approvals and permits described in this Agreement

**XII. Restriction on Assignment**

- A. Except as specifically provided herein, Operator shall not directly or indirectly (including, without limitation, by merger, acquisition, or other transfer of any controlling interest in Operator), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet or sublicense any portion of the Premises (which actions are referenced collectively herein as "Assignment") without City's prior written consent. City's consent to an Assignment shall not be unreasonably withheld in each instance, as provided herein below and subject to the exception for certain permitted transfers as provided in Section XII.G. (Permitted Assignment). Notwithstanding anything to the contrary contained in this Agreement, in no event shall Operator have the right to encumber by a mortgage, deed of trust, security agreement, or otherwise, any part of the Premises or City's interest therein.
- B. Notice of Proposed Assignment. If Operator desires to enter into an Assignment of this Agreement or any Site Permit issued hereunder, Operator shall give written notice (a "Notice of Proposed Assignment") to City of its intention to do so. The Notice of Proposed Assignment shall provide in detail the terms and conditions for such proposed Assignment and complete information, including financial statements, business history, and references about the Assignee and such other information about the proposed assignee (collectively, "Assignee") as is reasonably requested by City to make a fully informed decision about consent to Operator's request.
- C. City's Response. City shall make its election to approve or disapprove such assignment within thirty (30) days after City's receipt of the Notice of Proposed Assignment (the "Response Period"). If City approves the proposed assignment in writing, then Operator shall be entitled for a period of one-hundred (100) days following such date to enter into the proposed Assignment. However, the value of any Rent or other consideration realized by Operator under any such Assignment in excess of the Rent and additional charges payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such assignment) shall be paid to City.
- D. Notwithstanding anything to the contrary in this Section XII, if any monetary or other material event of default by Operator is outstanding hereunder at the time of Operator's Notice of Proposed Assignment (or if any event shall have occurred with the giving of notice of the passage of time or both would constitute such a default), then the City may elect by notice to Operator to refuse to consent to Operator's proposed Transfer and pursue any of its right or remedies hereunder or at law or in equity.
- E. Effect of Assignment. No Assignment by Operator nor any consent by City thereto nor any Assignment by Operator permitted hereunder without City's consent shall relieve Operator of any obligation on its part under this Agreement. Any Assignment that is not in compliance with this Section XII shall be void and, at City's option, shall constitute a material default by Operator under this Agreement. The acceptance of any Fees or other payments by City from a proposed Assignee



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shall not constitute consent to such Assignment by City or recognition of any Assignee, or a waiver by City of any failure of Operator or other transferor to comply with this Section.

- F. Assumption by Transferee. Each Assignee shall assume all obligations of Operator under this Agreement and shall be and remain liable jointly and severally with Operator for the payment of the Fees and additional charges, and for the performance of all of the terms, covenants, conditions and agreements herein contained on Operator's part to be performed. No Assignment shall be binding on the City unless Operator or Assignee shall deliver to City evidence satisfactory to City that it has obtained all permits, licenses, or other approvals required to operate as a wireless telecommunications service provider on the Premises, a counterpart of the Assignment (or other documents reasonably satisfactory to the City in the event of an Assignment permitted under Section XII.G. (Permitted Assignment)) and an instrument in recordable form that contains a covenant of assumption by such Assignee satisfactory in substance and form to City, and consistent with the requirements of this Section XII. However, the failure or refusal of such Assignee to execute such instrument of assumption shall not release such Assignee from its liability as set forth above. Except for a permitted Assignment as provided in Section XII.G., Operator shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Assignee and legal costs incurred in connection with the granting of any requested consent.
- G. Permitted Assignment. Notwithstanding any provision in this Agreement to the contrary, this Agreement may be sold, assigned or transferred by the Operator without any approval or consent of the City to the Operator's principal, parent, affiliates, subsidiary, subsidiaries of its principal or to any entity which acquires all or substantially all of Operator's assets in the market defined by the Federal Communications Commission in which the Premises are located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the City, which such consent will not be unreasonably withheld or delayed. No change of stock ownership, partnership interest or control of Operator or transfer upon partnership or corporate dissolution of Operator shall constitute an assignment hereunder.
- H. Third-party Carrier Customer. Notwithstanding anything in this Agreement to the contrary, certain Equipment deployed by Operator on Sites pursuant to this Agreement may be owned and/or operated by Operator's third-party carrier customers ("Carriers") and installed and maintained by Operator pursuant to license agreements between Operator and such Carriers. Such Equipment shall be treated as Operator's Equipment for all purposes under this Agreement provided that (i) Operator remains responsible and liable for all performance obligations under the Agreement with respect to such Equipment; (ii) City's sole point of contact regarding such Equipment shall be Operator; and (iii) Operator shall have the right to remove and relocate the Equipment.

### **XIII. Default**

- A. Events of Default. Any of the following shall constitute an event of default by Operator of this Agreement:
  - (1) Any failure to pay any Fees or additional charges as and when due, provided Operator shall have a period of thirty (30) calendar days from the date of written notice from City within which to cure any default in the payment of Rent; provided, however, that City shall not be required to provide such notice regarding Operator's failure to make such payments when due more than twice during the term of this Agreement, and any such failure by Operator



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after Operator has received two such notices from City shall constitute a default by Operator hereunder of the applicable Site for which Fees was not paid without any requirement on the part of City to give Operator further notice prior to removing Operator's Equipment and making Site(s) permitted to Operator available to be permitted by other parties.

- (2) Any failure to perform or comply with any other covenant, condition or representation made under this Agreement, provided Operator shall have a period of thirty (30) days from the date of written notice from City within which to cure such default under this Agreement, or, if such default is not capable of cure within such thirty (30)-day period, Operator shall have a reasonable period to complete such cure if Operator promptly undertakes action to cure such default within such thirty (30)-day period and thereafter diligently prosecutes the same to completion and Operator uses its best efforts to complete such cure with sixty (60) days after written notice of default from City;
  - (3) Any vacation or abandonment of the Premises for more than sixty (60) days such that the Premises are no longer being used for the purposes set forth in Section II; and,
  - (4) The appointment of a receiver due to Operator's insolvency to take possession of all or substantially all of the assets of Operator, or an assignment by Operator for the benefit of creditors, or any action taken or suffered by Operator under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.
- B. Remedies. Upon the occurrence of an event of default by Operator which is not cured by Operator within the applicable grace period, if any, specified in Section XIII.A. (Events of Default), City may terminate any Site Permit for which Operator is in default or, if said Operator's default is of such serious nature that it materially affects the purpose of this Agreement, the City may terminate this Agreement in whole or in part, in addition to all other rights and remedies available to City at law or in equity.

#### **XIV. Indemnification**

- A. Operator, on behalf of itself and its successors and assigns, shall indemnify defend and hold harmless ("Indemnify") City, its Agents and Invitees, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from:
- (1) Injury to or death of a person, including, without limitation, employees of Operator, or loss of or damage to property, occurring on or about the Premises and arising in connection with Operator's use of the Premises under this Agreement;
  - (2) Any default by Operator in the observation or performance of any of the terms, covenants or conditions of this Agreement to be observed or performed on Operator's part;
  - (3) The use or occupancy or manner of use or occupancy of the Premises by Operator, its Agents, or Invitees or any person or entity claiming through or under any of them;
  - (4) The condition of the Premises or any occurrence on the Premises from any cause attributable to the events described in clauses (1), (2), or (3) of this Section XIV; or,
  - (5) Any acts, omissions or negligence of Operator, its Agents or Invitees, in, on or about the Premises; all regardless of the negligence of, and regardless of whether liability without fault



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is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and further except to the extent such Claim is caused by the willful misconduct or active negligence of the City. The foregoing indemnity provisions shall cover claims and actions incurred in connection with or arising in whole or in part from the presence of or exposure of RFs or EMFs resulting from Operator's use of the Premises. The foregoing Indemnity shall also include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Operator specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such Claim is tendered to Operator by City and continues at all times thereafter. Operator's obligations under this Section XIV shall survive the termination of the Agreement.

**XV. Insurance**

- A. Operator shall procure and keep in effect at all times during the Term, at Operator's cost, insurance in the following amounts and coverages:
  - (1) Commercial General Liability insurance (including, but not limited to, premises-operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least Five Million Dollars (\$5,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) in the aggregate.
  - (2) Worker's Compensation Insurance with statutory limits and Employer's Liability coverage with limits not less than One Million Dollars (\$1,000,000.00) each accident or disease. The Workers' Compensation policy must be endorsed to include a waiver of subrogation in favor of the City, its councilors, officers, agents and employees..
  - (3) Commercial Automobile Liability Insurance with limit not less than Five Million Dollars (\$5,000,000.00) each accident combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles.
- B. The insurance limits required herein may be satisfied by a combination of primary, umbrella, and/or excess liability insurance policies.
- C. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to provide the following:
  - (1) Name as additional insured the City, its councilors, officers, agents and employees.
  - (2) That such policies are primary insurance, non-contributory, to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insured which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.
- D. All insurance policies required to be maintained by Operator hereunder shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or



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reduction in coverage to both Operator and City. Notice to City shall be mailed to: Director, Risk Management Department, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103 with a copy to Manager, Real Property Division, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico, 87103.

- E. Operator agrees to waive subrogation with respect to the insurance policies required under this Agreement. When required by an insurer, or if a policy condition does not permit Operator to enter into a pre-loss agreement to waive subrogation without an endorsement, Operator agrees to notify its insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition which expressly prohibits waiver of subrogation by the insured or which voids coverage should the Operator enter into a waiver of subrogation on a pre-loss basis. Operator shall promptly notify the City of any such express prohibition or condition in any applicable policy which may void coverage. Upon request by the City, Operator shall provide a copy of any such policy which voids coverage.
- F. Should any of the required insurance be provided under a claims-made form, the following shall apply:
  - (1) The retroactive coverage date shall be shown which shall be prior to the beginning of Operator's operations and/or performance under this Agreement;
  - (2) Insurance must be maintained and Certificates of Insurance must be provided for at least three (3) years after expiration or termination of this Agreement;
  - (3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Operator's operations or performance of services under this Agreement, Operator shall purchase an extended reporting period for a minimum of three(3) years after the expiration or termination of this Agreement.
- G. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be include in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.
- H. Operator shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverage required hereunder, with the Permit and Agreement to the City for City consideration, together with complete copies of the policies promptly upon City's request, and Operator shall provide City with certificates or policies thereafter annually for the term of the Permit and promptly upon City's request.
- I. Operator shall be responsible, at its expense, for separately insuring Operator's Property.
- J. Operator's compliance with the provisions of this Section XV shall in no way relieve or decrease Operator's liability under Section XIV (Indemnification), or any other provision of this Agreement.
- K. Notwithstanding anything to the contrary in this Agreement, City may elect, in City's sole and absolute discretion, to terminate this Agreement if Operator allows any required insurance coverage to lapse by: (i) providing Operator written notice of such lapse; and (ii) immediately providing written notice of termination if Operator fails to reinstate the lapsed coverage within three (3) business days of City's notice of such default.
- L. Operator shall carry its insurance with a good and solvent insurance company or companies, acceptable to City, rated A-VII or better by A.M. Best, and licensed to do business in New Mexico.
- M. Operator agrees to deliver certificates of its insurance on a standard ACORD form to City as soon as practicable after the placing of the required insurance and periodically thereafter, but no less than at the time of application of this Agreement and then annually.





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- N. A certificate of insurance that states that the failure to give the City notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For example, certificates or policies stating that the insurance company shall “endeavor to notify” and that the “failure to give such notice imposes no obligation” on the insurance company are not in compliance with the insurance requirement of this Lease. All certificates of insurance shall provide that thirty (30)-days written notice be given to the Director, Risk Management Department, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103, with copies to Real Property Manager, Planning Department, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103, before a policy is canceled, materially changed or not renewed.
- O. All insurance must be in effect before City will authorize Operator to install Equipment on any Site and shall remain in force until such Equipment has been removed from all Sites. Operator is responsibility for determining whether the above minimum insurance coverages are adequate to protect its interest. The above minimum coverages shall not constitute limitations upon Operator’s liability.
- P. The insurance requirements under this Agreement shall be the greater of (1) the minimum limits and coverage specified in this Section XV, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits. No representation is made that the minimum insurance requirements stated hereinabove are sufficient to cover the obligations of Operator under this Agreement.
- Q. Operator may propose and the City may accept an alternative insurance program, if that program provides equivalent protections to the City as the insurance requirements set out in this Section XV, which shall be determined by the City in its sole and exclusive discretion. The City’s acceptance of an alternate insurance program shall not effect an implied waiver or amendment of any requirement of this Agreement. Any amendment of these insurance requirements must be set out in writing as an Addendum and Modification of this Agreement, executed in the same manner as this Agreement.
- R. Operator shall require that its contractors that install, maintain, repair, replace or otherwise perform work on the Premises have and maintain insurance of the same coverage and amounts as required therein of Operator.
- S. The provisions of this Section XV shall survive the expiration or earlier termination of this Agreement for at least three years from the removal of the last remaining Site installed Equipment.

**XVI. Limitation of City’s Liability**

- A. Limitation on City’s Liability. City shall not be responsible for or liable to Operator and Operator’s agents and Operator hereby waives all Claims against City and its Agents and releases City and City’s Agents from all Claims for any injury, loss or damages to any person or property (including the Equipment) in or about the Premises by or from any cause whatsoever (other than to the extent caused to third parties from personal injury or property damages that occurs in the Premises caused by the intentional misuse or neglect, by City or City’s employees, agents and invitees), including without limitation, acts or omissions of persons using the sidewalks or right of way, streets adjoining or adjacent to or connected with the Premises; theft; burst, stopped or leaking water, gas, sewer, or steam pipes; or gas, fire, oil or electricity in, flood, or vehicle collision, on or about the Premises. Notwithstanding the forgoing, the City’s liability under this License shall in all cases be subject to, and shall not exceed the statutory dollar limits provided in NMSA (1978) Section 41-4-1 et. seq., as it may





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apply to the City at the time of any occurrence or Claim. The provisions of this subsection shall survive the expiration or termination of this Agreement.

- B. Consequential Damages. Operator expressly acknowledges and agrees that the Fees payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising from the disruption to Operator Use and Equipment. City would not be willing to enter into this Agreement in the absence of a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages due to the acts or omissions of City or its Agents, and Operator expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Operator or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Operator fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits) arising out of this Agreement, including, without limitation, any interference with uses conducted by Operator pursuant to this Agreement, regardless of the cause, and whether or not due to the active or passive negligence or willful misconduct of City or its Agents, and covenants not to sue for such damages City, its departments, council, officers, directors and employees, and all persons acting by, through or under each of them.

## **XVII. Surrender of Premises**

- A. Upon the Expiration Date or other termination of this Agreement or any individual Site Permit, Operator shall peaceably remove its Equipment from Sites, quit and surrender to City the Premises in good order and condition, normal wear and tear excepted, free of debris and hazards, after having made the last necessary repair required by Operator under this Section XVII (and damage caused by casualty or condemnation excepted). The Premises shall be surrendered free and clear of all liens and encumbrances.
- B. Operator shall, immediately before the Expiration Date or other termination of this Agreement, remove all of Operator's Equipment and repair any damage resulting from the removal. Operator's obligations under this Section XVII shall survive the Expiration Date or other termination of this Agreement. Any items of Operator's Equipment that remains on a Site or otherwise on the Premises after the Expiration Date of this Agreement may, at the option of the City, be deemed abandoned and in such case may be disposed of by City in any lawful manner after the City has issued a 60-day notice to Operator to remove the Equipment. Any cost associated with the City's removal of Operator's equipment shall be reimbursed to the City by Operator within 30 days from the City's invoice being sent to Operator.

## **XVIII. Special Provisions**

- A. City shall use its reasonable good faith efforts to conduct any activities on the Premises in a manner that, to the extent practicable, will minimize any disruption to Operator's use hereunder.
- B. Operator shall faithfully comply with any and all reasonable rules, regulations and instructions, written or oral which may be established by the City during the Term of this Agreement in its capacity as a municipal government with respect to use of any part of the Premises.
- C. Operator's Right to Terminate. In the event Operator fails to obtain or loses its permits necessary to install or operate its Equipment on any Site associated with this Agreement for which it submitted applications due to reasons other than its failure to comply with the conditions of the permit and in spite of reasonable efforts by Operator to obtain or maintain said permits, Operator may terminate



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this Agreement with ninety (90) days' prior written notice to City, and upon the effective date of such termination, Fees shall no longer be owed.

- D. Abandonment. Should Operator abandon the Equipment installed on a Site or Sites before the natural expiration of the terms of the applicable Site Permit(s) (or if the Equipment on all Sites be deemed abandoned, then this Agreement), the City may continue this Agreement and applicable Site Permit(s) in effect by not removing Operator's Equipment, in which event the City shall be entitled to enforce all of City's rights and remedies under this Agreement, including the right to recover all Fees as it becomes due under this Agreement and/or applicable Site Permit(s). In the event that Operator abandons its Equipment for a continuous period of sixty days, the City may in its discretion provide Operator 30 days' notice, and then remove the Equipment; upon the City's removal of the abandoned Equipment, this Agreement and all Site Permit(s) issued thereunder shall terminate. Failure to pay annual Fees for a period of 90 days after it is due shall constitute abandonment.
- E. City's Right to Terminate. City shall have the right to terminate any or all Site Permit (s) or require that Operator relocate Equipment from a particular Site without penalty upon thirty (30) days' written notice to Operator if, after notice and a reasonable time, (not to exceed sixty (60) days) for Operator to effect a remedy (cure), the Director of Municipal Development Department (or her or his designee) determines that Operator's continued use of a Site or Sites will adversely affect or pose a threat to public health and safety, constitutes a public nuisance, interferes with City services or would require the City to maintain a Site that is no longer required for the City. The foregoing notice requirements notwithstanding, the City may in its sole discretion determine that exigent circumstances exist that require, for reasons of public, health, safety, or needs of the City, and require that Operator immediately remove the Equipment from a particular Site. Within forty-eight (48) hours (or other time agreed by City) of receipt of such notice, Operator shall remove the Equipment from the identified Site.
- F. Operator's Obligation Not to Cause Interference. Operator will not permit its Equipment or its use of the Premises of any Site(s) as a Communications Site to cause interference with or impairment of other communication (radio, telephone and other communications transmission and/or reception) or computer equipment lawfully used by any person, including but not limited to the City or any of its Agents. Such interference shall be deemed an event of default of this Agreement by Operator, and upon notice from City, the Operator shall be responsible for eliminating such interference at no cost to the City. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, City shall have the right to bring action to enjoin such interference or to terminate the Site Permit for the site of the interference where the Equipment is causing said interference or impairment immediately upon notice, at City's election. The City and Operator shall use the best reasonable efforts to remedy and cure such interference without impairment of City operations, but Operator's operation of its Equipment shall at all times be subordinate to and shall accommodate the requirement of City communications and operations. In addition, Operator shall not in its installation or operation of Equipment on City Sites, interfere with City's intended use of the Sites.
- G. Operator agrees that no diminution of light, air or signal transmission by any structure that may hereafter be erected (whether or not by City) shall entitle Operator to any reduction of Fees or additional charges under this Agreement, result in any liability of the City to Operator, or in any other way affect this Agreement or Operator's obligations hereunder.



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**XIX. Miscellaneous**

- A. Termination of this Agreement shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Agreement, nor shall it affect any provision of the Agreement that expressly states it shall survive termination hereof.
- B. The Operator and any of its contractors shall comply with all federal, state, and local laws, ordinances, regulations, and rules and will not discriminate illegally against any person. The Operator's attention is specifically drawn to 62-14-1 et seq. NMSA (1978 Comp., 1984 Repl. Pamphlet) regarding excavating damage pipelines and underground utility lines.
- C. Construction and Severability. If any part of this Agreement becomes invalid or unenforceable, the remainder of this Agreement will remain valid and enforceable if the remainder of the Agreement is reasonably capable of completion, provided that the remainder of the Agreement does not materially prejudice either the City or the Operator in its respective rights and obligations contained in the valid covenants, conditions or provision of this Agreement.
- D. Every notice given under this Agreement will be effective only if it is in writing and delivered (a) in person, (b) by courier, (c) by reputable overnight courier guaranteeing next business day delivery, or (d) sent postage prepaid by United States certified mail, return receipt requested, directed to the other party at its address provided below, or such other address as either party may designate by notice given from time to time in accordance with this Subsection E. Notices will be effective (i) in the case of personal or courier, on the date of delivery or refusal to accept delivery, (ii) if by overnight courier, one (1) business day after the deposit of the notice with all delivery charges prepaid, and (iii) in the case of certified mail, the earlier of the date receipt is acknowledged or refused on the return receipt for such notice or three (3) business days after the date of posting by the United States Post Office. The notice addresses for Operator and City are as follows:

For Operator:

For City:

Planning Director  
Planning Department  
600 2nd St. NW  
Albuquerque, NM 87102

Copies of any notices to the City must also be given to:

City of Albuquerque  
Real Property Division  
P.O. Box 1293  
Albuquerque, NM 87103

City of Albuquerque  
Chief Administrative Officer  
One Civic Plaza NW  
P.O. Box 1293  
Albuquerque, NM 87103



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- E. Conflict of Interest. Upon execution of this Agreement, or within five (5) days following the acquisition of any interest in this Agreement during the term of this Agreement, Operator shall disclose in writing to City whether any City Councilor, officer or employee of City has acquired or hereafter acquires any direct, indirect, legal or beneficial interest in Operator or in any contract, lease, license, or agreement between City and Operator, or in any franchise, concession, right or privilege of any nature granted by City to Operator in this Agreement or otherwise.
- F. Fair Dealing. Operator covenants and warrants that the only entity interested in this Agreement is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Operator without collusion on the part of Operator with any person or firm, without fraud and in good faith. Operator also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Operator, will be, offered or given by Operator or any agent or representative of Operator to any officer or employee of City with a view towards securing this Operator or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.
- G. Board of Ethics and Campaign Practices. Operator agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Agreement whenever such records or information are within Operator's custody, are germane to an investigation authorized by the Board, and are requested by the Board. Operator further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. If required by applicable law, Operator agrees to require that all subcontractors employed by Operator for services performed for this Agreement shall agree to comply with the provisions of this subsection G. Operator and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this Subsection G.
- H. Discrimination prohibited. In the operation and use of the City right-of-way, the Operator shall not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age discriminate or discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Operator shall not discriminate against any employee or Operator for employment because of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental disability. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and disciplinary actions and grievances. The Operator agrees to post in conspicuous places available to employees, and Operators for employment, notice setting forth the provisions of this non-discrimination clause.
- I. Audits and Inspections. Operator understand and will abide by all provisions of the Accountability In Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994.
- J. Government Powers. Subject to state and federal law, nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, impairing or defining governmental rights or the police powers of the City or waiving any rights of ownership enjoyed by the City in the right of way or waiving or limiting the City's control over the management, operation or maintenance of the right of



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way, except as specifically provided in this Agreement. The provisions of this Subsection J shall survive the expiration or termination of this Permit

- K. Choice of Law, Venue. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New Mexico without reference to its conflict of law principles. The parties agree that jurisdiction for any suit, action, or proceeding arising out of this Agreement will be in Bernalillo County, New Mexico. The parties further acknowledge that they have fully and fairly bargained for the terms of this Subsection L. The provisions of this Subsection L shall survive the expiration or termination of this Agreement.
- L. Exhibits. All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Agreement are hereby incorporated into this Agreement by reference and are made part hereof as though set forth in full in this Agreement to the extent they are consistent with the terms and conditions of this Agreement.
- M. No Waiver. The waiver by City of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver thereof on any subsequent occasion. City shall not be deemed to have waived any term, covenant, or condition of this Agreement unless City has signed a written waiver waiving the term, covenant, or condition.
- N. Attorneys' Fees. If either party to this Agreement institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Agreement, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each party shall be responsible for its own attorneys' fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.
- O. Utilities. At all times, Operator shall be responsible to provide Operator's utilities for any and all Equipment in the right of way.
- P. Further Actions. At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purpose of this Agreement.
- Q. Counterparts. The Agreement may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one agreement, but in the making of proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.
- R. Public Document. City is a municipal corporation under the laws of the State of New Mexico. City and Operator acknowledge that this Agreement is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a "public record" within the meaning of said Act.
- S. Representation. Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this Agreement. Accordingly, each party hereto represents to the other that it has read and understood the terms of this Agreement, and the consequences of executing this Agreement and that except as expressly set forth herein, no representations have been made by either party to induce the other party to execute this Agreement.
- T. The person signing this Agreement on behalf of Operator warrants and represents that Operator is a duly authorized and existing entity, that the Operator is qualified to do business in New Mexico, that the person signing has the full right, power and capacity to execute said instrument(s) on behalf of



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Operator and has the authority to bind Operator to the performance of its obligations under said instrument(s) without the subsequent approval or consent of any other person or entity. The person signing this Agreement has provided City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties.

- U. Approval Required. This Agreement shall not become effective or binding until approved and signed by the City Planning Director or his/her designee.
- V. This Agreement, including the exhibits hereto, which are made a part of this Agreement, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are superseded. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement. Operator hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Agreement except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Operator by implication or otherwise unless expressly set for herein.

IN WITNESS WHEREOF, THE OPERATOR HERETO HAS SIGNED THIS AGREEMENT AS OF THE DATE indicated by Operator's signature, and the Agreement is effective after approval and signature of the the Director of Planning or his/her designee. The Operator agrees to all of the above provisions and certifies that all information provided to the City in this Agreement and any accompanying documents is true, complete, and correct to the best of Operator's knowledge.

\_\_\_\_\_  
Signature, Operator's Representative

\_\_\_\_\_  
Signature, City

\_\_\_\_\_  
Printed Name, Operator's Representative  
Title: \_\_\_\_\_

\_\_\_\_\_  
Printed Name, City

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date