

MASTER LEASE AGREEMENT

BETWEEN: CITY OF EUGENE "City"
an Oregon municipal corporation

AND: _____ "Lessee"
[name and description]

RECITALS

- A. City owns and/or manages and maintains public rights-of-way within the city limits of Eugene, Oregon. City also owns, manages and maintains certain facilities within such rights-of-way, including traffic signal poles and street light poles.
- B. Lessee is a telecommunications services provider and wishes to lease space on City owned poles to locate its small cell and/or distributed antenna systems (DAS) technology, which will facilitate the provision of Lessee’s mobile device telecommunications services.

[OR]

- B. Lessee is a telecommunications infrastructure company that builds and operates telecommunications networks and infrastructure for telecommunications services providers with whom Lessee contracts. Lessee wishes to lease space on City owned poles to locate Lessee’s small cell and/or distributed antenna systems (DAS) technology, which will facilitate the provision of mobile device telecommunications services by telecommunications services providers with whom Lessee contracts.
- C. City is willing to lease space on certain city owned poles to Lessee on the terms and conditions set forth in this Agreement.

AGREEMENT

1. Definitions.

- a. "Permit Application" means the City’s Utility Public Way Use Permit Application form, which Lessee shall use to fully describe each proposed Pole and location Lessee wishes to lease, as well as the specific Facility Lessee proposes to locate on the Pole. Lessee shall provide with each Permit Application, drawings of each Pole and the Facilities Lessee proposes to place on or about that Pole.

- b. "Approved Permit" means the permit City will issue if, after reviewing Lessee's Permit Application and drawings, City determines that Lessee's proposed use of such Pole to locate Lessee's Facilities is acceptable and in compliance with the terms and conditions of this Agreement.
- c. "Accessory Equipment" means any equipment other than an Antenna that is used in conjunction with Small Cell Wireless Facility arrangements. This equipment may be attached to or detached from a Small Cell Wireless Support Structure, and includes, but, is not limited to, cabinets, optical converters, power amplifiers, radios, multiplexers, microcells, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment on or in the immediate vicinity of a Support Structure. Accessory Equipment does not include a Support Structure.
- d. "Antenna" means communications equipment that transmits or receives electromagnetic radio signals, is attached to a Small Cell Technology Wireless Support Structure and is used to provide Wireless Communications Service.
- e. "Hazardous Substance" means any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any applicable federal, state, or local laws, regulations or rules, and amendments thereof.
- f. "Pole" means any City-owned traffic signal pole, street light pole or similar structure. "Pole" does not include, and this Agreement shall not apply to, utility poles owned by Eugene Water and Electric Board or by any other public utility.
- g. "Site" means each specific physical location or Pole which City agrees to lease to Lessee to locate its Facilities.
- h. "Small Cell Wireless Facility(ies)" or "Facilities", whether singular or plural, means and includes the following types of structures: (a) Antenna; and (b) associated Accessory Equipment. Facilities must meet both of the following qualifications: (i) each Antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other Accessory Equipment associated with the Facility that is installed on a Pole shall not exceed 10 cubic feet in volume, inclusive of the Antenna.
- i. "Small Cell Wireless Support Structure" or "Support Structure", whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, Small Cell Wireless Facilities, including, but not limited

to, Poles, utility poles, enclosed or open areas of a building or accessory structure, or a sign or a flag pole, that is located solely in the rights-of-way.

- j. "Stealth Technology" means a method(s) of concealing or minimizing the visual impact of a Small Cell Wireless Facility and Support Structure by incorporating features or design elements which either totally or partially conceal such Facilities. The use of these features or design elements is intended to produce the result of having the Facilities and associated structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the Facilities are an architectural component of the Support Structure.
- k. "Wireless Communications Services" means communications services made available to subscribers through wireless communications facilities, including any FCC licensed or unlicensed radio communications services, whether used for transmission or reception of voice, video, or data, including, wireless fidelity ("WiFi") and personal wireless services as defined by the Communications Act, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed. The term does not include broadcast radio or television services.

2. Master Lease; Site-Specific Permit Application and Approved Permit.

- a. This Agreement sets forth the general terms and conditions upon which City agrees to lease to Lessee, and Lessee agrees to lease from City, designated space on City's Poles. This Agreement does not apply to, and does not grant Lessee any right:
 - i. to install, operate or maintain Facilities or any other equipment in the City's rights-of-way;
 - ii. to access, or attach Facilities to, the utility poles of the Eugene Water and Electric Board or of any other entity with poles in the rights-of-way;
 - iii. to access, install, operate or maintain Facilities on any City property other than City Poles;
 - iv. to install, operate or maintain any Accessory Equipment in the rights-of-way that is not attached to a Pole; or
 - v. to install, erect, operate or maintain any Support Structure.

To the extent Lessee seeks , or needs, any of these rights to install its Facilities pursuant to this Agreement, those rights must be secured through separate agreements with the appropriate party.

- b. Each particular Site shall be described in the Permit Application, which Lessee must complete and submit to the City for each Pole it proposes to lease. The Application must fully describe the Facilities that Lessee proposes to place on that Pole. Permit Applications shall be submitted to City's Surface Maintenance Right-of-Way Supervisor or to the following email address:
PWMUtilityPermits@ci.eugene.or.us.
- c. For each Permit Application, Lessee must provide:
 - i. A structural analysis stamped by a civil engineer registered in the state or Oregon stating whether the Pole and Pole foundation have the structural capacity to support the Facilities proposed to be placed on it
 - ii. Engineered Radio Frequency report that shows emissions from the proposed Facilities will be within FCC approved guidelines.
 - iii. Propagation map showing coverage of wireless installation.
 - iv. A statement accurately setting forth the physical dimensions of the proposed Facilities and the Stealth Technology that will be used.
 - v. An accurate photo simulation depicting how (A) the Pole currently looks before the proposed Facilities are installed, and (B) the Pole would appear after the proposed Facilities are installed.
- d. City staff, including but not limited to permit staff, Utility Coordinator, Traffic Electrician, and Traffic Engineer will review the Permit Application for completeness, viability of pole for the proposed Facilities, structural compatibility, compliance with terms and conditions of this Agreement, etc. City staff shall track their time and costs incurred during such review.
- e. If, after City reviews a Permit Application, City determines that the Lessee's proposed use of a particular Pole to locate Lessee's Facilities is acceptable and in compliance with the terms and conditions of this Agreement, City may issue an Approved Permit for the particular Site. An Approved Permit may contain such conditions as the City determines are needed to fulfill the requirements of applicable City law and the terms and conditions of this Agreement. However, nothing in this Agreement shall be construed to obligate City to approve any Permit Application unless City, in its sole discretion, determines that Lessee has demonstrated that the particular Pole has sufficient and suitable capacity available, and can meet all applicable safety, reliability, Stealth Technology and engineering considerations for the Pole and the proposed Facilities, and will not interfere with City's own use of the Pole.

- f. Approved Permits shall be valid for 180 days, and may be extended for one additional period of up to 180 days. If the Facilities are not placed on the Pole as described in the Approved Permit within that time period, the Lessee must submit a new Permit Application and receive a new Approved Permit for that particular Site or Pole.
- g. The lease of each Site is governed by the terms and conditions of this Agreement and conditions set forth in the applicable Approved Permit. If there is a conflict or inconsistency between this Agreement and the Approved Permit, the provisions of the Approved Permit will govern.
- h. Approved Permits that the City has issued to Lessee are attached to this Agreement as Exhibit A. Any Approved Permits that are issued subsequent to the execution of this Agreement shall be appended to Exhibit A through an amendment to the Agreement.
- i. Lessee's use of City's Poles is limited only to placing Lessee's Facilities on such Poles to facilitate the provision of Wireless Communications Services, and to operating, maintaining, monitoring, and repairing such Facilities.
- j. Lessee's rights under this Agreement are not exclusive. City may grant rights to use any portion of its Poles to any other party, for any purpose, including uses in direct competition with Lessee, provided that no such use will interfere with Lessee's rights to use the Poles for the purposes permitted under this Agreement and any applicable Approved Permit.

3. City's Representations and Obligations.

- a. City represents that it has the right to enter into this Agreement, to grant Lessee the rights described herein, and to perform its obligations described herein.
- b. City will evaluate all Permit Applications, from Lessee and all other applicants, on a first-come, first-served basis.
- c. Unless an emergency situation precludes advance notice as provided in Section 6, City shall provide notice to Lessee prior to de-energizing Lessee's Facilities.

4. Lessee's Representations and Obligations.

- a. Lessee represents that it has the right to enter into this Agreement and to perform its obligations described herein.
- b. Lessee represents and warrants that it has obtained, and will maintain throughout the term of this Agreement, all governmental licenses,

authorizations, and permits required from any federal, state or other governmental entity to install and operate the Facilities and to provide Wireless Communications Services over those Facilities.

- c. Lessee must demonstrate compliance with City's Telecommunications Ordinance 20083 by completing a Registration application and, when appropriate, ensure Lessee has received City approval for long-term use of the public rights-of-way, including City approval of a license fee waiver under Eugene Code 3.410(5), if applicable, prior to submitting a Permit Application or other application for a City permit to work within City rights-of-way, and before this Agreement is executed.
- d. Lessee shall pay City for the costs incurred by City in reviewing Lessee's Permit Applications (the review process is described in Subsection 2.d.), including but not limited to city staff time. City shall periodically invoice Lessee for such costs and Lessee shall promptly pay such invoice, remitting payment as instructed on the invoice.
- e. Lessee shall be solely responsible for placing, maintaining, and promptly repairing all Facilities placed on City Poles under this Agreement and applicable Approved Permits. Lessee shall be solely responsible for its costs incurred in performing under this Agreement.
- f. Prior to placing, maintaining, or repairing Facilities, or any such work that occurs within City rights-of-way, Lessee shall obtain all necessary permits or other authorizations from the proper authorities, including Utility Public Way Use Permits from City.
- g. Except as provided in Section 5 below, Lessee shall provide written notice to City prior to placing, maintaining, or repairing Lessee's Facilities. Such notice shall be provided, no later than 48 hours prior to beginning such work, to City via email at PWMUtilityPermits@ci.eugene.or.us, attn: Brian Siria.
- h. Lessee shall provide a power shut off mechanism on each Pole where Facilities are placed so that City staff can power down the Facilities when performing maintenance to the Pole and associated City equipment where the Facilities are located.
- i. Lessee shall provide contact information for Lessee in the event City staff needs to de-energize the Facilities.
- j. Lessee shall maintain City Sites and Poles and Lessee's Facilities in a safe and clean condition and shall be responsible for maintaining all portions of the Pole except for equipment not owned or used by Lessee. Lessee shall repair and restore all damage to or destruction of the Site or Pole (whether caused by

vandalism, casualty, defect, natural process or neglect). Nothing in this paragraph shall be deemed to prevent Lessee from seeking indemnity from any person responsible for such damage or destruction.

- k. Lessee may not bring or permit any Hazardous Substance to be brought onto City Sites or Poles.
- l. Lessee shall be responsible for providing power and communications to each Site or Pole on which Lessee's Facilities are located. Lessee shall be solely responsible for the costs incurred in providing for such power and communications for Lessee's Facilities.
- m. Lessee shall keep the Site or Pole free and clear of any and all liens or encumbrances imposed or threatened to be imposed on them by reason of any contract, act, or omission by Lessee.
- n. Lessee shall allow the City, on reasonable prior notice, to inspect the books and records of Lessee, insofar as germane to the provisions of this Agreement and applicable Approved Permits, including documentation of the Lessee's uses of the City's Sites and Poles.
- o. If Lessee is a telecommunications infrastructure company, Lessee agrees, upon request of City, to promptly provide City copies of relevant documents, including contracts with telecommunications services providers with whom Lessee contracts and that use Lessee's Facilities located on City Poles.
- p. Promptly, and no later than 30 days after expiration or termination of this Agreement, Lessee shall remove all of its Facilities from City Poles and restore Poles to substantially the same condition that existed prior to the execution of this Agreement. If Lessee fails to promptly remove its Facilities, City may itself remove, or cause to have removed, the Facilities, and Lessee shall promptly and fully reimburse City for such costs incurred by City.
- q. Lessee shall provide the City, upon request, information regarding all communications services providers or other users of the Facilities located on the City's Poles, including copies of Lessee's contractual agreements with such providers and users.

5. Interference.

- a. Lessee shall not, nor shall it allow its employees, invitees, contractors or agents to engage in any activity on or about the Site or Pole that interferes with the access or use of the Site or Pole by City, a service provider, or other lessees of the City, or the public.

- b. If City believes Lessee's Facilities to be causing RF or ground interference with City's use of a Site or Pole, or the use of such Site or Pole by City's other permitted lessees, City shall notify Lessee in writing of the interference. Lessee shall discontinue use of the Facilities or cease any other activities causing such interference, within the time period set forth in the notice, and then may choose to modify or take action, at the Lessee's sole expense, as is authorized by City and necessary to correct existing and prevent future interference. Such plans shall be submitted to City a minimum of thirty (30) days prior to commencing such work. City shall not unreasonably withhold or delay its review of such plans and shall cooperate in a reasonable manner for a reasonable period of time to resolve any type of interference, provided such cooperation shall not include any solution that materially interferes with City's or existing lessees' use of the Site. If Lessee is unable to eliminate any such interference in a reasonable period of time to the satisfaction of City, City may terminate the applicable Approved Permit.

6. Emergency Work. If circumstances occur, or threaten to occur, from which either City or Lessee may reasonably conclude that significant damage is likely to occur to the Site, Pole, Facilities, or other equipment of either party, or of another person authorized by the City to use the Site, or of any other person, or that a substantial threat to life or public safety will exist before agents of the other party can be advised or respond, then the acting party, without notice, may repair, maintain, de-energize, disconnect, or dismantle any or all of Lessee's Facilities, and take any action that reasonably appears necessary with respect to the Facilities, without any liability for any damage that such action may cause, provided that the acting party has used due care and commonly accepted engineering practices. The acting party must notify the other party as soon as reasonably possible of any work performed under the provisions of this section.

7. Relocation. If City determines that removal of Lessee's Facilities from the Site or Pole is required by law or by the public interest, City shall have the right upon 30 days' written notice to require Lessee to relocate the Facilities to a new Site or Pole, under the following conditions:

- a. Lessee shall work in good faith with City to identify a substitute Site or Pole ;
- b. Lessee must submit and obtain all necessary Permit applications, permits, and approvals necessary for the relocation of Facilities; and
- c. Lessee shall pay all costs of relocating the Facilities, including costs of obtaining permits, licenses and approvals necessary to place the Facilities on the new Site or Pole.

8. Term; Renewal; and Early Termination.

- a. This Agreement shall become effective when fully executed and shall expire, unless earlier terminated as provided in this Section 8 of this Agreement, for an initial term of five years. This initial term may be renewed by mutual agreement of the parties for an additional five year term.
- b. This Agreement may be terminated early as follows:
 - i. Termination by Lessee. Lessee shall have the right to terminate this Agreement or applicable Approved Permit upon at least 60 days' prior written notice to City if Lessee reasonably determines that a Pole or Site is no longer feasible for any of the following reasons: (1) the inability to obtain or retain the necessary governmental approvals or permits, (2) signal interference created by surrounding structures, entities, or facilities, or (3) technological advances make continued use of the Site or Pole economically unfeasible. The notice of termination shall specify the date of termination and the reasons therefor.
 - ii. Termination by City. City shall have the right to terminate this Agreement or Approved Permit upon at least 30 days' prior written notice to Lessee if required as a result of any change of law, or by rule or order of a governmental entity or agency having jurisdiction over the Site or Pole. Additionally, City may terminate this Agreement or Approved Permit immediately if City determines that termination is required by the public interest. The notice of termination shall specify the date of termination and the reasons for the termination.
 - iii. Termination for Breach. Either party may terminate this Agreement or Approved Permit in response to any breach by the other party.
 1. The party seeking termination under this subsection shall provide the other party with written notice describing the breach and offering the other party at least thirty (30) days to avoid termination by curing the breach, except in the case of a third or more notice of termination for breach within a two year period for which no cure period is required. The date of termination shall be specified in the notice. If the nature of a breach is such that it cannot be cured within thirty days, the breaching party may avoid termination by commencing curative action within the thirty-day period and diligently prosecuting the cure to its completion. In the event the party seeking termination has provided the other party with notice of termination for breach

2. In the event a party breach

- c. Any and all Approved Permits expire or terminate upon expiration or termination of this Agreement.
- d. If, at termination or the expiration of the term of this Agreement, Lessee retains possession of any Site or Pole space or its Facilities remain on a City Pole, such possession or “holding over” shall not constitute a renewal or an extension of this Agreement for an additional term. Instead, Lessee must continue to comply with all the terms and conditions of this Agreement and any applicable Approved Permit pertaining to such Site or Pole, including the obligation to pay rent monthly during the holdover period, except rent shall be equal to two hundred percent (200%) of the last rent applicable to the Site or Pole until such time as Lessee removes its Facilities and returns the Site or Pole in good condition, that is substantially the same condition that existed prior to the execution of this Agreement.
- e. Any termination or expiration of this Agreement in whole or in part shall not release Lessee from any liability or obligation hereunder, whether indemnity or otherwise, which may have accrued or which may be accruing at the time of termination.
- f. Effect of Termination. Unless this Agreement or applicable Approved Permit is terminated by Lessee for breach by City, Lessee shall not be entitled to any refund of the rent paid hereunder, and Lessee shall be additionally liable for all of City’s direct expenses related to the termination. If this Agreement or applicable Approved Permit is terminated under section 5 due to breach by City, Lessee’s remedy shall be limited to receipt of a pro-rata portion of its most recent rental payment based on the date of termination.

9. Rent; Taxes.

- a. Lessee shall pay a monthly rental fee per Site or Pole of \$200 per month during 2018. For each year thereafter, the monthly rental fee for each Site or Pole shall increase by 3% from the previous year.
- b. The initial monthly rental fee for each Site or Pole shall become due upon approval of the applicable Approved Permit, and shall be pro-rated based upon the number of days remaining within that first month. Subsequent monthly payments shall be due on the first day of each month.
- c. Amounts not paid by the due date shall have a late payment charge accrue beginning on the first day thereafter in an amount equal to ten percent (10%) annually of the overdue amount. City’s acceptance of a late payment shall in no event constitute a waiver by City of Lessee’s default for the payment of the

overdue amount, nor prevent City from exercising any of the other rights or remedies granted to City under this Agreement or at law or in equity.

- d. Lessee shall not be entitled to reimbursement of any rental fees paid even if Lessee does not ultimately place its Facilities on a Site or Pole.
- e. In the event any real or personal property taxes are levied or assessed by any lawful authority against the Site, Pole, or Lessee's Facilities due to Lessee's use of such, Lessee shall be responsible for paying the taxes, except for any taxes that arise from use of the Facilities by entities other than Lessee, entities with whom Lessee contracts, and City. All taxes payable by Lessee must be paid when due and before delinquent.

10. Limitation of City Liability.

- a. City shall not be liable for costs, expenses, or damages related to any damage, loss, injury or death to Lessee or its employees, agents or affiliates in connection with this Agreement, Lessee's installation or operation of the Facilities, or the City's regulation of Lessee's use of the Poles or Sites, except under the circumstances and to the extent expressly provided herein. City shall under no circumstances be liable for any injury, damage or loss to Lessee or its affiliates or customers as a result of interruption or impairment of the Lessee's use of the Site, Pole, or Lessee's Facilities except for willful misconduct of City. Neither party shall be liable to the other for consequential damages, indirect damages, special damages, or punitive damages, nor loss of profits or revenue.
- b. **Damage or Destruction.** City shall not be responsible for any loss or damage to the Lessee's Facilities or any other personal property of Lessee located upon the Site or Pole, nor shall the rental fee be abated as a result of any damage, destruction or loss except to the extent caused directly and proximately by the negligence or wrongful acts of City, its agents or employees.

11. Indemnity. Lessee shall indemnify and hold City, and its officers, agents and employees, harmless from and against all claims, actions, liabilities, costs, including attorney fees and other costs of defense, arising out of the acts, errors or omissions, whether alleged or actual, of Lessee, its subcontractors, agents and employees in installing, maintaining or operating the Facilities, performing or failing to perform pursuant to this Agreement or applicable Approved Permits, failing to strictly comply with any provision of the Agreement or Approved Permits or any other actions or failures to act by Lessee and Lessee's employees, agents, and subcontractors. In the event any such action or claim is brought against City, Lessee shall, if City so elects and upon tender by City, defend the same at Lessee's sole cost and expense, promptly satisfy any judgment adverse to City or to City and Lessee, jointly, and reimburse City

for any loss, cost, damage or expense, including attorney fees, suffered or incurred by City. City shall notify Lessee, within a reasonable time, of any claim, threat of claim or legal action.

12. Insurance. Lessee shall have and maintain the insurance policies specified below. Each policy of insurance shall be written as a primary policy, not contributing with or in excess of any coverage which City may carry. A copy of each policy or a certificate satisfactory to City shall be delivered to City prior to Lessee beginning, or causing to begin, any activities under this Agreement or applicable Approved Permit. The adequacy of all insurance policies for compliance with this section shall be subject to approval by City's Risk Manager. Failure to maintain any insurance coverage required by this Agreement shall be cause for immediate termination of the Agreement by City.

Unless otherwise specified, each policy shall be written on an "occurrence" form with an admitted insurance carrier licensed to do business in the state of Oregon; and shall contain an endorsement entitling City to not less than 30 days prior written notice of any material change, non-renewal or cancellation. In the event the statutory limit of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limit coverage requirements specified below, City shall have the right to require that Lessee increase the coverage limits of all liability policies by the amount of the increase in the statutory limit.

- a. **Commercial General Liability.** Lessee shall maintain a broad form commercial general liability insurance policy reflecting limits of not less than \$2,000,000 combined single limit per occurrence, with an annual aggregate of \$4,000,000 for bodily injury, personal injury or property damage. Such policy shall contain a contractual liability endorsement to cover Lessee's indemnification obligations under this Agreement. The policy shall also contain an endorsement naming City as an additional insured including completed operations, in a form satisfactory to City, and expressly providing that the interest of City shall not be affected by Lessee's breach of policy provisions.
- b. **Automobile Liability.** Lessee shall maintain an automobile liability insurance policy reflecting limits of not less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury or property damage. The coverage shall include both hired and non-owned auto liability. The policy shall also contain an endorsement naming City as an additional insured, in a form satisfactory to City, and expressly providing that the interest of City shall not be affected by Lessee's breach of policy provisions. Coverage shall include both hired and non-owned auto liability.
- c. **Workers' Compensation Insurance.** Lessee shall comply with the Oregon Workers' Compensation law by qualifying as a carrier-insured employer or as a

self-insured employer and shall strictly comply with all other applicable provisions of such law. Lessee shall provide City with such further assurances as City may require from time to time that Lessee is in compliance with these Workers' Compensation coverage requirements and the Workers' Compensation law. Lessee is a subject employer that will comply with ORS 656.017.

[OR]

- d. **Liability Insurance.** Lessee must keep in full force and effect an occurrence based policy of liability and property damage insurance with respect to the Site or Pole in which the limits of coverage for bodily injury, personal injury and property damage are at least \$2,000,000 per person and \$4,000,000 per occurrence and in the annual aggregate, or provide satisfactory evidence to City of Lessee's ability to self-insure against risks in those amounts. Lessee will provide an additional insured endorsement including completed operations of insurance to City evidencing Lessee compliance with the insurance coverages/levels and indemnification obligations set forth herein. The certificate of insurance will name City as an additional insured.

13. Compliance with the Law. Lessee shall comply with all applicable Federal, State and local laws, rules, ordinances and regulations at all times and in performing under this Agreement and applicable Approved Permits, including but not limited to, land use laws and City's Telecommunications Ordinance.

14. Assignment and Sublease. Neither Lessee's interests under this Agreement and applicable Approved Permits, nor Lessee's interests in the Facilities, may be wholly or partially assigned, transferred, sold or encumbered, either directly or indirectly, without the prior written consent of City, which consent shall be solely within City's discretion. The parties acknowledge that City has a significant interest in the person or persons occupying the Site or Pole and that the consent by the City to assignment may be withheld if City is not given sufficient assurance that the proposed assignee has the demonstrated ability to satisfy the obligations of Lessee under this Agreement and applicable Approved Permits. Upon satisfactory assignment of this Lease and assumption by the assignee of all obligations hereunder, Lessee shall be relieved of all performance, liabilities and obligations under this Agreement and applicable Approved Permits except for liabilities arising or resulting from acts or omissions committed prior to the date of assignment. Notwithstanding the foregoing, Lessee may assign, sell, convey or otherwise transfer this Agreement and applicable Approved Permits, in whole, but not in part, to any corporation or entity which controls, is controlled by, or is under common control with, Lessee, without City's prior consent, provided, however, that City must be provided with (a) notice and reasonable assurance of the status of the assignee entity's capacity to assume Lessee's obligations and duties hereunder, and (b) the assignee entity's written acceptance of the terms of this Agreement and

assumption of all of Lessee's obligations and liabilities thereunder, whether arising before or after the date of the assignment.

15. Notices. Except for notices specifically required to be made by email, any notice permitted or required by the Agreement or applicable Approved Permits shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, and with return receipt requested, to the persons and addresses shown below. In addition, if directions for telephonic or electronic transmission (fax or email) are set forth below, notices may be delivered by fax or email. Notices sent by certified mail will be deemed delivered three business days after placement in the mail and notices sent by fax or email will be deemed delivered when successful transmission is electronically confirmed. Except as expressly provided in the Agreement, required notices must be signed by the person designated to receive notices, or that person's designee or attorney.

Lessee: _____

_____ email

City: _____
Department/Division

Eugene, Oregon 9740 _____
Email

Each party shall notify the other of any change in the name, address or fax or email instructions to be used for delivery of notices.

16. Dispute Resolution.

- a. Continued Performance. Unless the Agreement or applicable Approved Permits are terminated, neither party shall suspend performance of its obligations hereunder pending the resolution of a dispute.
- b. Negotiation/Mediation. The parties shall use all reasonable attempts to resolve disputes informally through conferral and negotiation. In the event such efforts

are unsuccessful, the parties may mutually agree to voluntary mediation. The parties shall share equally in all common costs of mediation.

- 17. Forum.** Any litigation between the City and Lessee that arises from or relates to this Agreement or applicable Approved Permits shall be brought and conducted solely and exclusively within the Lane County Circuit Court; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon, Eugene Division. In no event shall this Subsection be construed as a waiver by City of any form of defense or immunity, whether sovereign immunity, governmental immunity or otherwise, from any claim or from the jurisdiction of any court. LESSEE, BY EXECUTION OF THE AGREEMENT OR APPLICABLE APPROVED PERMITS, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.
- 18. Remedies.** All remedies granted the City under this Agreement are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. City reserves the right to also use any remedy available to City at law or in equity.
- 19. Waiver.** No waiver of any breach of this Agreement or applicable Approved Permits shall be held to be a waiver of any other or subsequent breach of this Agreement. The failure of either party to insist upon any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.
- 20. Interpretation.** This Agreement and applicable Approved Permits shall be governed by and interpreted in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.
- 21. Severability.** If any portion of this Agreement or applicable Approved Permits is held or declared by a court of competent jurisdiction to be void, invalid, illegal or otherwise not fully enforceable, it shall not affect any other section of this Agreement or applicable Approved Permits, and the remainder of the Agreement or applicable Approved Permits shall continue to be binding and of full force and effect.
- 22. Survival.** Any duty, liability or obligation of a party which arises under this Agreement or applicable Approved Permits, including without limitation, obligations with respect to indemnification, shall survive the termination or expiration of this Agreement and applicable Approved Permits, and shall be legally enforceable until satisfied by performance or payment, or until enforcement is legally precluded by lapse of time.
- 23. No Third-Party Beneficiaries.** There are no third-party beneficiaries of this Agreement or applicable Approved Permits. The parties agree and intend that this Agreement and

applicable Approved Permits shall be enforceable only by the parties and their duly authorized representatives.

24. Integration. The Agreement and applicable Approved Permits embodies the entire agreement of the parties concerning the use of City Sites and Poles by Lessee. There are no promises, terms, conditions or obligations other than those contained herein. The Agreement and applicable Approved Permits shall supersede all prior communications, representations or agreements, either oral or written, between the parties. The Agreement or applicable Approved Permits shall not be amended except in writing, signed by both parties.

[SIGNATURE BLOCK FOR CITY]

[SIGNATURE BLOCK FOR LESSEE]

EXHIBIT A
APPROVED PERMITS