



REQUEST FOR COUNCIL ACTION

Requestor: Larry Gardner

Meeting Date Requested: 9/9/2020

Department: Community Development

Date Final Action Required: 9/9/2020

Meeting Type: ☐ Work Session ☐ Public Hearing ☒ Business Item ☐ Consent Item

Action Requested: ☐ Provide Information ☐ Request Feedback ☒ Decision ☐ Other

Time Requested: Total Time: 10 Minutes (Presentation Time: Council Discussion:)

Signatures:

Submitter: Larry Gardner
Larry Gardner (Sep 3, 2020 09:40 MDT)

Dept. Head: Larry Gardner
Larry Gardner (Sep 3, 2020 09:40 MDT)

Reviewed as to Form: Duncan Murray
Duncan Murray (Sep 3, 2020 09:48 MDT)

Executive: Korban Lee
Korban Lee (Sep 3, 2020 10:01 MDT)

Council Office: Alan Raul

AGENDA SUBJECT

Approval of a template for a Master License Agreement ("MLA") for Small Wireless Facilities in the Public Right of Way.

PURPOSE FOR COUNCIL TIME

To allow the Council to approve a template for an MLA for Small Wireless Facilities in the Public Right of Way.

SUMMARY

The approval, by the City Council, of a template for an MLA for Small Wireless Facilities in the Public Right of Way will allow for wireless providers to apply for an MLA and site permits to place Small Wireless Facilities on poles in the Public Right of Way.

TIME SENSITIVITY / URGENCY

High. Wireless providers such as AT&T would like to start filing site applications immediately (in order to start construction right away).

BUDGET IMPACT

No additional anticipated budget impact; expenses have been anticipated and budgeted for. Filing fees are identified in the City's consolidated fee schedule.

STAFF RECOMMENDATION

Staff recommends this authorization process be completed.

PLANNING COMMISSION RECOMMENDATION

N/A

MOTION RECOMMENDED

"I move to approve Resolution No. 20-64, Approving of a template for a Master License Agreement for Small Wireless Facilities in the Public Right of Way."

MAYOR RECOMMENDATION

The Mayor is recommending approval of this resolution.

PACKET ATTACHMENT(S)

1. Resolution No. 20-64
2. Master License Agreement Template

OTHER INFORMATION

One additional ordinance, Ordinance No. 20-17, was approved on July 8, 2020, to establish design, size, location and height standards for micro and small wireless facilities, located in public rights-of-ways as defined in the 2018 Small Wireless Deployment Act, codified in Utah Code Ann. Chapter 54-21. These provisions regarding "Micro Wireless Facility" and "Small Wireless Facility" in Title 13, Chapter 16, Low Power Radio Service Antennas and Section 13-2-3 Definitions of the 2009 City Code.

The approval of this template Master License Agreement will allow for wireless providers to apply for a Master License Agreement and site/encroachment permits to work in the City's right of way to place micro and small wireless facilities. With these new micro and small wireless facilities, the City's residents and businesses will have a higher level of service.

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 20-64

A RESOLUTION APPROVING OF A TEMPLATE FOR A MASTER LICENSE AGREEMENT FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY AND AUTHORIZING THE MAYOR'S EXECUTION OF MASTER LICENSE AGREEMENTS SUBSTANTIALLY CONSISTENT WITH THIS TEMPLATE

Whereas, there is a proposed template for a Master License Agreement for Small Wireless Facilities in the Public Right of Way ("MLA"); and

Whereas, the City of West Jordan is willing to enter into this MLA with various wireless providers; and

Whereas, the City Council desires to authorize the Mayor to execute this MLA with various wireless providers; and

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH, THAT:

- Section 1. The Mayor is authorized, until December 31, 2020, to execute a Master License Agreement for Small Wireless Facilities in the Public Right of Way, which is substantially consistent with the attached MLA template, with any wireless provider.
- Section 2. The Mayor shall provide a copy of each executed Master License Agreement for Small Wireless Facilities in the Public Right of Way to the City Council within seven (7) days of being executed.
- Section 3. This Resolution shall take effect immediately.

Approved by the City Council of West Jordan, Utah, this 9th day of September 2020.

By: _____
Christopher McConnehey
Council Chair

ATTEST:

Cindy M. Quick
Council Office Clerk

Voting by the City Council

“YES”

“NO”

Council Member Kelvin Green

Council Member Zach Jacob

Council Member Chad Lamb

Council Chair Christopher McConnehey

Council Member David Pack

Council Member Kayleen Whitelock

Council Member Melissa Worthen

**MASTER LICENSE AGREEMENT
FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

THIS MASTER LICENSE AGREEMENT FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY (this “**Agreement**”), dated as of its date of recordation with the City Recorder of the City of West Jordan (the “**Effective Date**”), by and between CITY OF WEST JORDAN, a Utah municipal corporation (the “**City**”), and _____, a _____ (the “**Company**”).

RECITALS

A. The Company desires a non-exclusive agreement to install, at its sole cost and expense, a network of Small Wireless Facilities within the boundaries of the City of West Jordan, Utah, and to utilize the City of West Jordan’s public right-of-way for such purpose, in order to provide wireless services and expand the available data transmission bandwidth for mobile devices.

B. The City owns or controls such public right-of-way and has agreed to grant access to the Company in accordance with the terms and conditions of this Agreement.

D. The Company will agree to comply with City’s requirements as provided herein.

E. The Company is willing to compensate the City in exchange for a grant and right to use and physically occupy portions of the poles and/or the ROW as provided herein.

NOW, THEREFORE, for good and valuable consideration and, further, in contemplation of subsequent approval by legislative action of the City Council as hereinafter provided, the parties mutually agree as follows:

**ARTICLE 1
RESOLUTION AND CITY WIRELESS CODE**

1.1 Defined Terms and Applicable Codes. All capitalized terms and other specialized terms not otherwise defined herein have the meanings given them in West Jordan City Code Sections 8-9-1 and 13-2-3, or their successor provisions. The applicable ordinances are all of Title 8, Chapter 9 and all of Title 13, Chapter 16; the applicable fees are set forth in the City’s Uniform Fee Schedule; and the applicable Engineering Standards are set forth in Section 16500, Street Lighting Design and Construction Standards and/or other sections pertaining specifically to Small Wireless Facilities (collectively referred to as the “**City Wireless Code**”).

1.2 Resolution. The City Council has adopted Resolution 20-64 (the “**Resolution**”), approving the execution of this Agreement by the Mayor. Execution of this Agreement constitutes

the unqualified acceptance of the Resolution by the Company. Such Resolution is incorporated herein by reference, and is made an integral part of this Agreement.

1.3 Description. The Resolution and the City Wireless Code confer upon the Company, and its successors and assigns, the non-exclusive right, privilege, and access (the “**Access Rights**”), subject to the terms of this Agreement, to construct, install, maintain, repair, replace, modify, relocate, remove, and operate the Small Wireless Facilities in approved locations in the public right-of-way and attach Small Wireless Facilities to a Structure in the public right-of-way, as described in this Agreement. This Agreement does not grant to Company any interest in any property.

1.4 Term. The term of the Agreement is for a period from the Effective Date, until ten (10) years from the Effective Date. If there is no default under this Agreement and Company is compliant with all applicable law, rules, and regulations, Company may deliver to City written notice of its intent to enter into a new agreement in accordance with the then standard conditions of the City’s master license agreement, or upon such other terms as may be mutually agreed to by the parties, at least sixty (60) days prior to the expiration of the term.

ARTICLE 2 PERMIT APPROVAL

2.1 Application and Review.

(a) To locate any Small Wireless Facilities in the public right-of-way, Company shall submit an application for a Site License and Encroachment Permit (a “**Site/Encroachment Permit**”), in the current form approved by the City. Company shall comply with the requirements of the City Wireless Code. An approved Site/Encroachment Permit shall approve the location and plans for the location of a Wireless Facility. Depending on the scope of the Company’s proposed work, Company may also need to apply for additional permits. The Site/Encroachment Permit shall be reviewed as provided in the City Wireless Code and applicable state and federal law.

(b) Company shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its Small Wireless Facilities. Company shall obtain a franchise from the City for the location of such fiber optic lines in the public right-of-way.

(c) Any Company Facility that does not have an approved Site/Encroachment Permit, does not receive other required permits, or does not meet the specifications of this Agreement or the City Wireless Code, shall be deemed unauthorized. City may cause Company to remove any unauthorized Small Wireless Facilities upon 30 days’ written notice at Company’s cost and expense, or following the 30-day period may remove such facilities and will invoice Company for the actual and reasonable cost of such removal.

2.2 Scope and Priority. The City's preferred location for the installation of Small Wireless Facilities owned and/or controlled by the Company is (i) on City street light poles in the public rights-of-way under the terms of this Agreement, then, if such street light poles do not have the capacity to house such attachments, (ii) on replacement street light poles with capacity for Small Wireless Facilities to be purchased and installed by the Company and with ownership of the pole and street light conveyed to the City; then if no such options are available, on existing or replacement electric distribution facilities so long as the Company has the written permission of the pole owner. If no such poles are available, or if the Company prefers a different location and after consultation with City, and the City agrees, then (iv) the Small Wireless Facilities owned and/or controlled by the Company may, in conformance with the City's regulations and ordinances, install Small Wireless Facilities on the Company's proprietary poles newly installed in the public rights-of-way.

Locations will be prioritized based upon Company's technical and radio frequency needs and construction costs, but in any situation where Company has a choice of equipment locations, the parties shall mutually exercise good faith efforts to agree on attachments to poles in the order indicated above. The Company shall be responsible for complying with all obligations under this Agreement regarding equipment, irrespective of ownership of or title to such equipment. Subject to the exception described below, all Small Wireless Facilities shall be installed on poles.

ARTICLE 3 FEES

3.1 Compensation.

(a) Company shall pay all fees and rates due City pursuant to the City Wireless Code (the "**Small Cell Fees**").

(b) Company shall also pay any reasonable fees or costs permitted by law and charged by City or Structure owner and associated with any related permits or approvals, and any other ad valorem taxes, special assessments or other lawful obligations of the Company to the City.

3.2 Fee Payment. Company will pay the Small Cell Fees annually on or before the anniversary of the Effective Date as directed by City. Any Small Cell Fee paid after the due date shall incur 12% annual interest, compounded daily from the due date until payment is received on the amount due. If Company holds over past the expiration of this Agreement, each of the Small Cell Fees shall increase to 200% of the most recent respective Small Cell Fees paid annually. Payment of a hold over fee does not extend or renew this Agreement.

ARTICLE 4
COMPANY USE OF PUBLIC RIGHT-OF-WAY

4.1 Rights to Access and Use Public Right-of-way.

(a) The Company shall have the right to use a portion of a public right-of-way in the precise location described in the approved Site/Encroachment Permit to locate and install Small Wireless Facilities on an approved Structure, subject to the terms and conditions of this Agreement.

(b) The rights granted to the Company herein do not include the right to excavate in, occupy or use any City park, recreational areas or other property owned by the City (or regulated by the City, such as riparian areas of water source protection areas).

(c) Company shall install and maintain Small Wireless Facilities and Structures in a good and workmanlike manner.

4.2 Company Duty to Relocate. Whenever the City shall require the relocation or reinstallation of any of the Small Wireless Facilities situated within the public right-of-way, it shall be the obligation of the Company and at Company's sole cost and expense, to commence the removal of the respective Small Wireless Facilities within 60 days of receipt of written notice to relocate as may be reasonably necessary to meet the requirements of the City. The Company's relocation may be required by the City for any lawful purpose, including, without limitation, the resolution of existing or anticipated conflicts or the accommodation of any conflicting uses or proposed uses of the public right-of-way, whether such conflicts arise in connection with a City project or a project undertaken by some other person or entity, public or private. The City will cooperate with the Company to provide alternate space where available, within the public right-of-way. The new location shall be subject to obtaining an approved Site/Encroachment Permit. Such relocation shall be accomplished by the Company at no cost or expense to the City. In the event the relocation is ordered to accommodate the facilities of an entity other than City or Company, the cost and expense of such relocation shall be borne by such other entity.

4.3 Approval to Move Company Property; Emergency Exception. Except as otherwise provided herein, the City shall not, without the prior written approval of the Company, intentionally alter, remove, relocate or otherwise interfere with any portion of the Small Wireless Facilities. Any written approval request shall be promptly reviewed (within 30 days) and processed by the Company and approval shall not be unreasonably withheld, conditioned, or delayed. However, if it becomes necessary, in the reasonable judgment of City, to move any of the Small Wireless Facilities because of a fire, flood, emergency, earthquake disaster or other imminent and material threat thereof, or to relocate any portion of the Small Wireless Facilities upon the Company's failure to do so following a written request by the City under Section 4.3 hereof, these acts may be done by the City without prior written approval of the Company at the Company's sole cost and expense.

4.4 Compliance with Rules and Regulations and Applicable Laws. Small Wireless

Facilities located on, upon, over or under the public right-of-way shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with such lawful rules and regulations as the City may issue. The Company shall acquire, and pay any fees with respect to, such permits as may be required by such rules and regulations, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. All Small Wireless Facilities installed or used pursuant to this Agreement shall be used, constructed, repaired, replaced, and maintained in accordance with applicable federal, state and City laws, rules, and regulations, including without limitation environmental laws, now existing or from time to time adopted or promulgated.

4.5 Repair Damage. If during the course of work on Small Wireless Facilities, the Company causes damage to or alters any portion of the public right-of-way, Structure, or any City facilities or other property or facilities, the Company shall (at its own cost and expense and in a manner reasonably approved by City), replace and restore such portion of the public right-of-way, Structure, or any City facilities or other public or private property or facilities, in accordance with applicable City ordinances, policies and regulations relating to repair work of similar character. If Company does not complete such work within a reasonable time frame set by City, the City may complete such work and bill Company for the actual and reasonable cost and expense, to be paid within 30 days' following the date of an invoice for such work.

4.6 Guarantee of Repairs. For a period of three years following the completion of any work by Company in the public right-of-way or any repair work by Company performed pursuant to Section 4.5 above, the Company shall maintain, repair, and keep in good condition those portions of the public right-of-way, Structures, property, or facilities restored, repaired or replaced by Company, to the reasonable satisfaction of the City Engineer, reasonable wear and tear excepted.

4.7 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices in accordance with applicable safety regulations or standards imposed by law.

4.8 Inspection by the City. The Small Wireless Facilities shall be subject to inspection by the City to assure compliance by the Company with the terms of this Agreement. Company shall pay any fees charged or costs or expenses incurred by City in connection with such inspections.

4.9 Company's Duty to Remove Small Wireless Facilities from the Public Right-of-way.

(a) Subject to subsection (c) below, the Company shall remove from the public right-of-way all or any part of the Small Wireless Facilities, when one or more of the following conditions occur:

(i) The Company ceases to operate such Small Wireless Facilities for a continuous period of 12 months, except when the cessation of service is a direct result of a natural

or man-made disaster;

(ii) The construction or installation of such Small Wireless Facilities does not meet the requirements of this Agreement or the Site/Encroachment Permit; or

(iii) The Agreement or use of a Structure is terminated or revoked pursuant to notice as provided herein.

(b) Upon receipt by the Company of written notice from the City setting forth one or more of the occurrences specified in subsection (a) above, the Company shall have 90 days from the date upon which said notice is received to remove such Small Wireless Facilities, or, in the case of subsection (a)(i), to begin operating the Small Wireless Facilities.

(c) If Company fails to timely remove the Small Wireless Facilities as set forth in this Section, City may remove such facilities and bill Company for the actual and reasonable cost and expense, to be paid within 30 days' following the date of an invoice for such work.

4.10 Utilities. Company will be responsible for telephone, electric and any other utility service used or consumed by the Company in connection with its Small Wireless Facilities. In no event will the Company secure its utilities by sub-metering from the City.

4.11 Duty to Minimize Interference. Company shall not impede, obstruct or otherwise interfere with the installation, existence or operation of any other facility in the public rights-of-way, including but not limited to sanitary sewers, water mains, storm water drains, gas mains, traffic signals and/or utility poles, City-owned street lights, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and City networks, and other telecommunications, utility, or public property. All Company activities in the public rights-of-way shall be carried on as to minimize interference with the use of the public rights-of-way and with the use of private property, in accordance with all regulations of the City necessary to provide for and protect public health, safety and convenience.

4.12 Signal Interference Prohibited.

(a) Notice; Company Response. In the event any Small Wireless Facilities interfere with the City's traffic signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, the Company will respond to the City's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving such request, pursuant to protocol outlined below, and shall follow the notification process outlined in Article 10 of this Agreement.

(b) Response Protocol. The protocol for responding to events of interference will require the Company to provide to the City Engineer an interference remediation report that includes the following items:

(i) Remediation Plan. Devise a remediation plan to stop the event of

interference;

(ii) Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and

(iii) Additional Information. Include any additional information relevant to the execution of the remediation plan.

(c) Removal; Relocation. In the event interference with City's facilities cannot be eliminated, the Company shall shut down the Small Wireless Facilities and pursuant to Section 4.2 remove or relocate any Small Wireless Facility that is the source of the interference to a suitable alternative location.

ARTICLE 5 POLICE POWER

The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its residents and their properties. This Agreement is subject to any such ordinances, rules, and regulations.

ARTICLE 6 TRANSFER OF RIGHTS

6.1 Terms of Transfer.

(a) Except as provided in subsection (c) and provided that there is not an uncured default of any provision of this Agreement or Site/Encroachment Permit, the Company shall not sell, transfer, lease, assign, sublet, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise make available, the Access Rights or any rights or privileges under this Agreement, (each, a "**Transfer**"), to a Proposed Transferee, without the prior written consent of the City. A "**Proposed Transferee**" means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the Company. A "**Person**" means any individual, sole proprietorship, partnership, association or corporation, or any other form of organization, and includes any natural person.

(b) For the purpose of determining whether it shall grant its consent, the City may inquire into the qualifications of the Proposed Transferee, and the Company shall assist the City in the inquiry. City may condition or deny its consent based on any or a combination of the following or similar criteria. The Proposed Transferee shall indicate by affidavit whether it or any of its principals:

(i) has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(ii) has ever had a judgment entered against it in an action for fraud, deceit, or misrepresentation by any court of competent jurisdiction;

(iii) has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a system similar to the Small Wireless Facilities, except that any such claims, suits or proceedings relating to insurance claims, theft or service, or employment matters need not be disclosed;

(iv) is financially solvent, by submitting financial data, including financial statements, that have been audited by a certified public accountant, along with any other data that the City may reasonably require; and

(v) has the financial and technical capability to enable it to maintain and operate the Small Wireless Facilities for the remaining term of this Agreement and is in the business of operating Facilities.

In addition, Company shall provide to the City information regarding any failure by the Company to comply with any provision of this Agreement or of any applicable customer or consumer service standards promulgated or in effect in the City's jurisdiction at any point during the term of this Agreement.

(c) Notwithstanding the foregoing, the City's consent shall not be required in connection with the following circumstances, provided that Company is not released from the obligations under this Agreement and such transferee assumes this Agreement and agrees in writing to comply with all terms and conditions of this Agreement:

(i) The intra-corporate Transfer by Company to a Proposed Transferee that is another business entity in the tier of business entities owned or controlled by Company that (a) controls Company; or (b) is controlled by Company; or (c) is under common control with Company.

For the Transfer to be effective, Company must: (1) provide to City not less than 30 days prior written notice of that proposed transaction; (2) provide information concerning ownership a in the proposed transferee and their telecommunications-related experience and expertise; (3) represent that the proposed transaction will have no foreseeable effect on the management and operation of the Small Wireless Facilities in the public right-of-way;

(ii) Any Transfer in trust, a mortgage, or other instrument of hypothecation of the assets of the Company, in whole or in part, to secure an indebtedness, provided that such pledge of the assets of the Company shall not impair or mitigate the Company's

responsibility and capability to meet all its obligations under this Agreement, and provided further that such Proposed Transferee subordinates to this Agreement; or

(iii) Interconnection, license, or use agreements pursuant to which the Small Wireless Facilities may be used by another entity providing telecommunication services within the City, provided that any such interconnection, license, or use agreement is subordinate to this Agreement.

(d) Once the Company obtains City consent to transfer or assign this Agreement to a third party as required under this Section, the Company shall be authorized to transfer each Encroachment Permit to such third party without further consent or approval.

(e) Transfer by the Company shall not constitute a waiver or release of any rights of the City in or to its public right-of-way and any Transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement and not create any conflict with any applicable laws, rules, or regulations.

(f) Except as otherwise provided in this Section, a Transfer of this Agreement will only be effective upon the Proposed Transferee becoming a signatory to this Agreement by executing an unconditional acceptance of this Agreement.

(g) As contemplated by subsection (c)(iii) above, the parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Small Wireless Facilities deployed by Company in the public right-of-way pursuant to this Agreement may be owned and/or operated by Company's third-party wireless carrier customers ("**Carriers**") and installed and maintained by Company pursuant to license agreements between Company and such Carriers. Such license agreements shall be subordinate to this Agreement. Such Small Wireless Facilities shall be treated as the Company's for all purposes under this Agreement provided that (i) Company remains responsible and liable for all performance obligations under the Agreement with respect to such Small Wireless Facilities; (ii) City's sole point of contact regarding such Small Wireless Facilities as it relates solely to this Agreement shall be Company; and (iii) Company shall have the right to remove and relocate such Small Wireless Facilities pursuant to the terms of this Agreement.

ARTICLE 7 COMPANY INDEMNIFICATION; INSURANCE

7.1 No City Liability. The City shall in no way be liable or responsible for any loss or damage to property, or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of the Small Wireless Facilities. City will be liable only for its own conduct, subject to and without waiving any defenses, including limitation of damages, provided for in the Utah Governmental Immunity Act (Utah Code Ann. 63G-7-101, et. seq.) or successor provision. Company agrees that the Rights-of-Way are delivered in an "AS IS, WHERE IS" condition and City makes no representation or warranty regarding their condition,

and disclaims all express and implied warranties, including the implied warranties of habitability and fitness for a particular purpose.

7.2 Indemnification.

(a) Company shall indemnify, save harmless, and pay for the defense of the City, its officers and employees, from and against all losses, liabilities, claims, counterclaims, demands, actions, damages, costs, charges, and causes of action of every kind or character, including attorneys' fees, arising out of or related to the installation, use, maintenance, repair or removal of the Small Wireless Facilities, any of its or its customers' activities on any Wireless Site, or the Company's breach of any provision of this Agreement. Company's duty to defend City shall exist regardless of whether City or Company may ultimately be found to be liable for anyone's negligence or other conduct. The City, in its sole discretion, may select legal counsel and all other aspects of defense. If, at any time, Company is found, through an adjudicatory proceeding, to have been required to indemnify City, then in addition to any other remedies City may have, Company shall pay City's reasonable costs, expenses, and attorneys' fees incurred in proving such indemnification, defending itself, or enforcing this provision. Nothing herein shall be construed to require Company to indemnify the indemnitee against the indemnitees' own sole negligence. The provisions of this Section 7.2 shall survive the termination or expiration of this Agreement.

(b) City assumes no responsibility for any damage or loss that may occur to Company's property, except the obligation City assumes that it will not willfully or intentionally damage the property of Company. City has no responsibility for any equipment maintenance, or for Company's employees. Nothing in this Agreement shall be construed to create a partnership, joint venture, or employment relationship

7.3 Insurance.

(a) The Company, at its own cost and expense, shall maintain, during the term of this Agreement the following policies of insurance:

(i) Commercial General Liability Insurance. Commercial general liability insurance with the CITY OF WEST JORDAN named as an additional insured on a primary and non-contributory basis in comparison to all other insurance including City's own policy or policies of insurance, in the minimum amount of \$2,000,000 per occurrence with a \$3,000,000 general aggregate and \$3,000,000 products completed operations aggregate. The policy shall protect the City and the Company from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the Company's operations under this Agreement whether performed by Company itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, products and completed operations. The Company may utilize its umbrella policy to meet the required limits.

(ii) Commercial Automobile Liability Insurance. Commercial automobile liability insurance naming City as an additional insured that provides coverage for owned, hired, and non-owned automobiles used in connection with this Agreement, with a combined single limit of \$2,000,000 per occurrence. The Company may utilize its umbrella policy to meet the required limits. If the policy only covers certain vehicles or types of vehicles, such as scheduled autos or only hired and non-owned autos, Company shall only use those vehicles that are covered by its policy in connection with any work performed under this Agreement.

(iii) Workers' Compensation and Employer's Liability. Worker's compensation and employer's liability insurance sufficient to cover all of the Company's employees pursuant to Utah law. In the event any work is subcontracted, the Company shall require its subcontractor(s) similarly to provide worker's compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

(b) General Insurance Requirements.

(i) Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (A) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (B) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the City.

(ii) All policies of insurance shall be issued by insurance companies authorized to do business in the state of Utah and either (A) Currently rated A- or better by A.M. Best Company, or (B) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended.

(iii) The Company shall furnish certificates of insurance, acceptable to the City, verifying the foregoing matters concurrent with the execution hereof and thereafter upon renewal.

(iv) If any work is subcontracted, the Company shall require its subcontractor, at no cost to the City, to secure and maintain all minimum insurance coverages required of the Company hereunder. Company shall remain liable for all work of its subcontractors.

(v) All required certificates and policies shall provide that insurers of coverage thereunder shall provide 30 days' prior written notice of cancellation to the City with a ten (10) day notice for non-payment of premium. Company must provide to City written notice of any notice of cancellation of a policy at least 30 days prior to such cancellation, and evidence of a successor policy complying with the requirements of this Agreement.

7.4 Damages Waiver. Notwithstanding any provision in this Agreement to the contrary, in no event shall any party be liable to any other party for indirect, special, punitive, or consequential damages, including, without limitation, lost profits.

7.5 Bonds. Company shall comply with all bonding requirements required by West Jordan City Code, including those required to obtain permits.

ARTICLE 8 ENFORCEMENT; TERMINATION

8.1 Company Defaults. The Company shall be in default of this Agreement in the event of any of the following:

(a) The Company fails to make timely payments of the Small Cell Fees, or any other fee due to the City under the terms of this Agreement, and does not correct such failure within 30 days after such failure.

(b) The Company, by act or omission, defaults under any provision of this Agreement and such default is not cured within 30 days following notice by City to Company, or such longer cure period as permitted by the City if the Company (i) commences corrective action during 30 days following notice of the failure, and (ii) is diligently pursuing such corrective action to completion.

(c) The Company becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its Facilities are sold under an instrument to secure a debt and is not redeemed by the Company within 60 days.

(d) A representative of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City, that is fraudulent or in violation of a felony criminal statute of the State of Utah.

(e) Company abandons use of all Small Wireless Facilities for 12 consecutive months, except as otherwise provided in Section 4.9.

(f) Company violates any provision of an individual Site/Encroachment Permit issued in accordance with this Agreement, and fails to correct the violation as required herein and/or as provided in such Permit.

8.2 City Remedies. In the event of an uncured Company default, City shall maintain all its rights and remedies, at law and in equity, including the ability to charge fines, recover fees and costs, and remove the Small Wireless Facilities. Without limitation, City may do one or all of the following to the extent of applicable law:

(a) Fine Company \$100 per day per violation until the violation is cured.

(b) Terminate or suspend any franchise, permits, or licenses held by Company.

(c) If the violation is not cured within 180 days, or such longer cure period as may be permitted by City, City may remove and impound the Small Wireless Facilities until the violation has been cured.

(d) The City may terminate or revoke this Agreement and all rights and privileges hereunder.

8.3 City Defaults. In the event there is a material breach by City with respect to any of the provisions of this Agreement or its obligations under it, Company shall give City written notice of such breach. After receipt of such written notice, City shall have 30 days in which to cure any breach, provided City shall have such extended period as may be required beyond the 30 days if City commences the cure within the 30 day period and thereafter continuously and diligently pursues the cure to completion. Company may not maintain any action or effect any remedies for default against City unless and until City has failed to cure the breach within the time periods provided in this Section. In the event of an uncured default by City, Company shall maintain all its rights and remedies provided at law, however, no remedy that would have the effect of amending the provisions of this Agreement shall become effective without a formal amendment of this Agreement.

8.4 Company Termination.

(a) Agreement Termination. Company may terminate this Agreement by giving at least 30 days' written notice. Company shall not be subject to any penalty or fee for terminating this Agreement prior to the end of the term of the Agreement. Responsibility for Small Cell Fees shall cease upon removal of Company's Facilities, subject to Section 4.9 above and following payment of the Small Cell Fees for the year during which the Company's Facilities are removed.

(b) Termination of Use. Without terminating the Agreement, by giving at least 30 days' prior written notice, Company may terminate paying the Small Cell Fees for Small Wireless Facilities and/or Structures from which the Company has discontinued use and removed. City shall not provide partial reimbursement for termination of use during any partial year.

ARTICLE 9 NOTICES

9.1 City Designee and Address. Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Agreement shall be delivered to the City at the Community Services Department, Real Property Administrator, 8000 South Redwood Road, Second Floor, West Jordan, Utah, 84088, with a copy to the City Attorney, at 8000 South Redwood Road, Second Floor, West Jordan, Utah, 84088, and with copies to such other offices as the City may designate by written notice to the Company.

9.2 Company Designee and Address. During the term of this Agreement, the Company shall maintain a registered agent on file with the Utah Division of Corporations for services of notices by mail, and an office and telephone number for the conduct of matters relating to this Agreement during normal business hours. Unless otherwise specified herein, all notices from the City to the Company pursuant to or concerning this Agreement or the Access Rights shall be delivered to:

Company:

[Company Name and Address]

Attn:

With a copy to:

[Company Name and Address]

Attn:

ARTICLE 10. EMERGENCY CONTACTS

10.1 Coordination of Emergency Events. For purposes of this Article “emergency” means any event which may threaten public health or safety, or that results in an interruption in the provision of service, including but not limited to damaged or leaking water or gas conduit systems, damaged, obstructed or leaking sewer or storm drain conduit systems and damaged electrical and communications facilities. In case of an emergency due to interference, failure of traffic signal or utility systems, or any unforeseen events, the City will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. The City will make every reasonable effort to coordinate its emergency response with the Company. To that end, the City will use the following emergency contacts: The Company’s network operations center may be reached 24/7 at:

_____ [INSERT CONTACT INFORMATION].

10.2 Company’s Duty to Maintain Current Emergency Contacts. The Company shall maintain the emergency contact information current at all times with the City Engineer.

10.3 Company’s Response to Network Emergency. In case of a network emergency due to any unforeseen event, the Company may access its Small Wireless Facilities without first obtaining a public rights-of-way permit provided the Company has conducted network troubleshooting and diagnostic tests and has reasonably identified the point or points of network failure

or malfunction. While acting under this provision to address a network emergency, the Company shall conduct its activities within the public rights-of-way in such a manner as to protect public and private property and to provide the necessary traffic control. The Company will make every reasonable effort to coordinate its emergency response with the City. To that end, prior to entering the public rights-of-way, the Company will use the following emergency contacts to give notice to the City of the network emergency and an estimated time period to address the situation:

(a) The City's public safety communications dispatch may be reached 24/7 at: City of West Jordan Police Department; and/or

(b) The City Engineer.

(c) If contact cannot be made with the City in this manner, the Company shall call 9-1-1.

10.4 Notwithstanding the foregoing, within ten (10) days after undertaking the emergency work, the Company is required to apply for a right of way permit in order to allow the City to update its records of work.

10.5 City's Duty to Maintain Emergency Contacts. The City shall maintain the emergency contact information current at all times with Company's network operations contact.

ARTICLE 11 MISCELLANEOUS

11.1 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Resolution is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof or thereof, all of which will remain in full force and effect for the term of this Agreement and the Resolution or any renewal or renewals thereof.

11.2 No Waiver or Estoppel. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any of such terms and conditions.

11.3 Amendment Approval Required. Except as otherwise provided above, no amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company and an ordinance or resolution approving such amendments is approved by the City Council, if appropriate.

11.4 Utah Governmental Records Management Act. Whenever the Company is required to deliver to the City, or make available to the City for inspection, any records of the Company, and such records are delivered to or made available to the City with a written claim of business confidentiality which meets, in the judgment of the City, the requirements of the Utah Governmental Records Management Act (“GRAMA”), such records shall be classified by the City as “protected” within the meaning of GRAMA, and shall not be disclosed by the City except as may otherwise be required by GRAMA, by court order, or by applicable City ordinance or policy. Company specifically waives any claims against City related to disclosure of any materials as required by GRAMA.

11.5 Timeliness of Approvals. Whenever either party is required by the terms of this Agreement to request the approval or consent of the other party, such request shall be acted upon at the earliest reasonable convenience of the party receiving the request, and the approval or consent so requested shall not be unreasonably denied, delayed, conditioned or withheld, and shall comply with applicable law. Time is of the essence under this Agreement.

11.6 Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. The Company represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in state ethics laws, including those codified at Sections 10-3-1301 *et seq.* and Sections 67-16-1 *et seq.*, Utah Code Annotated; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in state ethics laws, including those codified at Sections 10-3-1301 *et seq.* and Sections 67-16-1 *et seq.*, Utah Code Annotated.

11.7 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah without reference to its conflict of laws principles. Venue shall reside in the City of West Jordan, Utah.

11.8 Entire Agreement. This Agreement contains all the agreements of the parties with respect to any matter addressed in this Agreement, excluding any permits issued in connection with this Agreement, and supersedes all prior discussions, agreements or understandings pertaining to any such matters for all purposes.

11.9 Authority. Each individual executing this Agreement on behalf of the City and Company represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of the City or Company (as applicable).

WITNESS WHEREOF, this Agreement is executed in duplicate originals as of the day and year first above written.

WEST JORDAN CITY, a municipality and political subdivision of the State of Utah:

By: _____
Dirk Burton, Mayor

Approved as to Legal Form:

ATTEST:

City Attorney

City Recorder

ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this ____ day of _____, 2020, before the undersigned notary public in and for the said state, personally appeared Dirk Burton, known or identified to me to be the Mayor of the City of West Jordan, and _____, City Recorder of the City of West Jordan, and the persons who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Utah
Residing at: _____
My Commission Expires: _____

COMPANY:

_____,
a _____ company:

By: _____
Its: _____

ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this ____ day of _____, 20__, before the undersigned notary public in and for the said state, personally appeared _____, known or identified to me to be the _____ of _____, a _____ company, and the person who executed the foregoing instrument and acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Utah
Residing at: _____
My Commission Expires: _____








7f - Master License Agreement


Final Audit Report

2020-09-03


Created:	2020-09-03
By:	Cindy Quick (Cindy.quick@westjordan.utah.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYzkKOFjnwaBIRzUxAar77Y_StfKQmFnp

"7f - Master License Agreement" History


-  Document created by Cindy Quick (Cindy.quick@westjordan.utah.gov)
2020-09-03 - 3:30:56 PM GMT- IP address: 207.225.200.66
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2020-09-03 - 3:33:00 PM GMT
-  Email viewed by Larry Gardner (larry.gardner@westjordan.utah.gov)
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Signature Date: 2020-09-03 - 4:01:45 PM GMT - Time Source: server- IP address: 207.225.200.66
-  Document emailed to Alan Anderson (alan.anderson@westjordan.utah.gov) for signature
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 Signed document emailed to Korban Lee (korban.lee@westjordan.utah.gov), Alan Anderson (alan.anderson@westjordan.utah.gov), Duncan Murray (duncan.murray@westjordan.utah.gov), Larry Gardner (larry.gardner@westjordan.utah.gov), and 1 more

2020-09-03 - 4:41:31 PM GMT