

**WIRELESS PUBLIC RIGHT OF WAY
CONDITIONS OF APPROVAL**

1.0 SCOPE OF PERMIT.

1.1 This encroachment permit ("Permit") authorizes PERMITTEE to construct, install, maintain, locate, operate, remove, and replace PERMITTEE's Facilities located underground in conduits or vaults, on the sidewalk and on approved streetlights or utility poles as described in this Permit ("Facilities") for the purposes of providing Telecommunications Services. For the purposes of this Permit, "Telecommunications Services" means the transmission of voice, video and data information in rendering audio- and video- conferencing services, which are permitted to be offered by PERMITTEE under its CPCN. Video services, video programming services, open video system services, community antenna television system services and cable services as such terms are defined under federal law shall not be considered "Telecommunications Services" hereunder and shall not be provided under the authority of this Permit.

1.2. PERMITTEE represents that its Facilities will be used for the sole purpose of rendering Telecommunications Services pursuant to its authorizations granted by the CPUC and/or the FCC. If PERMITTEE files an application to offer new or additional Telecommunications Services or other services not now authorized under its CPCN effective as of the date of this Permit, which directly affects the regulatory authority of the CITY, then PERMITTEE shall furnish the Public Works Director with a copy of any such application for authorization and any grant of authorization within thirty (30) Days of the filing or the issuance thereof. The Public Works Director shall have the authority to modify this Permit to modify the scope of this permit to reflect any change in Permittee's CPCN.

1.3 Permittee's use of the Right of Way shall be subject to the right of the CITY to use any and all parts of the Public Right-of-Way, exclusively or concurrently and shall be subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title which may affect the Public Right-of-Way. Nothing in this Permit shall be deemed to grant,

convey, create, or vest a perpetual interest in land in PERMITTEE, including, without limitation, any fee, leasehold interest, easement, or franchise rights.

1.4 Except as authorized by Law or under this Permit, in the performance and exercise of its rights and obligations, PERMITTEE shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner or owners of the affected property or properties.

1.5 Any work performed in the Public Right-of-Way pursuant to the rights granted to PERMITTEE hereunder shall be subject to the prior review and approval of the Director of Public Works. PERMITTEE shall obtain approval of the design and any applicable planning entitlements for of PERMITTEE's Facilities by the CITY's Architectural Review Board, Director of Planning, Planning and Transportation Commission or City Council, as applicable, as required under the Palo Alto Municipal Code. PERMITTEE shall comply with all laws in effect on the date of execution of this Permit or at any time during the term of this Permit in the performance of its obligations under this Permit.

1.6 To the extent not prohibited by Law, the CITY reserves the right to extend its regulatory authority and jurisdiction over any change in the nature or character of PERMITTEE's Facilities or its uses or any new or additional Telecommunications Services provided by PERMITTEE not now authorized under any CPCN, including but not limited to, the right to regulate, assess a tax, charge or fee, or otherwise condition the use of the Public Right-of-Way by PERMITTEE for the purposes of installation of fiber optic infrastructure and related equipment.

2.0 FEES AND TAXES

2.1 (Inapplicable, if checked) PERMITTEE is subject to the Digital Infrastructure and Video

Competition Act of 2006 ("DIVCA") and, consistent with Palo Alto Municipal Code requirements, including those set forth in Chapter 2.11, as he same may be amended from time to time, shall pay the City a five percent (5%) franchise fee and a one percent (1%) fee of all video service revenue to be used for public, educational, and government access related purposes.

2.2 PERMITTEE shall collect and distribute to the CITY all applicable utility users tax from its service users pursuant to Chapter 2.35 of Title 2 of the Palo Alto Municipal Code, as amended from time to time. PERMITTEE shall pay the possessory interest tax, if any, that may be levied by the County of Santa Clara against PERMITTEE.

3.0 REMOVAL AND RELOCATION OF FACILITIES

3.1 Upon demand of the CITY, acting by and through the PW Director, and within the period of time as may be established by the CITY, PERMITTEE, at its sole cost and expense, shall remove or relocate its Facilities constructed, installed, maintained, owned, or operated by PERMITTEE under this Permit, whenever the removal or relocation of PERMITTEE's Facilities, or any part thereof, is made necessary by the CITY, acting pursuant to any lawful governmental or proprietary purpose, including, without limitation, any lawful change of grade, alignment, or width of any CITY street or highway or other Public Right-of-Way in Palo Alto, or any construction, installation, or replacement of the CITY's Underground Facilities [as such term is defined in the Standard Drawings and Specifications (1992), as amended from time to time, or any part thereof. The CITY will issue in a timely manner such permits as may be necessary to effect such removal or relocation; provided, however, the CITY shall not be liable to PERMITTEE for any damages or other compensation, including, without limitation, lost profits, if such permits are not issued in a timely manner. The construction, installation, maintenance, ownership, or operation of any underground or aerial facility or structure by the CITY is expressly contemplated herein.

3.2 Upon the receipt of a written demand of the CITY, pursuant to Chapter 12.16 of the Palo Alto Municipal Code, as amended from time to time, and all applicable Laws, PERMITTEE shall replace any and all of its aerial Facilities with underground Facilities in accordance with all applicable laws.

3.3 In the event that PERMITTEE's Facilities, or any part thereof, are abandoned, PERMITTEE, promptly, shall notify the CITY, and, following receipt of the written request of the CITY, shall, at its sole cost and expense, at the City's election either: (1) vacate or remove PERMITTEE's Facilities, or any part thereof, except the conduits within such period of time as may be reasonably required to complete such work after the date of abandonment, or (2) abandon the same in place and dedicate the same to the CITY. If the PERMITTEE fails to remove or cause to be removed the abandoned property, the PERMITTEE shall be deemed to designate the CITY as its agent and at the PERMITTEE's sole cost and expense to remove or cause the removal of the abandoned property. The PERMITTEE covenants and agrees to pay the CITY, upon demand, its actual costs of removal, and this obligation shall survive the expiration or revocation hereof. the CUSTOMER shall apply for a franchise and pay the franchise fee as required by applicable law.

3.4 In the event that the CITY must occupy the Public Right-of-Way, or any part thereof, which is occupied by the PERMITTEE's Facilities, in the lawful exercise of the CITY's governmental or proprietary activities, functions and operations, as determined by the Directors, including, but not limited to, the construction of CITY's public works or other public projects, the PW Director may require the PERMITTEE to promptly remove and relocate the PERMITTEE's Facilities to another site within the Public Right-of-Way, and PERMITTEE, at Permittee's sole cost and expense, shall temporarily or permanently remove and relocate the PERMITTEE's Facilities to such other authorized site within the Public Right-of-Way, as appropriate. If the PERMITTEE does not temporarily suspend or cause to be suspended construction and installation activities affecting its Facilities, or its Facilities are not removed and relocated to another site upon receipt of the CITY's notice within the time required by the CITY's permitting regulations, then, unless the PERMITTEE demonstrates to the Utilities Director that the removal and relocation of its Facilities in another portion of the Public Right-of-Way will be completed before the CITY must occupy such portion of the Public Right-of-Way, the PERMITTEE shall be deemed to have designated the CITY as its agent to remove or cause the removal of its Facilities, or any part thereof, at the PERMITTEE's sole cost and expense. The PERMITTEE covenants and agrees to pay the CITY, upon demand, the City's actual costs of

removal, and this obligation shall survive the expiration or revocation hereof.

3.5 Whenever the removal or relocation of PERMITTEE's Facilities is required under this Permit, PERMITTEE, after the removal or relocation of PERMITTEE's Facilities at its own cost and expense, promptly shall repair and return the Public Right-of-Way in which its Facilities were located, to a safe and satisfactory condition in accordance with applicable Laws. If PERMITTEE does not return the affected site to a safe and satisfactory condition, then the CITY shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of PERMITTEE and charge its actual costs to PERMITTEE. Upon the receipt of a demand for payment by the CITY, PERMITTEE shall reimburse the CITY for such costs. The CITY will cooperate with PERMITTEE to locate an alternate location for PERMITTEE's Facilities within the Public Right-of-Way.

4.0 CONSTRUCTION STREET WORK PERMIT

4.1 PERMITTEE shall obtain a street opening permit for each construction project or other activity contemplated under this Permit to be performed within the Public Right-of-Way.

4.2 The street opening permit shall describe, in detail, PERMITTEE's Facilities to be constructed and installed, the time period in which any such construction activity is to be completed, and the Public Right-of-Way in which PERMITTEE's Facilities are to be located. The permits shall contain the terms, conditions, and specifications applicable to the construction, installation, and maintenance of PERMITTEE's Facilities. The construction of PERMITTEE's Facilities shall be placed underground, unless otherwise expressly authorized or permitted, in writing, by law. PERMITTEE shall provide for a means of identifying from the ground level PERMITTEE's Facilities which are placed underground, including, without limitation, the installation of cathodic-protected metallic tracing wire or other wire or non-wire facilities which are determined to be an acceptable means of identification by the Public Works Director.

4.3 PERMITTEE, at its sole cost and expense, shall repair, replace, or restore, or shall cause to be repaired, replaced, or restored, and shall be liable for any damage to, the CITY's streets, pavements,

underground facilities, poles, curbs, gutters, and sidewalks, and other CITY property occasioned by, the construction, installation, maintenance, repair, and removal of PERMITTEE's Facilities in the Public Right-of-Way by PERMITTEE or one under the direction of PERMITTEE, and shall repair, in kind, the damage at its sole expense.

4.4 Upon the issuance of a street opening permit by the CITY, PERMITTEE shall post or shall cause to be posted notices of the construction work schedule in the general vicinity of such work and shall deliver or shall cause to be delivered to those residents and businesses whose properties abut the construction work and those who will be directly impacted by PERMITTEE's work a written construction work schedule on two separate occasions (at least ten (10) Days and two (2) Days) before the commencement of the construction work, as otherwise may be required by Law. In addition, PERMITTEE shall be required to post "No Parking" notices at least 72 hours prior to commence of construction work.

4.5 Upon the completion of construction work, PERMITTEE promptly shall furnish to the CITY accurate plans and record or as-built drawings showing, in detail, the exact location, depth, and size of PERMITTEE's Facilities in the Public Right-of-Way, including, without limitation, the profiles of all street crossings. These plans and drawings shall be incorporated in one (1) set of 3 mil minimum thickness, good quality transparent Mylar drawings. PERMITTEE shall furnish to the CITY electronic disks (which utilize AutoCAD or Geographic Data Systems software) containing the full set of plans and record or as-built drawings. In lieu of this format, Permittee shall provide such plans in an alternate format as requested by the City.

4.6 To the extent directional boring or other similar methods are used to construct or install PERMITTEE's Facilities, PERMITTEE also shall "pothole" all CITY mains and customer services lines prior to crossing over, under, or between such underground facilities. PERMITTEE shall provide to the Public Works Director a written report within such time and containing such detail as may be established by the Public Works Director.

4.7 PERMITTEE shall complete the original construction of PERMITTEE's Facilities within the period specified in applicable City permits or

otherwise required by law, commencing from the date on which the required street work permits are issued. This period of time shall be extended for each Day that PERMITTEE ceases to engage in construction work or engages in such work between the hours of 6:00 p.m. and 8:00 a.m. Pacific Time at the written request of the CITY or during any event of Force Majeure. The CITY disclaims any and all liability for damages, including, without limitation, any consequential or incidental damages, for any delay in the construction work occasioned by the request of the CITY.

5.0 JOINT PARTICIPATION WITH OTHER PERMITTEES

5.1 To the extent it is practicable to do so, PERMITTEE shall cooperate with all other permittees in the planning, location, and construction of their joint and several telecommunications facilities within the Public Right-of-Way. Any removal or relocation of PERMITTEE's Facilities at the CITY's request to accommodate an entity other than the CITY shall be performed by PERMITTEE at the expense of such other entity. PERMITTEE shall, within thirty (30) Days of receipt of the demand of the Public Works Director, deliver to the Public Works Department, 250 Hamilton Avenue, 6th Floor, Palo Alto, such maps, plans, and diagrams as may be required to show, in detail, the exact location, size, depth, and description of PERMITTEE's Facilities within the Public Right-of-Way in relation to all other permitted telecommunications facilities. PERMITTEE shall "pothole" its Facilities, at its sole cost and expense, with respect to any existing CITY or third party underground utilities, telecommunications, or other facilities.

5.2 In accordance with the provisions of Chapter 3.1 of Division 5 of Title 1 of the Government Code of the State of California (Section 4216 et seq.), as amended, PERMITTEE as an operator of a subsurface installation shall obtain and maintain membership in a regional notification center (e.g, Underground Service Alert - Northern California), and shall otherwise comply with the provisions of the referenced chapter, division and title. PERMITTEE shall furnish written proof of such membership to the PW Director within thirty (30) Days of obtaining such membership. Repeal of any Law requiring such membership shall not negate PERMITTEE's obligation to maintain such membership, and PERMITTEE expressly agrees to

maintain such membership during the term of this Permit.

6.0 INDEMNIFICATION

6.1 PERMITTEE shall indemnify, protect, defend (with counsel reasonably acceptable to the CITY) and hold harmless the CITY, its council members, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including the costs of any hazardous material (as such term is defined in Section 17.04.040(e) of Chapter 17.04 of Title 17 of the Palo Alto Municipal Code, as amended) remedial actions of any kind and all other related costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense to the extent caused directly, in whole or in part, by the negligence or willful misconduct of PERMITTEE, its officers, employees, agents and subcontractors described in this Permit and not arising out of the sole negligence of the CITY, provided, however, the CITY shall be liable only for the cost of repair to the damaged Facilities arising from the CITY's sole negligent acts or omissions, and the CITY shall not be responsible for any damages, losses, or liability of any kind occurring by reason of anything done or omitted to be done by the CITY or by any third party, including, without limitation, damages, losses, or liability arising from the issuance or approval by the CITY of a permit to any third party or any interruption in Telecommunications Services.

7.0 INSURANCE

7.1 PERMITTEE shall obtain and maintain at all times during the term of this Permit commercial general liability insurance and comprehensive automotive liability insurance protecting PERMITTEE in an amount of not less than two million dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and not less than two million dollars (\$2,000,000) aggregate, for each personal injury liability, products-completed operations, and each accident. Such insurance shall name the CITY, its council members, officers, employees, agents, and contractors as additional named insureds as respects any liability arising out of PERMITTEE's performance of work under this Permit. Coverage shall be provided in accordance

with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. When an umbrella or excess coverage is in effect, coverage shall be provided in following form. Such insurance shall not be canceled or materially altered to reduce coverage until the CITY has received at least thirty (30) Days prior written notice of such cancellation or change. PERMITTEE shall be responsible for notifying the CITY of such change or cancellation. The minimum insurance coverages required by this Permit may be met through umbrella coverage.

7.2 PERMITTEE shall file the required original certificate(s) of insurance with endorsements with the CITY's risk manager, copy to the Public Works Director, subject to the CITY's prior approval, which shall clearly state:

7.2.1 Policy number; name of insurance company; name, address and telephone number of the agent or authorized representative; name, address and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts;

7.2.2 That thirty (30) Days' prior written notice of cancellation is unqualified as to the acceptance of liability for failure to notify the CITY; and

7.2.3 That PERMITTEE's insurance is primary as respects any other valid or collectible insurance that the CITY may possess, including any self-insured retentions the CITY may have, and any other insurance the CITY does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

The certificate(s) of insurance with endorsements and notices, shall be mailed to: City of Palo Alto, Public Works Department, P.O. Box 10250, Palo Alto, CA 94303, Attn.: Mike Nafziger, Senior Engineer.

7.3 PERMITTEE shall obtain and maintain at all times during the term of this Permit statutory workers' compensation and employer's liability insurance in an amount not less than one hundred thousand dollars (\$100,000) or such other amounts as required by California law, and furnish the CITY with a certificate showing proof of such coverage.

7.4 Any insurance provider of PERMITTEE shall be admitted and authorized to do business in

California and shall be rated at least A:VII in Best's Key Rating Guide. Insurance certificates issued by non-admitted insurance companies are not acceptable.

7.5 Prior to the execution of this Permit, any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the CITY. "Cross liability", "severability of interest" or "separation of insureds" clauses shall be made a part of the commercial general liability and comprehensive automobile liability policies.

8.0 PERFORMANCE BOND

8.1 On or before the Effective Date and for the duration of each construction project and other work to be performed by or on the behalf of PERMITTEE, which costs in excess of \$50,000, PERMITTEE shall procure and provide the CITY with a letter of credit or surety bond naming the CITY as the obligee in the amount of the project cost estimate or \$500,000, whichever is more, to guarantee and assure the faithful performance of PERMITTEE's obligations under this Permit. The CITY shall have the right to draw against the surety bond in the event of a default by PERMITTEE or in the event that PERMITTEE fails to meet and fully perform any of its obligations hereunder. Within ten (10) Days of receipt of written notice from the CITY, PERMITTEE shall renew or replace such sums of money as shall bring the surety bond current. Any letter of credit or performance bond may be cancelled by PERMITTEE at the end of the applicable construction project.