

Master Lease Agreement Telecommunications Equipment

This Master Lease Agreement ("Master Lease") is entered into this XX day of XX, 20XX ("Commencement Date"), between the City of Santa Cruz, a political subdivision of the State of California ("City"), and ("Lessee").

In consideration of the mutual covenants contained in this Master Lease and other good and valuable consideration, the receipt of which is hereby acknowledged, City and Lessee hereby agree as follows:

1. Master Lease

This Master Lease sets forth the general terms and conditions upon which City shall lease to Lessee a portion of certain towers, poles, conduit, buildings, rights of way and related facilities, equipment and structures ("City Facilities") owned by City for the installation, operation and maintenance of Lessee's Telecommunications Equipment, as defined in Section 3. This Master Lease does not provide for the use of any City Facility. The terms and conditions for use of specific City Facilities shall be set forth in a separate Facilities Lease Agreement. This Master Lease is not and shall not be deemed to be an exclusive agreement for the use of the City Facilities.

2. Facilities Lease

Upon the parties' mutual agreement for the use of specific City Facilities, the parties will execute a Facilities Lease Agreement ("Facilities Lease"), which shall be attached to this Master Lease and be deemed a part hereof. The Facilities Lease shall describe: a) the City Facilities and its location; b) the Lessee's Telecommunications Equipment, as defined in Section 3, and the method of installation on the City Facilities, c) the term and rent for use of the City Facilities, and d) other terms and conditions as the parties shall agree. In the event of a discrepancy or inconsistency between the terms and conditions of this Master Lease and the terms and conditions of the Facilities Lease, the terms and conditions of the Facilities Lease shall govern and control. Entering into this Master Lease does not obligate City or Lessee to enter into any Facilities Lease.

3. Use, Permits, Zoning and Access

3.1 Permitted Use

Lessee's use of the City Facilities shall be limited to the installation, operation and maintenance of antennas, cables, utility lines, computer equipment, batteries and emergency backup generators, equipment cabinets and related equipment ("Telecommunications Equipment") owned by the Lessee for the transmission and reception of telecommunications. Lessee's use shall be lawful and in compliance with all federal, state and local laws, rules, regulations, orders or other governmental requirements applicable to the installation and use of Lessee's Telecommunications Equipment.

3.2 Permits; Zoning

Lessee, at Lessee's expense, shall obtain all necessary licenses, construction permits, encroachment permits, zoning and land use approvals, or similar approvals ("Governmental Approvals") for the installation and operation of the Telecommunications Equipment on the City Facilities. Lessee's use of City Facilities under this Master Lease is entirely at Lessee's own risk. City does not warrant, represent, or guaranty the issuance of any Governmental Approvals. City agrees to reasonably cooperate with Lessee in obtaining such Governmental Approvals. Lessee shall provide to City copies

of such licenses, permits, easements, zoning, land use or similar approvals needed for Lessee's installation, operation and maintenance of the Telecommunications Equipment on the City Facilities.

3.3 Access

Where the City may legally convey such rights and for the term of a Facilities Lease, City hereby grants to Lessee a non-exclusive right of entry to access the the City Facilities ("Right of Entry"). The Right of Entry will be adequate to service the City Facilities and the Telecommunications Equipment applicable to any Facilities Lease. City agrees to reasonably cooperate with Lessee's efforts, at Lessee's expense, to obtain such easements and/or rights of entry as are needed for City Facilities where the City may not legally convey such rights.

Lessee shall be entitled access to the City Facilities between the hours of 6:00 a.m. and 6:00 p.m., seven (7) days per week. If an emergency repair is necessary, Lessee may be allowed reasonable access to the City Facilities between the hours of 6:00 p.m. and 6:00 a.m., provided that Lessee obtains the City Public Workers Director's or designee's permission prior to entry. The City shall provide Lessee with the phone number of the City's emergency contact ("Emergency Contact"), which number shall permit contact with the Emergency Contact, or his/her designate, twenty-four (24) hours per day.

Where the public has limited or no access to the City Facilities, Lessee agrees to give City reasonable notice prior to access to such City Facilities. Lessee will be responsible for notifying nearby property owners, users and residents in writing one week advance of any work which might be disruptive. Where the City Facilities are near or adjacent to residential property, Lessee will make reasonable accommodations to minimize disturbance to residents.

To the extent City has knowledge of any limitation or planned limitation on access to the City Facilities, City agrees to provide Lessee with written notice (in advance of such limitation to the extent possible) of any limitation on access, provided that in an emergency City shall not be obligated to provide such notice. City and Lessee agree to reasonably cooperate with one another and with the other service providers to minimize any restricted access to the City Facilities.

4. Interference

4.1. Interference by Lessee

Lessee and its licensees, employees, invitees, contractors or agents shall not engage in any activity that interferes with access to and use of the City Facilities by City or City's other lessees ("Existing Tenants"). City agrees to notify Lessee of any Existing Tenants who has not yet installed, configured or operated Telecommunications Equipment prior to the date that the Facilities Lease is executed by Lessee. Lessee agrees that even if the Existing Tenant installs facilities to the City Facilities pursuant to its reserved rights under its Facilities Lease, and this occurs after Lessee's installation and interference results, then it is Lessee's responsibility to eliminate the interference in accordance with this Section.

4.2 Interference by City

Except as provided in paragraph 4.3 of this Section, City and its lessees, licensees, employees, invitees, contractors or agents shall not engage in any activity or use the City Facilities in any way that interferes with Lessee's authorized use of and access to the City Facilities.

4.3 Resolving Interference

Lessee agrees that if Lessee's use of the City Facilities causes interference with City's or Existing Tenant's use of the City Facilities, Lessee shall, at its expense, immediately discontinue use of the Telecommunications Equipment and City Facilities, or cease such activities causing such interference, or otherwise take action necessary to eliminate such interference. Lessee shall undertake such modification or other action immediately upon notice of the interference in the case of "Physical Interference" (i.e., materially preventing, hindering or impeding access and/or work by City or Existing Tenants) with City's use of the City Facilities, or within 60 days of notice in the case of any other interference (i.e., signal interference, such as RF or grounding interference) with City's or an Existing Tenant's use of the City Facilities. City shall attempt to notify Lessee of such interference in advance of the need to discontinue use or modify Lessee's activities if reasonably possible and if Lessee clearly identifies its Telecommunications Equipment and other equipment with its name and a telephone number of the appropriate contact person. City shall cooperate with Lessee in a reasonable manner and for a reasonable period of time to resolve such interference, provided such cooperation shall not include any obligation that materially interferes with City's use of the City Facilities. If Lessee is unable to eliminate such interference in a reasonable period of time to the satisfaction of City or such Existing Tenant, City may terminate the applicable Facilities Lease in accordance with Section 11.a herein. Lessee agrees that in the event of any interference with Lessee's use of the City Facilities caused by City or an Existing Tenant, Lessee shall cooperate with City or such Existing Tenant in a reasonable manner and for a reasonable period of time to mutually resolve such interference, provided such cooperation shall not include any obligation which materially interferes with Lessee's reception and transmission of telecommunications. In the event that such interference cannot be mutually resolved within a reasonable period of time, Lessee may terminate the applicable Facilities Lease as provided in Section 11.a. herein. In the case of an emergency, City shall not be obligated to provide Lessee with any notice of work to be performed. Lessee shall be required to wait until all City's restoration activities have been completed prior to conducting any maintenance, repair, adjustment, or replacement work; such work to be performed in accordance with Section 10 herein.

5. Term

5.1 Initial Term

The term of this Master Lease shall commence on the Commencement Date set forth above, and shall continue for five (5) years, expiring at 11:59 p.m. on the fifth anniversary of said Commencement Date ("Expiration Date"), unless earlier terminated pursuant to the terms of this Master Lease.

5.2 Option to Extend

Lessee shall have the option to extend the term of this Master Lease beyond the initial term described herein for one additional (5) year term on the same terms, covenants and conditions that are contained in this Master Lease; City shall increase the Rent during the option period in the manner provided in Section 6.2 below. Lessee shall exercise its option to extend this Master Lease, if at all, by providing City with written notice that Lessee intends to exercise its option no later than one hundred and eighty (180) days prior to the Expiration Date.

5.3 Holdover

If Lessee shall remain in possession of the City Facilities at the Expiration Date, expiration of any option period, or any renewal term of a Facilities Lease, such possession shall be deemed a month-to-

month tenancy under the same terms and conditions as this Master Lease and any Facilities Leases pertaining to such City Facilities, except that the Rent shall be increased as provided in Section 6 herein.

6. Rent

6.1 Payment of Rent

From and after the commencement of the term of each Facilities Lease, Lessee shall pay City, as rent, the agreed amount payable as rent for the City Facilities under such Facilities Lease ("Rent"). Exhibit "A" provides a schedule of Facility Lease Rates. Unless otherwise provided in the Facilities Lease, Rent shall be payable on the first day of each calendar year in advance at City's address specified in paragraph 6.3 of this Section. If the term of a Facilities Lease commences on other than the first day of a year, Rent shall be prorated, on a monthly basis, for that first year for the number of full and partial months from the date of commencement of the Facilities Lease to the end of the year and such Rent shall be due within 30 days of the commencement date of the Facilities Lease. If a Facilities Lease is terminated on a day other than on the last day of a year, no Rent shall be refunded unless the termination is in accordance with Section 11.a, in which case the Rent shall be prorated as of the date of removal of the interfering Telecommunications Equipment from the City Facilities and the prepaid Rents shall be refunded to Lessee.

6.2 Adjustment of Rent

Rent under a Facilities Lease shall automatically increase by four percent (4%) per year on the first day of each calendar year or as specified in the Facilities Lease.

6.3 Delivery of Rent Payments

Lessee shall make one combined Rent payment for all Rent due under any Facilities Lease. Lessee shall include a schedule of Facilities Leases for which Rent is being paid with each combined Rent payment. Rent shall be made payable to the City of Santa Cruz, and shall be considered paid when delivered to:

City of Santa Cruz
809 Center Street
Santa Cruz, CA 95060

City may, at any time, by written notice to Lessee, designate a different address to which Lessee shall deliver the Rent payments. Lessee is solely responsible for timely payment of Rent and City will not send rent invoices to Lessee.

6.4 Failure to Pay Rent; Late Charge

a) If Lessee fails to pay rent due hereunder at the time it is due and payable, such unpaid amounts shall bear interest at the rate of ten percent (10%) per year from the date due to the date of payment, computed on the basis of monthly compounding with actual days elapsed compared to a 360-day year. In addition to such interest, the late payment by Lessee of any rent due hereunder will cause City to incur certain costs and expenses not contemplated under this Lease, the exact amount of which costs being extremely difficult or impracticable to fix. Such costs and expenses will include, without limitation, administrative and collection costs, and processing and accounting expenses. Therefore, if

any such rent is not received by City within ten (10) business days following the due date, Lessee shall immediately pay to City a late charge equal to five percent (5%) of such overdue amount. This late charge represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent due hereunder, City's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to such nonpayment by Lessee nor prevent City from exercising all other rights and remedies available to City under this Lease or under law.

b) In the event of a dispute between the parties as to the correct amount of rent owed by Lessee, City may accept any sum tendered by Lessee in payment thereof, without prejudice to City's claim as to the proper amount of rent owing. If it is later determined that Lessee has not paid the full amount of rent owing, the late charge specified herein shall apply only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Section to the contrary, however, City's Lease Administrator may waive any delinquency payment or late charge upon written application of Lessee.

7. Telecommunications Equipment

7.1 Installation and Material Alteration

Lessee shall have the right, at its cost and expense, to install, construct, operate and maintain the Telecommunications Equipment on the City Facilities. Lessee shall have the right to modify, supplement, replace or upgrade the Telecommunications Equipment as reasonably necessary at any time during the term of a Facilities Lease; provided, however, that Lessee shall not relocate the Telecommunications Equipment or any portion thereof anywhere on the City Facilities without prior written permission from City. Lessee shall ensure that such work does not adversely affect the structural integrity, maintenance, operations or use of the City Facilities or access thereto.

Prior to commencing any installation or material alteration of the City Facilities, Lessee shall provide City with Lessee's plans for installation or alteration for City's review and approval. Such approval shall be in writing and shall indicate City's determination that the proposed installation will meet City of Santa Cruz Design Criteria, and that the reliability, safety and structural integrity of the City Facilities has not been compromised. Lessee shall obtain all necessary permits or other legal authorization for all installations or material alterations.

Lessee's changing-out equipment with equipment of the same size, weight, frequency, and power, in the course of repairs or upgrading of the Telecommunications Equipment, shall not be a material alteration. Material alterations are defined as anything other than changing out equipment with equipment of the same size, weight, frequency, and power, in the course of repairs or upgrading of the Telecommunications Equipment including the co-location of equipment on the City Facilities.

Approval by a licensed engineer of any structural work to facilitate installation of the Lessee's Telecommunications Equipment shall be the responsibility and at the sole cost of the Lessee. All of Lessee's work shall be performed at Lessee's sole cost and expense, in a good and workmanlike manner, and in accordance with applicable laws and ordinances and Section 10 herein.

For alterations that are deemed not a material alteration, in the event the City does not furnish the Lessee with written response within sixty (60) days of City's receipt of the plans, City will be deemed to have approved them. After completion of any installation or alteration work, Lessee will provide

City with as-built drawings of the City Facilities if there has been any change from the plans previously reviewed by City.

7.2 Liens

Lessee is not authorized to contract for or on behalf of City for work on, or the furnishing of materials to, any City Facilities, and Lessee shall keep any City Facilities free from any liens arising from any work performed, materials furnished or obligations incurred by or at the request of Lessee, and Lessee shall discharge of record by payment, bond or otherwise, within ten (10) days subsequent to the date of its receipt of notice thereof from City, any mechanic's, laborer's or similar lien filed against any City Facilities for work or materials claimed to have been furnished to Lessee. If any lien is filed against any City Facilities as a result of the acts or omissions of Lessee, or Lessee's employees, agents, or contractors and Lessee fails to discharge or bond any lien within such period, then, in addition to any other right or remedy, City may, at its election, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. Lessee shall pay on demand any amount paid by City for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses City incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary disbursements in connection therewith.

7.3 Removal of Property

The Telecommunications Equipment shall remain the exclusive property of Lessee, and Lessee shall have the right to remove all or any portion of the Telecommunications Equipment at any time during the term of this Master Lease or the term of the relevant Facilities Lease and following any termination of the Facilities Lease or of this Master Lease. Upon expiration or termination of each Facilities Lease, Lessee shall remove the Telecommunications Equipment and all property of Lessee from the City Facilities and shall return the City Facilities in good condition, reasonable wear and tear excepted. Lessee's failure to remove the Telecommunications Equipment and other property of Lessee within thirty (30) days after the expiration or earlier termination of the Facilities Lease pertaining to such property shall be considered an abandonment of such property and City may remove or dispose of the Telecommunications Equipment and other property of Lessee at Lessee's sole cost and expense in any lawful manner without liability to City.

8. Acceptance of City Facilities

Taking possession of the City Facilities by Lessee is conclusive evidence that Lessee: (a) accepts the City Facilities as suitable for the purposes for which they are leased, (b) accepts the City Facilities and every part and appurtenance thereof as is, with all faults, except for latent defects, and (c) waives any claims against City in respect to defects in the City Facilities, or their suitability for any particular purposes. Lessee is deemed to take possession of the City Facilities upon commencement of the term of each Facilities Lease.

9. Electric Service

Where electric service is necessary, Lessee shall bear responsibility for arranging with power provider for service. Lessee shall be responsible to provide the necessary connection to electric service and shall pay directly to power provider all charges for electricity provided to Lessee at the City Facilities. If power needs may be met by photovoltaic or other freestanding renewable power source, nothing in this Master Lease shall be construed to prohibit such use so long as all work is done in accordance with

current codes and other legal requirements, including any applicable building codes and permit requirements, and is completed in a safe and workmanlike manner.

10. Safety Requirements Pertaining to Telecommunications Equipment

Telecommunications Equipment shall be installed, maintained, repaired, adjusted, and upgraded in accordance with the then-current provisions of the National Electric Safety Code ("NESC") and City of Santa Cruz Pole Attachment Specifications. Upon receiving written notice from City of noncompliance with said requirements ("Noncompliance Notice"), Lessee shall, at its sole expense, within 30 days of the date of the Noncompliance Notice, either bring the Telecommunications Equipment into compliance with said requirements or submit a plan of correction. If Lessee submits such a plan of correction then Lessee shall bring the Telecommunications Equipment into compliance within an additional 30 days, or within such time limits upon which City and Lessee mutually agree. If Lessee fails to bring the Telecommunications Equipment into compliance within the said time limits, Lessee agrees to pay a sanction amount equal to the Rent specified in the Facilities Lease. This sanction amount shall be in addition to the Rent and shall be retroactive from the date of the Noncompliance Notice and shall continue until the Telecommunications Equipment are brought into compliance, as determined by the City. After 60 days from the date of the Noncompliance Notice, City shall have the right, at its sole discretion, to rearrange the Telecommunications Equipment at Lessee's sole expense or to terminate Lessee's Facilities Lease for the applicable Telecommunications Equipment and remove the Telecommunications Equipment.

11. Termination

Except as provided in Section 12 and Section 23 herein, this Master Lease and each Facilities Lease may be terminated only as follows:

By City upon ten (10) days prior written notice from City to Lessee if physical interference has not been remedied to City's satisfaction or if any equipment placed on the City Facilities by Lessee interferes with City's or any Existing Tenant's use of their respective Facilities and Lessee does not cure such interference or its interfering activities have not ceased in accordance with Section 4.3;

By City upon ten (10) days prior written notice if Lessee fails to pay any Rent in accordance with Section 6, provided City has provided Lessee with ten (10) days prior written notice of the failure to pay rent and Lessee has the opportunity to cure;

e) By City upon sixty (60) days prior written notice if Lessee fails to bring the Telecommunications Equipment into compliance with the safety requirements set forth in Section 10.

By Lessee upon thirty (30) days prior written notice if it is unable to obtain or maintain after reasonable efforts to do so any license, permit or Governmental Approvals necessary for installation, operation and maintenance of the Telecommunications Equipment;

By Lessee upon ninety (90) days prior written notice if Lessee determines, in its reasonable discretion exercised in good faith, that the City Facilities are or have become unacceptable under Lessee's design or engineering specifications for its Telecommunications Equipment, provided that this determination was not and reasonably could not have been made by Lessee prior to Lessee's occupation of the City Facilities, as set forth in Section 8; by Lessee if a particular restriction contained in a ground lease and not set forth in this Master Lease or the applicable Facilities Lease prevents Lessee from the construction, operation or maintenance of or access to the Telecommunications Equipment;

In the event of termination of a Facilities Lease under this Section 11, no prepaid Rent applicable thereto shall be reimbursed by City to Lessee, except that such prepaid Rent shall be apportioned based on the termination date and refunded to Lessee in the event of termination pursuant to this Section. Upon termination and return of any such Rent, neither City nor Lessee shall have any further obligation or liability with regard to the City Facilities covered by the applicable Facilities Lease, except as otherwise provided herein or in such Facilities Lease.

12. Condemnation and Casualty

If at any time during the term of any Facilities Lease all or "substantially all" (meaning the remaining portion thereof shall not be of sufficient size or condition to permit the continuation of Lessee's use in a commercially reasonable manner) of the City Facilities applicable to such Facilities Lease shall be taken in the exercise of the power of eminent domain by any governmental or other authority, or by deed in lieu of condemnation, or shall be damaged or destroyed, then such Facilities Lease shall terminate, which termination shall be effective as of the date of the vesting of title in such taking or such damage or destruction. With respect to condemnation, City and Lessee shall each be entitled to pursue their own separate awards with respect to such taking. In the event of any damage, destruction or taking of less than all or substantially all of the City Facilities, such Facilities Lease shall continue and City and Lessee shall be entitled to pursue their own separate awards with respect to any such taking.

13. Taxes and Fees

13.1 Payment of Taxes and Fees

Lessee shall pay any fees, licenses or taxes, including but not limited to any possessory interest tax or property taxes assessed on, or any portion thereof attributable to, the Telecommunications Equipment and Lessee's construction, operation and maintenance thereof.

13.2 Creation of Possessory Interest

Pursuant to the provisions of Revenue and Taxation Code Section 107.6, Lessee is hereby advised that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such real property taxes. Lessee shall pay all such taxes when due, and shall not allow any such taxes, assessments or fees to become a lien against the City Facilities or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law.

14. Indemnity and Insurance

14.1 Lessee's Indemnity

City shall not be liable for, and Lessee shall defend and indemnify City and the employees and agents of City (collectively "City Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Lease and arising either directly or indirectly from any act, error, omission or negligence of Lessee or its contractors, licensees, agents, volunteers, servants or employees, including,

without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of City Parties. Lessee shall have no obligation, however, to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties.

14.2 City's Indemnity

City shall defend and indemnify Lessee and hold it harmless from and against any Claims related to this Master Lease that arise solely from any act, omission or negligence of City Parties.

14.3 Lessee's Insurance Obligations

Without limiting Lessee's indemnification obligations to City under this Master Lease, Lessee shall provide and maintain, during the term and for such other period as may be required herein, at its sole expense, insurance in the amounts and form specified in Exhibit "B", attached hereto.

14.4 City's Insurance Obligations

City maintains a policy of All-Risk Insurance covering the City's personal property in the City Facilities, including any fixtures or equipment in the City Facilities owned by City. The City utilizes a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out of its use or occupancy of the City Facilities.

15. Limitation of Liability

In no event shall City be liable to Lessee for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Master Lease or for any failure of performance related hereto howsoever caused, whether or not arising from City's sole, joint or concurrent negligence. To the extent any payment required to be made under this Master Lease is agreed by the parties to constitute liquidated damages, the parties acknowledge that the damages are difficult or impossible to determine and that such payment constitutes a reasonable approximation of such damages, and not a penalty.

16. Notices

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed to the following addresses:

If to City, to:

City of Santa Cruz
809 Center Street
Santa Cruz, CA 95060

If to Lessee, to:

With a copy to:

17. Quiet Enjoyment, Title and Authority

17.1 City's Authority

City covenants and warrants to Lessee that (i) it has full right, power and authority to execute this Master Lease and each Facilities Lease and has the power to grant all rights hereunder, (ii) its execution and performance of this Master Lease and each Facilities Lease will not violate any laws, ordinances or covenants, or the provisions of any mortgage, lease or other agreement binding on City, and (iii) Lessee shall have the quiet enjoyment of the City Facilities, and Lessee shall not be disturbed as long as Lessee is not in default beyond any applicable grace or cure period.

17.2 Lessee's Authority

Lessee covenants and warrants to City that Lessee has full right, power and authority to execute this Master Lease and each Facilities Lease and that the execution and performance thereof will not violate any laws, ordinances or covenants, or the provisions of any agreement binding on Lessee. Lessee acknowledges and agrees that this Master Lease and each Facilities Lease is subject and subordinate at all times to (i) the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against any City Facilities, or on or against City 's interest or estate therein, and (ii) any underlying ground lease, all without the necessity of having further instruments executed by Lessee to effect such subordination, but, only upon the condition that any such mortgagee, beneficiary or trustee expressly agrees not to disturb the rights of Lessee under this Master Lease and each Facilities Lease.

17.3 Ground Lease

This Master Lease and each Facilities Lease is subject to any restrictions or other terms or conditions contained in any underlying ground lease, and Lessee acknowledges and agrees to commit no act or omission which would constitute a default under any ground lease that City has provided a copy to Lessee prior to the execution of the applicable Facilities Lease. City covenants and warrants to Lessee that City has acquired any consent required under any ground lease to be obtained from the landlord thereunder in order for Lessee to construct, operate, maintain or access the Telecommunications Equipment, except as expressly set forth in this Master Lease or the applicable Facilities Lease, and that the terms of this Master Lease and the applicable Facilities Lease do not conflict with or are not prohibited by any ground leases. If a particular restriction contained in a ground lease and not set forth in this Master Lease or the applicable Facilities Lease prevents Lessee from the construction, operation or maintenance of or access to the Telecommunications Equipment, Lessee may terminate the applicable Facilities Lease, as provided in Section 11.f.

18. Assignment and Subleasing

18.1 Assignment

Lessee shall not assign this Master Lease, any Facilities Lease, any City Facilities or any of its rights with respect thereto, or relinquish possession of the City Facilities or any part thereof, or permit any other person to use the City Facilities or any part thereof, except Lessee may assign this Master Lease and any Facilities Lease and its rights hereunder and thereunder to any entity which is a parent, subsidiary or affiliate of Lessee; is merged or consolidated with Lessee; or purchases a majority or controlling interest in the ownership or assets of Lessee; provided that such entity is properly licensed

to operate a telecommunications business and shall, in a writing satisfactory to City, assume without limitation this Master Lease and each applicable Facilities Lease.

18.2 Notices

City may assign this Master Lease, any Facilities Lease, any City Facilities or any of its rights with respect thereto with notice to, but not approval or consent of Lessee upon proper notice as specified herein.

19. Waiver of Landlord's Lien

City hereby waives any and all lien rights it may have, statutory or otherwise, concerning any Telecommunications Equipment or any portion thereof. The Telecommunications Equipment shall be deemed personal property for purposes of this Master Lease and each Facilities Lease, regardless of whether any portion thereof is deemed real or personal property under applicable law, and except as otherwise provided in this Master Lease or in any Facilities Lease, City hereby consents to Lessee's right to remove all or any portion of any Telecommunications Equipment from time to time in Lessee's sole discretion.

20. Default and Remedies

20.1 Event of Default

The occurrence of any one or more of the following events constitutes an "Event of Default" by Lessee:

- i. Lessee fails to pay Rent or any amounts due under this Master Lease or any Facilities Lease within ten (10) days after written notice of such failure from City;
- ii. Lessee deserts, abandons, or vacates any City Facilities;
- iii. A petition is filed by or against Lessee under the Federal Bankruptcy Code or any similar law or statute of the United States or any state (and with respect to any petition filed against Lessee, such petition is not dismissed within sixty (60) days after the filing thereof) or Lessee is adjudged a bankrupt or insolvent, or a receiver, custodian or trustee is appointed for Lessee or for any of the assets of Lessee which appointment is not vacated within thirty (30) days of the date of the appointment, or Lessee becomes insolvent, is unable to pay its debts and they become due, or makes a transfer in fraud of creditors; and
- iv. Lessee fails to perform or observe any other term or condition of this Master Lease or a Facilities Lease and such failure continues beyond the notice periods specified in Section 11, if any of these are applicable, or for thirty (30) days after written notice from City if such Sections are not applicable; provided, however, that if such failure is capable of being cured, but not within such 30-day period, such period shall be extended so long as Lessee commences appropriate curative action within such 30-day period and thereafter diligently prosecutes such cure to completion as promptly as possible.

20.2 Remedies

A default under Section 23.1i, with respect to payments due under the Master Lease, or Section 23.1.iii shall be a default under this Master Lease. A default under Section 23.1.i, with respect to payments due

under any Facilities Lease, or any other clause of Section 23.1 shall be a default under the applicable Facilities Lease. If an Event of Default with respect to a Facilities Lease has occurred and is continuing, City may, without notice or demand except as expressly required above, in addition to any other remedy it may have under applicable law, terminate the applicable Facilities Lease. In either event Lessee shall immediately surrender the applicable City Facilities, If at any time during this Master Lease an Event of Default has occurred and is continuing beyond the applicable cure periods provided with respect to 50% or more of the Facilities Leases, City, in its sole discretion, may at any time upon thirty (30) days' notice to Lessee terminate this Master Lease and all Facilities Leases, in which event Lessee shall immediately surrender all of the City Facilities.

21. Waiver of Relocation Assistance Benefits

21.1 Relocation Assistance Benefits

Lessee is hereby informed and acknowledges the following:

By entering into this Lease and becoming a tenant of City, Lessee may become entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. 11 4601 et seq.) and/or the California Relocation Assistance Law (Cal. Gov. Code E 7270 et seq.) (collectively, the "Relocation Statutes"), should City at some time make use of the Premises in such a way as to "displace" Lessee from the Premises. Pursuant to the Relocation Statutes, City may then become obligated to make such payments to Lessee even where such displacement of Lessee does not otherwise constitute a breach or default by City of its obligations pursuant to this Lease.

Under the Relocation Statutes in effect as of the Date of Commencement of this Lease, Relocation Benefits may include payment to such a "displaced person" of (i) the actual and reasonable expense of moving himself or herself and a family, business, or farm operation, including personal property, (ii) the actual direct loss of reestablishing a business or farm operation, but not to exceed Ten Thousand Dollars (\$10,000), or (iii) payment in lieu of moving expenses of not less than One Thousand Dollars (\$1,000) or more than Twenty Thousand Dollars (\$20,000).

21.2 Lessee's Waiver and Release of Relocation Benefits

In consideration of City's agreement to enter into this Lease, Lessee hereby waives any and all rights it may now have, or may hereafter obtain, to Relocation Benefits arising out of the City's assertion or exercise of its contractual rights to terminate this Lease pursuant to its terms, whether or not such rights are contested by Lessee or any other entity, and releases City from any liability for payment of such Relocation Benefits; provided, however, that Lessee does not waive its rights to Relocation Benefits to the extent that Lessee's entitlement thereto may arise out of any condemnation or pre-condemnation actions taken by the City or any other public agency with respect to the Premises. Lessee shall in the future execute any further documentation of the release and waiver provided hereby as City may reasonably require.

22. General Provisions

22.1 Entire Agreement

This Master Lease and each Facilities Lease shall constitute the entire agreement and understanding of the parties with respect to the City Facilities that are the subject matters of the Facilities Lease and

supersedes all offers, negotiations and other agreements with respect thereto. Each Facilities Lease shall be a related agreement and, except as otherwise provided herein the occurrence of any default under one Facilities Lease shall not be deemed to constitute a default under any other Facilities Lease. There are no representations or understandings of any kind not set forth in this Master Lease or in the Facilities Leases, nor shall they create any right in the Lessee except as provided herein. Any amendment or modification to this Master Lease or any Facilities Lease must be in writing and executed by both parties.

22.2 Rights

No use of City Facilities under this Master Lease or otherwise shall create any right in the Lessee except as provided herein.

22.3 Brokers

Either party hereto that is represented in this transaction by a broker, agent or commission salesperson (a "Representative") shall be fully and exclusively responsible for the payment of any fee, commission or other compensation owing to such Representative, and shall indemnify and hold the other party harmless from and against any claim to a Fee, commission or other compensation asserted by such Representative.

22.4 Execution

Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease) necessary to protect its rights under this Master Lease and any Facilities Lease. Neither party shall record this Master Lease or any Facilities Lease pertaining thereto, but may record, in lieu thereof, the aforementioned Memorandum of Lease.

22.5 Force Majeure

If a party is delayed or hindered in, or prevented from the performance required under this Master Lease or any Facilities Lease, other than the payment of money, by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of like nature not the fault of the party ("Force Majeure Event") delayed in performing work or doing acts, such party is excused from such performance for the period of delay, providing that the party claiming Force Majeure has notified the other party of the delay as soon as is reasonably possible. In such event, the period for the performance shall be extended for the period of such delay, provided that the party that has suffered the Force Majeure Event takes all reasonable action necessary to overcome or mitigate the effects of the Force Majeure Event.

22.6 Governing Law

This Master Lease and any Facilities Lease shall be construed in accordance with the laws of the State of California. With respect to any suit, action or proceedings relating to this Master Lease and any Facilities Lease (the "Proceedings"), each party irrevocably consents to the exclusive jurisdiction of the courts of the State of California and the United States District Court for the Northern District of California, and irrevocably waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such party. Nothing in this Master Lease

precludes either party from enforcing in any jurisdiction any judgment, order or award obtained in any such court.

22.7 Lease Administration

This Lease shall be administered on behalf of City by the Department of Public Works — Real Property, City of Santa Cruz, or by such person's duly-authorized designee (referred to collectively herein as "City's Lease Administrator"), and on behalf of Lessee by: JADD LESSEES ADMINISTRATOR HERE1 or by such other person as may be designated in writing by Lessee (referred to collectively herein as "Lessee's Lease Administrator").

22.8 Lessee's Lease Administration

Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. Lessee shall provide City with a written schedule of its normal hours of business operation, and Lessee's Lease Administrator or a representative designated thereby shall be (i) available to City on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) present at the Lessee's place of business during Lessee's normal business hours, to resolve problems or answer question pertaining to this Lease and Lessee's operations of the Telecommunications Facilities.

22.9 Partial Invalidity

If any term of this Master Lease or any Facilities Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Master Lease or such Facilities Lease, which shall continue in full force and effect.

22.10 Successors and Assigns

This Master Lease shall run with the City Facilities and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and, to the extent assignable, their assigns.

22.11 Waiver

Any waiver by any party of its rights with respect to a default under this Master Lease or any Facilities Lease shall not be deemed a waiver with respect to any subsequent default or other matter.

22.12 Benefit of the Parties

This Master Lease and any Facilities Lease is intended solely for the benefit of the parties hereto and nothing in this Master Lease or Facilities Lease is intended to create any benefit for any other person.

22.13 Counterparts

This Master Lease and any Facilities Lease may be executed in counterparts, each of which shall be an original and which together shall constitute but one and the same instrument.

[Signature page follows.]