

**INFORMATION REQUESTED
for
WIRELESS RIGHT-OF-WAY AGREEMENT APPLICATION**

Overview

The information requested below is the first step in the process of acquiring a Right-of-Way Agreement with the City of Portland. Upon receiving your response, we will contact you to arrange a preliminary meeting between your representatives and City staff. The meeting will be an opportunity for both parties to get further information. Prior to the meeting, please read the attached sample Right-of-Way Agreement. Many of the provisions in the Right-of-Way Agreement are required by City Charter or City Code.

Specifics

Please provide the following information on company letterhead and send to this address prior to the preliminary meeting:

Office of Cable Communications & Franchise Management
City of Portland
1120 SW Fifth Ave., Room 1305
Portland, OR 97204

1. Business name.
2. Business address.
3. Contact person, title and phone number.
4. Describe the type of ownership of the business and list any affiliated businesses, including parent or subsidiary organizations.
5. Describe the purpose(s) of your business.
6. Describe the nature of service you propose to provide in Portland, your experience in providing it, and your intended customers.
7. Describe your proposed facilities in the right of way and your intended timelines for each phase of construction.
8. Describe your company's experience in constructing and maintaining facilities in the right of way. List other Right-of-Way Agreements and/or the names of other jurisdictions in which you have similar facilities in the right of way.
9. A copy of your Certificate of Authority from the OPUC.

If you have any questions about the application or the process, please call the City's Office of Cable Communications and Franchise Management at (503) 823-5385.

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ORDINANCE No.

* Grant a right-of-way use agreement to [Company] for three years for mobile telecommunications services, and establish terms and conditions (Ordinance).

The City of Portland ordains:

Section A. The Council finds:

1. Expansion of wireless services and users has increased at a rapid rate. Today in the United States over 50% of households and one-third of the population now have a wireless phone. Portland's penetration rates appear to be slightly higher than the national average.
2. The City seeks to promote the availability of high-quality and diverse wireless telecommunications services to city residents, businesses, the city and other public institutions, and seeks to encourage competition and neither to promote nor to hinder one wireless telecommunication service provider or technology over others.
3. New technology and competition may foster intensive use and occupancy of city right-of-way by multiple users. Intensive use and occupancy of city right-of-way requires coordination and management to ensure orderly planning, entry, construction, repair, maintenance and coordination of city right-of-way, as well as mechanisms to protect and assure the public health, safety and welfare, and reliable delivery of essential city services.
4. City right-of-way may be used and occupied by wireless telecommunications providers for facilities for the delivery, conveyance, and transmission of wireless telecommunications, for the enhancement of the health, welfare, and general economic well-being of the city and its citizens.
5. Wireless telecommunication providers have requested access to and use of city right-of-way for facilities for provision of wireless telecommunications services. The City Charter requires any entity occupying the right-of-way to first obtain a grant of authority for that occupancy. The wireless providers and the City have worked diligently together for two years arriving at an agreement.
6. The general public has been notified of the agreement and a series of public meetings was held.
7. The City has the authority under federal, state and local laws to acquire, construct, maintain, abandon and regulate the use and occupancy of streets, right-of-way, and other city property, to grant access thereto upon certain terms and conditions; and to require fair and reasonable compensation, on a competitively neutral basis, for the use of city right-of-way.

8. It is appropriate to provide for agreements to authorize and manage such use consistent with the City Charter and Portland City Code by requiring owners of wireless telecommunications facilities to obtain agreements for use of the right-of-way.
9. Wireless telecommunication facilities are non-lineal and will occupy both smaller and fewer areas of the right-of-way than traditional utility facilities. As such, they are not required to be subject to the franchise application applicable to lineal facilities such as water, sewer or gas pipelines, and telephone, cable, telegraph and electric light lines.
10. The City must exercise its authority in order to:
 - a. protect city right-of-way;
 - b. provide for city management of the placement of wireless telecommunications facilities in the city right-of-way;
 - c. ensure that wireless telecommunications providers are treated in a non-discriminatory manner while requiring compliance with all applicable codes and standards;
 - d. minimize disruption to existing and future public services relying on wireless telecommunications facilities in the city right-of-way, including, but not limited to city 800 MHz radio communications;
 - e. ensure public safety;
 - f. ensure compatibility with other infrastructure in the city right-of-way; and
 - g. provide for receipt of fair and reasonable compensation from wireless telecommunication providers for use of city right-of-way.
11. The privilege to place wireless telecommunications facilities and fixtures in city right-of-way is a valuable economic benefit that is available through the use of property rights held by the city. City right-of-way is a unique public resource acquired and maintained at substantial expense to the city and its taxpayers. The city has an obligation to manage the city right-of-way as a trustee for the public. The city shall manage the city right-of-way in a manner recognizing the economic value of the publicly owned asset and protecting the health, safety and welfare of the public.
12. The City of Portland, an Oregon municipal corporation, (the "City"), and [Company], have reached final agreement on the terms and conditions of a three (3) three-year renewable Right-of-Way Agreement ("Agreement") for [Company] to use the City Streets to provide wireless telecommunications services.
13. [Company] and the City are entering into this Agreement that will govern the right of [Company] to install, operate and maintain a wireless telecommunications system on Structures in City Streets.
14. [Company] has requested the privilege to install Facilities on Structures located in City Streets and the City desires to grant [Company] that privilege in accordance with the City Charter and City Code.

15. [Company]'s objective in seeking the privilege to install Facilities on Structures the City's Streets is to co-locate on existing or replacement Structures, thereby minimizing the visual impact and reducing the number of Structures and Facilities in the City that are necessary to provide wireless telecommunications service to the community.

NOW THEREFORE, The Council directs:

Section 1. NATURE AND TERM OF GRANT

- A. Grant of Authority. The City does hereby grant [Company], a [insert state] corporation qualified to do business in the State of Oregon, and [Company]'s successors and assigns, as approved by the City of Portland under **Section 12** of this Agreement, the privilege and authority to access Structures located in the City Streets to construct, repair, replace, maintain and operate Facilities for a Telecommunications System in, under and over the surface of City Streets. [Company] intends to use its Telecommunications System to provide Mobile Telecommunications Services. [Company] represents that it has applied for and received all necessary regulatory authority to provide Mobile Telecommunication Services.
1. This Agreement does not authorize [Company] to operate a cable system or provide video programming, as defined by 47 U.S.C.A §522, or to provide a telecommunications service as defined in ORS 759.005(2)(g).
 2. Nothing in this Agreement shall preclude [Company] from entering into a contract for the use of any portion of its Telecommunications System with any Person or other entity for any services, whether specified herein or not, provided that said Person or entity is another franchisee, licensee, or said Person has assumed responsibility for obtaining any required authority from the City.
- B. Duration. The term of this Agreement, and all rights and obligations pertaining thereto, shall be three (3) years, as measured from its effective date, unless terminated sooner as provided herein or renewed in accordance with **Section 15**.
- C. Effective Date. The effective date of this Agreement shall be 60 days after passage of the Agreement by the City Council, unless [Company] fails to file an unconditional written acceptance of this Agreement in accordance with **Section 17** of this Agreement, in which event this Agreement shall thereupon be null and void. The passage date of this Agreement is set forth on the last page of the original hereof, as stamped by the Council Clerk.
- D. Agreement Not Exclusive. This Agreement is not exclusive. The City expressly reserves the right to grant rights to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed [Company] hereunder, by lease, franchise, permit or otherwise.
- E. Charter and General Ordinances To Apply. To the extent authorized by law, this Agreement is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing

Exhibit A
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contractual rights of [Company], now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), are hereby incorporated by reference and made a part of this Agreement, to the extent authorized by law. Nothing in this Agreement shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

- F. Mutual Reservation of Rights. [Company] and City disagree on the legality of the provisions in this Agreement that refer to or incorporate Charter requirements. Nothing in this Agreement shall be deemed a waiver by [Company] or the City of the rights of [Company] or City under applicable law. By entering into this Agreement, [Company] is not waiving its rights to seek judicial or administrative review of the provisions in this Agreement and is not agreeing that the provisions in this Agreement are authorized by federal, state or local law. The City reserves and in no way waives any right to enforce the requirements in this Agreement during the term of this Agreement and [Company] agrees to such reservation and non-waiver by the City. [Company] also reserves and in no way waives any right to challenge the enforcement of the requirements in this Agreement and the City agrees to such reservation and non-waiver by the City.

Section 2. DEFINITIONS

- A. Captions. Throughout this Agreement, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Agreement. The captions shall not affect the meaning and interpretation of this Agreement.
- B. Definitions. For the purpose of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.
1. "Agreement" means this Agreement, as approved by the City Council and accepted by [Company], according to the terms of **Section 17** of this Agreement.
 3. "City" means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
 4. "City Council" means the Council of the City of Portland.
 5. "[Company]" means [Company].
 6. "Facility(ies)" means capital, equipment and property, including but not limited to the optical fiber, wires, pipes, mains, conduits, ducts, pedestals, antennas, cabinets and electronic equipment located in the Streets used for transmitting, receiving, distributing, providing or offering Mobile Telecommunication Services over the spectrum of radio frequencies licensed by the Federal Communications Commission.

Exhibit A
Wireless Resolution, July 24, 2002

7. "Attached Facilities" are any Facilities affixed to a Structure except optical fiber, wires, coaxial cable and the mounting hardware used to attach optical fiber, wires, coaxial cable. Examples of "Attached Facilities" include but are not limited to antennas, telephone boxes, power boxes, and other equipment boxes and cabinets on Structures;
8. "Guy Pole" or "Support pole" means a pole that is used primarily to structurally support an electrical or telephone distribution or transmission pole, but has no energized conductors or telephone wires or Facilities attached.
9. "Mobile Telecommunications Service" means commercial mobile radio service, as defined in **Section 20.3 of title 47** of the Code of Federal Regulations as in effect on June 1, 1999.
10. "Penalties" means any and all monetary penalties provided for in this Agreement.
11. "Person" means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.
12. "Streets" or "Right(s)-of-Way" means the surface of, and the space above and below, any public street, road, alley or highway, within the City, used or intended to be used by the general public for travel, to the extent the City has the right to allow [Company] to use them.
13. "Structure" means any utility pole, Guy or Support pole, utility pole extension, light standard or other similar pole in the Streets that is suitable for the installation of Facilities. An "Original Structure" is a Structure that has not been replaced to accommodate Facilities.
14. "Telecommunications System" means all necessary Facilities owned or used by [Company] for the purpose of providing Mobile Telecommunications Services and located in, under and above City Streets, excluding ducts, conduits and vaults leased from another City franchisee, licensee, lessee or permittee.
15. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Agreement.

Section 3. COMPENSATION AND AUDITING

A. Amount. As compensation for the benefits and privileges under this Agreement, and in consideration of permission to use the Streets of the City, [Company] shall pay the following fees to the City through the duration of the Agreement for the right to install Facilities on Structures in the Streets:

1. The Annual Fee. The Annual Fee for this Agreement shall be \$5,000;

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2. (a) The Right-of-Way Use Fee. The Company shall pay as a Right-of-Way Use Fee \$3,000 per year per Structure that has any Attached Facilities. If Attached Facilities occupy a Structure for less than one year, the amount of this Fee for that year shall be prorated at \$250 per month. If Company places Attached Facilities in the first half of a month, the Company owes the fee for the full month. If Attached Facilities are affixed in the second half of the month, the fee will not be assessed for the remainder of that month. For months with 30 or 31 days the first half of the month is through and including the fifteenth of that month. For February, regardless of leap years, the first half of the month is through and including the fourteenth;
- (b) The Right-of-Way Use Fee shall increase by four percent (4%) per year. This increase is applicable beginning one year after [Company] files its acceptance in accordance with **Section 17** and every year thereafter for the term of this Agreement;
3. Installation and Application Fee. There shall be a one-time Installation Fee of \$2,000 for each Structure that the company uses for Attached Facilities; and
4. Previous Occupancy Fee. This Fee only applies if the Company has had any Attached Facilities prior to the Effective Date of this Agreement. If it has, then it shall pay a Fee based only on the Right-of-Way Use Fee as stated in 2(a), above, for each of those Attached Facilities.

B. Remittance Dates. [Company] shall pay the above fees as follows:

1. The Annual Fee shall be due and owing on the date [Company] files its acceptance in accordance with **Section 17**, and on that same date every calendar year thereafter.
2. The Right-of-Way Fee shall be due and owing on the date [Company] files its acceptance in accordance with Section 17, and on the same date every calendar year thereafter, provided that the Right-of-Way fee for Facilities that are installed after the Right-of-Way Fee has been paid for a calendar year, shall include the pro-rated payment plus the next calendar year's payment.
3. The Installation and Application Fee shall be due and owing when plans are submitted to the City for approval.
4. The Previous Occupancy Fee shall be due and owing on the date [Company] files its acceptance in accordance with **Section 17**.

C. Late Payments: Any payment not paid when due shall be subject to a delinquency penalty charge of five percent (5%) of the unpaid amount. Failure to make full payment and penalty charges within sixty (60) days of the applicable payment date shall constitute a violation of this Agreement. In addition, all overdue amounts, including penalty charges, shall bear interest, until paid, at the rate of one percent (1%) per month.

D. Acceptance of Payment and Recomputation.

1. No acceptance of any payment made by [Company] shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid under **Section 3** shall be subject to confirmation and recomputation by the City, provided that such audit and computation is completed within three (3) years of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the three (3) year period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished. [Company] agrees to reimburse the City for:
 - a. The reasonable costs of such confirmation if the City's recomputation discloses that [Company] had paid 95% or less of the Agreement fees owing for the period at issue upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit.
 - b. One-half of the reasonable costs of such confirmation if the City's recomputation discloses that [Company] had paid more than 95% but less than 98% of the Agreement fees owing for the period at issue.
 - c. The City's costs which may be reimbursed under this Section shall not exceed \$5,000.00 per audit or financial review.
 - d. If the City determines that [Company] made any underpayment, and that the underpayment exceeded 5% of the amount due, [Company] shall pay late fees pursuant to Section C.3, above.
 - e. If [Company] disputes the City's determination of underpayment, [Company] shall immediately place the disputed amount in an escrow account until final resolution.
2. The City and its agents and representatives shall have authority to arrange for and conduct reviews of [Company]'s records pertaining to this Agreement including those for Facilities [Company] installed on structures in City rights-of-way and [Company]'s performance bond and insurance policy as required in this Agreement. The City may determine the scope of review in each instance. All amounts paid by [Company] shall be subject to review by the City, provided that such review be completed within three (3) years from the date payment was due. City requests for reviews shall be in writing. If [Company] has not provided copies of all information reasonably within the scope of the review to the City within 30 days from the date of the written request, [Company] shall provide access within the Portland metropolitan region, during normal business hours, upon 48 hours prior written notice. If the City requests in writing that [Company] provide, or cause to be provided, copies of any information reasonably within the scope of the review, and [Company] fails within 30 days of receipt of the request to provide, or cause to be provided, such information, then the three (3) year period shall be extended by one day for each day or part thereof beyond 30 days that [Company] fails to provide, or fails to cause to be provided, such requested information.

E. Cost of Pre-Agreement negotiations and Publication. [Company] has paid the City Five thousand Dollars (\$5,000) for its pre-Agreement costs, including publication of this Agreement, as such publication is required by the City Charter.

Section 4. GENERAL INSURANCE AND BONDING PROVISIONS

A. Insurance.

1. [Company] shall maintain commercial general liability insurance that protects the [Company] and the City, as well as the City's officers, agents, and employees, from the [redundant] claims referred to in **Section 6**. The insurance shall provide coverage at all times of not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$50,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$500,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this **Section 4(A)(1)** shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Agreement, [Company] shall provide a replacement policy with the same terms. [Company] shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Agreement.
2. [Company] shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The certificate of insurance shall be subject to the approval as to form by the City Attorney.
3. In the alternative to providing a certificate of insurance to the City, certifying liability insurance coverage as required in this Section, [Company] may provide the City with a statement regarding its self-insurance. [Company]'s self-insurance shall provide at least the same amount and scope of coverage for [Company] and the City, its officers, agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to the approval as to form by the City Attorney. Upon [Company]'s election to provide self-insurance coverage under this **Section 4(A)(3)**, any failure by the [Company] to maintain adequate self-insurance shall be a material violation of this Agreement.

B. Faithful Performance Bond.

1. Upon the effective date of this Agreement, [Company] shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of ten thousand dollars (\$10,000), conditioned that [Company] shall well and truly observe, fulfill, and perform each term and condition of this Agreement. [Company] shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Agreement, including, if necessary, the time required for removal of all of [Company]'s Facilities installed in the City's Streets. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City Auditor. The bond shall be subject to the approval as to form by the City Attorney.
 2. During the term of this Agreement, [Company] shall file with the City Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under Section **4(B)** if a bona fide, good faith dispute exists between the City and the [Company].
- C. Construction Bond. During all times when [Company] is performing any construction work in or under the Streets requiring a street opening permit, [Company] shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to the City, with good and sufficient surety approved by the City, in the sum of ten thousand dollars (\$10,000). The bond or letter of credit shall be conditioned that the [Company] shall well and truly observe, fulfill and perform each term and condition under **Section 6**. [Company] shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of [Company]'s construction work in or under the Streets by the City Engineer which shall not be unreasonably withheld or delayed. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, [Company] shall file with the City Auditor a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the approval as to form by the City Attorney.

Section 5. COVENANT TO INDEMNIFY AND HOLD THE CITY HARMLESS

- A. General Indemnification. [Company] hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this Agreement, by or for [Company], its agents or employees, or by reason of any neglect or omission of [Company] to keep its Facilities in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide [Company] with prompt notice of any such claim, which [Company] shall

defend with counsel of its own choosing and no settlement or compromise of any such claim will be done by the City without the prior written approval of [Company]. [Company] and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.

- B. Relocation Indemnification. [Company] also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from [Company]'s failure to remove, adjust or relocate any of its Facilities in the City Streets in a timely manner in accordance with a relocation schedule furnished to [Company] by the City Engineer under this Agreement, unless [Company]'s failure arises directly from the City's negligence or willful misconduct.

Section 6. CONSTRUCTION, REPLACEMENT, REPAIRS AND MAINTENANCE

- A. Permits. [Company] shall apply for and obtain all permits necessary for the construction, installation and operation of its Facilities in the Streets. [Company] shall pay all applicable fees due for City construction permits. All construction and maintenance of any and all [Company]'s Facilities within the Streets incident to [Company]'s provision of Mobile Telecommunications Services shall, regardless of who performs installation and/or construction, be and remain the responsibility of [Company].
- B. Installation of Equipment. [Company]'s Facilities shall be installed and maintained in accordance with the laws of the State of Oregon and the ordinances and standards of the City regulating such construction.
- C. Common Users. [Company]'s Facilities shall be attached to Structures located within the Streets. [Company] shall also allow and encourage other wireless carriers to co-locate facilities on Structures with [Company]'s Facilities, provided such co-location does not interfere with [Company]'s Facilities or jeopardize the physical integrity of the Structure and provided the owner of the Structure consents to such co-locations.
- D. Scale of Facilities. This section establishes standards for attaching Facilities to Structures in the Streets in a manner that minimizes the Facilities' potential incompatibility with adjacent uses. Nothing in this section modifies or supercedes other City requirements for these Facilities, such as Title 33 of the Portland City Code, also known as the Zoning Code.
1. Original Structures. Facilities may be attached to Original Structures in the Streets, provided:
 - a. Facilities do not jeopardize the physical integrity of the Structure;
 - b. Three sector arrays, also known as triangular "top hat" style antenna mounts, are prohibited;
 - c. The device used to mount the Facilities does not project more than ten (10) feet above the Structure;

- d. Antennas will be mounted flush with the device referenced in **Section 6(D)(1)(c)** or the existing structure, within a unicell-style top cylinder, or on davit arms that are no greater than five (5) feet in length as measured from the center of the Structure.
 - e. The visual impacts of any Facilities located in the Streets must be minimized by utilizing the smallest antennas, equipment and equipment cabinets available that will satisfy engineering requirements and the service objectives of the site. Whenever possible, Facilities shall be painted or otherwise treated architecturally so as to minimize visual impacts.
 - f. All antennas, cabling, mounting hardware and associated microcell/equipment cabinets mounted on an Original Structure must be painted to match the color of the Structure. If cabinets require a special heat-reducing paint finish, they must be a neutral color such as beige, off-white, or light gray.
 - g. The Original Structure is not replaced with a taller Structure, except as authorized in **Sections 6.D.2.**
2. Replacement Structures. For purposes of this Section "Replacement Structure" shall mean a Structure that a) replaces an existing Structure or Original Structure to accommodate Facilities; and b) does not result in an increase in the total number of utility, guy or support poles in the Streets. Facilities may be attached to Replacement Structures in the Streets, provided:
- a. The Replacement Structure is of sufficient integrity to support the Facilities;
 - b. The requirements of 6.D.1.b, e and f are met;
 - c. The device used to mount the Facilities does not project feet above the top of the Replacement Structure;
 - d. Antennas will be mounted flush with the Replacement structure, within a unicell-style top cylinder, or on davit arms that are no greater than five (5) feet in length as measured from the center of the Structure.
 - e. In Streets designated by current Official Zoning Maps of Title 33, Portland City Code, with a base zone of either R (residential) or OS (open space), any Replacement Structure, and any subsequent Replacement Structures, is never more than ten (10) feet taller than the Original Structure. In general, street centerlines are also the established boundaries for base zones, but the [Company] must consult the current zoning map to determine the base zone in which a Replacement Structure will be installed;
 - i. When the Original Structure is a Guy Pole, the height of the Original Structure may be increased by the lesser of either a) twenty feet over the existing height of the Guy Pole; or b) ten feet over the height of the Structure the Guy Pole supports.

For example, a 20 foot Guy Pole supporting a 30 foot utility pole may be extended to 40 feet when the Guy Pole is in an R or OS base zone.

- f. In Streets designated by current Official Zoning Maps of Title 33, Portland City Code, with a base zone other than R or OS, any Replacement Structure, and any subsequent Replacement Structures, is no more than twenty (20) feet over the height of the Original Structure.

- i. If the structure being replaced is a Guy pole it may be up to twenty (20) feet taller than the height of a structure that a Guy Pole supports. In general, street centerlines are also the established boundaries for base zones, but the [Company] must consult the current zoning map to determine the base zone in which a Replacement Structure will be installed; and

- g. The Replacement Structure is no taller than eighty (80) feet.

3. [Company] shall not locate any Facilities, such as cabinets, at grade within the Streets, but may connect its Facilities in the Streets to Facilities located on property adjacent to the Streets in accordance with applicable City codes and with the permission of the adjacent property owner.
4. [Company] may make excavations in the City Streets for any Facility needed for the maintenance or extension of its Mobile Telecommunications System, subject to obtaining permits from the City. Prior to doing such work, [Company] must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any franchisees, licensees or permittees of the City, or bureaus of the City, or other units of government, owning or maintaining facilities which may be affected by the proposed excavation.
5. In the event that emergency repairs are necessary for [Company] 's underground Facilities in the Streets, [Company] shall immediately notify the City of the need for such repairs. [Company] may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. [Company] must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.
6. Locates. [Company] shall comply with the requirements of the Oregon Utility Notification Law (ORS 757.542 to 757.562 and 757.993 (2001)) and the rules and regulations promulgated thereunder.

E. Relocation.

1. The City shall have the right to require [Company] to change the location of its Facilities in the Streets when the public convenience requires such change, and the expense thereof shall be paid solely by [Company]. The City shall provide [Company] with the standard notice given under the circumstances to other Leasees, franchisees, licensees, or permittees. Should [Company] fail to remove or relocate any such Facilities by the date

Exhibit A
Wireless Resolution, July 24, 2002

established by the City, the City may cause and/or effect such removal or relocation, and the expense thereof shall be paid by [Company], including all expenses incurred by the City due to [Company]'s delay. If the City requires [Company] to relocate its facilities located within the City's Streets, the City will make a reasonable effort to provide [Company] with an alternate location for its facilities within the City's Streets.

2. The provisions of this Section 6.E. shall in no manner require or preclude [Company] from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity, other than the City where the Facilities to be constructed by said person or entity are not or will not become City owned, operated or maintained Facilities.

F. Record of Installations.

1. On the date [Company] files its acceptance in accordance with **Section 17**, and annually thereafter, in the event any new Facilities are constructed or any existing Facilities are relocated, [Company] shall provide to the City's Office of Cable Communications and Franchise Management, or its successor, a list that identifies the location of [Company]'s Facilities in the Streets. In addition, [Company] shall file a Radio Frequency Transmission Facility Registration Form, made available by the City, for each existing and new Facility that is installed on Structures in the Streets. For existing Facilities, the form shall be filed on the date [Company] files its acceptance in accordance **with Section 17**, and every two years thereafter. For new Facilities, the form shall be filed within ten (10) days of the date the Facility is attached to the Structure in the City Streets, and every two years thereafter.
2. Within thirty (30) days following [Company] 's acquisition of any Facilities in the Streets, or upon any addition or annexation to the City of any area in which [Company] retains any such Facilities in the Streets, [Company] shall submit to the City a written statement describing all Facilities involved, whether authorized by agreement, license, permit or any other form of prior right, and specifying the location of all such Facilities. Facilities acquired by [Company] shall immediately be subject to the terms of this Agreement, within a reasonable period of time to bring such acquired Facilities into compliance with this Agreement.
3. Radio frequency emission levels. All existing and proposed Radio Frequency Transmission Facilities are prohibited from exceeding or causing other facilities to exceed the radio frequency emission standards specified in Part 1, Practice and Procedure, Title 47 of the Code of Federal Regulations, Section 1.1310, Radio Frequency Radiation Exposure Limits.

- G. Restoration After Construction. [Company] shall, after construction, maintenance or repair of Facilities, leave the Streets in as good or better condition in all respects as it was before the commencement of such construction, maintenance or repairs, excepting normal wear and tear. [Company] agrees to promptly complete restoration work and to promptly repair any

damage caused by such work at its sole cost and expense. When any opening is made by [Company] in a hard surface pavement in any Street, [Company] shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer, in accordance with standards developed and adopted by the City Engineer. All excavations made by [Company] in the Streets shall be properly safeguarded for the prevention of accidents. All of [Company]'s work under **Section 6** shall be done in strict compliance with all applicable rules, regulations and ordinances of the City.

H. Tree Pruning.

1. After obtaining a written permit from the City Forester, [Company] may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree in or overhanging the Streets which interferes with [Company]'s Facilities. Permit requirements for pruning are located in Portland City Code Chapter 20.40.080(E), or by contacting the City Forester's Office. Except in emergencies, [Company] may not prune trees at a point below 30 feet above sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. For the purposes of this **Section 6.H**, an emergency exists when it is necessary to prune to protect the public from imminent danger. The owner or occupant of the premises abutting the Street shall have seven days from receipt of [Company]'s notice to prune such tree at his or her own expense. If the owner or occupant fails to do so, [Company] may prune such tree at its own expense.
2. The City Forester may, at his or her own discretion, waive the notification and permit process in the case of single trees, if [Company] adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by [Company] shall be subject to the approval of the City Forester. The City Forester shall have the discretion to cancel the permit if, at any time, the [Company] or its agents, fails to use proper arboricultural practices.

Section 7. RESERVATION OF CITY STREET RIGHTS

Nothing in this Agreement shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street or laying down, repairing or removing water mains or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of the [Company]'s Facilities in the Streets. However, if any of the [Company]'s Facilities interfere with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the [Company]'s Facilities shall be removed or replaced in the manner the City shall direct in accordance with **Section 6.E.**; provided, however, the City will cooperate with the [Company] to identify alternate locations within the Streets. Any and all such removal or replacement shall be at the expense of the [Company]. Should [Company] fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to [Company], the City may cause and/or effect

such removal, adjustment or relocation, and the expense thereof shall be paid by [Company], including all costs and expenses incurred by the City due to [Company]'s delay.

Section 8. STREET VACATION

If any Street or portion thereof used by [Company] is vacated by the City during the term of this Agreement, unless the City Council specifically reserves to [Company] the right to continue its installation in the vacated Street, [Company] shall, without expense to the City, forthwith remove its Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the City Council which shall be no better than the condition of such Street immediately prior to removal. In the event of any failure, neglect or refusal of [Company], after thirty (30) days' notice by the City, to repair, improve or maintain such Street, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by the City Council, shall be entered in the Docket of City Liens against any property of [Company] which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City shall cooperate with [Company] to identify alternative locations within the Streets.

Section 9. MAINTENANCE OF FACILITIES

[Company] shall provide and put in use all Facilities necessary to control and carry [Company]'s Mobile Telecommunications Services so as to prevent injury to the City's property or property belonging to any Person within the City. [Company], solely at its own expense, shall repair, renew, change and improve said Facilities from time to time as may be necessary to accomplish this purpose. [Company] shall not construct its Telecommunications System in a manner that requires any customer, except the City, or any entity permitted by the City to install cables, ducts, conduits, or other facilities, in, under or over the City's Streets.

Section 10. DISCONTINUED USE OF FACILITIES

A. Whenever [Company] intends to discontinue use of its Facilities within all or part of a particular portion of the Streets and does not intend to use said Facilities again for six months, [Company] shall submit to the City Engineer for the City Engineer's approval a completed application describing the Facility and the date on which [Company] intends to discontinue using the Facility. [Company] may remove the Facility or request that the City permit it to remain in place. If [Company] is permitted to abandon its Facilities in place, upon consent of the City, the ownership of Facilities in the Streets shall transfer to the City and [Company] shall have no further obligation or liability therefor. Notwithstanding [Company]'s request that any such Facility remain in place, the City Engineer may require [Company] to remove the Facility from the Streets or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require [Company] to perform a combination of modification and removal of the Facility; provided, however, that [Company] may elect to remove its Facility entirely in the event the City requests any modification. [Company] shall complete such removal or modification in accordance with a reasonable schedule set by the City Engineer. Until such time as [Company] removes or modifies the Facility as directed by the City Engineer, or until the

rights to and responsibility for the Facility are accepted by another person having authority to construct and maintain such Facility, [Company] shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance and restoration of the Streets, in the same manner and degree as if the Facility were in active use, and [Company] shall retain all liability for such Facility.

- B. If [Company] discontinues use of Facilities on a Replacement Structure, and that Replacement Structure is taller than the Original Structure, the Company will return the Replacement Structure to its original height. In the alternative, after proper notice pursuant to this Agreement, the Company may request, and the City may grant at its discretion, a waiver from this requirement. If the City requests that the Structure be replaced with a Structure of the original height, the City shall give [Company] at least ninety (90) days to replace the Structure.

Section 11. HAZARDOUS SUBSTANCES:

- A. Compliance. [Company] shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to [Company]'s Mobile Telecommunications System in the Streets. For purposes of this Section, "Hazardous Substances" shall have the meaning given by **ORS 465.200(15) (2001)**.
- B. Maintenance and Inspection. [Company] shall maintain and inspect its Facilities located in the Streets. Upon reasonable notice to [Company] and in the presence of an authorized representative of [Company], the City may inspect [Company]'s Facilities in the Streets to determine if any release of Hazardous Substances has occurred, or may occur, from or related to [Company]'s Telecommunications System.
- C. Remediation. In removing or modifying [Company]'s Facilities as provided in this Agreement, [Company] shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto. Upon request, the City shall provide [Company] with information within the City's possession which identifies potentially responsible parties for the purposes of recovering such removal costs.
- D. Indemnification. [Company] agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of Hazardous Substances caused by [Company]'s ownership or operation of Facilities in the Streets.

Section 12. CITY'S WRITTEN CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE

- A. Consent. Except as otherwise permitted by **Section 10.B.** and except to entities that control, are controlled by, or are under common control with the [Company], neither this Agreement nor any of [Company]'s Facilities located in the Streets by authority of this Agreement shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior

written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, [Company] shall give written notice to the City of any transfers to entities under common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this **Section 12.A.** shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of [Company]'s Telecommunications System for the purpose of financing the acquisition of equipment for or the construction and operation of [Company]'s Telecommunications System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this Agreement.

1. In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. [Company] shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger or transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Agreement, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.
2. No sale, lease, mortgage, assignment, transfer or merger for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of **Section 4**, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, [Company] shall file with the Auditor an executed counterpart or certified copy thereof.

B. Transfers Without Consent in Ordinary Course of Business. [Company] shall not lease any of its Facilities without the City's prior consent as expressed by ordinance. However, and notwithstanding **Section 10.A.**, hereof, [Company] may lease any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as [Company] remains solely responsible for locating, servicing, repairing, relocating or removing such Facilities. A lessee of [Company]'s Facilities shall not obtain any rights under this Agreement. For the purposes of this Subsection, a capital lease shall be treated as a lease under this Subsection until the conclusion of the lease, when transfer of ownership occurs. At that point in time, the capital lease shall be treated as a sale under **Section 10.B.1.**

1. Notwithstanding **Section 10(A)(1)**, [Company] may sell portions of its Facilities in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as [Company] complies with the following conditions:
 - a. The sale is to the holder of a current existing, valid telecommunications or mobile telecommunications agreement, franchise, permit or lease with the City.

- b. Within fourteen days of the sale being executed and becoming final, [Company] shall provide written notice to the City, describing the Facilities sold by the [Company], identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of **Section 6.F.1.**), and providing an executed counterpart or certified copy of the sales documents.
- c. [Company] remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Facilities.
- d. Within fourteen days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid Agreement. The purchaser shall not obtain any of the [Company]'s rights under this Agreement.

Section 13. FORFEITURE AND REMEDIES

- A. Forfeiture. In addition to any other rights set out elsewhere in this Agreement, the City reserves the right to declare a forfeiture of the Agreement, and all of [Company]'s rights arising thereunder, in the event that:
 - 1. The [Company] violates any material provision of the Agreement.
 - a. For purposes of this Section, the following are material provisions of this Agreement, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Agreement:
 - (1) The invalidation, failure to pay or any suspension of [Company]'s payments of Fees to the City for use of the Streets under this Agreement;
 - (2) Any failure by the [Company] to submit timely reports regarding the calculation of its Agreement Fees to the City;
 - (3) Any failure by [Company] to maintain the liability insurance required under this Agreement;
 - (4) Any failure by [Company] to maintain the performance bond required under this Agreement;
 - (5) Any failure by [Company] to otherwise fully comply with the requirements of Sections **3 through and including Section 17** of this Agreement.
 - 2. The [Company] is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.
 - 3. There is a final determination that [Company] has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state

regulatory body regarding [Company]'s operation of its Mobile Telecommunications System or Services within the City.

- B. Additional Remedies. In addition to any rights set out elsewhere in this Agreement, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:
1. Impose a financial penalty of up to \$1,000.00 per violation;
 2. Suspend [Company]'s rights under this Agreement, until [Company] corrects or otherwise remedies the violation;
 3. Revocation. The City Council or [Company] may revoke this Agreement in the event that any provision becomes invalid or unenforceable and the City Council or [Company] expressly finds that such provision constituted a consideration material to the Agreement. The City or [Company] shall exercise its revocation rights under this subsection by providing 30 days written notice prior to the effective date of the revocation, and an opportunity to renegotiate acceptable provisions in accordance with **Section 14**.
- C. Determination of Remedy. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.
- D. Notice and Opportunity to Cure. The City shall give [Company] thirty (30) day's prior written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If [Company] cures the stated reason within the thirty (30) day notice period, or if the [Company] initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If [Company] fails to cure the stated reason within the thirty (30) day notice period, or if the [Company] does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this Section. However, in no event shall the City exercise its rights under this Section if a bona fide, good faith dispute exists between the City and [Company].

Section 14. RENEGOTIATION

In the event that any provision of this Agreement becomes invalid or unenforceable and the City Council or [Company] expressly finds that such provision constituted a consideration material to entering into this Agreement, the City and [Company] may mutually agree to renegotiate the terms of this Agreement. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have 90 days to conduct and complete the renegotiation. If both parties agree to renegotiations under this Section, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 15. EXPIRATION AND RENEWAL:

A. Renewal. Upon the expiration of the initial three year term of this Agreement, on application made by the [Company] for Agreement renewal or additional authority to exercise the privileges, or any of them, hereby granted, the [Company] shall have the first and preferential right to take and receive such authority upon terms and conditions approved by the City. If the [Company] does not promptly apply for such renewal or additional authority, or if the [Company] rejects the terms and conditions of such authority offered by the City, the City may, within one year from the expiration of the prior Agreement, grant a permit or Agreement to any other Person. In the event of such a grant, such other Person taking such new or additional authority, shall in addition to any compensation to be paid to the City for such new or additional authority, pay to the [Company], at or before the time such new or additional authority takes effect, and before the [Company] shall be deprived of the right to possess, maintain and operate its Telecommunications System located within the Streets, the fair and equitable valuation of [Company]'s Telecommunications System located within the Streets. If the third party and [Company] cannot agree on the fair and equitable value of said Telecommunications System, the dispute shall be submitted for a declaratory determination by the courts of the State of Oregon. Until such time as the City exercises its rights as set forth in this Section, the [Company]'s rights and responsibilities within the City shall continue to be controlled by the terms and conditions of this Agreement.

Section 16. MISCELLANEOUS

A. Compliance with Laws.

1. Both [Company] and the City shall comply with all applicable federal and state laws.
2. [Company] shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

B. Severability. If any Section, provision or clause of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Agreement shall not be affected.

C. Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Agreement in the public interest. [Company] shall not be relieved of its obligations to comply with any of the provisions of this Agreement by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Agreement by reason of such failure or neglect.

D. Force Majeure.

1. For purposes of this **Section 16.D.**, the term Force Majeure shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or

entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, or other similar events which are not reasonably within the control of the parties hereto.

2. If [Company] is wholly or partially unable to carry out its obligations under this Agreement as a result of Force Majeure, [Company] shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and [Company]'s obligations under this Agreement, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. [Company] agrees to use its best efforts to remedy as soon as possible, under the circumstances, [Company]'s inability, by reason of Force Majeure, to carry out its responsibility and duties under this Agreement.
- E. Choice of Forum. Any litigation between the City and [Company] arising under or regarding this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.
- F. Notice. Any notice provided for under this Agreement shall be sufficient if in writing and (1) delivered personally to the following addressee, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express), or (4) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:
1. If to the City: Office of Cable Communications and Franchise Management
 City of Portland, Oregon
 1120 SW 5th Avenue, Room 1305
 Portland, Oregon 97204
 FAX (503) 823-5370

 With a copy to: City Attorney's Office
 City of Portland
 Room 430, City Hall
 1221 SW 4th Avenue
 Portland, Oregon 97204
 FAX (503) 823-3089
 2. If to [Company]: [First company contact]

 With a copy to: [Second company contact]
 3. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

G. Confidential Records. [Company] may identify information submitted to the City as confidential. Prior to submitting such information to the City, [Company] shall prominently mark in conspicuous letters any information with the word "Confidential." The City shall treat any information so marked as confidential and not subject to public disclosure until the City receives any public records request for disclosure of such information. Within ten (10) working days of receiving any such request, the City shall provide [Company] with written notice of the request, including a copy of the request. [Company] shall have ten (10) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. Whether [Company] submits any written response to the City, the City shall retain the final discretion to determine whether to release the requested confidential information, provided the City shall give [Company] at least ten (10) working days written notice after receipt of any response from [Company] prior to releasing such information. [Company] does not waive any of its rights to seek a protective order from a court of competent jurisdiction restraining the City from disclosing such information.

H. Public Records.

1. Some information submitted by the [Company] to the City may be relevant to the [Company]'s obligation to pay Agreement fees or Compensation. Requiring such information to be submitted to the City in order to determine fees or Compensation payable or paid to the City may qualify such information as being exempt from public disclosure under **ORS 192.501(5) (2001)** of the Oregon Public Records Law.
2. Some information submitted by the [Company] to the City may otherwise be used to conduct its business and known to certain individuals within the organization, with actual or potential commercial value, and giving [Company] a business advantage over its competitors. Such information may constitute trade secrets and be exempt from public disclosure under **ORS 192.501(2) (2001)** of the Oregon Public Record Law.
3. Identification of these exemptions under the Oregon Public Records Law, which may apply to information submitted by the [Company] to the City, is not an exhaustive list of those possibly applicable to such information.

I. Amendment. The City has negotiated this Agreement in good faith, in reliance upon the information provided by the [Company] regarding the scope of its authority to offer the Mobile Telecommunications Services described in **Section 2.B.8** above. In the event that [Company] actually receives authority to offer telecommunications services outside the scope of this Agreement, or otherwise begins offering telecommunications services outside the scope of those identified in **Section 2.B.8**, [Company] shall immediately notify the City. Within 90 days of receiving such notice, the City may either enter into negotiations with the [Company] to revise or amend this Agreement to reflect such changed circumstances, or may proceed with early termination of this Agreement. The parties will negotiate in good faith to revise the Agreement to authorize the expanded scope of services.

- J. Interference. [Company] shall, at its expense, comply with all federal, state, and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, radio frequency emissions, other radiation and safety) in connection with the use, operation, maintenance, construction and/or installation of its Facilities. The City agrees to reasonably cooperate with the [Company] in obtaining, at [Company]'s expense, any federal licenses and permits required for or substantially required by [Company]'s use of the Streets. [Company] shall obtain written certification from the City of Portland, Bureau of Communications Networking (ComNet) that its transmission Facilities at any transmission location cause no interference or loss of signal of any City owned or operated communications system prior to turning up power and transmitting any signal from the Company's transmission Facilities at any transmission location. ComNet shall issue the written certification, or a written explanation of the reasons why the certification is not being issued, for existing Facilities within 30 days of receipt of full and complete documentation of the transmission Facilities.. ComNet shall issue the written certification, or a written explanation of the reasons why the certification is not being issued, for new Facilities, within 30 days of the date [Company] provides ComNet the information ComNet requests to test for interference.[Company] agrees to cooperate with ComNet to provide and review all technical information including engineering data on intermodulation and power output of [Company]'s transmission Facilities to allow a determination by ComNet of the [Company]'s transmission Facilities probable impact on City owned and operated Communications facilities. Further, if at any time during the [Company]'s occupancy of the transmission location, it is determined by ComNet that the [Company]'s transmission Facilities are negatively impacting the City's communications facilities, [Company] agrees to immediately and temporarily shut off power and transmission to and from [Company]'s transmission Facilities until the problem is resolved to the satisfaction of ComNet, provided ComNet and the City provide [Company] as much advance notice as is reasonably possible and assist [Company] in installing a temporary replacement Facility so as to avoid disruption of [Company]'s service.
- K. Release of Claims. The City hereby releases all claims to compensation it may have against [Company] associated with [Company]'s placement of Facilities in the Streets prior to the effective date of this Agreement, provided that this release does not relieve [Company] of its obligation to pay the Previous Occupancy Fee and to comply with all other terms and conditions of this Agreement for all Facilities and Attached Facilities in the Streets.

Section 17. WRITTEN ACCEPTANCE

On or before the thirtieth (30th) day after this ordinance becomes effective, [Company] shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by the [Company], subject to the approval as to form by the City Attorney. Any failure on the part of [Company] to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

Section 18. OTHER AUTHORITY SUPERSEDED:

Upon effectiveness of this Agreement, any and all authority to operate Facilities or Attached Facilities in the Streets previously granted to [Company] by the City shall be superseded by this Agreement.

Passed by the Council:
Commissioner Erik Sten
Portland
Soloos/Walters
July __, 2002

Gary Blackmer
Auditor of the City of

By

Deputy