

SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



921

SUBMITTAL DATE:

August 19, 2010

FROM: Economic Development Agency

SUBJECT: Communication Facility Permit – U.S. Department of the Interior, National Park Service, Belle Communications Site

RECOMMENDED MOTION: That the Board of Supervisors approve the attached Communication Facility Permit and authorize the Chairman to execute same on behalf of the County of Riverside.

BACKGROUND: Riverside County Information Technology (RCIT) operates radio equipment in support of the Public Safety Radio System, whose mission is critical to the County's Sheriff and Fire Departments. The Public Safety Enterprise Communications (PSEC) project is responsible not only for upgrading the existing network of communications sites but also for adding approximately fifty new sites to this existing network. Gaps in coverage in the Joshua Tree National Park and surrounding areas dictate the need for a new site inside the park boundaries.

(Continued)

Robert Field  
Assistant County Executive Officer/EDA

FINANCIAL  
DATA

Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature

BY:   
Jennifer L. Sargent

Prev. Agn. Ref.: 3.52 of 9/2/08

District: 4

Agenda Number:

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

3.43  
EDX-401a-F11  
Form 11 (Rev 08/2003)

FORM APPROVED BY:   
CYNTHIA M. GAUDEL  
DATE: 8-17-10

By:   
Greg Stoddard, Info. Tech. Officer  
Riverside County Information Technology

Dept't Recomm.: ☐ Consent ☐ Policy ☒  
Per Exec. Ofc.: ☐ Consent ☐ Policy ☒

**BACKGROUND:** (Continued)

The proposed communications site (Belle) has been identified as a suitable location to provide radio coverage improvements to the Joshua Tree National Park and surrounding areas. It is PSEC's desire to construct a new communications site to begin providing critical communications service for public safety. An existing abandoned communication facility at Belle must be upgraded.

The Economic Development Agency and PSEC have negotiated a ten year Communication Facility Permit for the site. Site development costs will come from PSEC funds that are already budgeted. The site is rent free unless and until the County allows subleasing to commercial entities, in which case rent would be assessed based on existing federal schedules. At this time, the County has no plans to entertain such arrangements.

The Communication Facility Permit is summarized below:

Grantor: U.S. Department of the Interior  
Superintendent, Joshua Tree National Park  
National Park Service  
74485 National Park Drive  
Twenty-nine Palms, CA 92277

Premises Location: Joshua Tree National Park  
Belle

Term: Ten years commencing August 1, 2010

Rent: None

Utilities: Electricity only, paid by County directly

The attached Communications Site Permit has been approved as to form by County Counsel.

RIGHT-OF-WAY PERMIT NO. 8330-10-001  
WIRELESS COMMUNICATION FACILITY

Between

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

JOSHUA TREE NATIONAL PARK

and

-- o o O o o --

COUNTY OF RIVERSIDE

-- o o O o o --

EXECUTED \_\_\_\_\_, 2010

COVERING THE PERIOD:

\_\_\_\_\_, 2010 THROUGH \_\_\_\_\_, 2020

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County of Riverside  
Joshua Tree National Park

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Joshua Tree National Park

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UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

RIGHT-OF-WAY PERMIT FOR

COUNTY OF RIVERSIDE, CA

Whereas the County of Riverside, California has applied to the United States of America, acting in this matter by and through the United States Department of the Interior, National Park Service, Joshua Tree National Park, an agency of the United States of America ("Service") for a right-of-way to install, construct, operate and maintain a communication facility including related lines and antennas ("Communication Facility") within the boundaries of Joshua Tree National Park, ("Park"); and

WHEREAS, the Service administers the Joshua Tree National Park which was established as a unit of the National Park System, United States Department of the Interior pursuant to the Presidential Proclamation No. 2193, August 10, 1936 and Public Law 103-433; and

WHEREAS, the Director of the Service (or his or her delegate) is required pursuant to 16 U.S.C. Section 1a-1 to authorize only those uses of land within the Park which will not be in derogation of the values and purposes for which the Park was established, except as may have been or shall be directly and specifically provided by Congress; and

WHEREAS, Federal agencies have been authorized pursuant to Public Law 104-104, the Telecommunications Act of 1996, to permit the siting of communications facilities on Federal lands; and

WHEREAS, the Deputy Director of the Service has issued a Memorandum dated May 10, 1996 that established procedures to permit the siting of wireless communication facilities on Service lands; and

WHEREAS, 16 U.S.C. Section 5 authorizes the head of the Department (or his or her delegate) having jurisdiction over subject land, to permit rights-of-way over, across and upon the lands and reservations of the United States upon a finding by the Director (or his or her delegate) that the right-of-way is not incompatible with the public interest; and

WHEREAS, the Service has promulgated regulations at Title 36 Code of Federal Regulations, Part 14, regarding permits for rights-of-way over and across lands administered by the Service; and

WHEREAS, the Service has been delegated the authority to permit such rights-of-way across land under the jurisdiction of the Service pursuant to 245 Department of the Interior, Departmental Manual 5.1; and

WHEREAS, the Service has determined that the proposed use of the Park lands for the installation, construction, operation, and maintenance of the Communication Facility is neither incompatible with the public interest nor inconsistent with the use of such lands for Park purposes and that the purpose and intent of the Communication Facility will be to provide communications services for Riverside County, CA, Emergency Services during the performance of their official duties.

WITNESSETH:

That the United States, through the National Park Service, an agency of the Department of the Interior, acting pursuant to 16 U.S.C. Section 5 and its regulations at 36 C.F.R. Part 14 et seq. hereby permits to County of Riverside, a non-exclusive right-of-way across Federal lands for the installation, construction, alteration, operation and maintenance of a wireless communication facility including related lines and antennas as described in Section 1.1 and for ingress and egress thereto as described in Section 1.3 subject to the permit terms and conditions set forth hereinafter ("Permit").

## 1 LEGAL DESCRIPTION OF RIGHT-OF-WAY

### 1.1 Legal Description of Permitted Right-of-Way

121'x 145' permanent use area together with a 20' ingress and egress and utilities easement to the nearest public right-of-way.

### 1.2 Illustrative Map of Permitted Right-of-Way

An illustrative depiction of the Permitted Right-of-Way is attached hereto as Exhibit A.

Permittee expressly agrees that such illustrative depiction of the Permitted Right-of-Way is for informational purposes only and to the extent Exhibit A conflicts with the legal description set forth in Section 1.1 of this Permit, the legal description set forth in Section 1.1 of this Permit shall prevail.

### 1.3 Legal Description of Road Access Area

The description and site plan of ingress and egress for the Permitted Right-of-Way is attached hereto as Exhibit F

### 1.4 Illustrative Map of Road Access Area

An illustrative depiction of the Road Access Area is attached to this Permit as Exhibit F. Permittee expressly agrees that such illustrative depiction of the Road Access Area is for informational purposes only and to the extent Exhibit F conflicts with the legal description set forth in Section 1.3 of this Permit, the legal description set forth in Section 1.3 of this Permit shall prevail.

## 2 AUTHORITY TO ENTER INTO PERMIT FOR RIGHT-OF-WAY

The Permittee represents and warrants to the Service that:

- 2.1 It is duly authorized and empowered under all Applicable Laws and by its charter and bylaws to enter into and perform the terms and conditions in this Permit;
- 2.2 Its Board of Directors, County of Riverside Board of Supervisors, or duly authorized executive committee, or a duly authorized representative of Permittee, has duly approved, and



has duly authorized the execution, delivery, and performance by it of this Permit;

- 2.3 All action that may be necessary or incidental to the approval of this Permit, and the due execution, delivery, and performance hereof by the Permittee has been taken;
- 2.4 All of the foregoing approvals, authorizations, and actions are in full force and effect at the time of the execution and delivery of this Permit;
- 2.5 Permittee shall at all times during the term of this Permit maintain a valid, current FCC License; and
- 2.6 If for activities authorized by this Permit, Permittee's personal property is situated on the personal property of another entity located in the Permitted Right-of-Way, Permittee shall at all times during the term of this permit maintain a valid, current authorization/permit from said Third Party for the construction, operation and maintenance of such personal property of Permittee. In the event of an apparent conflict between the terms of this Permit with any authorization/permit with said Third Party related to the Permitted Right-of-Way, the terms of this Permit shall prevail.

### 3 DEFINITIONS

As used in this Permit, the following terms shall have the following meanings, applicable, as appropriate, to both the singular and plural forms of the defined terms:

- 3.1 "Agency" means any federal, state or local agency, department, commission, board, bureau, office or other governmental authority having jurisdiction.
- 3.2 "Alterations" mean any additional improvements, modifications, alterations, or rehabilitation, reconstruction, or restoration of or to the Permitted Right-of-Way or Communication Facility by Permittee made after the completion of Construction, or in the case of no Construction, conducted after the Effective Date, but excluding replacement of Communication Facility equipment of a substantially similar size, height and weight as the existing Communication Facility equipment servicing the FCC approved band set forth in Section 3.6 of this Permit and which replacement causes no additional adverse impacts to the Park as determined by the Service.
- 3.3 "Alterations Compliance Report" means a document, prepared by an Independent Construction Inspector, that certifies that all Alterations have been completed in compliance with the Resource Rehabilitation Guidelines, NPS Guidelines, Guidelines for the Treatment of Cultural Landscapes, and all Applicable Laws.
- 3.4 "Applicable Laws" mean all present and future applicable statutes, regulations, requirements, licenses, rules, guidelines, ordinances, codes, permits, orders, decrees, and the like, and all amendments thereto, of any Agency, relating to and/or affecting the Permit, or Permittee's or Permittee's Agents' use of the Permitted Right-of-Way and the Road Access Area and/or operation of the Communication Facility, including, but not limited to:

- 3.4.1 Those Applicable Laws pertaining to reporting, licensing, permitting, investigation, remediation or abatement of emissions, discharges, or releases (or threatened emissions, discharges or releases) of Hazardous Materials in or into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials;
- 3.4.2 Those Applicable Laws pertaining to the protection of the health or safety of employees or the public;
- 3.4.3 Those Applicable Laws pertaining to the protection or restoration of natural, cultural, or archeological resources, including but not limited to NPS Guidelines; and
- 3.4.4 Those Applicable Laws pertaining to wireless communication facilities, radio transmissions and electromagnetic fields, including but not limited to Public Law 104-104, the Telecommunications Act of 1996, and FCC 96-326 Rule and Order; and
- 3.4.5 Those Applicable Laws found in Title 36 of the Code of Federal Regulations, and any Applicable Laws established specifically for the Park.
- 3.5 "Authorized Representative" means any of the Service's employees and agents, or any other individuals expressly authorized by the United States Department of the Interior, National Park Service, its successors or assigns, to perform specific functions related to this Permit.
- 3.6 "Communication Facility" means the Permittee's approved wireless communication Personal Property including all equipment and related lines, radios and antennas, in the area set forth on the map attached hereto and incorporated herein as Exhibit A, and in accordance with (i) Permittee's application submitted to the Service on February, 2009 as approved by the Service (attached to this Permit as Exhibit B); (ii) Design and Construction Documents as approved by the Service (attached to this Permit as Exhibit C); (iii) FCC Radio Authorization WQIF573(attached herein as Exhibit "J"); and (iv) all Applicable Laws, including but not limited to FCC 96-326 Rule and Order.
- 3.7 "Construction" means any construction, installation, improvements, or ground or site disturbance modifications necessary for Permittee's initial use of the Permitted Right-of-Way for the Communication Facility.
- 3.8 "Construction Compliance Report" means a document, prepared by an Independent Construction Inspector, at the sole cost and expense of Permittee, that certifies that the Permitted Right-of-Way, the Communication Facility, and all associated Construction and site restoration is in compliance with the Resource Rehabilitation Guidelines, Guidelines for the Treatments of Cultural Landscapes, NPS Guidelines, and all Applicable Laws.
- 3.9 "Construction Authorization" means a document issued by the Service authorizing Construction to commence based upon approved Design and Construction Documents as referenced in Exhibit C.
- 3.10 "CPI" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, All Items, Riverside County (1982-84 equals 100) or if such index is no longer published, a successor or substitute index designated by the Service, published by an Agency reflecting changes in consumer prices in the Riverside County area.

- 3.11 "Design and Construction Documents" mean schematic design and review documents, design development review drawings, Construction documents, Alterations documents, permit drawings and any other documents required to be prepared under this Permit for Construction or Alterations.
- 3.12 "Effective Date" is as defined in Article 11 of this Permit.
- 3.13 "Emergency Repairs" is as defined in Subsection 38.2.2 of this Permit.
- 3.14 "Environmental Damages" means all claims, demands, damages, injuries, losses, penalties, fines, costs (including reasonable consultant fees and expert fees), liabilities, causes of action, judgments, expenses and the like, of any nature whatsoever and by whomever made, incurred at any time during or after the term of this Permit which relate to the presence, suspected presence, release or suspected release of any Hazardous Material in or into the air, surface water, ground water or land at, on, about, under or within any area of the Park or adjacent property, and which arise directly or indirectly from or in connection with Permittee's or Permittee's Agents' use of the Permitted Right-of-Way and Road Access Area or operation of the Communication Facility. Environmental Damages include but are not limited to:
  - 3.14.1 Damages for death or personal injury, or for injury or damage to the Permitted Right-of-Way, other Service property, or adjacent property, foreseeable or unforeseeable; and
  - 3.14.2 Fees incurred for the services of consultants or contractors, and all other costs incurred in connection with the investigation, cleanup or remediation of such Hazardous Materials, the violation of any Applicable Law, or the restoration of the affected property.
- 3.15 "Fair Market Value" means Fair Market Value as defined by 36 C.F.R. 14.26(a).
- 3.16 "FCC" means the Federal Communications Commission.
- 3.17 "FF&E" means all Service fixtures, furniture, equipment, appliances, machinery, and apparatus attached to and forming a part of the Permitted Right-of-Way.
- 3.18 "Guidelines for the Treatment of Cultural Landscapes" means the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes.
- 3.19 "Hazardous Materials" mean any material or other substance (including storage tanks):
  - 3.19.1 The presence of which is governed by any Applicable Law as being hazardous or harmful to human health or the environment;
  - 3.19.2 That is or becomes defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "pollutant," "contaminant," or "toxic contaminant" under any Applicable Laws;
  - 3.19.3 That is toxic, explosive, corrosive, flammable, infectious, ignitable, radioactive, carcinogenic, mutagenic, or otherwise hazardous or is or becomes regulated by any Agency under any Applicable Laws;

- 3.19.4 The presence of which causes or threatens to cause a nuisance, or poses or threatens to pose a hazard to the environment or to the health or safety of persons;
  - 3.19.5 That contains, without limitation of the foregoing, gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds;
  - 3.19.6 That contains, without limitation of the foregoing, polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials, or urea formaldehyde foam insulation; or
  - 3.19.7 That contains or consists of, without limitation of the foregoing, radon gas.
- 3.20 "Impositions" mean all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, if any, lawfully imposed by any Agency, or other authority or entity, that may be levied, assessed, charged or imposed or may be or become a lien or charge upon the Permitted Right-of-Way or any part thereof; or upon the Use Fees; or upon Utility and Refuse Collection payment, or income of Permittee; or upon the use or occupancy of the Permitted Right-of-Way; or upon the Communication Facility, any Construction or Alterations, or Permittee's Personal Property. Impositions also include, but are not limited to, the payment of any bonds or charges imposed or required by any Agency, or other authority or entity, by reason of the proposed or actual use, treatment, storage, discharge or disposal of Hazardous Materials on or from the Permitted Right-of-Way by Permittee or Permittee's Agents; provided, however, that this provision shall not, and shall not be deemed to, permit Permittee or Permittee's Agents to use, treat, store or dispose of any such substances on any portion of the Permitted Right-of-Way.
- 3.21 "Independent Construction Inspector" means one or more independent inspectors, selected by Permittee, with all of the following qualifications:
- 3.21.1 Certification by the International Council of Building Officials as a certified inspector qualified to inspect any Construction and Alterations to the Right-of-Way and the Communication Facility with at least ten (10) years full-time professional inspection experience with similar communication facilities in the County of Riverside
  - 3.21.2 Registration with the State of California as a registered State geologist; and
  - 3.21.3 Certification by and/or registration with recognized professional organizations or governmental agencies as appropriate for the documentation and inspection of all site restoration associated with the Construction and Alterations and any certification as may be required by ASTM E1528-93, all Applicable Laws and/or the Service with at least ten (10) years full-time professional consulting and/or inspecting experience in the County of Riverside.
- 3.22 "Independent Verification" is as defined in Subsection 5.3.4 of this Permit.
- 3.23 "Interest Rate" means the percentage of interest charged based on the current value of funds to the United States Treasury that is published quarterly in the Treasury Fiscal Requirements Manual.
- 3.24 "Maintenance" means the act or process of continuously performing maintenance of the

Permitted Right-of-Way and Communication Facility to ensure good order, condition and repair in a manner consistent with comparable properties in the County of Riverside, California and in compliance with Guidelines for the Treatment of Cultural Landscapes, NPS Guidelines, and all Applicable Laws, as may be determined by the Service in its sole discretion, including but not limited to: (i) the prompt performance by Permittee of all repairs, maintenance, replacement, upgrading, Construction, or Alterations (whether structural or nonstructural, foreseen or unforeseen, or ordinary or extraordinary); (ii) the replacement, as they become worn out or obsolete, of the approved Communication Facility equipment and all FF&E necessary for Permittee's use; (iii) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without altering the appearance of the Permitted Right-of-Way and approved Communication Facility; (iv) the repair or replacement-in-kind of broken or worn-out elements, parts or surfaces so as to keep the existing appearance of the Permitted Right-of-Way and the approved Communication Facility; (v) scheduled inspections of the Communication Facility; and (vi) performance of all actions necessary to ensure that no nuisance or waste exist or are maintained on the Permitted Right-of-Way; and (vii) performance of all actions to ensure that no radio interference is caused by the Communication Facility to radio operations of the Service or to other duly licensed and legally operated radio facilities.

- 3.25 "Maintenance Plan" means a plan specifying how Permittee shall perform Maintenance in compliance with all of the terms, conditions and provisions of Article 30 of this Permit and the Maintenance Requirements and with the Resource Rehabilitation Guidelines, Guidelines for the Treatment of Cultural Landscapes, NPS Guidelines, and all Applicable Laws.
- 3.26 "Maintenance Requirements" are as defined in Exhibit G.
- 3.27 "NPS Guidelines" means NPS Guidelines for Site Disturbance Activity, if applicable, at the Park for the Protection and Restoration of Natural and Cultural Resources During Construction Activity, applicable to all permittees, lessees, cooperators, concessioners and other Park occupants, which specifications may be modified from time to time by the Service in its sole discretion.
- 3.28 "Operating Expenses" mean all expenses related to the management, maintenance and upkeep of the Permitted Right-of-Way including but not limited to supplies, Maintenance, Utility and Refuse Collection Services, private security and fire/life safety systems, and insurance.
- 3.29 "Park" means all lands, waters and structures, including but not limited to, all buildings, open spaces, roads, walkways and all natural, cultural, and archeological resources that are contained within the boundaries of Joshua Tree National Park.
- 3.30 "Parties" means the Service and Permittee, collectively.
- 3.31 "Permit" means this Right-of-Way Permit No. RW 8330-10-001 including all Permit terms and conditions and exhibits, and all modifications, amendments, and extensions thereof.
- 3.32 "Permit Month" means a calendar month, except that the first Permit Month shall begin on the Effective Date and the last Permit Month shall end on the Termination Date.
- 3.33 "Permit Year" means a calendar year, except that the first Permit Year shall begin on the Effective Date and the last Permit Year shall end on the Termination Date.

- 3.34 "Permitted Right-of-Way" means those areas within the Park as described in Article 1 of this Permit and Exhibit A.
- 3.35 "Permittee" means County of Riverside, its successors and assigns.
- 3.36 "Permittee's Agents" means any of Permittee's directors, officers, partners, members, employees, visitors, invitees, contractors, agents and any other persons or entities under the control of Permittee during the Term.
- 3.37 "Personal Property" means all fixtures, equipment, appliances, fences and any other apparatus constructed, installed or placed on the Permitted Right-of-Way.
- 3.38 "Preexisting Hazardous Materials" mean Hazardous Materials that existed in, on, under or about the Permitted Right-of-Way or other Service property prior to the Effective Date of this Permit, whether such substances were within the definition of Hazardous Materials as used in this Permit as of the Effective Date or subsequently become included within such definition.
- 3.39 "Remittance Form" means the form used to remit payment of the Annual Fees, a copy of which is attached to this Permit as Exhibit E, which Exhibit may be modified from time to time by the Service in its sole discretion.
- 3.40 "Resource Rehabilitation Guidelines" mean those requirements, if applicable, prescribed by the Service for Construction, Alterations and Maintenance of the Permitted Right-of-Way and Communication Facility, which requirements are available at the Service's park headquarters, and which requirements may be modified from time to time by the Service in its sole discretion.
- 3.41 "Road Access Area" is as defined in Section 6.1 and Exhibit F of this Permit.
- 3.42 "Rules for Use and Occupancy" means the Park's Rules for Use and Occupancy, if applicable, for buildings prescribed by the Service for the use and occupancy of Service property, applicable to all permittees, lessees, cooperators, concessioners and other Park occupants, which requirements may be modified from time to time by the Service in its sole discretion.
- 3.43 "Service" means the United States Department of the Interior, National Park Service, including its Authorized Representatives, successors and assigns.
- 3.44 "Service's Agents" means any of the Service's employees, agents and Authorized Representatives.
- 3.45 "Term" is as defined in Article 11 of this Permit.
- 3.46 "Termination Date" is as defined in Article 11 of this Permit.
- 3.47 "Transfer" means the direct or indirect, voluntary or by operation of law, sale, assignment, subletting, permitting, encumbering, pledge or other transfer or hypothecation of Permittee's interest in or rights with respect to the Permitted Right-of-Way. Any sale or other transfer, including by consolidation, merger or reorganization, of a controlling interest in Permittee, if such entity is a corporation, or any sale or other transfer of a controlling interest in the partnership interests of such entity, if such entity is a partnership, whether in a single transfer

or in a series of related transfers, and whether directly or by sale or transfer of underlying partnership or corporate ownership interests, shall be deemed a Transfer. The term "controlling interest" as used in this Permit means, in the case of a corporate entity, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of Permittee so as to permit exercise of managerial authority over the actions and operations of Permittee; in the case of a not-for-profit organization, a majority of the Board of Directors of Permittee; and, in the instance of a partnership, limited partnership, joint venture, limited liability company, or individual entrepreneurship, beneficial ownership of the capital assets of Permittee so as to permit exercise of managerial authority over the actions and operations of Permittee.

3.48 "Utility and Refuse Collection Services" mean all utility and refuse collection services necessary for the use of the Permitted Right-of-Way and/or operation of the Communication Facility, including but not limited to, gas, electricity, other power, water, telephone and other communications services, sewage, garbage and refuse collection; and any and all utility hook-ups, utility service connections, or changes in such service.

3.49 "Utility Improvements" is as defined in Section 16.2 of this Permit.

#### 4 PERMITTED USE OF RIGHT-OF-WAY BY PERMITTEE

This Right-of-Way Permit is for the sole purpose of allowing Permittee to install, operate, and maintain an approved Communication Facility within the Permitted Right-of-Way. Permittee agrees to the following restrictions on Permittee's use of the Permitted Right-of-Way and the Communication Facility located therein:

- 4.1 In utilizing the Permitted Right-of-Way, the Permittee agrees to comply with and be bound by all Applicable Laws and regulations, including, but not limited to Title 36 CFR 14, regarding rights-of-way over across and upon lands administered by the Service, and by the terms and conditions of this Permit.
- 4.2 Permittee expressly agrees that the Communication Facility installed within the Permitted Right-of-Way shall be utilized solely for Permittee's internal communications business requirements, including the off-Park resale of services from the Permittee's Use and Operation of the Communication Facility.
- 4.3 The Permittee expressly agrees to take reasonable measures to prevent the unlawful use and occupancy of the Permitted Right-of-Way by third parties.
- 4.4 The Permittee shall not (i) lease, sell, or license or otherwise provide a third party with the Use and Operation of the Communication Facility and the Permitted Right-of-Way, or (ii) install or allow to be installed facilities at the Park by third parties; except subject to a Service approved co-location within the Permitted Right-of-Way.
- 4.5 No overnight occupancy is authorized.

#### 5 COMPLIANCE WITH APPLICABLE LAWS; NEPA; NHPA; FCC RULE AND ORDER

### 5.1 General Compliance

Permittee, at Permittee's sole cost and expense, shall promptly comply with all Applicable Laws in its activities authorized pursuant to this Permit. Permittee shall give the Service immediate written notice of any notice of violation of Applicable Laws received by or on behalf of Permittee and, at its sole cost and expense, Permittee shall promptly rectify any such violation by Permittee or Permittee's Agents.

### 5.2 National Environmental Policy Act and National Historic Preservation Act

Where activities undertaken by Permittee require the preparation of compliance documents pursuant to the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA"), Permittee shall supply all necessary information to the Service and any appropriate Agency in a timely manner. No construction, alterations or installation activities shall occur on or to the Permitted Right-of-Way until all applicable NEPA and NHPA requirements have been met.

### 5.3 FCC 96-326 Rule and Order

#### 5.3.1 General Requirements

Permittee shall comply with all Applicable Laws relating to allowable presence of or exposure to electromagnetic fields ("EMFs"), including without limitation, FCC 96-326 Rule and Order, whether such EMF presence or exposure results from Permittee's Personal Property and/or Communication Facility alone or from the cumulative effect of Permittee's Personal Property and/or Communication Facility added to all other sources on or in the vicinity of the Permitted Right-of-Way permitted to operators of wireless communication systems and other permitted improvements. If the cumulative effect of the Service's or other non-governmental operations of wireless communication facilities use of the Permitted Right-of-Way taken together with Permittee's use hereunder exceeds such standards, Permittee shall, in addition to any other available remedies (such as verification of EMF measurements or reduction of EMF levels) have the right to terminate as set forth in Article 44. Without limiting the provisions of Permittee's indemnity contained in Article 36, Permittee, on behalf of itself and its successors and assigns, shall indemnify the Service from and against all claims incurred in connection with or arising in whole or in part from the presence of or exposure to EMFs resulting from Permittee's use of the Permitted Right-of-Way and operation of its Communication Facility.

#### 5.3.2 Initial Compliance

As part of the Construction Compliance Report requirement set forth in Subsection 21.4.4 of this Permit, Permittee shall calculate EMF levels and where EMF levels produced are projected to be highest. Permittee shall further provide proof that its Communication Facility is in compliance with this Section 5.3. In the event that Permittee's calculated EMF level exceeds eighty percent (80%) of the standards set forth in this Section 5.3, Permittee shall hire at Permittee's sole cost and expense a qualified electrical engineer licensed by the State of California (if such licensing is undertaken by said State) to measure EMFs levels at the Communication Facility prior to the



Communication Facility's normal operation. Permittee shall not operate the Communication Facility until it complies with this Section 5.3. Proof of said compliance shall be a certification provided by the engineer who prepared Permittee's original report.

#### 5.3.3 Ongoing Compliance

Within thirty (30) days of the commencement of the fifth (5th) Permit Year, Permittee shall submit proof to the Service that the Communication Facility is in continued compliance with this Section 5.3. Permittee shall prepare and submit to the Service a report listing each transmitter and antenna within the Permitted Right-of-Way and the effective radiated power radiated. If any of the equipment or effective radiated power has changed since the date of the Service's approval of the Construction Compliance Report, Permittee shall prepare, at its sole cost and expense, calculations specifying EMF levels and where EMF levels produced are projected to be highest. In the event that Permittee's calculated EMF level exceeds eighty percent (80%) of the standards set forth in this Section 5.3, Permittee shall hire a qualified electrical engineer licensed by the State of California to measure EMF levels at the Communication Facility during its normal operation. Proof of said compliance shall be a certification provided by the engineer who prepared Permittee's original report.

#### 5.3.4 Independent Verification

In order to ensure the objectivity of such proof of compliance, the Service at its sole discretion may require independent verification ("Independent Verification") of the results of Permittee's report and/or certification. In the event that the Service elects to prepare such Independent Verification, Permittee expressly agrees to reimburse the Service for all reasonable costs and expenses incurred by the Service.

### 6 ROAD ACCESS AREA

#### 6.1 Road Access Area

The Service hereby confers on Permittee for the Term of this Permit a personal, non-exclusive and non-possessory additional right-of-way to the extent necessary for Permittee's permitted use under this Permit in and over the portions of the Park adjacent to Permitted Right-of-Way as described in Section 1.3 and as shown on Exhibit F ("Road Access Area").

#### 6.2 Limitation on Use of Road Access Area

The Road Access Area may be used by Permittee for the following purposes only: physical access by Permittee's or Permittee's Agents' personnel and equipment to or from the Permitted Right-of-Way. Notwithstanding anything to the contrary contained herein, this additional right-of-way does not constitute a grant by the Service of any ownership, leasehold, easement or other property interest of estate whatsoever in the Permitted Right-of-Way, or Road Access Area or any portion thereof and the additional right-of-way is subject to all terms, agreements, covenants, conditions and provisions of this Permit. The rights granted to Permittee in this Article 6 are for the purpose of installing, constructing, maintaining, restoring, replacing and operating of the Communication Facility located within or on the Permitted Right-of-Way.

Such rights shall include the right of ingress and egress, twenty-four (24) hours per day, seven (7) days per week, or such other hours and days as the Service may specify in writing to the Permittee, over such Road Access Area for access to or from any of Permittee's Personal Property in or on the Permitted Right-of-Way, including the Communication Facility. It is the parties' intent that this additional right-of-way shall be co-terminus with the Permitted Right-of-Way. Accordingly, termination of this Permit in accordance with the terms hereof shall effect termination of Permittee's use of the Road Access Area.

## 7 ACCEPTANCE OF THE PERMITTED RIGHT-OF-WAY AS IS

### 7.1 Permittee's Due Diligence

Prior to entering into this Permit, Permittee has made a thorough, independent examination of the Permitted Right-of-Way and all matters relevant to Permittee's decision to enter into this Permit, and Permittee is thoroughly familiar with all aspects of the Permitted Right-of-Way and is satisfied that it is in an acceptable condition and meets Permittee's needs.

### 7.2 "As Is" Condition of the Permitted Right-of-Way

Permittee expressly agrees to use the Permitted Right-of-Way, Road Access Area and all improvements thereon, and all utility systems in their existing "AS IS" condition "WITH ALL FAULTS" and Permittee acknowledges that in entering into this Permit, Permittee does not rely on, and the Service does not make, any express or implied representations or warranties as to any matters including but not limited to the suitability of the soil or subsoil; the suitability of the Permitted Right-of-Way for the intended use; the likelihood of deriving trade from or other characteristics of the Park; the location of Hazardous Materials, archeological materials, or utilities; the technical or economic feasibility of Permittee's use of the Permitted Right-of-Way; Hazardous Materials on or in the vicinity of the Permitted Right-of-Way; the quality, nature or adequacy of any water, sewer, electric, telecommunication or other utility systems servicing the Permitted Right-of-Way; or any other matter. Permittee has satisfied itself as to such suitability and other pertinent matters by Permittee's own inquiries and tests into all matters relevant in determining whether to enter into this Permit. Permittee acknowledges the existing conditions of the Permitted Right-of-Way and Road Access Area and accepts the Permitted Right-of-Way and Road Access Area in their existing condition, and hereby expressly agrees that if any remedial work, Construction, Alterations or Maintenance is required to operate its Communication Facility and to conform the Permitted Right-of-Way and/or Road Access Area to the requirements of all Applicable Laws for Permittee's use, Permittee shall assume sole responsibility for any such work, including compliance with all Applicable Laws, except as expressly set forth in this Permit.

Permittee understands and expressly agrees that the Service's approval of Design and Construction Documents and the Service's approval of the Construction Compliance Report, any Construction Authorization, or any Service approval of Permittee's completion of Construction, Alterations and/or site restoration does not make nor imply any representation or warranty by the Service that the Permitted Right-of-Way complies with all Applicable Laws. Permittee expressly accepts this Permit and all risks and liabilities associated with the condition of the Permitted Right-of-Way and the use of the Road Access Area by Permittee and Permittee's Agents.

8 RESERVATION OF RIGHTS BY THE SERVICE

- 8.1 Permittee recognizes that the privileges authorized herein shall be subject to the express condition that the exercise thereof shall not unduly interfere with the management and administration of the Park. Permittee expressly agrees and consents to occupancy and use (including but not limited to the right to pass on, over, through, and across), during the term of this Permit, by the Service, Service's Agents, and its grantees, permittees, lessees, cooperators, licensees, visitors, and other invitees, of any part of the Permitted Right-of-Way or Road Access Area, except that, entry into any enclosed cabinet or other enclosed container of Permittee, approved by the Service to be in the Permitted Right-of-Way, will be undertaken only in the company of a representative of the Permittee, except in the case of an emergency.
- 8.2 Use by the Permittee of the land covered herein is subject to the right of the Service, in its sole discretion, to replace or substitute the Road Access Area, to establish trails, roads, and other improvements and betterment over, upon or through the Permitted Right-of-Way and/or Road Access Area, and further to the use by travelers and others of such roads, trails, and other improvements already existing. If it is necessary to exercise such right, every effort will be made by the Service to refrain from unduly interfering with or preventing use of the land by the Permittee for the purposes intended under this Permit.
- 8.3 The Service expressly reserves the right but has no duty to enter upon the Permitted Right-of-Way, except in the case of emergency, upon twenty-four (24) hours prior notice to Permittee for the purposes of monitoring or inspecting the activities authorized by this Permit, to assess whether Permittee is in compliance with the provisions of this Permit (and if found not to be, Permittee shall promptly correct any deficiencies in such compliance to the satisfaction of the Service), or for any other purpose, including but not limited to, for the purpose of installing, maintaining, repairing or replacing utilities, or other Park infrastructure, or for conducting invasive tests. Permittee shall establish procedures providing emergency access by the Service to any secured areas within the Permitted Right-of-Way, which procedures shall be satisfactory to the Service in its sole discretion.
- 8.4 The privileges granted herein are further expressly subject to all existing easements, licenses, and rights-of-way, and to those subsequently granted, including, but not limited to, rights-of-way for the installation, maintenance, replacement, repair, or relocation of utilities, as well as established access routes for roadways or other infrastructure located, or to be located, on the Permitted Right-of-Way.
- 8.5 The Service further retains the right to prohibit access to the Permitted Right-of-Way or Road Access Area when, at the Service's sole discretion, the Service believes there is or may be an immediate danger to life, the environment, or property. To the extent feasible, the Service will provide reasonable advance notice of such closure. The Service further reserves the right at any time to close to travel any of its lands, to erect and maintain gates at any point thereon, to regulate or prevent traffic of every or any kind thereon, to prescribe the methods of use thereof, and to maintain complete dominion over the same, including the right to prescribe the kind or kinds of vehicles that may travel the same or any designated part thereof.
- 8.6 The Permittee expressly recognizes that it shall have no claim against the Service for injury, loss, or other costs occasioned by any inconvenience to or interference with Permittee's use of the Permitted Right-of-Way as a result of the Service's exercise of the rights reserved to it

under this Article 8, provided, however, that the Service will endeavor to minimize interference with Permittee's activities authorized under this Permit.

#### 9 DEVIATION FROM APPROVED RIGHT-OF-WAY

The Permittee agrees that it will not deviate from the location of the Permitted Right-of-Way in its installation, construction, operation and maintenance of the Communication Facility. All ingress and egress for the construction, maintenance and operation of the Communication Facility shall be restricted to the Permitted Right-of-Way and Road Access Area. In the event that the Permittee determines that ingress and egress over Park lands not included in this right-of-way are necessary for the installation, construction, maintenance, and operation of the Communication Facility, then the Permittee must apply, in writing, to the Park Superintendent for approval of such ingress and egress.

#### 10 NO GRANT OF LEGAL INTEREST, EXCLUSIVE USE, OR PREFERENTIAL RIGHT OF RENEWAL

This Permit shall not be construed as a grant of any possessory, exclusive or permanent interest in the Permitted Right-of-Way or Road Access Area or any real or Personal Property thereon, except the Communication Facility, nor as an estate of any kind, nor as a grant of any preferential right of renewal, nor as an abandonment of use and occupancy, but shall merely be considered a temporary license for the non-exclusive, non-possessory use of the land as herein described, anything herein contained to the contrary notwithstanding. Title to the Service's real property and improvements thereon, including existing improvements on the Permitted Right-of-Way, shall be and remain solely in the Service. Notwithstanding the foregoing, all of Permittee's Personal Property, including the Communication Facility, constructed, installed, erected or placed by Permittee on the Permitted Right-of-Way or other Service property, shall be and remain the property of Permittee except as provided for in Articles 27 and 40 of this Permit.

#### 11 EFFECTIVE DATE AND TERM OF THE PERMITTED RIGHT-OF-WAY

The effective date of this Permit shall be the date of its execution by the Service's Regional Director ("Effective Date"). The term of this Permitted Right-of-Way shall be for a period of ten (10) years ("Term") commencing on the Effective Date at noon, and terminating ten (10) years later on \_\_\_\_\_, 2020 or on such earlier date as this Permit may be terminated pursuant to the terms, agreements, covenants, conditions and provisions of this Permit or of any Applicable Laws ("Termination Date").

#### 12 RENEWAL OF RIGHT-OF-WAY

Unless relinquished, abandoned, or otherwise terminated pursuant to the provisions of this Permit or of any Applicable Laws, the Permittee may make application to the Service, within six (6) months prior to the Termination Date, for renewal of this Permit. As provided for in Article 10 of this Permit, Permittee has no preferential right of renewal.

Upon request, the Permittee shall file, in accordance with all Applicable Laws, a written

application to renew this Permit, and shall agree to comply with all Applicable Laws governing the use of the lands of the Park for the purposes desired. This Permit may be extended subject to all Applicable Laws, pending consideration of the application for renewal; provided, however, that such interim extension shall in no way obligate the Service to grant approval of Permittee's application for extension of this Permit.

### 13 FEES

Pursuant to 36 C.F.R. 14, 31 U.S.C. Section 9701, and this Article 13, Permittee use fees are waived, for the use of Park lands.

#### 13.1 Use Fee

The Permittee agrees to pay annually to the Service for the use and occupancy of Park lands a use fee of -0- Dollars (Fees Waived), subject to CPI adjustments to the Use Fee as set forth in Section 13.2 of this Permit and any Reevaluation during the Term as set forth in Section 13.3 of this Permit.

#### 13.2 Adjustments to Use Fee

The Use Fee (Fees Waived) provided for in Section 13.1 of this Permit shall be subject to adjustment by the Service after the last day of the twelfth (12th) Permit Month of the Term and after the last day of each twelve (12) month period thereafter as follows:

- 13.2.1 The base for computing the Use Fee adjustment is the CPI published during the month most immediately preceding the Effective Date ("Beginning Index"). The CPI published during the month forty-five (45) days most immediately preceding the commencement of the twelfth (12th) Permit Month of the Term and each twelfth (12) month period thereafter ("Adjustment Index") is to be used in determining the amount of any future adjustments. If the Adjustment Index has increased over the Beginning Index, the Use Fee shall be set by multiplying the then-current Use Fee by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no case shall the Use Fee be less than the Use Fee set forth in Subsection 13.1 of this Permit.
- 13.2.2 If the CPI is changed so that the CPI base year differs from that in effect on the Effective Date, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.
- 13.2.3 Upon determination of the new Use Fee, pursuant to this Section 13.2, the Service will provide written notice to Permittee thirty (30) days in advance of the effective date of any such new Use Fee and such notification shall constitute an amendment to this Permit, as if such amendment were duly executed by the Parties. Permittee expressly agrees that any adjustment to the Use Fee pursuant to this Section 13.2 shall not in any way be construed as a revision of charges or a new charge under 36 C.F.R. 14.26(e).

### 13.3 Reevaluation During Term – (Fees Waived)

The Service shall have the right but not the obligation, in its sole discretion, to conduct a Reevaluation to establish the fair market value of the consideration to be paid by the Permittee pursuant to this Permit at (i) the end of the fifth (5th) Permit Year and/or (ii) the time of submittal of any request for an Alteration of the approved Communication Facility. Such Reevaluation shall be conducted according to 36 C.F.R. 14.26 (or its successor regulation) and all Applicable Laws. After at least thirty (30) days written notice to Permittee and opportunity for hearing, the Service may review the Use Fee and after a final determination by the Service impose such new Use Fee. Upon such final determination of a new Use Fee pursuant to this Section 13.3, the Service will provide thirty (30) days advance written notice to Permittee and such notification shall constitute an amendment to this Permit as if such amendment were duly executed by the Parties.

### 13.4 Payment Procedure

- 13.4.1 Permittee shall pay the Use Fee in advance on or before the first day of each Permit Year, beginning on the Effective Date, and continuing until the Termination Date.
- 13.4.2 Permittee's payment of Use Fee shall be made in one check payable to "DOI National Park Service" Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, CA, 92277 or at such other place or places as the Service may designate in writing from time to time.
- 13.4.3 Permittee shall complete and submit to the Service with each payment of the Use Fee a Remittance Form, a copy of which Remittance Form is attached to this Permit as Exhibit E.

### 13.5 Late Charges

Any unpaid Use Fees, if applicable, and all other amounts and charges due under this Permit shall bear interest at the Interest Rate from ten (10) business days after the date due until paid. In addition, Permittee recognizes that late payment of any portion of the Use Fees due under this Permit will result in administrative expense to the Service, the extent of which expense is difficult and economically impracticable to ascertain. Permittee therefore agrees that if any payment of the Use Fees and all other amounts and charges due under this Permit shall be overdue for ten (10) business days beyond the date on which it is due and payable as provided in this Permit, an additional late charge of five percent (5%) of the sums so overdue shall become immediately due and payable. Permittee agrees that such amount is a reasonable estimate of the expense to be suffered by the Service as a result of such late payment by Permittee and may be charged by the Service to defray such expense. In the event of nonpayment of interest or late charges on overdue Use Fees and all other amounts and charges due under this Permit, the Service shall have, in addition to all other rights and remedies, the rights and remedies provided in this Permit and by Applicable Laws for nonpayment of fees and other Service charges.

### 13.6 Use Fees; No Abatement or Counterclaim

The Use Fees and all other amounts and charges due under this Permit shall be absolutely net to the Service and shall be paid without assertion of any counterclaim, offset, deduction or defense and without abatement, suspension, deferment or reduction. Under no circumstances or

conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall the Service be expected or required to make any payment of any kind whatsoever with respect to the Permitted Right-of-Way or be under any obligation or liability except as expressly set forth in this Permit.

#### 14 FINANCIAL ASSURANCE

Permittee shall deliver to the Service a valid surety bond in the sum of One Hundred Thousand Dollars (\$100,000), issued by a surety company acceptable to the Service in such form as approved in writing by the Service. Permittee agrees that the Service may (but shall not be required to) apply the amount of the bond in whole or in part to remedy any damage to the FF&E or the Service's real or Personal Property caused by Permittee or Permittee's agents, or any failure of Permittee to perform any other terms, agreements, covenants, conditions or provisions contained in this Permit, following notice and opportunity for Permittee to cure such failure, without waiving any of the Service's other rights and remedies hereunder or at law or in equity. Permittee shall keep such surety bond, at its sole expense, in full force and effect until the sixtieth (60<sup>th</sup>) day after the termination Date, to insure the faithful performance by Permittee of all of the covenants, terms and conditions of this Permit. Such bond shall provide sixty (60) days' prior written notice to the Service of cancellation or material change thereof. In the event of any non-extension, cancellation or material change of the bond, Permittee shall replace such bond with another bond meeting the requirements of this Article 14 at least thirty (30) days prior to such expiration, cancellation or material change, and if Permittee fails to do so the Service shall be entitled to present its written demand for payment of the entire face amount of such bond and to hold the funds so obtained. Any unused portion of the funds so obtained by the Service will be returned to Permittee upon replacement of the bond in the full amount required hereunder.

#### 15 IMPOSITIONS

##### 15.1 Permittee's Obligations for Impositions

In addition to the Use Fees (Use Fee Waived) and payment for Utility and Refuse Collection Services and all other amounts and charges due under this Permit, Permittee covenants and agrees to bear, discharge and pay to the relevant Agency, in lawful money of the United States of America, without offset or deduction, as the same become due, before delinquency, all Impositions, commencing as of the Effective Date and continuing until the Termination Date.

It shall be Permittee's sole responsibility, in its sole discretion, to apply for and prosecute any exemption from any Impositions, and the Service shall be at no expense therefor.

##### 15.2 Receipts

Permittee shall obtain and deliver to the Service, receipts or duplicate receipts or other satisfactory evidence of payment for all Impositions required to be paid by Permittee, promptly upon payment thereof in the case of any Impositions for which a failure to pay may result in a lien upon the Permitted Right-of-Way, and, in all other cases, upon request of the Service.

#### 16 UTILITY AND REFUSE COLLECTION SERVICES

##### 16.1 Arrangements for Utility and Refuse Collection Services

The Service shall not supply any Utility or Refuse Collection Services; the Permittee shall make all arrangements for all such service with vendors.

#### 16.2 Limitation on the Service's Obligation to Provide Utility and Refuse Services

The Service does not make any express or implied representations or warranties as to the quality, nature or adequacy of existing water, sewer, electric, telecommunications or other utility systems serving the Permitted Right-of-Way or Road Access Area for Permittee's intended use. Permittee accepts all water, sewer, electrical, telecommunication and other utility systems in their existing condition as of the Effective Date, and hereby expressly agrees that if any upgrading, remedial work, Maintenance, Construction, or Alterations is required to conform any of the water, sewer, electric, telecommunication or other utility systems to the requirements of Permittee and/or all Applicable Laws ("Utility Improvements"), Permittee shall, at its sole cost and expense, assume sole responsibility for any such Utility Improvements.

#### 16.3 Payment for Utility and Refuse Collection Services Furnished by the Service

If applicable, the Service will bill Permittee for each individual Utility and Refuse Collection Service furnished by the Service. Permittee shall and hereby agrees to pay to the Service quarterly, or on such other schedule as may be established by the Service from time to time, in arrears within thirty (30) calendar days after date of such bill from the Service in lawful money of the United States of America without deduction or offset, all amounts due for Utility and Refuse Collection Services. Payment for Utility and Refuse Collection Services shall be made payable to "DOI National Park Service" at the Joshua Tree National Park Budget and Finance Office, or at such other place or places as the Service may designate from time to time.

#### 16.4 Discontinuance of Utility and Refuse Collection Services

The Service can discontinue, upon fourteen (14) days written notice to Permittee, any of the Utility and Refuse Collection Services furnished by the Service to the Permitted Right-of-Way and for which Permittee fails to pay as provided in Section 16.3 of this Permit.

### 17 COVENANT TO PAY OPERATING EXPENSES

Without limitation of any other obligation of Permittee under this Permit, Permittee shall pay or cause to be paid, to the respective entity to which it is payable, as and when due, all Operating Expenses.

### 18 RETENTION AND EXAMINATION OF RECORDS

#### 18.1 Retention of Records

Permittee shall keep, or cause to be kept, true, accurate and complete records related to Permittee's use of the Permitted Right-of-Way including but not limited to the operation of its Communication Facility. Such records shall include but not be limited to all data, surveys and tests obtained or made by Permittee for all or a portion of the Permitted Right-of-Way, and/or



Communication Facility. Permittee shall keep and make such records available to the Service at all reasonable times, upon advance notice and during normal business hours. If at any time during the Term, said records prove inadequate, Permittee shall, upon the request of the Service, procure and maintain such records as shall be of a character and form adequate for said purpose. In addition to all other records required to be retained by Permittee under this Permit, Permittee shall retain all reports and financial statements relating to expenditures for the Permitted Right-of-Way and/or to Permittee's use of the Permitted Right-of-Way under this Permit that were furnished to any other party.

#### 18.2 The Service's Examination

Upon reasonable prior notice and during normal business hours, Permittee shall provide the Service access to all records relating to the Permitted Right-of-Way, Construction, Alterations, Hazardous Materials, use of the Permitted Right-of-Way and operation of its Communication Facility under this Permit, for the purpose of conducting an examination of such records.

### 19 CONSTRUCTION APPROVAL

- 19.1 Permittee shall not undertake any Construction, or Alterations, or install any equipment or other facilities on the Permitted Right-of-Way (including temporary equipment or facilities) without the prior written approval of the Service. Any Alterations must be consistent with and at least equal in quality to the existing approved Construction.
- 19.2 As a prerequisite to obtaining approval for Construction or Alterations, Permittee, at Permittee's sole cost and expense, shall submit to the Service (i) Design and Construction Documents, approved by the Service in accordance with Article 20 of this Permit, (ii) evidence of availability of financing for such Construction or Alterations, (iii) evidence of insurance required pursuant to Article 37 of this Permit, and (iv) other relevant data as may be required by the Service. Additional proposed changes or modifications to the above must be approved in writing by the Service.
- 19.3 In accordance with this Article 19, Permittee is hereby granted permission and agrees and covenants to commence that Construction as identified in the Construction Authorization to be issued by the Service and referenced in Exhibit C. The Service's issuance of such Construction Authorization shall be subject to Permittee's submittal of acceptable final Design and Construction Documents, as determined by the Service in its sole discretion.

### 20 DESIGN OF CONSTRUCTION AND ALTERATIONS

#### 20.1 Standards

Permittee has designed all Construction and shall design all Alterations in accordance with the Resource Rehabilitation Guidelines, the Secretary Standards for Rehabilitation, Guidelines for the Treatments of Cultural Landscapes, NPS Guidelines, and all other Applicable Laws.

#### 20.2 Design and Construction Documents

- 20.2.1 All Design and Construction Documents shall be prepared by licensed professionals who meet appropriate State of California licensing, and certification requirements.
- 20.2.2 All Design and Construction Documents shall be subject to the prior written approval of the Service.
- 20.2.3 All Design and Construction Documents shall be prepared in compliance with the Resource Rehabilitation Guidelines, the Secretary Standards for Rehabilitation, Guidelines for the Treatments of Cultural Landscapes, NPS Guidelines and all other Applicable Laws.
- 20.2.4 Any survey prepared by the Permittee shall comply to the standards set in 36 C.F.R. Part 14 and the Resource Rehabilitation Guidelines.
- 20.2.5 In the preparation of Design and Construction Documents, Permittee shall review utility plans for the location of existing utilities that may be impacted in any way by Permittee's Construction or Alterations. If available, the Service will furnish to Permittee any existing "as-built" utility plans that impact such Construction or Alterations. Permittee is required to obtain all other necessary utility plans from any other utility provider at Permittee's sole cost and expense and provide copies of such additional utility plans to the Service.
- 20.2.6 In the preparation of the Design and Construction Documents, Permittee shall in addition review any other documents, including but not limited to environmental and archeological reports, that may be related to the design and prosecution of Construction.
- 20.2.7 Any change in the approved Design and Construction Documents and any deviations in the actual Construction or Alterations from such approved design elements shall be subject to the Service's prior written approval.
- 20.2.8 Permittee shall prepare and maintain on the Permitted Right-of-Way on an ongoing basis during Construction and Alterations approved annotated Design and Construction Documents showing clearly all changes, revisions and substitutions during Construction or Alterations.
- 20.2.9 As Design and Construction Documents are given final approval by the Service, they shall be incorporated as exhibits into this Permit.

## 21 GENERAL REQUIREMENTS FOR CONSTRUCTION AND ALTERATIONS

### 21.1 Construction and Alterations

- 21.1.1 If granted written permission pursuant to Article 19 of this Permit, Permittee hereby agrees and covenants to commence and prosecute diligently, at Permittee's sole cost and expense, Construction and Alterations in accordance with the final Design and Construction Documents approved by the Service, all in accordance with the provisions of this Article 21.
- 21.1.2 Construction and Alterations shall be done at Permittee's sole cost and expense. All Construction and Alterations work shall be performed in a good and workmanlike

manner and with materials of at least the quality and standard of materials used in comparable Communication Facility projects in the County of Riverside, California. Permittee shall perform all Construction and Alterations in strict accordance with all Applicable Laws, the Resource Rehabilitation Guidelines, Guidelines for the Treatments of Cultural Landscapes, NPS Guidelines, the Construction Authorization and the approved Design and Construction Documents and in accordance with Article 20.2.9 and all other terms, agreements, covenants, conditions and provisions of this Permit. Permittee shall perform all Construction and Alterations and maintain equipment and any Construction and Alterations facilities on the Permitted Right-of-Way in a safe, thorough and reliable manner.

- 21.1.3 Permittee shall not perform any Construction or Alterations outside the boundaries of the Permitted Right-of-Way.
- 21.1.4 Permittee shall limit work on Construction and Alterations in areas near known utilities to weekdays between the hours of 8:00 a.m. to 5:00 p.m., except in the case of an emergency necessitating immediate action outside these authorized hours. In the event that an emergency requires excavation outside these hours, the Permittee shall notify the Service immediately.
- 21.1.5 In the event that Permittee's Construction or Alterations, or other use of the Permitted Right-of-Way causes or results in a disruption of utilities within the Park, the Permittee shall immediately notify the Service and any other affected entities and such disruption shall be repaired or restored by the Permittee within four (4) hours or as prescribed by the Service. Permittee shall be solely liable for any such disruption, damage, or destruction of utility systems or apparatus and shall undertake, at its sole cost and expense, all necessary and appropriate repair work, subject to the written approval and satisfaction of the Service, and the Service shall not be liable therefor. The Service may, in its sole discretion, arrange for such repair work itself, and the Permittee hereby expressly agrees to reimburse the Service for all the Service's costs and expenses of any such work.
- 21.1.6 Archeological clearance pursuant to all Applicable Laws, including but not limited to Section 106 of the National Historic Preservation Act ("NHPA"), is required prior to any Construction and Alterations within the Permitted Right-of-Way and/or Park. Permittee shall notify in writing the Service Archeologist at least forty-eight (48) hours in advance of any ground-disturbing activities in order to arrange for the Service's monitoring of archeological resources.
- 21.1.7 Permittee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains, materials, or objects of antiquity ("Cultural Resources") or any species of biota identified for special status by either the Federal Endangered Species Act or the State of California Endangered Species Act ("Special Status Species"). If any surface or subsurface Cultural Resources or Special Status Species are encountered by Permittee, Permittee shall immediately halt work and notify the Service so that the Service may evaluate such Cultural Resources or Special Status Species. Permittee's affected activity shall not resume until approval is issued by the Service. Permittee agrees that the Service shall not be liable for any costs or expenditures occasioned as a result of any delays or alterations associated therewith. All Cultural Resources

shall remain property of the Service.

21.1.8 It is a material part of the consideration to the Service under this Permit that Permittee commence Construction no later than ninety (90) days after the Effective Date, or by the date established by the Service after approval of Design and Construction Documents for such Construction; that Permittee diligently pursue such Construction until completion; and that Permittee complete the Construction by no later than three (3) months after the commencement of Construction or as otherwise approved in writing by the Service in its sole discretion; and that Permittee complete the construction of any Alterations by the date established by the Service after approval of the Design and Construction Documents for such Alterations.

21.1.9 Notwithstanding the foregoing, in the event of the occurrence of an enforced delay due to unforeseeable causes beyond Permittee's control and without any fault or negligence on the part of Permittee, the time or times for performance of Permittee's obligations under this Article 21 shall be extended for the period of such enforced delay. Such enforced delay shall include without limitation acts of God or of public enemies, war, invasion, insurrection, rebellion, riots, earthquakes, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather delays, or any other similar delays, all so long as such delays do not cause a delay in excess of six (6) months. If the performance of Permittee's obligations under this article are delayed in excess of six (6) months, the Service may, at its sole discretion, terminate this permit.

## 21.2 Licensed Contractors

All Construction and Alterations shall be performed by licensed contractors who meet appropriate State of California licensing, bonding and certification requirements.

## 21.3 Copy of Construction Contracts

Permittee shall, upon request, furnish the Service with a true and correct copy of any of Permittee's contracts with any contractors, architects, or other consultants engaged in connection with any Construction or Alterations under this Permit.

## 21.4 Construction Completion Procedures

Upon completion of the Construction, Permittee shall comply with the following Construction completion procedures:

21.4.1 Permittee shall submit to the Service a written notice of completion of Construction.

21.4.2 Permittee shall deliver to the Service evidence, satisfactory to the Service, of payment of all costs, expenses, liabilities and liens arising out of or in any way connected with such Construction.

21.4.3 Permittee shall provide to the Service a complete set of as-built drawings and operational manuals (including all warranties) showing clearly all Service approved changes, revisions and substitutions made during Construction, including, without

limitation, field changes and the final location of all equipment, utility lines and other significant features of Construction, all in a format approved in advance by the Service.

21.4.4 Permittee, at its sole cost and expense, shall provide the Service with a Construction Compliance Report.

21.4.5 Within fifteen (15) working days of receipt of Permittee's Construction Compliance Report, the Service will review Permittee's Construction Compliance Report and provide written notice to Permittee of the Service's approval or disapproval of Permittee's completion of Construction. Permittee understands and expressly agrees that Permittee is prohibited from occupying the Permitted Right-of-Way and/or operating its Communication Facility until the Service approves Permittee's Construction Compliance Report.

#### 21.5 Alterations Completion Procedures

Upon the completion of Alterations, Permittee shall comply with the following Alteration completion procedures:

21.5.1 Permittee shall submit to the Service a written notice of completion of Alterations.

21.5.2 Permittee shall deliver to the Service evidence, satisfactory to the Service, of payment of all costs, expenses, liabilities and liens arising out of or in any way connected with such construction.

21.5.3 Permittee shall provide to the Service a complete set of as-built drawings and operational manuals (including all warranties) showing clearly all changes, revisions and substitutions made during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features of Alterations, all in a format approved in advance by the Service.

21.5.4 Permittee, at its sole cost and expense, shall provide the Service with an Alterations Compliance Report.

21.5.5 Within fifteen (15) working days of receipt of Permittee's Alterations Compliance Report, the Service will review such Alterations Compliance Report and provide written notice to Permittee of the Service's approval or disapproval of the Alterations Compliance Report.

21.5.6 The Service may, in its sole discretion, waive in writing the requirements of Subsections 21.5.4 and 21.5.5. In the event of such waiver, within fifteen (15) working days of the Service's receipt of Permittee's written notice of completion and all other items required of Permittee under this Subsection 21.5, the Service will provide written notice to Permittee of the Service's approval or disapproval of Permittee's completion of construction of Permittee's Alterations.

#### 21.6 On Site Inspection

The Service shall be entitled to have on the Permitted Right-of-Way at any time during Construction and Alterations an inspector or representative who shall be entitled to observe all aspects of the Construction and Alterations on the Permitted Right-of-Way. No inspection performed or not performed by the Service under this Permit shall give or be deemed to give the Service any responsibility or liability with respect to any work or construction or the prosecution thereof or the design of the Construction and/or Alterations, or constitute or be deemed to constitute a waiver of any of Permittee's obligations under this Permit or be construed as approval or acceptance of the work or the prosecution thereof or the design or construction of the Construction and/or Alterations.

## 22 ALTERATIONS TO COMMUNICATION FACILITY

For the purpose of this Permit, any proposed alteration or modification of the Communication Facility advanced by the Permittee, other than Maintenance, shall be treated as an Alteration and shall be subject to all the terms, agreements, covenants, conditions and provisions of this Permit, including but not limited to Articles 19, 20 and 21 of this Permit.

## 23 PROTECTION OF AND DAMAGE TO SERVICE PROPERTY

- 23.1 Permittee shall not engage in any activity that constitutes or results in waste or that causes or results in a nuisance, and shall at all times exercise due diligence to maintain the Permitted Right-of-Way and any improvements thereon in a safe and orderly condition; shall minimize the visual and aesthetic impacts of the Communication Facility to the extent feasible; and shall implement resource protection and conservation measures to prevent damage to the Park. In cases where it is not possible to prevent damage to the Park, the Permittee shall make all reasonable efforts to minimize damage to the Park to the greatest extent feasible. Required resource protection and conservation measures shall be as directed by the Service, and may include, but not be limited to, the installation of temporary construction-limit fencing, erosion controls, fire prevention measures, site restoration and landscaping measures, weed control, and any other resource protection measures deemed necessary by the Service. All such measures shall be subject to the satisfaction of the Service.
- 23.2 Permittee shall be fully responsible for any loss or destruction of or damage to the Park caused by or resulting from Permittee's or Permittee's Agents' use of the Permitted Right-of-Way. Any such damage or destruction shall be promptly repaired, replaced, or restored at the direction of and to the satisfaction of the Service. If so requested by the Service, the Permittee shall, in lieu of such repair, restoration or replacement, pay to the Service sufficient money to compensate for the loss. In exercising its discretion under this Section 23.2, the Service will use its professional judgment to determine the appropriate type and method of remediation, taking into account, among other relevant factors, the damage to the Park, the ability to repair or restore such resources, and the costs associated with the respective options.
- 23.3 Permittee shall dispose of brush and other refuse as required by the Service and shall at all times keep the Permitted Right-of-Way clean and free of litter and other debris, including managing litter and other debris to avoid attracting pests and to avoid wind dispersal. Except as expressly authorized in advance in writing by the Service, the discharge or abandonment of construction-related materials, debris (including vegetation), waste or fluids within the Park is prohibited.

## 24 LIMITATIONS ON REMOVAL OF VEGETATION

Permittee shall cut no timber or any other vegetation; remove no landscape features; conduct no mining or drilling operations; remove no sand, gravel, or other similar substances from the ground; commit no waste of any kind; nor in any manner change the contour or condition of the Permitted Right-of-Way, except as expressly authorized by the Service.

## 25 USE OF PESTICIDES AND HERBICIDES

Use of pesticides and/or herbicides within the Permitted Right-of-Way is strictly prohibited, except as may be authorized in advance in writing by the Service.

## 26 PROTECTION AGAINST FIRES

Permittee agrees to take all measures reasonably within its power, both independently and on request by the Service, to prevent and suppress fires on and adjacent to the Permitted Right-of-Way.

## 27 DISPOSAL OF PERSONAL PROPERTY AND RESTORATION OF LANDS AFTER CONSTRUCTION

- 27.1 Within thirty (30) days of completion of any Construction, Alterations, or other construction work authorized under this Permit, Permittee shall remove from the Park all Permittee's Personal Property, and all materials, debris and the like used or generated by the Permittee during such Construction, Alterations, or other construction work. Provided, however, that this Section 27.1 shall not require the removal of Permittee's Personal Property required to operate the Communication Facility approved in advance in writing by the Service.
- 27.2 Also within thirty (30) days of completion of any Construction, Alterations, or other construction work authorized under this Permit, Permittee shall restore the Permitted Right-of-Way, and any other areas of the Park impacted by such Construction, Alterations or other construction work to a condition equal to or better than their condition at the Effective Date of this Permit as determined by the Service in its sole discretion. Provided, however, that this Section 27.2 shall not require the removal of Permittee's Personal Property required to operate the Communication Facility as approved in advance in writing by the Service.
- 27.3 Should Permittee fail satisfactorily to undertake or complete the restoration activities set forth in this Article 27, the Service shall have the option, at its election and following notice to the Permittee, of undertaking such actions at Permittee's expense, and Permittee shall have no claim for damages against the Service for such action. At the Service's election and following notice to Permittee, any items of Permittee's Personal Property left on the Permitted Right-of-Way after the time set forth in Section 27.2 of this Permit shall become the property of the Service, without any compensation owing from the Service therefor; provided, however, Permittee shall remain liable for any costs incurred by the Service for the removal of such Personal Property and/or restoration of the areas.

## 28 WORK STOPPAGE, CLOSURES AND DELAYS

The Permittee acknowledges that the activities to be undertaken by the Permittee during the term of this Permit may have the potential to pose a threat to the Park, and that therefore, the Service may from time to time have to halt all or a portion of Permittee's activities under this Permit and/or close off areas of the Park in order to prevent or evaluate adverse effects to the Park. If during a work stoppage or closure the Service determines that there is a significant threat to the Park, the Service reserves the right, in its sole discretion, to extend the work stoppage or closure and to require the Permittee to develop revised work plans and/or mitigation measures so that the adverse effect(s) can be avoided or minimized. The Permittee agrees that it shall have no claim against the Service on account of any delays caused as a result of the Service's exercise of its rights under this provision, and that Permittee shall, at its sole cost and expense, implement any revised work plans or mitigation measures required by the Service.

## 29 PERMITS AND APPROVALS

Except as otherwise provided in this Permit, Permittee shall be responsible for obtaining, at its sole cost and expense, the approval of any Agency for any permit or other governmental action necessary to permit the activities under this Permit. Notwithstanding the foregoing, Permittee shall not, and shall ensure that Permittee's Agents shall not, submit to any person or entity or to any Agency information regarding the Service or the Service's lands without the Service's prior written approval unless the communication of information is in response to a valid order by a court or Agency or is otherwise required to be released by Applicable Laws, in which case Permittee shall notify the Service immediately of such order identifying the specific information released. In addition, Permittee may release such information that is necessary for Permittee to obtain insurance and, upon such release of information, Permittee shall provide written notice to the Service indicating what information was so released. The Service, at no expense to itself, will cooperate with Permittee to the extent reasonably required to obtain all such permits and approvals.

## 30 MAINTENANCE

### 30.1 Permitted Right-of-Way

Permittee shall during the Term, with due diligence, at its own cost and expense and without any cost or expense to the Service perform Maintenance in compliance with all of the terms, agreements, covenants, conditions, and provisions of this Permit and with an approved Maintenance Plan. The Parties hereby acknowledge and agree that Permittee's covenant that Permittee shall perform Maintenance on the Permitted Right-of-Way is material consideration for the Service's agreement to enter into this Permit.

The Service shall not be obligated to perform any Maintenance, Construction or Alterations of any kind, nature or description whatsoever of or to the Permitted Right-of-Way and Permittee hereby expressly waives any right under any Applicable Laws that would otherwise permit Permittee to perform Maintenance, Construction or Alterations at the Service's expense. Furthermore, the Service shall not under any circumstance be responsible for the performance of any repairs, upgrades, or Construction of or Alteration to any utility system serving the Permitted Right-of-Way.



Permittee shall submit a Maintenance Plan within thirty (30) calendar days of the Effective Date and, annually, thereafter. The Service will provide written notice within thirty (30) days to Permittee of the Service's approval or disapproval of the Maintenance Plan.

### 31 PROTECTIONS AGAINST INTERFERENCE

#### 31.1 Priority and Precedence of the Service Operations

The Service's operations shall take priority and precedence over Permittee's operation of the Communication Facility in the event Permittee's use of the Permitted Right-of-Way conflicts with the Service's operations, including but not limited to the Service's public safety radio communications system. Permittee shall operate its Communication Facility in a manner which will not cause interference with any of the Service's existing or future operations, such interference to be in the sole judgement of the Service. Permittee shall establish procedures in its Maintenance Plan for investigating and correcting any apparent interference with any of the Service's communication facilities caused by the Communication Facility. Such procedures shall establish standards for Permittee's response to such interference, including but not limited to all steps which Permittee shall take to correct and eliminate such interference by causing Alterations to the Communication Facility, or at Permittee's sole cost and at the Service's sole discretion, to the Service's communication facilities. Further, such procedures shall contain provisions allowing the Service to request, and obliging Permittee to comply with, immediate suspension of operation of the Communication Facility in the event that the Service believes that Permittee's Communication Facility is causing interference, as solely determined by the Service; provided however, that such procedures may also contain provisions which will allow Permittee during such suspension of operation to perform intermittent testing to eliminate any interference as approved in writing by the Service. If Permittee fails to follow such approved procedures, such failure shall be grounds for termination of this Permit for default immediately upon notice to the Permittee.

#### 31.2 Service's Right to Install Communication Facilities in, on or around the Permitted Right-of-Way

Permittee recognizes and acknowledges that the Service may install radio or other communication facilities in, on or around the Permitted Right-of-Way or other Service property and the Service makes no warranty or representation that such facilities will not cause interference with the Communication Facility. The Service will use its best efforts to provide Permittee notice prior to any such installation which the Service is aware has the potential to interfere with the Communication Facility.

#### 31.3 Covenant to Operate Communication Facility within Approved FCC Frequencies

Permittee covenants that it shall operate its Communication Facility within the approved FCC frequencies assigned to Permittee as of the Effective Date, in compliance with all Applicable Laws, including but not limited to applicable FCC rules, regulations and guidelines and shall not materially alter the nature of its use or transmission in such a way as to interfere with any lease, cooperative agreement, concessions contract, license, agreement or permit from the Service to any party with respect to any portion of the Park.

#### 31.4 Non-Service Interference with Permittee's Communication Facility

The Service shall use its best efforts to include the text of Section 31.3 of this Permit in all future agreements which permit the installation of telecommunications equipment in the Park for non-Service use. In the event that Permittee determines that it has reasonable cause to believe that another permittee of the Service providing wireless communication service from a site within the Park is causing interference with Permittee's operation of its Communication Facility, Permittee shall provide the Service such technical or other information as the Service deems necessary to evaluate the factual and technical basis for Permittee's belief and its identification of the responsible party(ies). In the event that the Service believes that such interference is occurring, the Service agrees to notify those parties believed to be causing such interference and take such other action as the Service deems appropriate in its sole discretion. The Service shall have no obligation to take any other measures to correct such interference. Permittee hereby releases the Service from any and all claims, monetary or non-monetary, Permittee might have arising in part or in whole from any interference from other operators of wireless communication systems.

### 31.5 Indemnity Against Damage from Interference

In addition to all other indemnity requirements set forth in this Permit, Permittee agrees to indemnify, reimburse, defend, save and hold harmless the Service and Service's Agents for and from any and all liability claims, demands, damages, injuries, losses, penalties, fines, costs (including consultant fees and expert fees), causes of action, judgments, expenses and the like for any loss of business revenue or income, any loss or destruction of, or damage to, any real or personal property, or for the death of or injury to persons, of any nature whatsoever and by whomever made, which may arise out of or be incident to interference either from or to the Communication Facility pursuant to the terms of Article 36 of this Permit.

## 32 CO-LOCATION

### 32.1 Co-Location Agreement

Permittee acknowledges that the Service may enter into permits with Permittee or other FCC authorized providers of wireless communication facilities adjacent to or near the Permitted Right-of-Way. Any third party which is a non-governmental entity and will use any portion of the Permitted Right-of-Way during the Term of this Permit, shall be required, as an express condition to its permit from the Service to comply with all Applicable Laws, including but not limited to FCC 96-326 Rule and Order.

### 32.2 Third Party Permits

The Service shall have the right to lease, license or grant a permit for the use of certain portions of the Permitted Right-of-Way to a third party, subject to the provisions of this Article 32 and Section 31.4 of this Permit. If such third party is a FCC licensee, the Service will, to the extent that it is aware that such new installation may have the potential to interfere with the Communication Facility, notify Permittee as to the identity of the FCC licensee, and the location, frequencies, and transmission power of such new installations. Permittee may submit to the Service its comments regarding the potential for interference of such new installation with its Communication Facility, however, the submission of such comments by Permittee shall not in any way be construed as creating an obligation on the part of the Service for action or other

consultation with Permittee.

### 33 RELOCATION

During the term of this Permit, should all or any portion of the Permitted Right-of-Way be needed by the Service, or should the Permittee's use of the same be determined by the Service to pose a threat of harm to the Park, or to materially and incurably, in the Service's sole judgment, interfere with the operations of other lessees, permittees, cooperators, concessioners and other Park occupants, or to interfere with the use or administration of the Park, Permittee shall, after consultation between the Permittee and the Service and upon notice to do so, move its activities and any of Permittee's Personal Property, including the Communication Facility, to such other location within the Park as may be designated by the Service, if any. In the case of such designation, the boundaries of the Permitted Right-of-Way shall be modified accordingly. If it shall be necessary to remove or relocate Permittee's Personal Property, including the Communication Facility, or to alter the location or boundaries of the Permitted Right-of-Way, the costs of any attendant moving or relocation shall be borne solely by the Permittee, and the Service shall have no liability, cost, or expense therefor. In the event said Permittee's Personal Property, including the Communication Facility, is not removed or relocated within one hundred twenty (120) days after such notice has been given by the Service, then the Service may cause such relocation or removal to occur at the Permittee's expense, and may, at its sole discretion, elect in addition or in lieu thereof to terminate this Permit.

### 34 HEALTH AND SAFETY

#### 34.1 General Duty to Take Reasonable Precautions

Permittee shall exercise reasonable precautions for the safety, health and welfare of all persons on or near the Permitted Right-of-Way, Road Access Area and the Park. Permittee shall provide and maintain proper signs, barriers and other means, as approved in advance in writing by the Service, of warning the public, including but not limited to providing sufficient warning for motorists and pedestrians (as applicable) of dangers during periods of installation, construction, alterations, maintenance, or repair of Permittee's Personal Property, Communication Facility, and/or the Permitted Right-of-Way. Permittee agrees to report employee, contractor and visitor accidents to the Service in a timely manner. Permittee agrees to be subject to periodic inspections by the Service fire department and safety office to ascertain whether all Applicable Laws are being followed, and Permittee shall correct, at its sole cost and expense, any deficiencies in such compliance to the satisfaction of the Service.

#### 34.2 Health and Safety Plan

Within thirty (30) days of execution of this Permit, Permittee shall submit for the Service review and approval a health and safety plan ("Health and Safety Plan") which shall comply with all Applicable Laws. Within fifteen (15) working days of receipt of Permittee's Health and Safety Plan, the Service will review such Health and Safety Plan and provide written notice to Permittee of the Service's approval or disapproval of the Health and Safety Plan. No Construction, Alterations or other work on Service property shall commence until such Health and Safety Plan is approved in writing by the Service.

35 HAZARDOUS MATERIALS

- 35.1 Permittee shall not, and Permittee shall ensure that Permittee's Agents shall not, treat, sell, dispose of, discharge, or release, any Hazardous Material upon, about, beneath or from the Permitted Right-of-Way. Nor may Permittee permit its Hazardous Materials to be commingled with the Hazardous Materials of the Service, if any.
- 35.2 Unless approved in advance in writing by the Service, Permittee shall not, and Permittee shall ensure that Permittee's Agents shall not, bring, generate or otherwise use, store, or handle any Hazardous Material upon, about, beneath or from the Permitted Right-of-Way or Road Access Area. All Hazardous Materials-related activities undertaken by Permittee or Permittee's Agents pursuant to this Permit must comply with all Applicable Laws. Permittee agrees to be responsible for timely acquisition of any permit(s) required for its Hazardous Materials-related activities, and shall provide to the Service, upon request, inventories of all such Hazardous Materials and any supporting documentation, including but not limited to material safety data sheets, uniform waste manifest forms, and/or any other pertinent permits.
- 35.3 If Permittee shall become aware of, or reasonably suspect, (without independent investigation), or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of any Applicable Law by Permittee or Permittee's Agents or from past or present activities of any person in connection with the Permitted Right-of-Way or Road Access Area or of any liability of Permittee or Permittee's Agents for Environmental Damages in connection with the Permitted Right-of-Way or Road Access Area, then Permittee shall immediately deliver to the Service a written description of such alleged violation, liability, correcting information, or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of the Service to defend or otherwise respond to any such notification.
- 35.4 Permittee shall, at its sole cost and expense, promptly take all actions required under Applicable Laws by any Agency to remedy damage to the Permitted Right-of-Way, Road Access Area, other Service property or adjacent property which arises directly or indirectly from or in connection with the presence, suspected presence, release or suspected release of any Hazardous Material introduced in or into the air, soil, surface water or ground water as a result of or in connection with Permittee's or Permittee's Agents' use of the Permitted Right-of-Way or Road Access Area. Such actions may include but are not limited to the investigation of the environmental condition of the areas adversely affected (the "Affected Property") by Permittee's or Permittee's Agents' breach of any of the provisions of this Permit, as well as the preparation and performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Affected Property. Permittee shall take all actions required under Applicable Law and shall restore the Affected Property to a condition substantially equal to that existing prior to the damage to such property by Permittee, in accordance with the standard of remediation imposed by Applicable Law. (To the extent of such impacted conditions, those portions of any Affected Property that are within the Park and that cannot be restored to substantially the pre-existing condition shall be restored in accordance with any additional standards or requirements imposed by the Service that in the Service's professional judgment are necessary or appropriate under Applicable Law). Permittee shall proceed continuously and diligently with such investigatory and remedial actions and these actions shall be performed in accordance with Applicable Law in a good, safe and workmanlike manner by one or more licensed and

reputable contractors experienced in the conduct of remedial actions in areas containing significant natural, cultural, and archeological resources or comparable experience. Such contractors shall be subject to advance written approval by the Service. Permittee shall pay all costs and expenses in connection with such investigatory and remedial activities chargeable to Permittee, including but not limited to the charges of such contractor(s), all power and utility costs, any and all taxes or fees that may be applicable to such activities, and all reasonable costs incurred by the Service in connection with the monitoring or reviewing of such investigatory or remedial activities. Permittee shall promptly provide to the Service copies of testing results and reports generated in connection with the above-mentioned activities. Promptly upon completion of such investigation and remediation, Permittee shall remove all associated Personal Property, debris, materials and the like, to the satisfaction of the Service.

- 35.5 The Service shall have the right, but not the duty, at all reasonable times and, except in the case of emergency, following at least twenty-four (24) hours advance notice to Permittee, to enter and to permit any Agency, public or private utilities and other entities and persons to enter upon the Permitted Right-of-Way, as may be necessary as determined by the Service in its sole discretion, to conduct inspections of the Permitted Right-of-Way and the Communication Facility, including invasive tests, to determine whether Permittee is complying with all Applicable Laws and to investigate the existence of any Hazardous Materials in, on or under the Permitted Right-of-Way. The Service shall have the right, but not the duty, to retain independent professional consultants to enter the Permitted Right-of-Way to conduct such inspections and to review any report prepared by or for Permittee concerning such compliance. Upon Permittee's request, the Service will make available to Permittee copies of all final reports and written data obtained by the Service from such tests and investigations. Permittee shall have no claim for any injury or inconvenience to or interference with Permittee's use of the Permitted Right-of-Way or any other loss occasioned by inspections under this Section 35.5.
- 35.6 In addition to all other indemnity requirements set forth in this Permit, Permittee expressly agrees to indemnify, reimburse, defend, save and hold harmless the Service and Service's Agents for and from any and all Environmental Damages caused by or arising out of this Permit or Permittee's or Permittee's Agents' use under this Permit of the Permitted Right-of-Way, whether or not the Environmental Damages were caused by the negligence or lack of diligence of the Permittee and regardless of whether the same is occasioned by the active or passive negligence of the Service, and regardless of whether liability without fault is imposed on the Service, except to the extent such claims are due to the sole negligence or willful misconduct of the Service.
- 35.7 This Permit is not intended to create a separate obligation on the part of the Permittee and in favor of the Service to remediate Pre-existing Hazardous Materials, nor does it limit or expand the rights or defenses of the Service or the Permittee with respect to such Pre-existing Hazardous Materials. Consequently, the provisions of Sections 35.4 and 35.6 of this Permit shall not apply to Pre-existing Hazardous Materials except to the extent: (i) Permittee's or Permittee's Agents' negligence or willful misconduct causes an exacerbation or migration of such Pre-existing Hazardous Materials, or (ii) Permittee or Permittee's Agents cause additional damage to the environment beyond such Pre-existing Hazardous Materials due to a violation of any Applicable Law regarding such Pre-existing Hazardous Materials. This Section 35.7 does not relieve Permittee of any obligation it might have with regard to third parties or any governmental entity by operation of Applicable Laws, including but not limited

to, the Comprehensive Environmental Response, Compensation and Liability Act.

- 35.8 Permittee understands and acknowledges that the Permitted Right-of-Way may contain lead-based paint. Therefore, Permittee hereby agrees that, during the Term, any necessary costs of removal or remediation with respect to lead-based paint in the Permitted Right-of-Way or in other areas adjacent to the Permitted Right-of-Way for which access by Permittee is necessary to operate or maintain Permittee's Communication Facility shall be borne solely by Permittee. Whenever Permittee performs Construction, Maintenance, and/or Alterations on the Permitted Right-of-Way, Permittee shall comply with all Applicable Laws related to the removal or remediation of lead-based paint. Nothing in this Permit shall be construed to require Permittee to remove lead-based paint unless Applicable Laws require such removal.
- 35.9 If deemed necessary in the sole discretion of the Service, Permittee shall develop and implement management and remediation plans for lead-based paint during any construction activities and for the ongoing Maintenance of the Permitted Right-of-Way. Permittee shall furnish a copy of such management and remediation plans to the Service before Construction and/or Alterations and annually as part of the Maintenance Plan, to the extent required.
- 35.10 Permittee shall not, and Permittee shall ensure that Permittee's Agents shall not undertake any activities in areas on the Park scheduled for environmental remediation unless it has received prior written approval from the Service and from State of California Environmental Protection Agency, and the Federal lead Agency. To the extent the activities of Permittee or Permittee's Agents under this Permit may interfere with or adversely affect areas of the Park undergoing environmental cleanup actions, Permittee shall cooperate with any involved Agency to coordinate or modify the work under this Permit as necessary to permit such cleanup actions to proceed to timely completion. An identification of current environmental remediation sites is attached as Exhibit D.
- 35.11 Should Permittee fail to perform or observe any of its obligations or agreements pertaining to Hazardous Materials or Applicable Laws for a period of thirty (30) days (or such longer period of time as is reasonably required) after notice, then the Service shall have the right, but not the duty, without limitation of any other rights of the Service under this Permit to enter the Permitted Right-of-Way and perform the same. Permittee agrees to reimburse the Service for the costs thereof and to indemnify the Service for liabilities therefrom as set forth in Section 35.6 of this Permit.
- 35.12 Permittee expressly agrees that the Service and the Service's Agents shall not be liable for any costs or injuries, including but not limited to any costs associated with interference with Permittee's use of the Permitted Right-of-Way, or Road Access Area, incurred by Permittee or Permittee's Agents resulting from contamination caused by any other permittee, lessee, cooperator, concessioner, or other Park occupant.
- 35.13 The provisions of this Article 35 shall survive any termination of this Permit. Article 37 of this Permit shall not limit in any way Permittee's or the Service's obligations under this Article 35.

## 36 INDEMNITY

The Service assumes no liability for any damage to or destruction of the Permitted Right-of-Way,

or the Park, or to Permittee's Personal Property, including the Communication Facility, nor for personal injuries or death sustained in connection with or as a result of Permittee's or Permittee's Agents' use of the Permitted Right-of-Way or Road Access Area.

The Permittee agrees to indemnify, reimburse, defend, save and hold harmless the Service and Service's Agents for and from any and all liability, claims, demands, damages, injuries, losses, penalties, fines, costs (including consultant fees and expert fees), causes of action, judgments, expenses and the like for any loss of business revenue or income, any loss or destruction of, or damage to, any real or personal property, including but not limited to damage by fire or other perils, or for the death of or injury to persons, of any nature whatsoever and by whomever made, which may arise out of or be incident to Permittee's or Permittee's Agents' use of the Permitted Right-of-Way, Road Access Area, or the operation of the Communication Facility, whether or not the same shall be occasioned by the negligence or lack of diligence of the Permittee or Permittee's Agents and regardless of whether the same is occasioned by the active or passive negligence of the Service, and regardless of whether liability without fault is imposed or sought to be imposed on the Service, except to the extent such claims are due to the sole negligence or willful misconduct of the Service. Permittee expressly acknowledges and agrees that it has an immediate and independent obligation to defend the Service from any claim which actually or potentially falls within this Article 36 and Sections 31.5 and 35.6 of this Permit, regardless of whether such allegation is, or may be, groundless, fraudulent or false. Such obligation to defend and indemnify shall arise at the time such claim is tendered to the Permittee by the Service and shall continue until discharged through performance or judicial determination.

The provisions of this Article 36 shall survive any termination of this Permit. Article 37 of this Permit shall not limit in any way Permittee's obligations under this Article 36.

### 37 INSURANCE

The Parties hereby expressly acknowledge and agree to the following: (i) the Service neither keeps nor has any obligation to obtain and keep any insurance of any kind for the Permitted Right-of-Way and/or Road Access Area; (ii) no portion of any fee, payment or other consideration made to the Service by Permittee pursuant to the terms, agreements, covenants, conditions and provisions of this Permit shall be applied to the cost and expense of obtaining and keeping insurance for the Permitted Right-of-Way and/or Road Access Area; (iii) the insurance required under this Article 37 is for the benefit of the Service; and (iv) that Permittee has no insurable real estate interest in the Permitted Right-of-Way and/or Road Access Area and that Permittee does not own, rent, occupy or possess the Permitted Right-of-Way and/or Road Access Area but merely uses it for the purposes of this Permit.

#### 37.1 Commercial General Liability and Umbrella Liability Insurance

##### 37.1.1 Scope of Requirement

At all times during the Term and at its sole cost and expense, Permittee shall obtain and keep in force commercial general liability and, if necessary, commercial umbrella liability insurance with a limit of not less than Three Million Dollars (\$3,000,000) for each occurrence, including all legal liability of Permittee, including but not limited to damage to any real or personal property, including damage caused by fire or other peril, arising out of or incident to the negligence of Permittee or Permittee's Agents. If such commercial general liability insurance contains a general aggregate limit, it shall apply separately to the Permitted Right-of-Way, or the general aggregate limit shall be twice the required occurrence limit. Commercial general liability insurance shall be written on an unmodified ISO Occurrence

Form CG0001 (or a substitute form providing equivalent coverage) and shall cover any liability which may arise out of or be incident to Permittee's or Permittee's Agents' use of the Permitted Right-of-Way or the Road Access Area., products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract.

#### 37.1.2 Additional Insured

The United States of America, the Service, and the Service's Agents and employees shall be included as additional insureds under the commercial general liability insurance policy, using ISO Additional Insured Endorsement Form CG2026 (or a substitute providing equivalent coverage), and under the commercial liability umbrella if any. Permittee's certificate of insurance shall have attached a copy of the endorsement from each policy providing for the "United States of America, the Service, and the Service's Agents and employees as the terms Service and Service's Agents are defined in Right-of-Way Permit No.8330-01-001 as additional insureds.

#### 37.1.3 Automobile Liability Insurance

Permittee shall maintain business auto liability insurance and, if deemed necessary in the sole discretion of the Service, commercial umbrella liability insurance. Coverage shall be at least as broad as: ISO Form CA 0001 (January 1987 edition) covering "Automobile Liability, code I - any auto." Permittee shall maintain limits no less than Three Million Dollars (\$3,000,000) per accident for bodily injury and property damage.

#### 37.1.4 Workers Compensation and Employers Liability Insurance

- (i) Scope of Requirement. At all times during the Term and at its sole cost and expense, Permittee shall obtain and keep in force both: (i) workers compensation insurance in the appropriate statutory amounts and coverages required under workers compensation, disability and any other Applicable Laws; and, (ii) employers liability insurance, with limits of not less than One Million Dollars (\$1,000,000) for bodily injury by accident and One Million Dollars (\$1,000,000) for bodily injury by disease, or such higher amounts as may be required by Applicable Laws.
- (ii) Waiver of Subrogation. Permittee waives all rights against the Service and Service's Agents for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial general liability and umbrella liability insurance obtained by Permittee pursuant to the requirements of this Subsection 37.1.4.

#### 37.1.5 Pollution Legal Liability/Environmental Remediation/Cleanup Liability Insurance.

Permittee shall maintain pollution legal liability, environmental remediation liability and other environmental insurance, including but not limited to lead paint abatement insurance, with coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; Environmental Damages; property damage



including but not limited to physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense costs, charges and expenses incurred in the investigation, adjustment of defense claims for such compensatory damages; sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of Hazardous Materials into or upon Service property, the atmosphere or watercourse or body of water, which results in Environmental Damages; transportation coverage for the hauling of any Hazardous Materials by Permittee or Permittee's Agents, from the Permitted Right-of-Way or other Service property to the final disposal location; and first party environmental remediation that pays for the cost of cleanup and remediation of the Permitted Right-of-Way or other Service property required to comply with all Applicable Laws. Such insurance shall be endorsed to provide third party disposal site coverage that covers third party bodily injury, property damage and cleanup coverage for pollution conditions emanating from a disposal site or landfill used by the Permittee or Permittee's Agents. Permittee shall maintain limits no less than: Two Million Dollars (\$2,000,000) per accident and Four Million Dollars (\$4,000,000) annual aggregate for bodily injury and property damage. The United States of America, the Service, and the Service's Agents and employees shall be included as additional insureds on the policy as loss payees under the Pollution Legal Liability/Environmental Remediation/Cleanup Liability Insurance Policy.

### 37.2 Other Required Insurance

Permittee shall maintain all other insurance to adequately protect the Permitted Right-of-Way and any of Permittee's activities on the Road Access Area. Other insurance includes but is not limited to aviation or aircraft liability. If such exposure is present, Permittee shall provide adequate limits to protect the Permitted Right-of-Way and the interests of the Service. Pursuant to Subsection 37.3.8 of this Permit, the Service reserves the right to require specific coverage of any such other insurance exposure.

### 37.3 General Insurance Program Requirements

#### 37.3.1 Acceptability of Insurers

All of the insurance required under this Permit, including without limitation, under Article 19 of this Permit and this Article 37, and all renewals thereof, shall be issued by one or more companies of recognized responsibility authorized to do business in the State of California with a financial rating of at least a Class A - VIII (or its equivalent successor) status, as rated in the most recent edition of A.M. Best's "Best's Insurance Reports."

#### 37.3.2 Alternative Right to Self-Insure, Deductibles and Self-Insured Retentions

Permittee shall have the right to self insure with respect to any of the insurance requirements required under this Permit with the written approval of the Service. In the event that Permittee elects to self-insure with respect to any of the insurance requirements required under this Permit, on or before the Effective Date and within thirty (30) days of the commencement of each Permit Year thereafter, Permittee shall submit to the Service a certificate of self-insurance signed by a duly authorized representative of Permittee, such certificate evidencing that Permittee's self-insurance program is in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this Permit. The initial certificate of self-insurance submitted by Permittee and

approved by the Service shall be attached to this Permit as Exhibit H.

Any deductibles or self-insured retentions must be declared and specifically approved by the Service in writing. All deductibles and self insured retentions shall be paid by Permittee.

With respect to any claim, loss or liability that would have been covered by the insurance policies (including but not limited to the United States of America, the Service, and the Service's Agents and employees' status as an "additional insured" thereunder) required by this Permit to be maintained by Permittee but within the self insured retention or deductible amount ("Self Insured Amount") expressly approved previously in writing by the Service, Permittee shall cover such claim, loss or liability on the same basis as the insurance arrangements or deductibles on such insurance policies, including but not limited to such insurance carrier responsibility to protect the United States of America, the Service, and the Service's Agents and employees as an "additional insured."

#### 37.3.3 Permittee's Insurance is Primary

All insurance shall apply as primary insurance with respect to any other insurance or self insurance programs afforded to the Service, and this shall be noted on Permittee's certificate of insurance as follows; "Permittee's insurance (all lines) shall apply as primary insurance to any loss."

#### 37.3.4 Notice of Cancellation

All policies provided for in this Permit expressly shall be endorsed to state that coverage shall not be canceled, non-renewed, or materially changed except after thirty (30) days prior written notice to the Service, such notice made in compliance with Article 45 of this Permit.

#### 37.3.5 Certificates of Insurance

- (i) Prior to the Effective Date, Permittee shall furnish the Service with an original certificate(s) and amendatory endorsements, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Article 37.
- (ii) All certificates shall incorporate the notice requirements set forth in Article 45 of this Permit.
- (iii) The certificates shall be standard, unmodified ACORD form certificates or in another equivalent successor format as required by the Service.
- (iv) Any certificate reference including the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the certificate form's cancellation provision.

#### 37.3.6 Availability of Policies

At any time Permittee shall provide to the Service at Service's address as set forth in Article 45 of this Permit actual and authentic copies of all insurance policies required in this Article 37 within ten (10) days of the Service's written request for said copies, such copies to include actual and authentic copies of all endorsements and other changes in such insurance policies to date.

#### 37.3.7 Permittee's Failure to Comply

Permittee shall maintain all policies provided for in this Permit throughout the Term, and Permittee shall renew such policies before the Expiration Date. Failure to maintain the required insurance may result in termination of this Permit at the Service's option.

#### 37.3.8 Changes in Insurance Requirements

If the Service at any time, but not more than every two (2) years, believes that the limits or extent of coverage, deductibles or self insurance retentions, with respect to any of the insurance required in this Article 37, are either excessive or insufficient for a prudent owner of property of the nature of the Permitted Right-of-Way, the Service may determine the proper and reasonable limits and extent of coverage, deductibles and self insurance retention limits for such insurance and such insurance shall thereafter be carried with the limits and extent of coverage, deductibles and self insurance retention limits as so determined until further change pursuant to the provisions of this Subsection 37.3.8. Notwithstanding any of the foregoing to the contrary, the limits of comprehensive or commercial general liability insurance required under Subsection 37.1 of this Permit, may be increased but shall in no event be reduced pursuant to this Subsection 37.3.8 below the dollar amount stated in Subsection 37.1 of this Permit.

#### 37.3.9 Insurance Not Limit on Liability

- (i) Permittee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. Except for specific provisions described in this Permit, no exclusion shall be permitted in any policy if it conflicts with any coverage required hereby.
- (ii) No approval by the Service of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the Service of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible. By requiring insurance herein, the Service does not represent coverage and limits will necessarily be adequate to protect Permittee, and such coverage and limits shall not be deemed as a limitation on Permittee's liability under the indemnities granted to the Service in this Permit.
- (iii) Failure of the Service to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Service to identify a deficiency from evidence that is provided shall not be construed as a waiver of Permittee's obligation to maintain such insurance.

### 37.3.10 Increase In Hazards/Conflict with Coverage

Permittee shall not do anything, or permit anything to be done, in or about the Permitted Right-of-Way, Road Access Area or on adjacent or nearby property that would: (i) invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Permitted Right-of-Way or any property located therein, or (ii) result in a refusal by insurance companies of good standing to insure the Permitted Right-of-Way or other property in amounts required under this Permit.

### 37.3.11 Waiver of Subrogation

Permittee hereby waives any and all rights of recovery against the Service and the Service's Agents for any loss or damage to the extent these damages are covered by insurance, including amounts within any insurance deductible or self-insured retention.

### 37.3.12 Separation of Insured/Cross Liability coverage

If Permittee's liability policies do not contain the standard ISO "Separation of Insureds Provision," or a substantially similar clause, they shall be endorsed to provide cross liability coverage.

## 37.4 Permittee's Time Element Exposure

Permittee may, at its option, purchase business income, business interruption, extra expense or similar coverage as part of its program of insurance, and in no event shall the Service be liable for any business interruption or other consequential loss sustained by Permittee, whether or not it is insured, even if such loss is caused by the negligence of the Service.

## 37.5 Permittee's Personal Property Exposure

Permittee may, at its option, purchase insurance to cover its Personal Property and/or Communication Facility. In no event shall the Service be liable for any damage to or loss of Personal Property and/or Communication Facility sustained by Permittee, whether or not it is insured, even if such loss is caused by the negligence of the Service.

# 38 DAMAGE OR DESTRUCTION

## 38.1 Termination; Effect on Use Fee Obligation

If the Permitted Right-of-Way or any part thereof is damaged or destroyed by fire, other perils, or natural events at any time during the Term, this Permit may be terminated by either party to this Permit as set forth in Article 44 of this Permit. In no event shall Permittee be entitled to any refund of the Use Fees.

## 38.2 No Termination

### 38.2.1 Duty to Restore

If the Permitted Right-of-Way or any part thereof is damaged or destroyed by fire or

other casualty at any time during the Term and this Permit is not terminated, Permittee, as promptly as reasonably practicable and with all due diligence, and at its sole cost and expense shall replace and restore any FF&E and Service's real or Personal Property necessary for Permittee's use of the Permitted Right-of-Way and prosecute to completion the Maintenance, Construction, or Alterations of such property to a condition determined by the Service as appropriate for Permittee's use of the Permitted Right-of-Way. In such event, Permittee shall promptly undertake to determine the extent of the damage or destruction and the estimated cost and time to perform the Maintenance, Construction, Alterations, remediation and restoration of such property in accordance with the provisions of this Permit. Permittee shall notify the Service of its estimation of such cost and time as soon as reasonably practicable but not later than thirty (30) days after the occurrence of the damage or destruction.

Permittee shall pay any amount by which insurance proceeds received as a result of such damage or destruction are insufficient to pay the entire cost of such Maintenance, Construction, Alterations, remediation and restoration. Without limitation of the foregoing, Permittee shall be responsible for replacing and restoring any FF&E and the Service's Personal Property required for Permittee's use of the Permitted Right of Way. Nothing contained in this Permit shall be construed as an obligation upon the Service to perform Maintenance, Construction, Alterations, remediation or restoration of the Permitted Right-of-Way, Road Access Area, or any part thereof.

#### 38.2.2 Emergency Repairs

If, after damage or destruction to the Permitted Right-of-Way or a part thereof, there is a substantial possibility that immediate emergency repairs ("Emergency Repairs") will be required to eliminate defective or dangerous conditions and to comply with all Applicable Laws, Permittee shall promptly undertake such Emergency Repairs after such damage or destruction as is necessary or appropriate for Permittee's use of the Permitted Right of Way to eliminate defective or dangerous conditions and to comply with all Applicable Laws.

#### 38.3 Termination; Damage and Destruction Caused by Permittee

If the Permitted Right-of-Way, Road Access Area, or any part thereof is damaged or destroyed by fire, other perils, or natural events at any time during the Term and such damage and destruction is caused directly or indirectly by Permittee or Permittee's Agents and the Service determines that such damage and destruction results in a threat to life-safety, Permittee shall prosecute to completion the demolition and removal of debris of all or a portion of Permitted Right-of-Way at the direction of and to the satisfaction of the Service.

### 39 LIENS

#### 39.1 No Power in Permittee to Create

Permittee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Service or of any interest of the Service in the Permitted Right-of-Way.

#### 39.2 Discharge of Liens by Permittee

Permittee shall not suffer or permit any liens known to Permittee to stand against the Permitted Right-of-Way or any part thereof by reason of any work, labor, services or materials done for, or supplied to, or claimed to have been done for or supplied to Permittee. If any such lien shall at any time be filed against the Permitted Right-of-Way or any portion thereof, Permittee shall cause the same to be discharged of record within sixty (60) days after notice to Permittee of filing the same, by either payment, deposit or bond, unless such lien shall be contested. If Permittee fails to discharge or contest such lien within such period and such failure shall continue for a period of fifteen (15) days after notice by the Service, then, in addition to any other right or remedy of the Service, the Service may, but shall not be obligated to, procure the discharge of the same either by paying the amount claimed to be due, by deposit in court, or by bonding. All amounts paid or deposited by the Service for any of the aforesaid purposes, and all other expenses of the Service and all necessary disbursements in connection therewith, in defending any such action or in procuring the discharge of such lien, shall become due and payable forthwith by Permittee to the Service upon written demand therefor.

#### 39.3 No Consent or Waiver by the Service

Nothing in this Permit shall be deemed to be, or be construed in any way as constituting, the consent or request of the Service, expressed or implied by inference or otherwise, to any person, firm or corporation, for the performance of any labor or the furnishing of any materials for any construction, repairs, maintenance, replacement, Alterations, reconstruction, restoration or rehabilitation of or to the Permitted Right-of-Way, the Communication Facility or any part thereof, or as giving Permittee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against the Service's interest in the Permitted Right-of-Way.

#### 40 SURRENDER AND VACATE THE PERMITTED RIGHT-OF-WAY

On or before the Termination Date, Permittee shall surrender and vacate the Permitted Right-of-Way, remove Permittee's Personal Property, including the Communication Facility, therefrom, repair any damage resulting from such removal, and return the Permitted Right-of-Way, all FF&E, the Service's real and Personal Property, and improvements to as good order and condition (subject to ordinary wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon the Service's approval of Permittee's Construction Compliance Report. If the Permitted Right-of-Way is expanded during the Term, Permittee shall surrender and vacate that expanded portion of the Permitted Right-of-Way, remove Permittee's Personal Property, including the Communication Facility, therefrom, repair any damage resulting from such removal, and return the Permitted Right-of-Way, the Service's Personal Property, FF&E and improvements to as good order and condition (subject to ordinary wear and tear and damage that is not caused directly or indirectly by Permittee) as that existing upon the Service's approval of Permittee's expanded Right-of-Way.

All Permittee's Personal Property, including the Communication Facility, shall remain the property of Permittee. However, if after the Termination Date, Permittee shall fail satisfactorily to remove Permittee's Personal Property, including all or a part of the Communication Facility, and so repair the Permitted Right-of-Way, then, at the Service's sole option, after ninety (90) days notice to Permittee, Permittee's Personal Property, including the Communication Facility, shall either become the property of the Service without compensation therefor, or the Service may cause it to be removed and the Permitted Right-of-Way to be repaired at the expense of Permittee, and no claim for damages against the Service or Service's Agents shall be created by or made on account of such removal and repair work.

#### 41 LIMITATION ON EFFECT OF APPROVALS

All rights of the Service to review, comment upon, approve, inspect or take any other action with respect to the operation of the Permitted Right-of-Way and the Communication Facility, any Maintenance, or the design or construction of any Construction or Alterations on the Permitted Right-of-Way, or the removal and/or remediation of any Hazardous Materials on, in or from the Permitted Right-of-Way or other Service property by Permittee or Permittee's Agents or any other matter, are expressly for the benefit of the Service and no other party. No review, comment, approval or inspection, right or exercise of any right to perform Permittee's obligations, or similar actions required or permitted by, of, or to the Service under this Permit, or actions or omissions of the Service or Service's Agents or other circumstances shall give or be deemed to give the Service any liability, responsibility or obligation for, in connection with, or with respect to the design and construction of the Construction or Alterations, or Maintenance or operation of the Permitted Right-of-Way, or the removal and/or remediation of any Hazardous Materials on, in or from the Permitted Right-of-Way or other Service property by Permittee or Permittee's Agents, nor shall any such approval, actions, information or circumstances relieve or be deemed to relieve the Permittee of the sole obligation and responsibility for the design and construction of the Construction and Alterations, Maintenance, or operation of the Permitted Right-of-Way, or the removal and/or remediation of Hazardous Materials required under this Permit, if any, except as expressly provided in Article 35 of this Permit.

#### 42 TRANSFER AND ASSIGNMENT OF PERMIT

##### 42.1 No Transfer by Permittee

The Parties expressly agree that this Permit is personal and exclusive to the Permittee and except as otherwise expressly provided in this Permit, no Transfer shall be made. Permittee shall not assign this Permit, in whole or in part, or any property on the Permitted Right-of-Way, and Permittee shall not enter into any agreements for the Permitted Right-of-Way or pay part thereof or any property thereon, nor grant any interest, privilege, permit, license or any other agreement whatsoever in connection with this Permit except as expressly provided for in this Permit. Notwithstanding the foregoing, the Permittee may, with the written approval of the Service, assign this Permit to Permittee's principal, affiliates, or subsidiaries of its principal, by reason of a business reorganization.

##### 42.2 Assignment by the Service

The Service shall have the right to assign any or all of its rights and obligations under this Permit. This Permit shall not be affected by any such assignment, and Permittee agrees to attorn to the purchaser or assignee. This Permit shall be binding upon, inure to the benefit of, and be enforceable by the Service's respective assigns and/or any successor in interest.

#### 43 AMENDMENTS OR MODIFICATIONS

Any amendments or modifications to this Permit must be in writing and signed by the parties hereto. Renewals will be subject to all Applicable Laws and such other terms and conditions as deemed necessary by the Service, in its sole discretion, to protect the public interest.

#### 44 TERMINATION

##### 44.1 Termination Without Cause

This Permit may be terminated for any reason, without cause at the discretion of the Service or Permittee upon thirty (30) days written notice. Permittee expressly acknowledges the revocable nature of this Permit and that the Service shall not be liable for any costs, expenses, damages, claims or the like caused by or arising out of the Service's discretionary termination or revocation of this Permit, including but not limited to any moving or relocation expenses.

##### 44.2 Termination For Default

In addition to any termination right set forth in Section 44.1 of this Permit, this Permit may also be terminated by either party upon default (after the expiration of applicable cure and grace periods) of any of the stated terms, agreements, covenants, conditions and provisions of this Permit upon thirty (30) days prior written notice. Any notice for termination of this Permit for default shall specify the nature of the default. The defaulting party may utilize the thirty (30) days following the receipt of such notice to cure the specified default (or in the event of a default which requires in excess of thirty (30) days to cure, such excess time as is approved in writing by the non-defaulting party). Timely cure of a specified default will avoid termination for that default. Permittee expressly acknowledges that the Service shall not be liable for any costs, expenses, damages, claims or the like caused by or arising out of the Service's termination of this Permit, including but not limited to any moving or relocation expenses.

#### 45 NOTICES

Any notice, consent or other communication required or permitted under this Permit shall be in writing and shall be delivered by hand, sent by courier, sent by prepaid registered or certified mail with return receipt requested, and shall be deemed to have been given on the earliest of (i) receipt, (ii) one (1) business day after delivery to a courier for overnight expedited delivery service, or (iii) five (5) business days after the date deposited in the United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return receipt must indicate receipt at the address specified), and addressed as appropriate to the following addresses (or to such other or further addresses as the Parties may designate by notice given in accordance with this Article 45):

If to the Service:

Superintendent, Joshua Tree National Park  
National Park Service  
74485 National Park Drive  
Twentynine Palms, CA 92277

If to Permittee:

County of Riverside  
Attn. Communication Site Lease Administrator  
3403 10<sup>th</sup> Street, Suite 500  
Riverside, CA 92501



46 PERMITTEE'S TAXPAYER IDENTIFICATION NUMBER

Permittee agrees that it is doing business with the Service and to provide the Service with its IRS taxpayer identification number ("TIN") in order for the Service to collect and report delinquent debt. Permittee's TIN is 95-6000930 .

47 ANTI-DEFICIENCY ACT

Nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Permit for the fiscal year, or to involve the Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

48 GENERAL TERMS AND CONDITIONS

48.1 Compliance with Federal Equal Opportunity Laws

Permittee shall comply with the requirements of: (i) Title VII of the Civil Rights Act of 1964 (as amended), as well as Executive Order No. 11246 of September 24, 1965 (as amended), which forbids discrimination in employment by government contractors; (ii) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, P.L. 93-112 (as amended), which prohibits discrimination on the basis of disability and requires government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals; (iii) 41 C.F.R. Part 60, which implements Executive Order No. 11246 and prescribes affirmative action requirements for government contractors and subcontractors; (iv) the Age Discrimination in Employment Act of December 15, 1967 (as amended); (v) the Americans With Disabilities Act, 42 U.S.C. Sections 12101 et seq.; and (vi) all other Applicable Laws relating to non-discrimination in employment and in providing facilities and services to the public, and Permittee shall do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such employment.

48.2 Governing Law and Construction of Terms

The laws of the United States shall govern the validity, construction and effect of this Permit. The language in all parts of this Permit shall in all cases be construed as a whole in accordance with the statutory authorities under which this Permit is granted, and the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this Permit.

48.3 Survivability of Certain Provisions

The provisions of this Permit concerning or relating to indemnification shall survive the termination, expiration and/or revocation of this Permit. The provisions of this Permit concerning or relating to liability for damages to property of the Service, and to restoration of the Service's resources, shall remain in effect until all of the Permittee's obligations under such provisions have been satisfied.

48.4 No Congressional Conflict of Interest

No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Permit or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Permit if made with a corporation for its general benefit.

#### 48.5 No Third Party Benefit

Except as expressly set forth in this Permit, this Permit shall not be deemed to confer upon any person or entity, other than the parties to this Permit as expressly set forth in this Permit, any third party beneficiary status, any right to enforce any provision of this Permit, or any other right or interest.

#### 48.6 Waiver not Continuing

The waiver of any breach of any provision of this Permit, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent, to any subsequent or prior breach of the same or any other provision of this Permit.

#### 48.7 Captions

The captions of Articles and Sections and the Table of Contents of this Permit are for convenience only and have no effect on the interpretation of the provisions of this Permit.

#### 48.8 Exhibits

The Exhibits and Addenda, if applicable, attached to this Permit are a part of this Permit and incorporated into this Permit by reference.

#### 48.9 Integration of Agreement

This Permit constitutes the sole and entire agreement between the Parties. No oral representations of any nature form the basis of or may amend this Permit. This Permit may not be enlarged, modified, or altered except as provided in Article 43.

#### 48.10 Severability

If a court or regulatory authority of competent jurisdiction holds any part, term, or provision of this Permit to be invalid, illegal or unenforceable in whole or in part for any reason, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced, if possible, as if the Permit did not contain the particular part, term, or provision so held to be invalid, illegal, or unenforceable.

### 49 SPECIFIC TERMS AND CONDITIONS

#### SEE ATTACHED "EXHIBIT I"

Permittee shall comply with the Park Specific Conditions set forth in Exhibit "I". In the event of any conflict between the Park Specific Conditions and the Maintenance Requirements in Exhibit "G" (together, the "Exhibit Provisions"), the Park Specific Conditions in Exhibit "I" will control. In the event of any conflict between the terms, agreements, covenants, conditions or provisions of this Permit and the

Exhibit Provisions, the terms of this Permit, including its amendments, will control.

IN WITNESS WHEREOF, the Regional Director of the National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Department of the Interior, has caused this Right-of-Way Permit No. 8330-10-001 to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL  
PARK SERVICE, JOSHUA TREE NATIONAL PARK

By:  
Its: Regional Director  
Pacific West Regional Office

"SERVICE"

ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

County of Riverside, California

By: \_\_\_\_\_  
Marion Ashley

Its: Chairman, Board of Supervisors

"PERMITTEE"

IN CONCURRENCE,

JOSHUA TREE NATIONAL PARK

By:  
Curt Sauer

Its: Superintendent

FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel 8-1-10  
SYNTHIA M. GUNZEL DATE

EXHIBIT A  
PERMITTED RIGHT-OF-WAY

The Permitted Right-of-Way is indicated in the site plan below, which right-of-way is located in Joshua Tree National Park, California.

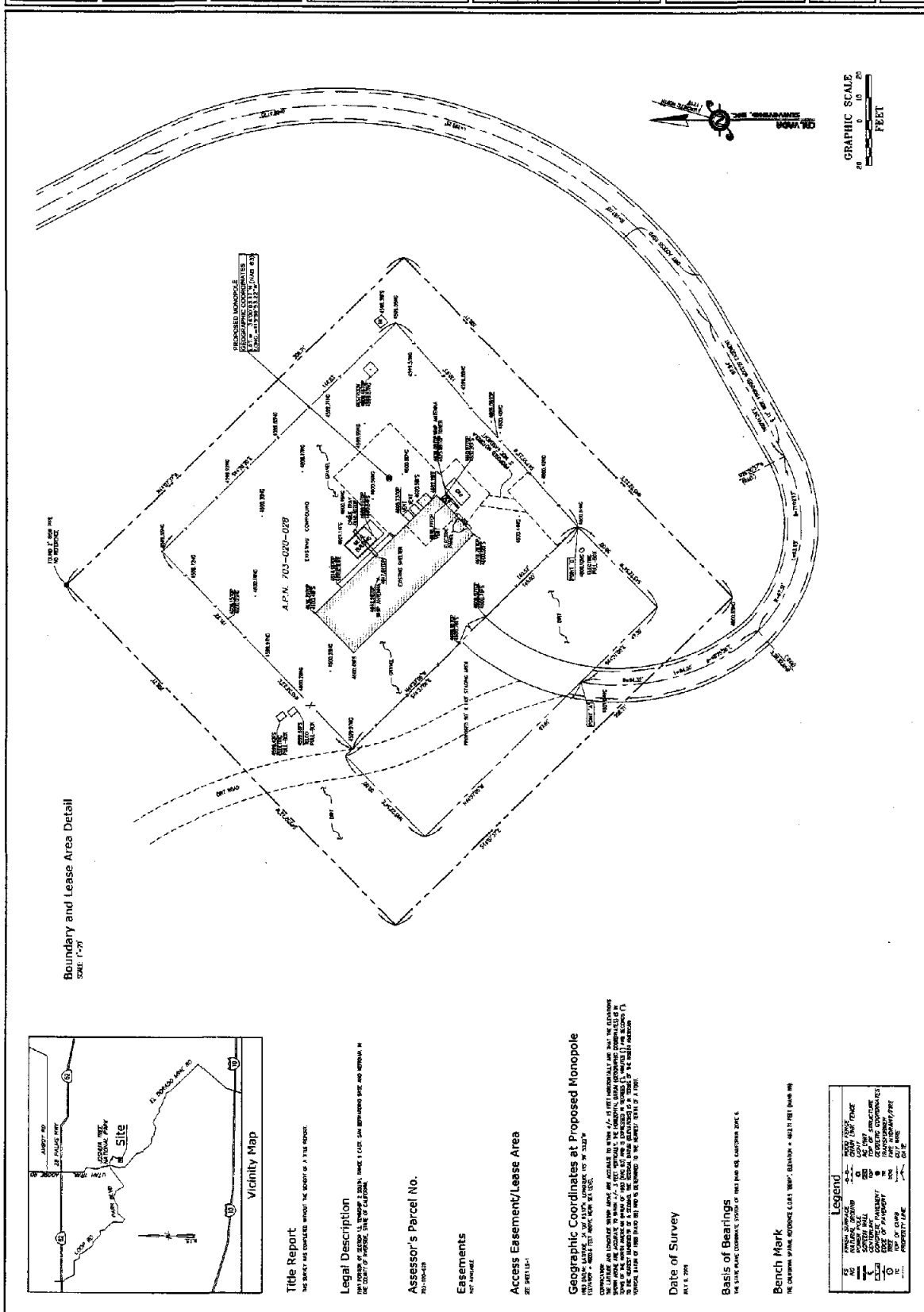


EXHIBIT B  
PERMITTEE'S RIGHT-OF-WAY APPLICATION

STANDARD FORM 299  
(9/92)  
APPLICATION FOR TRANSPORTATION AND  
UTILITY SYSTEMS AND FACILITIES  
ON FEDERAL LANDS  
P. L. 96-487 and Federal  
Register Notice

SITE NAME: Belle

FORM APPROVED  
OMB NO. 1004-0060  
Expires June 30, 2010

**NOTE:** Before completing and filing the application, the applicant should completely review this package and schedule a pre-application meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the

FOR AGENCY USE ONLY  
Application Number: \_\_\_\_\_

Date filed: \_\_\_\_\_

1. Name and address of applicant (include zip code)

Jim Force  
County of Riverside  
3133 Mission Inn Avenue  
Riverside, CA 92507

2. Name, title, and address of authorized agent if different from item 1 (include zip code)

GRD Inc.  
32120 Dillon Circle  
Wildomar, CA 92595

3. Telephone (include code)

Applicant: 951-955-482

Authorized agent: 951-  
0000

4. As applicant you are? (check one)  
application is for: (check one)

- a. ☐ Individual  
b. ☐ Corporation\*  
No.  
c. ☐ Partnership/ Association\*  
authorization No.  
d. ☐ State Government/ State Agency  
No.  
e. ☒ Local Government  
has been received\*  
f. ☐ Federal Agency

\* If checked, complete supplemental page under Item 7

5. Specify what

- a. ☒ New authorization  
b. ☐ Renew existing authorization  
c. ☐ Amend existing  
d. ☐ Assign existing authorization  
e. ☐ Existing use for which no authorization  
f. ☐ Other

\* if checked, provide details

6. If an individual, or partnership are you a citizen(s) of the United States? ☐ Yes ☐ No

7. Project description (describe in detail): (a) type of system or facility, (e.g., canal, pipeline, road); (b) related structures and facilities; (c) physical specifications, (length, width, grading etc.); (d) term of years needed; (e) time of year of use or operation; (f) volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction. (attach additional sheets if additional space is needed.)

(a) County of Riverside communication facility

(b) Radio communication network consisting of a 10' wide x 19' deep x 10' high room inside an existing equipment building and a 100' antenna support structure with a 25' top mounted whip -type antenna (125' overall height), two additional whip-type antennas and one micro-wave dish-type antenna, see (Exhibit A,B,&C).

(c) 121'x 145' permanent use area together with a 20' ingress and egress and utilities easement to the nearest public right-of-way.

(d) In perpetuity or maximum term allowed by the National Park Service.

(e) The facility will be in continuous use and require year round access.

(f) Total volume approximately 5000 tons (accumulative)

- (g) Construction, testing and integration can be completed in approximately 365 days.
- (h) 100' x 100' temporary use for construction adjacent to permanent use area.

---

8. Attach area map with the location of proposed project clearly marked. N/A

---

9. State or local government approval: ☐ Attached ☐ Applied for ☒ Not required

---

10. Non-returnable application fee: ☒ TBD ☐ Attached ☐ Not required

---

11. Does project cross international boundary or effect international waterways? ☐ Yes ☒ No  
(if "yes" indicate on map)

---

12. Give a statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

The County of Riverside has financed, constructed and maintains a wireless communication system that provides to the citizenry of the County and the public at large a communication network to support radio communications for Sheriff, Fire and other County departments. The County's network of communication facilities is maintained by the Riverside County Information Technology department.

---

13

a. Describe other reasonable alternative routes and modes considered.

Multiple existing wireless facilities were studied, evaluated and utilized where appropriate. It is necessary to add to the existing network new facilities to improve the coverage in areas that currently does not have wireless coverage for County network users.

---

b. Why were these alternatives not selected?

The existing facilities do not meet the County's minimum requirements regarding coverage area, access, power, auxiliary power and security of the equipment.

---

c. Give explanation as to why it is necessary to cross federal lands.

The County of Riverside Sheriff's Office provides law enforcement services to the National Park Service at Joshua Tree National Park. The County operates a Radio system that is an essential communication link for Sheriff's deputies in the performance of their duties. The radio system must be extended to provide coverage within the National Park in order to permit the Sheriff's office to effectively and safely perform its duties.

---

14. List authorizations and pending applications filed for similar projects, which may provide information to the authorizing agency. (specify number, date, code, or name.)

Big Maria - CAAZRI 4878, Whitewater - LA 0133452 and CACA 47326, Chuckwalla - CACA-45520, Cactus City CACA 45521, Indio Hill - CACA-46545

---

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimate cost of next best alternative; and (c) expected public benefits.

The project will provide County network users wireless coverage in areas that currently do not have coverage. (a). The one time cost to establish the facility is \$400-500K. Operation and maintenance is \$4-5K annually. (b). There is no next best alternative. (c) As a first responder, the County provides radio communication capabilities to the County Sheriff, Cal Fire, NPS, BLM and other County, State and Federal agencies.

---

16. Describe probable effects on the population in the area, including the social and economic aspects, and rural lifestyles

Improved safety and security of park visitors and employees, due to improved communications for Sheriff's deputies and other first responders.

17. Describe the likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and groundwater quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

(a) The communication facility will have a permanently installed temporary use auxiliary generator that will have a minimum effect

(b) Antenna support structure and antennas will be visible from Pinto Basin Rd. and surrounding areas.

(c thru f) No effect

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plant, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

There are no significant effects anticipated to the flora and fauna in the establishment and use of this facility

19. State where any hazardous substance, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 (14), or any hazardous or solid waste, as defined in the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6903 (5), (27), will be used in the construction of, or at any time transported within, the right-of-way.

Motor oil, engine coolant and propane for the auxiliary generator plus Cement and gel-cell batteries will be used or transported in the right-of-way.

20. Name all the Department(s)/ Agency(ies) where this application is being filed.

United States Department of the Interior  
Joshua Tree National Park Field Office  
74485 National Park Drive  
Twentynine Palms, CA 92277

=====

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information is correct to the best of my knowledge.

=====

Signature of Applicant  
Date: 2-17-09

John W. Doak

=====

Title 18, U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

=====



EXHIBIT C  
CONSTRUCTION AUTHORIZATION

The Construction Authorization and Design and Construction Documents are located in the Office of the Superintendent, Joshua Tree National Park.

EXHIBIT D  
CURRENT ENVIRONMENTAL REMEDIATION SITES

See attached Environmental Remediation Map, if applicable.

EXHIBIT E  
REMITTANCE FORM

See attached Remittance Form, if applicable

EXHIBIT F  
ROAD ACCESS AREA

See Attached Map

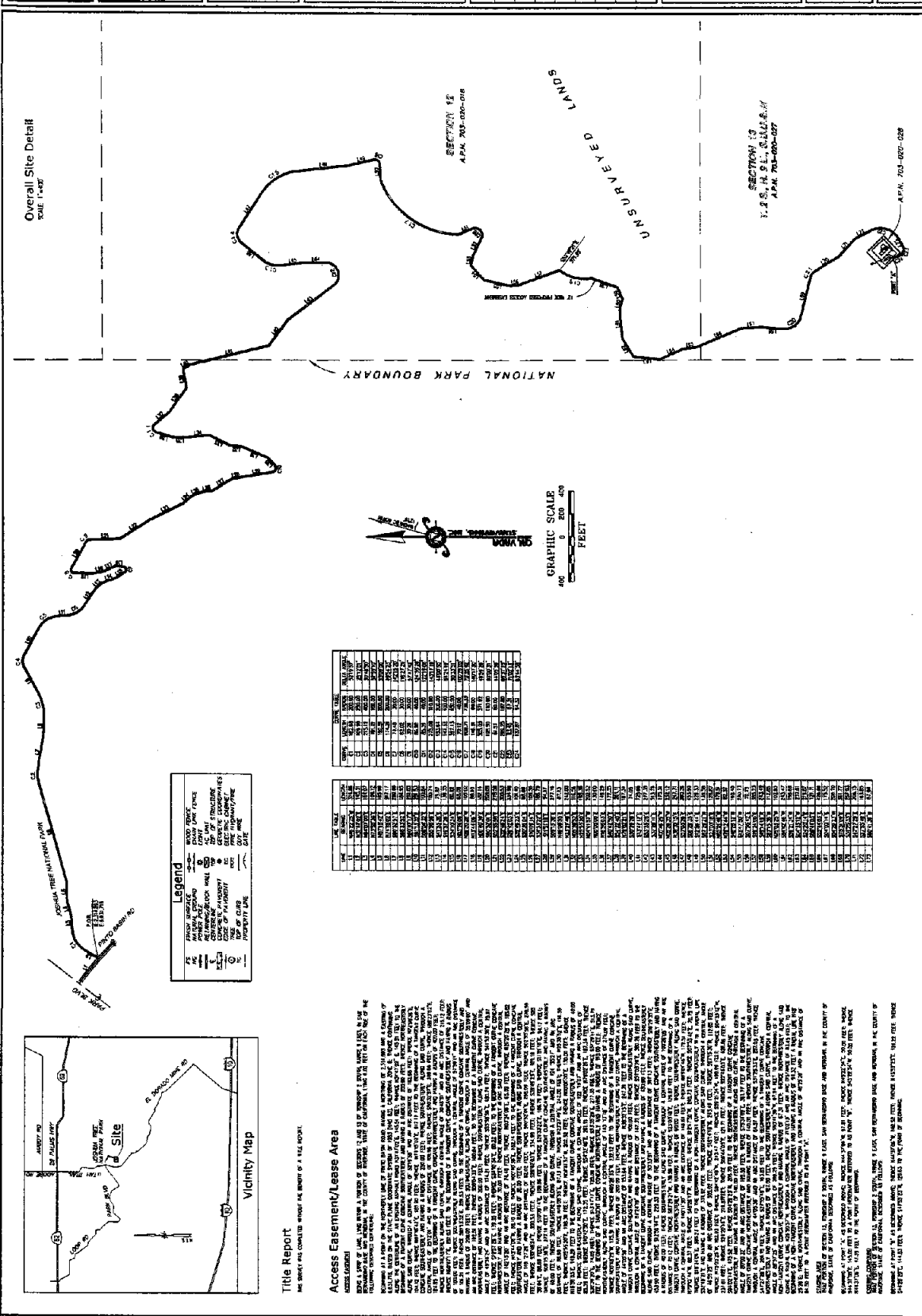


EXHIBIT G  
MAINTENANCE REQUIREMENTS FOR THE PERMITTED RIGHT-OF-WAY

These Maintenance Requirements for the Permitted Right-of-Way are attached as an exhibit to the Right-of-Way Permit No. 8330-10-001 between the United States Department of the Interior, National Park Service, Joshua Tree National Park, and County of Riverside, dated as of \_\_\_\_\_, 2010 (hereinafter referred to as "Permit"). Except as otherwise specified herein, any terms used in these Maintenance Requirements for the Permitted Right-of-Way are as defined in the Permit. In the event of any apparent conflict between the terms, agreements, covenants, conditions or provisions of the Permit with these Maintenance Requirements for the Permitted Right-of-Way, the terms of the Permit, including its amendments, shall prevail. These Maintenance Requirements for the Permitted Right-of-Way may be modified from time to time by the Service in its sole discretion.

1.0 FIRE PROTECTION SYSTEMS

- 1.1 Permittee shall arrange for at least two (2) separate visits per year by Permittee's contractor to inspect Permittee's installed fire suppression system.
- 1.2 Any fire alarm system installed specifically for the operation of the Communication Facility in the Permitted Right-of-Way shall be kept and maintained in full operating condition at all times in accordance with all Applicable Laws, including but not limited to the National Fire Protection Association requirements.
- 1.3 For any new installation of fire protection systems, such installation shall be conducted by a licensed contractor.

2.0 EXTERIOR SURFACES

Exterior surfaces of the Communication Facility shall be repaired using the same size, style, type and grade of material as exists on the Communication Facility as of the date of the Service's approval of Permittee's Construction Compliance Report unless otherwise approved by the Service in writing.

3.0 EXTERIOR LIGHTING

Exterior lighting of the Permitted Right-of-Way, if any, shall be kept and maintained in full operational condition and in compliance with all Applicable Laws, including but not limited to FCC or Federal Aviation Administration regulations, policies and/or guidelines. Installations shall be done by a State of California licensed electrician/contractor and shall be energy efficient with dusk-to-dawn controls or timers to provide energy conservation.

4.0 PAINTED SURFACES

- 4.1 Painted surfaces of the Communication Facility shall be maintained in such a manner as to ensure that painted surfaces are free of peeling, blistering, and excessive wear.
- 4.2 Any repaired or replaced exterior surfaces shall be painted with a minimum of one coat of primer and two coats of paint to match existing color and type of paint.
- 4.3 Paint materials shall be of a "best quality" from a major manufacturer and a type and color which is readily available on the commercial market. Any changes to paint colors

EXHIBIT G  
MAINTENANCE REQUIREMENTS FOR THE PERMITTED RIGHT-OF-WAY

from the color range provided by the Service must be approved in writing by the Service.

- 4.4 Permittee shall not store any paint materials in the Communication Facility or Permitted Right-of-Way.

5.0 FLOORS AND FLOOR COVERINGS

Floors and floor coverings in the Communication Facility shall be maintained in such a manner as to ensure that floors and floor coverings are free of excessive wear and deterioration.

6.0 ELECTRICAL SYSTEMS

- 6.1 Electrical lines and equipment (including but not limited to conduits, fuses, panels, and switches) shall be maintained from the Communication Facility's electric meter into and throughout the Permitted Right-of-Way and for the Communication Facility (including but not limited to lines, cords, and equipment), including any Personal Property affixed to the secondary electrical lines beyond the electric meters within the Permitted Right-of-Way or Communication Facility.
- 6.2 The Communication Facility shall be equipped with properly functioning safety equipment, overload protective devices and switches.
- 6.3 Any high voltage (220v and higher) contact points shall be marked as such in accordance with all Applicable Laws, including but not limited to National Safety Council standards.
- 6.4 Any new installation of electrical systems (including but not limited to additions of electric panels or sub-panels, new circuits or meter boxes, renovations or rewiring of existing electrical systems), shall be conducted by an electrician, licensed to do business in the State of California, in compliance with all Applicable Laws, including but not limited to National Electrical Code requirements.
- 6.5 Backup generators shall only be operated during power outages and for testing and maintenance purposes. If the Communication Facility is located within one hundred (100) feet of a residential unit, noise attenuation measures shall be included to reduce noise levels at the facility to a maximum exterior noise level of sixty (60) Ldn and a maximum interior noise level of 45 Ldn. Testing and maintenance shall only take place on weekdays between the hours of 8:30 and 4:30 p.m.

7.0 LEAD-BASED PAINT MANAGEMENT AND REMEDIATION PLAN

- 7.1 Permittee shall develop and implement management and remediation plans for lead-based paint during the Term.
- 7.2 Permittee shall furnish a copy of such a management and remediation plans to the Service annually.

8.0 CLEANING AND JANITORIAL

EXHIBIT G  
MAINTENANCE REQUIREMENTS FOR THE PERMITTED RIGHT-OF-WAY

Permittee shall at least once per year during the term of the Permit, professionally clean, as appropriate, the Communication Facility.

9.0 COMMUNICATION FACILITY

- 9.1 Permittee's maintenance and field technicians shall respond to trouble shoot any system, or system related, problems that may arise. System related problems affecting the property of the Service shall be repaired in a timely basis.
- 9.2 Permittee shall monitor all systems remotely from its central switching office and shall dispatch personnel as required to operate its Communication Facility.
- 9.3 Two (2) routine "check" visits by Permittee maintenance personnel per year to inspect the general condition of the Permitted Right-of-Way and Communication Facility including but not limited to the equipment cabinets, cable runs, the roof, and antennas as a result of the antenna installation.
- 9.4 Permittee's field technicians shall check and tune the radio equipment, including but not limited to any electronic interference testing between the communication system and the Service's radio communications system, commercial radio, television, or civilian aeronautical communication.

10.0 HEALTH AND SAFETY

- 10.1 Set forth training timetable and procedures as necessary to inform the Service's maintenance personnel regarding protocol to protect the health and safety of the Service's employees who work in or around the Communication Facility.
- 10.2 Prepare and distribute a health and safety fact sheet and/or informational sheet regarding the Communication Facility for use by any Service contractors or subcontractors performing work in the Permitted Right-of-Way.
- 10.3 Ensure that all notices regarding potential electromagnetic field hazards be well maintained and updated with current telephone numbers of any contacts listed.

11.0 INTERFERENCE

Set forth procedures for investigating, correcting and/or eliminating any interference caused by Permittee's Communication Facility in accordance with Section 31.1 of the Permit.

12.0 IDENTIFICATION OF COMMUNICATION FACILITY

Replace as necessary all of Permittee's labeling on equipment, cables, conduits and ducts that comprise the Permitted Right-of-Way and/or Communication Facility.

13.0 DEBRIS REMOVAL



EXHIBIT G  
MAINTENANCE REQUIREMENTS FOR THE PERMITTED RIGHT-OF-WAY


Permittee shall remove all debris associated with any Maintenance performed in the Permitted Right-of-Way or Communication Facility, including but not limited to the Maintenance requirements outlined in this Exhibit G.

14.0 INSPECTIONS

An annual inspection of the Permitted Right-of-Way shall be conducted jointly with the Service during the months of August and September ("Annual Inspection"). The Annual Inspection shall be used to determine whether the Permitted Right-of-Way is in compliance with all Applicable Laws and to specify the scope of Maintenance required for inclusion in the Maintenance Plan.

EXHIBIT H  
INITIAL INSURANCE CERTIFICATE

Certificate Attached

GL2-469	AI	CERTIFICATE OF COVERAGE			06/28/2010
<b>CSAC Excess Insurance Authority</b> <b>C/O ALLIANT INSURANCE SERVICES, INC.</b> <b>PO BOX 6450</b> <b>NEWPORT BEACH, CA 92658-6450</b>  PHONE (949) 756-0271 / FAX (619) 699-0901 LICENSE #0C36861		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BELOW. THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.			
		IMPORTANT: If the certificate holder is an ADDITIONAL INSURED and/or requesting a WAIVER OF SUBROGATION, the Memorandums of Coverage must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).			
		COVERAGE AFFORDED BY: <b>A - CSAC Excess Insurance Authority</b>			
<b>Member:</b> RIVERSIDE COUNTY ATTN: JIM SESSIONS P.O. BOX 1210 RIVERSIDE, CA 92502-1210		COVERAGE AFFORDED BY: <b>B</b>			
		COVERAGE AFFORDED BY: <b>C</b>			
		COVERAGE AFFORDED BY: <b>D</b>			
<b>Coverages</b> THIS IS TO CERTIFY THAT THE MEMORANDUMS OF COVERAGE LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED BY THE MEMORANDUMS DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH MEMORANDUMS. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO LTR	TYPE OF COVERAGE	MEMORANDUM NUMBER	COVERAGE EFFECTIVE DATE (MM/DD/YYYY)	COVERAGE EXPIRATION DATE (MM/DD/YYYY)	LIABILITY LIMITS
<b>A</b>	<input checked="" type="checkbox"/> Excess General Liability <input checked="" type="checkbox"/> Excess Auto Liability <input checked="" type="checkbox"/> Excess Errors & Omissions	EIA-10 GL2-06	07/01/2010	07/01/2011	Each Occurrence      \$3,000,000  Member's Self-Insured Retention      \$1,000,000  Completed Operations Aggregate Applies
<b>Description of Operations/Locations/Vehicles/Special</b> AS RESPECTS RIGHT OF WAY PERMIT NUMBER 8330-09-001 FOR A WIRELESS COMMUNICATION FACILITY.  THE UNITED STATES OF AMERICA, THEIR SERVICE AND SERVICE AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL COVERED PARTIES, BUT ONLY INsofar AS THE OPERATIONS UNDER THIS CONTRACT ARE CONCERNED.  THE AUTHORITY WAIVES ITS RIGHTS OF SUBROGATION AGAINST THE ADDITIONAL COVERED PARTY PURSUANT TO ENDORSEMENT NUMBER 11.					
<b>Certificate Holder</b> US DEPT OF THE INTERIOR, NATIONAL PARK SERVICE JOSHUA TREE NATIONAL PARK ATTN: DAVID A. REYNOLDS, RIGHTS-OF-WAY ONE JACKSON CENTER 1111 JACKSON ST, STE 700 OAKLAND, CA 94607			<b>Cancellation</b> SHOULD ANY OF THE ABOVE DESCRIBED MEMORANDUMS OF COVERAGES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE MEMORANDUMS OF COVERAGE PROVISIONS.		
			AUTHORIZED REPRESENTATIVE  CSAC EXCESS INSURANCE AUTHORITY		

## **ENDORSEMENT NO. 11**

### **CSAC EXCESS INSURANCE AUTHORITY (CSAC EIA) GENERAL LIABILITY II**

#### **ADDITIONAL COVERED PARTY AMENDATORY ENDORSEMENT**

It is agreed that the "Covered Party, Covered Persons or Entities" section of the Memorandum is amended to include the person or organization named below, but only with respect to liability arising out of premises owned by or rented to the Member, or operations performed by or on behalf of the Member or such person or organization so designated.

Coverage provided under this endorsement is primary. Coverage provided under this endorsement is limited to the minimum limits required by contract.

**Additional Covered Party:**

The United States of America, Their Service and Service Agents and employees

**As Respects:**

Right of Way Permit No. 8330-09-001 for a Wireless Communication Facility

It is further agreed that nothing herein shall act to increase the Authority's Limit of Liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 10 GL2-06

**Issued to:** Riverside County

**Issue Date:** June 28, 2010



**Authorized Representative  
CSAC Excess Insurance Authority (CSAC EIA)**

CERTIFICATE NO.

ISSUE DATE (MM/DD/YYYY)

WC-1146

**CERTIFICATE OF COVERAGE**

06/28/2010

**CSAC Excess Insurance Authority**

**C/O ALLIANT INSURANCE SERVICES, INC.**  
**PO BOX 6450**  
**NEWPORT BEACH, CA 92658-6450**  
 PHONE (949) 756-0271 / FAX (619) 699-0901  
 LICENSE #0C36861

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BELOW. THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER

IMPORTANT: If the certificate holder is requesting a WAIVER OF SUBROGATION, the Memorandums of Coverage must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

COVERAGE AFFORDED BY: **A - See attached schedule of insurers**

COVERAGE AFFORDED BY: **B**

COVERAGE AFFORDED BY: **C**

COVERAGE AFFORDED BY: **D**

**Member:**

RIVERSIDE COUNTY  
 ATTN: JIM SESSIONS  
 P.O. BOX 1210  
 RIVERSIDE, CA 92502-1210

**Coverages**

THIS IS TO CERTIFY THAT THE MEMORANDUMS OF COVERAGE AND POLICY LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED BY THE MEMORANDUMS AND POLICY DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH MEMORANDUMS AND POLICY.

CO LTR	TYPE OF COVERAGE	MEMORANDUM/ POLICY NUMBER	COVERAGE EFFECTIVE DATE (MM/DD/YYYY)	COVERAGE EXPIRATION DATE (MM/DD/YYYY)	LIABILITY LIMITS
A	EXCESS WORKERS' COMPENSATION & EMPLOYERS' LIABILITY	See attached for insurers policy numbers	07/01/2010	07/01/2011	<p>WORKERS' COMPENSATION:            Difference between Statutory and Member's \$2,000,000 Retention</p> <p>EMPLOYERS' LIABILITY:            Difference between \$5,000,000 and Member's \$2,000,000 Retention</p>

**LIMITS APPLY PER OCCURRENCE FOR ALL PROGRAM MEMBERS COMBINED.****Description of Operations/Locations/Vehicles/Special Items:**

AS RESPECTS EVIDENCE OF COVERAGE FOR PERMIT NUMBER 8330-09-001 FOR RIGHT-OF-WAY AT JOSHUA TREE WIRELESS COMMUNICATION FACILITY IN JOSHUA TREE NATIONAL PARK. ASSESSOR PARCEL NUMBER 703-020-028; LEGAL DESCRIPTION: THAT PORTION OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 9 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

THE AUTHORITY WAIVES ITS RIGHTS OF SUBROGATION AGAINST US DEPT OF THE INTERIOR, NATIONAL PARK SERVICE JOSHUA TREE NATIONAL PARK PURSUANT TO ENDORSEMENT NUMBER 3.

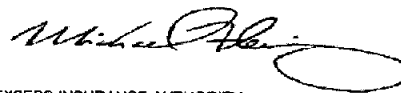
**Certificate Holder**

US DEPT OF THE INTERIOR, NATIONAL PARK SERVICE JOSHUA TREE NATIONAL PARK  
 ATTN: DAVID A. REYNOLDS, RIGHTS-OF-WAY  
 ONE JACKSON CENTER  
 1111 JACKSON ST, STE 700  
 OAKLAND, CA 94607

**Cancellation**

SHOULD ANY OF THE ABOVE DESCRIBED MEMORANDUMS OF COVERAGE/POLICIES BE CANCELLED BEFORE THE EXPIRATION THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE MEMORANDUMS OF COVERAGE/POLICIES PROVISIONS.

AUTHORIZED REPRESENTATIVE



CSAC EXCESS INSURANCE AUTHORITY

**ENDORSEMENT NO. 3**

**CSAC EXCESS INSURANCE AUTHORITY (CSAC EIA)  
EXCESS WORKERS' COMPENSATION**

**WAIVER OF SUBROGATION ENDORSEMENT**

The Authority waives its rights of subrogation against the party named below. Coverage provided under this endorsement is limited to the minimum limits required by contract.

US Dept of the Interior, National Park Service Joshua Tree National Park

**As Respects:**

Permit number 8330-09-001 for right-of-way at Joshua Tree wireless communication facility in Joshua Tree National Park. Assessor parcel number 703-020-028; legal description: that portion of Section 13, Township 2 South, Range 9 East, San Bernardino Base and Meridian, in the County of Riverside, State of California

It is further agreed that nothing herein shall act to increase the Authority's limit of indemnity.


This endorsement is part of the Memorandum of Coverage and takes effect on the effective date of the Memorandum of Coverage unless another effective date is shown below. All other terms and conditions remain unchanged.

Effective Date: July 1, 2010

Memorandum No.: EIA 10 EWC-37

Issued to: Riverside County

Issue Date: 6/28/2010

  
\_\_\_\_\_  
Authorized Representative  
CSAC Excess Insurance Authority (CSAC EIA)

**CSAC EXCESS INSURANCE AUTHORITY  
EXCESS WORKERS' COMPENSATION PROGRAM  
2010/2011 SCHEDULE OF INSURERS  
Riverside County**

PROVIDER	POLICY NUMBER	LIMIT
CSAC Excess Insurance Authority	EIA 10 EWC-37	The difference between \$5,000,000 each accident or each employee for disease and the individual member's SIR greater than \$1,000,000.
ACE American Insurance Company	WCL C4571312A	\$ 45,000,000 each accident/each employee for disease excess of \$5,000,000 \$ 45,000,000 each accident for communicable disease excess of \$5,000,000
National Union Fire Insurance Co. of Pittsburgh, PA (Chartis)	488-0465	Statutory each accident/each employee for disease excess of \$50,000,000



**Federal Communications Commission**  
Wireless Telecommunications Bureau

**RADIO STATION AUTHORIZATION**

LICENSEE: RIVERSIDE, COUNTY OF

ATTN: RCIT COMMUNICATIONS BUREAU  
RIVERSIDE, COUNTY OF  
6147 RIVERCREST DR., STE A  
RIVERSIDE, CA 92507

<b>Call Sign</b> WQIF573	<b>File Number</b> 0003743299
<b>Radio Service</b> PC - Public Coast Stations, Auctioned	

FCC Registration Number (FRN): 0001526979

<b>Grant Date</b> 06-08-2009	<b>Effective Date</b> 06-08-2009	<b>Expiration Date</b> 05-19-2019	<b>Print Date</b> 06-09-2009
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<b>Market Number</b> VPC006	<b>Channel Block</b> -	<b>Sub-Market Designator</b> 20
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<b>Market Name</b> Southern Pacific
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<b>1st Build-Out Date</b>	<b>2nd Build-Out Date</b>	<b>3rd Build-Out Date</b>	<b>4th Build-Out Date</b>
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**Waivers/Conditions:**

Authorization is subject to the terms and conditions of the Order of the Chief, Public safety and Critical Infrastructure Division, DA 05-437, adopted and released on February 16, 2005.

Authorized spectrum excludes channel 88 in accordance with Section 80.371(c) of the Rules.

**Conditions:**

Pursuant to §309(h) of the Communications Act of 1934, as amended, 47 U.S.C. §309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. § 310(d). This license is subject in terms to the right of use or control conferred by §706 of the Communications Act of 1934, as amended. See 47 U.S.C. §606.

This license may not authorize operation throughout the entire geographic area or spectrum identified on the hardcopy version. To view the specific geographic area and spectrum authorized by this license, refer to the Spectrum and Market Area information under the Market Tab of the license record in the Universal Licensing System (ULS). To view the license record, go to the ULS homepage at <http://wireless.fcc.gov/uls/index.htm?job=home> and select "License Search". Follow the instructions on how to search for license information.