



Placentia City Council

AGENDA REPORT

TO: CITY COUNCIL
VIA: CITY ADMINISTRATOR
FROM: INTERIM FINANCE DIRECTOR
DATE: JULY 18, 2017
SUBJECT: **MAY 2017 (PRELIMINARY) TREASURER'S REPORT**
FISCAL
IMPACT: NONE

SUMMARY:

The Finance Department has prepared a monthly Treasurer's Report for the month of May 2017. The Treasurer's Report includes all investments managed by the City and investments held by trustees.

RECOMMENDATION:

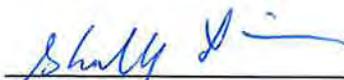
It is recommended that the City Council take the following action:

1. Receive and file the May 2017 (Preliminary) Treasurer's Report.

DISCUSSION:

Government Code § 53646 states that the Treasurer or Finance Director of the City may render a report on investments at least quarterly to the legislative body. The attached Treasurer's Report reflects the City's investment portfolio for the month of May 2017 (Preliminary). The City Treasurer has reviewed and signed the attached report.

Prepared by:


Shally Lin

Interim Finance Director

Reviewed and approved:



Damien R. Arruía
City Administrator

Attachment:

May 2017 (Preliminary) Treasurer's Report

3.a.
July 18, 2017

City of Placentia

CITY TREASURER'S REPORT

**May 2017
(Preliminary)**

Fiscal Year 2016-17



**CITY OF PLACENTIA TREASURER'S REPORT
SUMMARY OF CASH & INVESTMENTS
AS OF MAY 31, 2017 (Preliminary)**

CASH & INVESTMENTS HELD BY CITY				
	Percent of Portfolio	Current Yield	Cost	Market Value
<u>Invested</u>				
Local Agency Investment Fund	69.79%	0.75%	\$ 8,474,116.97	\$ 8,474,116.97
Certificates of Deposit	8.07%	Varies	\$ 980,000.00	\$ 980,000.00
<u>Non-Invested</u>				
Checking Accounts	22.14%		\$ 2,688,391.63	\$ 2,688,391.63
Total Cash & Investments Held by City	100.00%		\$ 12,142,508.60	\$ 12,142,508.60

CASH & INVESTMENTS HELD BY FISCAL AGENT				
	Percent of Portfolio	Current Yield	Cost	Market Value
Money Market Mutual Funds & Treasury Obligations	100.00%		\$ 2,399,973.90	\$ 2,399,973.90
	100.00%		\$ 2,399,973.90	\$ 2,399,973.90

TOTAL CASH AND INVESTMENTS	
Cash & Investments Held by City and Fiscal Agent - Market Value	\$ 14,542,482.50

**CITY OF PLACENTIA TREASURER'S REPORT
CASH AND INVESTMENT DETAIL - CITY
AS OF MAY 31, 2017 (Preliminary)**

HELD BY CITY						
Agency	Investment Description	Current Yield	Purchase Date	Maturity Date	Purchase Price	Market Value
CASH:						
Bank of America - General Checking	Account No. 143128-0221	N/A	N/A	On Demand	\$ 2,653,220.87	\$ 2,653,220.87
Bank of America - Workers' Comp	Account No. 143188-0525	N/A	N/A	On Demand	\$ 11,647.48	\$ 11,647.48
Bank of America - Healthcare	Account No. 143138-0513	N/A	N/A	On Demand	\$ 23,221.22	\$ 23,221.22
Bank of America - Successor Agency	Checking Acct	N/A	N/A	On Demand	\$ 0.01	\$ 0.01
Multi-Bank Securities Cash Account	Cash / Bank Deposits	N/A	N/A	On Demand	\$ 302.05	\$ 302.05
Total Cash					\$ 2,688,391.63	\$ 2,688,391.63
INVESTMENTS:						
Local Agency Investment Fund	City Account No. 98-30-678	0.75%	N/A	On Demand	\$ 8,474,116.97	\$ 8,474,116.97
Multi-Bank Securities BMO Harris Bank	Certificate of Deposit	1.20%	2/4/2016	2/2/2018	\$ 245,000.00	\$ 245,308.70
Multi-Bank Securities Ally Bank	Certificate of Deposit	1.45%	2/4/2016	2/4/2019	\$ 245,000.00	\$ 245,803.60
Multi-Bank Securities American Federal Bk	Certificate of Deposit	1.50%	2/10/2016	2/10/2020	\$ 245,000.00	\$ 243,402.60
Multi-Bank Securities Goldman Sachs	Certificate of Deposit	2.00%	2/3/2016	2/3/2021	\$ 245,000.00	\$ 245,485.10
Total Investments					\$ 9,454,116.97	\$ 9,454,116.97
TOTAL CASH & INVESTMENTS HELD BY CITY					\$ 12,142,508.60	\$ 12,142,508.60



CITY OF PLACENTIA TREASURER'S REPORT
INVESTMENT DETAIL - HELD BY FISCAL AGENT
AS OF MAY 31, 2017 (Preliminary)

HELD BY FISCAL AGENT						
Agency	Investment Description	Current Yield	Purchase Date	Maturity Date	Purchase Price	Market Value
2011 Gas Tax Certificates of Participation						
Wells Fargo	Wells Fargo Money Market	0.03%	N/A	N/A	\$ 841,007.76	\$ 841,007.76
2003 Certificate of Participation						
US Bank	US Bank Money Market	0.03%	N/A	N/A	\$ 584,307.50	\$ 584,307.50
2013 Tax Allocation Refunding Bond						
US Bank	First American Treasury Fund	0.01%	N/A	N/A	\$ 535,164.48	\$ 535,164.48
2009 Lease Revenue Bond						
US Bank	US Bank Money Market	0.03%	N/A	N/A	\$ 439,494.16	\$ 439,494.16
TOTAL INVESTMENTS HELD BY FISCAL AGENT					\$ 2,399,973.90	\$ 2,399,973.90

CITY OF PLACENTIA TREASURER'S REPORT



CASH BALANCES

AS OF MAY 31, 2017 (Preliminary)

CITY		
101	General Fund	6,036,634.90
201	Utility User Tax	-
205	State Gas Tax	141,341.90
206	Gas Tax Bond Fund	-
207	Housing Authority	(315,162.77)
210	Measure M	1,571,684.83
211	PEG Fund	230,251.70
215	Air Quality Management	207,319.23
225	Asset Seizure	1,058,828.60
226	Traffic Offender Fund	49,051.53
230	Supplemental Law Enforcement	74,027.88
235	Park Development	193,887.85
240	Sewer Construction	20,606.33
241	Public Safety Mitigation Fee	286,518.17
245	Storm Drain Construction	93,688.66
250	Thoroughfare Construction	77,003.69
260	Street Lighting District	(148,547.53)
261	Public Safety CFD 2014-01	19,580.03
265	Landscape Maintenance	241,254.75
270	CDBG Fund	127,017.87
275	Sewer Maintenance	650,693.38
280	Miscellaneous Grants	487,381.97
401	City Capital Projects	(1,428,307.71)
405	In-Lieu Low/Mod Housing	525,000.00
501	Refuse Administration	477,962.26
505	CNG Fueling Station	-
601	Employee Health & Welfare	(1,898,585.45)
605	Risk Management	786,369.40
610	Equipment Replacement	53,839.10
615	Information Technology	-
701	Special Deposits	478,846.45
715	Community Facilities District	32,599.35
	Sub-Total	<u>10,130,786.37</u>
SUCCESSOR AGENCY TO THE RDA		
208	Successor Agency Retirement Fund	174,126.56
	TOTAL CASH	<u>\$ 10,304,912.93</u>

City of Placentia
Changes in Cash Balances
 May 2017

RPT FUND	Data FUND	FUND	CASH BALANCE 4/30/2017	RECEIPTS	DISBURSEMENTS	TRANSFERS IN & OUT	CASH BALANCE 5/31/2017
101	10	GENERAL FUND	5,285,864.24	4,101,124.54	(4,398,383.70)	1,048,029.82	6,036,634.90
201	16	UTILITY TAX FUND	865,348.75	182,681.07		(1,048,029.82)	-
205	17	GAS TAX	434,652.99	67,793.73		(361,104.82)	141,341.90
206	52	GAS TAX BOND FUND	-		(361,104.82)	361,104.82	-
207	53	HOUSING AGENCY	(324,700.21)	9,537.44			(315,162.77)
208	54	SUCCESSOR AGENCY FUND	174,236.56		(110.00)		174,126.56
210	18	MEASURE "M"	1,492,171.00	83,457.99	(3,944.16)		1,571,684.83
211	58	PEG FUND	235,177.20		(4,925.50)		230,251.70
215	19	AIR QUALITY FUND	194,196.46	17,341.07	(4,218.30)		207,319.23
225	21	ASSET SEIZURE FUND	1,061,025.99		(2,197.39)		1,058,828.60
226	51	TRAFFIC OFFENDER FUND	48,479.53	572.00			49,051.53
230	22	COPS/SUPPL LAW ENFORCEMENT	69,673.78	4,354.10			74,027.88
235	23	PARK DEVELOPMENT FUND	192,228.52	1,659.33			193,887.85
240	24	SEWER CONSTRUCTION FUND	20,606.33				20,606.33
241	57	PUBLIC SAFETY MITIGATION FUND	286,518.17				286,518.17
245	25	STORM DRAIN CONSTRUCTION FUND	93,688.66				93,688.66
250	26	THOROUGHFARE CONSTRUCTION	77,003.69				77,003.69
260	28	PLACENTIA LIGHTING DISTRICT	(122,048.91)	3,600.53	(30,099.15)		(148,547.53)
261	55	PUBLIC SAFETY CFD 2014-01	20,956.97	248.06	(1,625.00)		19,580.03
265	29	LANDSCAPE MAINT. DISTRICT	254,099.36	13,239.67	(26,084.28)		241,254.75
270	30	HOUSING & COMMUNITY DEVELOP.	67,017.87	250,467.00	-	(190,467.00)	127,017.87
275	48	SEWER MAINTENANCE FUND	685,549.70	65,104.05	(99,960.37)		650,693.38
280	50	MISC GRANTS	440,281.97	47,100.00			487,381.97
401	33	CAPITAL PROJECTS FUND	(1,416,294.99)	143,580.57	(346,060.29)	190,467.00	(1,428,307.71)
405	34	IN-LIEU LOW/MOD HOUSING	525,000.00				525,000.00
501	37	REFUSE FUND	652,902.94	46,975.79	(221,916.47)		477,962.26
505	38	CNG FUELING STATION	-				-
601	39	HEALTH & WELFARE INS.	(1,490,014.34)	210,280.25	(618,851.36)		(1,898,585.45)
605	40	RISK MANAGEMENT	780,095.69	56,616.49	(50,342.78)		786,369.40
610	41	EQUIPMENT REPLACEMENT FUND	53,722.10	117.00			53,839.10
615	42	INFORMATION TECHNOLOGY FUND	-				-
701	44	TRUST & AGENCY FUND	469,959.82	26,810.63	(17,924.00)		478,846.45
715	47	COMMUNITY FAC. DISTRICT	32,599.35				32,599.35
TOTAL PER GENERAL LEDGER			11,159,999.19	5,332,661.31	(6,187,747.57)	-	10,304,912.93



CITY OF PLACENTIA TREASURER'S REPORT
CERTIFICATION
AS OF MAY 31, 2017 (Preliminary)

TREASURER'S REPORT

3 Month Projected Cash Requirements (June - August): \$14,922,455

3 Month Projected Cash Revenues (June - August): \$11,121,008

In compliance with the California Government Code Section 53646 et seq., I hereby certify that sufficient investment liquidity and anticipated revenues are available to meet the City's expenditure requirements for the next six months and that all investments are in compliance with the City's Investment Policy.

Submitted By:


Shally Lin, Interim Finance Director

Approved By:


Kevin A. Larson, City Treasurer

CITY OF PLACENTIA TREASURER'S REPORT
DEFICIT CASH TRANSFERS
AS OF MAY 31, 2017 (Preliminary)



DEFICIT CASH BALANCES

Fund	Deficit Amount	General Fund	Measure M	Gas Tax	Sewer Maintenance	Asset Seizure	Risk Management	Total Funding Source
Housing Authority	(315,162.77)	315,162.77						315,162.77
Street Lighting District	(148,547.53)	148,547.53						148,547.53
City Capital Projects	(1,428,307.71)		1,428,307.71					1,428,307.71
Employee Health & Welfare	(1,898,585.45)	1,898,585.45						1,898,585.45
Total Transfers	(3,790,603.46)	2,362,295.75	1,428,307.71					3,790,603.46
Cash Balance Before Transfer		6,036,634.90	1,571,684.83	141,341.90	650,693.38	1,058,828.60	786,369.40	10,245,553.01
Cash Available After Transfer		3,674,339.15	143,377.12	141,341.90	650,693.38	1,058,828.60	786,369.40	6,454,949.55



Placentia City Council

AGENDA REPORT

TO: CITY COUNCIL

VIA: CITY ADMINISTRATOR

FROM: DIRECTOR OF DEVELOPMENT SERVICES
DIRECTOR OF PUBLIC WORKS

DATE: JULY 18, 2017

SUBJECT: **POLICY DISCUSSION AND REVIEW OF A DRAFT ORDINANCE TO ADOPT CHAPTER 23.83 OF TITLE 23 OF THE CITY OF PLACENTIA MUNICIPAL CODE TO PERMIT THE ORDERLY, MANAGED, AND EFFICIENT DEVELOPMENT OF WIRELESS COMMUNICATION FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY (PROW)**

FISCAL
IMPACT: No fiscal impacts are anticipated with the review of this proposed draft ordinance.

SUMMARY:

Chapter 23.82 of the Placentia Municipal Code (PMC) currently regulates the installation of wireless communication facilities (WCFs) citywide for both public and private property. New federal and state legislation has limited the ability of local jurisdictions to apply discretion in rendering decisions for both new and modified WCF in the public right-of-way (PROW). Assembly Bill No. 57 (AB 57) Chapter 685 was amended by the Federal Communications Commission (FCC) on April 6, 2015, to include regulations regarding WCFs. Under the bill, a local jurisdiction cannot deny a co-location or siting application, but can control when, why, and how it is established. Furthermore, recently proposed State legislation aims to restrict city and county discretionary permitting within the public right-of-way. Senate Bill No. 649 (SB 649), introduced by Senator Ben Hueso (D-San Diego), seeks to further streamline the installation of small cell antennas onto vertical infrastructure within the PROW. SB 649 would make WCF within the PROW a permitted use, not subject to local discretionary action. Although SB 649 is not officially signed into law, Staff has prepared a draft ordinance for discussion with the purposes of establishing uniform processing requirements for the orderly, managed, and efficient development of WCFs within the PROW. A draft ordinance has been prepared and Staff is seeking policy direction from the City Council on preparation of a final ordinance. Although the draft ordinance before Council applies only to sites in the PROW, Staff is also recommending an update to the Placentia Municipal Code (PMC) regulating wireless facilities on private property (PMC Chapter 23.82) as it is severely outdated.

RECOMMENDATION:

It is recommended that the City Council take the following actions:

3.b.
July 18, 2017

1. Receive the Staff Report and review the proposed draft ordinance; and
2. Ask any questions of Staff; and
3. Provide direction to Staff as appropriate for preparation of a final draft ordinance, design guidelines, master license agreement, and associated fees to be considered by City Council at a future meeting; and
4. Provide direction to Staff as appropriate for the review and oversight of all WCFs within the PROW to be managed by City Staff and not a third party; and
5. Provide direction to Staff as appropriate for preparation of an update to PMC Chapter 23.82 to be considered by City Council at a future meeting.

BACKGROUND:

Small cells are the most recent evolution of wireless radio technology and are becoming standard infrastructure for Wireless Service Providers (WSPs) as part of their heterogeneous network (HetNet) strategy. Small cells are compact and low powered base stations used to compliment mobile phone service from larger macro cell towers and facilities. The term, "small cells" is an umbrella term used for a wide range of WCFs that include femto cells, pico cells, micro cells, and metro cells. These low-powered radio access nodes typically have a coverage range from about 30 feet to several hundred feet and have become a high valuable solution to alleviate network congestion by providing for the densification needs of the WSPs. Network densification requirements for WSPs have led to the need for small cells, as coverage and capacity needs have become critical problems.

Outdoor small cell nodes are typically placed on existing infrastructure such as utility/telephone poles, street lamps or traffic signal poles which provide a high density of potential sites where these location sensitive deployments can occur. To support high speed service, small cell technology provides WSPs the ability to integrate an approach to allow for 3G, 4G LTE, and Wi-Fi service from a single deployment, including the future deployment of 5G devices. These small cell nodes are operated and controlled by a single mobile phone company. The purpose of installing small cells is to increase range and capacity in densely populated urban areas that cannot be sustained by macro cells. The growth of small cells is a response to increasing global data traffic, which is continuing to increase at a rapid pace.

DISCUSSION:

SB 649

SB 649 aims to address and answer this increase in data traffic. It would remove the requirement for WSPs to obtain discretionary approval prior to installing a small cell device on public right-of-ways, including City-owned facilities and light poles. This bill could require the City to provide access to vertical infrastructure in PROWs and would limit the amount of rent that could be charged for access. The only place where a small cell tower could not be installed

is on fire department facilities. The bill would not only remove the ability to take into consideration any aesthetic, design or nuisance impacts, but would also remove a jurisdiction's ability to consider these facilities as a "project" pursuant to CEQA. In accordance with SB 649, the largest allowable device is limited to 35 cubic feet in size similar to the dimensions of a small refrigerator, but the size limitation does not take into account all of the space the supplemental equipment will utilize. The bill specifically excludes the supporting equipment necessary, including but not limited to, electric meters, demarcation box, pedestals, grounding equipment and other necessary devices for the device to run. Such ancillary equipment is not included in the bill's 35 cubic foot restriction. Given that this is an emerging technology and there are relatively few examples of micro cell sites in varying capacities, it is difficult to determine the amount of space each device would require.

SB 649 will eliminate public involvement, full local environmental and design review, and the ability for local governments to negotiate leases or any public benefit for the installation of small cell equipment. Small cells would be required to be allowed on public property in any zone in a city or county and would be subject to a vague permitting process. The bill eliminates the full discretion a local jurisdiction currently maintains to require that such equipment blends into the community they are entering and that WCPs adequately maintain their equipment. SB 649 eliminates the ability to negotiate any public benefit such as proving network access for a library. Additionally, the bill makes local governments responsible to adopt a complicated set of ordinances, thereby increasing costs to local jurisdictions, at the same time the bill caps the flexible revenue cities and counties can generate for public services. SB 649 forces local government to rent space for small cells on public property at rates far below fair market value and requires that every jurisdiction, in order to use its own public property, provide substantial evidence that the space is needed by that community. Rents from the use of public property, which every other for-profit business pays, help cover the cost of essential public services. The bill now sets an arbitrary cap on the annual fee, rather than allowing each jurisdiction to determine fees based upon fair market rates.

Financial Review

Chapter 23.82 of the PMC currently regulates WCF within both public and private property. Staff currently oversees and manages 11 telecommunication contracts on city owned and operated sites.

City Managed Macro Cell Sites	
FY 2015-2016	\$276,847.96

The table above displays the passive revenue source during FY 2015-16. Monthly fees range from \$1,000 to \$2,800 per month, generally with a 4% annual increase per provider. The lease terms are for five years, with an option of four additional five year terms.

There are approximately 3,668 street light poles and traffic signals located within the City limits. Of the total street light poles and traffic signals, 216 are owned and operated by the City. Past discussions with wireless telecommunication consultants (5 Bars) revealed that approximately 50-70 City light poles and traffic signals may be deemed viable sites for small cell usage. SB

649, in its current form, will require local jurisdiction's to rent space on public infrastructure at an annual rate of \$250. The yearly revenue generated for the City would be nominal, resulting in cumulative revenue of \$17,500 per fiscal year for the usage of 70 light poles and/or traffic signals. A fully deployed small cell network would generate only 6% of the total revenue generated by macro cell sites based on FY 2015-2016.

Design Standards

Aesthetic and/or design controls that assist in protecting the visual character of a neighborhood is absent in legal language of SB 649. The bill would provide little to no design criteria and fails to mandate any reasonable attempts at integrating stealthing techniques that would adequately camouflage all telecommunications equipment into the facility. Design is only dictated by the size limitations prescribed in the bill, which can lead to an array of different design types. Design requirements may only be implemented in historic districts or within coastal zones, which would not apply to the City of Placentia. However, citywide guidelines may be implemented to encourage uniformity in design for all small cell deployments in order to ensure compatibility with the area of each cell site to the maximum extent feasible. In addition, they City may be able to include design guidelines for all ancillary support related equipment to the extent permitted by law.

Draft Ordinance

The proposed draft ordinance addresses the issues of regulating small cells by distinguishing measures that apply to the siting, modification, or construction of these facilities within the PROW. Applications involving infrastructure in the PROW co-located on a City owned pole shall be considered for Ministerial Review (no public hearing). By providing guidelines in the ordinance for the design of these facilities, the City can offer a faster approval process for applications that fit the requirements. Having a ministerial approval process in the ordinance eliminates the risk of Staff encountering issues with the "shot clock" and ensures a level of consistency in design citywide.

A discretionary review (Planning Commission public hearing) will be required for all WCF co-locations, modifications or new facilities that do not match the guidelines provided for ministerial review. The City expects to have a limited number of discretionary applications, which should allow sufficient effort to be devoted to approving the application before the expiration of the "shot clock". By adoption of the ordinance the City can approve or deny proposed telecommunication devices within the acceptable timeline based on whether they fit the design parameters established in the proposed ordinance.

Should an applicant seek approval of five (5) or more WCFs in the PROW (including new facilities and co-locations on existing facilities), the applicant may elect to submit an application for a master deployment plan permit, subject to the Planning Commission's review and approval. The proposed facilities in a master deployment plan shall be reviewed together at the same time and shall be otherwise subject to the same requirements and procedures applicable to a major communication facility. Only facilities in the PROW may be covered by the master deployment plan.

Draft License Agreement

For WCFs proposed for installation on City-owned property or assets, a draft master site license agreement between the City and each WCP will be required to be fully executed. The license agreement can cover multiple sites/locations and will outline the placement and operation of these facilities in conformance with the City's approved ordinance. The agreement will outline the term of the license as well as any applicable license fees due to the City. The terms of each master site license agreement may vary based on negotiations with the individual wireless carriers and is presented as a template from which to begin negotiations with the various carriers. Each master license agreement will ultimately be presented to the City Council in the future for its review and approval.

Options for Implementation

The City has two options to address the potential implementation of SB 649. These options are to enter into a public-private partnership with a telecommunications firm to provide the service of drafting a new telecommunications ordinance for PROW small cells, processing permits for proposed small cell deployments, contract negotiations, and providing consulting services, as opposed to these activities being directly administered by Staff ("in-house"). As part of a public-private partnership with a third party, as would be the case with a firm such as "5 Bars", a "cooperative piggyback agreement" would likely be instituted with a revenue share system. As an example, in a revenue share system the City would receive 65% and "5 Bars" would receive 35% of all revenue derived from any lease agreements. However, given the \$250 restriction on annual rental rate per site, 70 streetlights/traffic signal poles would yield total revenue of \$17,500. Applying a revenue sharing agreement would afford the City with a revenue source of \$11,375. The mutual revenue source for both parties would be nominal and would not be an effective or profitable strategy to combating WSP within the PROW. Given the number of identified viable vertical infrastructure within the City, it is the determination of Staff that undertaking the processing of PROW small cell deployments can be effectively handled "in house", without the need of a third party.

CONCLUSION

The current ordinance is antiquated in that it does not adequately address the most recent advancements in technology in the realm of wireless communications. Furthermore, Chapter 23.82 is in direct conflict with SB 649 provisions by requiring all right-of-way installations to obtain a Use Permit from the Planning Commission, which the Senate Bill seeks to directly eliminate. Therefore, there is seemingly a need for both a new ordinance to address PROW sites and separately, an update to Chapter 23.82 of the PMC.

The draft ordinance prepared for discussion would establish uniform processing requirements for the orderly, managed, and efficient development of WCFs within the PROW. It would create uniform standards for small cell deployments within the PROW and hold WSPs accountable for submitting substantiating evidence as to the basis of the deployment and require technical verification as to the existing gap in service coverage, including establishing a standard permitting process. The draft ordinance would only create Chapter 23.83 with the intent to address PROW installation only. Given the abbreviated timeline of the possible passage of SB

649, Staff recommends that Chapter 23.82 be addressed and updated at a later date, which will focus on all WCFs, including macro cell sites.

Prepared by:



Andrew A. Gonzales
Senior Planner

Reviewed and approved:



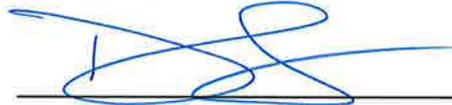
Luis Estevez
Director of Public Works

Reviewed and approved:



Joseph M. Lambert
Director of Development Services

Reviewed and approved:



Damien R. Arrula
City Administrator

Attachments:

1. Draft City Council Ordinance No. O-2017-XX (for discussion purposes)
2. PMC Chapter 23.82 – Wireless Communication Facilities (existing macro cell ordinance)
3. Draft Master License Agreement
4. Draft Right-Of-Way Wireless Communication Facility Submittal Forms

CITY OF PLACENTIA

WIRELESS IN RIGHT OF WAY

Chapter 23.83 - WIRELESS TELECOMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY

23.83.010 - Purpose.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City's public right-of-way and on city-owned property. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations.

23.83.020 - Definitions.

"Accessory equipment" means any equipment associated with the installation of a communication facility, including but not limited to cabling, generators, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

"Antenna" means that part of a communication facility designed to radiate or receive radio frequency signals and/or electromagnetic waves.

"Cellular" means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

"Code" means the Placentia Municipal Code.

"Collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signal or electromagnetic waves for communication purposes.

"Communication facility," "facility" or "facilities" or "wireless telecommunications facilities" mean any facility or facilities that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

Exceptions: The term "communication facility" does not apply to the following:

1. Government owned and operated telecommunications facilities.
2. Emergency medical care provider-owned and operated telecommunications facilities.

3. Mobile services providing public information coverage of news events of a temporary nature.
4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

"COW" means a "cell on wheels," which is a communication facility temporarily rolled in or temporarily installed.

"Director" means the Director of the Department of Development Services, or his or her designee, unless the entire application is for a purely ministerial approval, in which case "Director" means the Director of Public Works or his or her designee.

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

"Ground-mounted" means mounted to a telecommunications tower.

"Located within the public right-of-way" includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way.

"Modification" means a change to an existing communication facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. "Modification" does not include repair, replacement or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

"Monopole" means a structure composed of a pole or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm, monoeucalyptus, monocactus, and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).

"Mounted" means attached or supported.

"Pole" means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.

"Public right-of-way" shall mean a strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be or is presently occupied by a road, sidewalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, bikeway, pedestrian walkway, or other public use."

"Sensitive uses" means any residential use, public or private school, day care, playground, and retirement facility.

"Small cell" means a wireless telecommunications facility with antennas of no more than nine cubic feet in volume each and associated equipment with a cumulative volume no larger than 21 cubic feet on all poles and structures and 35 cubic feet on all non-pole structures or as explicitly defined by the state or federal laws, rules, and regulations. An associated electric meter, concealment, telecom demarcation box, ground-based enclosure, battery backup power system, grounding equipment, power transfer switch,

cutoff switch, cable, or conduit may be located outside the primary equipment enclosure and is not included in the calculation of the equipment volume. Volume is a measure of the exterior displacement, not the interior volume, of the enclosure. Any equipment that is concealed from public view in or behind an otherwise approved structure or concealment is not included in the volume calculations.

"Telecommunications tower" means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support communication facility antennas.

"Utility pole" means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

"Wireless telecommunications services" means the provision of services using a communication facility or a wireless telecommunications collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

23.83.030 - Applicability.

A. Applicability. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way and city-owned property as follows:

1. All facilities for which applications were not approved prior to _____, 2017 shall be subject to and comply with all provisions of this chapter.
2. All facilities for which applications were approved by the city prior to _____, 2017 shall not be required to obtain a new or amended permit until such time as a provision of this code so requires. Any communication facility that was lawfully constructed prior to _____, 2017 that does not comply with the standards, regulations and/or requirements of this division, shall be deemed a nonconforming use.
3. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance (Section 23.83.130 (Operation and Maintenance Standards)), cessation of use and abandonment (Section 23.83.170 (Cessation of Use or Abandonment)), removal and restoration (Section 23.83.180 (Removal and Restoration—Permit Expiration, Revocation or Abandonment)) of wireless telecommunications facilities and the prohibition of dangerous conditions or obstructions by such facilities (Section 23.83.150 (No Dangerous Condition or Obstructions Allowed)); provided, however, that if a condition of approval conflicts with a provision of this chapter, the condition of approval shall control until the permit is amended or revoked.

B. Exclusions. This chapter does not apply to the following:

1. Amateur radio facilities;
2. Over the air reception devices ("OTARD") antennas;

3. Facilities owned and operated by the city for its use;
4. Any entity legally entitled to an exemption pursuant to state or federal law or city-issued franchise agreement.

23.83.040 - Communication facility permit requirements (Discretionary and Ministerial).

A. General Rule - Major Wireless Communication Facilities Permit Required. All new wireless facilities or collocations or modifications to existing wireless facilities shall require a use permit subject to Planning Commission approval unless otherwise provided for in this chapter.

B. Minor Wireless Communication Facilities Permit.

1. Discretionary Permit. The Director may issue a special use permit for new facilities or collocations or modifications to existing facilities that meet all the following criteria:

- a. Consists of a small cell;
- b. The proposal is not located in any location identified in Section 23.83.200 (Location Restrictions); and
- b. The proposal complies with all applicable provisions in this chapter without need for an exception pursuant to Section 23.83.190 (Exceptions).

2. Referral to Commission. The Director may, in the Director's discretion, refer any application for a special use permit to the Planning Commission for approval, which approval shall be granted if the commission makes the findings required in Section 23.83.090.

C. Ministerial Wireless Telecommunications Facilities Permit. Notwithstanding Section 23.83.220 (State or Federal Law – Ministerial Requirements), the Director shall approve a ministerial wireless telecommunications permit if, all of the following apply:

1. The facility will comply with all applicable laws including, but not limited to:
 - a. the Americans with Disabilities Act;
 - b. all building and safety requirements, including those within the California Building Standards Code, as amended by the City of Placentia;
 - c. all requirements of the Federal Communications Commission (FCC), including requirements relating to radio-frequency (RF) emissions and limits on interference.
2. The proposed facility will be installed on either:
 - a. an existing pole that meets all of the following requirements:
 - i. The pole does not support a traffic control device (examples include stop signs and traffic signals);
 - ii. The facility will match the design of the pole; and
 - iii. If feasible, all equipment installed on the pole will be the same color as the pole; or
 - b. a new light pole that meets all of the following requirements:
 - i. the pole meets the City's design requirements for its own light poles;
 - ii. the pole is at least 90 feet away from any existing light pole; and

- iii. Unless requested otherwise by the city in writing, the light on the pole will be illuminated, operated, and maintained consistent with the operation of the other light poles in the city, and the full costs of illumination shall be fully borne by the applicant.
3. The applicant has provided technical data clearly demonstrating that there is a significant gap in the applicant's coverage and the facilities proposed are needed to fill that gap.
4. The city has issued all required wireless telecommunications encroachment permit(s) and entered into any required master license agreement.
5. All accessory equipment is housed in a container which is either (a) attached to the pole such that it does not protrude from the pole by more than four inches; is attached more than 10 feet above the ground; and is camouflaged to the extent feasible; or (b) installed underground.
6. Antennas must be:
 - a. No more than nine cubic feet in volume, whether in a single array or separate;
 - b. No more than four inches wider in diameter than the existing pole;
 - c. Mounted symmetrically on top of the pole;
 - d. The same color and as the pole; and
 - e. The same shape as the pole (which shape is typically cylindrical).

D. Master Deployment Plan Permit.

1. Notwithstanding any other provision of the Code to the contrary, any applicant that seeks approval for five or more wireless telecommunications facilities in the right of way and/or public property (including new facilities and collocations to existing facilities) may elect to submit an application for a master deployment plan permit subject to Planning Commission approval. Any master deployment plan shall expire 36 months after the effective date of the approval unless the Planning Commission establishes a shorter time period. The proposed facilities in a master deployment plan shall be reviewed together at the same time and shall be otherwise subject to the same requirements and procedures applicable to a major wireless communication facility permit. Only facilities in the right of way and/or public property may be covered by a master deployment plan. Any master deployment plan shall be required to enter into a master license agreement.

2. A master deployment plan permit shall be deemed an approval for all wireless telecommunications facilities within the plan; provided, however, that an individual encroachment permit shall be required for each communication facility built pursuant to the plan.

3. Each facility proposed to be constructed pursuant to a master deployment plan permit, shall be built in strict compliance with the approved plan. Any deviations or alterations from the approved master deployment plan for an individual communication facility shall be considered as through no master deployment plan permit had been issued and shall require either a major, minor, or ministerial wireless communication facilities permit, as applicable.

4. An applicant that proposes to amend a master deployment plan permit shall apply to the city and follow the same procedures as would otherwise be required to obtain a new master deployment plan permit.

E. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other city departments, state or federal agencies.

F. Eligible Applicants. Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise agreement or master license agreement with the city permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a communication facility or a communication collocation facility in the public right-of-way.

G. Speculative Equipment Prohibited. The city finds that the practice of "pre-approving" wireless equipment or other improvements that the applicant does not presently intend to install but may wish to install at some undetermined future time does not serve the public's best interest. The city shall not approve any equipment or other improvements in connection with a communication facility permit when the applicant does not actually and presently intend to install such equipment or construct such improvements. All improvements must be installed at the same time.

23.83.050 - Application for communication facility permit.

A. Application.

1. In addition to the information required of an applicant for a wireless communication facility encroachment permit or any other permit required by this code, each applicant requesting approval of the installation or modification of a communication facility in the public right-of-way and city property shall fully and completely submit to the city a written application on a form prepared by the Director.

2. No applicant seeking to install wireless antennas shall seek an encroachment permit for fiber or coaxial cable only. Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the right-of-way.

B. Application Contents – All Permits. The Director shall develop an application form and make it available to applicants upon request. The supplemental application form for any new communication facility installation in the public right-of-way (regardless of whether it is ministerial or discretionary) shall require the following information, in addition to any information required by 23.83.050.C (for discretionary permits) and all other information determined necessary by the Director:

1. Contact information. The name, address, email address, and telephone number of the applicant, owner and the operator of the proposed facility, and the date the application was received by the City.

2. Written authorization. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property, including written authorization from the Southern California Joint Pole Committee.

3. Engineering Plans. Detailed engineered improvement plans of the proposed facility and related report prepared by a professional engineer registered in the State of California documenting the following:

- a. Height, diameter and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least visible equipment within the particular technology the carrier chooses to deploy. A layout plan, section and elevation of the tower structure shall be included.
- b. A photograph and model name and number of each piece of equipment included.
- c. Power output and operating frequency for the proposed antenna.
- d. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
- e. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the city.

4. Justification for Facility. A justification study which includes the rationale for selecting the proposed use; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option.

5. Environmental. A completed environmental assessment.

6. Request for Exception. If the applicant requests an exception to the requirements of this chapter (in accordance with Section 95.05.190 (Exceptions)), the applicant shall provide all information and studies necessary for the city to evaluate that request.

7. Proof of RF Emission Compliance. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power "ERP") for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

8. FAA Documents. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the facility.

9. Fee. An application fee, and a deposit for a consultant's review as set forth in paragraph E of this section 23.83.050 in an amount set by resolution by the city council and in accordance with applicable law (e.g. California Government Code Section 50030).

10. RF Exposure Checklist. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety", as it may be amended from time to time, to determine whether the facility will be "categorically excluded" as that term is used by the FCC.

11. Site Plans. Site plan(s) to scale, specifying and depicting the exact proposed location of the pole, pole diameter, antennas, accessory equipment, access or utility easements, landscaped areas, existing utilities, adjacent land uses, and showing compliance with Section 23.83.080 (Requirements for Facilities within the Public Right-of-Way).

12. Traffic Control. If an encroachment permit is required, then the encroachment permit procedures shall control whether (or not) a traffic control plan is required. If no encroachment permit is required, then a traffic control plan is required if either (a) the proposed installation is on any street in a non-residential zone or (b) the applicant seeks to use large equipment (e.g. crane) and the Director decides to require a traffic control plan.

13. Other Information. Any other information and/or studies determined necessary by the Director may be required.

C. Additional Application Contents – Discretionary Permits. In addition to providing all materials required in subsection B of this section 95.05.050, applications for discretionary permits shall also provide the following:

1. Owner Authorization. If the applicant is an agent, the applicant shall provide a duly executed letter of authorization from the owner of the facility. If the owner will not directly provide wireless telecommunications services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services.

2. Written Description. A full written description of the proposed facility and its purpose.

3. Mock Up and Sign. Proof that a temporary mock-up of the facility and sign has been installed at the proposed location for a period of at least 30 calendar days which facility roughly replicates for the public the proposed height and bulk of the proposed structure. If the Director finds the applicant's cost of complying with this requirement would greatly outweigh the value of such compliance, then the Director may waive the requirement that the applicant install the mock up (but not the installation of the sign, which still requires an encroachment permit).

a. Applicant shall obtain an encroachment permit before installing a temporary mock-up and a sign, and must remove the temporary mock-up and sign within five calendar days of receiving a written notice to remove from the Director.

b. The mock-up and sign shall demonstrate the height and mass of the facility, including all interconnecting cables. The applicant shall not be entitled to install the facility it intends to install permanently. The mock-up may consist of story poles or the like.

c. The mock-up be accompanied by a sign that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the telephone number of the Public Works Department.

d. The applicant shall be required to follow any other city practices or processes relevant to the installation of a mock-up and sign as may be provided in a publicly accessible form or document.

e. After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with this code.

4. Elevations. Scaled elevation plans of proposed poles, antennas, accessory equipment, and related landscaping and screening.

5. Noise Study. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed communication facility will comply with this code including section 95.05.080(A)(16)(b). The Director may waive the requirement for a noise study if the Director finds the cost of creating the study would greatly outweigh the value of receipt of such study.

6. Propagation Maps. A written description identifying the geographic service area for the subject installation including geographic and propagation maps, that identifies the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities, as well as the estimated number of potentially affected uses in the geographic service area. Regardless of whether a master deployment plan permit is sought, the applicant shall depict all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application. Longer range conceptual plans for a period of five years shall also be provided, if available.

a. In the event the applicant seeks to install a communication facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites;

b. If applicant seeks to address service capacity concerns, a written explanation identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.

7. CPCN. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

8. Visual Depiction. Accurate visual impact analysis showing the maximum silhouette, color and finish palette and proposed screening for the facility, including scaled photo simulations from at least three different angles.

9. Landscape Plan. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.

D. Application Contents. Modification of Existing Facility. The content of the application form for a modification to an existing facility shall be determined by the Director, and shall include but not be limited to the requirements listed in Section 23.83.050(B) and (C) unless prohibited by state or federal law.

E. Effect of State or Federal Law Change. If a subsequent state or federal law prohibits the collection of any information required by Section 23.83.050(B) or (C), the Director is authorized to omit, modify or add to that request from the City's application form with the written approval of the city attorney, which approval shall be a public record.

F. Independent Expert. The Director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a communication facility. The review is intended to be a review of technical aspects of the proposed communication facility and shall address any or all of the following:

1. Compliance with applicable radio frequency emission standards;
2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
3. The accuracy and completeness of submissions;
4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues identified by the consultant or designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. No permit shall be issued to any applicant which has not fully reimbursed the city for the consultant's cost.

23.83.060 - Review procedure.

A. Pre-submittal Conference. Prior to application submittal, the city strongly encourages all applicants to schedule and attend a pre-submittal conference with Public Works Department staff to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Public Works Department staff will endeavor to provide applicants with an appointment within approximately five business days after receipt of a written request.

B. Application Submittal Appointment. All applications must be submitted to the city at a pre-scheduled appointment. Applicants may submit one application per appointment but may schedule successive

appointments for multiple applications whenever feasible as determined by the city. City staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request.

C. Notice and Decisions. The provisions in this section describe the procedures for approval and any required notice and public hearings for an application.

1. When Hearings Required.

a. Discretionary Decisions. Any permit application under this chapter subject to Planning Commission or the Director's discretionary approval requires notice and a public hearing in accordance with code Section 23.87.030 (Public Hearings and Public Notices).

b. Ministerial Decisions. The Director may approve or conditionally approve an application for a ministerial application without a public hearing and without issuing prior notice of the decision. For denials see subsection 3, below.

2. Notice of decisions

a. Planning Commission Decision of Approval. The Planning Commission may approve, or conditionally approve, an application only after the commission makes the findings required in Section 23.83.090 (Findings).

b. Administrative Approvals. The Director may approve, or conditionally approve, an application only after it makes the findings required in Section 23.83.090 (Findings). Within five days after the Director approves an application under this chapter, the Director is directed to place notice of the decision in the U.S. mail, ~~consistent with Code section 20.09.C (Effective Date of Land Use Decisions).~~

3. Denials.

a. All final decisions made pursuant to this chapter shall be in writing and based on substantial evidence in the written administrative record. The written decision shall include the reasons for the decision.

b. Administrative Denials. If the Director determines that any application submitted for a ministerial or discretionary wireless communication facilities permit does not meet code requirements, the Director shall notify the applicant of said finding in writing, and the application shall be denied effective on the date of issuance of said notice, unless, within 10 days of the issuance of the written notice, the applicant requests the application be converted to an application for a major wireless facilities permit application. The Planning Commission shall thereafter hear the application only after a complete application for the major wireless communication facilities permit has been submitted.

4. Notice of Shot Clock Expiration.

a. Notification by Applicant. The city acknowledges there are federal and state shot clocks which may be applicable to a proposed communication facility. That is, federal and state law provide time periods in which the city must approve or deny a proposed communication facility. As such, the applicant is required to provide the city written notice of the expiration of any shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than 20 days prior to the

expiration, and until the applicant has provided such notice, the city shall be entitled to conclude that the applicant has consented to the delay, and that the delay is reasonable.

b. Tolling Agreements. The Director is authorized to enter into an agreement to toll the relevant shot clock requirements, if the form of the agreement meets the approval of the City Attorney.

D. Appeals. Any aggrieved person or entity may appeal a decision by the Director or the Planning Commission.

23.83.070. (Reserved)

23.83.080 - Requirements for facilities within the public right-of-way.

A. Design and Development Standards. All wireless telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines.

a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities to ensure that the facility is as visually screened as feasible, to prevent the facility from dominating the surroundings.

b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

c. To the extent feasible, facilities shall be located such that views from a residential structure are not significantly impaired.

2. [Reserved.]

3. Traffic Safety. All facilities shall be designed and located in such a manner to avoid adverse impacts on traffic safety. Among other things, when determining traffic safety impacts, the City will consider the views of the Manual for Uniform Traffic Control Devices (MUTCD) and whether the proposed installation location is high enough and far enough away from the street to minimize the risk of high profile vehicles colliding with the installation.

4. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.

5. Equipment. The applicant shall use the least visible equipment possible. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible.

6. Poles.

a. Facilities shall be located consistent with Section 23.83.200 (Location Restrictions) unless an exception pursuant to Section 23.83.190 (Exceptions) is granted.

b. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited. (For exceptions see subparagraph (6)(h) below and sections 23.83.190 (Exceptions) and 23.83.220 (State or Federal Law).)

c. Utility Poles. The maximum height of any antenna shall not exceed 48 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 20 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.

d. Light Poles. The maximum height of any antenna shall not exceed four feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be on the pole, and not on any mast arm.

e. Replacement Poles. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.

f. Pole mounted equipment, exclusive of antennas, shall be restricted to the smallest possible dimensions and shall not exceed nine cubic feet in dimension.

g. [Reserved.]

h. An exception shall be required to place a new pole in the public right-of-way. If an exception is granted for placement of new poles in the right-of-way:

i. Appearance. Such new poles shall be designed to resemble existing poles in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.

ii. Minimum Distance Between Poles. Such new poles that are not replacement poles shall be located at least 90 linear feet from any existing pole to the extent feasible.

iii. Analysis. A new pole justification analysis shall be submitted to demonstrate why existing infrastructure cannot be utilized and demonstrating the new pole is the least intrusive means possible including a demonstration that the new pole is designed to be the minimum functional height and width required to support the proposed facility.

i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent feasible. For all wooden poles wherein interior installation is infeasible, conduit and cables attached to the exterior of poles shall be mounted flush thereto and painted to match the pole.

7. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

8. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

9. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or safety hazards to pedestrians and motorists so as not to obstruct the intersection sight distance.

10. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.

11. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inches from the curb and gutter flow line.

12. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:

a. Unless city staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception shall be required to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible. (See section 23.83.040.C, authorizing certain above ground installations on existing poles).

b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this chapter.

c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes facing it.

13. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.

14. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.

15. Lighting.

a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.

b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.

c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.

d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.

e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.

f. Nothing in this subsection 15 is intended to prevent the installation of wireless facilities camouflaged on or within light poles if the light pole meet the City's design requirements for its own light poles.

16. Noise.

a. Backup generators shall only be operated during periods of power outages, and shall be tested only between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 6:00 p.m. on Saturday, and shall be prohibited at any time on Sunday and on all federal holidays, unless other hours are approved by the Director upon receipt of evidence that an emergency exists which would constitute a hazard to persons or property.

b. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

17. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The Director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

18. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a communication facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

19. The installation and construction approved by a communication facility permit shall begin within one year after its approval or it will expire without further action by the city.

B. Conditions of Approval. In addition to compliance with the design and development standards outlined in this section, all facilities shall be subject to the following conditions of approval (approval may be by operation of law), as well as any modification of these conditions or additional conditions of approval deemed necessary by the approving party:

1. As Built Drawings. The permittee shall submit an as built drawing within 90 days after installation of the facility. As-builts shall be in an electronic format acceptable to the city which can be linked to the City's GIS.

2. Contact Information. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. The permittee shall notify the city of any changes to the information submitted within 30 days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.

b. The legal status of the owner of the communication facility.

3. Assignment. The permittee shall notify the city in writing at least 90 days prior to any transfer or assignment of the permit. The written notice required in this section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. The Director may require the transferor and/or the transferee to submit any materials or documentation necessary to determine that the proposed transfer complies with the existing permit and all its conditions of approval, if any. Such materials or documentation may include, but shall not be limited to: federal, state and/or local approvals, licenses, certificates or franchise agreements; statements; photographs; site plans and/or as-built drawings; and/or an analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission. Noncompliance with the permit and all its conditions of approval, if any, or failure to submit the materials required by the Director shall be a cause for the city to revoke the applicable permits pursuant to and following the procedure set on in Section 95.05.180 (Removal and Restoration—Permit Expiration, Revocation or Abandonment).

4. Signs. At all times, all required notices and/or signs shall be posted on the site as required by the Federal Communications Commission, California Public Utilities Commission, any applicable licenses or laws, and as approved by the city. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.

5. Security. Permittee shall pay for and provide a performance bond or other form of security approved by the city attorney's office, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and this code. The security instrument coverage shall

include, but not be limited to, removal of the facility. (The amount of the security instrument shall be calculated by the applicant in its submittal documents in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.) Before issuance of any building permit, permittee must submit said security instrument.

6. Noise Complaints. If a nearby property owner or occupant registers a noise complaint and city forwards the same to the permittee (personally identifiable information may be redacted), the permittee shall have ten business days to file a written response regarding the complaint which includes any applicable remedial measures. If the city determines the complaint is valid and the applicant has not taken any steps to minimize the noise, the city may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant if the site is found in violation of this chapter. The matter shall be reviewed by the Director. If the Director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the Director may impose conditions on the project to achieve said objective.

7. Permit Expiration. A condition setting forth the permit expiration date in accordance with Section 23.83.160 (Permit Expiration) shall be included in the conditions of approval.

8. Additional conditions. The communication facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the Director for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any adjacent property. The city may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the underlying permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the city by the permittee.

9. No Permit Transfer. The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by Section 95.05.080(B)(5) (Security).

10. Property Rights. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the city shall be moved to accommodate a communication facility unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the city with documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.

11. Liability. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.

12. Repair Obligations. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation, use, and/or maintenance of a communication facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. If the permittee fails to complete such repair within the number of days stated on a written notice by the City Engineer. Such time period for correction shall be based on the facts and circumstances, danger to the community and severity of the disrepair. Should the permittee not make said correction within the time period allotted the City Engineer shall cause such repair to be completed at permittee's sole cost and expense.

13. Drip Line. No facility shall be permitted to be installed in the drip line of any tree in the right-of-way.

14. Insurance. The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of public liability insurance, with minimum limits of \$2,000,000 for each occurrence and \$5,000,000 in the aggregate, that fully protects the city from claims and suits for bodily injury and property damage. The insurance must name the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the city, except for cancellation due to nonpayment of premium. The insurance provided by permittee shall be primary to any coverage available to the city, and any insurance or self-insurance maintained by the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers shall be excess of permittee's insurance and shall not contribute with it. The policies of insurance required by this permit shall include provisions for waiver of subrogation. In accepting the benefits of this permit, permittee hereby waives all rights of subrogation against the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers. The insurance must afford coverage for the permittee's and the wireless provider's use, operation and activity, vehicles, equipment, facility, representatives, agents and employees, as determined by the City's Risk Manager. Before issuance of any building permit for the facility, the permittee shall furnish the city risk manager certificates of insurance and endorsements, in the form satisfactory to the city attorney or the risk manager, evidencing the coverage required by the city.

15. Indemnification. To the fullest extent permitted by law, permittee and any contractors or subcontractors working on its behalf agree to indemnify the City of Placentia, its officers, employees, agents and elected and appointed boards (hereinafter "City Indemnitees") for any loss, claim, demand, cause of action, cost, expense, damage, obligation or liability which arises out of or is in any way connected with the installation, use, and maintenance of the communication facility, including any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of permittee, its contractors or subcontractors, and regardless of any acts, omissions or negligence

(whether active or passive) of any person or entity indemnified hereunder. At their own expense, permittee and, as applicable, any contractors or subcontractors working on its behalf, shall defend any suit, claim or action against the City Indemnitees founded upon such loss, claim, demand, cause of action, cost, expense, damage, obligation or liability. Permittee shall ensure that the contract of any contractor or subcontractor working under this permit contain an indemnity agreement, requiring the contractor or subcontractor to indemnify and defend the City Indemnitees pursuant the terms set forth above. Permittee shall indemnify the City Indemnitees, and save them harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other provision or covenant of this section.

16. Hold Harmless. Additionally, to the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the city for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the communication facility, or to any work done by or use of the public right-of-way by the permittee, owner or operator of the communication facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers.

17. Cabinet Removal. Should the utility company servicing the facility with electrical service not require the use of an above ground meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within 90 days of such service being offered and reasonably restore the area to its prior condition. An extension may be granted if circumstances arise outside of the control of the permittee.

18. Relocation. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to city, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above ground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency, (ii) any abandonment of any street, sidewalk or other public facility, (iii) any change of grade, alignment or width of any street, sidewalk or other public facility, or (iv) a determination by the Director that the communication facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way. Such modification, removal, or relocation of the facility shall be completed within 90 days of notification by city unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the Code including applicable notice and hearing procedures. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Code allow. If the facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances including those of immediate or imminent threat to the public's health and safety, the

city may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

19. Written Approval of Conditions. Permittee shall agree in writing that the permittee is aware of, and agrees to abide by, all conditions of approval imposed by the communication facility permit within 30 days of permit issuance. The permit shall be void and of no force or effect unless such written consent is received by the city within said 30-day period.

20. Right of Way Agreement. Prior to the issuance of any encroachment permit, permittee may be required to enter into a right-of-way agreement with the city in accordance with the City's past practice.

21. "Permittee" shall include the applicant and all successors in interest to this permit.

23.83.090 – Findings for Discretionary Permits.

No discretionary permit shall be granted for a communication facility unless the approving party makes all of the following findings:

- A. The proposed facility has been designed and located in compliance with all applicable provisions of the Code, including Chapter 23.83.
- B. Either (1) the design and location for the proposed installation is least intrusive on the purposes of this chapter; or (2) there is no feasible alternative design or location that would be less intrusive on the purposes of this chapter.

23.83.100 - Reserved.

23.83.110 - Nonexclusive grant.

No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

23.83.120 - Emergency deployment.

A COW shall be permitted for the duration of an emergency declared by the city or at the discretion of the Director.

23.83.130 - Operation and maintenance standards.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards:

- A. Repairs. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent within 48 hours:
 - 1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
 - 2. After permittee, owner, operator or any designated maintenance agent receives notification from the city.

- B. Contact Information. Each permittee of a communication facility shall provide the Director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven days of any change.
- C. Good Condition. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 - 1. General dirt and grease;
 - 2. Chipped, faded, peeling, and cracked paint;
 - 3. Rust and corrosion;
 - 4. Cracks, dents, and discoloration;
 - 5. Missing, discolored or damaged artificial foliage or other camouflage;
 - 6. Graffiti, bills, stickers, advertisements, litter and debris;
 - 7. Broken and misshapen structural parts; and
 - 8. Any damage from any cause.
- D. Landscaping. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Director.
- E. Replacement. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- F. Routine Inspections. Each facility shall be operated and maintained to comply at all conditions of approval. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the same and the standards set forth in this chapter.

23.83.140 - Reserved.

23.83.150 - No dangerous condition or obstructions allowed.

No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

23.83.160 - Permit expiration.

A. 10 Year Expiration. Unless Government Code Section 65964, as it may be amended, authorizes the city to issue a permit with a shorter term, a permit for any communication facility shall be valid for a period of ten years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten years from the date of issuance, such permit shall automatically expire.

B. Renewal. A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the City's current code requirements for wireless telecommunications facilities.

23.83.170 - Cessation of use or abandonment.

A. Abandonment. A communication facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days unless the permittee has obtained prior written approval from the Director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

B. Notice of Abandonment. The operator of a facility shall notify the city in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the Director of any discontinuation of operations of 30 days or more.

C. Remedies. Failure to inform the Director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:

1. Litigation;
2. Revocation or modification of the permit;
3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
4. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
5. Any other remedies permitted under this code.

23.83.180 - Removal and restoration—Permit expiration, revocation or abandonment.

A. Removal at Permit Termination. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its communication facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city.

B. Failure to Remove. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within 90 days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the Director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this section shall be grounds for:

1. Prosecution;
2. Acting on any security instrument required by this chapter or conditions of approval of permit;

3. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or

4. Any other remedies permitted under this code.

C. Summary Removal. If the Director or City Engineer determines that the condition or placement of a communication facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the Director or City Engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.

D. Removal of Facilities by City. If the city removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removed by the city due to exigent circumstances.

23.83.190 - Exceptions.

A. Federal Law – Planning Commission Exception. The City Council recognizes that federal law prohibits a permit denial when it would effectively prohibit the provision of personal wireless services and the applicant proposes the least intrusive means to provide such services. The City Council finds that, due to wide variation among wireless facilities, technical service objectives and changed circumstances over time, a limited exemption for proposals in which strict compliance with this chapter would effectively prohibit personal wireless services serves the public interest. The City Council further finds that circumstances in which an effective prohibition may occur are extremely difficult to discern, and that specified findings to guide the analysis promotes clarity and the City's legitimate interest in well-planned wireless facilities deployment. Therefore, if any applicant demonstrates that strict compliance with any provision in this chapter, as applied to a specific proposed personal wireless services facility, would effectively prohibit the provision of personal wireless services, the Planning Commission may grant a limited, one-time exemption from strict compliance with the requirements of this Code subject to the provisions in this section.

B. Required Findings. The Planning Commission shall not grant any exception unless the applicant demonstrates by a preponderance of the evidence all the following:

1. The proposed wireless facility qualifies as a "personal wireless services facility" as defined in United States Code, Title 47, section 332(c)(7)(C)(ii);

2. The applicant has provided the City with a clearly defined technical service objective and a clearly defined potential site search area;

3. The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the City or otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or potentially available; and

4. The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable technical service objectives.

C. Scope. The Planning Commission shall limit its exemption to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its reasonable technical service objectives. The Planning Commission may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

D. Independent Consultant. The City shall have the right to hire, at the applicant's expense, an independent consultant to evaluate issues raised by the exception and to submit recommendations and evidence in response to the application.

23.83.200 - Location restrictions.

Wireless telecommunications facilities are strongly disfavored in certain areas. Therefore, the following locations are permitted when an exception has been granted pursuant to Section 23.83.190 (Exceptions):

- A. Public right-of-way of local streets as identified in the General Plan if within the residential zones.
- B. Public right-of-way if mounted to a new pole that is not replacing an existing pole in an otherwise permitted location.

23.83.210 - Effect on other ordinances.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of this code. In the event of a conflict between any provision of this chapter and other sections of this code, this chapter shall control.

23.83.220 - State or Federal Law – Ministerial Requirements.

A. Ministerial permitting.

1. If it is determined by the City Attorney that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, such requirement shall be deemed severable and all remaining regulations shall remain in full force and effect. Such a determination by the City Attorney shall be in writing with citations to legal authority and shall be a public record. For those facilities, in lieu of a use permit or a special use permit, a ministerial administrative permit shall be required prior to installation or modification of a communication facility, and all provisions of this chapter that would otherwise apply to the discretionary permit shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the Director rather than as a discretionary

permit. Any conditions of approval set forth in this provision or deemed necessary by the Director shall be imposed and administered as reasonable time, place and manner rules.

2. Notwithstanding the foregoing subsection (1) of this subsection (A), the determination that would otherwise be made by the City Attorney may be made by the Director if the Director's determination is made upon a form approved by the City Attorney which form is designed to ensure compliance with the requirements of subsection (1).

B. Changed law. If subsequent to the issuance of the written determination pursuant to subsection A above, and before the issuance of a wireless telecommunications permit, the city attorney determines that the law has changed and that discretionary permitting is permissible, the City Attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The city attorney's written determination shall be a public record.

C. Enforceable Laws. All installations permitted pursuant to this chapter shall comply with all federal and state laws including but not limited to the American with Disabilities Act, and the California Building Standards Code.

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Placentia Municipal Code

Title 23 ZONING

Chapter 23.82 WIRELESS COMMUNICATION FACILITIES

23.82.010 Purpose.

The purpose of this chapter is to control the installation of wireless communication facilities. It is recognized that unrestricted installations are contrary to the city's efforts to stabilize economic and social aspects of neighborhood environments and the city's efforts to promote safety and aesthetic considerations, family environments and a basic residential character within the city. It is the intent of this chapter to permit wireless communication facilities where they can be installed without creating an adverse economic, safety and aesthetic impact on neighboring property owners and the overall community. (Ord. 96-O-110 § 1, 1996)

23.82.020 Definitions.

For the purpose of the provisions regulating wireless communication facilities, the following words and phrases shall be construed to have the meanings herein set forth in this section, unless it is apparent from the context that a different meaning is intended:

"Antenna" means a device used in communications which transmits or receives radio signals.

Antenna, Dish. "Dish antenna" means a dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called "microwave antenna" or "microwave dish antenna."

Antenna, Panel. "Panel antenna" means an antenna or array of antennas that are flat and rectangular and designed to concentrate a radio signal in a particular area. Also referred to as a "directional antenna."

Antenna, Whip. "Whip antenna" means an antenna that transmits signals in three hundred sixty (360) degrees. They are typically cylindrical in shape and are less than six (6) inches in diameter and measure up to eighteen (18) feet in height. Also called omnidirectional, stick or pipe antennas.

"Building-mounted" means mounted to the top or side of a building or to other structures.

"Base transceiver station (BTS)" means a ground-mounted metal cabinet that contains electronic radio equipment required by wireless communication facilities.

"California Public Utilities Commission (CPUC)" means the governmental agency which regulates the terms and conditions of public utilities in the state of California.

"Cell sites" means a geographical area with a radius of two (2) to eight (8) miles that contains both transmitting and receiving antennas.

"Cellular" means an analog or digital wireless communication technology that is based on systems of interconnected neighboring cell sites, each of which contains antennas.

"Co-location" means the locating of wireless communications equipment from more than one provider on a single building-mounted, roof-mounted or ground-mounted wireless communication facility.

"Electromagnetic field" means the local electric and magnetic fields caused by voltage and the flow of electricity that envelop the space surrounding an electrical conductor.

"Enhanced specialized mobile radio" means a digital wireless communication technology that specializes in providing dispatching services.

"Flower tower" means a structure that integrates a monopole into a light pole or other utility pole.

"Ground-mounted" means mounted to a pole, monopole, lattice tower or other freestanding structure specifically constructed for the purpose of supporting such antennas.

"Height" means the distance from the existing grade at the base of the antenna or, in the case of a roof-mounted antenna, from the grade at the exterior base of the building to the highest point of the antenna and any associated support structure when fully extended.

"Hertz" means a unit for expressing frequency which is the number of times a wave-like radio signal changes from maximum positive to maximum negative charge per second. 1 Hertz = 1 cycle per second; 1 kilohertz (kHz) = 1,000 Hz; 1 megahertz (MHz) = 1,000 kHz or 1,000,000 Hz; 1 gigahertz (GHz) = 1,000 MHz or 1 million kHz or 1 billion Hz.

"Lattice tower" means a structure with three or four steel support legs that supports a variety of antennas. These towers generally range in height from sixty (60) to two hundred (200) feet and are constructed in areas where great height is needed, microwave antennas are required, or where the weather demands a more structurally sound design.

"Major wireless communication facility" means a wireless communication facility that:

- (A) Is ground-mounted on property not within the public right-of-way; or
- (B) Is ground-mounted within the public right-of-way but does not qualify as a microcell facility; or
- (C) Is building or roof-mounted and exceeds ten feet in height and/or exceeds the maximum height permitted in the zoning district in which the facility is located.

"Microcell" means a wireless communication facility that:

- (A) Contains a maximum of four (4) whip or panel antennas where each whip antenna does not exceed four (4) inches in diameter and four (4) feet in length and each panel antenna does not exceed two (2) square feet in surface area;
- (B) Contains a maximum of one microwave antennae no larger than ten (10) square feet in surface area;
- (C) Has an array of antennas less than ten (10) feet in height;
- (D) Is building or roof-mounted or, if within the public right-of-way, is located on top of a light pole or telephone pole or a metal or precast concrete monopole (similar in design to a street light pole or street tree);
- (E) Has a total height, if building- or roof-mounted, that does not exceed the maximum height

permitted in the applicable zoning district in which the facility is located.

"Minor wireless communication facility" means a wireless communication facility that:

- (A) Consists of a microcell; or
- (B) Is building- or roof-mounted and is less than ten (10) feet in height and complies with the height requirements of Section 23.82.060.

"Monopole" means a structure composed of a single spire used to support antennas and related equipment.

"Personal communication services" means a digital wireless communication technology that has the capacity for multiple communication services and will provide a system in which calls will be routed to individuals rather than places, regardless of location.

"Radiofrequency radiation" means electromagnetic radiation in the portion of the spectrum from three (3) kilohertz to three hundred (300) gigahertz, and it consists of waves of electric and magnetic energy moving together through space radiating from a transmitting device to a receiving device to achieve wireless communication.

"Roof-mounted" means mounted above the eave line of a building.

"Safety standards" means the most current adopted rules for human exposure limits for radio frequency (RF) radiation adopted by the Federal Communications Commission (FCC).

"Stealth facility" means any communication facility which is designed to blend into the surrounding environment, typically one that is architecturally integrated into a building or other concealing structure. Also referred to as "concealed antennas."

"Wireless communication facility" means a structure that supports antennas, microwave dishes and other related equipment that sends and/or receives radiofrequency signals. (Ord. O-2009-07 § 3, 2009; Ord. 96-O-110 § 1, 1996)

23.82.030 Applicability.

(a) All wireless communication facilities for which applications were approved and/or building permits issued by the development services department on or prior to the adoption date of the ordinance codified in this chapter shall be exempt from the regulations and guidelines contained in this chapter.

(b) All wireless communication facilities for which applications were received by the development services department but not approved prior to the adoption date of the ordinance codified in this chapter, shall be required to comply with the regulations and guidelines contained in this chapter. (Ord. 96-O-110 § 1, 1996)

23.82.040 Development standards.

(a) **Permit Required.** No wireless communication facility shall be installed without first obtaining a building permit (for major wireless communication facilities, refer to Section 23.82.070).

(b) **Screening Guidelines.**

(1) Wireless communication facilities shall have subdued colors and nonreflective materials

which blend with materials and colors in the surrounding area.

(2) Wireless communication facilities shall be located in areas that will minimize their aesthetic visual impact on the surrounding community. Ground-mounted facilities shall be located only in proximity to existing aboveground utilities, such as electrical towers or utility poles (which are not scheduled for eventual undergrounding), light poles or trees of comparable height. For building-mounted facilities, all screening shall be compatible with the existing architecture in color, texture and type of material of the building.

(c) Site Selection Guidelines. Preferred method, in order of priority, of mounting an antenna is as follows:

- (1) Mount to an existing structure on the facade, roof or co-located tower;
- (2) Mount to an existing steel or concrete pole (such as a light standard);
- (3) Mount to a new steel or concrete monopole;
- (4) Mount to a commercial sign.

(d) Additional Guidelines. Wireless communication facilities shall not bear any signs or advertising devices other than certification, warning or other required seals or signage.

(1) All accessory equipment associated with the operation of the wireless communication facility shall be located within a building, enclosure or underground vault that complies with the development standards of the zoning district in which the accessory equipment is located.

(2) Within ninety (90) days of commencement of operations, applicants for the wireless communication facilities shall be required to provide a preliminary report and field report prepared by a qualified engineer that shows the operation of the facility is in conformance with the standard established by the American National Standards Institute (ANSI) and Institute of Electrical and Electronics Engineers (IEEE) for safe human exposure to electromagnetic fields (EMF) and radio frequency radiation (RFR).

(3) As part of the application process, applicants for wireless communication facilities shall be required to provide written documentation demonstrating a good faith effort in locating facilities in accordance with the site selection provisions. (Ord. 96-O-110 § 1, 1996)

23.82.050 Location.

(a) No major or minor wireless communication facility shall be established:

(1) Within any residentially zoned or residentially designated areas of the specific plans, except upon public property that is not residential in character, including city parkland, school district property, or other public property located in a residential zoning district and provided that such communication facility is designed so as to blend in with the existing environment; or

(2) On any property that contains any legally-established residential use; or

(3) Within the Santa Fe-Commercial (SF-C) or Town Center (T-C) zoning district; or

(4) On any property that is designated as "Historic" by the city council.

(b) Providers requesting permission to establish wireless communication facilities in the city are encouraged to find sites that are separated from residential areas to the greatest extent feasible. There shall be a minimum one hundred (100) feet of horizontal distance between any residential structure and a free-standing wireless communication facility.

(c) Major wireless communication facilities shall be encouraged to locate on properties which are located within the manufacturing (M) and commercial-manufacturing (C-M) districts. (Ord. O-2009-07 § 3, 2009; Ord. 96-O-110 § 1, 1996)

23.82.060 Height.

No wireless communication facility shall exceed the maximum height permitted in the applicable zoning district in which the facility is located, unless the director of development services determines that it is necessary for portions of the wireless communication facility to extend beyond the maximum permitted height in order to effectively receive and send transmitted communication signals or to stealth and/or blend the facility in with the existing environment. (Ord. O-2009-07 § 3, 2009; Ord. 96-O-110 § 1, 1996)

23.82.070 Use permit.

(a) All major wireless communication facilities established in the city shall receive planning commission approval of a use permit pursuant to Chapter 23.87.

(b) Monitoring Program. Each major wireless communication facility approved shall be subject to review by the planning commission at the end of five (5) years from the date of approval. The planning commission, as applicable, may modify existing conditions or impose new conditions to protect the public health, safety and general welfare.

(c) Expiration. Each major wireless communication facility shall be approved for a period not to exceed the term of the lease. A copy of the lease shall be submitted to the director of development services prior to the issuance of a building permit for the public wireless communication facility. If the lease is extended or terminated, notice and evidence thereof shall be provided to the director of development services. Upon termination or expiration of the lease, the use permit for the facility shall become null and void and the facility removed. (Ord. 96-O-110 § 1, 1996)

23.82.080 Special use permit.

(a) All minor wireless communication facilities meeting the definitions established in this chapter shall be approved subject to obtaining a building permit from the department of development services and/or an encroachment permit from the department of public works if located within a public right-of-way.

(b) If a provider proposes to exceed the defined standards, a special use permit shall be required, pursuant to the following requirements:

(1) An application shall be submitted to the city planning division for review by the director development services;

(2) The application shall include: plans; a documented reason why the requirements of this chapter are being exceeded; the latest fee prescribed by city council resolution; and all other requirements listed in the wireless communications facilities submittal requirements, on file with the planning division;

(3) A decision date shall be established a minimum of twenty-one (21) days from the date of accepting the completed application. The decision on the application shall be made by the director of development services;

(4) Not less than ten (10) days prior to the decision on the application, notice of the proposed installation of the wireless communication facility shall be mailed to all property owners as shown on the latest equalized assessment roll within a one hundred (100) foot radius of the exterior boundaries of the subject property;

(5) A decision on the special use permit shall be made without a public hearing, unless one (1) is requested either by the applicant, another affected person(s), or by the director of development services;

(6) All decisions of the director of development services may be appealed to the planning commission. (Ord. O-2007-07 § 41, 2007; Ord. 96-O-110 § 1, 1996)

23.82.090 Abandonment.

(a) Wireless communication facilities that were lawfully installed and are no longer operating shall be removed from the property no later than ninety (90) days after the discontinuation of use. Such removal shall be in accordance with proper health and safety regulations.

(b) A written notice of the determination of abandonment shall be sent or delivered to operator of the wireless communication facility. The operator shall have thirty (30) days to remove the facility or provide the director of development services with evidence that the use has not been discontinued. All facilities not removed within the required thirty (30) day period shall be in violation of the code and operators of the facility and the owners of the property shall be subject to penalties for violations under the enforcement and penalties provisions of this chapter. (Ord. 96-O-110 § 1, 1996)

23.82.100 Violation—Misdemeanors.

Operators violating any of the provisions of this chapter are guilty of a misdemeanor. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. The penalty for a misdemeanor is a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment. (Ord. 96-O-110 § 1, 1996)

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COMMUNICATIONS MASTER SITE LICENSE AGREEMENT
BETWEEN CITY OF PLACENTIA AND

[REDACTED]

This Communications Site License Agreement (“License”) is made and entered into this [REDACTED], 2017 by and between the City of Placentia (“City”), a California municipal corporation and charter city and [REDACTED] (hereinafter referred to as “Licensee”). City and Licensee are sometimes collectively referred to herein as the “Parties.”

RECITALS

- A. City owns various street lights and associated poles and other infrastructure located on public property and in the various public right-of-ways within the City of Placentia (“PROW”).
- B. City desires to allow Licensee to replace a maximum of [REDACTED] of City’s existing poles with a new streetlight poles, which new streetlight poles are further described in Section 4.2 (“Streetlight Poles”) and which will support certain wireless facilities. The locations of the Streetlight Poles are shown on Exhibit “A”.
- C. Licensee desires to use that space on the Streetlight Poles depicted in Exhibit “B” (the “Pole Space” or “License Area”) to erect, maintain, and operate those communications facilities, utility lines, transmission lines, electronic equipment, transmitting and receiving antennas, supporting equipment and structures thereto, as shown in the site plan attached hereto as Exhibit “B” (“Pole Space Facilities”).
- D. Licensee desires to pay to City a license fee for use of the Pole Space to erect, maintain, and operate the Pole Space Facilities.
- E. For each Streetlight Pole, Licensee further desires to use: (1) ground space measuring approximately 28 square feet of the PROW (“Ground Space”) depicted in Exhibit “B” within which Licensee will erect, maintain, and operate those communications facilities, utility lines, transmission lines, electronic equipment, supporting equipment and structures as shown in the site plans attached hereto as Exhibit “B” (“Support Facilities”) (the Pole Space Facilities and Support Facilities are collectively referred to herein as the “Licensee Facilities”), as well as the Streetlight Pole; and (2) such other property as is necessary for access and utility easements, if any, all at Licensee's sole cost and expense.
- F. The Support Facilities shall be located within the PROW, and are not subject to a license fee.
- G. City desires to allow Licensee to use the Pole Space and Ground Space and Licensee desires to use the Pole Space and Ground Space in exchange for due and adequate consideration, the receipt and sufficiency of which are acknowledged by the Parties and further described and set forth in this License. The purpose of this License is to allow Licensee to

construct and operate the Licensee Facilities on the Pole Space and Ground Space to provide better communication services to its customers, who are wireless carriers.

NOW, THEREFORE, based upon the foregoing facts, in reliance on the foregoing recitals which are true and correct, in consideration of the mutual agreements contained in this License, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee hereby agree as follows:

1. **Licensed Land.** City hereby grants Licensee a license in, on, across and over the License Area for each of the [REDACTED] Streetlight Poles identified in Exhibit "A", on the terms hereinafter set forth, for the purpose of constructing and operating the Licensee Facilities. The grant of this License shall not relieve Licensee from the requirement to obtain, at its expense, any land use permits or other approvals for the installation and operation of the Licensee Facilities. It is expressly understood that all rights granted to Licensee under this License are irrevocable until this License expires or is sooner terminated according to the provisions of this License.

1.1 Decommissioning of SCE Streetlight Poles. The Parties agree that prior to erecting the Streetlight Poles related to any SCE streetlight pole, the [REDACTED] SCE streetlight poles in the PROW relevant to Licensee's proposed network must be decommissioned. Licensee agrees to reimburse City for out of pocket costs incurred by City to decommission and obtain ownership of the [REDACTED] SCE streetlight poles, as such SCE streetlight pole is decommissioned and incorporated. An estimate of such cost shall be provided to Licensee prior to such decommissioning for Licensee's approval.

1.2 Option to Increase Number of Streetlight Poles. Licensee may request, and subject to the City's sole discretion, City's City Manager may approve a twenty percent (20%) increase in the number of Streetlight Poles that may be utilized by Licensee under this Agreement. Should City grant such a request, Licensee shall be given a License subject to the same terms as this Agreement. However, the License for an additional Streetlight Pole shall only be valid for a term equal to the time remaining under this Agreement (including any Renewal Terms (as defined below)). The location of the additional Streetlight Poles shall be determined in the sole discretion of the City, working in cooperation with Licensee.

2. **Term.** The term of this License shall be for five (5) years, commencing with on the first day of the month following (a) the issuance of a building permit and/or encroachment permit allowing Licensee to construct any of the Licensee Facilities (as defined below) in the License Area, or (b) the date that is sixty (60) days from the Effective Date (as defined below), whichever first occurs ("Commencement Date") and terminating at 11:59 p.m. on the last day of the 60th month of the initial term ("Initial Term"). This License may be terminated in accordance with the provisions of Section ~~1.88~~ herein.

3. **Option to Renew.** Licensee shall have the option to renew this License on the terms and conditions herein contained for four (4) additional five (5) year periods each, a "Renewal Term") on the same terms and conditions as set forth herein. This License shall automatically renew for each successive Renewal Term unless Licensee notifies City, in writing, of Licensee's intention not to renew this License, at least ninety (90) days prior to the expiration of the preceding term. Such notice shall be deemed given upon the mailing of such notice to City. If Licensee shall

remain in possession of the License Area at the expiration of this License or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this License, except that Licensee shall pay to City a monthly rent equal to one hundred fifty percent (150%) of the rental rate paid for use of the Pole Space for each Streetlight Pole at the expiration or termination of this License, provided that, thereafter, either Party may terminate this License for any reason at any time upon thirty (30) days prior written notice to the other Party.

4. **Facilities; Utilities; Access.**

4.1 **Licensee Facilities.** Subject to the provisions of this License, Licensee has the right to erect, maintain, and operate the Licensee Facilities on the License Area on the Streetlight Poles identified in Exhibit "A". Licensee has the right to do all work necessary to prepare, maintain, and alter the License Area for Licensee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. Licensee shall have the right to alter, replace, enhance and upgrade the Licensee Facilities at any time during the term of this License, provided that: (i) such work is contained within the License Area, (ii) Licensee complies with each and every provision of this License; **and (iii)** the License Area is not replaced or significantly altered, except with the written consent of City, which City may grant or withhold in its sole discretion, with the understanding that normal construction and repair activities by Licensee in deploying **and operating** its network will not be considered a replacement or significant alteration. All of Licensee's construction and installation work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and according to plans and specifications approved by City. Title to the Licensee Facilities shall be held by Licensee, subject to Section 4.5. All Licensee Facilities shall remain Licensee's personal property and are not fixtures. Licensee shall remove all Licensee Facilities, at its sole expense, and shall repair any damage to the **PROW** or the City Facilities caused by such removal in accordance with Sections 11 and 12 below.

4.2 **City Facilities.** The Streetlight Poles, after installation by Licensee, the streetlight bulbs and casings, and the electrical wiring for the streetlights ("City Facilities") shall not be considered part of the Licensee Facilities. Upon the completion of construction of the Streetlight Poles in compliance with all specifications **reasonably** approved by City and all applicable laws, codes and ordinances, title and ownership of the Streetlight Poles shall automatically, without need for execution of further documentation, transfer to City, and Licensee shall cause any warranty or warranties provided by the manufacturer of any component of the City Facilities to be transferred to City. Notwithstanding the foregoing, Licensee shall be liable for **a period of one (1) year** any failure to construct the City Facilities in compliance with all applicable laws, codes and ordinances, and all specifications approved by City, and shall correct any area of noncompliance upon demand. Following such transfer, **City** shall be solely responsible for the ongoing maintenance and upkeep of the City Facilities, including replacement of the City Facilities, provided, however, that **Licensee** shall be responsible for all maintenance and upkeep costs necessitated by **Licensee's** acts or omissions. Within thirty (30) days of Licensee's receipt of a written request from City, Licensee shall provide initial training to City staff to allow City personnel to access and maintain **streetlight** wiring inside the Streetlight Poles. **Licensee shall have the exclusive right to use any Streetlight Pole under this License, and such transfer of ownership to City shall be without warranty, express or implied, except as expressly provided above.**

4.3 Electricity Use. Licensee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Licensee shall, at its option, either: (i) draw electricity and other utilities from separate utility service than City's from any utility company that will provide service to the Licensee Facilities; or (ii) install a single meter serving both the Licensee Facilities and City Facilities, and pay for the electricity and other utility services consumed by the City Facilities. City agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Licensee Facilities, including the grant to Licensee or to the servicing utility company at no cost to Licensee of an easement in, over across or through **PROW** as required by such location acceptable to City and the servicing utility company.

4.4 Pole Space Access. Licensee, Licensee's employees, agents, subcontractors, lenders and invitees shall have access to the License Area without notice to City twenty-four (24) hours a day, seven (7) days a week, at no charge, provided Licensee shall not obstruct any public street or sidewalk without obtaining such encroachment permits or other approvals as may be required by City.

4.5 Relocation. Upon no less than one hundred eighty (180) days prior written notice to Licensee, Licensee shall relocate the Licensee Facilities to a location reasonably acceptable to Licensee at Licensee's sole expense in the event that relocation of any of the Licensee Facilities becomes necessary due to any relocation, realignment, or improvement of any public street or City right-of-way. Notwithstanding the foregoing, if a City-imposed condition of approval associated with a permit issued to a private party subsequent to the Effective Date requires the relocation of the Licensee Facilities, all costs to relocate shall be borne by the private party. Upon reasonable notice given to Licensee, Licensee shall temporarily relocate the Licensee Facilities at Licensee's sole expense in the event that relocation of any of the Licensee Facilities becomes necessary due to any work performed in the public street or City right-of-way that does not require a permanent relocation, provided that Licensee may install a temporary antenna facility and an alternate power and fiber source during any such temporary relocation upon the mutual agreement of the parties.

5 Use. Subject to the provisions of this License, including, but not limited to, Sections **10** and **16**, the License Area may be used for any activity directly connected with the provision of communication services and the operation of the Licensee Facilities, provided that Licensee shall not construct or operate any Licensee Facilities in addition to those depicted or listed in **Exhibit "B"** without City's consent. Licensee's use of the License Area shall comply with all applicable laws, ordinances, and regulations.

6. License Payments. As consideration for the issuance of this License for placement of the Pole Space Facilities on the Pole Space, Licensee shall pay to the City the annual amount of _____ Dollars (\$X,XXX) per Streetlight Pole paid annually ("License Payment"). License Payments for each Streetlight Pole shall commence on the first day of the month in which construction of such Streetlight Pole begins. The first installment of the License Payment shall be due upon the start or construction of the first Streetlight Pole or within ninety (90) days following the Commencement Date, whichever occurs last and shall be prorated based on the months remaining in the year following the Commencement Date through the first anniversary of the Commencement Date, and thereafter the License Payments will be

payable on the anniversary date of this license to City. The License Payments shall increase by three percent 3% each year, effective on the anniversary of the Commencement Date. All payments shall be made payable to: City of Placentia, 451 E. Chapman Avenue, Placentia, CA 92630.

6.1 Applicability of License Payment. The License Payment is consideration only for Licensee's placement of the Pole Space Facilities on the Pole Space. Licensee's use of all portions of the PROW, shall be without additional charge.

7 Late Payment Charges. Licensee hereby acknowledges that late payment by Licensee to City of License Payments and other sums due hereunder will cause City to incur costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of consideration or any other sum due from Licensee shall not be received by City within ten (10) business days after written notice after such amount is due, Licensee shall pay to City a late charge equal to ten percent (10%) of such overdue amount, as well as interest on the outstanding amount which shall accrue at the rate of ten percent (10%) per annum. In no event shall the late charge or interest exceed the maximum allowable by law. The Parties hereby agree that such late charge will automatically accrue by reason of any late payment by Licensee. Acceptance of such late charge by City shall in no event constitute a waiver of Licensee's default with respect to such overdue amount, nor shall it prevent City from exercising any of the other rights and remedies granted hereunder.

8 Termination. In the event this License is terminated by either Party between the anniversary dates, there shall be a pro rata refund of any consideration paid in advance for the remaining term.

8.1 Termination By Licensee. This License, or any right to Pole Space, may be terminated by Licensee upon sixty (60) days prior written notice at any time during this License (i) if Licensee is unable to occupy or utilize the License Area due to ruling or directive of the FCC or other governmental agency, which cannot be reasonably corrected by Licensee, including but not limited to, a take back of channels or roadways or change in frequencies, or (ii) if Licensee determines that the License Area is not appropriate for its operations for economic, environmental, or technological reasons, including signal strength or interference. In the event Licensee terminates this License solely for economic or technological reasons, not including interference, Licensee shall pay to City an additional sum of money equal to one (1) year of the then-current License Payments, as liquidated damages, for the terminated Pole Space. Violation by City of any term, covenant, condition or provision contained herein shall be cause for immediate termination of the License as to any affected Pole Space by Licensee, unless corrected within thirty (30) days after City's receipt of Licensee's written request to do so. If such violation cannot reasonably be corrected within such thirty (30) day period, Licensee shall not have the right to terminate the License as to such affected Pole Space if the City commences correction of the violation within such thirty (30) day period and thereafter diligently pursues such correction to completion. Notwithstanding anything to the contrary herein, Licensee may terminate this License or right to use a Pole Space at any time with or without cause prior to the Commencement Date upon written notice to City.

8.2 Termination By City. Violation **by Licensee** of any term, covenant, condition, or provision contained herein shall be cause for immediate termination of the License **as to any affected Pole Space** by City, unless corrected within thirty (30) days after Licensee's receipt of City's written request to do so. If such violation cannot reasonably be corrected within such thirty (30) day period, the City shall not have the right to terminate this License **as to such affected Pole Space** if Licensee commences correction of the violation within such thirty (30) day period and thereafter diligently pursues such correction to completion. Upon the third instance of late payment **during any calendar year** during the License term (including any extension or renewal terms), Licensee shall not be entitled to the thirty (30) day cure period, and the City may immediately terminate this License by providing written notice of termination to Licensee.

8.3 License Fee Adjustments. In the event this License is terminated with respect to an affected Pole Space, as set forth in Sections 8.1 and 8.2 above, the License Payment shall be reduced in accordance with the reduction of the number of Streetlight Poles. Any such reduction in the License Payment, as permitted by this Section 8.3, shall apply as of the date of termination of this License with respect to such affected Pole Space. By way of example only, should Licensee lose the right or desire to cease operating at one (1) Pole Space, the License Fee shall be reduced by \$ _____, effective as of the date of termination.

9. Improvements.

9.1 Construction of Improvements. Except as otherwise provided herein, no improvements, including the Licensee Facilities, shall be constructed and/or maintained on the License Area without City's prior written approval of plans and specifications, which shall include **lawful and reasonable** review of the aesthetic and visual nature of the Licensee Facilities. City shall endeavor to approve or request changes to the plans and specifications within **fifteen (15)** days of receipt of such plans. Notwithstanding the foregoing, Licensee shall be permitted to swap out, replace, and upgrade its equipment without City's consent, provided that such changes do not materially alter the aesthetic appearance of the Licensee Facilities when viewed from the ground, or that any such alteration has been approved by City, in its sole discretion, and is incorporated herein in Exhibit "B". The aesthetic and visual nature of the Licensee Facilities, including color and composition, shall complement and blend into the surrounding community to the extent reasonably feasible. All work done, including construction of the Streetlight Pole by Licensee, shall be performed in accordance with the approved plans unless otherwise approved in writing by the City. Licensee shall not change the existing grade or otherwise modify the topography of the **PROW** affected by this License without prior written consent of City. Subject to approval by City, Licensee may traverse **the PROW** in order to connect to public utilities.

9.2 Permits and Pavement Restoration. Licensee shall comply with City's **code** requirements as to construction occurring within any public street and/or City right-of-way, including obtaining encroachment permits for any such construction. Licensee shall restore any pavement, sidewalks, landscaping, or signage disturbed by Licensee or its contractors to City standards.

9.3 As-Built Drawings. Within thirty (30) days of the completion of all authorized work, Licensee shall file with the City Engineer a construction plan reflecting the as-built condition of the Licensee Facilities and Streetlight Pole. All construction plans submitted to the City Engineer shall be approved and certified by the Licensee's responsible engineer, and approved by the City as built per approved plans and City standards and specifications. Upon approval by City of the Licensee Facilities and Streetlight Pole, City shall release the bond required pursuant to Section 1.9.2.

10. Interference.

10.1 Licensee shall operate the Licensee Facilities in a manner that will not cause interference to other licensees or lessees of **PROW** provided that the installations of such licensees' facilities predate that of the Licensee Facilities, and in a manner that will not cause interference with communications systems operated by City, regardless of when such systems are installed or their use commences, provided that such systems are operated in accordance with manufactural specifications and within the terms of their license and licensed frequencies and in accordance with all applicable Federal Communications Commission ("FCC") rules and regulations as well as other applicable Federal, State, and local laws, rules, and regulations. Subject to the previous sentence, City will not allow other licensees or lessees of the PROW to interfere with any pre-existing Licensee Facility.

10.2 In the event that the Licensee Facilities cause interference with City's communications equipment, and such interference is not cured within ten (10) business days after Licensee's receipt of notice from City, City may require Licensee to locate a suitable relocation site for the interfering Licensee Facilities or a redesign of such facilities to reduce or eliminate interference. Any interference in violation of this Section **10** shall be deemed a material breach by the interfering Party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the Parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured Party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this License as to such affected Licensee Facility immediately upon written notice. The Parties agree to cooperate in developing solutions to interference problems, including determining which design changes may be necessary to end the interference. If relocation or redesign is deemed necessary by City due to interference with City's communications caused by Licensee, Licensee shall redesign or relocate any or all of the Licensee Facilities to alternate locations reasonably acceptable to City, at Licensee's sole cost and expense, or if such redesign or relocation is not acceptable to Licensee, Licensee may terminate this License.

10.3 Except in emergencies or as otherwise agreed to by City, Licensee shall not perform or have performed any tests, construction, installation, operation, maintenance, or repair in the **PROW** which will unreasonably interfere with the use of the **PROW** (other than the License Area) by the City or members of the public. All operations by Licensee shall be in compliance with all "FCC" requirements, as well as other applicable Federal, State, and local laws, rules, and regulations.

11. Vacating the Property.

11.1 At the expiration of the term or at any sooner termination of this License (or Licensee's right to use any License Area), Licensee shall quit and surrender possession of the applicable License Area to City in as good order and condition as it was delivered to Licensee on the Commencement Date, reasonable wear and tear and damage by the elements excepted. Within sixty (60) days of the expiration or termination of this License, Licensee shall remove all Licensee Facilities from the License Area, provided that Licensee shall be deemed to remain in possession of the License Area for purposes of Section 3 until all Licensee Facilities have been removed. The Streetlight Pole shall remain in place as a part of the City Facilities.—Licensee agrees to pay any costs incurred by City if Licensee fails to comply with this provision, including reasonable attorneys' fees and costs expended on any action by City to compel removal by Licensee.

12. Maintenance and Repair.

12.1 All Licensee Facilities shall be maintained in good and workable order and good appearance (provided that any noticeable (from street level) peeling paint or rust of the Licensee Facilities in comparison with their original appearance shall be deemed not to constitute "good appearance" for purposes of this section) in accordance with City's written direction which may be provided from time to time, including but not limited to, painting and screening. Except in the event of an emergency, Licensee shall notify City no less than seventy-two (72) hours in advance of any repairs or maintenance which will or may cause an outage to the streetlight located on the Streetlight Pole. City shall maintain and keep the Streetlight Pole containing Licensee Facilities in good condition and in accordance with City's standard maintenance requirements, at City's sole cost and expense.

1.12.2 City shall have no obligation or responsibility to repair Licensee Facilities damaged or destroyed through the actions of any third party, including but not limited to motor vehicle accidents. Licensee shall be solely responsible for repairing or replacing, at Licensee's sole expense, any such damage or destruction. City may, in its discretion and at its expense, clean and/or repair any defacement or damage caused by graffiti or other vandalism to the Streetlight Pole.

12.2 If Licensee damages or disturbs the surface or subsurface of any PROW or adjoining property, pole, streetlight fixture, traffic signal, or other public improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to City, repair the damage or disturbance.

12.3 Except as otherwise set forth herein, if a Streetlight Pole needs replacement or repair due to a traffic accident or deterioration, upon notice to City, Licensee shall have the right to immediately replace the same at City's cost. In such event, City shall reimburse Licensee within thirty (30) days of Licensee's receipt of an invoice. However, in the event Licensee elects, at City's cost, to have City replace the Streetlight Pole, City shall perform such replacement within thirty (30) days thereafter, and Licensee shall cooperate with City to temporarily relocate the affected Licensee Facilities, if necessary. Upon completion of the replacement, City shall notify Licensee in order for Licensee to install its Licensee Facilities.

Licensee shall have the right to temporarily use another Streetlight Pole for its operation during the replacement period at a location reasonably acceptable to both City and Licensee.

13 Hazardous Substances.

13.1 For purposes of this License, the term “Hazardous Substances” means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as “the State Toxic Substances Law”); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste, or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

13.2 City warrants and represents that, to its knowledge as of the date hereof, there is not presently pending any proceeding before any Federal, State, or local tribunal or agency, the outcome of which would diminish or preclude Licensee’s use of the License Area as permitted under the terms of this License. Except as so provided, City makes no warranty or representation whatsoever concerning the License Area, including without limitation, the condition, fitness, or utility for any purpose thereof, of any improvements thereto with applicable laws, ordinances, or governmental regulations. Licensee’s right to use the License Area is strictly on an “as is” basis with all faults. City hereby disclaims all other warranties whatsoever, express or implied, regarding the condition of the soil (or water), geology, and any warranty of merchantability or habitability or fitness for a particular purpose.

13.3 Except as otherwise specifically permitted under the terms of this License, Licensee shall not use, create, generate, store, deposit, dispose of or allow any Hazardous Substances on, under, about or within **PROW** or the License Area in violation of any federal, state, or local law, rule, regulation, order, decree, or other requirement listed in sub-section **13.1**. Storage of batteries for emergency power, fuel for temporary generators to be used during power outages, and ordinary

paints, solvents and similar substances commonly used in small quantities and necessary for maintenance of the Licensee's Facilities are excepted from the preceding prohibition of use by Licensee of Hazardous Substances on the City's property, so long as Licensee complies with all applicable federal, state, and local laws, rules, and regulations governing the use of such items.

13.4 No permanent underground or above ground storage tanks shall be installed in or on the License Area or **PROW**.

13.5 Upon reasonable notice to Licensee, City or its officers, employees, contractors, or agents shall at all times have the right to go upon and inspect the License Area and the operations conducted thereon to ensure compliance with the requirements herein stated. This inspection may include taking samples for chemical analysis of substances and materials present and/or testing soils on and around the License Area and taking photographs.

13.6 Licensee shall, within forty-eight (48) hours of the discovery by Licensee of the presence of, or believed presence of, a Hazardous Substance as defined herein, give written notice to City in the event that Licensee knows or has reasonable cause to believe that any release of Hazardous Substance has come or will come to be located on, under, about or within the License Area or **PROW**. The failure to disclose in a timely manner the release of a Hazardous Substance, including but not limited to, an amount which is required to be reported to a state or local agency pursuant to law (e.g., California's Hazardous Materials Storage and Emergency Response Act, Health and Safety Code Section 25550 et seq.) shall be grounds for termination of this License by City as to such affected License Area in addition to actual damages and other remedies provided by law. Licensee shall immediately clean up and completely remove all Hazardous Substances placed by Licensee on, under, about or within the License Area or **PROW**, in a manner that is in all respects safe and in accordance with all applicable laws, rules, and regulations.

13.7 In the event Hazardous Substances are discovered, Licensee shall disclose to City the specific information regarding Licensee's discovery of any Hazardous Substances placed on, under, about, or within the License Area or **PROW** by Licensee or its employees or agents, and provide written documentation of its safe and legal disposal.

13.8 Breach of any of the covenants, terms, and conditions contained in this Section **13**, and Licensee's failure to cure within thirty (30) days of Licensee's receipt of written notice from City, shall give City the authority to either immediately terminate this License as to all such affected License Area or to require the shutdown of Licensee's operations thereon, at the sole discretion of City. In either case, Licensee will continue to be liable under this License to remove and mitigate all Hazardous Substances placed by Licensee on, under, about or within License Area or **PROW**. Licensee shall be responsible for, and bear the entire cost of removal and disposal of, all Hazardous Substances introduced to the License Area and **PROW** by Licensee during Licensee's period of use and possession of the License Area or ~~City property~~**PROW**. Upon termination of this License, Licensee shall, in accordance with all laws, remove from the License Area or **PROW** any equipment or improvements placed on the License Area or **PROW** by Licensee that may be contaminated by Hazardous Substances.

13.9 Licensee shall defend, indemnify, and hold City and its officials, officers, employees, contractors, and agents free and harmless from any and all claims, liability, injury, damage, costs, or expenses (including, without limitation, the cost of reasonable attorney's fees) arising as a result of the presence of use of any Hazardous Substances placed or caused to be placed by Licensee or its partners, affiliates, agents, officials, officers, contractors, or employees on the **PROW** or License Area. The foregoing indemnity is intended to operate as an agreement pursuant to, among other requirements, Section 107, subdivision (e) of CERCLA, 42 United States Code Section 9607, subdivision (e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify each party from any liability created by the other party pursuant to such sections.

14. **Previous Licenses.** In the event there is an existing license between Licensee and City covering the License Area, it is agreed and understood that this License shall cancel, supersede and terminate said prior license **for such space** as of the Effective Date of this License.

15. **Subordinate Rights.**

15.1 This License is subject and subordinate to the prior and future rights and obligations of City, its successors and assigns, to use the PROW in the exercise of its powers and in the performance of its duties. Accordingly, there is reserved and retained unto City, its successors, assigns, grantees, and permittees, the right to construct and reconstruct facilities and appurtenances in, upon, over, under, across, and along the PROW, and in connection therewith, the right to grant and convey to others, rights and interests to the **PROW**, provided that the foregoing not unreasonably interfere with Licensee's use of the License Area as provided in this License. In the event of interference to Licensee's operations, City agrees to take all reasonable steps necessary to eliminate such interference promptly, except to the extent such interference is caused by a use or user of PROW over the operations of which City has no control, provided that City's authority to regulate the time, place, and manner of the use of PROW shall not be deemed, **by itself**, to constitute "control" for purposes of this sentence. If City cannot eliminate such interference, Licensee shall have the right to terminate this License pursuant to Section **8.2** and **10.**

15.2 This License is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims, and other matters of title ("Title Exceptions") which may affect the License Area now or hereafter **as of the Commencement Date**.

16. **Assignment or Subletting.** Licensee shall not assign this License without the prior express written consent of the City, which shall not be unreasonably withheld, conditioned, or delayed; provided, however, Licensee may assign this License, **or sublicense the License Area**, without the consent of City and without increasing the number or substantially changing the type of facilities on the License Area, to any of its subsidiaries or successor legal entities, of it or its parent company, or to any entity acquiring substantially all of the assets of Licensee ("Permitted Assignment"). **Licensee may sublicense any portion of a Licensed Area within its sole discretion, upon notice to Licensor. Any sublease that is entered into by Licensee shall be subject to the provisions of this License and shall be binding upon the successors, assigns, heirs and legal representatives of the respective Parties hereto. Any assignment** for which City consent is required and obtained shall be deemed an "Authorized Assignment." In the normal

course of business, Licensee may enter into agreements with wireless carriers (“Additional Carrier”) other than the initial carrier, to provide improved coverage and capacity for the Additional Carrier utilizing the License Area and Pole Space Facilities. Any application by Licensee to host such Additional Carrier will be subject to the requirements of Section 1 and the payment requirements outlined in Section 6. The additional equipment utilized to host any Additional Carrier shall be of the Distributed Antenna System variety, and will be similar in size and technology as the equipment then in use by Licensee. In no instance is Licensee permitted to sublease the License Area or Pole Space Facilities to any third party for the purposes of constructing or hosting a wireless facility not contemplated by this License, including, but not limited to macro-type wireless facilities. Any unauthorized assignment or sublicense shall be void and City shall have the right to immediately terminate this License. Upon any Permitted Assignment by Licensee, Licensee shall be relieved of any liabilities and obligations occurring or incurred after assignment hereunder and City shall look solely to the assignee for performance under this License and all obligations hereunder. Notwithstanding anything to the contrary contained in this License, Licensee may assign, mortgage, pledge, hypothecate, or otherwise transfer without consent its interest in this License to any financing entity, or agent on behalf of any financing entity to whom Licensee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by loans, bonds, debentures, notes, or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances, and similar facilities or in respect of guaranties thereof; provided that any such transferee shall be bound by the provisions of this License, including but not limited to the restrictions on assignments.

17. Taxes. The possessory property interest created by this License may be subject to property taxation, and Licensee may be subject to the payment of property taxes levied on such interest by the appropriate taxing authority. Licensee is required to pay any such tax directly to the appropriate taxing authority. In addition, if personal property taxes are assessed, Licensee shall pay any portion of such taxes directly attributable to the License Area. City shall pay all real property taxes, assessments and deferred taxes on the License Area, except for any tax levied on Licensee’s possessory interest.

18. Mechanic’s Liens. Licensee shall keep the License Area free from any liens arising out of any work performed, material furnished, or obligations incurred by Licensee, or any tenant or subtenant thereof. Licensee shall not be considered in violation of this provision if it provides a bond in lieu of the lien which is in conformance with applicable law and which is in an amount and form reasonably acceptable to the City.

19. Waiver. The waiver by City or Licensee of any breach of any term, covenant, condition, or provision contained herein (“Terms”), shall not be deemed to be a waiver of such Terms for any subsequent breach of the same or any other Terms contained herein. The subsequent acceptance of consideration by City shall not be deemed to be a waiver of any preceding breach by Licensee of any Terms of this License, other than the failure of Licensee to pay the particular consideration so accepted, regardless of City’s knowledge of such preceding breach at the time of acceptance of such consideration.

20. Attorneys' Fees. The prevailing party in any action brought by either Party hereto, based on any claim arising under this License, shall be entitled to reasonable attorneys' and/or consultants' fees.

21. Insurance.

21.1 Types; Amounts. Licensee shall obtain insurance in the amounts described below unless specifically altered or waived by City ("Required Insurance"). Any insurance or self-insurance maintained by the City, its elected officials, officers, employees, agents, and volunteers, shall be excess of Licensee's insurance and shall not contribute with it.

21.1.1 Required Insurance for Licensee.

(i) *General Liability Insurance.* Licensee shall maintain **commercial** general liability insurance, with a combined single limit of not less than **Five Million Dollars 5,000,000 per occurrence for bodily injury and property damage and Five Million Dollars (\$5,000,000) general aggregate.**

(ii) *"All Risk" Property Insurance.* Licensee shall maintain a policy of property insurance for perils usual to a standard "all risk" insurance policy on all its improvements or alterations in, on, or about the License Area, with limits equal to the value of all such improvements or alterations.

(iii) *Automobile Liability Insurance.* Licensee shall maintain **commercial** automobile liability insurance with a combined single limit of Two Million Dollars (\$2,000,000.00) per accident.

(iv) *Workers' Compensation Insurance.* Licensee shall maintain Workers' Compensation insurance in compliance with all applicable statutes, and **employer's liability with a limit of One Million Dollars (\$1,000,000.00) each accident/disease/policy limit.**

21.2 General Provisions. The general liability insurance policy shall **include** City, its elected officials, officers, employees, agents, and volunteers as **an additional insured as their interest may appear under this License. The** commercial general liability insurance and automobile liability insurance shall be primary **and non-contributory with** any insurance or **program of self-that may be maintained by the City.** The Required Insurance shall contain standard separation of **insured** provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employee, and volunteers.

21.3 Certificates; Insurer Rating; Cancellation Notice. Prior to the Commencement Date, Licensee shall furnish to City properly executed certificates of insurance which evidence all Required Insurance. Licensee shall maintain the Required Insurance at all times while this License is in effect, and shall replace any certificate, policy, which will expire prior to that date. Unless approved in writing by City, Licensee shall place the Required Insurance with insurers licensed, **authorized or permitted** to do business in the State of California and with a current A.M. Best rating of at least A-VII.

21.4 Waiver of Subrogation. Licensee releases City and its officials, directors, employees, **and** representatives, from any claims for damage or harm to any person, the License Area, or Licensee's Facilities caused by, or which result from, risks insured under any **property** insurance policy carried by Licensee **at the time of such damage or harm. City releases Licensee and**

its officials, directors, employees, and representatives, from any claims for damage or harm to any person, the License Area, or City Facilities caused by, or which result from, risks insured under any property insurance policy carried by City at the time of such damage or harm. Licensee shall cause the policy of Worker's Compensation required herein to provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policy.

22. Indemnity. Licensee hereby agrees to defend, indemnify, and hold City and its directors, officials, officers, agents, and employees free and harmless from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages, or injuries of any kind in law or equity, to persons or property, including wrongful death, to the extent caused by a breach of this **License** by, or the negligence or willful misconduct of, Licensee, its partners, affiliates, agents, officials, officers, contractors, subcontractors, or employees in performance of this License or use of the License Area. Licensee shall defend, with counsel **reasonably** approved by City, at Licensee's sole expense, any and all aforesaid suits, actions, or proceedings, legal or equitable, that may be brought or instituted against City, its directors, officials, officers, agents, or employees. Licensee shall pay and satisfy any judgment, award or decree that may be rendered against City, its directors, officials, officers, agents, or employees. Licensee shall reimburse such parties for any and all legal expenses and costs incurred by one or all of them in connection with this License or the indemnity herein provided. Licensee's obligation shall survive termination or expiration of this License, and shall not be restricted to insurance proceeds, if any, received by City or its directors, officials, officers, agents, or employees. In no event shall Licensee be obligated to indemnify, defend, and/or hold City harmless for claims to the extent such claims are caused by City's negligence or willful misconduct.

23. Amendments. The provisions of this License may be amended only by mutual written consent of the Parties.

24. Limitation of Liability. Licensee acknowledges that under no circumstance, including but not limited to condemnation or breach of this Agreement, shall City be liable to Licensee for any incidental, consequential, or punitive damages, including but not limited to any loss of income, business or profits, arising out of Licensee's use of Licensed Area or City's performance or non-performance under this Agreement, even if City has been advised of the possibility of such damages. City acknowledges that under no circumstance, including but not limited to condemnation or breach of this Agreement, shall Licensee be liable to City for any incidental, consequential, or punitive damages other than License Payment, including but not limited to any loss of income, business or profits, arising out of Licensee's use of Licensed Area or City's performance or non-performance under this Agreement, even if Licensee has been advised of the possibility of such damages.

25. No Relocation Assistance. Licensee acknowledges that Licensee is not entitled to relocation assistance or any other benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this License.

26. Time. Time is of the essence of this License.

27. Notices. Except as otherwise provided in section **12.3**, all notices permitted or required under this License shall be given to the respective parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

Licensee:

City:

City of Placentia
401 E. Chapman Avenue
Placentia, CA 92630
Attn: Director of Public Works

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

28. Entire Agreement. This License constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein. Any amendments to this License must be in writing and executed by both parties.

29. Invalidity. If any provision of this License is invalid or unenforceable with respect to either party, the remainder of this License or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this License shall be valid and enforceable to the fullest extent permitted by law.

30. Successors and Assigns. This License shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.

31. Governing Law and Venue. This License shall be governed by the laws of the State of California. Any action to interpret or enforce this License shall be brought and maintained exclusively in the courts of and for Orange County, California.

32. Execution of License. This License may be executed in duplicate counterparts, each of which shall be deemed an original.

33. Survival. All obligations of Licensee hereunder not fully performed as of the completion or termination of this License shall survive such completion or termination, including without limitation all payment obligations and all obligations concerning the condition of the License Area.

34. Nondiscrimination. Licensee certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies and any of its contractors retained with respect to this License are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment.

35. Authority to Enter Agreement. Both Parties represent to the other that they have the requisite power and authority to conduct their business and to execute, deliver, and perform the requirements of, this License. Each Party warrants that the individuals who have signed this License have the legal power, right, and authority to enter into this License and bind each respective Party.

36. Recordation. City acknowledges that a memorandum of this License in the form of Exhibit "EC" may be recorded by Licensee, at its sole cost and expense, in the official records of the County of Orange. City agrees to execute such memorandum at the request of Licensee.

[Signature page follows]

The effective date of this License is the date of execution by the last party to sign (the "Effective Date").

CITY OF PLACENTIA
a California Municipal Corporation

Damien R. Arrula
City Administrator

By: _____
Its: _____

Date _____

Date _____

Attest

Patrick J. Melia CMC
City Clerk

Approved as to Form

Christian L. Bettenhausen, City Attorney

Exhibit "A"

Location of Streetlight Poles

Exhibit "B"

**General Depiction of Pole Space, Pole Space Plan,
and Plans of Pole Space Facilities**

Exhibit "C"

Memorandum of License

[attached on following page]

**RECORDING REQUESTED BY:
WHEN RECORDED, RETURN TO:
[INSERT ENTITY CONTACT INFO]**

MEMORANDUM OF LICENSE

THIS MEMORANDUM OF LICENSE ("Memorandum") dated as of [REDACTED] between CITY OF PLACENTIA, A CALIFORNIA MUNICIPAL CORPORATION ("City"), and [REDACTED] ("Licensee").

RECITALS

WHEREAS, City and Licensee have executed that certain Communications Site License Agreement ("License") dated as of [REDACTED], covering certain premises ("Premises") situated on City-owned streetlight poles located in the County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, City and Licensee desire to record notice of the License in the Official Records of Orange County, California;

NOW, THEREFORE, in consideration of the foregoing, City and Licensee hereby declare as follows:

1. **Demise.** City has Licensed the Premises to Licensee, and Licensee has hired the Premises from City, subject to the terms, covenants and conditions contained in the License.

2. **Expiration Date.** The term of the License ("Term") is scheduled to begin on the Commencement Date (as that term is defined in the License) and shall expire five (5) years thereafter, subject to Licensee's option to extend the Term pursuant to Section 3 of the License for one additional term of five years.

3. **License Controlling.** This Memorandum is solely for the purpose of giving constructive notice of the License. If the terms of the License and this Memorandum conflict, the terms of the License shall control.

IN WITNESS WHEREOF, City and Licensee have executed this Memorandum of License as of the date and year first written above.

**CITY OF PLACENTIA,
a California municipal corporation**



By:

By: _____

Title: _____

Damien R. Arrula
City Administrator

Name: _____

Title: _____

Date _____

Date _____

Attest:

Patrick J. Melia, City Clerk

Approved as to Form:

Christian L. Bettenhausen, City Attorney

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
County of _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A TO THE MEMORANDUM OF LICENSE
LEGAL DESCRIPTION OF STREET POLE LOCATIONS

APN:

All that real property located in the State of California, County of Orange, as described herein:

City of Placentia

DEVELOPMENT SERVICES DEPARTMENT

APPLICATION FOR WIRELESS COMMUNICATIONS FACILITIES (WCF) ON PUBLIC RIGHT-OF-WAY

DESCRIPTION OF WORK: _____

LOCATION (NEAREST EXISTING STREETS): _____

ESTIMATED START DATE: _____ COMPLETION : _____

	NAME	ADDRESS	PHONE/EMAIL
PERMIT APPLICANT	_____	_____	_____
PROPERTY OWNER	_____	_____	_____
DESIGNER	_____	_____	_____
GENERAL CONTRACTOR	_____	_____	_____

ALL WORK AND IMPROVEMENTS SHALL BE PERFORMED IN ACCORDANCE TO SAID APPROVED PLANS, CITY OF PLACENTIA ORDINANCE NO.____ AS MAY BE FURTHER DEFINED BY THE CITY ENGINEER AND/OR CHIEF BUILDING OFFICIAL, BEFORE, DURING AND AFTER SAID WORK PERFORMANCE.

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE THAT THE INFORMATION PRESENTED IN THIS APPLICATION AND DATA SHOWN ON THE GRADING PLAN IS TRUE AND CORRECT, AND THAT THE WORK PERFORMANCE WILL COMPLY WITH ALL APPLICABLE LAWS AND THAT IN THE DOING OF SAID WORK, NO PERSON SHALL BE EMPLOYED IN VIOLATION OF THE LABOR CODE OF THE STATE OF CALIFORNIA AS RELATES TO WORKMEN'S COMPENSATION INSURANCE.

SIGNATURE OF APPLICANT _____ DATE _____

THE FOLLOWING CHECKED REQUIREMENTS ARE APPLICABLE

- WRITTEN AUTHORIZATION OF THE UTILITY POLE OWNER
- ENGINEERING PLANS SIGNED BY A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA
- STRUCTURAL CALCULATIONS FOR SUPPORTING THE STRUCTURE AS REQUIRED

WCD BOND POSTED BY
AGENT _____
BOND NO _____
AMOUNT _____

DATES OF APPROVAL BY
PLANNING COMM. _____
CITY COUNCIL _____

PERMIT VALIDATION

PERMISSION IS HEREBY GRANTED TO THE ABOVE APPLICANT TO PROCEED WITH INSTALLING WCD FOR THE DESCRIBED DEVELOPMENT IN ACCORDANCE WITH CITY APPROVED PLANS PROVISIONS OF CITY OF PLACENTIA ORDINANCE NO. _____.



City of Placentia

DEVELOPMENT SERVICES DEPARTMENT

GUIDELINES FOR INSTALLING WIRELESS COMMUNICATIONS FACILITIES (WCF) ON CITY RIGHT OF WAY

It is the intention of the City of Placentia to effectively provide its residents, visitors, and businesses with state-of-the-art wireless telecommunication systems, such as wireless Internet, voice, and other forms of data communications. It is also the City's goal to safeguard the public, protect City assets and provide the residents with pristine open and safe space to live and work. The City sponsors installation of wireless communication facilities that are assimilated to their surroundings, either as stand-alone or co-located with an existing supporting structure or upon a City-owned utility pole within the public right of way. In order to achieve this goal, the City requires that before wireless telecommunication devices can be installed on City's Right-Of-Way, applicants, submit pertinent information and obtain permits for such installations. The purpose of the Wireless Communication Facilities Permit is to provide the City with information regarding these wireless communication facilities to ensure that they meet the City's Developmental Codes and the related Ordinances. The following are the guidelines for obtaining and securing Wireless Communications Facilities Permits.

PERMIT

All telecom facilities proposed to be located on City-owned or City-held trust property must first apply for and receive a permit under the provisions of City Ordinance No. ____.

AGREEMENT

All Telecommunication facilities located on City's ROW and owned property or City-held Trust property must have an agreement approved as to form by the City Attorney and approved as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager.

PRE-SUBMITTAL CONFERENCE

Prior to application submittal, the City strongly encourages all applicants to schedule and attend a pre-submittal conference with Planning and Public Works Departments Staff to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Public Works Department Staff will endeavor to provide applicants with an appointment within approximately five (5) business days after receipt of a written request.

The following are the list of the items that are essential for this review:

- A. A letter of justification describing the proposed wireless communication facility and if applicable, a description of the communications services, equipment, or facilities that the

applicant will offer or make available to the City or other public, educational and governmental institutions.

- B. Alternative site analysis, assessing the feasibility of alternative sites, including the potential for co-location, in the vicinity of the proposed site, as deemed necessary by the City. The analysis should include an explanation of why other sites considered were not selected. In the case of proposed sites that are inside or within 150 feet of any Residential District, the alternative site analysis shall specifically include an evaluation of the availability and feasibility of potential alternative sites located on Open Space District lands within the vicinity of the proposed site.
- C. Provide before and after photographs (simulations) specifying the location of the antennas, supporting structures, power poles, utility boxes, transmission buildings and/or other accessory uses; include site access, parking, fences, signs, landscaped areas and adjacent land uses.
- D. An accurate map and drawing showing the proposed site and detailing existing wireless communication facility locations owned and operated by the applicant. In addition, provide a separate scaled drawing showing where the WTF is to be located along with heights and elevations.
- E. Applicants for the WTF shall provide a structural integrity report and calculations from a professional engineer licensed in the State of California documenting that the design, including technical and engineering, and other pertinent factors governing selection of the proposed design, anticipated capacity of the structure and failure characteristics.
- F. Applicant shall disclose future plans for facility locations for the next 5 years from the date of application submittal. A projection of the wireless carrier's anticipated future wireless communication facility is needed by the City to be used by the City as part of a master planning effort designed to ensure a more planned, integrated and organized approach to wireless communication facility siting as the remaining areas of the City are built out.
- G. Provide a list detailing the property address and type of facility (e.g. monopole, antenna) for all facilities operated by the applicant in the City of Placenta.
- H. Describe how the proposed installation complies with the visual impact standards and the screening requirements.
- I. Provide statements regarding the regulations of the Federal Communications Commission (FCC) and, if applicable, the Federal Aviation Administration (FAA) as follows:
 - a. That the application complies with the regulations of the FCC, or a statement from the applicant that compliance is not necessary, and the reasons why.
 - b. If the WTF is near an airfield, that the application has not been found to be a hazard to air navigation, or a statement that no compliance with Part 77 of FAA regulations is required and the reasons why.

APPLICATION SUBMITTAL APPOINTMENT

All applications must be submitted to the City at a pre-scheduled appointment. Applicants may submit one (1) application per appointment but may schedule successive appointments for multiple applications whenever feasible as determined by the City. City Staff will endeavor to provide applicants with an appointment within five (5) business days after receipt of a written request.

APPLICATION FOR WCD

Subsequent to the pre-approval conference and after the proposed WCD has been reviewed and approved by the City, the applicant will have to submit an application for WCD through the Public Works Department. No applicant seeking to install wireless devices shall seek an encroachment permit for fiber or coaxial cable intended for the WCD use separately. Applicants shall simultaneously request fiber installation or other cable installation when seeking to install WCD in the City's right-of-way.

Application Contents – Prior to issuance of an encroachment permit, the supplemental application form for any new WCF installation in the public ROW shall require the following information, in addition to any information required by the Director:

1. Contact information. The name, address, email address, and telephone number of the applicant, owner and the operator of the proposed facility, and the date the application was received by the City.
2. Written authorization. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property.
3. Engineering Plans. Detailed engineering plans of the proposed facility and related report prepared by a professional engineer registered in the state documenting the following:
4. Height, diameter and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least visible equipment within the particular technology the carrier chooses to deploy. A layout plan, section and elevation of the tower structure shall be included.
5. A photograph and model name and number of each piece of equipment included.
6. Power output and operating frequency for the proposed antenna.
7. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
8. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the City.

Upon receipt, review and approval of the plans, the applicant shall apply for an encroachment permit through the Department of Public Works for performing the construction and installation of the WCF devices.



Small Cell Study Session
City Council Meeting
July 18, 2017



BACKGROUND

- **ASSEMBLY BILL No. 57 (AB 57)** amended by Federal Communications Commission (FCC) on April 6, 2015, to streamline permit processing of Wireless Telecommunication Facilities (WCF).
 - Limits a local jurisdiction’s power to deny a co-location or siting application.
 - Sets timelines for decisions on new cell sites or collocations in accordance with FCC’s 2009 Shot Clock Order:
 - New Cell Site ≤ 150 days
 - Collocations ≤ 90 days

- **SENATE BILL No. 649 (SB 649)** proposes to streamline permitting by restricting local jurisdiction’s discretion for WCFs within the public right-of-way (PROW) for city assets (utility poles, light poles, traffic lights) & city owned sites.
 - Bill Intent: *“Ensure that communities across the state have access to most advanced communications technologies...”*
 - Prohibits local jurisdiction’s from adopting/enforcing any regulation on the placement or operation of WCFs within the PROW and regulating all associated taxes, fees, or charges on such facilities/sites.



TELECOMMUNICATIONS TECHNOLOGY

WHY SMALL CELLS?

- Increasing densification is creating greater demand with data usage, thereby leading to the need for small cells.
- Compact low powered base stations used to compliment larger macro cells.
 - Increase range and capacity in densely populated urban areas.
 - Assist in alleviating data traffic
 - Affixed to utility poles, street lights, or traffic signal poles because of high density potential sites.
 - Coverage range between 30 feet in an urban environment & 3,000 feet within a rural environment.



SENATE BILL 649 (SB 649)



SENATE BILL No. 649 introduced by Senator Hueso that provides the following:

- Full access to city/county owned assets
- Rent control on use of public property
 - Max. \$250 lease rate per year (per site)
 - No fee escalator
- Ministerial approval process for all WCFs within PROW in all zones, except within coastal zones and historical districts
 - Streamlined permitting processes with limitation on application requirements and conditions of approval
- Automatic renewals for all wireless permits (not just small cells)
- Limited ability to dictate design



SB 649 ISSUES

- Full discretionary review eliminated
- No build out commitments
- No public benefit, especially for disadvantages communities
- Cities/counties lose control their assets
 - Requires local jurisdictions to adopt regulations to secure the right to use space on their own property
 - No protections for decorative street lights (only coastal and historic districts are excluded)
- Size limitation does not account for all equipment, including supporting appurtenances as ground equipment.



FINANCIAL REVIEW

PRE-SB 649 vs. POST-SB 649

▪ Macro Cell (Existing)

- City oversees/manages 11 WCFs for a total revenue of \$276,848
- Monthly fees range \$1,000 – \$2,800 per month, generally with a 4% annual increase per Wireless Service Provider (WSP).

▪ Small Cell (Post-SB 649)

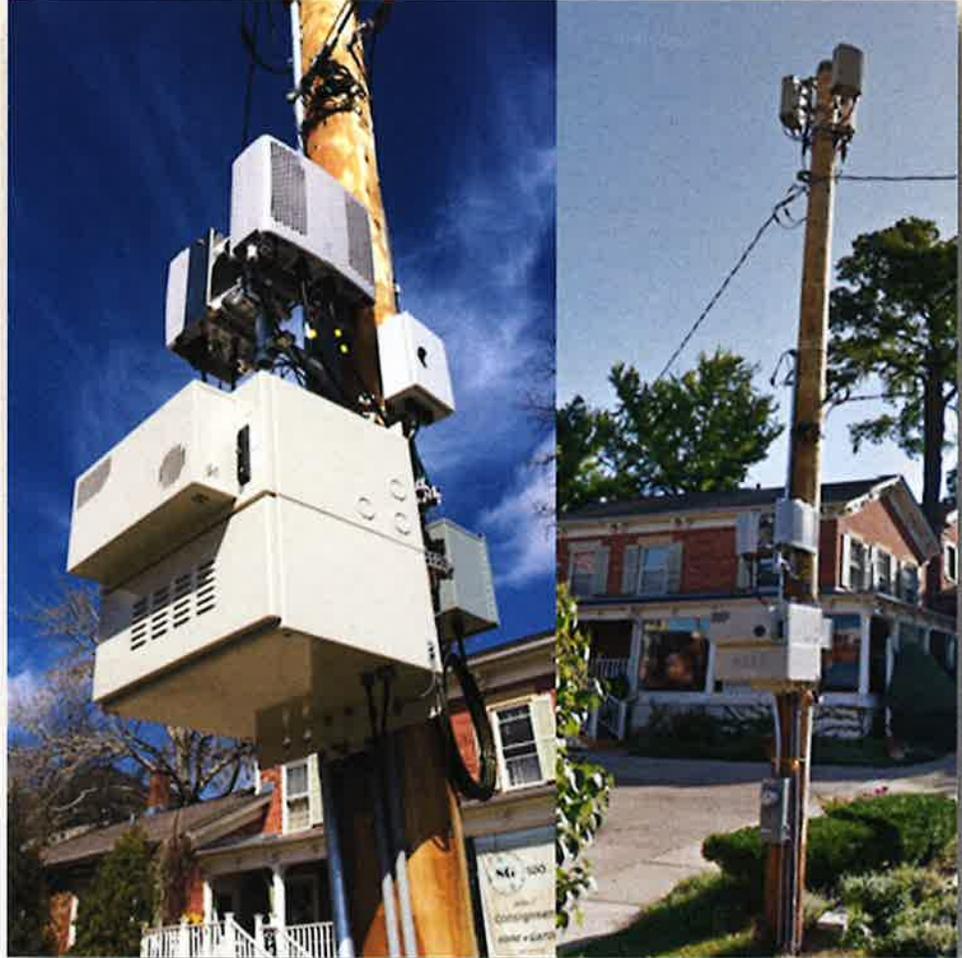
- Per 5 Bars approx. 50-70 city owned and operated viable sites for small cell deployment
- Potential yearly revenue based on \$250 yearly lease rate for 70 sites will generate \$17,500 in total revenue; 6% of total revenue generated by current macro cell sites



GOOD DESIGN



BAD DESIGN



DRAFT ORDINANCE

▪ MINISTERIAL REVIEW

- WCF co-located on city owned pole within the PROW or utility pole
- Provides guidelines on the overall design to facilitate faster approval process
- Create consistency of design city-wide

▪ DISCRETIONARY REVIEW

- All WCF in the PROW (including new facilities and co-locations on existing facilities) that do not match the guidelines for ministerial action
- Limited number of discretionary applications anticipated based on the streamlined approach for ministerial applications



DRAFT LICENSE AGREEMENT

DRAFT LICENSE AGREEMENT

- Required to be fully executed between the City and each WSP
- Agreement will include the following:
 - Cover multiple sites/location
 - Outline placement and operation of these facilities
 - Outline terms for replacement of pole and maintenance
 - Outline terms of license and fees
 - Agreement may vary based on negotiations of each WSP



OPTIONS FOR IMPLEMENTATION

PUBLIC PRIVATE PARTNERSHIPS

- Draft new telecommunications ordinance for small cell PROW
- Process Permits for small cell deployments
- Contract negotiations
- Consulting Services
- “Cooperative Piggyback Agreement” based on a revenue share system
 - Example (5 Bars): City at 65% and 3rd party at 35%
 - Results in a revenue share of \$11,375 out of \$17,500 generated per year
- Continue to require both legal and staff time by the City for review of new potential small cell sites

IN-HOUSE PROCESSING

- Retain 100% of revenue generated
- Control all contract negotiations
- Preparation of ordinance that protects City assets and encourages compatibility to maximum extent feasible
- City manages all macro cell sites successfully for the last 15 years



STAFF RECOMMENDATION

- Provide direction to staff for preparation of final draft ordinance, design guidelines, master license agreement, and associated fees.
- Provide direction to staff for the review an oversight of all WCFs within PROW and city owned property
- Provide direction to staff for preparation of an update to PMC Chapter 23.82 – Wireless Commission Facilities





Placentia City Council

AGENDA REPORT

TO: CITY COUNCIL

VIA: CITY ADMINISTRATOR

FROM: CHIEF OF POLICE

DATE: JULY 18, 2017

SUBJECT: **PURCHASE AND IMPLEMENTATION OF NEW POLICE DEPARTMENT
COMPUTER AIDED DISPATCH (CAD) / RECORDS MANAGEMENT
SYSTEMS (RMS)**

FISCAL
IMPACT: ALLOCATION OF ASSET FORFEITURE FUNDS (YEAR 1) IN AN
AMOUNT NOT-TO-EXCEED \$118,440 FOR THE PURCHASE AND
IMPLEMENTATION OF THE MARK43 CAD/RMS SOFTWARE
PACKAGE

SUMMARY:

The Police Department (Department) has utilized Public Safety Systems Incorporated (PSSI) as the Records Management Systems (RMS) since 1984. In 1996, the City purchased and implemented the Computer Aided Dispatch (CAD) software component from PSSI. In recent years the Department has realized an increase in work among all employees because of this outdated system. Numerous third-party applications have been purchased in attempt to bridge the gap created by using PSSI. The ongoing maintenance costs for these systems has escalated in excess of \$100,000 annually. Since our utilization of PSSI, monumental updates in technology have occurred, making an immediate replacement necessary in order to reduce workloads, increase officer safety and availability, and to provide accurate and robust data necessary for 21st century policing.

This action will approve a five-year agreement in an amount not-to-exceed \$592,200 for the purchase of the Mark43 CAD/RMS software system to replace the Department's existing systems. The first year of the Mark43 will be paid for utilizing Asset Forfeiture Funds as identified in the FY 17-18 Capital Improvement Program budget. It is anticipated that future years costs will be paid for utilizing the Public Safety Mitigation Fee Fund or General Fund.

RECOMMENDATION:

It is recommended that the City Council take the following actions:

1. Approve the purchase of the Mark43 CAD and RMS software for a five (5) year subscription term (May 15th 2018 – May 15th 2023) from Mark43, Inc. in an amount not-to-exceed \$592,200; and

3.c.

July 18, 2017

2. Authorize the City Administrator and/or his designee to execute all necessary documents, in a form approved by the City Attorney.

DISCUSSION:

In January 2017, the Placentia Police Department formed a committee to address the Department’s outdated software systems with a goal to make recommendations to either upgrade and/or replace the existing Public Safety Systems Incorporated (PSSI) Police Computer Aided Dispatch (CAD), Records Management System (RMS), Jail Management System (JMS), Digital Information Management System (DIMS), Trackers Evidence System, and associated interfaces. Research into upgrading the current system revealed it was cost prohibitive and would not solve the Department’s redundant workflow problems. Alternatively, the committee identified numerous companies that provided multi-faceted systems that were all-inclusive for law enforcement.

The committee selected four (4) of the industry leaders and innovators in the public safety software marketplace to provide demonstrations and competitive bids for a five (5) year service agreement. The committee hosted product demonstrations and conducted site visits with partner law enforcement agencies currently using these provider’s software systems. Feedback was given and each provider was thoroughly vetted to find the best fit for the Department’s operational parameters.

Each vendor was asked to provide a detailed quote for a five (5) year agreement. Financing was made available by three (3) of the vendors (Mark43 is subscription based) and the results are as follows:

CAD/RMS Provider	Year 1 (2018)	Year 2 (2019)	Year 3 (2020)	Year 4 (2021)	Year 5 (2022)	Total	Interest Rate
mark43 (5 Year)	\$118,440.00	\$118,440.00	\$118,440.00	\$118,440.00	\$118,440.00	\$592,200.00	Subscription
Zuercher (5 Year)	\$140,692.23	\$140,692.23	\$140,692.23	\$140,692.23	\$140,692.23	\$703,461.14	3.22%
Superion (Sungard) (5 Year)	\$113,422.55	\$150,608.55	\$151,724.55	\$152,872.55	\$154,056.55	\$722,684.75	3.30%
Spillman (5 Year)	\$156,780.69	\$156,780.69	\$156,780.69	\$156,780.69	\$156,780.69	\$783,903.45	0%

SELECTION PROCESS:

In June 2017, based upon the results of the product demonstrations, detailed quotes, and employee feedback, the committee recommended Mark43 as the finalist vendor to replace our current system. Mark43 is a New York based company with a local Los Angeles area office. The company is one of the newest within the public safety software marketplace and provides the most contemporary CAD and RMS technology currently available. Of the four selected companies who responded to our bid request, Mark43’s proposal proved to be the best for the Department, particularly in the following areas:

- **Records Management System (RMS):** The Mark43 RMS (brand-named Cobalt) is a comprehensive cloud-based solution that is uniquely scalable, and configurable for

each of the Department's divisions. The system is also CJIS and NIBRS compliant; it will provide a paperless work-flow and reduce employee down time.

- **Computer Aided Dispatch (CAD):** The Mark43 CAD (brand-named Mercury) is also a comprehensive cloud-based solution that is uniquely scalable, and configurable for our current and future dispatching needs. Mercury will add the latest technological advancements, including fully Geographic Information System (GIS) integrated Automatic Vehicle Locator (AVL) mapping, guaranteed uptime of up to 99.95%, and multi-level location cautions for immediate contextual awareness of any scene.
- **Property & Evidence:** Most comprehensive and user-friendly of all systems featuring seamless RMS integration, mobile application for evidence logging and auditing, paperless disposition notifications, and fully customizable barcode labels. Existing Zebra printers and Surface tablets can be utilized with this new system.
- **Technical Support:** Mark43 provides 24/7 technical support plus continuous application monitoring and tuning. Enhancements and system upgrades are included at no additional cost and completed by Mark43. At a significant cost-savings, all legacy data migration and interface development will also be included (\$25,000 to \$100,000 value).
- **Intuitive Design:** Secure, industry-leading Amazon Web Services (AWS) GovCloud platform. Multiple data center redundancy reduces risk of loss during disasters, works across *all* computer software platforms, next generation configuration with agency manageable presets - without a vendor work order or upgrades.
- **Cost:** Mark43's total cost was the least expensive of the four submitted proposals with predictable, annual subscription pricing.
- **Efficiency:** The Mark43 enterprise solution will eliminate redundancies, enhance daily operations, and reduce overtime needed to complete reports and process arrests. Consolidation and elimination of 3rd party applications will incur a direct differential of only \$17,340 per year, by upgrading to the Mark43 system.

FISCAL IMPACT:

The Department recommends that asset forfeiture funds be used for the purchase of the Mark43 CAD/RMS software in year one (1). State and federal laws only permit law enforcement agencies to use Asset Forfeiture funds for direct law enforcement purposes and only for programs that will enhance future investigations or support additional law enforcement measures against criminal acts, drug trafficking and other narcotic related offenses. The purchase of equipment and services is specifically permissible under Asset Forfeiture guidelines and will enhance future Police Department efforts to detect, discover, and track illicit drug dealers, identify, track and arrest gang members, enhance daily patrol functions, improve

investigations and follow-up to illegal activities, and apprehend dangerous criminals. CAD/RMS software is critical to the overall mission as outlined above.

It is anticipated that the amount needed to purchase the systems will not exceed the amount requested; these funds were included in the 2017-2018 Capital Improvement Program budget. It is anticipated that future years costs (years 2-5) will be paid for utilizing the Public Safety Mitigation Fee Fund or General Fund. While difficult to measure, it is anticipated that there will be Police Department savings as a result of deploying the Mark43 system over our current budgeted CAD/RMS and third-party software maintenance agreements.

Prepared by:

 FOR D.R.

David Radomski
Sergeant / Investigations

Reviewed and approved:



Darin Lenyi
Chief of Police

Reviewed and approved:



Shally Lin
Interim Finance Director

Reviewed and approved:



Damien R. Arrula
City Administrator

Attachments:

1. Mark43 Pricing for the City of Placentia
2. Mark43 Master Service Agreement (MSA)



Mark43 Pricing for the City of Placentia

Sign date of July 19th, 2017

This purchase price is for the Software-as-a-Service (SaaS) procurement as defined by any relevant contract(s), Master Service Agreement(s), Statement(s) of Work, and/or other agreements entered into by both Mark43 and the department.

The integrations listed are those required for launch to occur. The department has the option to add on other integrations after launch. Rates for additional integrations (if any) will be included in the contract.

Mark43 Subscription – Recurring Annual Expense	Price
5 Year Subscription to Mark43 CAD and RMS with Property & Evidence <i>This rate is per sworn officer, per month, paid bi-annually</i>	\$210 per sworn per month
Professional Services	
CLETS Interface to Mark43 CAD	Included
Vesta / E911 Interface to Mark43 CAD	Included
LiveScan Interface to Mark43 RMS	Included
CrossRoads Interface to Mark43 RMS	Included
Getac GPS Interface to Mark43 CAD	Included
Data Migration of Legacy Records	
A) Placentia PD RMS legacy data from PSSI – Mark43 will migrate Entities, which include persons, locations and crimes – an officer will be able to search for old reports by report number and open them up from within the Mark43 RMS as a PDF document.	Included
B) Placentia PD Property/Evidence Data	Included
C) Placentia PD Crossroads Data	Included
D) Placentia PD MySQL DIMS data – Mark43 will migrate UP TO 500GB of images (JPEGs) and up to 3GB of video (MP4)	Included
Key Dates & Terms	
Expected PPD RMS & CAD Go-live / Cutover Date	May 15th, 2018
5 year, no annual increase or decrease in price for additional/less sworn (up to 60 sworn)	5 Year Term
5 year, no annual increase in price for innovation / inflation	5 Year Term

Year 1 Payment Schedule	Amount Due
Contract Signing - Expected Date: July 19th 2017	\$0
Project Kickoff - Expected Date: September 1st, 2017	\$29,610
RMS Cutover - Expected Date: May 15th, 2018	\$29,610
Evidence Cutover - Expected Date: May 15th, 2018	\$29,610
CAD Cutover - Expected Date: May 15th, 2018	\$29,610
Total Year 1 Payments:	\$118,440
Years 2 Through 5 Payment Schedule	Amount Due
June 2019	\$59,220
December 2019	\$59,220
June 2020	\$59,220
December 2020	\$59,220
June 2021	\$59,220
December 2021	\$59,220
June 2022	\$59,220
December 2022	\$59,220
Total Years 2 Through 5 Payments:	\$473,760

SOFTWARE LICENSE AND SERVICES

This Software License and Services Agreement (this "**Agreement**") is effective as of **July 19th 2017** (the "**Effective Date**") by and between Mark43, Inc. ("**Mark43**"), with a place of business at 28 E. 28th 12th Floor, New York, NY 10016, and The City of Placentia Police Department ("**Subscriber**"), with a place of business at 401 East Chapman Avenue, Placentia California 92870.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

- 1.1 **Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in this Agreement when capitalized, and may be read in singular, plural or an alternative tense as the context requires.
- 1.2 "**Affiliate**" means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.3 "**Applicable Law**" means, with respect to any party, any federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any international, federal, state or local court, administrative agency or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such party or any of its properties, assets or business operations.
- 1.4 "**Applications**" means the Records Management System, Computer-Aided Dispatch and Evidence Management Applications, as described in Schedule A.
- 1.5 "**Authorized User**" means an Affiliate, employee or independent contractor of Subscriber (solely to the extent such contractor is providing services to Subscriber), who has been authorized by Subscriber to use the SaaS Services.
- 1.6 "**Documentation**" means the user guides and user manuals for the SaaS Services that Mark43 provides to Subscriber.
- 1.7 "**Integration Control Document**" means the agreement, if applicable, governing any integrations with Third Party Applications.
- 1.8 "**Intellectual Property Rights**" means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.9 "**Professional Services**" means the evaluation, consultation, implementation, customization, configuration and other services offered by Mark43 in connection with the SaaS Services.
- 1.10 "**SaaS Services**" means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Mark43 for remote access and use by Subscriber, including any Documentation thereto.
- 1.11 "**Services**" means the services provided or required to be provided by or through Mark43, including without limitation, SaaS Services and Professional Services.
- 1.12 "**Software**" means the object code version of Mark43's computer software and all Updates made available by Mark43 to Subscriber under this Agreement.
- 1.13 "**Statement of Work**" means a detailed plan of work to be agreed by the Parties in conjunction with this Agreement in order to facilitate implementation of the Professional Services and Applications.

- 1.14 "Subscriber Data" means all data, information, content and other materials stored or transmitted by Subscriber and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Third Party Application, excluding any Third Party Data and any Mark43 Data.
- 1.15 "Term" means the Initial Term and any Renewal Term.
- 1.16 "Third Party Application" means a third-party service approved by Mark43 to which Subscriber and any Authorized User facilitates Mark43's access to, and use, of the SaaS Services, via an application programming interface or other means.
- 1.17 "Third Party Components" means any components of the SaaS Service from time to time that are provided by third parties (e.g., Google Maps).
- 1.18 "Third Party Data" means any data owned by a third party that Mark43 provides to Subscriber via the SaaS Service.
- 1.19 "Third Party Provider" means third parties, including other vendors, state agencies and local agencies, that control products and/or databases with which Mark43 SaaS Services are to be interfaced.
- 1.20 "Updates" means any and all new releases, new versions, patches and other updates for the SaaS Services that Mark43 makes generally available without additional charge to its other subscribers of the SaaS Services.
- 1.21 "Vendors" means third parties with whom Mark43 contracts to provide components of the SaaS Services, and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).
- 1.22 "Website" means any Internet website through which Mark43 provides the SaaS Services under this Agreement.

2. SERVICES.

- 2.1 **SaaS Services.** During the Term, Mark43 hereby grants a non-exclusive, non-transferable, non-sublicensable license to Subscriber and its Authorized Users to access and use the SaaS Services through the Website for Subscriber's internal purposes and in accordance with the terms and conditions of this Agreement. Mark43 will be responsible for hosting the Website, and Subscriber and its Authorized Users will be responsible for obtaining internet connections and other third party software and services necessary for it to access the Website through the Internet as set forth in Schedule C, "Technical Requirements." Subscriber will be responsible to Mark43 for compliance with the restrictions on use and other terms and conditions of this Agreement by any of its Authorized Users.
- 2.2 **Professional Services.** Mark43 offers Professional Services in connection with the SaaS Services as further described in Schedule A. To the extent any Professional Services involve the development of any customization or configuration to the SaaS Services, all Intellectual Property Rights to such customization or configuration will be solely owned by Mark43 and will be deemed to be included in the definition of SaaS Services and licensed to Subscriber on the terms set forth herein.
- 2.3 **Access to Documentation.** Mark43 will provide Subscriber via the Website or other means with access to the Documentation, as may be updated from time to time. Subscriber may print copies of, use, and permit its Authorized Users to use, the Documentation solely in connection with the use of the SaaS Services.
- 2.4 **Support Services.** Mark43 will provide a telephone-based help desk through which it will respond to inquiries about the SaaS Services from Subscriber via telephone from 7 AM to 7 PM (Eastern Time), Mondays through Fridays (excluding U.S. Federal holidays). Mark43 also provides a 24/7 email based help desk for the SaaS Services as set forth in Schedule A.
- 2.5 **Restrictions on Use.** Subscriber and its Authorized Users will not (and will not permit any third party to): (i) share Subscriber's or any Authorized User's login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services or of any files contained in or generated by the SaaS Services; (iii) copy, modify, adapt or translate the SaaS Services or the Third Party Data, or otherwise make any use, resell, distribute or sublicense the SaaS Services or the Third Party Data other than in connection with this Agreement; (iv) make the SaaS Services

available on a "service bureau" basis or allow any third parties to use the SaaS Services; (v) disclose the SaaS Services or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the SaaS Services or the Third Party Data; (vii) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (x) introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (xi) use the Services to post advertising or listings; (xii) use the Services to defame, abuse, harass, stalk, or threaten others; (xiii) permit access or use of the Services by any individual outside the United States; (xiv) hide or obscure any Authorized User's location; (xv) permit access or use of the Services, for any activities other than to enhance Subscriber's own services, where reliance solely on, or failure to use, the Services could lead to death, personal injury, or property damages. Subscriber and its Authorized Users will not access the SaaS Services if in direct competition with Mark 43, and will not allow access to the SaaS Services by any party who is in direct competition with Mark43, except with Mark43's prior written consent. Subscriber shall comply with additional restrictions on use of the Services in Additional Terms, as defined in Section 2.10 below.

- 2.6 **Security Obligations.** Subscriber agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Service. Subscriber agrees it shall notify Mark43 promptly in the event it becomes aware of any unauthorized access or use of the SaaS Service, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. [In addition, Authorized Users may log into the SaaS Service from only one location at any given time – concurrent usage (or sign in) under a single username is prohibited.] Subscriber is responsible for all activities conducted within User accounts in use of the SaaS Service. Subscriber shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Service, including all those related to data privacy and the transmission of technical or personal data. Subscriber agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Service, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.
- 2.7 **Title.** As between Mark43 and Subscriber, Mark43 retains title to and ownership of the SaaS Services, including all copyrights and other Intellectual Property Rights relating thereto. Mark43's licensors retain title to and ownership of the Third Party Data and the Third Party Components, including all copyrights and other intellectual property rights relating thereto. Subscriber will have no rights with respect to the SaaS Services, the Third Party Data or the Third Party Components other than those expressly granted under this Agreement. Any suggestions for changes or improvements to Services that Subscriber provides to Mark43, whether solicited by Mark43 or not, shall be owned by Mark43 and Subscriber hereby irrevocably assigns, and shall assign, to Mark43 all right, title, and interest in and to such suggestions. Mark43 shall have no obligation to incorporate such suggestion into its products or Services.
- 2.8 **Subscriber Data.** As between Mark43 and Subscriber, Subscriber owns and shall retain all right, title, and interest, including, without limitation, all Intellectual Property Rights, in and to the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, and legality of the Subscriber Data, including obtaining all rights and consents necessary to share the Subscriber Data with Mark43 as set forth in this Agreement. Notwithstanding anything to the contrary contained herein, Subscriber hereby grants to Mark43 an irrevocable, worldwide, royalty free, non-exclusive, transferable, sublicensable license to use the Subscriber Data to: provide the SaaS Services to Subscriber and other Mark43 subscribers; analyze the Subscriber Data in anonymized and/or aggregate form in order to operate, maintain, manage, and improve the SaaS Services, create new products and services, and share and/or license this aggregate data to Affiliates, agents, business partners, and other third parties; for Mark43's internal purposes to improve the Applications, Software, and related services, and any other uses disclosed in or related to performance under the Agreement or any statement of work.
- 2.9 **Third Party Applications.** If Subscriber installs or enables a Third Party Application for use with the SaaS Services, Subscriber grants (and will cause the applicable third party to grant) Mark43 permission to access Subscriber Data stored on that Third Party Application as required for the interoperation of that Third Party Application with the SaaS Services. In no event will Mark43 be responsible for any Third Party Application, or for any failure of a Third Party Application to properly

interoperate with the SaaS Services. If Mark43 receives information that a Third Party Application may violate any Applicable Laws or Third Party rights, Subscriber will, promptly upon receiving notice of the foregoing from Mark43, disable any connection between such Third Party Application and the SaaS Services to resolve the potential violation (and if Subscriber fails to promptly disable such connection, Mark43 shall have the right to do so). In addition, in the event that Subscriber fails to properly obtain the grant of rights to Mark43 to access and use Third-Party Data as required for the interoperation of that Third-Party Application, Subscriber shall defend, indemnify, and hold harmless Mark43 from any and all claims based on Mark43's use of such Third-Party Application.

2.10 **Third Party Components.**

(a) **Use of Third-Party Components.** Mark43 may use Vendors to subcontract the performance of its duties and obligations hereunder and to provide certain functions of the Services, including without limitation, hosting and data analysis. Certain Vendor policies and terms and conditions of service shall apply to the Services. Such terms, or URL locator addresses for such terms, will be provided on **Schedule D** or in writing from time to time, "**Additional Terms.**" If any of the Vendors and/or licensors of the Third-Party Components require Mark43 to flow down any Additional Terms Subscriber, Subscriber's use of such Third-Party Components, as incorporated into the SaaS Service, shall be subject to such Additional Terms. In the event of any inconsistency or conflict between the Additional Terms and the terms of this Agreement, such Additional Terms shall govern with respect to Subscriber's use of the applicable Third Party Component.

(b) **DISCLAIMER REGARDING THIRD PARTY COMPONENTS.** MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY COMPONENTS, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY COMPONENTS AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

2.11 **Third Party Data.** Subscriber shall access and use the Third Party Data in accordance with the terms and conditions of the agreement between the Subscriber and the provider of such Third Party Data. MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY DATA, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY DATA AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

2.12 **Agreements with Third Party Providers.** Subscriber, and not Mark43, is solely responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers in connection with the interfaces, and for paying all fees, costs and expenses of Third Party Providers.

2.13 **Changes to Services.** Mark43 may make changes and Updates to its Services, provided that it does not materially derogate the overall quality of the Services. Mark43 does not guarantee that the Services are or will remain compatible with any particular third party software or equipment, and may, upon written notice, terminate its support for, any software or equipment of Subscriber that Mark43 determines are incompatible with the operation of the Services.

3. FEES AND PAYMENT TERMS.

3.1 **Fees for Mark43 Services.** Subscriber will pay Mark43 fees as stated on **Schedule A** (the "**Fees**") attached hereto in accordance with the payment schedule set forth on **Schedule A**. All payments of Fees are non-refundable. All amounts stated in this Agreement or on any invoice are in U.S. dollars, and all payments will be made in U.S. dollars. Overdue payments will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum allowable interest under Applicable Law, from due date until paid. Subscriber will pay any sales, use or other tax related to the license and services provided hereunder, exclusive of income taxes and payroll taxes relating to Mark43's employees. Subscriber agrees that its use of and payment for Services constitutes its inspection and acceptance of such Service.

3.2 **Third-Party Data and Third-Party Components.** Additional fees may apply to the use of certain Third-Party Data and Third-Party Components, which if provided by Mark43, such fee may be included within the Fees. Mark43 may pass through any increase in such fees for Third Party Components or Third Party Data, relating to any existing Services, by giving Subscriber thirty (30) days' advance notice.

- 3.3 **Taxes.** Subscriber will be responsible, as required under applicable law, for identifying and paying all taxes, including sales, use, excise, and other governmental fees, duties, and charges (and any penalties, interest, and other additions thereto) that are imposed on Subscriber or Mark43 with respect to the transactions and payments under this Agreement (excluding taxes based on Mark43's income or employment) ("**Indirect Taxes**"). All Fees are exclusive of Indirect Taxes. If Subscriber is exempt from paying Indirect Taxes, it shall provide to Mark43 exemption certificates, or a direct payment permit certificate, or such information to Mark43 as reasonably required and requested to determine whether Mark43 is obligated to collect Indirect Taxes from Subscriber. If any such taxes are required to be withheld on any payment, Subscriber will pay such additional amounts as are necessary so that the net amount received by Mark43 is equal to the amount then due and payable under this Agreement.

4. TERM AND TERMINATION.

4.1 Term.

(a) **Initial Term.** The initial term of this Agreement begins on the Effective Date and will continue for the period set forth on Schedule A, unless and until terminated in accordance with Section 4.2 (the "**Initial Term**").

(b) **Renewal Terms.** Upon expiration of the Initial Term or any Renewal Term, this Agreement will automatically renew for successive periods as set forth on Schedule A (each, a "**Renewal Term**") at the rates set forth on Schedule A, unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.

4.2 Temporary Suspension and Termination.

(a) Either party may terminate this Agreement upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.

(b) If Mark43 reasonably determines that Subscriber's use of the Services either: (i) fails to comply with the Restrictions on Use in Section 2.5; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Mark43's systems, the Services, or the systems or content of any other subscriber; or (iv) subjects Mark43 or its Affiliates to possible liability, then Mark43 may immediately upon notice temporarily suspend Subscriber's and any Authorized User's right to access any portion or all of the Services, pending remedial action by Subscriber, or after a period of 30 days, terminate the Services.

4.3 Effect of Termination.

In the event of any termination or expiration of this Agreement,

(a) Subscriber will pay Mark43 all amounts payable hereunder as of the effective date of termination or expiration;

(b) all rights and licenses granted hereunder to Subscriber (as well as all rights granted to any Authorized Users of Subscriber) will immediately cease, including but not limited to all use of the SaaS Services; and

(c) Mark43 will provide records to Subscriber in accordance with its transition assistance services ("**Transition Assistance**") as set forth in Schedule B.

(d) Subscriber will, upon written request of Mark43, either return to Mark43 or provide Mark43 with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of Mark43 that are in Subscriber's possession or control.

4.4 Survival.

The following provisions will survive any termination or expiration of this Agreement: Section 2.7 ("Subscriber Data"), Section 2.9 ("Third Party Components"), Section 2.10 ("Third Party Data"), Section 4.3 ("Effect of Termination"), Section 5 ("Confidentiality"), Section 6.2 ("Disclaimer"), Section 7 ("Limitation of Liability"), Section 8 ("Indemnification"), Section 9 ("Miscellaneous Provisions"), Schedule B ("Transition Assistance") and this Section 4.4 ("Survival").

5. CONFIDENTIALITY.

- 5.1 **Definition of Confidential Information.** For the purposes of this Agreement, "**Confidential Information**" means: (a) with respect to Mark43, the SaaS Services, and any and all source code relating thereto, as well as Documentation and non-public information or material regarding Mark43's legal or business affairs, financing, customers, properties or data, and (b) with respect to Subscriber, any non-public information or material regarding Subscriber's legal or business affairs, financing, customers, properties or data. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any

action by, or involvement of, the party to which the Confidential Information is disclosed (the "**Receiving Party**"); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the "**Disclosing Party**"); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party.

- 5.2 **Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the Effective Date: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Agreement; (ii) subject to Section 5.4 below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party's performance of this Agreement and (iii) except as provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.
- 5.3 **Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).
- 5.4 **Employee and Independent Contractor Compliance.** The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations hereunder with respect to such Confidential Information.
- 5.5 **Required Disclosures.** If a party is requested to disclose any of the other party's Confidential Information pursuant to any judicial or governmental order, that party will not disclose the Confidential Information without first giving the other party written notice of the request and sufficient opportunity to contest the order, to the extent such notice and opportunity to contest may be lawfully given. If one party is nonetheless legally compelled to disclose Confidential Information, such party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such counsel advises it is legally required to be disclosed, provided that such party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal. Without limiting the foregoing, Subscriber shall notify Mark43 of any requests for public records relating to Mark43 (including, without limitation, user guides or Documentation, or documents submitted by Mark43 in response to the RFP) within 24 hours of receipt of the request. Without limiting the foregoing, Subscriber further agrees to indemnify and hold harmless Mark43, its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from all claims, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and expert and consulting fees), incurred or expended by Mark43 in connection with a request for the disclosure of Confidential Information of Mark43 or Subscriber Data.
- 5.6 **Information Collected Through SaaS Services.** Subscriber is solely responsible for compliance with applicable laws related to the manner in which Subscriber chooses to use the Services, including Subscriber's transfer and processing of Subscriber Data. Subscriber understands and agrees that when it uses certain features of the SaaS Services, certain information and data may be collected from Authorized Users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information. Subscriber agrees that Mark43 may use such information to (i) provide more effective Services, (ii) to develop and test its Services, (iii) to aggregate such information and combine it with that of other Users, and (iv) to use anonymous aggregate data to improve the Services or for marketing, research or other business purposes. Provision of Services may involve the disclosure of such information to Vendors or Affiliates on the condition that they agree to treat such information in a manner substantially in accordance with this Agreement. Subscriber may revoke its consent to Mark43's collecting and using such data at any time by written notice to Mark43; provided, however, that Subscriber agrees that such revocation of consent may impair or render impossible the Subscriber's use of the SaaS Services.

6. REPRESENTATIONS AND WARRANTIES.

- 6.1 **Power and Authority.** Each party represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder and that the person signing this Agreement on behalf of the party has the authority to bind that party. Subscriber represents and warrants that it has obtained, and shall have, all necessary approvals, consents, and authorizations necessary for procurement under this Agreement and that its obligations under this Agreement do not, and shall not, exceed any budget authority limitations, during the Term of this Agreement. Subscriber further represents that it has not received federal funding in connection with procurement under this Agreement.
- 6.2 **No Other Warranties.** Use of the SaaS Services is not intended to be a substitute for the professional judgment of dispatchers, law enforcement officers, or first responders. The SaaS Services do not provide legal advice. Subscriber shall be responsible for all its own actions or failure to act in connection with the SaaS Services. Mark43 cannot guarantee that every error in the SaaS Services or problem raised by Subscriber will be resolved. THE SERVICES, THE THIRD PARTY COMPONENTS, AND THE THIRD PARTY DATA ARE PROVIDED "AS IS." MARK43 ASSUMES NO RESPONSIBILITY OR RISK FOR SUBSCRIBER'S USE OR MISUSE OF, OR FAILURE TO USE, THE INFORMATION PROVIDED THROUGH THE SAAS SERVICES. MARK43 MAKES NO WARRANTY THAT THE SERVICES WILL BE COMPLIANT WITH ANY REQUIREMENTS OF CJIS (CRIMINAL JUSTICE INFORMATION SERVICES) OR CLETS (CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM) OR ANY EQUIVALENT. DUE TO THE NATURE OF SOFTWARE AND THE INTERNET, MARK43 CANNOT GUARANTEE THAT EVERY ERROR IN THE SAAS SERVICES OR PROBLEM RAISED BY SUBSCRIBER WILL BE RESOLVED. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6 NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SERVICES, THE THIRD PARTY COMPONENTS, THE THIRD PARTY DATA OR THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION OR THAT THE SERVICES, THIRD-PARTY COMPONENTS AND THIRD-PARTY DATA ARE UP TO DATE, ACCURATE OR COMPLETE, SECURE FROM LOSS OR DAMAGE, OR FREE OF HARMFUL COMPONENTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

7. LIMITATION OF LIABILITY.

- 7.1 **Liability Exclusion.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OR USE, OR FAILURE OF, OF THE SERVICES, THE THIRD PARTY COMPONENTS OR THE THIRD PARTY DATA PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, ENVIRONMENTAL DAMAGE, LOSS OF PROFITS, REVENUES, ANTICIPATED SAVINGS, CUSTOMERS, OPPORTUNITIES, DAMAGE TO PRIVACY, REPUTATION OR GOODWILL OR UNAVAILABILITY OF THE SERVICES, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- 7.2 **Limitation of Damages.** MARK43'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID AND PAYABLE TO MARK43 BY SUBSCRIBER DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES. MARK43 SHALL HAVE NO LIABILITY ARISING OUT OF OR RELATING TO THE THIRD-PARTY COMPONENTS OR THE THIRD-PARTY DATA.
- 7.3 **Exceptions.** NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 7.1 AND SECTION 7.2 SHALL NOT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8. INDEMNIFICATION.

8.1 **Indemnification by Mark43.** Mark43 will defend, indemnify and hold harmless Subscriber and its Authorized Users, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with any third party claim arising after the Effective Date that the use of the SaaS Services (excluding any open source software) in accordance with this Agreement infringes or misappropriates the United States intellectual property rights of third party; provided, however, that the foregoing obligations shall be subject to Subscriber (a) promptly notifying Mark43 of the claim, (b) providing Mark43 with reasonable cooperation in the defense of the claim when Subscriber becomes aware and (c) providing Mark43 with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Mark43 shall not enter into any such settlement without Subscriber's prior written consent, which consent will not be unreasonably withheld, and that Subscriber shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing. Notwithstanding the foregoing, Mark43 shall have no obligation with respect to a third party claim to the extent the third party claim arises from: (s) claims arising out of acts or omissions of Subscriber or its users, employees or contractors; (t) claims brought by Subscriber or its Affiliates or Authorized Users; (u) claims arising from the use of old versions software after receipt of modified or updated versions of software; (v) claims arising from the use of Third Party Applications, Third Party Components or Third Party Data; (x) use of the SaaS Services in combination with modules, apparatus, hardware, software, or services not authorized by Mark43 or specified in the Documentation for use with the SaaS Services; (y) use of the SaaS Services in a manner that is not in accordance with this Agreement or the Documentation; (z) the alteration or modification of the SaaS Services by a party other than Mark43, unless such alterations and modifications were authorized by Mark43 or specified in the Documentation for use with the SaaS Services.

8.2 **Indemnification by Subscriber.** Subscriber will defend, indemnify and hold harmless Mark43 and its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with (I) any third party claim arising from or relating to (i) any allegation that any data, information or materials provided by Subscriber hereunder, including, without limitation, the Subscriber Data and Third Party Applications, when used in connection with the SaaS Services: (a) infringes or misappropriates any Intellectual Property Rights of a third party, or (b) violates any Applicable Laws; (ii) the actual or alleged violation of Applicable Law by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (iii) Subscriber's breach of this Agreement; provided, however, that the foregoing obligations shall be subject to Mark43 (x) promptly notifying Subscriber of the claim, (y) providing Subscriber with reasonable cooperation in the defense of the claim and (z) providing Subscriber with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Subscriber shall not enter into any such settlement without Mark43's prior written consent, which consent will not be unreasonably withheld, and that Mark43 shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing; (II) disabling a connection to a Third Party Application at Subscriber's request; (III) Subscriber's actions or failure to act, resulting in any third-party claim for personal injury or death, damage to personal property or reputation, environmental damage, interference with contract or employment, or violation of privacy; (IV) any request pursuant to a judicial or governmental order or other similar process, including but not limited to a subpoena or FOIA request or discovery request, seeking the disclosure of any Subscriber Data or other information collected or maintained by Mark43 in connection with the SaaS Services. For the avoidance of doubt, and without limiting the foregoing, Subscriber hereby acknowledges that Mark43 shall have no implicit or explicit obligation to challenge, oppose or defend against any request described in Clause (IV) of this subsection unless and until Subscriber reaffirms that it will honor its indemnification obligations as provided herein.

9. MISCELLANEOUS.

9.1 **Notices.** Unless otherwise specified herein, all notices and other communications between the parties required or permitted by this Agreement or by Applicable Law, will be deemed properly given, if given by (i) personal service, (ii) registered or certified mail, postage prepaid, return receipt requested, or (iii) nationally recognized private courier service, to the respective addresses of the parties set forth below or such other addresses as the respective parties may designate by like notice from time to time. Notices so given will be effective upon (a) receipt by the party to which

notice is given; or (b) on the fifth (5th) business day following mailing, whichever occurs first:

If to Mark43:

Mark43, Inc.
28 E. 28th Street
12th Floor
New York, NY 10016
Attn: David Jochim

If to Subscriber: _____

Placentia Police Department
401 East Chapman Avenue
Placentia, CA 92870
Attn: David Radomski

Copy to:

Mark43, Inc.
28 E. 28th Street
12th Floor
New York, NY 10016
Attn: General Counsel

Copy to: _____

- 9.2 **Assignment.** Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; provided, however, that a party may, without the consent of the other party, assign or otherwise transfer this Agreement to any of its Affiliates or to an entity with or into which it is merged or consolidated or to which it sells its stock or other equity interests or all or substantially all of its assets. Any assignment or other transfer in violation of this section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
- 9.3 [RESERVED]
- 9.4 **Force Majeure.** Except with respect to failure to pay any amount due under this Agreement, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts that are not caused by or within the control of the nonperforming party, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.
- 9.5 **No Waiver.** The failure of either party to enforce at any time for any period any provision hereof will not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged.
- 9.6 **Amendment.** No modification, change or amendment to this Agreement shall be effective unless in writing signed by Subscriber and Mark43. No term included in any invoice, estimate, confirmation, acceptance, purchase order or any other similar document in connection with this Agreement will be effective unless expressly stated otherwise in a separate writing signed by Subscriber and Mark43.
- 9.7 **Relationship of the Parties.** The relationship of the parties established by this Agreement is that of independent contractors and nothing contained herein will be construed to (a) give any party any right or authority to create or assume any obligation of any kind on behalf of any other party or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
- 9.8 **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, to the extent the economic benefits conferred thereby to the parties remain substantially unimpaired, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions or affecting the validity or enforceability of any of such terms or provisions in any other jurisdiction.
- 9.9 **Headings.** The titles and headings contained in this Agreement are for reference purposes only and shall not in any manner limit the construction or interpretation of this Agreement.
- 9.10 **Counterparts.** This Agreement may be executed, including by electronic signature, in two or more counterparts, each of which shall be an original and all such counterparts together shall constitute

one and the same instrument. Electronically executed or electronically transmitted (including via facsimile transmission) signatures have the full force and effect of original signatures.

- 9.11 **Cumulative Remedies.** All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 9.12 **Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.
- 9.13 **Compliance with Laws.** Each party shall comply with all Applicable Laws relating or pertaining to the use of the Services. Subscriber shall ensure that its use of all Subscriber Data complies with all Applicable Laws relating to the privacy of third parties or the protection of their personal data promulgated by any governmental, municipal, or legal authority having jurisdiction over Subscriber or the End User Data covered by this Agreement. "Applicable Laws" means all applicable provisions of all (x) constitutions, treaties, statutes, laws (including the common law), rules, directives, regulations, ordinances, codes or orders of any governmental authority and (y) orders, decisions, injunctions, judgments, awards and decrees and consents of or agreements with any such entity. Each party shall comply with local anti-bribery laws as well as the U.S. Foreign Corrupt Practices Act, as well as any other applicable laws and regulations. In connection with its performance under the Agreement, neither party shall directly or indirectly: (A) offer, pay, promise to pay, or authorize the payment of any money, gift or other thing of value to any person who is an official, agent, employee, or representative of any government or instrumentality thereof or to any candidate for political or political party office, or to any other person while knowing or having reason to believe that all or any portion of such money, gift or thing of value will be offered, given, or promised, directly or indirectly, to any such official, agent, employee, or representative of any government or political party, political party official or candidate; (B) offer, promise or give any person working for, or engaged by, the other party a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; or (C) request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement. Each party represents and warrants that it shall be responsible for compliance with this provision by all third parties engaged by it to perform services related to this Agreement and shall require that such third parties agree to comply with all legal requirements required of such party under this Agreement.
- 9.14 **Entire Agreement.** This Agreement supersedes all previous understandings, agreements and representations between the parties, written or oral and constitutes the entire agreement and understanding between the parties with respect to the subject matter thereof and incorporates all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither party makes any covenant or other commitment concerning its future action nor does either party make any promises, representations, conditions, provisions or terms related thereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

MARK43, INC.

CITY OF PLACENTIA POLICE DEPARTMENT

By: SCOTT CROUCH _____

By: _____

Title: CHIEF EXECUTIVE OFFICER _____

Title: _____

Date: JULY 19TH, 2017 _____

Date: _____

SCHEDULE A

Services Schedule

1. **Services.** The Services covered by this Agreement consists of the following:

a. **Professional Services:**

i. Interfaces to be provided are described as follows:

- 1) CLETS Interface to Mark43 CAD
- 2) Vesta / E911 Interface to Mark43 CAD
- 3) LiveScan Interface to Mark43 RMS
- 4) CrossRoads Interface to Mark43 RMS
- 5) Getac GPS Interface to Mark43 CAD

ii. The Data Migration to be provided is described as follows:

- 1) Placentia PD RMS legacy data from PSSI – Mark43 will migrate Entities, which include persons, locations and crimes – an officer will be able to search for old reports by report number and open them up from within the Mark43 RMS as a PDF document.
- 2) Placentia PD Property/Evidence Data
- 3) Placentia PD Crossroads Data
- 4) Placentia PD MySQL DIMS data – Mark43 will migrate UP TO 500GB of images (JPEGs) and up to 3GB of video (MP4)

b. **SaaS Services:**

i. The Applications to be provided are described as follows:

Record Management System

Field Contact & Offense Reporting
Incident Reporting
Arrest & Booking
DUI Arrest
Automatic UCR & NIBRS coding
Exported PDF Forms
Custom Units, Teams and User Roles
Configurable Report Approval Chains
Dynamic Master Entity Profiles
Image, Video, and Audio file uploads
Permission-based Read/Write Privileges
User Specific Reports Dashboard
Advanced Search
Rich Text Formatting
Auto-Validation of Fields, Locations and People
Configurable Fields
Smart Duplicate Data Entry Logic and Prevention
Configure all mandated NCIC Masks for Mark43 RMS

Computer Aided Dispatch

Call Taking and Dispatching
Event Management
Call Processing
Automatic Vehicle Location Mapping (Integration)
Unit Management and Monitoring
Call Management

Mark43 Evidence

- Immutable Chain of Custody
- Master Item Profile
- Chain of Custody Validations and Guardrails
- Digitally capture signatures and photo ID's
- Batch Label Printing
- Support for Zebra Printing
- Storage Location Setup and Customization
- Mobile Application (barcode scanning)
- Automated disposition approval process with customizable retention periods

Mark43 Case Management

The Mark43 RMS case management module interfaces directly with reports written in the RMS and enables pulling of data from multiple disparate incidents into one investigation.

- ii. Upon completion of the Professional Services, Mark43 will provide Subscriber with a 60 month (5 year) regular usage period (the "Regular Usage Period") of the SaaS Services. The Regular Usage Period for CAD and RMS is expected to commence on or about **May 15th, 2018**.
- 2. **Initial Term.** The Initial Term of this Agreement is for the time it takes to complete the Professional Services plus sixty (60) months thereafter, and will commence on the Effective Date.
- 3. **Renewal Terms.** Any Renewal Terms shall be for a period of 1 year.
- 4. **Fees.** The total annual Mark43 subscription price for CAD and RMS with Property & Evidence is \$210 per sworn officer per month or \$118,440 per year.

Mark43 Pricing is based on the number of sworn officers employed directly or indirectly by Subscriber at the time the Order Form is signed. In the event that Subscriber increases its number of employed sworn officers, which is currently 47, during the Term of the agreement to more than 60 sworn officers, then the fee shall increase by \$210 per sworn officer per month in excess of 60 sworn officers.

- 5. **Payment Schedule.** Subscriber will pay the Fees on the following schedule:

Year 1 Payment Schedule

Year 1 Milestones	% of Year 1 due	Expected Date	Amount Due
Contract signing	0%	July 19 th 2017	\$ -
Project Kickoff	25%	September 1 st , 2017	\$ 29,610.00
RMS Cutover	25%	May 15 th , 2018	\$ 29,610.00
Evidence Cutover	25%	May 15 th , 2018	\$ 29,610.00
CAD Cutover	25%	May 15 th , 2018	\$ 29,610.00
Total Year 1 Payments			\$ 118,440.00

Years 2 through 5 Payment Schedule

Year 2 Payment Dates	Amount Due
June 2019	\$ 59,220.00

December 2019	\$ 59,220.00
Year 3 Payment Dates	
June 2020	\$ 59,220.00
December 2020	\$ 59,220.00
Year 4 Payment Dates	
June 2021	\$ 59,220.00
December 2021	\$ 59,220.00
Year 5 Payment Dates	
June 2022	\$ 59,220.00
December 2022	\$ 59,220.00
Total Years 2 through 5 Payments	\$ 473,760.00

- a. Renewal Term: Fees for any Renewal Term will be paid on the first day of the Renewal Term.
6. **Support Services.** As part of the SaaS Services, subject to Section 2.4, Mark43 shall establish, sufficiently staff and maintain the organization and processes necessary to provide telephone and/or email based technical support, troubleshooting, error identification, isolation and remediation, and other assistance directly to Subscriber and its Authorized Users to support Subscriber's use, deployment and validation of the SaaS Services on a 24x7 basis, and after normal business hours and on holidays, as necessary to support Mark43's obligations under this Agreement. The contact information for Mark43's technical support organization is Support@mark43.com and Mark43 will notify Subscriber in writing of any changes no less than 5 days in advance. Mark43 shall provide Subscriber with online access to its known-problem database and any other resource containing information that will aid in problem and error resolution and correction, as well as any other technical resources made electronically available to any of Mark43's other customers. The Mark43 account manager or primary point of contact for Subscriber with respect to this Agreement will be Andrew Kennedy.
7. **Service Levels.** Mark43 shall provide the Applications in accordance with the following services levels.
- a. **Service Levels for the Records Management System and Evidence Management Applications (hereinafter, "RMS").**
- i. **RMS Availability.** During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS ("**RMS Scheduled Downtime**"); provided, however, that Mark43 is not responsible for any downtime of the RMS caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein; provided, further, that Mark43 shall be responsible for any downtime of RMS caused by Integrated Third Party Software (as defined below) solely to the extent specified in Section 71 below ("**Service Levels for Integrated Third Party Software**"). Mark43 shall provide Subscriber with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime (defined below) of the RMS, as well as continual periodic updates during the unscheduled

downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the RMS shall be available.

- ii. **RMS Service Credits.** In the event that Mark43 fails to make the RMS available at least 99.9% of the time in any given month during the Regular Usage Period due to RMS Unavailability (as defined below), Mark43 will credit the Subscriber's account for the unavailable RMS as follows:

RMS Availability (Monthly)	Credit Percentage
Above 99.9%	0%
99.8 – 99.0%	10%
98.9 – 98.0%	20%
Below 97.9%	30%

"RMS Unavailability" is defined as the percentage of minutes per month in which the RMS is completely and generally unavailable for Subscriber's use (but not the use of any one Authorized User), provided that RMS Unavailability does not include any unavailability attributable to: (a) RMS Scheduled Downtime for maintenance (whether by Mark43, by a vendor, or by Subscriber); (b) acts or omissions of Subscriber or any Subscriber user of the RMS; (c) server downtime related to connectivity issues resulting from Third Party-managed VPN access to hosted server or Subscriber internal network problems; (d) defects or bugs in the Applications or Software caused by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (e) any other cause(s) beyond Mark43's reasonable control, including but not limited to those caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), Third Party Components, overall internet congestion or a force majeure. Subscriber will be responsible for immediately notifying Mark43 of all Third Party-managed VPN access and internal or external (e.g. internet service provider) network problems that arise.

"Credit Percentage" means the applicable percentage of the portion of the Fees attributable to Services in the calendar month in which the RMS Unavailability occurs. For example, if Subscriber has paid Mark43 \$1,000 for one year of a Regular Usage Period, and the RMS Availability falls to 99.5% during any calendar month in that year, then Mark43 will owe Subscriber a 10% credit on that month's portion of the Fee, or: $\$1,000/12 = \83.33 per month, and 10% of $\$83.33 = \8.33 . In this example, Mark43 would owe Subscriber \$8.33 in credit for the month in which RMS Availability fell to 99.5%.

In order to receive this credit, Subscriber must notify Mark43 in writing within fifteen (15) days following the end of the month the RMS Unavailability occurred. All claims are subject to review and verification by Mark43 prior to any credits being granted. Mark43 will acknowledge credit requests within fifteen (15) business days of receipt and will inform Subscriber whether such claim request is approved or denied. The issuance of RMS Service Credit by Mark43 hereunder is Subscriber's sole and exclusive remedy for any failure by Mark43 to satisfy the service levels set forth in this Section 7(a).

b. Service Levels for the Computer Aided Dispatch Application (CAD).

- i. **CAD Availability.** During any calendar month of a Regular Usage Period, CAD shall be available to Subscriber no less than 99.95% of the time on a 24x7 basis, excluding scheduled maintenance of CAD ("**CAD Scheduled Downtime**"); provided, however, that Mark43 shall not be responsible for downtime of CAD under this section caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein. Any CAD Scheduled Downtime shall be scheduled on minimal traffic days whenever possible. The parties agree that the total amount of CAD Scheduled Downtime shall not exceed 60 minutes during any 30-day period. Mark43 shall provide Subscriber with immediate telephone notification to the point of contact set forth in the Agreement as soon as it becomes aware of any actual or potential unavailability of CAD other than CAD Scheduled Downtime ("**CAD Unscheduled Downtime**"), as well as continual periodic updates during the CAD Unscheduled Downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the CAD shall be available.
- ii. **Error Response and Resolution.** When reporting a failure of the CAD to Mark43 (a "**CAD Error**"), Subscriber shall identify the CAD Error as a Severity Level 1, 2, or 3 (each defined below) based on Subscriber's initial evaluation. If Mark43 becomes aware of a Severity Level 1 or 2 CAD Error, Mark43 shall promptly, but in no event to exceed the Initial Response timeframe in the chart set forth below, notify Subscriber, and such notice shall identify the CAD Error as a Severity Level 1 or 2 CAD Error

based on Mark43's initial evaluation. Mark43 and Subscriber shall cooperate in good faith to jointly determine whether a CAD Error is a Severity Level 1, 2, or 3 CAD Error; provided, however, that in the event that Mark43 and Subscriber cannot come to such joint determination despite such good faith cooperation, Mark43's determination shall control. Subscriber may report to Mark43 any Severity Level 1 or 2 CAD Error 24 hours per day, 7 days per week, and any Severity Level 3 CAD Error during Mark43's normal business hours. Upon notification by Subscriber of a CAD Error, Mark43 shall commence and diligently pursue correction of such CAD Error, at all times employing at least the level of effort ("**Level of Effort**") designated in the chart set forth below and in all instances providing an Initial Response, temporary resolution or fix (a "**Work Around**") and a permanent fix (a "**Permanent Correction**") to Subscriber within the timeframes in the chart set forth below, as measured from the earlier of the time that Subscriber notifies Mark43 or Mark43 first becomes aware of a CAD Error. Mark43 shall provide Subscriber with updates to the status of Mark43's efforts (the "**Status Updates**") by telephone, email or such other means as may be reasonably designated by Subscriber from time to time, no less frequently than the timeframes identified in the chart set forth below. For the avoidance of doubt, a CAD Error does not include, and Mark43 will not be responsible for, any feature or functionality of the CAD that is not set forth in Section 1(b)(i)(2) of this Schedule A or in a project plan created for Subscriber by Mark43.

1. "**Severity Level 1 CAD Error**" means any CAD Error that, for fifty percent (50%) or more of Subscriber's dispatchers, renders the CAD or any material portion thereof inoperative, or materially impairs use of the CAD in a production environment. Examples of Severity Level 1 CAD Errors include, without limitation, situations in which the CAD are inoperable and causing dispatchers to experience a total loss of service, continuous or frequent instabilities, a loss of connectivity or inability to communicate as intended, or there is an inability to process transactions, the creation of a hazard or emergency, or the inability to use a primary feature or function of the CAD.
2. "**Severity Level 2 CAD Error**" means any CAD Error that, for fifty percent (50%) or more of Subscriber's dispatchers, substantially impairs use of one or more features or functions of the CAD, which constitute less than a material portion thereof, in a production environment, or any CAD Error occurring in a testing or other non-production environment that, if occurring in a production environment, would constitute a Severity Level 1 CAD Error. Examples of Severity Level 2 CAD Errors include, without limitation, situations in which a CAD Error is causing intermittent impact to dispatchers, loss of redundancy, loss of routine administrative or diagnostic capability, or inability to use a secondary feature or function of the CAD.
3. "**Severity Level 3 CAD Error**" means any CAD Error that, for fifty percent (50%) or more of Subscriber's dispatchers, has a minimal impact on the performance or operation of the CAD. Examples of Severity Level 3 CAD Errors include, without limitation, a CAD Error having only a minimal impact on dispatchers and CAD Errors seen in a test or other non-production environment that, if deployed in a production environment, would not constitute a Severity Level 1 CAD Error.

Severity Level	Level of Effort	Initial Response	Work Around	Permanent Correction	Status Updates
1	Continuous best efforts, 24 hours per day, 7 days per week	Immediate, but in no event to exceed 30 minutes	6 hours	3 calendar days	Every 3 hours prior to a Work Around and every calendar day thereafter
2	Commercially reasonable efforts, 24 hours per day, 7 days per week	1 hour	24 hours	5 calendar days	Every 6 hours prior to a Work Around and every calendar day thereafter
3	Commercially reasonable efforts, during normal business hours	1 Business Day	10 Business Days	20 Business Days	Every 2 Business Days prior to a Work Around and every 5 Business Days thereafter

CAD Service Credits. Mark43's failure to meet the CAD services levels set forth in Section 7(b) during any calendar month of a Regular Usage Period entitles Subscriber to Fee credits (the "**CAD Service Credit(s)**") calculated as set forth below. Any CAD Service Credits owed to Subscriber hereunder shall offset against

any subsequent Fees owed by Subscriber and shall be Subscriber's sole and exclusive remedy with respect to Mark43's failure to provide the CAD. If Mark43 fails to meet the CAD service levels set forth in this Section 7(b) in any applicable calendar month during the Regular Usage Period, then Mark43 shall credit Subscriber five percent (5%) of the portion of the Fees attributable to CAD Services in the calendar month in which such CAD service level failure occurs. The applicable CAD Service Credits will be applied to the next invoice. Only one CAD Service Credit for failure to meet the applicable service level shall be granted for each Service in a calendar month of the Regular Usage Period.

- c. **Service Levels for Integrated Third Party Software.** Notwithstanding anything else to the contrary contained herein, Mark43 shall be responsible for any downtime of or related to the Applications or Integrated Third Party Software (as defined below) that is caused by Integrated Third Party Software solely to the extent specified in this Section 7(c). Credit Percentages Service Credits referenced elsewhere in this Contract shall not apply to downtime caused by Integrated Third Party Software or the integrations or connections to Integrated Third Party Software.
- i. **Availability of Third Party Applications.** The Statement of Work will outline specific Third Party Application integrations (the "Integrated Third Party Software") to be performed by Mark43 during the Professional Services Period, and the Subscriber's and Mark43's respective rights regarding acceptance of those Services. During the Regular Usage Period, the Integrated Third Party Software shall be operational no less than 99.9% of the time on a 24x7 basis, excluding any scheduled maintenance of the Integrated Third Party Software (whether scheduled by Mark43 or by the third party provider, the "Integration Scheduled Downtime"); provided, however, that Mark43 shall not be responsible for downtime caused by upgrades or updates to Integrated Third Party Software of which Mark43 does not receive the requisite advance notice, and such downtime will not count against the service levels promised herein. Mark43 agrees that it shall schedule any Integration Scheduled Downtime on minimal traffic days whenever possible. The Parties further agree that Mark43 shall not schedule in excess of 90 minutes of Integration Scheduled Downtime in during any 30-day period. Mark43 shall provide Subscriber with immediate telephone notification to the point of contact set forth in the Contract as soon as it becomes aware of any actual or potential unavailability of an Integration other than Integration Scheduled Downtime ("Integration Unscheduled Downtime"), as well as continual periodic updates during the Integration Unscheduled Downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the Integration shall be available.
- ii. **Responsibilities for Planned Updates.** Subscriber shall provide Mark43 with prompt notice, and in no case fewer than forty-five (45) days' advance notice, of any update by the Third Party provider of Integrated Third Party Software. Mark43 shall undertake commercially reasonable efforts to patch, repair or update the Software in order to integrate it with the updated Integrated Third Party Software.
- iii. **Responsibilities for Planned Upgrades.** Subscriber shall provide Mark43 with prompt notice, and in no case fewer than ninety (90) days' advance notice, of any planned upgrade by the Third Party provider of Integrated Third Party Software. Mark43 shall evaluate the time and resources required to patch, repair or update the Software in order to integrate it with the upgraded Integrated Third Party Software. The Parties shall engage in good faith negotiations to agree on the terms (including, without limitation, schedule and price) on which Mark43 would develop a patch, repair, update or Upgrade to integrate the Software with the Integrated Third Party Software.

SCHEDULE B
Transition Assistance

Upon termination of the Agreement for any reason, and subject to all Fees due being paid in full, Mark43 will create searchable PDFs of each record (each, a "**Record**") and provide them to the Subscriber for download. Subscriber may request, and Mark43 will consider, other formats in which to create the Records, but the final format of all Records will be determined in Mark43's sole discretion. Records can be uploaded to Subscriber's new records management system by the Subscriber or its new vendor.

1. Preparation

- a. The Subscriber will provide the desired cutoff date of the SaaS Services (the "**Cutoff Date**"), at which time all existing user accounts will be terminated.
- b. Mark43 will provide one (1) account for the Subscriber to access a web-based storage platform to retrieve Subscriber documents and Records (the "**Transition Account**"). The Transition Account will be available to Subscriber for thirty (30) days prior to the Cutoff Date.

2. Content

- a. Each Report in Cobalt will be recreated as a searchable PDF (or other mutually agreed to format as described above) using the standard Cobalt format then in use.
- b. All archive files will be accessible via the internet on the Cutoff Date.

3. Support

- a. Mark43 will maintain Subscriber data in Cobalt for up to 1 year following the Cutoff Date.
- b. Mark43 will maintain Subscriber PDF archives for up to 2 years following the Cutoff Date.
- c. Mark43 will resolve any issues it deems to be the result of errors in the Cobalt platform or export process for a period of six (6) months after the Cutoff Date.

Transition Assistance as outlined in this Schedule B is included in the Fees charged to Subscriber for the Services. Fees are due and payable up to the Cutoff Date. In the event that any Fees have not been paid as required in this Agreement, Mark43 may retain all Records and decline to provide the support outlined in Section 3 of Schedule B above until such Fees are paid in full.

SCHEDULE C

Technical Requirements

Mark43 CAD and RMS Recommended Hardware Equipment

	CAD Dispatch Workstation	RMS Dispatch Workstation
Operating Systems Supported	Windows 7 and higher	Windows 7 and higher
Processor	Quad-core Intel processor	Single, quad-core Intel processor
Memory	4 GB	4 GB
Network Card Speed	2 Mbps	2 Mbps
Screen Resolutions Supported	1920x1080	1024x768
Hard Disk Space Required	256GB SSD Disk Drive	80GB
Monitor	Dual 24 inch, flat panel, monitors	Dual 24 inch, flat panel, monitors
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.	Mark43 systems do not require any 3rd party software or plugins.
Graphics Card Recommended	2, 512 MB NVIDIA Quadro NVS 310, 4MON	2, 512 MB NVIDIA Quadro NVS 310, 4MON

	CAD Non-Dispatch Workstation	RMS Non-Dispatch Workstation
Operating Systems Supported	Windows 7 and higher	Windows 7 and higher
Processor	Single, quad-core Intel processor	Single, quad-core Intel processor
Memory	4GB	4GB
Network Card Speed	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.
Screen Resolutions Supported	1920x1080	1024x768
Hard Disk Space Required	256GB SSD Disk Drive	80GB
Monitor	24 inch, flat panel, monitors	24 inch, flat panel, monitors
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.	Mark43 systems do not require any 3rd party software or plugins.

Graphics Card Recommended	2, 512 MB NVIDIA Quadro NVS 310, 4MON	2, 512 MB NVIDIA Quadro NVS 310, 4MON
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	CAD Non-Dispatch Mobile Laptop	RMS Non-Dispatch Mobile Laptop
Operating Systems Supported	Windows 7 and higher	Windows 7 and higher
Processor	Single, quad-core Intel processor	Single, quad-core Intel processor
Memory	4GB	4GB
Network Card Speed	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.
Screen Resolutions Supported	1024x768	1024x768
Hard Disk Space Required	80GB	80GB
Monitor	13"	13"
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.	Mark43 systems do not require any 3rd party software or plugins.

Browser Requirements

Since the Mark43 platform is web-based, it can be accessed from any web browser. Mark43 requires using a modern web browser to access the system. IE 9+, Edge, Safari (latest), Firefox (latest), Chrome (latest) are all supported. However, we recommend Chrome as it updates to the latest version automatically and is proven high performance. As far as devices that work with Mark43, we are hardware agnostic as long as a modern browser is supported. Deployed departments have used Panasonic Toughbooks as well as Getac tablets.

Interface Server Requirements

If 3rd party integrations are required, an interface server may be installed on site. The requirements of this server are:

	Requirements
Sever Purpose	Servers only required for interfacing with 3rd party applications. Mark43 systems are cloud based and require no server hardware on-premise.
Operating System	RHEL 7, CentOS 7
Processor speed & quantity	3.1 Ghz
Cores per processor	2
Memory	8GB
Network Card Speed	2 Mbps
Network Card Quantity	1 NIC (2 NICs at 1 GBPS or greater preferred)
Screen Resolution	1024x768
Hard Disk Space Required	250GB
Hard Disk Space Drive Configuration	500GB

Networking/Firewall:

Inbound	Outbound	VPN	User Accounts
SSH over client VPN	All	Mark43 needs ability to SSH to the interface server over our client VPN	Admin user accounts for personnel with client VPN access.

Internet Connectivity Requirements:

Mark43's software-as-a-service platform is accessed via web browser and requires Subscriber to connect via an active internet connection.

In office, Mark43 requires a 1 GB internet connection along with a backup internet service provider line for redundancy purposes. In the field, Mark43 recommends a 4G LTE connection for best performance.

Updated 6/23/17

Placentia Police Department CAD/RMS Recommendation

July 18, 2017



*System images courtesy of Mark43

Project Introduction

- Current state of Computer Aided Dispatch (CAD) / Records Management System (RMS)
- Early 1990's technology – rising costs and maintenance – not user friendly
- Ad-hoc committee formed in January 2017 (12 members)
 - Committee recommendations



Project Strategy

- Find a solution for Placentia PD with input from all Divisions
- Look towards the future (tablets/smartphones/data storage costs)
- Reduce workload and overtime
- Increase data accuracy and enhance data (searching)
- Modern technology solution to assist with recruitment, retention, and morale
- Increase officer safety





Our Choice

mark43

“The Mark43 mission is to empower communities and their governments with new technologies that improve the safety and quality of life for all.”



Mark43 Current Customers

MARK43 IN THE FIELD

Multiple offices provide
comprehensive 24/7/365 support.

NYC | DC | LA | TO

TRUSTED IN DEPARTMENTS OF ALL SIZES

The Metropolitan Police Department

Washington, D.C.
3,742 Sworn Officers

Richmond Police Department

Contra Costa County, CA
165 Sworn Officers

Hawthorne Police Department

Los Angeles County, CA
96 Sworn Officers

Gardena Police Department

Los Angeles County, CA
91 Sworn Officers

Camden County Police Department

Camden County, NJ
397 Sworn Officers

Downey Police Department

Los Angeles County, CA
109 Sworn Officers

Manhattan Beach Police Department

Los Angeles County, CA
64 Sworn Officers

Culver City Police Department

Los Angeles County, CA
106 Sworn Officers

Jersey City Police Department

Hudson County, NJ
900 Sworn Officers

El Segundo Police Department

Los Angeles County, CA
68 Sworn Officers

Hermosa Beach Police Department

Los Angeles County, CA
32 Sworn Officers

Palos Verdes Estates Police Department

Los Angeles County, CA
21 Sworn Officers



Mark43 Advantages

- Comprehensive cloud-based solution (Amazon GovCloud)
 - Reduces IT server maintenance obligations – Updates handled by Mark43
 - Multiple data center backup (reduces risk of loss during disasters or hardware failures)
- Automatic Vehicle Locator (AVL) with GIS integration
- Digital case management system
- Guaranteed uptime of up to 99.95%
- Robust Property & Evidence features
- 24/7 Technical Support
- Works on any device
- Required interfaces and legacy data conversion included in pricing

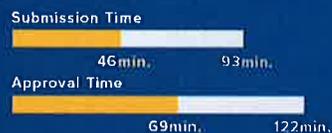


Immediate Cost Savings

PROVEN TO KEEP OFFICERS ON THE STREET

A massive reduction in report writing time meant the D.C. Metropolitan Police Department could put more officers on the street instead of behind a computer screen.

ARREST REPORTS



50%

reduction in arrest report writing time

OFFENSE REPORTS



80%

reduction in incident/offense reporting time

238,000 hours

saved per year on report writing

110+ officers

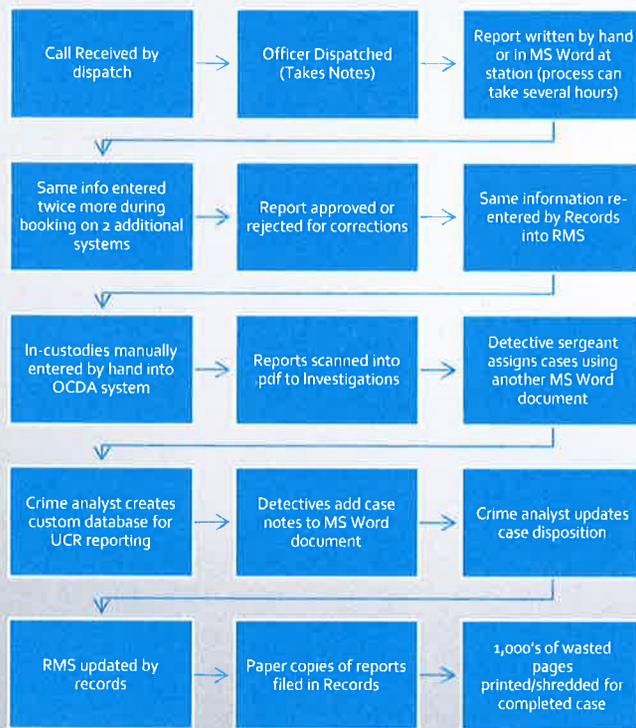
effectively added to patrol

■ Mark43 RMS ■ Legacy Software



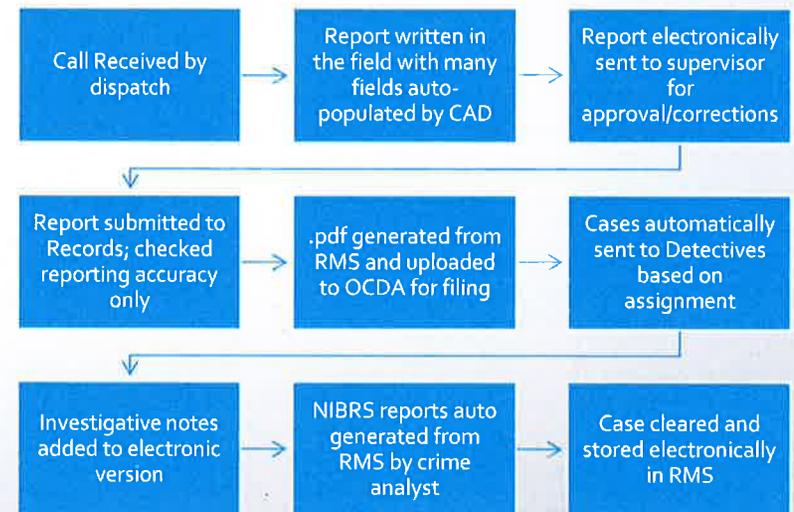
Workflow Comparison

OLD



6 to 12 hour process on average

NEW

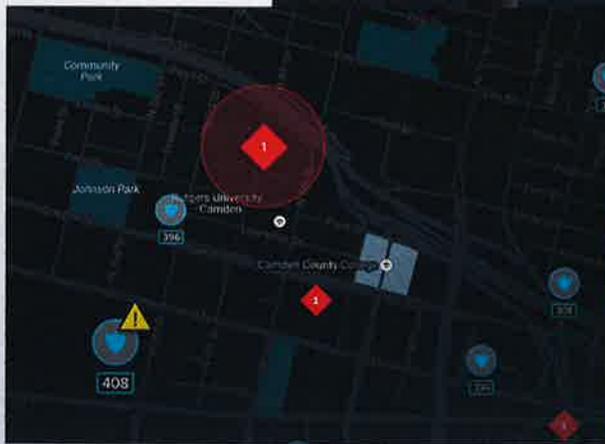


50% to 80% reduction in workload

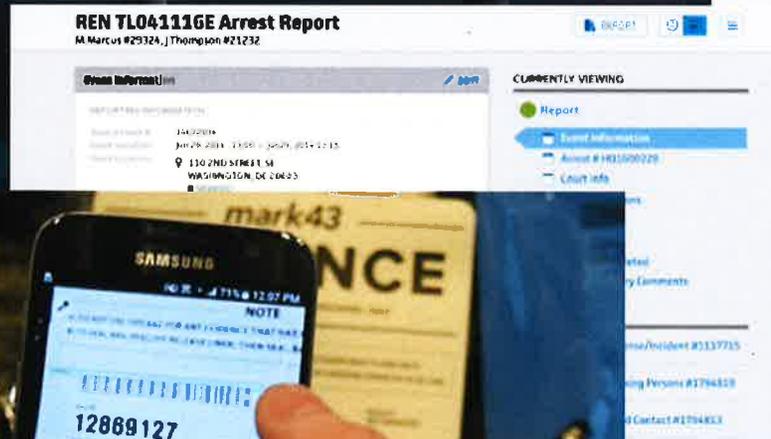


Mark43 System

CAD



Automatic Vehicle Locator (AVL)



RMS



Property & Evidence



Implementation Savings

- PSSI: \$89,820 (annual increases & limited support/updates)
- Digital Image Management System (DIMS): \$4,750
- Trackers Systems (Property & Evidence): \$5,750
- Columbitech: \$960
 - Total: \$101,280 (eliminated)
- Mark43
 - \$118,440 per year - \$210 per month, per officer (includes support staff)
 - Direct differential of just \$17, 160
 - Immediate savings in overtime and will significantly enhance daily operations



Conclusion

- Empowers officers to reduce down time and return to the field
- Increases data accuracy
- Will significantly reduce workload for all employees
- Enhances crime analysis with real-time data
- Our outdated systems are preventing us from being as productive as we could be
- Opportunity for Placentia PD to be an industry leader and model policing agency in Southern California



Questions?



mark43