

ERIN MENDENHALL
Mayor



DEPARTMENT of COMMUNITY
and NEIGHBORHOODS
Blake Thomas
Director

CITY COUNCIL TRANSMITTAL


Lisa Shaffer (Apr 7, 2021 15:15 MDT)

Lisa Shaffer, Chief Administrative Officer

Date Received: 04/07/2021

Date sent to Council: 04/07/2021

TO: Salt Lake City Council
Amy Fowler, Chair

DATE: April 7, 2021

FROM: Blake Thomas, Director, Department of Community & Neighborhoods



SUBJECT: SQF, LLC Master License Agreement for Small Cell Installation in the Right-of-Way

STAFF CONTACT: Blake Thomas, CAN Director 801-535-7707
Shellie Finan, Real Property Manager 801-535-6447
Kimberly Chytraus, City Attorney 801-535-7683

DOCUMENT TYPE: Ordinance / Master License Agreement

RECOMMENDATION: Pass an Ordinance granting the Master License Agreement with SQF, LLC for small cell installation in the right-of-way.

BUDGET IMPACT: None

BACKGROUND/DISCUSSION: SQF, LLC ("SQF") has applied for a new, non-exclusive Master License Agreement ("MLA") to access Salt Lake City rights-of way to install small cell infrastructure for wireless provider clients, which will allow a wireless carrier to increase its wireless capacity in installation areas. This MLA granted by the City will allow this small cell provider to install and maintain small cell infrastructure within the City rights-of-way, subject to conditions in the agreement and after securing specific site approvals. The MLA also requires payment for the grant of access to the City's right-of-way. SQF and the City have negotiated the terms of the proposed MLA, attached as Exhibit "A" to the proposed Ordinance.

PUBLIC PROCESS: Not Applicable

EXHIBITS: Proposed Ordinance and Master License Agreement

SALT LAKE CITY ORDINANCE
No. __ of 2021

(Granting a Master License Agreement for Wireless Facilities in the Public Way
to SQF, LLC, a Delaware limited liability company)

WHEREAS, SQF, LLC, a Delaware limited liability company (the “Company”) desires to install equipment to provide third party broadband wireless services within Salt Lake City, Utah (the “City”), and in connection therewith to establish a network in, under, along, over, and across present and future rights-of-way of the City, consisting of antennas, radios, and conduit, together with all necessary and desirable appurtenances, for the operation of a wireless broadband small cell network for communication services; and

WHEREAS, the City, in the exercise of its police power, ownership, use or rights over and in the public rights-of-way, and pursuant to its other regulatory authority, believes it is in the best interest of the public to provide to the Company, and its successors, access rights pursuant to a non-exclusive license agreement to operate its business within the City; and

WHEREAS, the City and the Company propose to enter into a Master License Agreement for Wireless Facilities in the Public Way in the substantially final form of which has been presented to the City Council at the meeting at which this Ordinance is being considered for adoption; and

WHEREAS, the City desires to approve the execution and delivery of such Master License Agreement for Wireless Facilities in the Public Way and to otherwise take all actions necessary to grant the referenced rights to the Company; and

WHEREAS, the City believes this Ordinance to be in the best interest of the citizens of the City.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah, as follows:

SECTION 1. Purpose. The purpose of this Ordinance is to grant to the Company, and its successors and assigns, a non-exclusive right to use the present and future public way within and under control of the City for its business purposes, under the constraints and for the compensation enumerated in the substantially final form of the Master License Agreement for Wireless Facilities in the Public Way attached hereto as Exhibit A, and by this reference incorporated herein, as if fully set forth herein (the “Master License Agreement”).

SECTION 2. Short Title. This Ordinance shall constitute the SQF, LLC Master License Agreement Ordinance.

SECTION 3. Grant of Access Rights. The administration is hereby authorized to negotiate and execute the Master License Agreement reflecting the terms of this Ordinance and incorporating such other terms and agreements as recommended by the City Attorney’s Office. There is hereby granted to the Company, and its successors and assigns, in accordance with the terms and conditions of the Master License Agreement, the right and privilege, to construct, maintain and operate in, under, along, over and across the present and future rights-of-way of the City, all as more particularly described in the Master License Agreement.

SECTION 4. Term. The term of the Master License Agreement is for a period of ten years from and after the recordation of the executed Master License Agreement with the Salt Lake City Recorder’s Office, with a renewal of an additional ten year term as provided therein. The Company shall pay all costs of publishing this Ordinance.

SECTION 5. Acceptance by Company. Within thirty (30) days after the effective date of this Ordinance, the Company shall execute the Master License Agreement; otherwise, this Ordinance and the rights granted hereunder shall be null and void.

SECTION 6. No revocation or termination may be effected until the City Council shall first adopt an ordinance terminating the Master License Agreement and setting forth the reasons therefor, following not less than thirty (30) days prior written notice to the Company of the proposed date of the ordinance adoption. The Company shall have an opportunity on said ordinance adoption date to be heard upon the proposed termination.

SECTION 7. This Ordinance shall take effect immediately upon publication.

Passed by the City Council of Salt Lake City, Utah, this ____ day of _____, 2021.

CHAIRPERSON

ATTEST:

CITY RECORDER

Transmitted to Mayor on _____.
Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

ATTEST:

CITY RECORDER

(SEAL)

Bill No. _____ of 2021.
Published: _____.

Salt Lake City Attorney's Office
Approved As To Form

By: KChytraus
Kimberly K. Chytraus
Date: January 6, 2021

EXHIBIT “A”

MASTER LICENSE AGREEMENT

EXHIBIT “A”

MASTER LICENSE AGREEMENT

MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES IN THE PUBLIC WAY

THIS MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES IN THE PUBLIC WAY (this “**Agreement**”), dated as of its date of recordation with the Salt Lake City Recorder (the “**Effective Date**”), by and between SALT LAKE CITY CORPORATION, a Utah municipal corporation (the “**City**”), and SQF, LLC a Delaware limited liability company (including its successors and assigns, the “**Company**”).

RECITALS

A. The Company desires a non-exclusive agreement to install, at its sole cost and expense, a network of Wireless Facilities and/or structures related thereto within the boundaries of Salt Lake City, Utah, and to utilize Salt Lake City’s Public Way for such purpose, in order to provide wireless services and expand the available data transmission bandwidth for mobile devices.

B. The City owns or controls such Public Way and has agreed to grant access to the Company in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration and, further, in contemplation of subsequent approval by legislative action of the City Council as hereinafter provided, the parties mutually agree as follows:

ARTICLE 1 ORDINANCE

1.1 Defined Terms. All capitalized terms not otherwise defined herein have the meanings given them in Salt Lake City Code Chapter 14.056, or its successor (the “**City Wireless Code**”).

1.2 Ordinance. The City Council has adopted an ordinance entitled Verizon Wireless Master License Agreement Ordinance (the “**Ordinance**”), approving the execution of this Agreement. Execution of this Agreement constitutes the acceptance of the Ordinance by the Company. Such Ordinance is incorporated herein by reference, and made an integral part of this Agreement.

1.3 Description. The Ordinance confers upon the Company, and its successors and assigns, the non-exclusive right, privilege, and access (the “**Access Rights**”), subject to the terms of this Agreement, to construct, install, maintain, repair, replace, modify, relocate, remove, and operate: (i) the Wireless Facilities in approved locations in the Public Way and (ii) attach Wireless

Facilities to an existing or new Structure in the Public Way, all as described in this Agreement. This Agreement does not grant to Company any interest in any property.

1.4 Term. The term of the Agreement is for a period from and after the date hereof, until 10 years from the Effective Date. If there is no default under this Agreement and Company is compliant with all applicable law, rules, and regulations, this Agreement shall be automatically extended for one additional period of 10 years. If the Company intends not to extend the term, Company shall deliver to City written notice of its intent not to extend the term prior to the expiration of the initial term.

ARTICLE 2 PERMIT APPROVAL

2.1 Application and Review.

(a) To locate Wireless Facilities in the Public Way or attach Wireless Facilities to an existing or new Structure in the Public Way, Company shall submit an application for a Permit to Work in the Right-of Way (a “**Public Way Permit**”), the form of which shall be substantially similar to the form attached hereto as **Exhibit “A”**; provided, the City and the Company can reasonably amend the form from time to time to comply with the City Wireless Code, subject to the Small Wireless Facilities Deployment Act pursuant to Title 54, Chapter 21 of the Utah Code, or its successor (the “**State Code**”) and applicable federal law. In accordance with the State Code, the Company may submit a request to review and approve multiple Wireless Facilities on the same application by attaching a list of said facilities to the application. If a Wireless Facility is approved and a Public Way Permit is granted, the license for the approved Wireless Facility shall coincide with this Agreement subject to Section 8.4. Company shall comply with the requirements of the City Wireless Code. An approved Public Way Permit shall approve the location and plans for the location of a Wireless Facility. Depending on the scope of the Company’s proposed work, Company may also need to apply for additional permits such as a traffic control permit and electrical permit. The Public Way Permit shall be reviewed as provided in the City Wireless Code, the State Code and applicable federal law.

(b) Company shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its Wireless Facilities. Company shall obtain a franchise from the City for the location of such fiber optic lines in the Public Way.

(c) Any Company Facility that does not have an approved Public Way Permit, does not receive other required permits, or does not meet the specifications of this Agreement or the City Wireless Code, shall be deemed unauthorized. City may cause Company to remove any unauthorized facilities upon 30 days’ written notice at Company’s cost and expense, or following the 30-day period may remove such facilities and will invoice Company for the cost of such removal.

ARTICLE 3 FEES

3.1 Compensation.

(a) Company shall pay all fees and rates due City pursuant to the City Wireless Code (the “**Small Cell Fees**”). If the Company is Collocating on a Utility Pole that is owned, managed, or operated by, or on behalf of the City, Company shall pay the City an annual fee equal to \$50 per Utility Pole, as may be amended in accordance with the State Code (“**City Pole Rate**”). Further, consistent with the City Wireless Code and the State Code, the Company shall not be charged any additional rate, fee or compensation for the right to use or occupy any Public Way because Company is subject to the municipal telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act (the “**MTLT**”). If Company is no longer subject to the MTLT, the Company shall compensate City for the right to use the Public Way as provided by the State Code, subject to applicable federal law.

(b) Company shall also pay any reasonable fees or costs permitted by the City Wireless Code, subject to the State Code and other applicable state and federal laws, and charged by City or Structure owner and associated with any related construction or traffic control permits or similar approvals, and any other ad valorem taxes, special assessments or other lawful obligations of the Company to the City.

If City is required by law to collect any federal, state, or local tax, fee, or other governmental imposition (each, a “Tax”) from Company with respect to the transactions contemplated by this Agreement, then City shall bill such Tax to Company in the manner and for the amount required by law, Company shall promptly pay such billed amount of Tax to City, and City shall remit such Tax to the appropriate tax authorities as required by law; provided, however, that City shall not bill to or otherwise attempt to collect from Company any Tax with respect to which Company has provided City with an exemption certificate or other reasonable basis for relieving City of its responsibility to collect such tax from Company. Company shall be responsible for all Taxes that are assessed against or are otherwise the legal responsibility of Company with respect to itself and its property.

3.2 Fee Payment. The City Pole Rate shall be paid upon the issuance of each Public Way Permit and be paid in advance annually on or before the anniversary of each Public Way Permit thereafter. There shall be no proration for any partial year. Any payment of the City Pole Rate or other Small Cell Fee, if any, paid after the due date shall incur 12% annual interest, compounded daily from the due date until payment is received on the amount due. If Company holds over past the expiration of the applicable Public Way Permit and the applicable removal period provided herein, each of the Small Cell Fees shall increase to 200% of the most recent respective Small Cell Fees paid annually if any are being paid hereunder. Payment of a hold over fee does not extend or renew this Agreement or any Public Way Permit.

ARTICLE 4
COMPANY USE OF PUBLIC WAY

4.1 Rights to Access and Use Public Way.

(a) The Company shall have the right to use a portion of a Public Way in the location described in the approved Public Way Permit to locate and install Wireless Facilities on an approved Structure, subject to the terms and conditions of this Agreement.

Notwithstanding anything herein to the contrary, the Company may maintain or replace its Wireless Facility with like-kind equipment of substantially similar size that is in compliance with the design standards set forth in the City Wireless Code without prior written approval of the City; provided, Company shall obtain a Public Way Permit, as required by the City Wireless Code, to authorize construction in the ROW, or a traffic control permit.

(b) The rights granted to the Company herein do not include the right to excavate in, occupy or use any City park, recreational areas or other property owned by the City (or regulated by the City, such as riparian areas of water source protection areas).

(c) Company shall install and maintain Wireless Facilities and Structures that it owns in a good and workmanlike manner.

4.2 Company Duty to Relocate. Whenever the City shall require the relocation or reinstallation of any of the Wireless Facilities situated within the Public Way, it shall be the obligation of the Company and at Company's sole cost and expense, to accommodate such requirement within the reasonable time periods provided by the City and, at the latest, complete the relocation of the respective Wireless Facilities within 180 days of receipt of notice to relocate as may be reasonably necessary to meet the requirements of the City. The Company's relocation may be required by the City for any lawful purpose, including, without limitation, the resolution of existing or anticipated conflicts or the accommodation of any conflicting uses or proposed uses of the Public Way, whether such conflicts arise in connection with a City project or a project undertaken by some other person or entity, public or private; provided, the City shall not relocate the Wireless Facilities to accommodate another wireless carrier unless required by applicable state or federal law. The City will cooperate with the Company to ensure no interference with Company's operations (including the location of a temporary facility) and provide alternate space where available, within the Public Way. The new location shall be subject to obtaining an approved Public Way Permit. Such relocation shall be accomplished by the Company at no cost or expense to the City. In the event the relocation is ordered to accommodate the improvements of an entity other than City or Company, the cost and expense of such relocation shall be borne by such other entity.

4.3 Approval to Move Company Property; Emergency Exception. Except as provided in Section 4.2, the City shall not, without the prior written approval of the Company, intentionally alter, remove, relocate or otherwise interfere with any portion of the Wireless Facilities. Any written approval request shall be promptly reviewed (within 60 days) and processed by the Company and approval shall not be withheld, conditioned, or delayed so long as such request does

not materially adversely impact the Company's network and does not impose additional costs upon the Company. The Company may condition its approval upon its ability to install a temporary facility and issuance of a replacement Public Way Permit to provide for an alternate space. However, if it becomes necessary, in the reasonable judgment of City, to move any of the Wireless Facilities because of a fire, flood, emergency, earthquake disaster or other imminent and material threat thereof, these acts may be done by the City without prior written approval of the Company at the Company's sole cost and expense. In the event of an emergency, the City shall use good faith efforts to contact Company's Network Operations Center at (800) 621-2622 ("NOC") prior to taking any action involving Company's equipment.

4.4 Compliance with Rules and Regulations and Applicable Laws. Wireless Facilities located on, upon, over or under the Public Way shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with such lawful rules and regulations as the City may issue, subject to the State Code and other applicable state or federal laws. The Company shall acquire, and pay any fees with respect to, such permits as may be required by such rules and regulations, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. All Wireless Facilities installed or used pursuant to this Agreement shall be used, constructed, repaired, replaced, and maintained in accordance with applicable federal, state and City laws, rules, and regulations, including without limitation environmental laws, now existing or from time to time adopted or promulgated.

4.5 Repair Damage. If during the course of work on Wireless Facilities, the Company causes damage to or alters any portion of the Public Way, Structure, or any City facilities or other public property or facilities, the Company shall (at its own cost and expense and in a manner reasonably approved by City), replace and restore such portion of the Public Way, Structure, or any City facilities or other public or private property or facilities, in accordance with applicable City ordinances, policies and regulations relating to repair work of similar character. If Company does not complete such work within a reasonable time frame set by City, the City may complete such work and bill Company for the cost and expense, to be paid within 30 days' following the date of an invoice for such work.

4.6 Bond; Guarantee of Repairs. Company before being issued a Public Way Permit hereunder, shall provide the City with an acceptable corporate surety bond in the amounts set forth herein to guarantee faithful performance of the work authorized by any Public Way Permit granted pursuant to this Agreement and compliance by Company with the terms and conditions of the permit, applicable city ordinances, and the regulations, specifications and standards promulgated by the City relative to work in the Public Way. The bond shall be valid for a period of three years following the completion of any work by Company in the Public Way or any repair work by Company performed pursuant to Section 4.5 above, the Company shall maintain, repair, and keep in good condition those portions of the Public Way, Structures, property, or facilities restored, repaired or replaced by Company, to the reasonable satisfaction of the City Engineer, reasonable wear and tear excepted. The total, one-time bond amount shall be \$15,000 to be held by the City Engineer, and provided that the City Engineer may reasonably revise the amount of the bond as set forth in Salt Lake City Code section 14.32.070, as may be amended from time to time.

4.7 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices in accordance with applicable safety regulations or standards imposed by law.

4.8 Inspection by the City. The Wireless Facilities shall be subject to inspection by the City to assure compliance by the Company with the terms of this Agreement. Company shall pay any actual and reasonable fees charged or costs or expenses incurred by City in connection with such inspections; provided, such inspections shall be limited to one time per calendar year.

4.9 Company's Duty to Remove Wireless Facilities from the Public Way.

(a) Subject to subsection (c) below, the Company shall remove from the Public Way all or any part of the Wireless Facilities, when one or more of the following conditions occur:

(i) The Company ceases to operate such Wireless Facilities for a continuous period of 12 months, except when the cessation of service is a direct result of a natural or man-made disaster or other emergency;

(ii) The construction or installation of such Wireless Facilities does not meet the requirements of this Agreement or the Public Way Permit and Company fails to cure such failure to comply within the notice and cure periods set forth in Section 8.1(b) and the City elects to terminate this Agreement or an Public Way Permit pursuant to Sections 8.2(a) or 8.2(d).

(b) Upon receipt by the Company of written notice from the City setting forth one or more of the occurrences specified in subsection (a) above, the Company shall have 90 days from the date upon which said notice is received to remove such Wireless Facilities, or, in the case of subsection (a)(i), to begin operating the Wireless Facilities.

(c) If Company fails to timely remove the Wireless Facilities as set forth in this Section, City may remove such facilities and bill Company for the cost and expense, to be paid within 30 days' following the date of an invoice for such work.

ARTICLE 5
POLICE POWER

The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its residents and their properties. This Agreement is subject to any such ordinances, rules, and regulations.

ARTICLE 6
TRANSFER OF RIGHTS

6.1 Terms of Transfer.

(a) Except as provided in subsection (c) and provided that there is not an uncured default of any provision of this Agreement or Public Way Permit at the time of transfer, the Company shall not sell, transfer, lease, assign, sublet, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise make available, the Access Rights or any rights or privileges under this Agreement, (each, a “**Transfer**”), to a Proposed Transferee, without the prior written consent of the City. A “**Proposed Transferee**” means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the Company. A “**Person**” means any individual, sole proprietorship, partnership, association or corporation, or any other form of organization, and includes any natural person.

(b) For the purpose of determining whether it shall grant its consent, the City may inquire into the qualifications of the Proposed Transferee, and the Company shall assist the City in the inquiry. City may condition or deny its consent based on any or a combination of the following or similar criteria. The Proposed Transferee shall indicate by affidavit whether it or any of its principals:

(i) has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(ii) has ever had a judgment entered against it in an action for fraud, deceit, or misrepresentation by any court of competent jurisdiction;

(iii) has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a system similar to the Wireless Facilities, except that any such claims, suits or proceedings relating to insurance claims, theft or service, or employment matters need not be disclosed;

(iv) is financially solvent, by submitting financial data, including financial statements, that have been audited by a certified public accountant, along with any other data that the City may reasonably require; and

(v) has the financial and technical capability to enable it to maintain and operate the Wireless Facilities for the remaining term of this Agreement and is in the business of operating Facilities.

In addition, Company shall provide to the City information regarding any failure by the Company to comply with any provision of this Agreement or of any applicable customer or consumer service standards promulgated or in effect in the City’s jurisdiction at any point during the term of this Agreement.

(c) Notwithstanding the foregoing, the City’s consent shall not be required in connection with the following circumstances, provided that Company is not released from the obligations under this Agreement and such transferee assumes this Agreement, including subsection (d) below:

(i) The Transfer from Company to an entity in which Company holds a controlling interest or to an entity which holds a controlling interest in the Company or and entity under common control with the Company, or an entity that is a successor by merger or other consolidation of the Company;

(ii) any entity acquires all or substantially all of the Company's assets in the market defined by the FCC in which the City is located;

(iii) Any Transfer in trust, a mortgage, or other instrument of hypothecation of the assets of the Company, in whole or in part, to secure an indebtedness, provided that such pledge of the assets of the Company shall not impair or mitigate the Company's responsibility and capability to meet all its obligations under this Agreement; or

(iii) Interconnection, license, or use agreements pursuant to which the Wireless Facilities may be used by another entity providing telecommunication services within the City, provided that any such interconnection, license, or use agreement is subordinate to this Agreement.

(d) Transfer by the Company shall not constitute a waiver or release of any rights of the City in or to its Public Way and any Transfer shall be expressly subject to the terms and conditions of this Agreement and not create any conflict with any applicable laws, rules, or regulations.

(e) A Transfer of this Agreement will only be effective upon the Proposed Transferee becoming bound to this Agreement by executing an unconditional acceptance of this Agreement or other assignment, agreement or other document reasonably provided by the Company and delivered to the City.

(e) As contemplated by subsection (c)(iii) above, the parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Wireless Facilities collocated on Company's Structures in the Public Way pursuant to this Agreement may be owned and/or operated by Company's third-party wireless carrier customers ("Carriers") and installed and maintained by Company pursuant to license agreements between Company and such Carriers. Such license agreements shall be subordinate to this Agreement. Such Wireless Facilities shall be treated as the Company's for all purposes under this Agreement provided that (i) Company remains responsible and liable for all performance obligations under the Agreement with respect to such Wireless Facilities; (ii) City's sole point of contact regarding such Wireless Facilities as it relates solely to this Agreement shall be Company; and (iii) Company shall have the right to remove and relocate such Wireless Facilities pursuant to the terms of this Agreement.

ARTICLE 7 COMPANY INDEMNIFICATION; INSURANCE

7.1 No City Liability. The City shall in no way be liable or responsible for any loss or

damage to property, or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of the Wireless Facilities. City will be liable only for its own conduct, subject to and without waiving any defenses, including limitation of damages, provided for in the Utah Governmental Immunity Act (Utah Code Ann. 63G-7-101, et. seq.) or successor provision. Company agrees that the Rights-of-Way are delivered in an “AS IS, WHERE IS” condition and City makes no representation or warranty regarding their condition, and disclaims all express and implied warranties, including the implied warranties of habitability and fitness for a particular purpose.

7.2 Indemnification.

(a) Company shall indemnify, save harmless, and defend City, its officers and employees, from and against all losses, claims, counterclaims, demands, actions, damages, costs, charges, and causes of action of every kind or character, including attorneys’ fees, arising out of Company’s intentional, reckless, or negligent performance hereunder or under the Ordinance. Company’s duty to defend City shall exist regardless of whether City or Company may ultimately be found to be liable for anyone’s negligence or other conduct. If City’s tender of defense, based upon this indemnity provision, is rejected by Company, and Company is later found by a court of competent jurisdiction to have been required to indemnify City, then in addition to any other remedies City may have, Company shall pay City’s reasonable costs, expenses, and attorneys’ fees incurred in proving such indemnification, defending itself, or enforcing this provision. Nothing herein shall be construed to require Company to indemnify the City against the City’s own negligence or willful misconduct. The provisions of this Section 7.2 shall survive the termination or expiration of this Agreement.

(b) City assumes no responsibility for any damage or loss that may occur to Company’s property, except for negligent, willful or intentional damage to the property of Company caused by City. City has no responsibility for any maintenance of Company’s equipment, or for Company’s employees. Nothing in this Agreement shall be construed to create a partnership, joint venture, or employment relationship

7.3 Insurance.

(a) The Company, at its own cost and expense, shall secure and maintain, and shall ensure that any subcontractor to the Company shall secure and maintain, during the term of this Agreement the following policies of insurance:

(i) Commercial General Liability Insurance. Commercial general liability insurance with the Salt Lake City Corporation included as an additional insured as their interests may appear under this Agreement on a primary and non-contributory basis in comparison to all other insurance including City’s own policy or policies of insurance, in the amount of \$2,000,000 per occurrence with a \$3,000,000 general aggregate and \$3,000,000 products completed operations aggregate. The policy shall protect the City and the Company from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the Company’s operations under this Agreement. Such insurance shall provide coverage for premises operations, products and

completed operations. The Company may utilize its umbrella policy to meet the required limits.

(ii) Commercial Automobile Liability Insurance. Commercial automobile liability insurance to include City as an additional insured as their interests may appear under this Agreement and providing coverage for owned, hired, and non-owned automobiles used in connection with this Agreement, with a combined single limit of \$2,000,000 per occurrence. The Company may utilize its umbrella policy to meet the required limits. If the policy only covers certain vehicles or types of vehicles, such as scheduled autos or only hired and non-owned autos, Company shall only use those vehicles that are covered by its policy in connection with any work performed under this Agreement.

(iii) Workers' Compensation and Employer's Liability. Worker's compensation with statutory limits pursuant to Utah law and employer's liability insurance with \$1,000,000 per accident/per employee disease/per policy disease. In the event any work is subcontracted, the Company shall require its subcontractor(s) similarly to provide worker's compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

(b) General Insurance Requirements.

(i) Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (A) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (B) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the City.

(ii) All policies of insurance shall be issued by insurance companies authorized to do business in the state of Utah and either (A) Currently rated A- or better by A.M. Best Company, or (B) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended.

(iii) The Company shall furnish certificates of insurance, verifying the foregoing matters concurrent with the execution hereof and thereafter upon renewal.

(iv) If any-work is subcontracted, the Company shall require its subcontractor, at no cost to the City, to secure and maintain all insurance coverages required of the Company hereunder.

(v) Company shall use commercially reasonable efforts to provide City with written notice of any notice of cancellation of a policy at least 30 days prior to such cancellation, and a certificate of insurance as evidence of a successor policy complying with the requirements of this Agreement.

7.4 Damages Waiver. Notwithstanding any provision in this Agreement to the contrary, in no event shall any party be liable to any other party for indirect, special, punitive, or consequential damages, including, without limitation, lost profits.

ARTICLE 8 ENFORCEMENT; TERMINATION

8.1 Company Defaults. The Company shall be in default of this Agreement in the event of any of the following:

(a) The Company fails to make timely payments of the Small Cell Fees, or any other fee due to the City under the terms of this Agreement, and does not correct such failure within 30 days after its receipt of written notice of such failure.

(b) The Company, by act or omission, defaults under any provision of this Agreement and such default is not cured within 30 days following written notice by City to Company, or such longer cure period as permitted by the City if the Company (i) commences corrective action during 30 days following notice of the failure, and (ii) is diligently pursuing such corrective action to completion.

(c) The Company becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its Facilities are sold under an instrument to secure a debt and is not redeemed by the Company within 60 days.

(d) A representative of the Company acting as an authorized representative of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City, that is fraudulent or in violation of a felony criminal statute of the State of Utah.

(e) Company abandons use of all Wireless Facilities for 12 consecutive months, except as otherwise provided in Section 4.9.

8.2 City Remedies. In the event of an uncured Company default, City shall maintain all its rights and remedies, at law and in equity, including the ability to charge fines, recover fees and costs, and remove the Wireless Facilities that are the subject of such default. Without limitation, City may do one or all of the following:

(a) Fine Company \$100 per day per non-monetary default until the non-monetary default is cured.

(b) Terminate or suspend any Public Way Permit or other permits held by Company that are the subject of such default.

(c) Withhold issuing any new permits to the violating party.

(d) If the violation is not cured within 180 days, or such longer cure period as may be permitted by City, City may remove and impound the Wireless Facilities that are the subject of

such default until the violation has been cured.

(e) The City may terminate or revoke this Agreement and all rights and privileges hereunder, if there are two or more defaults in any twelve month period that affect all Wireless Facilities hereunder, or the City may terminate the specific Wireless Facility(ies) licensed hereunder in the event of a default pertaining to said Wireless Facility, if the default demonstrates a material disregard of the City's primary use of the Public Way at the respective site(s), including threatening the health and safety of citizens.

8.3 City Defaults. In the event there is a material breach by City with respect to any of the provisions of this Agreement or its obligations under it, Company shall give City written notice of such breach. After receipt of such written notice, City shall have 30 days in which to cure any breach, provided City shall have such extended period as may be required beyond the 30 days if City commences the cure within the 30 day period and thereafter continuously and diligently pursues the cure to completion. Company may not maintain any action or effect any remedies for default against City unless and until City has failed to cure the breach within the time periods provided in this Section. In the event of an uncured default by City, Company shall maintain all its rights and remedies provided at law, however, no remedy that would have the effect of amending the provisions of this Agreement shall become effective without a formal amendment of this Agreement.

8.4 Company Termination.

(a) Agreement Termination. Company may terminate this Agreement or any Public Way Permit, in its sole discretion, by giving at least 30 days' written notice. Company shall not be subject to any penalty or fee for terminating this Agreement prior to the end of the term of the Agreement. Responsibility for Small Cell Fees shall cease upon removal of Company's Wireless Facility(ies), subject to Section 4.9 above and following payment of the Small Cell Fees for the year during which the Company's Facilities are removed.

(b) Termination of Use. Without terminating the Agreement, by giving at least 30 days' prior written notice, Company may terminate paying the Small Cell Fees for Wireless Facilities and/or Structures from which the Company has discontinued use and removed. City shall not provide partial reimbursement for termination of use during any partial year.

ARTICLE 9 NOTICES

9.1 City Designee and Address. Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Agreement shall be delivered to the City at Housing and Neighborhood Development Division, Real Estate Services Manager, 451 South State Street, Room 425, P.O. Box 145460, Salt Lake City, Utah, 84114-5460, with a copy to the City Attorney, at 451 South State Street, Room 505A, P.O. Box 145478 Salt Lake City, Utah 84114-5478, and (b) such other offices as the City may designate by written notice to the Company.

9.2 Company Designee and Address. During the term of this Agreement, the Company

shall maintain a registered agent on file with the Utah Division of Corporations for services of notices by mail, and an office and telephone number for the conduct of matters relating to this Agreement during normal business hours. Unless otherwise specified herein, all notices from the City to the Company pursuant to or concerning this Agreement or the Access Rights shall be delivered to:

Company:	SQF, LLC ATTN: Alda Lisis 16 Middle Street, 4 th Floor Portland, ME 04101
With Invoices to be sent to:	SQF, LLC ATTN: Accounts Payable 16 Middle Street, 4 th Floor Portland, ME 04101
Emergency Contact:	207-358-7467

ARTICLE 10 MISCELLANEOUS

10.1 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof or thereof, all of which will remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof.

10.2 No Waiver or Estoppel. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any of such terms and conditions.

10.3 Amendment Approval Required. Except as otherwise provided above, no amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company and an ordinance or resolution approving such amendments is approved by the City Council, if appropriate.

10.4 Utah Governmental Records Management Act. Whenever the Company is required to deliver to the City, or make available to the City for inspection, any records of the Company, and such records are delivered to or made available to the City with a written claim of business confidentiality which meets, in the judgment of the City, the requirements of the Utah

Governmental Records Management Act (“GRAMA”), such records shall be classified by the City as “protected” within the meaning of GRAMA, and shall not be disclosed by the City except as may otherwise be required by GRAMA, by court order, or by applicable City ordinance or policy. Company specifically waives any claims against City related to disclosure of any materials as required by GRAMA.

10.5 Timeliness of Approvals. Whenever either party is required by the terms of this Agreement to request the approval or consent of the other party, such request shall be acted upon at the earliest reasonable convenience of the party receiving the request, and the approval or consent so requested shall not be unreasonably denied, delayed, conditioned or withheld, and shall comply with applicable law. Time is of the essence under this Agreement. Notwithstanding the foregoing, the City shall comply with all timelines set forth in the City Wireless Code, the State Code and all applicable state and federal laws, rules, regulations and orders. By executing this Agreement, Company does not waive any right to enforce its rights and remedies under federal law.

10.6 Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. The Company represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City’s conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City’s conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

10.7 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah. Venue shall reside in Salt Lake City, Utah. In the event of any conflict between this Agreement, including the exhibits, and the City Wireless Code or Ordinance as it exists on the effective date of this Agreement, this Agreement shall prevail, except as federal or state law may preempt or act to modify the City Wireless Code or Ordinance at present or in the future.

10.8 Entire Agreement. This Agreement contains all of the agreements of the parties with respect to any matter addressed in this Agreement, excluding any permits issued in connection with this Agreement, and supersedes all prior discussions, agreements or understandings pertaining to any such matters for all purposes.

10.9 Authority. Each individual executing this Agreement on behalf of the City and Company represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of the City or Company (as applicable).

[Signatures on next page.]

WITNESS WHEREOF, this Agreement is executed in duplicate originals as of the day and year first above written.

SALT LAKE CITY CORPORATION, a
Utah municipal corporation

Erin Mendenhall, Mayor

Date: _____

Attest and Countersign:

City Recorder

Date of Recordation: _____

Approved as To Form:

Kimberly K. Chytraus, Senior City Attorney

SQF, LLC

By _____

Name: Joshua Broder

Title: President

Date: _____