

Indemnification Agreement

THIS INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20____, by and between the City of Montclair, hereinafter referred to as "City," and _____, a _____, hereinafter referred to as "Permittee."

WHEREAS, the City has been requested to issue a permit for installation of certain Small Cell Facilities or Wireless support Structures in the public right-of -way, as more fully described in the attached application/permit number _____, and

WHEREAS, the Permittee represents that it is fully qualified to perform such work by virtue of its experience and the training, education and expertise of its principals, contractors and employees.

NOW THEREFORE, in consideration of the mutual promises and releases contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Indemnification.

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Permittee's services, to the fullest extent permitted by law, Permittee shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Permittee, its officers, agents, employees or contractors (or any entity or individual that Permittee shall bear the legal liability thereof) in the performance of professional services under the subject permit.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Permittee shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents ("Indemnified Parties") from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of any work pursuant to the subject permit by Permittee or by any individual or entity for which Permittee is legally liable, including but not limited to officers, agents, employees or contractors of Permittee. Said indemnification shall include any claim that Permittee, or Permittee's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law. Said obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above whether the Indemnified Parties were actively or passively negligent, except that it shall not apply to claims arising from the sole negligence or willful misconduct of the Indemnified Parties. The Permittee's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) General Indemnification Provisions. Permittee agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every contractor or other person or entity involved by, for, with, or on behalf of Permittee in the performance of the work set forth in the subject permit. In the event Permittee fails to obtain such indemnity obligations from others as required here, Permittee agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Permittee and shall survive the termination of this Agreement or this section. These indemnification provisions are independent of and shall not in any way be limited by the insurance requirements of this Agreement. City approval of the insurance required by the subject permit does not in any way relieve the Permittee from liability under this section.

2. Attorney's fees. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

3. Authority. If signed on behalf of an entity, the signatory represents and warrants that he or she has the approval, authority and consent of the entity, on whose behalf this is signed, to bind that entity to this agreement.

Permittee Name: _____

Signature: _____

Typed or printed name of authorized representative: _____

Title of authorized representative: _____