



STAFF REPORT

ITEM NO. 10

DATE: JULY 17, 2012
TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS
FROM: ROD FOSTER, CITY MANAGER *R. Foster*
PREPARED BY: DAVID X. KOLK, ELECTRIC UTILITY DIRECTOR
SUBJECT: APPROVE POLE ATTACHMENT LICENSE AGREEMENT
BETWEEN CITY OF COLTON AND FREEDOM
COMMUNICATIONS, INC.

RECOMMENDED ACTION

It is recommended that the City Council approve the attached Pole Attachment License Agreement between the City of Colton and Freedom Communications, Inc.

GOAL STATEMENT

The proposed action will support the City's goal to provide safe, reliable, affordable and environmentally sustainable electric service.

BACKGROUND

The City of Colton Electric Department and local telephone companies belong to the Southern California Joint Pole Association (SCJPA). When phone companies attach lines to City owned poles they purchase space on a pole and are considered joint owners in the pole. Their ownership includes a responsibility for a share of pole maintenance costs. Cable TV companies and non-phone telecommunication companies do not belong to SCJPA and must lease space on the poles from the City under a negotiated agreement. Time Warner Cable is the only company that currently has a lease agreement with the City of Colton.

ISSUES/ANALYSIS

Freedom Communications has requested a lease agreement with the City of Colton to attach fiber optic lines to City owned utility poles. Under the proposed agreement, Freedom Communications will pay the City a one-time application fee of \$1,000. This will give them the right to attach their fiber optics to a maximum of 50 poles at a cost of \$18.25 per pole and \$2.00 per anchor per year. The City's existing pole agreements have annual prices of around \$5.00 per pole per year. Attachments are on an as-needed basis up to the maximum number of poles

specified in the agreement. It is unknown how many poles Freedom Communications will ultimately require. The lease agreement has an initial 10 year term and then converts to a year to year agreement.

FISCAL IMPACTS

Approval of the Pole Attachment License Agreement will result in additional lease revenues to the Electric Utility of up to \$1,012 per year, depending on the number of pole attachments.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

Pole Attachment License Agreement

ATTACHMENT 1

Pole Attachment License Agreement

Dated May 8, 2012

POLE ATTACHMENT LICENSE AGREEMENT

On this 17th day of July, 2012 the City of Colton, a California city and municipal corporation (hereinafter called "City") and Freedom Telecommunications, Inc., a California corporation (hereinafter called "Licensee"), hereby agree that from and after the date hereof the terms and conditions set forth in this Pole Attachment License Agreement ("Agreement") shall govern Licensee's use of any and all poles owned in whole or in part by City. This Agreement applies to all attachments or occupations of the Licensee's equipment as hereinafter defined.

This is a pole attachment only license and does not preclude City from requiring a franchise or other type of additional agreement in the future to the extent legally required or permitted.

1. Licensee's use of City's poles shall be confined to supporting those cables and wires together with associated messenger cables, guy wires, anchors and other appurtenances, all hereinafter called "equipment", which City has given Licensee prior written permission to install. Such equipment shall be used exclusively for the deployment of cables for wholesale dark fiber installations. Any and all equipment shall be located only on that portion of City's poles normally used for communication facilities and not on that portion used for electrical transmission or distribution. This Agreement covers the area within the limits of the City of Colton.
2. Whenever Licensee shall desire to place equipment upon any of City's poles, Licensee shall make written application for permission to do so, in the number of copies and in the form from time to time presented by City. If such application is approved, permission to place the equipment described in the application upon the pole or poles identified within the time specified therein shall be granted by City by one copy of the application being signed by an employee designated by the Director of the Colton Public Utilities Department, in the place provided thereon for that purpose and returning the signed copy to Licensee. No application shall be deemed accepted or approved through City's failure to approve or deny the application in writing, and any application which has not been approved or denied within forty-five (45) days after City receives a complete application, all required documents and material, and payment of all sums required herein does not guarantee an approval by the City. The City shall endeavor to complete the necessary reviews within a reasonable timeframe and provide guidance to Licensee for such completion of any application(s) that has not been processed within the initial forty-five 45-day interval.
3. Upon receiving the signed copy of the application but not before, and upon payment of the sums required herein, and provided that Licensee is in full compliance with the terms and condition of this Agreement and all applicable state and federal laws, orders, and regulations with respect to all of Licensee's facilities and equipment in Colton, Licensee shall have the right to install, maintain and use its equipment described in the application upon the pole(s) identified therein, provided, however, that before commencing the installation Licensee shall notify City of the specific time it proposes to do the work sufficiently in advance so the City may arrange to have its

representative present when the work is performed, but in no event less than 72 hours in advance. Such installations shall occur only on days when City is open for business unless otherwise agreed to in writing by the City.

- a. License shall not have the right to place, nor shall it place any additional equipment upon any pole used by it without first making application for permission to do so, submitting the required fees, and receiving written permission from City. Licensee shall not change the position of any equipment attached to any pole or within any conduit without City's prior written approval.
4. Each application to the City to install any equipment shall be accompanied by a payment to the City of \$1000.00 for any pole attachment application package, provided that no such package may contemplate the use of more than 50 poles and/or lengths of conduit. This \$1000.00 fee shall be for the processing of the application and the engineering of the attachments or occupations proposed and the inspection of the work performed pursuant to section 19 herein. The application fee is non-refundable.
5. In addition to the processing, engineering and inspection fees specified in section 4 above, Licensee shall pay to the City an annual license fee of \$18.25 dollars per pole for each foot of space occupied, two dollars (\$2.00) per anchor, and \$0.49 per foot of 1 1/2" conduit or 1 1/4" inner-duct required. The annual fee shall be prorated over the number of months that Licensee has its equipment attached to or occupied in the City's facilities commencing with the first day of January and half on the first day of July each year. The annual fee may be changed by City, in accordance with applicable federal, state or local law but otherwise in City's sole discretion, upon ninety (90) days written notice to Licensee. Licensee shall provide City with an annual inventory of all Licensee maps specific to attachments within the City and on City controlled infrastructure, including locations and equipment types for each item of equipment, concurrently with the annual payment unless no changes have been made in the previous year to Licensee's equipment attached to City infrastructure.
6. (a) Licensee shall, at its own risk and expense, place and maintain its equipment upon poles (i) in a safe condition and good repair; (ii) in a manner satisfactory to City and so as not to conflict or interfere with work on or use of the poles by City or others; and (iii) in conformity with such requirements and specifications as City may from time to time prescribe and with all laws and regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to overhead and underground line construction, including without limit thereto, General Orders No. 95 and 128 of the Public Utilities Commission of State of California and any supplements thereto and revisions thereof, the national Electrical Safety Code, and any statewide electric codes adopted by the State of California or any department or agency thereof.

(b) Licensee shall install and maintain tags on its equipment and each attachment identifying the Licensee's name and contact phone number. Such tagging shall be of sufficient size and position so as to be readable from ground level.

(c) Licensee shall furnish all work, materials and equipment required for its installations. City may, at City's sole discretion, install all or part of the equipment to be installed on poles within City and all other necessary facilities. Licensee shall reimburse City for its entire actual cost and fully burdened labor expenses of performing installation of Licensee's facilities, provided that City may require a deposit in advance from Licensee of any amount up to the estimate of the City's costs and expenses. Licensee shall be responsible for costs specific to its facilities and not for any network attachment installed by others that have facilities attached to City infrastructure.

(d) Licensee shall complete the installation of its equipment covered by each approved individual application within such time limit as City shall state on the application; and if Licensee should fail to complete the installation of its equipment within the prescribed time limit, or if no such time limit is stated by City, then within one hundred eighty (180) days, the permission granted by City to place equipment shall automatically be revoked and Licensee shall not have the right to place equipment without first reapplying for and receiving permission to do so, all as prescribed hereinabove for initial applications. Any variance from these time limits must be approved by the City.

(e) For purposes of this agreement "fully burdened labor expense" shall mean the rate of pay for a unit of labor performed by a City employee plus benefits and non-personnel operating costs allocable to such unit of labor, as adjusted from time to time. By way of illustration only, in fiscal year 2011-2012, City's fully burdened labor expense for City provided electric utility labor is calculated as the employees' base hourly rate of pay plus 35 % of such base hourly rate.

7. (a) If in City's judgment, the accommodation of any of Licensee's equipment necessitates the rearrangement of facilities on or within existing City facilities, City will indicate on the application the necessary changes and the estimated cost thereof and return it to Licensee. If Licensee still desires to use the facilities and returns the application marked to so indicate, City within a time determined solely by City will provide new facilities as required, and City will make such transfers or rearrangements of existing facilities as may be required, all to be done at the sole risk and expense of Licensee, and Licensee will reimburse City its entire actual cost and fully burdened labor expense thereby incurred. City may require Licensee to provide a deposit in advance of any amount up to the estimate of City's costs and expenses.

(b) If in City's judgment, Licensee's existing equipment on or within any City facility interferes with or prevents the placing of any additional facilities required by City, and if the additional facilities could be placed by removing Licensee equipment, or by rearranging the existing facilities, City shall notify Licensee of the rearrangements of facilities and transfers of facilities required in order to continue the accommodation of Licensee's equipment, together with an estimate of the cost of making any such changes; and if Licensee desires to continue to maintain its equipment and so notifies City, City shall within a reasonable time make such replacement or facilities rearrangement as may be required, all at the sole risk and expense of Licensee, and Licensee, on demand, shall reimburse City for the entire actual costs and fully burdened labor expense incurred. City may require Licensee to provide a deposit in advance of any amount up to the

estimate of City's costs and expenses. If Licensee does not so notify City, Licensee shall at its own expense and risk, remove its equipment from the affected City facilities within thirty (30) days from notification by City.

8. If Licensee makes attachments, contacts or installations of equipment to any of City's facilities or to portions or spaces of any facilities owned by City, without City's permission hereunder, or if Licensee is in material default of any term or condition hereof, City may at its option remove any or all of the Licensee's equipment attached to or installed upon any of City's facilities. Any removals of equipment pursuant to this section shall be at the risk of Licensee and any such equipment as City shall so remove shall be stored only for thirty (30) days by City and disposed of thereafter for Licensee's account in a manner to be determined solely by the City. City shall have no liability for any damage to Licensee facilities or equipment incurred during the removal or storage of such facilities or equipment. Licensee shall reimburse City for all costs of removal and storage incurred. If any Licensee attachments or occupations made without prior approval of City are discovered, application to City must be initiated pursuant to the requirements stated in section 4 of this Agreement and regardless of whether such application is initiated or approved, Licensee shall pay City upon demand an amount equal to the greater of: (i) (2) years' annual license fee for each attachment or occupation, computed at the annual rate then in effect in addition to all other costs or charges payable hereunder, or (ii) charges for the entire period of time from the date of attachments as determined by the City. In either case Licensee shall also pay interest at the rate of 18% per year for all payments computed from the date each such payment should have been made following the initial attachment.
9. In order to keep the number of poles on public thoroughfares and elsewhere to a predictable minimum, Licensee shall not erect any pole of its own in or near any location where City is willing to accommodate Licensee's equipment or to provide a pole adequate to accommodate Licensee's equipment. Licensee shall not erect any pole of its own where no pole line exists.
10. Nothing in this Agreement shall create any obligation on City to grant permission to use any of its poles and nothing herein shall restrict Licensee from negotiating with other pole owners for use of space on their poles or for space on poles jointly owned by them with City or other conduit owners for use of space within their solely owned systems.
11. (a) When the anchorage requirements of Licensee and City are coincident, in the sole judgment of City, the strains of City's facilities and Licensee's equipment on the pole involved shall be held by the same guys and anchors. When City deems it desirable, Licensee shall install or if City so elects it will install, separate guys or anchors, or both, to hold the strains of Licensee's equipment upon the poles, at Licensee's sole risk and expense and for its account. Any such separate guys and/or anchors shall be owned and maintained by Licensee.

(b) When in the sole opinion of City, any existing guying facilities are inadequate to hold the strains caused by the Licensee's equipment, and separate guying facilities

are not desired, or if guying facilities being used by Licensee are, in the opinion of City, inadequate to hold additional strain resulting from the placing of any additional facilities on the poles involved and the guying facilities would have been adequate to hold the additional strains but for the strains resulting from Licensee's equipment, City may replace the existing guying facilities with adequate guying facilities at the sole risk and expense of Licensee and Licensee, on demand, will reimburse City for City's entire actual cost and fully burdened labor expense.

12. Licensee shall provide a 24 hour emergency repair service throughout the term of this Agreement. Upon approval of any first attachment the name of the person or persons responsible, and their telephone numbers, must be provided before construction may commence.
13. City reserves to itself the right to maintain the poles and to operate its facilities in such a manner as will best enable it to fulfill its own service requirements and City shall not be liable to Licensee for any interruptions to Licensee's service or for interference with the operation of Licensee's equipment arising in any manner from the use of the poles, conduits and facilities by City.
14. Licensee shall obtain from the public authorities and owners of real property any and all permits, easements, licenses, franchises or grants necessary for the lawful exercise of the permission granted by the approval of any application hereunder. Nothing herein shall be deemed to grant to Licensee any license, easement, assignment or other right to exercise any of City's rights to erect or maintain any poles, electric lines, City owned telecommunication lines or other equipment over, through, under or upon any property of another. Licensee shall indemnify hold harmless and, at the opinion of the City, defend City against any loss, damage, penalties, liability or expense, including attorney's fees caused by Licensee or claimed to be so caused arising out of any act or omission of Licensee, which City or any third party or parties may suffer or incur including without limitation, any loss, damage, cost, expense or liability suffered or incurred or alleged to be suffered or incurred by reason of Licensee's failure to comply with the provisions of this Agreement, or arising out of any investigation or alleged invasion of property rights of third parties by Licensee or its officers, employees, successors or assigns made or done pursuant to the provisions of this Agreement. Nothing in this Agreement shall be construed to confer any permit, license or grant to use the property of any third persons.
15. Licensee shall at any time, at its own risk and expense, upon notice from the City, relocate, replace or renew its equipment or transfer it to other poles or conduits, or perform any other work in connection with said equipment as may be required by City in City's sole discretion; provided, however, that in such cases as may be determined by City, City may at Licensee's sole risk and expense, relocate, replace or renew equipment, transfer it to other poles or perform any other work in connection with said equipment that may be required in the maintenance, replacement, removal or relocation of said poles or conduits and the facilities thereon or which may be placed therein, or for the service needs of City, and Licensee, on demand, shall reimburse City for the entire actual costs and fully burdened labor expense thereby incurred.

16. Licensee may at any time remove all or part of its equipment from any said poles and, in each case, it shall immediately give City written notice of such removals in the number of copies and in the form from time to time prescribed by City. Removal of such equipment from any pole or conduit shall constitute a termination of Licensee's right to use such pole or conduit for the equipment removed.
17. No use, however extended of any pole(s) under this Agreement shall create or vest in Licensee any ownership or property rights, but Licensee's rights shall be and remain a mere license, which as to any particular pole(s) may be terminated at any time by City, upon ninety (90) days' written notice to Licensee, and Licensee shall remove its equipment from the pole(s) within ninety (90) days. Licensee shall prevent any and all liens from attaching, as a result of Licensee's activities, to any property of City upon which any of Licensee's equipment is attached or installed. Nothing herein contained shall be construed to compel City to maintain any particular pole(s) for a period longer than that demanded by its own service requirements. Nothing in this Agreement shall create any special relationship between City and Licensee, such as an agency relationship, but the parties shall have only the relationship of independent contracting parties. Except as otherwise provided herein, Licensee shall not use or refer to its business dealings with others, the words and marks "City", "City of Colton" or any other words and marks owned by or used by City in identifying itself or by others in referring to it, without specific written permission from City to do so.
18. Licensee shall exercise all practicable precautions to avoid causing damage to the facilities of City. Licensee shall be fully responsible for any and all loss from damage, including without limitation damages for loss of use and liability for consequential damages arising out of or caused by an act, failure to act or intentional act of Licensee's employees, contractors or subcontractors. Licensee shall make an immediate report of the occurrence of any damage to the owner of the damaged facilities and shall, on demand, reimburse said owner for the entire expense incurred in making repairs, as well as actual loss or damage suffered by the owner of the damaged facilities.
19. City shall have the right to inspect each new installation of Licensee's equipment upon and in the vicinity of City's pole(s) and to make inspections as often as construction may warrant of Licensee's plant as City deems necessary. Inspections, weather made or not, shall not relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.
20. In furtherance of the purpose of law, rules and regulations relating to security, espionage, sabotage and subversive activities, Licensee agrees as follows:
 - a. To provide suitable identification to each employee, agent, and/or contractor of Licensee who will have occasion to perform work on or about poles or conduits of City.
 - b. To cause each such employee, agent and contractor to observe faithfully and to comply strictly with all general security rules which City reasonably may find necessary or advisable on the premises.

- c. Not to assign any work on, about or within City's poles(s) to any such employee, agent or contractor who in the judgment of City, Licensee or other competent authority is a security risk.
- d. Not to permit any employee, agent or contractor to open or enter any City owned vault, manhole, pull box or other substructures at any time without prior written approval from the City.

21. In addition to other indemnification hereunder, Licensee shall indemnify, defend and hold harmless City and its officers, employees, affiliates, successors and assigns, against and from any and all loss, claims, demands, causes of action, damages, costs (including attorneys' fees), or liabilities, in law or in equity, of every kind and nature whatsoever, directly or proximately resulting from or caused by or claimed to result from or be caused by:

- a. Installation by Licensee, maintenance, existence, or use of equipment on, about, or within City's pole(s) whether solely owned by City or jointly owned with other utilities; and/or
- b. Any interruption, discontinuance, or interference with Licensee's service to any of its subscribers or customers occasioned or claimed to have been occasioned by any action of City pursuant to or consistent with this Agreement, notwithstanding the circumstances that City may be alleged or determined to have been contributorily, concurrently, jointly, independently or solely negligent; and Licensee shall, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against City or its officers, employees, affiliates, subsidiaries, successors or assigns, in any such suit, action, or other legal proceeding and shall reimburse City for any and all legal expenses, including attorney's fees incurred in connection therewith.

Licensee covenants and agrees that City shall not be liable for any damage or injury of any kind or nature to Licensee's equipment, employees, agents, servants, or independent contractors or third parties, notwithstanding the circumstances that City may be alleged or determined to have been contributorily, concurrently, or jointly, independently, or solely negligent and the direct or proximate cause of any such damage to Licensee's equipment.

22. Prior to city's execution of this Agreement, and throughout the term of this Agreement, Licensee or its contractors working on Licensee's behalf shall obtain and maintain the following insurance in full force and effect with an insurance company or companies satisfying the requirements below, or satisfying such increased insurance requirements as City may determine are necessary:

- a. **Workers' Compensation Insurance.** By executing this Agreement, Licensee certifies that Licensee is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against

liability for workers' compensation or to undertake self-insurance before commencing any work under this Agreement. A certificate evidencing such compliance shall be filed with City, which certificate shall provide that City shall be given thirty (30) days written notice prior to amendment, modification, or cancellation of such coverage. Licensee shall require the insurance company or companies to waive all rights of subrogation against City, its officers, agents and employees.

- b. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence limit and a general aggregate limit in the amount of not less than \$2,000,000 to insure Licensee against damages for bodily injury (including death), as well as against claims for property damage which may arise from or which may concern operations or by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Licensee, including but not limited to premises-operations liability, products-completed operations liability, independent contractors liability, personal injury liability, and contractual liability (including under Section 21 of this Agreement). All such liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California. Notwithstanding the foregoing, City may increase the required policy limits within reason in its sole discretion at any time, provided that an increase "within reason" shall include but not be limited to one that is tied to the increase in the Consumer Price Index or some other index of inflation.
- c. Automobile liability insurance in an amount not less than \$1,000,000 per occurrence limit and issued by insurance companies authorized to transact liability insurance business in the State of California. Notwithstanding the foregoing, City may increase the required policy limits within reason in its sole discretion at any time, provided that an increase "within reason" shall include but not be limited to one that is tied to the increase in the Consumer Price Index or some other index of inflation.
- d. Insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this Agreement, for both commercial general and automobile liability, shall be filed with City and shall include City as an additional insured. Said policies shall be in the usual form of commercial general liability insurance, but shall include the following provisions:

"Solely with respect to work done by and on behalf of the named insured under the Pole Attachment License Agreement with the City of Colton, it is agreed that City and its officers and employees are added as additional insured under this policy."
- e. The policies shall not be canceled, modified, or amended unless thirty (30) days' prior written notification of intended cancellation, modification, or amendment has been given to City by certified or registered mail.

- f. City, its agents and employees make no representation that the limits of the insurance specified to be carried by Licensee pursuant to this Agreement are adequate to protect Licensee. If Licensee believes that any required insurance coverage is inadequate, Licensee will obtain such additional insurance coverage as Licensee deems adequate, Licensee will obtain such additional insurance coverage as Licensee deems adequate, at Licensee's sole expense.
- g. If for any reason Licensee fails to obtain or keep any of the insurance in force, City may (but is not required to) obtain that insurance. In that event, Licensee must promptly reimburse City its premium costs, plus one and one-half percent (1-1/2%) monthly interest until paid.
- h. Any insurance policy or coverage provided by Licensee as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A+ or higher and a Financial Class of VIII or higher as determined by A.M. Best.

23. City shall have the right to require Licensee to furnish a bond to cover the faithful performance by Licensee of its obligations under this Agreement based on the number of attachments in the following amounts, or such increased amounts as City may determine to be necessary:

Number of Attachments	Required Security
1-50	\$15,000
51-100	\$30,000
101-300	\$75,000
310-1000	\$250,000

If such a bond is required by City, it shall be issued by a commercial bonding company selected by Licensee which is authorized to transact surety insurance business in the State of California and satisfactory to City; shall not be subject to termination or cancellation except upon ninety (90) days' prior written notice by certified mail to City; shall be in such form and in such amount, as the City shall specify from time to time; and, subject to termination or cancellation as foresaid, shall be maintained in full force and effect throughout the life of this Agreement.

24. If the Surety on the bond mentioned in Section 23 hereof should give notice of the termination of said bond, or if Licensee should materially default in any of its obligations under this Agreement and such material default shall continue for thirty (30) days after written notice thereof, City may, by a written notice to Licensee, forthwith terminate this Agreement or forthwith terminate any or all permits granted by it hereunder, and Licensee shall remove its equipment from the poles to which said termination applies within thirty (30) days from such notification unless otherwise agreed to by the parties

due to practical or safety related issues. The obligations of Licensee shall survive such termination of this Agreement until fully performed by Licensee.

25. In addition to any other rights of City hereunder or at law or equity, if Licensee should default in the removal of its equipment from any pole or other City facility within the time allowed for removal or should default in the performance of any other work which it is obligated to do under this Agreement, City may elect to do the work at Licensee's sole risk and expense, and Licensee, on demand, shall reimburse City for its actual costs and entire fully burdened labor expense incurred. Any equipment removed by City under this section shall be stored by City at Licensee's expense no longer than thirty (30) days, and thereafter disposed of by City for Licensee's account in a manner solely determined by City.
26. If either party should bring any suit, action, or other legal proceeding against the other party hereunder or in connection herewith, the prevailing party shall be entitled to recover, in addition to any judgment or decree for costs, such reasonable attorney's fees as it may have incurred in the suit, action, or other legal proceeding.
27. The failure by either party to enforce any provision of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect. If any part or parts of this Agreement conflict with any law or shall be held to be void or voidable by any court of competent jurisdiction, the portions not voided shall remain in full force and effect.
28. All amounts payable by Licensee to City under the provisions of this License shall unless otherwise specified be due and payable within thirty (30) days after presentation of bills. Nonpayment of any amount when due shall constitute a material default of this Agreement, and delinquent amounts shall bear interest at the rate of one and a half percent (1.5%) monthly interest until paid.
29. Nothing herein contained shall be construed as affecting any rights or privileges conferred by City, by contract or otherwise, to others not parties to this Agreement to use any poles and conduits covered by this Agreement; and the City shall have the right to confer, continue or extend such rights or privileges. The privileges herein granted to Licensee shall at all times be subject to any such contracts and arrangements.
30. Unless sooner terminated as herein provided this Agreement shall continue in effect for a term of ten (10) years from the effective date hereof, and from year to year thereafter, but any party may terminate its participation in whole or in part at any time during the term or any extensions thereof by giving the other party at least six (6) months prior written notice to that effect. At the expiration of six (6) months, all rights and privileges of Licensee as to the poles and conduits affected by the notice shall forthwith terminate, and Licensee shall remove its equipment prior to the expiration of such six month period.

Any termination of this Agreement in whole or in part shall not release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing, or which arises out of any claim that may have accrued or may be accruing at the time of termination.

31. Licensee shall not assign, transfer, sublicense, sublease or sublet any privilege granted to it hereunder, without City's prior written consent, which may be withheld in City's sole discretion, but otherwise this License shall inure to the benefit of and be binding upon the successors and assigns of the parties thereto.
32. Licensee agrees that no contract work done for it by an independent contractor shall be done by any person, firm or corporation, without requiring insurance from the independent contractor that is the same as required of Licensee herein and that City shall be included in the various insurance policies required therein as an additional insured as specified by City.
33. Licensee shall be responsible for and pay all taxes, fees, and other charges related to and including the following:
 - a. Licensee shall pay when due all taxes on its equipment installed on City poles and should any such tax be assessed against and required to be paid by City, Licensee, on demand, will reimburse City in the amount of such tax so paid by City.
 - b. It is the intent of the parties hereto not to create any permanent or possessory interest accruing to Licensee in City's poles by this License or by exercise of the permission given. Notwithstanding the foregoing, Licensee hereby recognizes and understands that this License may create a possessory interest subject to property taxation and that the Licensee may be subject to the payment of property taxes levied on such interest. Any such imposition of a possessory interest tax shall be the liability of the Licensee, and Licensee agrees to pay or reimburse City for any and all such taxes and assessments, together with all penalties and fees, if applicable, during the term of this License.
34. Whenever in this License notice is provided or required to be given by one party to another, such notice shall be in writing and transmitted by United States mail or by personal delivery to:

For City of Colton:
Electric Department
650 North La Cadena Drive
Colton, CA 92324-2853
Phone: 909-370-6132
Fax: 909-370-5132

For Licensee to:
Freedom Telecommunications, Inc.
4505 Glencoe Avenue
Marina del Rey, CA 90292
Office: 310-823-3336
Fax: 310-823-8995

The parties may direct notice(s) to such other address as either party may, from time to time, designate for that purpose, and shall provide the other party written notice using the US

Postal Service with Certified Receipt for any such change unless otherwise accepted by the other party.

35. Licensee acknowledges and agrees that this Agreement does not authorize Licensee to use its equipment to provide, nor shall Licensee allow or permit any other person or entity to use any of Licensee's equipment to provide, within the City of Colton any form of "cable services" as defined in 47 USCA Section 522 (the Cable Communications Act of 1984 as modified by the Telecommunications Act of 1996), "cable television system" services or "video provider" services as defined in Section 53054.2 of the California Government Code, or "community antenna television system" services subject to Section 53066 of the California Government Code, as those statutes now provide and as they may be subsequently amended to provide, without obtaining a franchise from the State of California. Licensee hereby acknowledges and agrees to comply with the provisions of Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006.
36. Business Tax(es). Licensee understands that its performance under this Agreement will constitute doing business in the City of Colton, and it shall, therefore, register for and pay a business tax pursuant to the Colton Municipal Code.
37. Nondiscrimination. During Licensee's performance under this Agreement, Licensee shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Licensee agrees to conform to the requirements of the Americans with Disabilities Act in Licensee's performance under this Agreement.
38. Uncontrollable Forces: No Party shall be considered to be in default in performance of any of its obligations when a failure or performance shall be due to an "Uncontrollable Force." The term Uncontrollable Force means any cause beyond the control of the Party affected, including, but not restricted to, failure of or threat of failure of facilities, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. No Party shall, however, be relieved of liability for negligence, or due to remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations, by reason of an Uncontrollable Force, shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability within a reasonable time period.

39. This is an integrated agreement representing the entire understanding of the Parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. This Agreement may be amended or modified only in a written instrument signed by authorized representatives of both Parties. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.
40. This Agreement shall be governed by the laws of the State of California. Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of and for San Bernardino County, California.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

**City of Colton
A Municipal Corporation**

Freedom Telecommunications, Inc.

By: _____

By: _____

Title: _____

Title: _____

Attested

Attested

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Risk Management

By: _____

Date: _____

City of Colton Attorney – Approved as to Form

By: _____

Title: _____

Date: _____

Date: _____

Date: _____

TO
BE
REMOVED



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/03/2012 15:03

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Barney & Barney LLC CA Insurance Lic: 0C03950 9171 Towne Centre Drive, Suite 500 San Diego, CA 92122 858-457-3414	CONTACT NAME: Terry Salazar
	PHONE (A/C, No, Ext): (858) 875-3004 FAX (A/C, No): (858) 210-3955
	E-MAIL ADDRESS: Terry.salazar@barneyandbarney.com
	INSURER(S) AFFORDING COVERAGE
	INSURER A: Travelers Property Casualty Company of America NAIC # 25674
INSURED Freedom Telecommunications, Inc. 4505 Glencoe Ave. Marina del Rey, CA 90292	INSURER B: Travelers Casualty Insurance Company of America 19046
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

Client # 55171

COVERAGES CERTIFICATE NUMBER: 444178 MST NUMBER: 22759 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		X	6802B27297A	2/18/2012	2/18/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			CUP2B272711	2/18/2012	2/18/2013	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	UB3765T470	7/17/2011	7/17/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Business Personal Property; Replacement Cost / Special Form			6802B27297A	2/18/2012	2/18/2013	Limit \$10,712 Deductible \$500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: Pole Attachment License Agreement. City of Colton, its officers, agents and employees are named as additional insured as respects to the General Liability per attached endorsement. Waiver of Subrogation applies to the Worker's Compensation per attached endorsement. Primary Wording applies to the General Liability per attached.

CERTIFICATE HOLDER City of Colton Public Utilities Department 650 North La Cadena Drive Colton, CA 92324-2853	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Terry Salazar</i>

Subject

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ACORD 25 (2010/05)

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Insured: Freedom Telecommunications, Inc.

Master # 22759

Cert # 444178

Attachment Page

COMPLETE LISTING OF CERTIFICATE HOLDER and/or ADDITIONAL INSURED:

(additional insureds apply only with respect to coverages marked by "X" under "Addtl Insrd" on the Certificate)

City of Colton

PRIMARY INSURANCE: Such insurance as is afforded by the General Liability policy is primary insurance and no other insurance of the additional insured shall be called upon to contribute to a loss

INSURED: Freedom Telecommunications, Inc.

COMPANY: Travelers Property Casualty Company of America POLICY PERIOD: 7/17/2011 TO 7/17/2012

POLICY #: UB3765T470

EFFECTIVE DATE: 05/03/2012



WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (A) - 001

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA (BLANKET WAIVER)

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

The additional premium for this endorsement shall be .05 % of the California workers' compensation premium.

Schedule

Person or Organization

Job Description

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED IN A WRITTEN AGREEMENT EXECUTED PRIOR TO LOSS TO PROVIDE THIS WAIVER.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective Insured

Policy No.

Endorsement No. Premium

Insurance Company

Countersigned by

Handwritten signature: Perry E. Kelley

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INSURED: Freedom Telecommunications, Inc.

POLICY #: 6802B27297A

COMPANY: Travelers Casualty Insurance Company of America

POLICY PERIOD: 2/18/2012

TO 2/18/2013

EFFECTIVE DATE: 05/03/2012

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE - This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- A. Reasonable Force Property Damage - Exception To Expected Or Intended Injury Exclusion
B. Non-Owned Watercraft Less Than 75 Feet
C. Aircraft Chartered With Pilot
D. Damage To Premises Rented To You
E. Increased Supplementary Payments
F. Who Is An Insured - Employees And Volunteer Workers - First Aid
G. Who Is An Insured - Employees - Supervisory Positions
H. Who Is An Insured - Newly Acquired Or Formed Organizations
I. Blanket Additional Insured - Owners, Managers Or Lessors Of Premises
J. Blanket Additional Insured - Lessors Of Leased Equipment
K. Blanket Additional Insured - Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement
L. Blanket Additional Insured - Broad Form Vendors
M. Who Is An Insured - Unnamed Subsidiaries
N. Who Is An Insured - Liability For Conduct Of Unnamed Partnerships Or Joint Ventures
O. Contractual Liability - Railroads
P. Knowledge And Notice Of Occurrence Or Offense
Q. Unintentional Omission
R. Blanket Waiver Of Subrogation

PROVISIONS

A. REASONABLE FORCE PROPERTY DAMAGE - EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION

The following replaces Exclusion a., Expected Or Intended Injury, in Paragraph 2., of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

a. Expected Or Intended Injury Or Damage
"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

B. NON-OWNED WATERCRAFT LESS THAN 75 FEET

The following replaces Paragraph (2) of Exclusion g., Aircraft, Auto Or Watercraft, in Paragraph 2.

of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

- (2) A watercraft you do not own that is:
(a) Less than 75 feet long; and
(b) Not being used to carry any person or property for a charge.

C. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion g., Aircraft, Auto Or Watercraft, in Paragraph 2. of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
(b) Not owned by any insured; and
(c) Not being used to carry any person or property for a charge.

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COMMERCIAL GENERAL LIABILITY

D. DAMAGE TO PREMISES RENTED TO YOU

1. The first paragraph of the exceptions in Exclusion j., **Damage To Property**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions, of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions c., g. and h., and Paragraphs (1), (3) and (4) of Exclusion j., do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by fire unless Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion – All Pollution Injury Or Damage or Total Pollution Exclusion in its title. A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III – Limits Of Insurance.

3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**:
 6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises.
The Damage To Premises Rented To You Limit will be:
 - a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
 - b. \$100,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.
4. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
 - b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.
6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:
 - (b) That is insurance for "premises damage"; or
 7. Paragraph 4.b.(1)(c) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

E. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:
 - b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

F. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – FIRST AID

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:
Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed

COMMERCIAL GENERAL LIABILITY

or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of SECTION III – LIMITS OF INSURANCE:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the DEFINITIONS Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

G. WHO IS AN INSURED – EMPLOYEES – SUPERVISORY POSITIONS

The following is added to Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

H. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph 4. of SECTION II – WHO IS AN INSURED:

4. Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner

or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

I. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

COMMERCIAL GENERAL LIABILITY

- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

J. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

K. BLANKET ADDITIONAL INSURED – PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

L. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
 - (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
 - (6) "Your products" which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingre-

COMMERCIAL GENERAL LIABILITY

dent, part or container entering into, accompanying or containing such products; or

- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

M. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

N. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES

The following replaces the last paragraph of **SECTION II – WHO IS AN INSURED**:

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II – Who Is An Insured.

O. CONTRACTUAL LIABILITY – RAILROADS

- 1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:

c. Any easement or license agreement;

- 2. Paragraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

P. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:

(1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.

(2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

(a) Any individual who is:

- (i) A partner or member of any partnership or joint venture;
- (ii) A manager of any limited liability company;
- (iii) A trustee of any trust; or
- (iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

(b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

COMMERCIAL GENERAL LIABILITY

(3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discoverers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

Q. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., Representations, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

R. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.