



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 10/23/2012

Report Type: Consent

Title: Agreement: Issuance of Revocable Permit for Sacramento Convention Center

Report ID: 2012-00790

Location: District 1

Recommendation: Pass a Resolution: 1) authorizing the City Manager or the City Manager's designee to execute the Agreement for Issuance of Revocable Permit for Sacramento Convention Center; and 2) authorizing the City Manager or City Manager's designee to execute such other documents as necessary to implement the revocable permit agreement.

Contact: Ken Hancock, Real Property Agent, (916) 808-5752; Judy Goldbar, Convention Center General Manager

Presenter: Not applicable

Department: General Services Dept / Convention, Culture & Leisure

Division: Real Estate/Asset Management

Dept ID: 13001551

Attachments:

- 1-Description/Analysis
- 2-Attachment 1 Background
- 3-Agreement
- 4-Resolution

City Attorney Review

Approved as to Form
Lan Wang
10/10/2012 1:14:49 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
10/4/2012 2:44:22 PM

Approvals/Acknowledgements

Department Director or Designee: Craig Lymus - 10/8/2012 9:14:58 AM



Description/Analysis

Issue: On November 28, 2000, the City of Sacramento (“City”) and WOMBO, Inc. (“WOMBO”) entered into City Agreement No. 2000-0198, in which WOMBO agreed to provide telecommunications services to the exhibitors, visitors, and employees of the Sacramento Convention Center Complex (“Convention Center”). At the time, the Convention, Culture and Leisure Department (“CC&L”) did not execute an Agreement for Issuance of Revocable Permit with WOMBO. Nevertheless, under the terms of City Agreement No. 2000-0198, WOMBO is required to obtain all necessary permits. Based on a recent review of WOMBO’s telecommunications infrastructure located on City-owned property at the Convention Center, it is clear that WOMBO must obtain a revocable permit for telecommunications services and infrastructure that are located on city-owned property.

Policy Considerations: City Code Section 3.76.050 requires that telecommunications providers who propose locating telecommunications facilities on city-owned property must apply to the City for issuance of a revocable permit.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA): Executing a revocable permit for the use of existing property, as proposed, is a continuing administrative activity of the City, and would result in no physical changes to the environment. The action is exempt from the provisions of the California Environmental Quality Act (CEQA). CEQA Guidelines sections 15378(b)(2), 15061(b)(3).

Sustainability: The proposed action is related to the continuing operation of The Sacramento Convention Center, and is consistent with the efforts of the City to provide a balanced and healthy environment.

Commission/Committee Action: None

Rationale for Recommendation: The Convention Center serves as both an educational and community resource for adults and children. The guests of the Convention Center, as well as the exhibitors and employees, have benefited from the ability to use the telecommunications infrastructure provided by WOMBO, without which, business within the Convention Center would have been dramatically limited over the years. City Code Section 3.76.050 states that any telecommunications providers who propose to locate telecommunications infrastructure on City-owned property must enter into an Agreement for Issuance of Revocable Permit. Though WOMBO has been operating within the Convention Center and on City-owned property, an Agreement for Issuance of Revocable Permit was never executed at the onset of its provision of services. Upon recognition that this omission had occurred, City staff is addressing the omission in the Recommendation.

Financial Considerations: WOMBO and City entered into a Professional Services Agreement in 2000 (City Agreement No. 2000-0198) in which WOMBO became the exclusive telecommunications provider for services to patrons, exhibitors, and employees at the Convention Center. WOMBO charges convention center clients for services and pays the City a commission based on its proceeds. As per City Agreement No. 2000-0198, WOMBO pays

the City 25% of its gross monthly proceeds on a monthly basis. City Agreement No. 2010-1020, a Professional Services Agreement (“PSA”) replaced the expired City Agreement No. 2000-0198, following a Request for Proposals process in which WOMBO was the only responding proposer. The new contract remained consistent with the original agreement by retaining all terms and conditions related to financial considerations

As the existing PSA is and shall remain in force and in full effect, there is no need to address fees within the Agreement for Issuance of Revocable Permit. WOMBO will continue to abide by the financial considerations of the PSA and shall continue to remit monthly payments to City.

Emerging Small Business Development (ESBD): No goods or services are being purchased.

Attachment 1

Background Information:

The Convention Center is a component of the City of Sacramento Convention, Culture and Leisure Department and has been in operation since 1974. It was expanded in 1996 nearly tripling its size. The Convention Center hosts over six hundred (600) events and approximately 1,000,000 visitors annually. The Convention Center operates up to 24 hours a day, 363 days a year. Convention Center use by exhibitors, patrons, and employees has become a year-round operation, and as such, requires current technology to provide these clients the ability to communicate effectively, whether by the traditional telephone, mobile phone, or internet – via hard line or Wi-Fi.

In 2000, CC&L and WOMBO entered into City of Sacramento Agreement No. 2000-0198, in which CC&L and WOMBO mutually agreed to certain terms and conditions related to the provision of services and equipment to the clients of the Convention Center. The services and equipment to be provided were telecommunications-related, and were to benefit the clients of the Convention Center such that there would be readily available means of communication to and from the Convention Center by exhibitors, patrons, and employees. WOMBO, according to the agreement, would at its sole cost and expense, furnish all facilities and equipment required for furnishing services pursuant to the agreement. In turn, WOMBO, as a provider of facilities and services to an end user, would be permitted to charge a user fee to the end user. As part of the financial consideration of the agreement, WOMBO was responsible for remitting to the City twenty-five percent (25%) of its gross monthly revenues generated from its user fees.

After the initial term of the City Agreement No. 2000-0198 expired, WOMBO and City agreed to five (5) additional one-year term extensions as per the agreement. Upon the expiration of the final one-year term extension, the City issued a Request for Proposals for telecommunication services. WOMBO was the only responding company and as such, WOMBO and City entered into City Agreement No. 2010-1020. This agreement, a Professional Services Agreement (“PSA”), has an initial term extending through December 7, 2013, with the option of two additional one-year terms.

In the spring of 2012, WOMBO requested City’s approval of a proposed upgrade to its systems in which its copper wire infrastructure would be replaced with fiber-optic line. The proposed upgrade would serve to enhance the speed with which it would be able to provide its services. All infrastructure related to the upgrade of the fiber optic installation would become the property of the City upon expiration of the PSA. When this request was sent to the City’s Real Estate Services Section (“RESS”), it was discovered that no Agreement for Issuance of Revocable Permit (“Agreement”) had ever been issued. This report and its recommendation remedy the omission.

AGREEMENT FOR ISSUANCE OF REVOCABLE PERMIT SACRAMENTO CONVENTION CENTER

THIS AGREEMENT FOR ISSUANCE OF REVOCABLE PERMIT ("Agreement"), dated _____, 2012, is made by and between WOMBO, Inc. ("Permittee") and the CITY OF SACRAMENTO, a municipal corporation ("City") with respect to the following facts:

RECITALS

WHEREAS, City owns and maintains certain real property currently used as the Sacramento Convention Center Complex ("Convention Center"), and which is more fully described in Exhibit "A" hereof, (the "Property"), and

WHEREAS, Permittee is a private entity which provides telecommunications services through the use of facilities located within the city of Sacramento and elsewhere; and

WHEREAS, Permittee desires to locate structures and equipment in and on the Property owned by City; and

WHEREAS, City is willing to allow Permittee to do so on the basis of a revocable permit, and upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, the parties agree as follows:

1. ISSUANCE OF REVOCABLE PERMIT

Upon the terms and conditions set forth in this Agreement, City hereby agrees to issue to Permittee a non-exclusive revocable permit ("Revocable Permit") for installation and maintenance of a wireless telecommunications facility ("WTF"), with associated structures and equipment, together with rights of ingress and egress for reasonable access thereto and, in the discretion of City, to the appropriate source of electric and telecommunications facilities, at the location on the Property specified in Exhibit "B" hereof (the "Premises"). This Agreement and all of its terms and conditions shall remain in effect during the entire term of the Revocable Permit. This Agreement is expressly agreed to be non-exclusive, and City shall be free to enter into agreements or permits with other parties, including related or non-related providers, for revocable permits or similar arrangements. City and Permittee agree that the Revocable Permit will not be issued until and unless Permittee has obtained all entitlements required by paragraph 5 herein, Permittee has paid such fees to the City as are required by paragraph 3 herein, and Permittee is in compliance with Sacramento City Code Section 3.76.050.

2. TERM OF REVOCABLE PERMIT

A. Term

The term ("Term") of the Revocable Permit issued pursuant to this Agreement shall be for a period running concurrently with the term of that certain Professional Services Agreement ("PSA") between WOMBO, Inc. and City, which has been designated as Agreement Number 2010-1020, commencing on the Effective Date of this Agreement as defined in paragraph 10 herein. The Term of the Revocable Permit shall expire or terminate upon the expiration or termination of the PSA under the provisions of the PSA.

B. Upon Termination

(1) Removal of Structures and Equipment on Termination. Unless otherwise directed by City in writing (and subject to the provisions of subparagraph 4(G) herein), within thirty (30) days of the termination of this Agreement and at Permittee's sole cost and expense, Permittee shall remove all structures and equipment from the Premises, and shall restore the Premises to their original condition prior to the issuance of the Revocable Permit normal wear and tear excepted. In the event that the Premises or any portion thereof are damaged by Permittee in the process of removal, such damage shall be repaired forthwith by Permittee at Permittee's sole cost and expense. Upon termination of this Agreement, City shall have the option, in its sole discretion, of retaining those structures (including, without limitation, tower(s), monopole(s), buildings), vault(s), equipment shed(s), and pad(s), but excluding antenna(s)) installed by Permittee on the Premises, which structures shall then become the property of the City. City shall exercise its option by providing written notice to Permittee prior to the termination of this Agreement.

(2) Return of Removal Bond. In the event Permittee removes those structures and equipment from the Premises as required by the City, and restores the Premises to their original condition prior to the issuance of the Revocable Permit as required by the City, City shall release the Removal Bond or any cash payment provided in lieu of the Removal Bond. Any return of the cash payment shall be without interest. In the event Permittee does not remove any structures or equipment from the Premises as required by the City, or does not restore the Premises to their original condition prior to the issuance of the Revocable Permit as required by the City, City may use the Removal Bond, or any cash payment provided in lieu of the Removal Bond, for such purposes. Any unused portion of the cash payment shall be returned without interest.

(3) No Reimbursement. Under no circumstances shall any portion of the the Application Processing Fee be reimbursed to Permittee, regardless of the manner or date of termination of this Agreement.

(4) Relocation of Structures and Equipment. If it is determined by City that the location of Permittee's structures and equipment interfere with full use and enjoyment of public property, the City shall make reasonable efforts to allow for relocation of the structures and equipment within the same parcel as the existing structures and equipment in lieu of termination and revocation of the permit. Such relocation may occur

pursuant to provisions of paragraph 6(A). All costs related to relocation shall be paid by Permittee.

3. FEES

A. During the Term of the Revocable Permit, Permittee shall pay all fees set forth in that certain Professional Services Agreement ("PSA") between WOMBO, Inc. and City, which has been designated as Agreement Number 2010-1020, including any and all supplemental agreements thereto.

B. Processing Fees.

1) Permittee shall pay an estimated application fee in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) ("Application Processing Fee") to City to recover staff costs associated with processing this Agreement, including, but not limited to, costs of the City Department of General Services, the City Neighborhood Planning and Development Department, and the City Attorney's Office. The amount of the Application Processing Fee will be set by Resolution of the City Council. Permittee agrees that the \$5,000.00 Application Processing Fee represents a fair and accurate estimate of the costs of providing the review needed for the Application and this Agreement. If the City's actual review costs exceed the \$5,000.00 estimated amount, Permittee agrees to pay to the City such excess costs upon billing by the City.

2) In the event that amendment to the Agreement is requested by Permittee at any time after the Agreement is executed, Permittee shall pay an estimated amendment fee ("Amendment Processing Fee") to City to recover staff costs associated with processing the Amendment, including, but not limited to, costs of the City Department of General Services, the City Neighborhood Planning and Development Department, and the City Attorney's Office. The amount of the Amendment Processing Fee will be set by Resolution of the City Council. If the City's actual review costs exceed the estimated amount, Permittee agrees to pay to the City such excess costs upon billing by the City.

C. Removal Bond. Permittee shall provide to City a bond, letter of credit, or other security instrument, of a type and in the amount of \$30,000 to the City, that is to pay for the removal of structures and facilities installed on the Premises by Permittee ("Removal Bond"). Permittee shall keep the Removal Bond in effect for the duration of this Agreement, including any extensions or renewals hereof. Permittee may meet its Removal Bond obligations by providing to the City a cash payment adequate to pay for the removal of structures and facilities installed on the Premises by Permittee. Upon a Surety's written notice to City of cancellation of a Removal Bond, Permittee must submit written notice and proof of a replacement Removal Bond within thirty (30) days.

G. Manner of Payment of Fees. Permittee shall pay the Application Processing Fee upon execution by Permittee of this Agreement. The Removal Bond, or the cash payment provided in lieu of the Removal Bond, shall be provided to the City on the date the City issues the Revocable Permit to Permittee. All fees and the Removal

Bond, or the cash payment provided in lieu of the Removal Bond, shall be delivered to City at the address specified in paragraph 12 herein for the giving of notices.

4. USE OF THE PREMISES

A. Nature of the Use Allowed. Permittee shall use the Premises strictly in accordance with the terms of this Agreement and the Revocable Permit, solely for the purpose of installation and maintenance of a WTF, including, without limitation, related antenna equipment and fixtures. Permittee shall have reasonable rights of ingress and egress to the Premises to conduct, at the sole expense of Permittee, surveys, structural strength analyses, subsurface boring tests, and other similar activities with the written consent of City, which consent shall not be unreasonably withheld. Permittee may, at its sole expense, make such improvements on the Premises as it deems necessary from time to time for the operation of a transmitting and receiving site for wireless voice and data communications; provided, however, that any alteration other than replacing equipment with equipment of like kind will require written approval of the City.

B. Non-interference with City Use. Permittee shall use the Premises in a manner which is at all times subordinate to and consonant with City's use of the Property and the Premises.

C. Non-interference with City Communications and Other Uses. Permittee agrees and understands that City maintains a communications system, including associated installations and equipment, which provides routine and emergency communications with its officers and employees, as well as officers and employees of other jurisdictions, and that it is imperative that there be no interference with that system by virtue of Permittee's use of the premises. Permittee's maximum effective radiated power shall not exceed 2 watts. The frequencies at the Premises shall be within 2412 - 2484 MHz (2.4 GHz Wi-Fi) and 5240 - 5825 MHz (5 GHz Wi-Fi). Permittee agrees to resolve technical interference problems with other equipment located at the Premises as of the Effective Date. Permittee agrees to resolve any such technical interference problems associated with any future equipment that Permittee adds or attaches to the Premises during the term of this Agreement.

D. Nuisance. Permittee shall at all times conduct its use of the Premises in such a manner that it shall not constitute a public or private nuisance.

E. Damage to City Property. Permittee shall at all times conduct its use of the Premises in such a manner so as not to damage City property. Permittee shall be liable to City for any damage to any City property, including but not limited to, trees, sprinklers, lawn, other landscaping, fixtures, equipment, structures, vehicles, or other City property, arising out of or in any way directly or indirectly related to or resulting from the installation, maintenance or operation of Permittee's structures and equipment on the premises, or any action or activity of Permittee, or its employees, agents, or contractors.

F. Non-interference with Permittee's Use. City agrees that, subject to all other provisions of this Agreement, and subject to City's right to grant other or additional

permits, Permittee is entitled to reasonable access to the Premises at all times throughout the Term so long as Permittee is not in default beyond the expiration of any cure period. If City desires to permit another communications provider to install equipment on the Premises with the potential to cause interference problems with Permittee's then-existing equipment, then prior to entering into an agreement with such proposed communications provider, City will give written notice to Permittee of such proposed installation. Such notice shall include technical information from the proposed provider which is sufficient to determine whether the proposed use will interfere with Permittee's operation of the WTF. Permittee agrees to cooperate with the proposed provider to resolve any such interference problem(s). City agrees that any future agreement which permits the installation of communications equipment on the Premises shall be conditioned upon not interfering with Permittee's then-existing operation of the WTF. Permittee shall not be required to modify Permittee's then-existing WTF to prevent interference with any new communications use of the Premises so long as Permittee operates the WTF within its assigned frequencies and in compliance with all applicable FCC Rules and Regulations.

G. Co-location. Permittee acknowledges and agrees that the City may allow other providers of communications facilities to locate on the same Premises and/or on the same facilities as Permittee, including such facilities as may be constructed by Permittee. In the event any other facilities are co-located on facilities constructed and/or used by Permittee, Permittee agrees not to dismantle or otherwise alter the facilities being used by Permittee for as long as those facilities are being used by any other permittee(s). At the expiration of all uses on the facilities used by Permittee, Permittee agrees, at City's option, either to remove the facility used by Permittee or leave the facility used by Permittee in its then current condition.

H. Reservation for Public Use. Permittee shall provide space on its facilities for public communications use by public agencies in such location(s) and in such manner(s) as may be determined by City. Such space shall be provided at no cost if used by City.

5. ENTITLEMENTS

Prior to the issuance of the Revocable Permit, Permittee shall at its sole and exclusive expense, obtain all necessary local land use entitlements, building permits, and other City, County, State or Federal permits as may be necessary to operate the facilities contemplated by Permittee. These Permits shall not be construed as a waiver of any requirement, fee, or procedure required to obtain any such entitlement or permit. By accepting the Revocable Permit, Permittee warrants and represents that it has obtained all necessary local land use entitlements, building permits, and other City, County, State or Federal permits to operate the facilities contemplated by Permittee.

6. CONSTRUCTION REQUIREMENTS

A. Location of Structures and Equipment. The initial location of the structures and equipment to be installed by Permittee shall be in the sole and exclusive discretion of the City. In the event City thereafter determines that structures or equipment

need to be moved, City shall meet and confer with Permittee to discuss the necessary relocation of structures or equipment; provided, however, that the determination that said structures and equipment need to be moved shall be in the sole and exclusive discretion of the City. The ultimate location of Permittee's structures and equipment shall be mutually agreeable to both parties; provided, however, that in no event shall Permittee be required to relocate its antennas to a different place on a tower, or to pay for the relocation of its base station equipment, in order to accommodate another telecommunications provider.

B. City Approval of Plans, Specifications and Design. Permittee shall submit to City prior to commencing any construction on the Premises complete plans and specifications, including detailed site plans, for the structures and equipment to be installed on the Premises. City shall have absolute discretion to specify design requirements, aesthetic requirements, and specifications excepting those technical requirements relating to operation of the WTF. The plans and specifications and site plan shall also be part of Exhibit "B" hereof. Permittee shall not commence any construction on the Premises until and unless the City has approved all plans and specifications for that construction. Any damage to City facilities during construction shall be promptly repaired by Permittee. Permittee shall complete construction and installation of structures and equipment within ninety (90) days of issuance of the Revocable Permit.

C. Seismic Safety. Because Permittee's equipment will, in part, be located above ground level in areas where falling heavy equipment would likely result in personal injury or death, and property damage, Permittee shall employ the professional services of qualified engineers for the purpose of investigating the seismic risks at the Premises related to attaching Permittee's equipment to the Premises, and for recommendations concerning measures required to strengthen the methods and equipment used to attach the Permittee's equipment to the Premises. Permittee shall consult with City prior to selecting an engineer, and shall furnish to City a copy of all reports and recommendations of the engineer, together with any supporting data, calculations or studies upon which the engineer has based conclusions and/or findings. City shall have the right to approve or disapprove the report and recommendations prior to construction by Permittee. No such construction shall commence prior to delivery to City of a report and recommendations approved by City.

D. Costs of Inspection. The parties agree and understand that during the course of construction, City may be required to provide on-site supervision and inspection services because Permittee may be performing work on and around City facilities. Permittee shall, upon billing by City, promptly pay the entire cost of such on-site supervision and inspection services as are directly related to the construction activities of Permittee during the course of construction and until final City inspection and approval. City's reimbursement rate shall be One Hundred Dollars (\$100.00) per hour. The total reimbursement shall not exceed a total sum of Five Thousand Dollars and no cents (\$5,000.00).

E. One Call Requirement. Permittee shall inform City in writing in the manner designated in paragraph 12 herein at least twenty-four (24) hours prior to any intended excavation on or around the Premises.

F. Temporary Relocation of Structures and Equipment. In the event that construction or renovation of City property requires removal of Permittee's structures and/or equipment, the City may agree to temporary relocation in lieu of removal. At the conclusion of the construction or renovation, the Permittee's structures and/or equipment shall be returned to its previous location within a reasonable amount of time unless the parties agree to a different location in writing. All costs related to temporary relocation shall be paid by Permittee.

7. MAINTENANCE & REPAIR

Permittee shall at all times during the term of this Agreement maintain its structures, equipment, and required landscaping on the Premises, in good and safe operating order and condition.

8. INSURANCE; LIABILITY; INDEMNIFICATION

A. Insurance Requirements. During the entire term of this Agreement, Permittee shall maintain the following noted insurance:

(1) Minimum Scope of Insurance.

Coverage shall be at least as broad as:

a. Insurance Services Office Form No. CG 001 (Broad Comprehensive General Liability);

b. Insurance Services Office Form Number CA 0001 (ED. 6/92) (Automobile Liability, Code 1 "any auto");

c. Workers' Compensation as required by the Labor Code of the State of California, and Employers' Liability insurance.

B. Minimum Limits of Insurance. Permittee shall maintain limits no less than:

(1) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

(3) Worker's Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retention. Any amounts that Permittee (rather than its insurance carrier) must pay directly to any third party as compensation for

any insured loss or liability, whether described as a deductible or self-insured retention, must be declared to and be approved by City.

D. Other Insurance Provisions. All policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages:

a. City, its officials, employees and volunteers are to be covered as additional insureds with respect to: liability arising out of activities performed by or on behalf of Permittee; products and completed operations of Permittee; premises owned, leased or used by Permittee; or automobiles owned, leased, hired or borrowed by Permittee. The coverage shall contain no special limitations on the scope of the protection afforded to City, its officials, employees or volunteers, with respect to Permittee's operations of and on the Premises.

b. Permittee's insurance coverage shall be primary insurance with respect to City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be excess of Permittee's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees, or volunteers.

d. Coverage shall state that Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that coverages shall not be canceled except after thirty (30) days prior written notice has been given to City. In addition, Permittee agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been given to City.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.

F. Verification of Coverage. Permittee shall furnish City with certificates of insurance showing compliance with the above requirements and with copies of endorsements effecting all coverages required by this clause, or other similar documentation acceptable to the City's Risk Manager within thirty (30) days of the Effective Date of this Agreement and shall attach documents hereto as Exhibit "C". The certificates, endorsements and/or other acceptable documents shall set forth a valid policy number for City, and shall indicate the Issue Date, Effective Date and Expirations Date. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf.

G. Insurance. In any public liability policy covering personal injury or property damage, City shall be named as an additional insured at no cost to City. Each policy of insurance shall provide that there shall be no cancellation of coverage under the policy unless and until City has been provided with thirty (30) days written notice of cancellation.

H. No City Liability for Loss or Damage to Permittee's Structures or Equipment. In the event that Permittee's structures or equipment installed on the Premises are damaged in any way, irrespective of the cause, excepting City's willful misconduct or sole negligence, City shall not be liable therefor and Permittee shall have no claim or right against City for the costs of repair or replacement. This clause is intended as a complete release of liability in favor of City, including without limitation all claims whether known or unknown, liquidated or unliquidated, contingent or absolute. Permittee has knowledge of and understands the terms and effect of California Civil Code Section 1542, and voluntarily waives the benefits of the terms of that statute. California Civil Code Section 1542, states in full:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Initials: CITY: _____

PERMITTEE: 

I. Indemnification and Defense of City. Permittee shall indemnify, defend and hold harmless City and its officers, employees and agents, from and against any and all claims, losses, liabilities, or damages, including payment of attorneys' fees, whether for personal injury or property damage, rising out of or in any way directly or indirectly related to or resulting from the installation, maintenance or operation of Permittee's structures and equipment on the Premises, or any action or activity of Permittee or its officers, employees, or agents relating to the performance of the terms of this Agreement or the Revocable Permit, irrespective of whether caused in part by City, its officers, agents or employees, except where City's actions constitute willful misconduct or City's sole negligence.

9. TAXES

Permittee shall pay all personal property and other taxes assessed upon its structures and equipment, and any possessory interest or other property tax imposed on Permittee or City by virtue of or relating to the installation, maintenance or operation of Permittee's structures and equipment on the Premises. In the event that the Sacramento County Assessor requires preparation and filing of any form of tax exemption application due to the existence on the premises of Permittee's structures or equipment, Permittee shall pay the entire cost of preparation and processing of such applications, including reasonable attorneys' fees associated therewith. Pursuant to Section 107.6 of the California Revenue and Taxation Code, City hereby informs Permittee that there may be a possessory interest tax levied by virtue of this Agreement.

10. EFFECTIVE DATE

The effective and operative date of this Agreement shall be upon approval of City Council (the "Effective Date"). However, this Agreement shall be of no force or effect and shall be deemed terminated without liability to City if Permittee fails to provide valid proof of insurance acceptable to City's Risk Manager within the time period specified in subparagraph 8(f) herein. This Agreement further shall be of no force or effect and shall be deemed terminated without liability to City if Permittee fails to obtain and maintain any entitlement, permit or approval required for the installation, operation, or maintenance of its structures or equipment, or if Permittee fails to obtain final City approval of the installation, within one hundred eighty (180) days of the Effective Date.

11. ASSIGNMENT AND SUBLETTING

Permittee shall not have the right to assign or sublet its Revocable Permit, or any of its rights under this Agreement, in whole or in part, without the prior written consent of City, which consent may be withheld for any reason or granted subject to such conditions as may be specified by City; provided, however, that Permittee may assign or sublet without City's prior written consent to its general partner or to any party controlling, controlled by or under common control with Permittee or to any party which acquires substantially all of the assets of Permittee. Any other attempt to do so assign or sublet shall be void, and cause for immediate termination of the Agreement and revocation of the Revocable Permit issued pursuant to this Agreement. The prohibition on assignment and subletting pursuant to this Agreement specifically includes, without limitation, the subleasing, licensing, or granting of other rights to use all or any portion of the facilities (including towers) constructed or used by Permittee on the Premises. Any revenue obtained by Permittee from any such assignment or subletting authorized hereunder shall be the property of the City.

12. NOTICES

Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail. All notices must be in writing and are effective upon receipt or five (5) days after deposit in the U.S. mail, certified and postage prepaid, to the addresses set forth below:

A. To City:

City of Sacramento
Department of General Services
Facilities and Real Property Management Division
c/o Telecom Program Manager
5730 24th Street, Building 4
Sacramento, CA 95822

B. To Permittee:

WOMBO, Inc.
Attn: John Sommatino
RE: Sacramento Convention Center
8733 Magnolia Avenue, Suite 100
Santee, CA 92071

13. NO AGENCY RELATIONSHIP

Nothing in this Agreement or the application thereof shall be construed to create any relationship between the parties other than that of a permitting agency and a permittee as to the premises. Permittee is not an agent of City in performing the terms of this Agreement or in operating under this Agreement.

14. SEVERABILITY

Should any part, term, portion or provision of this Agreement or the application thereof to any person or circumstance be held to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or circumstances, shall be deemed severable and shall not be affected thereby, provided that said remaining portions or provisions can be construed in substance to constitute the full Agreement that the parties intended to enter into in the first instance.

15. AMENDMENTS

No alteration, modification, or variation of the terms of this Agreement shall be valid unless made in writing and executed by both parties.

16. WAIVER

Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right hereunder.

17. INTERPRETATION

The headings herein are for convenience only and shall not affect construction or interpretation of the Agreement. Construction and interpretation of this Agreement and the Revocable Permit issued pursuant to this Agreement shall be governed by California law. Venue for any action concerning this Agreement or the Revocable Permit issued pursuant to this Agreement shall be Sacramento County, California. This Agreement and the Revocable Permit issued pursuant to this Agreement shall at all times be subject to the provisions of Sacramento City Code Chapter 12.04, as such chapter may be amended from time to time.

18. UTILITIES

A. Acceptance of Utilities. Permittee agrees to inspect the Premises prior to the issuance of the Revocable Permit to verify the adequacy and availability of utilities to the Premises. By accepting the Revocable Permit, Permittee agrees and acknowledges that it is satisfied with utility service to the Premises, and that such utilities are adequate for the operations of Permittee on the Premises. Permittee shall pay for all utilities used by it at the Premises. City agrees to cooperate with Permittee in Permittee's efforts to obtain utilities from any location provided by City or the servicing utility. The cost of improving or constructing any utility service to the Premises for Permittee's use shall be the sole and exclusive expense of Permittee.

B. Relocation. Where utility relocation is required either because of the Permittee's construction or installation of its facilities, or by virtue of a subsequent City issued permit(s), the entire utility relocation cost shall be payable by the permittee whose telecommunication facilities required the relocation.

19. HAZARDOUS MATERIALS

City represents that it has no knowledge of any substance, chemical or waste (collectively, "Substance") on the Premises identified as hazardous, toxic or dangerous in any applicable federal, state, or local law or regulation. Permittee shall not introduce or use any such Substance on the Premises in violation of any applicable law. Permittee shall be responsible for the complete cost of removal and/or remediation of any such Substance introduced by Permittee as may be required by any applicable federal, state, or local law or regulation.

20. ATTORNEYS' FEES

The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

21. ENTIRE AGREEMENT

This Agreement, and the Revocable Permit issued pursuant to this Agreement, and the attachments hereto, constitute the entire Agreement between the parties concerning the subject matter thereof.

22. BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, and assigns of the parties hereto.

23. RELOCATION ASSISTANCE

Permittee acknowledges it is not entitled to any relocation assistance payments at the conclusion of this Agreement, or the conclusion of the Revocable Permit issued pursuant to this Agreement, under State or federal law (California Government Code Section 7260 et seq. and 42 USC 4601 et seq., respectively) and Permittee further agrees that it will not file or pursue any such claim.

24. PUBLIC RECORDS

Permittee acknowledges that this Agreement and the Revocable Permit, and all exhibits or attachments hereto, are public records and thus may be disclosed to members of the public pursuant to the Public Records Act (California Government Code Section 6250 et seq.), as such act may be amended from time to time.

25. AUTHORITY

By executing this Agreement, Permittee warrants and represents that it has the legal authority to enter into this Agreement. Within thirty (30) days of the Effective Date, Permittee shall provide to City a certificate executed by the Permittee's corporate secretary, or equivalent authorized person, stating that Permittee is an entity in good standing in its state of origin licensed to do business in California and that Permittee has obtained all necessary local, state, and federal licenses as may be necessary to operate the facilities and business operations contemplated by this Agreement. The person signing this Agreement for Permittee hereby represents and warrants that he or she is authorized to sign this Agreement on behalf of Permittee.

THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK
SIGNATURES ON FOLLOWING PAGE

PERMITTEE: WOMBO, Inc.

CITY: CITY OF SACRAMENTO,
a municipal corporation

By: _____
Print Name: JOHN SOMMATICO
Title: CEO
Dated: 10/2/12

By: _____
Print Name: _____
Title: _____
For John F. Shirey, City Manager
Dated: _____

RECOMMENDED FOR APPROVAL

APPROVED AS TO FORM:

By: _____
Program Manager

By: _____
Senior Deputy City Attorney

ATTEST:

By: _____
City Clerk

Exhibit “A”

Exhibit “B”

Exhibit “C”



RESOLUTION NO. 2012-

Adopted by the Sacramento City Council

OCTOBER 23, 2012

AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR ISSUANCE OF REVOCABLE PERMIT FOR THE SACRAMENTO CONVENTION CENTER

BACKGROUND

- A. WOMBO, Inc. has been operating telecommunications services at the Sacramento Convention Center since 2000, at which time the City entered into City Agreement No. 2000-0198. After the initial term of City Agreement No. 2000-0198 came to a close, by mutual agreement between WOMBO, Inc. and City, the term was extended for five additional one-year terms.
- B. At the end of the fifth extended one-year term of City Agreement No. 2000-0198, the City issued and a Request for Services (RFP). WOMBO was the only responding proposer and as such, WOMBO, Inc. and City entered into City Agreement No. 2010-1020.
- C. The City has a continuing need to provide telecommunications services at the Sacramento Convention Center and under City Code Section 3.76.050, any telecommunications providers who propose to locate telecommunications infrastructure on City-owned property must enter into an Agreement for Issuance of Revocable Permit

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or City Manager's designee is hereby authorized and directed to execute the Agreement for Issuance of Revocable permit – Sacramento Convention Center with WOMBO, Inc.
- Section 2. The City Manager or City Manager's designee is hereby authorized to execute such other documents as necessary to implement the revocable permit agreement.
- Section 3. Exhibit A is a part of this Resolution.