

**HERMOSA BEACH  
ATTACHMENT PERMIT AGREEMENT**

**T**HIS ATTACHMENT PERMIT AGREEMENT (the "Permit") is dated as of \_\_\_\_\_, 2005, and entered into by and between the **CITY OF HERMOSA BEACH**, a California municipal corporation (the "City"), and **TREYSPAN, INC.**, ("Treyspan").

**RECITALS**

A. Under California law the City has the right and power to regulate the time, location, and manner of attachment, installation, operation, and maintenance of wireless digital communications radios in the Public Right of Way within the limits of the City.

B. Treyspan wishes to attach, install, operate, and maintain a wireless digital communications radio network on facilities located in the Public Right of Way for purposes of operating a wireless digital communications radio network (the "Network").

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

**1 DEFINITIONS.** The following definitions shall apply generally to the provisions of this agreement:

**1.1 Agency.** "Agency" means any governmental or quasi-governmental agency other than the City, including the FCC and the PUC (as such terms are defined in §§ 1.4 and 1.9 below).

**1.2 City.** "City " means the City of Hermosa Beach.

**1.3 Effective Date.** "Effective Date" means the latest to occur of (a) the date on which this Permit, is finally approved by the City Council of Hermosa Beach, is executed by the City and delivered to Treyspan; (b) the date on which all permits required hereunder for deployment of the Radios is issued by the City; or (c) the date on which Treyspan hangs its first Radio as provided below.

**1.4 FCC.** "FCC" means the Federal Communications Commission.

**1.5 Fee.** "Fee" means any assessment, license, charge, fee, imposition, tax (but excluding any utility users' tax or franchise fees), or levy of general application to Persons doing business in the City lawfully imposed by any governmental body.

**1.6 Gross Revenues.** “Gross Revenues” means the gross dollar amount accrued on Treyspan’s books for Services provided to its customers with billing addresses in the City, excluding (i) local, state, or federal taxes collected by Treyspan that have been billed to the subscribers and separately stated on subscribers’ bills and (ii) revenue uncollectible from subscribers (*i.e.*, bad debts) with billing addresses in the City that was previously included in Gross Revenues.

**1.7 Laws.** “Laws” means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Permit, in effect either at the time of execution of this Permit or at any time during the presence of Radios in the Public Right of Way.

**1.8 Treyspan.** “Treyspan” means Treyspan, Inc. a corporation duly organized and existing under the laws of the State of California, and its lawful successors, assigns, and transferees.

**1.9 PUC.** “PUC” means the California Public Utilities Commission.

**1.10 Permit.** “Permit” means this nonexclusive Attachment Permit Agreement and may also refer to the associated right to encroach upon the Public Right of Way conferred hereunder.

**1.11 Person.** “Person” means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business entity or association.

**1.12 Provision.** “Provision” means any agreement, clause, condition, covenant, qualification, restriction, reservation, term or other stipulation in this Permit that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to this Permit. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

**1.13 Public Right of Way.** “Public Right of Way” means in, upon, above, along, across, and over the public streets, roads, lanes, courts ways, alleys, boulevards, and places, including all public utility easements and public service easements as the same now or may hereafter exist that are under the jurisdiction of the City. This term shall not include any property owned by any Person or Agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency.

**1.14 Radio Month.** “Radio Month” means a calendar month during which a Radio occupies space on a City-owned pole or other City-owned property, even if such occupancy is less than the entire month.

**1.15 Radio.** “Radio” means the radio equipment, whether referred to singly or collectively, to be installed and operated by Treyspan hereunder and more particularly described in **Exhibit A** attached hereto.

**1.16 Services.** “Services” means the wireless internet network connection provided by Treyspan through its Radios to its subscribers with billing addresses within the City. It is understood and agreed that any additional functions of Treyspan, including but not limited to customer service and support, franchisee fees, products, equipment and related material necessary to the operation of Treyspan’s wireless internet work shall not be considered “Services” for purposes of this agreement.

**2 TERM.** The term of this Permit shall commence on the effective Date and shall expire on the date which completes five (5) years after the Effective Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Permit shall be renewed automatically for two (2) successive terms of five (5) years each on the same terms and conditions as set forth herein, except that the Annual Fee shall be subject to adjustment as provided in § 4.2.1 below, unless either Treyspan or the City notifies the other party of its intention not to renew not less than thirty (30) calendar days prior to commencement of the relevant renewal term. Notwithstanding anything to the contrary herein, the Permit shall automatically terminate, with the same effect as if the term had expired, if Treyspan fails to deploy its network and commence offering the Services to subscribers within the City within one (1) year from the date of the City’s execution and delivery of this Permit to Treyspan.

**3 SCOPE OF PERMIT.** Any and all rights expressly granted to Treyspan under this Permit, which shall be exercised at Treyspan’s sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Right of Way exclusively or concurrently with any other Person or Persons and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the Public Right of Way. Nothing in this Permit shall be deemed to grant, convey, create, or vest in Treyspan a perpetual real property interest in land, including any fee, leasehold interest, or easement.

**3.1 Attachment to City-Owned Property.** Subject to the terms of § 3.4.1 below, the City hereby authorizes Treyspan to attach, install, operate, maintain, service, remove, reattach, reinstall, relocate, and replace Radios in or on City street light poles, lighting fixtures, electroliers, or other City’ owned property located within the Public Right of Way for the purposes of providing Services to Persons located within or without the limits of the City.

**3.2 Attachment to Third-Party Property.** Subject to obtaining the permission of the owner(s) of the affected property, the City hereby authorizes and permits Treyspan to attach, install, operate, maintain, service, remove, reattach, reinstall, relocate, and replace such number of Radios in or on poles or other structures owned by public utility companies, including Southern California Edison, or other property owner(s) located within the Public Right of Way as may be permitted by the public utility company or

property owner(s), as the case may be. Treyspan shall furnish to the City documentation of such permission from the individual utility or property owner(s) responsible.

**3.3 No Interference.** Except as permitted by applicable Laws or this Permit Treyspan in the performance and exercise of its rights and obligations under this Permit shall not interfere in any manner with the existence and operation of any and all public and private rights-of-away, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties.

**3.4 Compliance with Laws.** Treyspan shall comply with all applicable Laws in the exercise and performance of its rights and obligations under the Permit.

**3.4.1 Construction Permits.** Any and all construction work performed pursuant to the rights granted under this Permit, including the installation, operation, maintenance, location, and attachment of the Radios in the Public Right of Way, shall, if required under applicable City ordinances, be subject to the prior review and approval of City by means of submission of a permit application, payment of any applicable permitting fees, and the City's ordinary administrative review. Treyspan agrees to apply for and obtain all appropriate permits required by applicable Law prior to the commencement of any work or construction in the Public Right of Way. Any and all permits required herein shall relate to the initial set up and installation of the Radios within the jurisdiction of the City. Said permits shall be issued by the City to remain effective for the duration of this Permit. Treyspan shall pay the initial permit fee prior to installation of any Radio within its system, but shall not be required to apply for and/or pay additional permit fees related to the service, maintenance and/or repair of said Radios after the date of initial installation. Treyspan shall provide the City with reasonable notice of the intent to maintain and/or service a Radio prior to encroachment in the Public Right of Way. The locations of Treyspan's planned initial installation of Radios shall be incorporated in **Exhibit B** attached to this Permit. After the initial deployment of the Radios, new attachments, removals, and relocations of Radios shall also be subject to the City's permitting process. If the location of any Radio is different from that applied for in the applicable permit, the location of such Radio installed by Treyspan or its designee shall be disclosed in writing to the City by Treyspan within ten (10) days after its installation, removal, or relocation. Notwithstanding anything to the contrary herein, Treyspan agrees that it will not install more than one hundred (100) Radios within the City without the express prior written consent of the City.

**3.4.2 As-Built Drawings.** Upon the completion of construction work, Treyspan promptly shall furnish to the City, in hard copy and in Treyspan's electronic format, suitable documentation showing the exact location of the Radios in the Public Right of Way.

**3.4.3 Modification of Service Voltage.** The City reserves the right to modify the service voltage delivered to or at any street light pole or utility pole on which a Radio may be located. Treyspan shall replace or modify any Radio that will be affected by such voltage modifications. In the event that Treyspan fails to replace or modify any Radio within the thirty-day notice period before the voltage modification, the City may disconnect any such Radio until Treyspan performs and completes the necessary work and advises City accordingly.

**3.5 Annual Business License.** Treyspan agrees to obtain an annual City business license prior to the Effective Date and maintain the same throughout the term of this Permit.

**4 FEES AND TAXES.** Treyspan shall be solely responsible for the payment of all lawful Fees and utility charges in connection with the exercise of Treyspan's rights under this Permit, including those set forth below.

**4.1 Franchise Fee.** Treyspan shall pay to the City, on an annual basis, an amount (the "Franchise Fee") equal to five percent (5%) of Treyspan's Gross Revenues collected during each preceding calendar year, which amount shall be collected from subscribers of the Services and remitted to City as provided herein. The Franchise Fee shall be due on or before the forty-fifth (45<sup>th</sup>) day after the end of each calendar year or fraction thereof. Within forty-five (45) days after the termination of this Permit, the Franchise Fee shall be paid for the period which has elapsed since the end of the last calendar year for which the Franchise Fee has been paid. Treyspan shall furnish to the City with each payment of the Franchise Fee a statement, executed by an authorized officer of Treyspan or his or her designee, showing the amount of Gross Revenues for the period covered by the payment. If Treyspan discovers that it has failed to pay the entire or correct amount of the Franchise Fee, Treyspan shall pay the difference to the City or make such other adjustment within fifteen (15) days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from Treyspan. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this Permit occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or collecting any balance due to the City.

**4.1.1 Accounting and Audit.** Treyspan shall keep accurate books of account at its principal office in Torrance or such other location of its choosing for the purpose of determining the amounts due to the City under § 4.1. The City may inspect Treyspan's books of account at any time during regular business hours on five (5) days' prior written notice and may audit the books from time to time, but in each case only to the extent necessary to confirm the accuracy of payments due under § 4.1. The City shall bear the cost of any such audit, unless such audit reveals an underpayment to the City of more than five percent (5%) of the Franchise Fee which was due to the City for such calendar year. Once each calendar year the City may require an annual report from Treyspan relating to its

operations and revenues within the City. City agrees to hold in confidence any nonpublic information it learns from Treyspan in accordance with applicable law.

**4.2 Annual Fee.** Treyspan shall pay to the City an annual fee (the “Annual Fee”) in the amount of Sixty Dollars (\$60.00) for the use of each city-owned pole or other structure or piece of City-owned property upon which a Radio has been installed pursuant to this Permit. The initial Annual Fee shall be due and payable not later than the date of installation of the first Radio on City-owned poles or other City-owned property under this Permit (the “Installation Date”) and shall be computed based upon the number of Radios Treyspan estimates as of the Installation Date that it will install on City-owned poles or other City-owned property during the succeeding twelve (12) months. The Annual Fee for subsequent years shall be due and payable not later than thirty (30) days following each anniversary of the Installation Date and shall equal the total number of Radios then installed on City-owned poles or other City-owned property pursuant to this Permit multiplied by the Annual Fee, adjusted for the Prior Year Adjustment, as described immediately below. The Prior Year adjustment shall either increase or decrease a subsequent year’s aggregate Annual Fee to account for the installation or removal of Radios during the prior year, and shall equal the difference between (i) the total number of Radios used to calculate the prior year’s aggregate Annual Fee multiplied by twelve (12) and (ii) the actual number of Radio Months which occurred during such year, multiplied by one-twelfth of the Annual Fee.

**4.2.1 CPI Adjustment.** At the commencement of each renewal term, the Annual Fee with respect to such term shall be adjusted effective January 1<sup>st</sup> of the first year of such renewal term by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index of all items, Base 1982-1984, which occurred during the previous term or renewal term, as the case may be, for the Los Angeles-Anaheim-Riverside Consolidated Metropolitan Statistical Area.

**4.3 Preference for City-Owned Property.** In any situation where Treyspan has a choice of attaching its Radios to either City-owned property or third-party-owned property in the Public Right of Way, Treyspan agrees to attach to City-owned poles or other City-owned property, provided that such City-owned poles or other City-owned property are at least equally suitable functionally for the operation of Treyspan’s Ricochet® system and the fee associated with such attachment is equal or less than the fee or cost to Treyspan of attaching to the alternative third-party-owned property.

**4.4 Municipal Access Program.** In consideration of City’s execution and delivery of this Use Agreement, City shall have the right throughout the term of this Use Agreement to use the wireless internet network for its municipal operations such as police, fire, public works and general government activities at rate of fifty percent (50%) off the retail pricing for broadband Service only. This discounted rate for broadband Service does not include any other aspect of Treyspan’s business, including but not limited to support, equipment and/or maintenance, which shall be provided in accordance with Treyspan’s

then prevailing rate(s). This § 4.4 solely for the City's its own use and shall not be entitled to resell, distribute, or otherwise permit the use of the same by any other Person.

**4.5 Reimbursement of City's Expenses.** Treyspan shall reimburse the City at City's standard rates for all reasonable expenses relating to the preparation, issuance, and implementation of this Permit, promptly upon receipt of bills, paid invoices, and such other documentation as Treyspan shall reasonable require. The reimbursement provided for in this § 4.5 shall not replace or excuse Treyspan from the payment of any applicable City permit fee for work undertaken in connection with this Permit.

**4.6 Potential Utility Users' Tax.** Treyspan acknowledges and agrees that the City may require users of revenue-producing services such as the Services which are the subject of this Permit to pay a utility users' tax ("Utility Tax") to the City pursuant to City's Municipal Code. If the City determines that the Services are subject to the Utility Tax, Treyspan agrees to collect the tax from service users and remit such tax to the City in accordance with City's Municipal Code.

**4.7 Most-Favored Nation Clause.** Should Treyspan after the parties' execution and delivery of this Permit enter into an attachment permit agreement with another municipality of the same size or smaller than the City in the Los Angeles Metropolitan Statistical Area which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are substantially superior to those in this Permit, City shall have the right to request that Treyspan modify this Permit to incorporate the same or substantially similar superior benefits and such other terms.

**5 REMOVAL AND RELOCATION OF RADIOS.** Treyspan understands and acknowledges that City may require Treyspan to relocate one or more of its Radios, and Treyspan shall at City's direction relocate such Radios at Treyspan's sole cost and expense, whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a City project or for the under grounding of utility lines; (b) because the Radio is interfering with or adversely affecting proper operation of City light poles, street lighting, holiday decorations, traffic signals, or other City facilities; (c) to protect or preserve the public health, safety, or welfare; or (d) because of any unforeseen emergency, at the determination of the City Engineer. If Treyspan shall fail to relocate any Radios as requested by the City in accordance with the foregoing provision, City shall be entitled to relocate the Radios at Treyspan's sole cost and expense, without further notice to Treyspan.

**5.1 Treyspan Desires Relocation.** In the event Treyspan desires to relocate any Radios from one City-owned pole or other property to another City-owned pole or other property, Treyspan shall so advise City. City will use its best efforts to accommodate Treyspan by making another functionally equivalent City-owned pole or other property available for use in accordance with and subject to the terms and conditions of this Permit.

**5.2 Discontinuation of Service.** In the event that any Radio subject to this Permit is abandoned and no longer placed in service for a period of six (6) months or more, Treyspan promptly shall notify the City, and the City, at its option, may require Treyspan promptly to remove the abandoned Radio(s) at Treyspan's sole cost and expense or dedicate the same to the City. The City shall not issue notice to Treyspan that the City intends to exercise the option to require removal or dedication of Radios, unless and until the City first gives fifteen (15) days' prior written notice to Treyspan to remove the Radios. If Treyspan shall fail to remove the Radios as required by the City, the City shall be entitled to remove the Radios at Treyspan's sole cost and expense. Treyspan shall execute such documents of title as will convey all right, title, and interest in the abandoned Radios, but in no other Treyspan property, intellectual or otherwise, to the City.

**5.3 Damage to Right-of-Way.** Whenever the removal or relocation of Radios is required under this Permit, and such removal or relocation shall cause the Public Right of Way to be damaged, Treyspan, at its sole cost and expense, shall promptly repair and return the Public Right of Way in which the Radios are located to a safe and satisfactory condition to the satisfaction of the City's Director of Public Works. If Treyspan does not repair the site as just described, then the City shall have the option, upon fifteen (15) days' prior written notice to Treyspan, to perform or cause to be performed such reasonable and necessary work on behalf of Treyspan and to charge Treyspan for the proposed costs to be incurred or the actual costs incurred by the City and City's standard rates. Upon the receipt of a demand for payment by the City, Treyspan shall reimburse the City for such costs.

**6 INDEMNIFICATION, WAIVER, AND BOND.** Treyspan agrees to indemnify, defend (with counsel reasonably acceptable to the City and to Treyspan's insurance carrier), protect, and hold harmless the City, its council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") arising, directly or indirectly, in whole or in part, out of the activities or facilities described in this Permit, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council members, officers, employees, agents, or contractors.

**6.1 Waiver of Breach.** The waiver by the City of any breach or violation of any Provision of this Permit by Treyspan shall not be deemed to be a waiver or a continuing waiver by the City of any subsequent breach or violation of the same or any other Provision of this Permit by Treyspan.

**6.2 Waiver of Claims.** Treyspan waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Radio or any loss or degradation of the Services as a result of a sudden or gradual loss or change of electrical power caused by, among others events, an Act of God, an event or occurrence which is beyond the reasonable control of the City, a power outage, a



lightning strike, or occasioned by the installation, maintenance, replacement or relocation of any City-owned facility to which such Radio is attached.

**6.3 Limitation of City's Liability.** The City shall be liable only for the cost of repair to damaged Radios arising from the negligence or willful misconduct of City or its employees or agents, and the City shall not be responsible for any damages, losses, or liability of any kind occurring by reason of anything done or omitted to be done by the City or by any third party, including damages, losses, or liability arising from the issuance or approval by the City of a permit to any third party or any interruption in Services.

**6.4 Bond or Other Security.** Prior to the commencement of any work under this permit, Treyspan shall furnish or cause to be furnished to City a good and sufficient bond, substantially in the form attached hereto as **Exhibit C** entitled Surety Bond, in the amount of Two Thousand Five Hundred Dollars (\$2,500), or such other comparable security instrument as may be approved by the City's attorney or risk manager, securing the faithful performance by Treyspan of all of the work, construction, installation, and removals required to be performed by Treyspan under this Permit within the time periods set forth hereunder.

**7 INSURANCE.** Treyspan shall obtain and maintain at all times during the term of this Permit (including the period between the expiration hereof and Treyspan's removal of its Radios or other equipment from the Public Right of Way) commercial general liability insurance and commercial automobile liability insurance protecting Treyspan in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than One Million Dollars (\$1,000,000) annual aggregate for each personal injury liability and products-completed operations. Such insurance policies shall name the City, its council members, officers, and employees as additional insureds as respects any covered liability arising out of Treyspan's performance of work under this Permit. Coverage shall be provided in accordance with the limits specified and the Provisions indicated herein. Claims-made policies are not acceptable. When an umbrella or excess coverage is in effect, coverage shall be provided in following form. Such insurance shall not be canceled or materially altered to reduce coverage until the City has received at least thirty (30) days' advanced written notice of such cancellation or change. Treyspan shall be responsible for notifying the City of such change or cancellation.

**7.1 Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this Permit, Treyspan shall file with the City the required original certificate(s) of insurance with endorsements, subject to the City's prior approval, which shall clearly state all of the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts;

- (b) that thirty (30) days' prior notice of cancellation is required to the City; and
- (c) that Treyspan's insurance is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and, any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in § 8 below:

**7.2 Workers' Compensation Insurance.** Treyspan shall obtain and maintain at all times during the term of this Permit statutory workers' compensation and employer's liability insurance in an amount not less than Five Hundred Thousand Dollars (500,000) and shall furnish the City with a certificate showing proof of such coverage.

**7.3 Insurer Criteria.** Any insurance provider of Treyspan shall be admitted and authorized to do business in California and shall be rated at least A:X in *A.M. Best & Company's Insurance Guide*. Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**7.4 Severability of Interest.** Prior to the execution of this Permit, any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the City. "Cross liability," "severability of interest," or "separation of insureds" clauses shall be made a part of the commercial general liability and commercial automobile liability policies.

**7.5 Contractors' and Subcontractors' Insurance.** Treyspan shall require that all contractors and subcontractors obtain insurance meeting the criteria set forth herein and shall furnish to the City copies of all certificates evidencing such policies of insurance.

**7.6 Insurance and Indemnification Obligation.** Treyspan's compliance with the insurance requirements herein shall not excuse, replace, or otherwise affect Treyspan's duty to indemnify and defend the City pursuant to § 6 of this Permit.

**8 NOTICES.** All notices which shall or may be given pursuant to this Permit shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as just described, addressed as follows:

*if to the City:*

**CITY OF HERMOSA BEACH**  
Attn: City Manager  
1315 Valley Drive  
Hermosa Beach, CA 90254

*if to Treyspan:*

**TREYSPAN, INC.**  
Attn: Network Manager  
21250 Hawthorne Blvd  
Torrance CA 90503

Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

**9 TERMINATION.** This Permit may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by such other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. As used in this § 9, the term *default* shall include, with respect to Treyspan's obligations hereunder, Treyspan's failure (i) to comply with the restrictions established in § 3, (ii) timely to pay any sums owing to the City under § 4, and (iii) to maintain, deploy, relocate, or remove its Radios as provided in § 5 hereof.

**10 ASSIGNMENT.** This Permit shall not be assigned by Treyspan without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Any attempted assignment in violation of this § 10 shall be void. Notwithstanding the foregoing, the transfer of the rights and obligations of Treyspan hereunder to a parent, subsidiary, or financially viable affiliate of Treyspan or to any successor-in-interest or entity acquiring all or substantially all of Treyspan's outstanding voting stock or assets shall not be deemed an assignment or transfer for the purposes of this Permit, provided that (i) any such transferee will have a financial strength after the proposed transfer at least equal to that of Treyspan prior to the transfer, (ii) any such transferee assumes all the obligations of Treyspan hereunder, and (iii) Treyspan shall not be released from the obligations of this Permit by virtue of such transfer. If such criteria are satisfied, it shall not be deemed reasonable for the City to withhold its consent to the proposed transfer, unless the proposed transferee has a record of performance under similar agreements which is unacceptable to the City under a reasonable standard of evaluation. Lack of prior specific experience in administering a system providing the Services described in this Permit shall not, by itself, be deemed a reasonable basis for refusing or conditioning the City's

consent. Treyspan shall give to the City thirty (30) days' prior written notice of any proposed transfer for which notice is required hereunder. In the case of any proposed transfer for which the City's consent is required hereunder, Treyspan agrees to reimburse the City for its reasonable expenses incurred in reviewing such transfer proposal.

**11 MISCELLANEOUS PROVISIONS.** The provisions which follow shall apply generally to the obligations of the parties under this Permit.


**11.1 Nonexclusive Use.** Treyspan understands that this Permit does not provide Treyspan with exclusive use of any City-owned poles or property and that City shall have the right to permit other providers of telecommunications services to install equipment or devices in the Public Right of Way; however, City shall endeavor promptly to notify Treyspan of the receipt of a proposal for the installation of communications equipment or devices in the Public Right of Way, regardless of whether a license is required by the FCC for the operation thereof.

**11.2 Amendment of Permit.** This Permit may not be amended except pursuant to a written instrument signed by both parties.

**11.3 Severability of Provisions.** If any one or more of the Provisions of this Permit shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such Provision(s) shall be deemed severable from the remaining Provisions of this Permit and shall in no way affect the validity of the remaining portions of this Permit.

**11.4 All-Hours Contact.** Treyspan shall be available to the staff employees of any City department having jurisdiction over Treyspan's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Radios. The City may contact by telephone the network control center operator at telephone number (800) 556-6123 regarding such problems or complaints.

**11.5 Governing Law; Jurisdiction.** This Permit shall be governed and construed by and in accordance with the law of the State of California. In the event that suit is brought by a party to this Permit, the parties agree that trial of such action shall be vested exclusively in the state courts of California, County of Los Angeles, or in the United States District Court, Central District of California in the County of Los Angeles.

**11.6 Attorneys' Fees.** Should any dispute arising out of this Permit lead to ation, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees.

**11.7 Exhibits.** All exhibits referred to in this Permit and any addenda, attachments, and schedules which may from time to time be referred to in any duly executed amendment to this Permit are by such reference incorporated in this Permit and shall be deemed a part of this Permit.

**11.8 Successors and Assigns.** This Permit is binding upon the successors and assigns of the parties hereto.

**11.9 Rules, Regulations, and Specifications.** Treyspan acknowledges that the City may develop rules, regulations, and specifications, including a general ordinance or other regulation governing wireless telecommunications in the City (the "Regulations"), for the attachment, installation, and removal of Radios and any similar purpose devices on the City-owned facilities, including poles, and that such Regulations, when finalized, shall govern Treyspan's activities hereunder as if they had been in effect at the time this Permit was executed by the City; provided, however, that in no event shall such Regulations materially interfere with or affect Treyspan's right to install Radios or Treyspan's ability to transmit or receive radio signals from Radios installed pursuant to and in accordance with this Permit or materially increase Treyspan's obligations hereunder.

**11.10 Advice of Displacement.** To the extent the City has actual knowledge thereof, the City will attempt to inform Treyspan of the displacement of any pole on which any Radio is located.

**11.11 Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Permit, such party shall not unreasonably delay, condition, or withhold its approval or consent.

**11.12 Entire Agreement.** This Permit contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Permit which are not fully expressed herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

TREYSPAN, INC.

By \_\_\_\_\_

\_\_\_\_\_  
[name typed]

Its: \_\_\_\_\_

CITY OF HERMOSA BEACH

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Stephen Burrell, City Manager

ATTEST:

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City Clerk