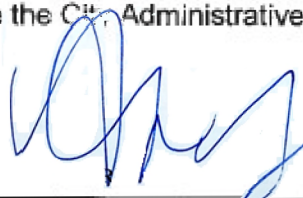


## TRANSMITTAL

TO The City Council	DATE 9/6/18	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 4	

**Lease Agreement Between the City of Los Angeles and Los Angeles SMSA Limited Partnership DBA Verizon Wireless for the Installation and Operation of a Neutral Host Cellular Distributed Antenna System at the Greek Theatre**

Approved and transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a). See the City Administrative Officer report attached.

  
(Ana Guerrero) for  
\_\_\_\_\_  
ERIC GARCETTI  
MAYOR

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: September 6, 2018

CAO File No. 0150-11045-0000

Council File No.

Council District: 4

To: The Mayor

From: Richard H. Llewellyn, Jr., City Administrative Officer

Reference: Letter to the Mayor from the Board of Recreation and Park Commissioners dated November 29, 2017; referred by the Mayor on December 4, 2017

Subject: **LEASE AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND LOS ANGELES SMSA LIMITED PARTNERSHIP DBA VERIZON WIRELESS FOR THE INSTALLATION AND OPERATION OF A NEUTRAL HOST CELLULAR DISTRIBUTED ANTENNA SYSTEM AT THE GREEK THEATRE**

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### RECOMMENDATION

That the Council approve and authorize the President and Secretary of the Board of Recreation and Park Commissioners to execute the lease agreement with Los Angeles SMSA Limited Partnership dba Verizon Wireless for the installation and operation of a neutral host Cellular Distributed Antenna System at the Greek Theatre for a term of ten years with three five-year extension options at an initial first year lease payment of \$2,300 per month with annual rate adjustment of 3 percent for each year thereafter, including throughout any extension terms, subject to the approval of the City Attorney as to form.

### SUMMARY

At its meeting of November 15, 2017, the Board of Recreation and Park Commissioners (Board) approved the proposed lease agreement (Agreement) with Los Angeles SMSA Limited Partnership dba Verizon Wireless (Verizon Wireless) for the installation and operation of a neutral host Cellular Distributed Antenna System (DSA) at the Greek Theatre for a term of ten years with three five-year extension options. Verizon Wireless will pay an initial first year lease payment of \$2,300 per month with annual rate adjustment of 3% for each year thereafter, including throughout any extension terms.

The City, through the Board and the Department of Recreation and Park (Department), owns the historic Greek Theatre located within Griffith Park in Council District 4. The Greek Theatre has undergone numerous renovations recently to restore, modernize, and expand the venue to provide the patrons with musical entertainment and public and professional performances.

As part of these on-going improvements to modernize the venue, the Department sought to improve wireless services at the Greek Theatre for patrons and visitors by installing a DAS at the venue.

According to the Department, multiple vendors were evaluated with the assistance of an independent consultant. After rounds of price negotiations with two responding vendors (Verizon Wireless and T-Mobile), Verizon Wireless offered the higher lease payments and was selected by the Department. Verizon Wireless will act as the lead carrier for the DAS and will design, construct, install, maintain, upgrade the DAS, operate the DAS, and contract with other carriers for connection to and use of the DAS. According to the Department, Verizon Wireless will pay for the installation of the DAS (approximately \$800,000) and will be responsible for additional on-going cost to support and maintain the DAS. Under this Agreement, Verizon Wireless does not have exclusive right to operate a DAS at the Greek Theatre, and Verizon Wireless is required to sublease its DAS to other FCC licensed wireless carriers at reasonable market rates.

In accordance with Charter Sections 371(e)(2,10) the Board, in its capacity as the contract awarding authority for the Department, found that the use of competitive bidding for the Agreement would be undesirable, impractical or impossible or is otherwise excused by the common law and the Charter because, unlike the purchase of a specific product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by the Department to provide DAS services.

In accordance with Charter Sections 372, the Board found that obtaining competitive proposals or bids for DAS services is not reasonably practicable or compatible with the Department's interests due to the limited number of telecommunications carriers available to provide DAS services.

The Board also found that the installation and operation of a neutral host Cellular Distributed Antenna System at the Greek Theatre involves negligible or no expansion of the facility use and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 3(4) of the City CEQA Guidelines

Council approval of the proposed agreement is required because the term exceeds three years. To the best of our knowledge, Verizon Wireless has complied with all standard provisions for City contract.

## **FISCAL IMPACT STATEMENT**

Los Angeles SMSA Limited Partnership dba Verizon Wireless will pay an annual lease payment of \$2,300 per month with annual rate adjustment of 3 percent for each year thereafter, including throughout any extension terms. Revenues from this lease agreement will be deposited into the Department of Recreation and Parks' operating fund. There is no additional impact on the General Fund.

**DEPARTMENT OF RECREATION  
AND PARKS**

**BOARD OF COMMISSIONERS**

**SYLVIA PATSAOURAS**  
PRESIDENT

**LYNN ALVAREZ**  
VICE PRESIDENT

**MELBA CULPEPPER**  
**MISTY M. SANFORD**

**ARMANDO X. BENCOMO**  
BOARD SECRETARY (213) 202-2640

**CITY OF LOS ANGELES**  
CALIFORNIA



**ERIC GARCETTI**  
MAYOR

**MICHAEL A. SHULL**  
GENERAL MANAGER  
**ANTHONY-PAUL (AP) DIAZ, ESQ.**  
EXECUTIVE OFFICER &  
CHIEF OF STAFF

**VICKI ISRAEL**  
ASSISTANT GENERAL MANAGER

**RAMON BARAJAS**  
ASSISTANT GENERAL MANAGER

221 N FIGUEROA ST.  
3RD FLOOR, SUITE 350  
LOS ANGELES, CA 90012  
(213) 202-2633, FAX (213) 202-2614

**LAPARKS.ORG**  
PARK PROUD LA

November 29, 2017

Honorable Eric Garcetti, Mayor  
City of Los Angeles  
Room 303, City Hall

Attention: Ms. Mandy Morales

Dear Mayor Garcetti:

In accordance with Executive Directive No. 3, attached herewith are three copies of a proposed Lease Agreement between the City of Los Angeles, Department of Recreation and Parks (RAP) and Los Angeles SMSA Limited Partnership dba Verizon Wireless, for the installation and operation of a neutral host Cellular Distributed Antenna System (DAS) at the Greek Theatre.

Also attached for the assistance of your Office in reviewing the proposed Agreements is Report No. 17-244, which was adopted by the Board of Recreation and Park Commissioners at its Regular Meeting held on November 15, 2017. The Department of Recreation and Parks hereby request that your Office expedite the review of the proposed Agreements to transmit forthwith for consideration by City Council. After your review and recommendation, the proposed Agreements will be submitted to the Board for final action.

If you have any questions with regard to the proposed Agreements, please contact Mr. Gino Ogtong, Management Analyst II, at (213) 202-5675.

Very truly yours,

**BOARD OF RECREATION AND  
PARK COMMISSIONERS**

**IRIS L. DAVIS**  
Commission Executive Assistant II

Attachments

cc: Gino Ogtong, Contracts Administration





# APPROVED

NOV 16 2017

## BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 17-244

DATE: November 15, 2017

C.D. \_\_\_\_\_

### BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GREEK THEATRE - LEASE AGREEMENT FOR INSTALLATION AND OPERATION OF A NEUTRAL HOST CELLULAR DISTRIBUTED ANTENNA SYSTEM; EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO ARTICLE III, SECTION 1, CLASS 3(4) OF THE CITY CEQA GUIDELINES

A.P. Diaz

V. Israel

R. Barajas

S. Pina-Cortez

H. Fujita

N. Williams

N/W



General Manager

Approved X

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

### RECOMMENDATIONS

1. Approve the proposed Lease Agreement (Agreement), herein included as Attachment 1, between the City of Los Angeles, Department of Recreation and Parks (RAP) and Los Angeles SMSA Limited Partnership dba Verizon Wireless, a California limited partnership, for the installation and operation of a neutral host Cellular Distributed Antenna System (DAS) at the Greek Theatre (Project), as described in the Summary of the Report;
2. Approve the Agreement between RAP and Verizon Wireless, for an initial term of ten (10) years with options to extend for three (3) additional five-year terms, at an initial first year rate of Two Thousand, Three Hundred Dollars (\$2,300.00) per month with annual rate adjustments of three percent (3%) for each year thereafter, including throughout any extension terms;
3. Direct the Board Secretary to transmit the proposed Agreement to the Mayor and City Council for approval, subject to approval of the City Attorney as to form;
4. Authorize RAP and the City Attorney to make any necessary technical changes to the Agreement consistent with the terms and conditions set forth in this Report;
5. Authorize the Board President and Secretary to execute the Agreement subsequent to all necessary approvals;
6. Find, in accordance with Charter Section 371(e)(10), that the use of competitive bidding for the Agreement would be undesirable, impractical or impossible or is otherwise is

## BOARD REPORT

PG. 2 NO. 17-244

excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by RAP to provide DAS services;

7. Find, in accordance with Charter Section 372, that obtaining competitive proposals or bids for DAS services is not reasonably practicable or compatible with RAP's interests due to the limited number of telecommunications carriers available to provide DAS services, the limited number of interested responses received by RAP in its informal outreach to some of these carriers, and the requirement that Verizon make available its DAS on the Property for sublease to other carriers;
8. Find that the Project is exempt from provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 3(4) of the City CEQA Guidelines; and,
9. Authorize RAP's General Manager or the Chief Accounting Employee to make technical corrections as necessary to carry out the intent of this Report.

### SUMMARY

The historic Greek Theatre is owned by the City of Los Angeles and is located within Griffith Park. It is one of the Nation's most beloved and recognized outdoor entertainment venues. It has played host to some of the biggest music legends from Sir Elton John to Frank Sinatra, Bruce Springsteen to Carlos Santana, and many more. Since the 1950s, promoters and entertainment companies alike have partnered with the City to help sustain, support and bring improvements to the Greek Theatre's house and backstage areas to stay current and compete with other similar renowned amphitheaters. The Greek Theatre has undergone numerous renovations to restore, modernize, and expand this iconic venue to provide the patrons with continued musical entertainment, public and professional performances.

As part of these ongoing improvements, RAP would like to provide wireless services to the Greek Theatre and its patrons and visitors. RAP proposes to enter into a Lease Agreement (Agreement) with Verizon Wireless for the installation and operation of a neutral host Cellular Distributed Antenna System (DAS) on a portion (basement level) of the Greek Theatre property. Verizon Wireless will act as lead carrier for the DAS, and will design, construct, install, maintain, upgrade the DAS from time to time, operate the DAS, contract with other carriers for connection to and use of the DAS, and use of its proprietary telecommunications equipment connected to the DAS.

RAP evaluated and consulted with multiple vendors for this Project through an independent consultant. RAP performed rounds of price negotiations with multiple vendors to arrive at the mutually agreed lease payment with Verizon Wireless. RAP selected Verizon Wireless because Verizon Wireless will pay RAP the most over the term of the agreement. Due to competitive pressure, Verizon Wireless has agreed to pay a lease even though it does not usually make lease payments for DAS installations. The Greek Theatre DAS installation is estimated to cost

## BOARD REPORT

PG. 3 NO. 17-244

Verizon Wireless an investment of Eight Hundred Thousand Dollars (\$800,000.00) with additional ongoing cost of support and maintenance after deployment.

Due to the limited number of telecommunications carriers that can provide DAS services as well as the limited response received from vendors during RAP's outreach to these vendors, RAP staff determined a formal competitive process was not practicable and would not benefit RAP. This determination was also made in light of the fact that Verizon will not have an exclusive right to operate a DAS at the Greek Theatre, insuring that the opportunity for other vendors to install and operate a DAS at the Greek Theatre would remain, and that Verizon would be required to sublease its DAS to other FCC licensed wireless carriers at reasonable market rates.

The proposed Agreement (Attachment 1) between the City and Verizon Wireless outlines each party's respective roles, responsibilities, and financial relationship with respect to the installation and operation of a neutral host DAS at the Greek Theatre. The term of the proposed Agreement commences upon an initial term of ten (10) years with option to extend for three (3) additional five-year terms at the rate of Two Thousand, Three Hundred Dollars (\$2,300.00) per month with annual rate adjustments of three percent (3%) for each year thereafter, including throughout any extension terms.

### ENVIRONMENTAL IMPACT STATEMENT

RAP staff has determined that the proposed installation and operation of a neutral host DAS at the Greek Theatre involves negligible or no expansion of facility use. Therefore, RAP staff recommends that the Board find the Project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 3(4) of the City CEQA Guidelines.

### FISCAL IMPACT STATEMENT:

There is no fiscal impact to the RAP's General Fund with the approval of this Report. Approving this lease agreement will have a positive revenue impact to the Greek Theatre.

This Report was prepared by Gino Ogtong, Management Analyst II, and reviewed by Alex Yee, Director of Systems, Information Technology Division.

### LIST OF ATTACHMENT(S)

- 1) Proposed Lease Agreement

**LEASE AGREEMENT  
BETWEEN  
THE CITY OF LOS ANGELES  
AND  
LOS ANGELES SMSA LIMITED PARTNERSHIP dba VERIZON WIRELESS  
FOR THE INSTALLATION AND OPERATION OF A NEUTRAL HOST  
CELLULAR DISTRIBUTED ANTENNA SYSTEM AT THE GREEK THEATER**

This LEASE AGREEMENT ("AGREEMENT") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Los Angeles, (hereinafter referred to as "CITY") a municipal corporation, acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "BOARD"), and Los Angeles SMSA Limited partnership dba Verizon Wireless, a California limited partnership, having a mailing address of One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (hereinafter referred to as "LESSEE"). CITY and LESSEE shall be referred to hereinafter collectively as the "**Parties**".

**WHEREAS**, CITY operates that certain plot, parcel or tract of land, improved with a multi-purpose amphitheater structure commonly known as The Greek Theatre (the "**Structure**"), together with all rights and privileges arising in connection therewith, located at 2700 N. Vermont Avenue, Los Angeles, CA 90027 (collectively, the "**Property**").

**WHEREAS**, LESSEE and those of its sub-lessees, as applicable, desire to use a portion of the Property in connection with their Federally licensed communications business.

**WHEREAS**, CITY desires to grant to LESSEE the rights to use a portion of the Property, and to install and operate a neutral host Cellular Distributed Antenna System (the "**DAS**"), to provide wireless services to the Property, its customers, and visitors, and to future on-site users of the DAS in accordance with the terms of this Agreement.

**WHEREAS**, LESSEE desires to act as lead carrier for DAS, and, as such, to design DAS, construct and install DAS, maintain DAS and upgrade it from time to time to meet the standards prescribed in this Agreement, to operate DAS and to contract with other carriers for connection to and use of DAS, and to use and occupy a portion of the Property as the location for its proprietary telecommunications equipment to be connected to the DAS, all as provided in this Agreement.

**WHEREAS**, CITY desires to grant to LESSEE the authority to contract for the design, construction, maintenance and repair of the DAS.

**NOW THEREFORE**, the CITY and LESSEE hereby agrees as follows:

## **SECTION 1. PARTIES TO THE CONTRACT, REPRESENTATIVES AND NOTIFICATION**

### **1.1 Parties**

The parties to this AGREEMENT are:

**CITY** - The City of Los Angeles, a municipal corporation, acting by and through its **BOARD OF RECREATION AND PARK COMMISSIONERS** on behalf of the Department of Recreation and Parks, has its principal office at 221 N. Figueroa Street, Suite 300, Los Angeles, CA 90012.

**LESSEE** - Los Angeles SMSA Limited Partnership, dba Verizon Wireless, a Delaware limited partnership having its principal office at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920.

### **1.2 Representatives**

The representatives of the parties who are authorized to administer this Agreement and to whom formal notices, demands and communications will be given are as follows:

CITY's representative will be:

Michael A. Shull, General Manager  
City of Los Angeles, Department of Recreation and Parks  
221 N. Figueroa Street, Suite 350  
Los Angeles, CA 90012

With copies to:

Noel Williams, Chief Financial Officer  
City of Los Angeles, Department of Recreation and Parks  
Finance Division  
221 N. Figueroa Street, Suite 200  
Los Angeles, CA 90012  
E-mail: [Noel.Williams@lacity.org](mailto:Noel.Williams@lacity.org)

Telephone Number: (213) 202-4380  
Fax Number: (213) 202-3215

And

Alex Yee, Director of Systems  
City of Los Angeles, Department of Recreation and Parks  
Systems, Finance Division  
221 N. Figueroa Street, Suite 450  
Los Angeles, CA 90012  
Email: [Alex.Yee@lacity.org](mailto:Alex.Yee@lacity.org)

Telephone Number: (213) 202-3290  
Fax Number: (213) 202-4310



LESSEE's representative will be:

Los Angeles SMSA Limited Partnership  
dba Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

Telephone Number: (866) 862-4404

## **SECTION 2. LEASE OF PREMISES**

CITY leases to LESSEE: (A) a certain portion of the Property containing approximately two hundred seventy-two (272) square feet including the air space above such room/cabinet/ground space (the "Equipment Space") within the area depicted on attached Exhibit 1, which shall include space for the head-end equipment for the DAS, as well as space for LESSEE's proprietary telecommunications equipment to be connected to the DAS; and (B) areas located throughout the Property for the placement of antennas in such locations as CITY, or CITY and LESSEE shall mutually approve after good faith consultation, which locations are deemed sufficient for the operation of the antennas (the "Antenna Space"). CITY shall have the right to require LESSEE to relocate any part of the System at LESSEE's sole expense, upon at least three (3) months prior written notice to LESSEE and with LESSEE's approval (such approval not to be unreasonably withheld, delayed or conditioned), and LESSEE shall receive a proportionate abatement of Rent for any period of time greater than seven (7) days during which the DAS is not fully operational as a result of the relocation. Additionally, CITY irrevocably grants to LESSEE during the Term (as defined below) a non-exclusive license over, under, along and through the Property in locations reasonably determined necessary by LESSEE, from time to time, to install, maintain, repair, replace and remove conduits, wires, cables, cable trays and other necessary connections between the Equipment Space and/or the Antenna Space and the electric power, telephone and/or fuel sources on the Property (collectively the "Connections "). The Equipment Space, the Antenna Space, and the space occupied by the Connections are hereinafter collectively referred to as the "Premises". The project will be implemented in two (2) separate phases which are outlined in Exhibit 4.

## **SECTION 3. PERMITTED USES**

(a) **Permitted Use of Premises.** LESSEE hereby is granted the use of the Premises for the installation, construction, maintenance, operation, repair, replacement and upgrade of the DAS and any and all other communications fixtures and related equipment, cables, accessories and improvements as may be needed by LESSEE (and its sub-lessees, as applicable) from time to time to fully provide for the continuous transmission and reception of DAS-related communications signals, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "Communication Facility"), as well as the right to test, survey and review title on the Property, at no additional cost to CITY, as described in Sections 10 (b) and 10 (c) below (collectively, the "Permitted Use"). LESSEE will provide plans and drawings to CITY and CITY will respond to either approve or disapprove (with reasons for disapproval provided to LESSEE) such drawings within forty-five (45) business days after receipt from LESSEE, such approval to be not unreasonably withheld, delayed, or conditioned. CITY grants LESSEE (and its sublessees, as applicable) during construction, the non-exclusive right to use such portions of CITY's contiguous, adjoining or surrounding property (the "Surrounding Property") as may reasonably be necessary during construction and installation of the

Communication Facility. LESSEE has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, and to make improvements, alterations, upgrades or additions to the Premises appropriate for LESSEE's use ("**LESSEE Changes**"). LESSEE shall comply with all applicable governmental laws, engineering & building codes, rules, statutes and regulations relating to its installation, construction, maintenance, operation, repair, replacement and upgrade of the Communication Facility on the Property. LESSEE has the option to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this AGREEMENT, subject to CITY's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. In the event LESSEE desires to modify, replace, or upgrade the Communication Facility, and LESSEE requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, CITY agrees, in good faith, to lease to LESSEE the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by a proportionate amount consistent with the rates charged under this AGREEMENT for Equipment Space. CITY agrees to take such actions and enter into and deliver to LESSEE such documents as LESSEE reasonably requests in order to effectuate and memorialize the lease of the Additional Premises to LESSEE.

(b) **The Project.** LESSEE shall, at its sole expense, design, construct and install DAS throughout the Property to provide voice and data cellular coverage at the Property (the "**Project**") in accordance with the technical standards outlined in Exhibit 2 (the "**Technical Standards**"), the drawings referenced in Exhibit 1 (the "**Preliminary Designs**"), as such designs may be modified or supplemented by the approved Project Plans (as defined hereinafter), and the terms of this AGREEMENT. DAS must provide coverage for substantially all of the Property, inclusive of administrative areas, support staff locations, arena floor, meeting rooms, hallways and general spaces.

(c) The parties acknowledge that the DAS will not provide a public safety communications system, WiFi services, VHF, UHF, or two-way radio communications, and CITY shall be permitted to use the Property for such purposes, subject to the provisions of this AGREEMENT. LESSEE hereby covenants to build and operate the DAS and shall take commercially reasonable measures to offer the DAS available for sublease to other Carriers, on reasonable terms and conditions approved by CITY (not to be unreasonably withheld, conditioned or delayed), and in accordance with the terms of this AGREEMENT.

#### **SECTION 4. TERM**

(a) **Initial Term.** The initial lease term will be ten (10) years ("**Initial Term**"), commencing on the Effective Date. The Initial Term will terminate on the tenth (10<sup>th</sup>) anniversary of the Effective Date.

(b) **Extended Term.** LESSEE shall have the option, upon mutual agreement of the parties, to extend this AGREEMENT for three (3) additional five (5) year terms (each an "**Extension Term**," together with the Initial Term, the "**Term**"), upon the same terms and conditions. To exercise an option to extend the Term, LESSEE must deliver prior written notice to CITY of its desire to extend this AGREEMENT for each Extension Term not less than one hundred eighty (180) days prior to the termination of the then existing Term. CITY shall be deemed to have agreed to such Extension Term, unless CITY delivers written notice to LESSEE of its desire to have this AGREEMENT expire at the end of the then existing Term, not more than ninety (90) days after receipt of LESSEE's notice of desire to extend the AGREEMENT.

(c) **Automatic Renewal.** If LESSEE does not elect to extend this AGREEMENT in accordance with Paragraph 4(b), and neither party timely provides the other with a Non-Renewal Notice (as defined

below), then upon expiration of the then existing Term, this AGREEMENT shall automatically continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (each an "Annual Term") until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rental during such annual terms shall be subject to the escalation percentage set forth in this AGREEMENT.

(d) **Non-Renewal Notice.** If either party desires that the Term of this AGREEMENT expires at the end of the then-existing Term, such party shall provide the other party with written notice (a "Non-Renewal Notice"), at least sixty (60) days prior to the end of the then existing Term, of its desire that the Term expire at the end of the then existing Term, and shall not be subject to renewal pursuant to Paragraph 4(b) or 4(c) of this AGREEMENT. If neither party provides the other with a timely Non-Renewal Notice, this AGREEMENT shall automatically renew in accordance with Paragraph 4(c) above.

(e) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the Term ("Term").

#### **SECTION 5. RENT AND PROJECT FEE**

(a) **Rent.** Commencing on the fifth (5<sup>th</sup>) day in the month following the date that LESSEE commences operation of the DAS (the "Rent Commencement Date"), LESSEE will pay CITY a monthly rental payment of Two Thousand, Three Hundred Dollars (\$2,300.00) (the "Rent"), to the address set forth in Section 21. In any partial month occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by LESSEE to CITY before or on the Rent Commencement Date. Rent shall be payable on or before the fifth (5<sup>th</sup>) day of each calendar month, in advance, after the Rent Commencement Date and throughout the Term. CITY reserves the right to charge a late payment fee of two hundred and fifty dollars (\$250.00) for each occurrence of late payment.

(b) **Adjustments.** In year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised or any Annual Terms, the monthly Rent will increase by three percent (3%) over the Rent paid during the previous year.

(c) **Utilities.** In the event, LESSEE utilizes power to operate DAS from CITY's switchgear or related electric infrastructure, LESSEE will be responsible for design and installation of any additional electrical power infrastructure and an electric sub-meter. The sub-meter will be read monthly and LESSEE the amount billed to CITY will be invoiced to LESSEE on a quarterly basis for the actual cost of the energy utilized by DAS. LESSEE agrees to reimburse CITY on a Net 30 basis.

#### **SECTION 6. INSPECTION AND AUDIT**

CITY and CITY's representatives, shall have the right to inspect the DAS from time to time and LESSEE shall cooperate with CITY and provide such representatives reasonable access to the DAS for inspection. CITY and CITY's representatives shall have the right to review copies of all documentation prepared with respect to DAS, all contractor and subcontractor invoices and books and records related to the Project and DAS, upon reasonable advance notice to the LESSEE.

#### **SECTION 7. PRE- CONSTRUCTION**

(a) **Design.** LESSEE shall, at its sole expense, complete the design of DAS and prepare detailed drawings, plans and specifications meeting the Technical Standards (in consultation with CITY) and

consistent with the Preliminary Designs, as such designs may be modified or supplemented by the approved Project Plans.

(b) **Project Planning.** LESSEE shall continue to diligently prosecute, at its sole expense, all activities necessary to the design of DAS and the plan for prosecution of the Project, including the following:

- (1) Prepare detailed drawings, plans and specifications for DAS and other documentation, including a map layout of the network design (the "Project Plans").
- (2) Submit Project Plans to CITY for its approval, such approval not to be unreasonably withheld, conditioned or delayed. CITY shall respond and either approve or give a notice of its disapproval and the specific reasons (and actions needed to obtain approval), promptly but in no event later than the twenty-one (21) business day following receipt, the parties recognizing that time is of the essence. LESSEE is permitted to submit parts of the Project Plans for significant portions of the construction for CITY's review in accordance with this Section 7(b)(2).

## **SECTION 8. CONSTRUCTION**

LESSEE, at its sole expense, shall construct and install DAS in accordance with the Project Plans and the following: (i) construction on any part of DAS may begin only after CITY has approved the Project Plans for that portion of DAS, as contemplated in Section 7(b); (ii) construction of DAS must be substantially completed and successfully tested on or before one hundred and fifty (150) days following CITY's approval of the Project Plans (the "**Construction Deadline**"); (iii) delays attributable to material or labor shortages, transportation delays and similar potential sources of delay shall not be an event of Force Majeure that will justify an extension of the Construction Deadline unless caused directly by hurricanes, floods or other natural disasters; (iv) LESSEE must deliver as-built drawings of DAS in AutoCAD format identifying placement of all antennas, remotes, intermediate and head-end equipment, including carrier base stations, within sixty (60) days of the date on which DAS first processes commercial traffic (all engineering drawings must be stamped by an engineer that holds a valid registration in the State of California for the applicable discipline related to the drawings), as well as within sixty (60) days subsequent to the completion of each construction phase of the DAS, including any addition to, or relocation of, the DAS where "as builds" require revision; (v) construction of DAS must be performed under the direction and control of a person holding an appropriate California contractor's license, if required by the State of California; (vi) DAS will be constructed with only new materials (hardware, antennas, cable and equipment), and (viii) LESSEE shall promptly bond out any liens filed against the Property with respect to the Project or DAS. LESSEE will obtain the best, commercially reasonable warranties and/or performance guarantees against defects in design, materials and workmanship from all contractors and suppliers for the benefit of LESSEE and CITY. LESSEE's construction of DAS shall not disrupt or materially interfere with CITY's use of the Property. LESSEE and its contractors shall not store construction equipment, supplies or materials at the Property except for equipment, materials and supplies necessary in connection with the portion of DAS construction being performed at the time of storage. Except for damage (but not theft or loss) caused by CITY's negligence or willful misconduct, CITY shall have no liability with respect to any damage to LESSEE's construction equipment, materials or supplies and LESSEE shall bear all risk of loss and have care, custody and control of such equipment, materials and supplies. The time period between the date of this AGREEMENT and substantial completion of DAS is referred to as the "**Construction Period**".

## **SECTION 9. PROPERTY ACCESS**

(a) **In General.** Throughout the Construction Period, CITY will afford LESSEE and its sublessees, as applicable, full and free access to the Property, Monday – Friday 9:00 a.m. – 6:00 p.m. for purposes of performing work necessary to completing the Project Plans and for the construction of the Project, other than during Blackout Dates, restricted access dates or other periods of time where tenants of the Property have specific event restrictions. Access to the Property on Restricted Access Dates and Blackout Dates will be permitted as provided in subsections (b) and (c) below. LESSEE's employees, agents and contractors (including contractor's employees) shall not be permitted any access to the Property without required credentials supplied by CITY, which shall be promptly provided.

(b) **Blackout Dates.** Dates when the Property is unavailable for work during the Construction Period are referred to as "Blackout Dates." Known Blackout Dates are listed on Exhibit 3. LESSEE may not access the Property on the Blackout Dates without advance written approval of CITY. CITY shall provide LESSEE with limited access to the Property on a Blackout Date if CITY determines, in its reasonable discretion that such access will not interfere with the event or activity at the Property and CITY is not otherwise prohibited from permitting such access. Specifically, CITY shall permit access to the Property on a Blackout Date (unless otherwise prohibited from doing so) if one of the following conditions are met: (i) the areas or locations being accessed are not a part of the Property being used for the event giving rise to the Blackout Date and there is not expected to be any visibility of the work to the participants or attendees of such event; or (ii) access occurs prior to an event and the participants and attendees will not be impacted by the work then being performed, provided work must stop prior to the start of the event and the work area must be cleaned and secured to the satisfaction of CITY; or (iii) access occurs after an event has ended and the participants and attendees have left the premises, provided work must not begin until after the end of the event.

(c) **Restricted Access.** CITY may restrict access to the Property on any additional date during the Construction Period (a "Restricted Access Date") by sending written notice to LESSEE; provided, however, on each Restricted Access Date CITY shall be required to permit LESSEE to access a portion of the Property during times of day which will not interfere with the event or activity at the Property, determined in CITY's sole, but reasonable discretion. CITY may notify LESSEE of up to ten Restricted Access Dates without affecting the Construction Deadline. If the number of Restricted Access Dates exceeds ten, LESSEE shall have the right to extend the Construction Deadline for an amount of time equal to the number of Restricted Access Dates in excess of ten dates.

(d) **Post Construction Access.** At all times throughout the Term of this AGREEMENT after the Construction Period, CITY will afford LESSEE, and its sublessees, as applicable, full and free access to the Property, Monday – Friday 9:00 a.m. – 6:00 p.m. for purposes of performing work necessary to operate and maintain the DAS, except as set forth in this Section. CITY may restrict access to the Property on any date during the Term on an as needed basis at its sole discretion. CITY may permit access to LESSEE or its subcontractors in accordance with the following: (i) to the extent that it will not interfere with an event or activity at the Property, determined in CITY's sole, but reasonable discretion, and (ii) to reach the Equipment Space in the event of an emergency. LESSEE's employees, agents and contractors (including contractor's employees) shall not be permitted any access to the Property without required credentials supplied by CITY, which shall be promptly provided.



## **SECTION 10. APPROVALS**

(a) CITY agrees that LESSEE's ability to use the Premises is contingent upon the suitability of the Premises and Property for LESSEE's Permitted Use and LESSEE's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by LESSEE for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "Government Approvals"). LESSEE shall be responsible for obtaining and maintaining all Governmental Approvals. CITY authorizes LESSEE to prepare, execute and file all required applications to obtain Government Approvals for LESSEE's Permitted Use under this AGREEMENT and agrees to reasonably assist LESSEE with such applications and with obtaining and maintaining the Government Approvals. In addition, LESSEE shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) LESSEE has the right at its sole cost and expense to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) LESSEE may also perform and obtain, at LESSEE's sole cost and expense, tests or reports on, over, and under the Property, necessary to determine if LESSEE's use of the Premises is compatible with LESSEE's engineering specifications, system, design, operations or Government Approvals. LESSEE shall provide CITY copies of all test results and reports within thirty (30) days of receiving said results and reports.

## **SECTION 11. TERMINATION**

This AGREEMENT may be terminated, without penalty or further liability, as follows:

(a) By either party on thirty (30) days' prior written notice, if the other party remains in default under Section 19 of this AGREEMENT after the applicable cure periods;

(b) By LESSEE upon sixty (60) days' prior written notice to CITY, if, after diligently pursuing any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as intended pursuant to this AGREEMENT, LESSEE is unable to obtain, or maintain, any such required approval(s) or the issuance of such license or permit by any agency, board, court or other governmental authority; or if LESSEE determines, in its reasonable discretion, that the cost of obtaining or retaining the same is commercially unreasonable. LESSEE agrees to keep CITY reasonably apprised of its efforts to obtain required approvals, licenses and permits, including without limitation, by providing CITY with written notice, as soon as reasonably practicable, of any anticipated or actual circumstances which may delay or prevent LESSEE from obtaining necessary approvals, licenses or permits.

(c) By CITY, in the event LESSEE hasn't constructed the DAS and DAS isn't providing commercially available service to CITY and the patrons of the Property within one hundred and eighty (180) business days from the date this AGREEMENT is fully executed.

(d) By LESSEE, as set forth in Section 16 below.

The CITY has the right to cancel the AGREEMENT for cause at any time subject however to earlier termination by CITY as provided in Section PSC-9 of Appendix A – Standard Provisions for City Contracts (Rev. 10/17). The parties agree and acknowledge that only Section PSC-9 of the attached

Standard Provisions for City Contracts (Rev. 10/17) is being incorporated by this reference. Except for Section PSC-9, no other provision of Appendix A is intended to have any force or effect in this AGREEMENT unless specifically referenced herein

## **SECTION 12. INSURANCE**

LESSEE shall obtain and keep in force a commercial general liability insurance policy with a limit of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage and Two Million Dollars (\$2,000,000.00) general aggregate which covers LESSEE's use and occupancy of the premises and the operations conducted thereon pursuant to this AGREEMENT. Such insurance policy must also include the CITY as an additional insured as their interest may appear under this AGREEMENT and comply with the Office of the City Administrative Officer's Insurance Requirements, see Form Gen. 146 (Rev. 6/12) Required Insurance and Minimum Limits and Form Gen. 133 (Rev. 05/12) Instructions and Information on Complying with City Insurance Requirements. The CITY, based upon advice of the City's Risk Managers, may increase or decrease the amounts on insurance coverage required herein by giving thirty (30) days' written notice to LESSEE.

The preferred form of evidence of insurance is an insurance industry ACORD Certificate submitted electronically via Track4LA™ at <http://track4la.lacity.org>, the City's online insurance compliance system. For additional information on City of Los Angeles evidence of insurance submission requirements, please refer to the Instructions and Information on Complying with City Insurance Requirements.

Without limiting LESSEE's indemnification of CITY, LESSEE shall provide and maintain, at its own expense during the entire term of the AGREEMENT, insurance having the limits customarily carried and actually arranged by LESSEE but not less than the amounts and types listed in the AGREEMENT covering its operations hereunder subject to the following conditions:

- (a) **Additional Insured:** CITY, its Boards, Officers, Agents and Employees shall be included as additional insureds as their interest may appear under this AGREEMENT in all liability insurance policies except Worker's Compensation/Employer's Liability, Professional Errors and Omissions and second-party Legal Liability coverages (such as Fire Legal). CITY shall be named Loss Payee as Its Interest May Appear in all required property, fidelity and surety coverages.
- (b) **Insurance Requirements:** All insurance required hereunder shall conform to CITY requirements established by Charter, ordinance or policy and shall be filed with the Office of the City Attorney for its review in accordance with Los Angeles City Administrative Code Sections 11.47 through 11.56.
- (c) **Primary Insurance:** Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on CITY's insurance program for contributions.
- (d) **Admitted Carrier/Licensed California Broker:** Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California.
- (e) **30-Day Notice:** Upon receipt of notice from its insurer(s) LESSEE shall provide the CITY with thirty (30) days prior written notice of cancellation to the Office of the Administrative Officer.
- (f) **Prior Approval:** Evidence of Insurance shall be submitted to and reasonably approved by the Office of the City Administrative Officer prior to commencement of any work or tenancy under this Contract.

(g) Severability of Interest: Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whom claim or suit is brought. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.

(h) Acceptable Evidence: LESSEE shall submit a certificate of insurance as acceptable evidence and approval of insurance in accordance with Form Gen. 133 (Rev. 05/12) "Instructions and Information on Complying with City Insurance Requirements".

(i) Renewal: Once the insurance has been approved by CITY, evidence of renewal of an expiring policy may be submitted in accordance with Form Gen. 133 (Rev. 05/12) "Instructions and Information on Complying with City Insurance Requirements."

(j) Aggregate Limits/Blanket Coverage: If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of LESSEE outside this AGREEMENT, LESSEE shall give CITY prompt, written notice of any incident occurrence, claim, settlement or judgment against such insurance which is LESSEE's best judgment will diminish the protection such insurance affords CITY. CITY may, at its option, specify a minimum acceptable aggregate for each line of coverage required.

CITY reserves the right at any time during the term of this AGREEMENT to change the amounts and types of insurance required hereunder by giving LESSEE ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to LESSEE, CITY agrees to negotiate additional compensation proportional to the increased benefit to CITY.

The required coverages and limits are subject to availability on the open market at reasonable cost. LESSEE's failure to procure or maintain required insurance or a self-insurance program shall constitute a material breach of contract under which CITY may immediately terminate or suspend this Contract.

LESSEE shall maintain required insurance coverage and minimum limits in full force during the term of this Agreement and shall ensure that any of LESSEE's employees, consultants, agents and subcontractors of any tier comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract.

A waiver of subrogation under workers compensation in favor of CITY is required.

### **SECTION 13. INTERFERENCE**

(a) Where there are existing radio frequency user(s) on the Property, CITY will provide LESSEE, upon execution of this AGREEMENT, with a list of all existing radio frequency user(s) on the Property to allow LESSEE to evaluate the potential for interference. LESSEE warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by CITY, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations, manufacturer's specifications, and standards.

(b) CITY will not grant, after the date of this AGREEMENT, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the Communication Facility, the operations of LESSEE or the rights of LESSEE under this AGREEMENT.

(c) CITY will not use, nor will CITY permit its employees, lessees, licensees, invitees, agents or independent contractors to use, any portion of the Property in any way which interferes with the

Communication Facility, the operations of LESSEE or the rights of LESSEE under this AGREEMENT. CITY will cause such interference to cease within seventy-two (72) hours after receipt of notice of interference from LESSEE. In the event any such interference does not cease within the aforementioned cure period, CITY will be in breach of this AGREEMENT, and LESSEE will have the right, in addition to any other rights that it may have at law or in equity, CITY, to elect to enjoin such interference or to terminate this AGREEMENT upon notice to CITY.

(d) For the purposes of this provision, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic, physical or obstruction interference with, or degradation of, the communications signals to and/or from the Communication Facility.

#### **SECTION 14. INDEMNIFICATION**

Except for the gross negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, LESSEE shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including LESSEE'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by LESSEE, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Agreement.

LESSEE shall pay all fines, penalties, and other similar charges which may be imposed upon it or CITY because of the failure of LESSEE or its respective officers, agents, employees, contractors, or subcontractors in the course of the installation to adhere to applicable federal, state or local laws, ordinances, rules, regulations, or building and safety codes.

LESSEE shall further hold harmless and indemnify CITY from and against any and all suits, claims, actions or liabilities whatsoever, including reasonable attorney's fees and expenses, incurred in connection therewith or with successfully establishing the right of indemnification hereunder which arises out of breach or default by LESSEE in performance of any obligation to be performed by LESSEE under this Agreement.

#### **SECTION 15. WARRANTIES**

(a) LESSEE and CITY each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this AGREEMENT and bind itself hereto through the party set forth as signatory for the party below.

(b) CITY represents, warrants and agrees that: (i) CITY solely owns the Property as a legal lot in fee simple, and CITY solely owns the Structure; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect LESSEE's Permitted Use and enjoyment of the Premises under this AGREEMENT; (iii) as long as LESSEE is not in default then CITY grants to LESSEE sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) CITY's execution and performance of this AGREEMENT will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on CITY; (v) CITY has obtained all consents and

approvals necessary to enter into this AGREEMENT and to grant LESSEE the rights hereunder; and (vi) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, CITY will provide promptly to LESSEE a mutually agreeable subordination, non-disturbance and attornment agreement.

(c) LESSEE represents, warrants and agrees that DAS will be constructed in a good and workmanlike manner and will comply with all Technical Standards.

## **SECTION 16. ENVIRONMENTAL**

(a) **Environmental Compliance.** Based only on CITY's actual knowledge, CITY represents and warrants, except as may be identified in Exhibit 5 attached to this AGREEMENT, (i) the Property, as of the date of this AGREEMENT, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property is not, as of the date of this AGREEMENT, subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. CITY and LESSEE agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

### **(b) Environmental Indemnities.**

(I) As to each Property, LESSEE shall not use or store any Hazardous Materials (defined below) of any kind on the Property except in accordance with applicable law. In the event the property becomes contaminated by Hazardous Materials or contaminated waste materials brought, used, manufactured, or stored on the Site in violation of applicable law by LESSEE or any of its agents, employees or independent contractors, LESSEE shall be responsible for, and pay all costs for the removal and disposal of all such materials as required by law and, further, CITY may terminate the applicable Property / Site Lease Agreement and this Agreement as pertains thereto without penalty.

(II) LESSEE will be responsible for and will defend, indemnify, and hold CITY harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the Site associated with LESSEE's use of Hazardous Materials. CITY will be responsible for and will defend, indemnify and hold LESSEE harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the Site associated with CITY's use of Hazardous Materials.

(III) "Hazardous Materials" means asbestos or any hazardous substance, waste or materials as defined in any federal, state or local environmental or safety law or regulation including, but not limited to CERCLA. The obligations of this Section shall survive the expiration or other termination of the applicable Property and this Agreement.

(c) **LESSEE's Right to Terminate.** In the event LESSEE becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in LESSEE's reasonable determination, renders the condition of the Premises or Property unsuitable for LESSEE's use, or if LESSEE reasonably determines that the leasing or continued leasing of the Premises would expose LESSEE to undue risks of liability to a government agency or third party, LESSEE will have the right, in addition to any other rights it may have at law or in equity, to terminate this AGREEMENT upon written notice to CITY. Notwithstanding the foregoing, LESSEE shall have no right



to terminate this AGREEMENT pursuant to this Section 16(d), and any notice provided by LESSEE shall be null and void, if, within sixty (60) days of such written notice, CITY cures the condition on the Premises or Property such that the condition of the Premises and Property are suitable for LESSEE's use and do not expose LESSEE to undue risks of liability to a government agency or third party.

#### **SECTION 17. REMOVAL/RESTORATION**

All portions of the Communication Facility brought onto the Property by LESSEE will be and remain LESSEE's personal property, regardless of whether any portion is deemed real or personal property under applicable law, and, at LESSEE's option, may be removed by LESSEE without CITY's consent at any time during the Term if such removal doesn't impact coverage, capacity or performance of the DAS. CITY covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by LESSEE will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of CITY that all improvements of every kind and nature constructed, erected or placed by LESSEE on the Premises will be and remain the property of LESSEE and may be removed by LESSEE at any time during the Term if such removal doesn't impact coverage, capacity or performance of the DAS. Within sixty (60) days after the termination of this AGREEMENT, LESSEE will remove all of LESSEE's above-ground improvements and LESSEE will restore the remainder of the Premises to its condition at the commencement of this AGREEMENT, reasonable wear and tear and loss by casualty or other causes beyond LESSEE's control excepted. If LESSEE fails to restore the Property after removal of the Communication Facility as required under this Section 17, CITY shall have the right to restore such Property and receive reimbursement from LESSEE for the costs of restoration. LESSEE's obligations and CITY's rights under this Section 17 shall survive the termination of this AGREEMENT.

#### **SECTION 18. MAINTENANCE/UTILITIES**

(a) LESSEE will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted, throughout the Term of this AGREEMENT. CITY will maintain and repair the Property and access thereto and all areas of the Premises where LESSEE does not have exclusive control, in good and leasable condition, subject to reasonable wear and tear and damage from the elements.

(b) CITY will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide such other service to LESSEE as LESSEE may require in furtherance of the Permitted Use. LESSEE shall be responsible for ordering separate utility services which LESSEE may require from time to time for the use and operation of its Communication Facility, and maintaining such services during the Term at LESSEE's sole expense. In the event ordering separate utility service is not feasible, LESSEE will be responsible for providing and installing sub-metering equipment at all locations where power is provided by CITY. By specific agreement between CITY and LESSEE, LESSEE shall be responsible for the cost of bringing the T-1 and/or such other telephone service from the main (or minimum) point of entry ("MPOE") on the Property to the Equipment Space or such other location comprising a portion of the Premises as LESSEE shall have the right to designate for the installation and operation of LESSEE's Communication Facility.

#### **19. DEFAULT AND RIGHT TO CURE**

(a) **LESSEE's Default.** The following will be deemed a default by LESSEE and a breach of this AGREEMENT: (i) non-payment of Rent if such Rent remains unpaid for more than fifteen (15) days after receipt of written notice from CITY of such failure to pay; or (ii) LESSEE's failure to perform any other term or condition under this AGREEMENT within thirty (30) days after receipt of written notice from CITY

specifying the failure. No such failure, however, will be deemed to exist if LESSEE has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of LESSEE. If LESSEE remains in default beyond any applicable cure period, CITY will have the right to exercise any and all rights and remedies available to it under law and/or equity.

(b) **CITY's Default.** The following will be deemed a default by CITY and a breach of this AGREEMENT: (i) failure to commence actions to cure an interference problem within five (5) business days after receipt of written notice of such default; no such failure, however, will be deemed to exist if CITY has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of CITY; or (ii) CITY's failure to perform any term, condition or breach of any warranty or covenant under this AGREEMENT within thirty (30) days after receipt of written notice from LESSEE specifying the failure. No such failure, however, will be deemed to exist if CITY has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of CITY. If CITY remains in default beyond any applicable cure period, LESSEE will have: (x) the right to cure CITY's default and to deduct the reasonable costs of such cure from any Rent monies due to CITY from LESSEE, and (y) any and all other rights available to it under law and/or equity.

(c) **Force Majeure.** Failure in performance by any party hereunder shall not be deemed an Event of Default and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided herein when such failure or non-occurrence is due to Force Majeure. An extension of time for performance for any such cause shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause, provided that, if notice by the party claiming such extension is sent to the other party more than ten (10) days after the commencement of the cause, the period shall be deemed to commence ten (10) days prior to the giving of such notice. For purposes of this AGREEMENT, "Force Majeure" means a casualty, adverse weather conditions that cannot reasonably be anticipated, acts of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, threats of sabotage or terrorism, restraint by court order, and similar occurrences beyond the reasonable control of a party that make compliance with any of the party's material obligations under this AGREEMENT in a timely manner impracticable or impossible and which, in all cases, are not foreseeable or a result of the negligence or willful misconduct of, or in the control of, the party. Notwithstanding the forgoing, delays attributable to material or labor shortages, transportation delays and similar potential sources of delay shall not be an event of Force Majeure that will justify an extension of the Construction Deadline unless caused directly by hurricanes, floods or other natural disasters.

## **SECTION 20. ASSIGNMENT/SUBLEASE**

LESSEE will have the right to assign this AGREEMENT only with CITY's consent which will not be unreasonably withheld, conditioned or delayed. LESSEE may assign or otherwise transfer its interest in this AGREEMENT without CITY's consent, but with prior notice to, to (i) any Affiliate of LESSEE, (ii) any partnership, corporation or other business entity into which LESSEE shall be merged, converted or consolidated in accordance with applicable statutory provisions governing merger, conversion or consolidation of the applicable business entity, (iii) a partnership, corporation or other business entity which is a direct successor to LESSEE owning all or substantially all of LESSEE's business and assets in the market defined by the FCC in which the Property is located, or (iv) any person or entity that, after first receiving the necessary FCC licenses, acquires LESSEE's communications business or assets in the market defined by the FCC in which the Property is located and assumes all obligations of LESSEE

under this AGREEMENT. LESSEE shall make commercially reasonable efforts to sublease the DAS, to other FCC licensed wireless providers ("Carriers") at a reasonable market rate, on terms consistent with the following: (i) the Carrier will contract with CITY for lease or use rights for space within the Property for such Carrier's proprietary equipment (a "Site Lease"); (ii) the Carrier will contract with LESSEE for the right to connect such Carrier's proprietary equipment to the DAS (the "In-Building Agreement"), under which each Carrier will be obligated to contribute its share of all costs of the DAS incurred to date to reimburse LESSEE and any other Carriers then on the DAS and to fund its share of ongoing costs of operating and maintaining the DAS (plus a cumulative overhead allowance of ten percent (10%) of all such DAS costs. Said ten percent (10%) overhead cost shall be shared in the event that there are multiple sublessee Carriers). LESSEE shall not execute an In-Building Agreement with any Carrier which has not executed a Site Lease with CITY. Each Carrier will be solely responsible for the cost of constructing, installing, maintaining and operating its own proprietary equipment at the Property.

## **SECTION 21. NOTICES.**

Formal notices, demands and communications to be given hereunder by either party will be made in writing and may be effected by certified mail, return receipt requested, and will be deemed communicated as of the date of receipt.

If the person designated to receive the notices, demands or communications or if the address of such person is changed, written notice of such change shall be given, in accordance with this Section, within five (5) working days of the change.

If to CITY: Noel Williams, Chief Financial Officer  
City of Los Angeles, Department of Recreation and Parks  
Finance Division  
221 N. Figueroa Street, Suite 200  
Los Angeles, CA 90012  
E-mail: [Noel.Williams@lacity.org](mailto:Noel.Williams@lacity.org)  
Telephone Number: (213) 202-4380  
Fax Number: (213) 202-3215

And

Alex Yee, Director of Systems  
City of Los Angeles, Department of Recreation and Parks  
Finance Division  
221 N. Figueroa Street, Suite 450  
Los Angeles, CA 90012  
Email: [Alex.Yee@lacity.org](mailto:Alex.Yee@lacity.org)  
Telephone Number: (213) 202-3290  
Fax Number: (213) 202-4310

If to LESSEE: Los Angeles SMSA Limited Partnership  
dba Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

## **SECTION 22. CONDEMNATION**

In the event CITY receives notification of any condemnation proceedings affecting the Property, CITY will provide notice of the proceeding to LESSEE within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in LESSEE's sole determination, to render the Premises unsuitable for LESSEE, this AGREEMENT will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds. LESSEE will be entitled to reimbursement for any prepaid Rent on a pro rata basis.

## **SECTION 23. CASUALTY**

Except for CITY's active negligence, LESSEE will provide notice to CITY of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. If any part of the Communication Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, CITY may terminate this AGREEMENT by providing written notice to LESSEE, which termination will be effective as of the date of such casualty or other harm. LESSEE will be entitled to reimbursement of any prepaid Rent on a pro rata basis. Subject to written approval by the CITY, if the CITY or LESSEE undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, CITY agrees to permit LESSEE to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed.

## **SECTION 24. WAIVER OF CITY'S LIENS**

CITY waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof.

## **SECTION 25. TAXES**

CITY shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of CITY. LESSEE shall be responsible for all taxes levied upon LESSEE's leasehold improvements on the Premises. CITY shall provide LESSEE with copies of all assessment notices on or including the Premises immediately upon receipt, along with sufficient written documentation detailing any assessment increases attributable to the leasehold improvements, but in no event later than thirty (30) days after receipt by CITY. If CITY fails to provide such notice within such time frame, CITY shall be responsible for all increases in taxes for the year covered by the assessment, and all subsequent years to the extent (a) CITY continues to fail in providing notice, and/or (b) LESSEE is precluded from challenging such assessment with the appropriate government authorities.

## **SECTION 26. MISCELLANEOUS**

(a) **Amendment/Waiver.** This AGREEMENT cannot be amended, modified or revised unless done in writing and signed by CITY and LESSEE. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this AGREEMENT or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Limitation of Liability.** In no event will LESSEE be liable to the CITY for any consequential, incidental or special damages (including, without limitation, lost profits and opportunity costs). Except for LESSEE's indemnity obligations under this Agreement and PSC-18 and PSC-19 in Standard Provisions

of City Contracts (Rev. 10/17) to indemnify the CITY for third party injury, personal liability, third party damage or third party intellectual property infringement pursuant to this Agreement, the aggregate liability of the Contractor for Professional Liability (errors and omissions) claims in any way arising out of or relating to the services performed under this Agreement shall be limited to and not exceed One Million Dollars (\$1,000,000).

The above limitations shall not limit LESSEE's liability for personal injury or death or for damage to real property or tangible personal property caused by the negligence or willful misconduct of LESSEE or its employees; liability for infringement of other party's intellectual property rights, or liability for payment of interest added by a court of law or an arbitration panel to a judgment entered in any action or proceeding under this Agreement.

The above limitations will not limit CITY's payment obligations under this Agreement.

The foregoing disclaimers and limitations will apply to the maximum extent permitted by law.

(c) **Bind and Benefit.** The terms and conditions contained in this AGREEMENT will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This AGREEMENT and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This AGREEMENT will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the AGREEMENT or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this AGREEMENT and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; and (viii) the singular use of words includes the plural where appropriate.

(g) **Affiliates.** All references to "LESSEE" shall be deemed to include any Affiliate of LESSEE using the Premises for any Permitted Use or otherwise exercising the rights of LESSEE pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(h) **Survival.** Any provisions of this AGREEMENT relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this AGREEMENT that by their sense and context are intended to survive the termination or expiration of this AGREEMENT shall so survive.



(i) **W-9.** CITY agrees to provide LESSEE with a completed IRS Form W-9, or its equivalent, upon execution of this AGREEMENT and at such other times as may be reasonably requested by LESSEE.

(j) **Advertising / Promotion.** LESSEE shall have no rights via this AGREEMENT for promotional or advertising, or branding purposes. The DAS shall not be labeled or identified in any fashion with names, logos or related trademarks that identify any Carriers operating on the system.

(k) **No Electronic Signatures/No Option.** The submission of this AGREEMENT to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This AGREEMENT will become effective as a binding AGREEMENT only upon the handwritten legal execution, acknowledgment and delivery hereof by CITY and LESSEE.

(l) **Severability.** If any provision of this AGREEMENT is held invalid, illegal or unenforceable by a court or agency of competent jurisdiction, (a) the validity, legality and enforceability of the remaining provisions of this AGREEMENT are not affected or impaired in any way if the overall purpose of the AGREEMENT is not rendered impossible and the original purpose, intent or consideration is not materially impaired; and (b) the parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal or unenforceable) that is valid, legal and enforceable and carries out the parties' intentions to the greatest lawful extent. If any such action or determination renders the overall performance of this AGREEMENT impossible or materially impairs the original purpose, intent or consideration of this Agreement, and the parties are, despite the good faith efforts of each, unable to amend this AGREEMENT to retain the original purpose, intent and consideration in compliance with that court or agency determination, either party may terminate this AGREEMENT upon sixty (60) days' prior written notice to the other party.

(m) **Counterparts.** This AGREEMENT may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(n) **Independent Contractor; No Partnership.** LESSEE shall be an independent contractor with respect to the performance of this Agreement, and neither LESSEE nor anyone employed by LESSEE shall be deemed for any purpose to be the employee, agent, servant, borrowed servant, or representative of CITY. No provisions herein shall be construed as creating a partnership, joint venture or other association whereby the CITY and LESSEE would be jointly liable as partners or co-venturers.

## **SECTION 27. ENTIRE AGREEMENT**

Except as specified herein, this AGREEMENT shall supersede any prior oral or written understanding or communications between Parties and constitutes the entire agreement of the Parties with respect to the subject matter hereof. This AGREEMENT may not be amended or modified, except in writing and signed by both Parties hereto.

## **SECTION 28. INCORPORATION OF DOCUMENTS**

The following documents are incorporated and made a part hereof by reference.

- Exhibit 1 – Equipment Space
- Exhibit 2 – Technical Standards
- Exhibit 3 – Blackout Dates
- Exhibit 4 – Phased Implementation Plan
- Exhibit 5 – Environmental Compliance Exceptions

Appendix 1 – Standard Provision for City Contracts (Rev. 10/17)

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

IN WITNESS WHEREOF, the parties have executed this LEASE AGREEMENT as of the day and year first above written.

Executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_

THE CITY OF LOS ANGELES, a municipal  
corporation, acting by and through its BOARD  
OF RECREATION AND PARK  
COMMISSIONERS

By \_\_\_\_\_  
PRESIDENT

By \_\_\_\_\_  
SECRETARY

Executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_

Los Angeles SMSA Limited Partnership dba  
Verizon Wireless  
By: AirTouch Cellular, its general partner

By \_\_\_\_\_  
PRESIDENT

By \_\_\_\_\_  
SECRETARY

Approved as to Form:

Date: \_\_\_\_\_

MICHAEL N. FEUER,  
City Attorney

By \_\_\_\_\_  
DEPUTY CITY ATTORNEY