CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY
☐ Consent ☐ Regular ☐ Statutory

Council Meeting Date:	12/09/2013
Department:	Office of Policy and Government Relations
Department Head	Mark Isrealson
Agenda Coordinator (include phone #):	**Nancy Rodriguez X7510**

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Master Communications Facilities License By and Between the City of Plano, Texas, and Dallas MTA, L.P. d/b/a Verizon Wireless, authorizing its execution by the City Manager or his designee; and providing an effective date.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: **2013-14**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): N/A

COMMENTS: This item has no financial impact.

STRATEGIC PLAN GOAL: Resolutions to approve terms and conditions of master communication licenses relate to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.

SUMMARY OF ITEM

This Resolution approves the terms and conditions of a Master Communications Facilities License for Verizon Wireless for Small Cell Technology.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Staff Memorandum, Brochure, Resolution, Master Communications Facilities License	

Plano
City of Excellence

City of Plano
1520 K Avenue
Plano, TX 75074

P.O. Box 860358
Plano, TX 75086-0358
Tel: 972.941.7000
plano.gov

Date: November 25, 2013

To: Bruce Glasscock, City Manager

From: Mark Israelson, Director of Policy & Government Relations

Subject: Verizon Wireless – Small Cell master Agreement

Earlier this fall, Verizon Wireless (Verizon) approached the City of Plano regarding deployment of small cell sites on city facilities. Verizon is in the process of filling in portions of their service area with smaller equipment that will enhance service, including 4G LTE. This service is highly utilitized by citizens of Plano.

Verizon sought a master agreement from the City to provide consistency among various sites and expedite the process for submitting to City Council for approval. Verizon currently has two communications facilities license agreements with the City for ground equipment used to support towers attached to Oncor transmission lines. The master lease agreement used the language contained within our existing agreements as the basis for the master agreement, which includes the following key provisions:

- Term – 10 years
- Renewal – (3) 5 year terms
- Initial Rent - $2,000 annually per site
- Escalation – 3% annually on the effective date

The current agenda item approves the master agreement. Each individual site will be added to Appendix A and sent to Council with an amended agreement for approval. The amendment will be limited to the addition of sites on Appendix A and the corresponding revenue.

Strategic Partnerships

Verizon Wireless is looking to form strategic partnerships across the country for the implementation of small cells. Benefits include:

1. Revenue stream
2. Enhanced 4G LTE coverage
3. Equipment needs are small and unobtrusive

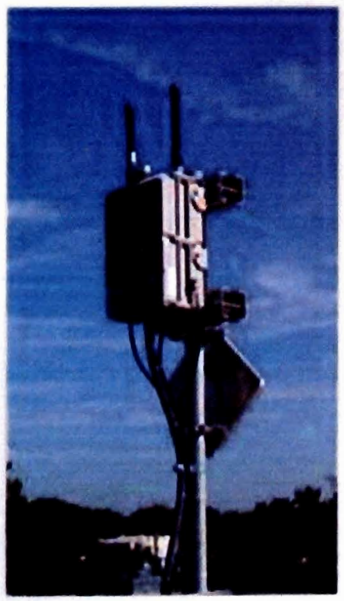
Verizon Wireless

Chad Schmelzer
South Area Small Cell Real Estate Specialist
Phone: (704) 510-8673
Chad.schmelzer@verizonwireless.com

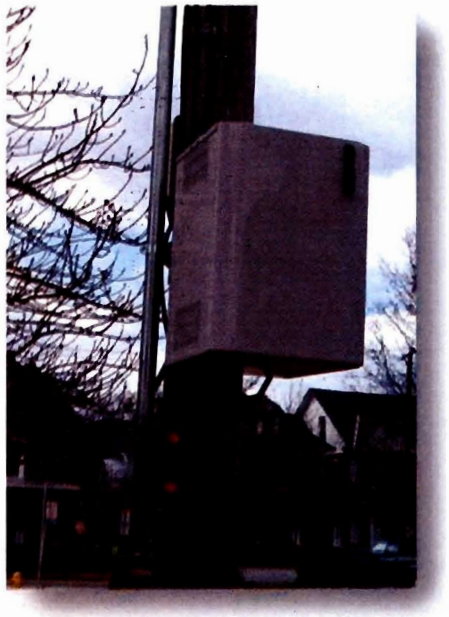
Amanda Eastin
South Area Small Cell Real Estate Specialist
Phone: (830) 837-2827
Amanda.eastin@verizonwireless.com

verizonwireless

Small Cell Technology



An innovative approach to coverage and capacity needs



Small Cells

- Lightweight, small form cell
- Full cell capability mounted below 45 ft.
- Help meet capacity needs where subscriber density peaks
- Can be located on malls, parking lots, street lights, lamp posts, flag poles, etc.

Definition

Within Verizon Wireless, a small cell is defined as a surgical coverage/capacity solution with an average coverage footprint of 500'. The distinguishing feature is our unobtrusive equipment.

Installation Requirements

- Low power (2x5W)
- Low antenna height (<45')
- Power consumption approximately 200 watts
- Easement for power and fiber
- Equipment lease space average 6' x 6'

Deployment Methodology

- Identify locations where the addition of small cells will benefit the users most
- Acquire the specified location(s)
- Determine requirements for deployment such as power, backhaul, and equipment
- Establish timeline for project completion
- Upon completion of installation, optimize for peak efficiency

Who Is Involved

Verizon Wireless has a team of professionals who will work with the property owners to insure that small cell installations meet the highest industry standards and enhance the quality that users demand.

- Site qualification and acquisition (Real Estate)
- Design modeling (RF Engineers)
- Fiber backhaul (Transport Engineers)
- Power, equipment, cables, antennas, etc. (Equipment Engineers)
- Construction, installation, integration (Construction Engineers)

Currently

Verizon Wireless is actively looking to deploy small cells across our entire network. Where small cells are deployed, users will experience improved 4G LTE coverage. The strategic partners will benefit from the revenue stream as well as having the ability to offer their customers an improved 4G LTE experience.

verizonwireless

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Master Communications Facilities License By and Between the City of Plano, Texas, and Dallas MTA, L.P. d/b/a Verizon Wireless, authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Master Communications Facilities License between the City of Plano, Texas and Dallas MTA, L.P. d/b/a Verizon Wireless, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

WHEREAS, Specific sites will be added to Appendix A as needed and agreed to and be submitted to City Council for approval.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the Third Amendment and all other documents in connection therewith on behalf of the City of Plano.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED on this the 9th day of December, 2013.

_____
Harry LaRosiliere, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

Exhibit "A"

STATE OF TEXAS §
§ KNOW ALL BY THESE PRESENTS:
COUNTY OF COLLIN §

MASTER COMMUNICATIONS FACILITIES LICENSE

This Master Communications Facilities License ("Agreement") is made by and between the **CITY OF PLANO, TEXAS,** a home rule municipal corporation (hereinafter referred to as the "CITY") and **DALLAS MTA, L.P. d/b/a VERIZON WIRELESS,** with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404) (hereinafter referred to as "LICENSEE"), for the use of certain premises and/or facilities according to the following terms and conditions. CITY and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

W I T N E S S E T H:

WHEREAS, CITY desires to provide LICENSEE with facilities for housing and operating certain communications equipment, including the installation of antennas or antenna systems and the space required to run cable between the equipment and the antenna or antenna systems; and

WHEREAS, LICENSEE is a communications services company duly authorized to provide certain telecommunications services and desires to lease certain property(ies) owned by CITY for installation and operation of IMPROVEMENTS, as defined herein, to operate a communications facility(ies) and all related purposes; and

WHEREAS, CITY and LICENSEE desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to particular sites at which CITY may wish to permit LICENSEE to install, maintain and operate communications equipment as hereinafter set forth; and

WHEREAS, CITY and LICENSEE acknowledge that they will enter into a lease supplement ("Supplement"), a copy of which is attached hereto as Exhibit A, with respect to any particular location or site which the Parties agree to lease; and

WHEREAS, CITY owns the premises and facilities described below and desires to allow LICENSEE to enter and utilize designated areas of the facilities and premises.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Location

1.1. The premises and facilities (hereinafter referred to as the "PREMISES") provided by CITY are described in the SITE PLAN attached to the respective Supplement and incorporated therein as **Appendix "A"**. Included upon the PREMISES shall be an existing transmission tower, building or other improvement, the Antenna Facilities, as defined herein, and

the cabling run to the Antenna Facilities. LICENSEE'S antennas and equipment are hereinafter referred to as "IMPROVEMENTS"). As a part of the SITE PLAN, LICENSEE shall provide to CITY a map that identifies all of LICENSEE'S cell sites within the City of Plano and within a one-mile radius of the boundaries of the City of Plano. As used herein, the term "Equipment Compound" means all equipment, shelters and similar structures located on the PREMISES and identified on **Appendix "A"** of the respective Supplement. The license authorized under the terms of this Agreement shall be a license for the use of that portion of the PREMISES designated for use by LICENSEE on the SITE PLAN.

1.2. Site Plan. The SITE PLAN must be approved by CITY prior to the execution of the respective Supplement, with approval or disapproval not to be unreasonably withheld, conditioned or delayed. The SITE PLAN shall describe and illustrate the location of the IMPROVEMENTS under the Supplement. The SITE PLAN shall include a scale drawing and inventory analysis of the proposed installations, as well as an elevation of the PREMISES with the proposed installations. Performance under the Supplement shall be in strict compliance with the SITE PLAN. If LICENSEE'S installation, maintenance and operation of the IMPROVEMENTS fail to comply with the approved SITE PLAN, at any time, as reasonably determined by CITY, then CITY shall have the right to terminate the Supplement upon notice to LICENSEE, who has an opportunity to cure as provided under Section 5 herein. Any proposed material modifications to LICENSEE'S SITE PLAN must be approved in writing by CITY before LICENSEE may make any changes to its SITE PLAN as originally approved by CITY.

1.3. LICENSEE shall inspect, examine and investigate the status of the title and condition of the PREMISES to the extent that LICENSEE deems necessary, and LICENSEE understands, acknowledges and agrees that it is entering into each Supplement to acquire a leasehold interest in the PREMISES "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the PREMISES that LICENSEE conducts and not as a result of any representation, warranty, assurance, guaranty or promise of CITY or any person purporting to act on behalf of CITY, other than those which may be expressly set forth in this Agreement.

1.4. LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE SUPPLEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY OR OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT OR THE SUPPLEMENT.

Exhibit "A"

2. Use of Premises

2.1. Permitted Use. Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, CITY agrees to allow installment of LICENSEE'S IMPROVEMENTS, in accordance with the terms of this Agreement. LICENSEE'S use shall be non-exclusive and shall be for the purpose of the installation, operation, and maintenance of its IMPROVEMENTS, for the transmission, reception, and operation of a communications facility and all related purposes thereto. LICENSEE shall obtain the written approval of the City prior to installation of any IMPROVEMENTS on the PREMISES, which approval shall not be unreasonably withheld, conditioned or delayed. LICENSEE understands, acknowledges and agrees that the use of the PREMISES by LICENSEE in conjunction with the terms of this Agreement is to be for the installation, operation and maintenance of communications equipment, in strict compliance with the Agreement and the SITE PLAN attached to the Supplement. LICENSEE shall not use the PREMISES for any other purpose whatsoever, including the storage or placement of debris, storage of replacement IMPROVEMENTS, or any other item, without first obtaining the prior written consent of CITY, which may be given or withheld for any reason or for no reason, in the CITY'S sole, absolute and unrestricted discretion.

2.2. Prohibited Use. LICENSEE shall not use the PREMISES in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. LICENSEE shall neither do nor permit to be done anything that would violate any certificate of occupancy applicable to the PREMISES or would render void or uncollectible any insurance then in force with respect to the PREMISES, or that would in any way increase the premiums payable by CITY for fire, liability or any other insurance coverage on the PREMISES or the contents of any improvements thereon.

2.3. Subletting of Use Premises or Improvements. LICENSEE may not sublet to or license others to use the PREMISES or LICENSEE'S IMPROVEMENTS without the prior written consent of CITY. Any such attempt by LICENSEE shall be without effect and may at CITY's option result in the termination of the Supplement.

2.4. Maintenance, Repair or Replacement of Improvements. LICENSEE may update, maintain, repair, or replace the IMPROVEMENTS located upon the PREMISES from time to time without CITY's approval, provided that the total of all IMPROVEMENTS do not require more space than the existing IMPROVEMENTS. Any change in the location of improvements on the PREMISES must be satisfactory to CITY, such approval not to be unreasonably withheld, conditioned or delayed. LICENSEE shall submit to CITY for approval, a detailed proposal for any substantial replacement of IMPROVEMENTS and any supplemental materials for CITY's evaluation and written approval, such approval not to be unreasonably withheld, conditioned or delayed. As used herein, substantial replacement shall mean any replacement that (i) involves the parking of a "semi" truck on the premises, or (ii) involves a material change-out or alteration of Licensee's equipment. Notwithstanding the foregoing and any other provision herein to the contrary and further notwithstanding the frequencies set forth elsewhere herein, Licensee shall have the right, at any time during the term of this Agreement as the same might be extended, to change or add additional frequencies without the consent of CITY; provided, however that Licensee shall provide CITY with advance written notice of any such change or addition and provided further that Licensee agrees to comply with the terms and

provisions of Section 9 herein with respect to interference in connection with such change or addition of frequencies. A current and accurate SITE PLAN must be submitted to CITY by LICENSEE and maintained on file with CITY for the entire term of this Agreement and all renewals thereof.

3. Term

3.1. This Agreement shall be for a term of twenty-five (25) years commencing upon the execution hereof by both Parties. Each Supplement shall be effective as of the date of execution by both Parties (the "Effective Date"), provided, however, the initial term of each Supplement shall be for ten (10) years and shall commence on the first day of the month following the day that LICENSEE commences installation of the equipment on the Premises (the "Effective Date"). For a period not to exceed one hundred eighty (180) days following the Effective Date, LICENSEE shall have the right to terminate the respective Supplement by giving thirty (30) days written notice to CITY of such termination if LICENSEE is unable to obtain all licenses and permits or authorizations required for LICENSEE'S use of the PREMISES from all applicable government and/or regulatory entities (the "Governmental Approvals") for LICENSEE'S intended use of and improvements to the PREMISES.

3.2. LICENSEE is granted the option to renew each Supplement for three (3) additional five (5) year terms, after the initial term expires. Unless LICENSEE gives written notice of its decision not to exercise the renewal option within 90 days prior to the expiration of the current term or period, the Supplement will automatically renew for each said renewal term as long as LICENSEE remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all extension periods, subject to amendment by the mutual agreement of the Parties, in writing and signed by both Parties. If LICENSEE continues to possess the PREMISES following the expiration of all of the extension periods provided herein, and the Supplement has not been renewed or superseded, the Supplement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term, (2) shall continue from month to month under the terms and conditions set forth herein and (3) may be terminated by either party upon at least thirty (30) days written notice to the other party. All the terms and covenants of this Agreement apply to all holdover tenancy periods.

3.3. Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Supplements in effect until their expiration or termination.

4. Payment Terms and Conditions

4.1. Rent Payment. In consideration for providing the PREMISES for use by LICENSEE, the LICENSEE shall pay rent to CITY annually, with the first payment being due within thirty (30) days following the Effective Date of the Supplement. Thereafter payment shall be due annually on the anniversary of the Effective Date throughout the initial term and all renewal terms hereof and prorated for any partial term. LICENSEE shall pay rent to CITY annually in advance, without prior notice or demand, without any abatement, setoff, reduction, deduction, counterclaim or recoupment whatsoever, in the amount equal to Two Thousand and

No/100 Dollars ($2,000.00) per year for each PREMISES subject to a Supplement ("Rent Payment"). Interest on late payments shall accrue at the then prime interest rate. If the Supplement is terminated at a time other than the last day of the calendar year of the term for any reason other than a default by LICENSEE, all Rent Payments shall be prorated as of the date of termination and all prepaid Rent Payments shall be refunded to LICENSEE.

4.2. Rent Adjustment. The Rent Payment shall be increased by three percent (3%) at the beginning of each Lease Year (as herein defined) following the first Lease Year of the Lease Term or the first Lease Year. For purposes of this Lease Agreement, the term "Lease Year" shall mean the twelve-month period which commences on the first day of the calendar month in which the Effective Date occurs (if the Effective Date occurs on the first day of a calendar month) or on the first day of the calendar month following the calendar month in which the Effective Date occurs (if the Effective Date occurs on a day other than the first day of a calendar month). The dollar increase in the Rent Payment shall be determined by multiplying the Rent Payment (as previously adjusted) payable during the preceding Lease Year by three percent (3%). The sum of the dollar increase required by this multiplication plus the Rent Payment (as previously adjusted) payable for and on account of the preceding Lease Year (i.e., one hundred three percent (103%) of the prior Lease Year's Rent shall be the Rent Payment for the Lease Year of the adjustment.

4.3. Holdover Rent. The Rent Payment, as defined in Section 4.1 above, due during any holdover period shall be equal to one hundred fifty percent (150%) of the Rent Payment due during the immediately preceding Initial term or any renewal term.

4.4. Additional Fees. CITY may assess, in addition to the Rent Payment, additional payments by LICENSEE to cover CITY's additional costs ("Additional Fees"), which include but are not limited to: (i) costs of utilities associated with the day-to-day operation and maintenance of the Premises; (ii) costs incurred by CITY for providing access to the Premises outside of normal business hours; and (iii) applicable taxes, including property taxes, or business taxes levied on the PREMISES. CITY shall notify LICENSEE of amounts due in Additional Fees in writing, and LICENSEE shall pay Additional Fees simultaneously with the next monthly Rent Payment due on the Premises, or, if notice of Additional Fees occurs within ten (10) days of the due date of the next monthly Rent Payment, simultaneous with the Rent Payment due for the next month. The foregoing shall be subject to the provisions of Section 16 herein.

4.5. Payment Address. Rent Payments and Additional Fees shall be made payable to City of Plano, C/O Intergovernmental Relations Department, PO Box 860358, Plano, Texas 75086.

4.6. Lawful Currency. Rent Payments and Additional Fees shall be made according to paragraph 4.5 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever. Rent Payments shall be free and clear of any business license tax or fee which is measured upon the size of the PREMISES. In no event will LICENSEE be obligated to pay any general income taxes measured upon the income of the City. In the event any federal, state, county, municipal or other governmental authority hereafter imposes or levies any such business license tax or fee, LICENSEE shall pay to CITY an amount equal to any and all amounts so imposed or levied as a

component of Additional Fees. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that the City may have with Licensee or its parent or any subsidiary or affiliate.

4.7. Dishonored Checks. Any dishonored check shall incur a service charge of ten percent (10%) of its face amount. Subsequent to the first dishonored check received by CITY for any payment, all subsequent payments, including Rent Payments and Additional Fees, shall be made by cashier's check.

5. Termination

5.1. Termination for Cause. Upon the occurrence of any one or more of the events listed below (hereinafter referred to as "Event of Default"), or as provided elsewhere in this Agreement, CITY may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under the respective Supplement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to LICENSEE with the understanding that all use of the PREMISES being terminated shall cease upon the date specified on such notice. LICENSEE shall equitably compensate CITY in accordance with the terms of the respective Supplement for the use of the PREMISES prior to the date specified in such notice, following inspection and acceptance of same by CITY. LICENSEE shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should CITY choose to exercise its option to terminate.

5.2. Event of Default. Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

(a) if LICENSEE fails to pay amounts due under this Agreement within fifteen (15) days of receipt of written notice that such payments are overdue;

(b) if either party fails to observe or perform its obligations under this Agreement other than as provided in Section 5.2(a) above and does not cure such failure within thirty (30) days from the party's receipt of written notice of breach or such longer period as may be mutually reasonably agreed upon by the Parties to complete a cure commenced within the 30 day period.

5.3. Termination by LICENSEE. This Agreement may be terminated by LICENSEE, without penalty or further liability, as follows:

(a) upon written notice, if LICENSEE is unable to obtain, or maintain, 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 now and hereafter intended by LICENSEE; or if LICENSEE determines in its sole

discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(b) on sixty (60) days written notice for any reason, other than 5.2(a) or (b) above, so long as LICENSEE pays CITY a termination fee equal to six (6) months rent at the current rate or rent at the current rate prorated to the end of CITY'S fiscal year in which the termination occurs, whichever is greater.

5.4. Notice and Opportunity to Cure. Upon the occurrence of an Event of Default, CITY shall deliver to LICENSEE a Notice of Intent to Terminate that identifies in detail the Event of Default, if the Event of Default remains uncured for thirty (30) calendar days after delivery of such notice, CITY may terminate the Supplement and the license granted herein by delivering to the LICENSEE a Notice of Termination that identifies the effective date of the termination, which date shall not be less than sixty (60) days after the date of delivery of the Notice of Intent to Terminate; provided, however, that the time periods for notice of termination specified in this Section shall not apply to a default pursuant to Section 5.2(b).

5.5. Primary Function of PREMISES. The parties understand and agree that the interests of LICENSEE in the PREMISES are superseded by the public health, safety, and welfare of the citizens of Plano served by the PREMISES. In the event that the Plano City Council or the Plano City Manager declares a public emergency or if there exists a threat to the PREMISES that would detrimentally impact public health, safety and welfare such that immediate action is necessary, LICENSEE shall, within thirty (30) days following receipt of written notice of such emergency and need to relocate and/or remove its IMPROVEMENTS from the PREMISES. In the event that LICENSEE is not able to timely respond, CITY may remove LICENSEE'S IMPROVEMENTS without incurring any liability for damages of any type. Costs of removal and reattachment of IMPROVEMENTS shall be borne by LICENSEE.

5.6. Removal of Improvements. If LICENSEE'S IMPROVEMENTS must be removed, whether or not such removal is done pursuant to Section 5.5 above, LICENSEE shall have the right to set up a portable mounted antenna, a cell on wheels (COW), and/or some other similar temporary structure approved by CITY, such approval not to be unreasonably withheld, conditioned or delayed, on CITY premises to allow LICENSEE to continue to provide communications services and all related purposes. LICENSEE may maintain its COW for a period of thirty (30) days past the date of removal of IMPROVEMENTS. To maintain the temporary antenna, COW, or other temporary structure for a period in excess of thirty (30) days, LICENSEE must obtain written approval from CITY, such approval not to be unreasonably withheld, conditioned or delayed. If the PREMISES are not in such condition as to be utilized by LICENSEE at the end of the initial thirty (30) day period, CITY shall provide as many additional thirty (30) day extensions for such temporary structures as are necessary to allow LICENSEE to continue its operations as authorized by this Agreement.

6. City's Right of Entry Onto Premises

6.1. CITY and CITY'S agents, employees or contractors may enter upon the PREMISES, except LICENSEE'S secured areas, for the purpose of performing repairs and

maintenance work to the PREMISES. If maintenance work is required, CITY agrees to provide LICENSEE with reasonable notice prior to commencing such work to allow LICENSEE to remove the affected IMPROVEMENTS. Decisions as to the extent to which LICENSEE will be required to remove such IMPROVEMENTS shall be within the reasonable discretion of CITY. If, however, in the reasonable discretion of CITY, repair or maintenance requires immediate action on the part of CITY, CITY will take reasonable efforts to notify LICENSEE, but may enter the PREMISES, except LICENSEE'S secured areas, and take such action as is required, except any action to remove any or all IMPROVEMENTS made by LICENSEE. In no event shall CITY be liable for any expenses associated with LICENSEE'S removal of IMPROVEMENTS or for lost or anticipated profits. LICENSEE, at its expense and exclusive use, may use any and all reasonable and appropriate means of restricting access to the LICENSEE'S equipment shelter, as identified in the SITE PLAN.

7. Access

7.1. LICENSEE shall have the non-exclusive right to access the aforementioned PREMISES at any time, by contacting and providing notice to CITY. LICENSEE must be accompanied by CITY personnel at all times when accessing the PREMISES. If CITY is contacted by LICENSEE after the normal business hours of CITY for the purpose of accessing the aforementioned location, LICENSEE agrees to reimburse CITY for the actual cost of any CITY staff involvement necessary for this access.

7.2. LICENSEE'S right of access is a contractual right for the benefit of LICENSEE only and nothing contained in this Agreement shall be construed to constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 22.9 herein, such right of access shall inure to the benefit of LICENSEE'S assignee.

8. Damages to Property

8.1. Damage and Restoration of Property. LICENSEE shall immediately notify CITY of any and all damages resulting from, arising out of, or caused to, the PREMISES and CITY property surrounding the PREMISES, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping by LICENSEE'S operations, by LICENSEE, its officers, agents, employees and invitees. LICENSEE shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed within thirty (30) calendar days and shall be completed in a manner reasonably acceptable to CITY.

8.2. Failure to Restore Property. If LICENSEE does not make or perform any required maintenance or repairs to the PREMISES within the time period provided in Section 8.1, CITY shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event LICENSEE shall pay CITY the cost thereof, plus an administrative fee of ten percent (10%) of the cost of the repairs, within thirty (30) calendar days of demand. Within thirty (30) days following the expiration or earlier termination of this Agreement, LICENSEE shall restore the PREMISES to the condition in which the PREMISES existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond LICENSEE'**S** control excepted.

9. Electrical, Radio and Intermodulation Interference

9.1. LICENSEE shall operate its IMPROVEMENTS in a manner that will not cause radio frequency interference to the CITY or other licensees of the SITE in their use of any equipment or their conduct of any activity on the SITE pursuant to agreements which pre-date the installation and operation of LICENSEE'S IMPROVEMENTS. LICENSEE'S installation and operation of the IMPROVEMENTS shall be in compliance with all FCC requirements.

9.2. Prior to installation of any IMPROVEMENTS on the PREMISES, LICENSEE shall conduct bandwidth testing of its IMPROVEMENTS and CITY equipment to check bandwidth conflict between CITY'S monitoring control system and LICENSEE'S system. If such conflict occurs, LICENSEE shall take all steps necessary to resolve the conflict to the reasonable satisfaction of CITY. If the conflict cannot be remedied to the reasonable satisfaction of CITY, CITY may terminate this Agreement upon thirty (30) days written notice to LICENSEE.

9.3. LICENSEE shall not cause electrical, radio or intermodulation interference to CITY or to any other licensee who is using the PREMISES prior to or at the time of LICENSEE'S installation of its IMPROVEMENTS. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while such interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.4. LICENSEE shall not cause electrical, radio or intermodulation interference to CITY at anytime during or after installation or operation of LICENSEE'S IMPROVEMENTS. Moreover, LICENSEE'S use will not in any material way adversely affect or interfere with CITY'S signal operation or its communication system. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.5. CITY will not grant a license to any other party for the use of CITY's PREMISES without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with LICENSEE'S signal operation or its communication system. Such provision shall be similar to the provisions required of LICENSEE herein. Furthermore,

license agreements with third parties will state that prior to installation of improvements, such third parties shall be required to conduct bandwidth testing of its equipment and the equipment of LICENSEE to check bandwidth conflict between third-party equipment and LICENSEE'S equipment. If such conflict occurs, CITY shall take all steps necessary to resolve the conflict caused by such third-party to the reasonable satisfaction of LICENSEE. If the conflict cannot be remedied to the reasonable satisfaction of LICENSEE, CITY shall terminate such third-party's license upon thirty (30) days written notice to such third-party. LICENSEE shall have the right to terminate this Agreement upon ten (10) days written notice to CITY if another user of the PREMISES causes interference with LICENSEE'S operations, and such interference is not corrected within thirty (30) days following the notice to such third party user causing the interference. In the event that LICENSEE experiences interference caused by a third-party licensee, LICENSEE agrees that it shall seek recourse solely from such third party. No compensation shall be due from CITY for damages, including, but not limited to, lost or anticipated profits.

9.6. LICENSEE shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the PREMISES is causing significant interference. CITY shall not be responsible for the costs associated with the resolution of any dispute between users of the PREMISES, but shall be responsible for the enforcement of any of LICENSEE'S rights provided by Section 9.5 of this Agreement.

9.7. Upon report to LICENSEE, and all other third parties with communications equipment on that CITY-owned property, of interference with any CITY-owned/operated radio emergency system, LICENSEE shall, within six (6) hours after such notification, perform an assessment of the source of the interference. In the event such interference results from LICENSEE'**S** operations, LICENSEE agrees, within twelve (12) hours of first notification, to propose a plan of action to eliminate such interference. CITY and LICENSEE agree to provide a technician or other qualified representative to assist in testing, formulating and coordination of a plan for resolution.

9.8. If such interference results from LICENSEE'S operations, LICENSEE must correct such interference within twenty-four (24) hours of CITY'S original notification to LICENSEE or shall discontinue all use of LICENSEE'S IMPROVEMENTS upon the PREMISES. LICENSEE'S IMPROVEMENTS cannot be reactivated until LICENSEE can demonstrate that the cause of such interference has been eliminated.

9.9. Each party agrees to provide the other with a telephone number through which that party can contact a representative of the other on a 24-hour per day, 7 days a week basis for the purpose of implementing the requirements of this paragraph.

10. Condition of Premises

10.1. CITY shall maintain the PREMISES in compliance with all applicable statutes, ordinances, regulations and rules required for CITY uses of the PREMISES and surrounding property, and in a manner which will not interfere with LICENSEE'S reasonable use of the PREMISES. Upon expiration, cancellation, or termination of this Agreement, LICENSEE will have the right to remove its IMPROVEMENTS from the PREMISES at LICENSEE'S cost and

expense. Title to all remaining improvements shall belong to CITY. However, upon vacation of the PREMISES, LICENSEE shall surrender the PREMISES in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond LICENSEE'S control, as determined by CITY. If, as determined by CITY, the PREMISES are not surrendered in satisfactory condition, the LICENSEE shall pay CITY within thirty (30) business days of demand an amount equal to the actual cost to restore the PREMISES to substantially the same condition as received plus an administrative fee of ten percent (10%) of the restoration costs.

10.2. LICENSEE shall have sole responsibility for the maintenance, repair, and security of its IMPROVEMENTS, and shall keep same in good repair and condition during the term and all renewals and holdover tenancies of this Agreement.

10.3. Intentionally deleted.

10.4. LICENSEE shall keep the PREMISES free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or interference.

10.5. In the event CITY or any other licensee undertakes painting, construction, or other alterations on the PREMISES, LICENSEE shall take reasonable measures at LICENSEE'S cost to cover all of LICENSEE'S IMPROVEMENTS and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. CITY shall not be responsible for any damages or costs incurred by LICENSEE due to the actions or omissions of any third-party licensees upon the PREMISES. CITY shall provide thirty (30) business days written notice to all licensees upon the PREMISES prior to CITY undertaking such painting, construction, or other alterations.

10.6. By taking possession of the PREMISES, LICENSEE accepts the PREMISES in the condition existing as of the Effective Date. CITY makes no representation or warranty with respect to the condition of the PREMISES and CITY shall not be liable for any latent or patent defect in the PREMISES. CITY agrees to notify LICENSEE of the existence of any latent defects of which the CITY has knowledge.

11. Construction, Installation and Operation

11.1. Construction, Installation and Operation. LICENSEE may, at its sole cost and expense, construct, install, operate, maintain, monitor, reconfigure and repair its IMPROVEMENTS. Not less than thirty (30) days prior to the date on which LICENSEE intends to commence construction of its IMPROVEMENTS, LICENSEE shall provide to the CITY for its approval, such approval not to be unreasonably withheld, conditioned or delayed, a proposal containing: (i) a written notice and plan describing in reasonable detail, the steps necessary to complete LICENSEE'S construction and installation: (ii) a list and description of all IMPROVEMENTS to be installed on the PREMISES; (iii) a list of all contractors, subcontractors and other entities that will perform LICENSEE'S construction and installation work; and (iv) copies, certificates or other proof that LICENSEE or LICENSEE'S contractors and subcontractors have obtained all necessary permits and licenses for the performance of

LICENSEE'S work. CITY's failure to respond in writing to LICENSEE'S proposal within twenty (20) days of CITY'S receipt of the proposal shall constitute CITY's rejection of the proposal, and LICENSEE shall not commence LICENSEE'S work. CITY's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval that LICENSEE is required to obtain from any duly authorized local authorities for any construction, installation or other element of LICENSEE'S work.

11.2. Marking and Lighting Requirements. LICENSEE acknowledges that it shall be responsible for compliance with all tower or building marker and lighting requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with LICENSEE'S installation and maintenance of IMPROVEMENTS under this Agreement, as well as any expenses, fees or fines associated with the compliance or the non-compliance of LICENSEE'S installation or maintenance of IMPROVEMENTS under this Agreement. If the LICENSEE does not cure a condition of noncompliance within the time-frame allowed by the citing agency, CITY may thereafter terminate this Agreement upon thirty (30) days written notice to LICENSEE.

11.3. Inspection and Tests. Upon the Effective Date and for the term of this Agreement, LICENSEE shall have reasonable access as provided in Section 7 above to the SITE and PREMISES as are necessary and approved by CITY for the purpose of inspection and planning. LICENSEE shall retain, or shall cause to be retained, at its sole cost and expense, certified and insured structural engineers to perform such an inspection and provide a structural report as to the structural integrity of the PREMISES, its maximum load capacity, and other aspects of the PREMISES, as appropriate. LICENSEE shall provide to CITY a copy of the report. LICENSEE shall not conduct construction, installation, operation, maintenance or repair of IMPROVEMENTS in a manner inconsistent with the structural report.

11.4. Payment, No Mechanics Liens. LICENSEE shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by LICENSEE in or to the PREMISES. Title to the IMPROVEMENTS shall be held by LICENSEE. CITY shall not be responsible for or with respect to the performance of LICENSEE'S Work. LICENSEE shall pay or cause to be paid all costs associated with LICENSEE'S work. LICENSEE shall not suffer or permit to be enforced against any portion of the SITE or PREMISES any (i) mechanic's, materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to LICENSEE**'S** work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within thirty (30) days after recordation of any lien, encumbrance, judgment or similar item which affects the SITE or PREMISES in any way, LICENSEE shall obtain the complete discharge and release thereof at LICENSEE'S sole expense or expenditure (without any cost being imposed upon CITY.) However, LICENSEE shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that LICENSEE provides a bond or other form of security reasonably acceptable to CITY in an amount sufficient to hold CITY fully and completely harmless from any and all liability therefor or on account thereof.

11.5. Improvements to Premises; Removal. All IMPROVEMENTS constructed, installed and operated by or on behalf of LICENSEE shall remain LICENSEE'S personal

property and are not fixtures. LICENSEE shall remove all IMPROVEMENTS at its sole expense within thirty (30) days following the expiration or earlier termination of this Agreement, and LICENSEE shall repair any damage to the PREMISES or SITE caused by such removal and fully restore the PREMISES or SITE to the same condition as existed prior to such damage at its sole cost and expense. LICENSEE shall provide to CITY in writing, by not later than the end of the prescribed thirty (30)-day period, notice that all IMPROVEMENTS have been removed in accordance with this Section. Failure of LICENSEE to remove any or all IMPROVEMENTS from the PREMISES and SITE within the prescribed thirty (30) days shall be construed as holdover pursuant to this Section, and all obligations and requirements, including payment of Rent Payments, shall continue to apply unless and until LICENSEE removes all IMPROVEMENTS and so notifies CITY.

11.6. Liability for Damage/Outages. LICENSEE shall be solely responsible for any damage caused by LICENSEE, its agents and/or contractors on or to the PREMISES or SITE that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless CITY, Signal Sites, Inc., and all of their respective partners, employees, agents, successors and assigns from all claims or actions for damages, including actual, incidental and consequential damages, brought by another licensee as a result of LICENSEE'S, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct.

12. Intentionally Deleted

13. Compliance with Laws

13.1. By LICENSEE. LICENSEE, its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees, shall comply in all respects and at all times with all applicable local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to LICENSEE'S services, LICENSEE'S construction, installation and operation work, IMPROVEMENTS and LICENSEE'S use of the PREMISES. Without limiting the generality of the preceding sentence, LICENSEE shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations (*e.g.*, NEBs, IEEE, Federal Communications Commission ("FCC") and BellCore standards) and shall not use the PREMISES or operate the IMPROVEMENTS in any manner which is inconsistent therewith. LICENSEE shall, at LICENSEE'S sole cost and expense, promptly apply for and use its best efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the IMPROVEMENTS. In the event LICENSEE fails to obtain any required license, permit, approval or consent to construct and operate the IMPROVEMENTS, through no fault of LICENSEE, LICENSEE shall have the right to terminate this Agreement in accordance with Section 5 of this Agreement.

13.2. By CITY. CITY shall comply in all material respects, and shall exercise commercially reasonable efforts to cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees to comply in all material respects with all laws, ordinances, orders, rules and regulations of all governmental or judicial authorities having

jurisdiction thereof, whether state, federal or local, relating to CITY'S leasehold interest in the SITE.

14. Complaint Resolution

If either LICENSEE or CITY receives a written complaint regarding LICENSEE'S operations and such complaint, if reasonably determined by the City to be valid and if the cause of such complaint would cause LICENSEE to be in default of this Agreement, LICENSEE shall respond within twenty-four (24) hours of receipt of such written complaint. LICENSEE shall respond with a written explanation to each such complaint with detail of its investigation into the incident upon which the complaint was based (the "Incident") and the actions that LICENSEE has taken to resolve the Incident including, when necessary, all future actions LICENSEE will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the reasonable satisfaction of the complainant within fifteen (15) days, LICENSEE shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If future action is necessary, LICENSEE shall include a schedule for completion of its plan to correct or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If CITY must step in and resolve a complaint regarding LICENSEE'S operations, LICENSEE shall reimburse CITY for all reasonable expenses incurred. If CITY imposes upon LICENSEE a resolution to an Incident that does not involve a breach of the Agreement by LICENSEE, the breach by LICENSEE of any federal, state, or local law or ordinance or the commission by LICENSEE of any negligent or intentional act or omission to a person that causes bodily injury or property damage and LICENSEE does not wish to resolve the Incident in the manner directed by CITY, LICENSEE may terminate this Agreement upon thirty (30) days notice without penalty.

15. Utility Easements and Utility Cost

15.1. LICENSEE shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that LICENSEE consumes in connection with the installation and operation of LICENSEE'S IMPROVEMENTS and which are separately metered and charged to LICENSEE by any public utility service company, without any expense therefor being imposed upon CITY.

15.2. If LICENSEE first obtains CITY's written consent, which may be given or withheld for any reason or no reason in the CITY's sole discretion, LICENSEE shall have the right to obtain electricity and other public utility services from the existing outlets available at the PREMISES. Absent such consent, LICENSEE shall obtain separate public utility services from any company that will provide such services to the PREMISES (which services may include an approved battery-powered or diesel standby power generator located on the PREMISES for LICENSEE'S exclusive use).

15.3. LICENSEE shall not permit any charges for public utility services to accumulate or become a lien on the SITE. If LICENSEE fails to pay any such charge required to be paid by LICENSEE pursuant to this Section, CITY may, but shall not be required to, pay such charge on LICENSEE'S behalf. If CITY pays any such charge on behalf of LICENSEE or incurs any cost

with respect to any grant of any public utility service easement for the benefit of LICENSEE pursuant to this Section, LICENSEE shall reimburse and pay to CITY an amount equal to all such charges so paid and all such easement costs so incurred, within thirty (30) days after receipt of CITY'S demand, as Additional Fees.

15.4. Additional Utility/Power Equipment. In the event that LICENSEE is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other utility services required for the operations of LICENSEE'S IMPROVEMENTS, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

16. Taxes

16.1. LICENSEE agrees to timely reimburse CITY for all taxes that are assessed against CITY, if any, due to the real property taxes attributable to LICENSEE'S IMPROVEMENTS or use of the PREMISES and IMPROVEMENTS constructed or maintained by LICENSEE on or about the PREMISES; provided, however, CITY shall use its best efforts to provide prior notification of any taxes for which LICENSEE is to be charged, so LICENSEE will have the opportunity to appear before the taxing authority and contest any assessment.

16.2. If LICENSEE fails to pay any such taxes after such contest of any assessment and for which LICENSEE is obligated, CITY may, but shall not be required to, pay such taxes on LICENSEE'S behalf. If CITY pays any such taxes on behalf of LICENSEE pursuant to the preceding sentence, LICENSEE shall reimburse and pay to CITY an amount equal to any such taxes so paid, plus an administrative fee of ten percent (10%) of the taxes, within thirty (30) days after demand as Additional Rent.

17. Liability and Indemnification

17.1. LICENSEE shall at all times comply with all laws and ordinances and all applicable rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the IMPROVEMENTS, authorized herein, and, except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees, shall fully release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants or employees against any and all claims, damages, lawsuits, losses, costs, or expenses which may be sustained or incurred by CITY, its officers, officials, agents, servants or employees as a result of LICENSEE'S installation, operation, or removal of such IMPROVEMENTS.

17.2. LICENSEE undertakes and assumes for its officers, agents, employees, servants, affiliates, contractors and subcontractors, all risk of dangerous conditions, if any on or about the PREMISES, and, except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees, LICENSEE hereby agrees to release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants and employees against and from any claim asserted or liability imposed upon CITY, its officers, officials, agents, servants, and employees for personal injury or property damage to any person arising out of LICENSEE'S installation, operation, maintenance, condition or use of the PREMISES or LICENSEE'S IMPROVEMENTS

or LICENSEE'S failure to comply with any applicable federal, state, or local statute, ordinance or regulation.

17.3. LICENSEE represents and warrants that its use of the PREMISES herein will not generate any hazardous substance, and it will not store or dispose on the PREMISES nor transport to or over the PREMISES any hazardous substance. The storage of acid storage batteries on the Premises as necessary for use in the event of a power outage, and the installation on the premises of a diesel or propane generator for emergency use to provide electricity in the event of a power outage shall not be a violation of this Section 17. LICENSEE further agrees to release, defend, indemnify, and hold CITY, its officers, officials, agents, servants and employees, harmless from and against any damage, loss, or expense or liability resulting from the generating, transporting, storage or disposal of such hazardous substances including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any applicable federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease, including diesel and propane fuel.

18. Insurance

18.1. LICENSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at LICENSEE'S sole expense, liability insurance and workers' compensation insurance, and a certificate of insurance shall be submitted to and approved by CITY prior to the Effective Date of this Agreement. LICENSEE must provide insurance in compliance with **Appendix "B"** attached hereto and incorporated herein for all purposes. At the time of an extension or renewal of this license agreement, LICENSEE shall provide a certificate of insurance for the added term that shows LICENSEE meets all insurance requirements under Appendix B.

18.2. In the event that LICENSEE uses third-party contractors or subcontractors to provide services or to perform work upon the PREMISES, LICENSEE shall include in all contracts, subcontracts, and bid documents with such third parties, the requirement that: (a) each such third party shall provide CITY with separate certificates of insurance or such other documentation as is reasonably required by CITY to evidence that each such third party obtains and maintains insurance coverage consistent with the insurance requirements of this Agreement throughout the term of its contract with LICENSEE; and (b) such third party shall execute the Contractor Agreement, a copy of which is attached hereto and incorporated herein as **Appendix "B-1"**. All such insurance certificates and other documents evidencing coverage shall contain an affirmative statement of the contractor, subcontractor, or other third party that such third party shall notify the City of Plano in the event that the policy lapses or is canceled for any reason.

19. Notice

19.1. Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); or (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. Service by United States mail shall be deemed made on the date actually received.

CITY	LICENSEE
City of Plano c/o Intergovernmental Relations Department PO Box 860358 Plano, Texas 75086	Dallas MTA, L.P. d/b/a Verizon Wireless 180 Washington Valley Road Bedminster, New Jersey 07921 Attn: Network Real Estate

CITY or LICENSEE may from time to time designate any other address for this purpose by written notice to the other party.

20. Remedies

20.1. LICENSEE'S failure to timely remit payments due hereunder three times within a 12-month period shall be a breach of this Agreement for which LICENSEE shall be given fifteen (15) days from receipt of written notice from CITY (that such payment is overdue for the third time within such 12-month period) to cure. If LICENSEE fails to make payment as required; if LICENSEE abandons or vacates the PREMISES; or if LICENSEE becomes insolvent; and has not filed for bankruptcy, CITY shall have the right, at its option, in addition to and not exclusive of any other remedy CITY may have hereunder or by operation of law, with fifteen (15) days notice, require LICENSEE to re-enter the PREMISES and remove the IMPROVEMENTS therefrom. Under no circumstances shall CITY or anyone acting on CITY'S behalf attempt to remove LICENSEE'S communications equipment, except as provide for in Section 5.5 herein. Upon such occurrence, CITY may either (a) declare this Agreement and license granted herein at an end, in which event LICENSEE shall immediately pay CITY a sum of money equal to the total of (i) the amount of Rental Fees accrued through the date of termination; (ii) the amount by which the Rental Fees reserved for the balance of the term exceeds the amount of such rental loss that the LICENSEE proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other reasonable amounts necessary to compensate CITY for all detriment proximately caused by LICENSEE'S failure to perform its obligations under this Agreement, or (b) without terminating this Agreement, relet the PREMISES, or any part thereof, for the account of LICENSEE upon such terms and conditions as CITY may deem advisable, and any moneys received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid; and, thereafter, toward payment of all sums due or to become due to CITY hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, LICENSEE shall pay CITY any deficiency monthly, notwithstanding that CITY may have received Rental Fees in excess of the Rental Fees

stipulated in this Agreement in previous or subsequent months, and CITY may bring an action therefor as such monthly deficiency shall arise.

20.2. No re-entry and taking of possession of the PREMISES by CITY shall be construed as an election on CITY's part to terminate this Agreement, regardless of the extent of renovations and alterations by CITY, unless a written notice of such intention is given to LICENSEE by CITY.

21. Force Majeure

21.1. Notwithstanding any other provision in this Agreement to the contrary, neither Party wilt have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days notice.

22. Miscellaneous Provisions

22.1. Modifications. LICENSEE'S operations and all CITY approved modifications to the PREMISES must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

22.2. Entire Agreement. This Agreement, together with all Appendices attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

22.3. Capacity. Both LICENSEE and CITY represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

22.4. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be in a court with jurisdiction over Collin County, Texas.

22.5. Amendment. This Agreement may only be amended by the mutual written agreement signed by the parties hereto.

22.6. Legal Construction; Severability. In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the

other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

22.7. Nonwaiver. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or conditions of this Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by a Party in the exercise of its rights herein shall in no way constitute a waiver thereof.

22.8. Independent Contractor. LICENSEE covenants and agrees that LICENSEE is an independent contractor and not an officer, agent, servant or employee of CITY; that LICENSEE shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between CITY and LICENSEE, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and LICENSEE.

22.9. Successors and Assigns.

(a) CITY and LICENSEE each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither CITY nor LICENSEE will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of CITY. LICENSEE shall not assign, sublet, subcontract, transfer or allow the use of any interest in the PREMISES or any use of LICENSEE'S IMPROVEMENTS, including but not limited to equipment, lines, channels or frequencies, on the PREMISES without the prior written consent of CITY. CITY'S consent may be conditioned upon LICENSEE successfully obtaining contracts from such third parties wherein those parties agree to directly compensate CITY for all benefits incurred by the use of the PREMISES.

(b) Notwithstanding anything in Section 22.9(a) to the contrary, LICENSEE may assign this Agreement to any parent, subsidiary or affiliate, or any entity that acquires all or substantially all of LICENSEE'S assets in the market where the Premises are located without CITY'S consent. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, LICENSEE shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment.

(c) If CITY shall, at any time, relinquish its ownership or otherwise dispose of the PREMISES, CITY shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition; provided, however, that such relinquishment of ownership or disposition of the PREMISES shall be subject to LICENSEE'S rights under this Agreement. If the PREMISES are so disposed of, LICENSEE shall not disavow any of LICENSEE'S obligations pursuant to this Agreement but shall attorn to the purchaser or transferee thereof for the performance of CITY's obligations under this Agreement.

22.10. Applicable Laws. This Agreement is entered into subject to the charter and ordinances of CITY as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws.

22.11. Subordination to Mortgage. As to any mortgage now or subsequently placed upon any property of which the PREMISES are a part, of which CITY shall notify LICENSEE in writing, shall be deemed to be prior in time and senior to the rights of the LICENSEE under this Agreement. LICENSEE subordinates all of its interest in the Premises created by this Agreement to the lien of any such mortgage. CITY and LICENSEE shall, at the other Party's request, execute any additional documents necessary to indicate this subordination, provided that such mortgage shall not disturb possession of LICENSEE hereunder.

22.12. Contract Interpretation. Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

[The Remainder of this Page Intentionally Left Blank; Signature Page to Follow]

Exhibit "A"

EXECUTED on the day of _____ day of _____, 201___.

LICENSEE:

DALLAS MTA, L.P. d/b/a VERIZON WIRELESS

By: Verizon Wireless Texas, LLC,
its general partner

By:_____
Aparna Khurjekar,
Area Vice President Network

CITY:

CITY OF PLANO, TEXAS, a home rule municipal corporation

By:_____
Bruce D. Glasscock
CITY MANAGER
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

CITY'S TAX ID#: 75-6000640

Exhibit "A"

ACKNOWLEDGMENTS

STATE OF NORTH CAROLINA §
§
COUNTY OF MECKLENBURG §

This instrument was acknowledged before me on the ____ day of _____, 2013, by **APARNA KHURJEKAR,** Area Vice President Network of Verizon Wireless Texas, LLC, general partner of Dallas MTA, L.P. d/b/a Verizon Wireless, on behalf of said partnership.

_____
Notary Public in and for

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2013, by **BRUCE D. GLASSCOCK,** City Manager of the **CITY OF PLANO, TEXAS,** a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

Exhibit "A"

EXHIBIT "A"

LEASE SUPPLEMENT

This Lease Supplement ("Supplement"), is made this ____ day of _____, _____, between the **CITY OF PLANO,** a home rule municipal corporation, whose principal place of business is 1520 Avenue K, Plano, Texas 75074 ("CITY"), and **DALLAS MTA, L.P.**, a Delaware limited partnership, d/b/a Verizon Wireless, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("LICENSEE").

1. **Master Lease Agreement.** This Supplement is a Supplement as referenced in that certain Master Lease Agreement between the City of Plano, Texas and Dallas MTA, L.P. d/b/a Verizon Wireless, dated _____ ____, 201__, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. **Premises.** CITY hereby leases to LICENSEE that certain premises on CITY's Property located at INSERT SITE ADDRESS as shown on Exhibit "1" attached hereto and made a part hereof.

3. **Term**. The Commencement Date and the Term of this Supplement shall be as set forth in the Agreement.

4. **Consideration.** Rent under this Supplement shall be as set forth in the Agreement, payable to City as per the Agreement.

5. **Site Specific Terms.** (Include any site-specific terms)

[1. LICENSEE shall supply its own electrical service to the Premises.]

Exhibit "A"

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seal the day and year first above written.

CITY

CITY OF PLANO, TEXAS

By: _____

Bruce D. Glasscock
CITY MANAGER
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

LICENSEE

_____
Witness

DALLAS MTA, L.P. d/b/a VERIZON d/b/a VERIZON WIRELESS

By: Verizon Wireless Texas, LLC,
its general partner

_____
Witness

By:_____
Aparna Khurjekar,
Area Vice President Network

Date: _____

Exhibit “A”

Appendix “A”

PREMISES

Exhibit "A"

Appendix "B"

Insurance Requirements

Exhibit "A"

Appendix "B-1"

Contractor Agreement