JRP
4/16/15
Item No. 14B

AN ORDINANCE 2015-04-16-0311

AUTHORIZING A LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, FOR COLLOCATION OF WIRELESS FACILITIES ON A NEW WIRELESS TOWER AT THE SAN ANTONIO INTERNATIONAL AIRPORT WITH AN ANNUAL REVENUE OF $50,000.00.

* * * * * *

WHEREAS, the San Antonio International Airport ("SAT") has begun construction of a Consolidated Rental Car Facility ("CONRAC") and the footprint of the proposed facility sits over an existing wireless tower built by New Cingular PCS, LLC, (formerly AT&T) on which Verizon Wireless is collocated; and

WHEREAS, the existing wireless tower must be decommissioned in order to give way to construction of the CONRAC; and

WHEREAS, the City of San Antonio and New Cingular Wireless PCS, LLC, have reached an agreement on the terms of a Lease Agreement to collocate their wireless facilities on a new wireless tower being built by Verizon Wireless atop the existing long term parking garage at SAT; and

WHEREAS, the Lease Agreement is for a term not to exceed 30 years and will result in an initial annual rent of $50,000.00 of which 80% will be paid to the City and 20% will be paid to Verizon Wireless which will grow at a rate of 3% per year; and

WHEREAS, the Aviation Department has reviewed the terms of the Lease Agreement and the Information Technology Services Department has reviewed the engineering design documents attached thereto, and both support the execution of the Lease Agreement; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of a Lease Agreement with New Cingular Wireless PCS, LLC attached to this Ordinance in substantially final form as **Exhibit A** are approved and incorporated into this Ordinance for all legal purposes.

SECTION 2. New Cingular Wireless PCS, LLC, is authorized to obtain all necessary work and building permits from the Development Services Department to undertake construction of the wireless facilities at SAT in compliance with the engineering design documents attached to the Lease Agreement.

SECTION 3. The City Manager or her designee is authorized to execute the Lease Agreement set out in **Exhibit A**.

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SECTION 4. Funds generated by this Ordinance will be deposited into Fund 51001000, Internal Order 233000000002 and General Ledger 4401170.

PASSED and APPROVED this 16th day of April, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**14B (in consent vote: 14A, 14B)**
Date:	04/16/2015
Time:	11:03:14 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a lease agreement with New Cingular Wireless, PCS, LLC, (AT&T) for the collocation of wireless antenna facilities on the newly constructed Verizon communications tower, and authorizing the Aviation Director to terminate the existing Standard Tower lease agreement with AT&T.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x			x	
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				x
Joe Krier	District 9				x		
Michael Gallagher	District 10		x				

EXHIBIT A

LEASE FOR COLLOCATION OF WIRELESS ANTENNA FACILITIES ON CITY BUILDING

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LEASE FOR COLLOCATION OF WIRELESS ANTENNA FACILITIES

This Lease (the "Lease") is entered into, by and between the City of San Antonio, a Texas Municipal Corporation, ("Landlord" or "City") as lessor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Tenant") as lessee. The Landlord and Tenant, referred to individually as "Party" or collectively as "Parties," enter into this Lease pursuant to San Antonio City Ordinance No. _____.

WITNESSETH:

WHEREAS, Landlord owns real property located at 9800 Airport Blvd., San Antonio, Bexar County, Texas (hereinafter the "Property"), together with the building (the "Building") located on the Property, which is commonly known as the San Antonio International Airport; and

WHEREAS, Tenant wishes to collocate wireless Antenna Facilities, as defined in Section 5.1, to a tower constructed by Verizon Wireless on the roof of the Building (the "Tower"), including the placement of antennas, lines and cables, with accompanying electronic equipment shelters or enclosures installed, or to be installed, on the Building or Property; and

WHEREAS, as a result, Tenant wishes to lease space on the Tower Building, and Property for the installation of Tenant's Antenna Facilities , a non-exclusive access for utilities, and access for ingress and egress to the Property, Building, and Premises as defined in section 1.1. A).

NOW THEREFORE, in consideration of the mutual promises, covenants, undertakings, and other consideration set forth in this Lease, Tenant and Landlord agree as follows:

1. PERMITTED USE

1.1 **Permitted Use of Premises.** The "Premises" consist of the area controlled by Tenant as described in the site plan set out in Exhibit "A", may be used by Tenant for the transmission and reception of radio communication signals and for the collocation construction, installation, operation, maintenance and repair of wireless equipment and related support facilities (such as antennas, microwave dishes, equipment shelters or enclosures and/or cabinets and utilities including but not limited to electrical, telecommunications and fiber line) but only for the provision of wireless communications services for which Tenant has a legal right and license, if required, to provide and not for any other purpose. This Lease shall include any new types of facilities that may evolve or be adopted using wireless technologies, such as 700 MHz Public Safety LTE. Tenant shall, at its expense, comply with all applicable present and future federal, state, Federal Aviation Administration regulations, Transportation Security Administration regulations, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use of (and operations, maintenance, construction and/or installations at) the Premises. This Lease applies to the installation of the wireless equipment and support facilities depicted in the engineering designs and plans incorporated in Exhibit A. Subject to Section 8.1, network upgrades, replacement of antennas and/or shelter or enclosure equipment, and installation of replacement equipment arrays are permitted uses, provided Tenant submits to Landlord engineering designs of the proposed changes for review and approval by Landlord in compliance with subsection 5.2.

1.2 **Application Process.** Prior to the execution of this Lease, Tenant shall submit to Landlord a written application in the form required by Exhibit B (the "Application") for the proposed installation accompanied with the appropriate fees required by Exhibit C. Landlord, in its sole discretion will determine whether the Property is suitable for the proposed installation. Landlord shall review the Application to ensure compliance with local laws and policies. The proposed height and specifications of a wireless antenna must be in compliance with Section 35-385 of the City of San Antonio Unified Development Code ("UDC § 35-385"). For the purpose of this Lease, the application process fee is waived and Landlord acknowledges and agrees that Tenant has previously met the Application process requirements herein.

1.3 **Tower Built for Collocation.**

a. In compliance with UDC § 35-385, Verizon Wireless, has designed and constructed the Tower to support a minimum of two collocators. Notwithstanding the foregoing, prior to allowing Tenant to collocate on the Tower, Tenant shall provide to Landlord and Verizon Wireless a satisfactory structural analysis at such collocator's sole expense indicating that the Tower is adequate to support Tenant's equipment, and Tenant shall pay to Verizon Wireless an amount equal to thirty-three and three tenths percent (33.3%) of Verizon Wireless' total actual capital cost to construct the Tower. In addition, tenant shall pay Verizon Wireless fair market based compensation for access to fiber conduit installed on the Building for the purpose of providing telecommunications connectivity to Tower tenants.

b. Each such third party collocator shall enter into a tower lease agreement with Landlord. Notwithstanding anything in this Lease to the contrary, Landlord agrees that any such third party collocator will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with industry standards to the equipment of Tenant. Landlord shall include in its tower lease agreement with any such third party collocator a requirement that no such interference shall be permitted to Tenant's equipment. In the event a third party provider wishes to extend the height of the Tower in order to accommodate collocation, the Landlord will accommodate the request provided (i) the upgrade does not result in any interference with the equipment of the Tenant, (ii) the third party provider pays the entire cost of the Tower extension and equipment installation, and (iii) the proposed Tower extension is in compliance with UDC § 35-385 and any applicable property covenants or restrictions. Prior to allowing any third party collocator to modify its equipment on the Tower, such collocator shall provide to Landlord and Tenant a satisfactory structural analysis indicating that the Tower is adequate to support such collocator's equipment.

c. Rent hereunder shall be paid in the following manner: 80% to Landlord and 20% to Verizon Wireless. All revenue payments to Verizon Wireless shall be sent to the following address:

Verizon Wireless
Site Name: Airport San Antonio Intl Repl
P.O. Box 64498
Baltimore, MD 21264-4498

1.4 **Approvals.** Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's permitted use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or

deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for amendments, special use permits, and construction permits (collectively, the "Government Approvals"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's permitted use under this Lease and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities. Tenant has the right 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. Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

2. TERM

2.1 **Initial Term.** The initial term of the Lease shall be for five (5) years commencing on the Effective Date of the Lease and ending at midnight on the last day of the initial term ("Initial Term"). This Lease will automatically renew for five (5) additional terms of five (5) years each unless otherwise retracted in writing by either Party at the end of the Initial Term or subsequent five (5) year terms by providing ninety (90) days' notice of termination. The total length of the Lease shall not exceed a total of thirty (30) years, including renewals. The effective date of the Lease shall be the date on which both Parties execute the Lease following approval of the Lease by the City Council (the "Effective Date").

2.2 **Renewal Terms.** Following the Initial Term, the Lease will automatically renew for up to five (5) additional five (5) year renewal terms (each a "Renewal Term") provided neither Party chooses to terminate the Lease in accordance with subsection 2.1 above. Each Renewal Term shall be based on the same terms and conditions as set forth herein. The Initial Term and all Renewal Terms shall be collectively referred to herein as the "Term."

2.3 **Hold Over Tenancy.** Any holding over by Tenant after the expiration of the Term, with the consent of the City, shall be construed to be a tenancy from month-to-month on the terms and conditions herein, except that the annual Rent (as hereinafter defined) shall be twice the amount set forth at the end of the Term of this Lease, prorated and paid monthly in advance.

3. RENT AND ADMINISTRATIVE FEES

3.1 **Rent.** In accordance with section 1.3 c., Tenant shall pay 80% of rent amount to Landlord and 20% to Verizon Wireless. Tenant shall pay, as rent, Fifty Thousand and 00/100 Dollars ($50,000.00) per year to be paid in equal monthly installments on the first day of the month, in advance, for the Term of this Lease, which will be increased and compounded at three percent (3%) per year (collectively "Rent") as illustrated on the schedule included in Exhibit D. The provisions of Section 3 shall control with regard to the discrepancy between the Rent installments calculated pursuant to this section and the Rent installments set out on Exhibit D, as the purpose for Exhibit D is to illustrate the compounding effect on Rent of the 3% annual escalation factor.

3.2 **Timing of Annual Rent Payments.** The monthly installment of Rent shall commence on the first day of the month following full execution of the lease by all parties and will be payable

thereafter on the first day of the month during the entire Term of the Lease.

3.3 **Late Payment Interest.** Any Rent not paid within ten (10) days of the due date shall be assessed a rate of 18% per annum from that date.

3.4 **Administrative Fees.** In addition to the Rent, the Tenant will be responsible for paying administrative fees, as applicable, associated with the operation and maintenance of the Tower and supporting equipment, as provided in Exhibit C. Landlord reserves the right to update the schedule of administrative fees in order to recover its actual costs of contract and oversight administration.

3.5 **Payment of Rent and Administrative Fees.** Tenant shall pay Landlord the Rent and applicable administrative fees specified in Exhibit C in the form of a check made out to the order of the City of San Antonio and sent to:

City of San Antonio
Aviation Department
Attn: Property and Business Development
9800 Airport Boulevard
San Antonio, TX 78216

4. INTERFERENCE, TESTING AND RESERVATION

4.1 **Interference with Use of Property Prohibited.** Tenant shall not use the Premises or Antenna Facilities (as defined in subsection 5.1) in any way which interferes with the current or future operations of Landlord, or the use of any portion of the Property and Building by Landlord and any of its City departments and agencies, or by lessees or licensees of Landlord with rights in any portion of the Property and Building prior to or subsequent to execution of this Lease. Tenant acknowledges that the Premises are located on and are part of an operating airport and that Tenant may not install any equipment or perform any functions that may be in conflict with 14 CFR Part 139 Airport Certification as those regulations may be amended from time to time, or jeopardize the operating certificate of the Airport. Notwithstanding section 4.2, Landlord shall not use, nor shall Landlord permit its lessees, licensees, grantees, employees, or agents to use, any portion of the Premises in any way which intentionally interferes with, the operations of Tenant or the rights of Tenant hereunder. Such interference shall be deemed a material breach by Landlord, who shall, upon written notice from Tenant, take reasonable action to terminate such interference which results from operations directly under Landlord's control. In the event any such interference does not cease promptly, the Parties acknowledge that continuing interference may cause irreparable injury and, therefore, the Tenant shall have the right to terminate this Lease immediately upon written notice pursuant to Section 10 hereof.

4.2 **No Interference with Mission Critical Communications.** . Tenant shall not operate its Antenna Facilities in such a manner as to cause interference with City radio communications at any time during the Term of this Lease, including all radio communications utilized at the Property by law enforcement, aviation, and public safety authorities of federal law (i.e., Federal Aviation Administration, Department of Homeland Security, Drug Enforcement Administration, Department of Defense, Department of State, and Environmental Protection Agency), state law (i.e., Texas Department of Public Safety, and Bexar County Sherriff's

Department), and City Ordinances and regulations (i.e., City of San Antonio Emergency Communications Radio System). In the event Tenant's Antenna Facilities interfere with Landlord's emergency communications radio system, Tenant will be required to cease the interference immediately upon receiving notice from Landlord. In the event such interference cannot be remedied within 24 hours, Tenant shall shut down its Antenna Facilities (except for intermittent testing to determine the cause of such interference) until such interference is remedied.

4.3 **Radio Frequency Compliance Tests.** On an annual basis, Landlord may, at Tenant's expense, perform tests as necessary to determine compliance of the Antenna Facilities and equipment located on the Premises with applicable Federal radio frequency exposure limit rules, currently set forth at 47 C.F.R. Section 1.1310, or subsequent applicable Federal rules as from time to time in effect. Landlord may perform additional antenna radio frequency tests at Landlord's expense to determine whether Tenant's Antenna Facilities and equipment are in compliance with applicable Federal radio frequency exposure limit rules. If any such tests determine that Tenant is not in compliance with applicable radio frequency exposure limit rules, Tenant shall shut down all communications equipment on the Premises (except for intermittent testing and work necessary to bring it into compliance) until subsequent tests, which tests shall be at Tenant's sole expense, again show compliance with such rules. If Landlord performed a test resulting in a finding that Tenant is not in compliance with applicable Federal radio frequency exposure limit rules, Tenant shall reimburse Landlord for actual cost incurred by Landlord in performing such test.

4.4 **Initial Radio Frequency Compliance Testing.** Tenant shall conduct an initial test for compliance with applicable Federal radio frequency exposure limit rules prior to placing Tenant's equipment on the Premises into commercial operation, and Tenant shall perform additional tests upon any significant change in the equipment on the Premises. All such testing shall be performed by a qualified radio engineer, and a copy of the test results shall be provided to all Parties. If such tests show noncompliance with applicable radio frequency exposure limit rules then in effect, then all communications equipment on the Premises shall be shut down (except for intermittent testing and work necessary to bring it into compliance) until subsequent tests again show compliance with such rules.

4.5 **Reservation of Rights.** Landlord does not grant, and reserves for itself, its lessees, successors and assigns, (i) all mineral rights, seismic rights and rights to oil, gas, other hydrocarbons or minerals on, as to, under or about any portion of the Premises; (ii) ground water rights associated with the Property; (iii) rights to generate electricity from the wind or wind power on, as to or about any portion of the Premises; and (iv) the right to grant to others the rights hereby reserved.

4.6 **Interference with Tenant.** Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, 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. Landlord will not, and will take reasonable efforts to prevent its employees, tenants, licensees, agents or independent contractors from interfering in any way with the Antenna Facilities, the operations of Tenant or the rights of Tenant under this Lease In the event of an emergency, Landlord may interfere with Tenant's Antenna Facilities, and or the operations of the Tenant or the rights of the Tenant under this Lease as is necessary to address the emergency.

5. TENANT IMPROVEMENTS

5.1 **Tenant Improvements.** Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, equipment shelters or enclosures and/or cabinets and related cables and utility lines and a location based system, including, without limitation, antenna(s), coaxial cable, base units and other associated equipment (collectively, the "Antenna Facilities") as set forth on and in accordance and compliance with Exhibit A. Exhibit A shall contain a site plan which includes all buildings, structures, equipment cabinets, utility boxes, fences, generators, fuel tanks, backup battery cabinets, and parking; elevation drawings for the location of the Antenna Facilities on the Tower, and equipment cabinets; fence detail; and specifications for all exterior colors, paint and other finishes. Consistent with UDC § 35-385 Tenant's unmanned equipment shelter(s) shall contain no more than 750 square feet of gross floor area and shall be no more than 12 feet in height. Tenant may include photo simulations of what the Property, Building, and Premises will look like upon installation of the Antenna Facilities and incorporate them in Exhibit A. It is understood that the Premises is the area controlled by the Tenant as described in Exhibit A.

5.2 **Approval of Plans.** Prior to commencing construction, Tenant shall use the form attached as Exhibit B to submit plans and specifications for all improvements to Landlord for Landlord's written approval, not to be unreasonably withheld. No improvement, construction, installation or alteration shall be commenced until plans for such work have been approved by the Landlord and the Federal Aviation Administration, if applicable, and all necessary permits have been properly issued. For purposes of this Lease, Tenant's plans and specifications for the initial construction of the Antenna Facilities are deemed approved by Landlord.

5.2.1 **Modification of Premises.** Subject to Section 8.1, during the Term of this Lease, but prior to commencing any network upgrades, or any changes, additions, deletion and/or alterations of the Tenant's property as depicted in Exhibit A, Site Plans – Engineering Design of Improvements, including Reinforcements to the Building, including but not limited to, the addition of antennas, microwave dishes, equipment shelters and/or cabinets and utilities, Tenant shall submit to Landlord in writing detailed engineering design documents for Landlord's review and approval, which such approval shall be granted within twenty (20) business days from Tenant's payment of the applicable administrative fee pursuant to Section 3.4 herein to Landlord. In the event that Landlord's approval is not granted within such twenty (20) day time period, Tenant shall notify Landlord by letter or by email documenting Landlord's failure to review and approve within the requisite time period and shall thereby give Landlord three (3) additional business days in which to approve such engineering design documents and in the event that Landlord fails to complete its review and grant its approval within such three (3) business day period, Tenant's engineering design documents will be deemed approved. If Landlord reasonably determines that the engineering design documents submitted by Tenant are incomplete or otherwise contrary to local regulations or Landlord's contractual commitments, the time taken by Tenant to correct such insufficiencies shall be considered outside of the scope of the above required time periods for the Landlord's review. Tenant shall not commence work on any such network upgrades, changes, additions, deletion and/or alterations prior to Landlord approving such upgrades, changes, additions, deletion and/or alterations in writing unless such has been deemed approved as provided hereinabove.

If applicable, Tenant shall also obtain written approval from the Federal Aviation Administration. Review of such engineering design documents, other than routine maintenance, will be subject to an administrative fee. Any change that requires additional cabling, parking, or ground space will be subject to an adjustment in rent. All amended engineering design documents will be incorporated into this Lease and will become part of Exhibit A. Notwithstanding anything in this Lease to the contrary, Landlord's review of the engineering design documents submitted by Tenant shall be limited solely to a review for completeness and compliance with local regulations and Landlord's contractual commitments and shall not result in an increase in Tenant's rent or a denial of Tenant's proposed changes, and shall not be unreasonably withheld, conditioned or delayed. Landlord further agrees that Tenant shall have the right to install RRH units and equipment related thereto as part of its initial installation. If such RRH units and related equipment are not installed as part of the initial construction, Tenant will provide notice to Landlord of the proposed installation which will be considered a maintenance operation not subject to an administrative fee. Any subsequent network upgrades that may include replacement and/or addition of RRH units and related equipment will be subject to the same notice requirement set forth in the preceding sentence.

6. CONSTRUCTION

6.1 **No Construction Liens.** Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. If any lien is filed against the Premises, Building, or Property as a result of acts or omissions of Tenant or Tenant's employees, agents or contractors, Tenant shall discharge the lien or bond the lien off or otherwise reasonably secure the lien within sixty (60) days after Tenant receives written notice that the lien has been filed.

6.2 **No Interference with Construction.** Landlord acknowledges that except for Tenant's non-compliance with this Lease it shall not interfere with Tenant's construction within the Premises including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities. However, Tenant will provide evidence to Landlord that Tenant's placement of the Antenna Facilities will not result in subjecting Landlord's employees, contractors, and invitees with access to the Building and Property to unacceptable levels of radio emissions in violation of FCC regulations. Notwithstanding the foregoing, Tenant's construction activities shall not interfere with public ingress and egress to the Building.

6.4 **Backup Generation.** Tenant has the right to install and maintain a permanent backup generator at ground level. Such permanent backup generator shall be for Tenant's sole and exclusive use.

6.5 **Equipment Shelters or Enclosures.** Tenant will be required to install equipment shelter(s) or enclosure(s) on or inside the Building or at ground level on the Property, in compliance with UDC § 35-385. Tenant may not install lead acid batteries in equipment shelters or enclosures unless such batteries are valve regulated lead acid batteries, and will not be required to share its equipment shelter(s) or enclosure(s) with other parties that may collocate on the Tower. Access to equipment shelters or enclosures will be via locked gates and doors.

6.6 **Relocation of Utility Facilities.** If installation of Antenna Facilities results in the necessary relocation of any utility facilities of third parties on City of San Antonio rights-of-

way, private easements, the Property, or the Building, Tenant shall be responsible for paying the cost for the relocation of utility facilities as appropriate to complete construction.

7. UTILITY FACILITIES

7.1 **Installation of Utility Facilities.** Tenant shall have the right to install utility lines serving the Premises, at Tenant's expense, and to improve the present utilities on the Building or Property, all at Tenant's expense. Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall install separate meters for utilities on the Building or Property used by Tenant. Tenant shall pay when due all charges for utilities serving the Premises during the Term of the Lease.

8. MAINTENACE

8.1 **Maintenance of Antenna Facilities.** Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Building and Property in commercially reasonable condition and repair during the Term of this Lease, normal wear and tear and casualty excepted. Tenant shall have the right to conduct testing and maintenance activities, and repair and replace the Antenna Facilities at any time during the Term of this Lease. Notwithstanding anything in this Lease to the contrary, Tenant shall have the right to make any maintenance adjustments to the Antenna Facilities including, but not limited to modifications or swaps of antennas or other equipment. Such maintenance activities shall not require the Landlord's consent or approval; however, Tenant shall notify Landlord of equipment modifications or swaps pursuant to subsection 5.2.1 and Tenant shall adhere to applicable security protocols to contractors working at the airport.

8.2 **Signage.** Tenant may not place or allow the placement of any signs or graffiti on the Premises, except for those required for emergency notification and identification, or as required by law or rule. After thirty (30) days' notice to remove, Landlord at any time may enter the Premises and undertake any activities necessary to abate or remove graffiti located therein. Tenant shall reimburse Landlord all costs incurred by Landlord in connection with such abatement or removal within thirty (30) days of Landlord's presenting Tenant with a statement of such costs.

8.3 **Facilities Management.** Tenant shall, at its own expense, maintain the Premises and all of Tenant's improvements, equipment and other personal property on the Premises in good working order, condition and repair. Tenant shall keep the Premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference. If Tenant's lack of maintenance creates a public hazard or endangers the health or safety of Landlord's employees, agents or licensees accessing the Building or Property, the Tenant will address the situation within ten (10) days of receiving notice from Landlord, unless a longer timeframe is mutually agreed to by the Parties. Failure to comply will serve as grounds for termination of this Lease pursuant to Section 10.1.1 hereof.

8.4 **Building Maintenance and Repair.** Landlord will maintain and repair the Property and access thereto, the Building and the Tower, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Tenant shall promptly repair any damage to the Building caused by its installation of the Antenna Facilities. In the event, the Tenant's installation of Antenna Facilities results in water leakage during rain events the Tenant shall be responsible

for repairing the roof and all water damage to the Building caused by Tenant, including replacing the roof if necessary. Tenant shall respond with necessary repairs within 24 hours of receiving notice of evidence of damage to the Building.

8.5 **Material Improvements and Alterations.** Tenant shall not construct any material improvements or structures not otherwise allowed under the terms of this Lease, nor shall Tenant make any material physical alterations other than repairs in the ordinary course of business. Any material physical improvements and/or alterations over and above the plans provided in Exhibit A, including but not limited to network upgrades, not in compliance with subsection 5.2 shall be considered impermissible uses of the Premises.

9. ACCESS

9.1 **Access to Property and Premises.** As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant non-exclusive access to the Property and Building for ingress, egress, and utilities installation and maintenance, which include, but are not limited to, the installation of power and telephone service cables, and to access and service the Premises and the Antenna Facilities at all times during the Term of this Lease. Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises, including the common areas of the Building ("Access") at all times during the Term of this Lease, consistent with the regulations applicable to the Property, Building, and Premises. Tenant shall use the Premises and any City facilities to which it is granted access under this Lease with the same degree of care as it accords its own property, and shall in no way interfere with the operations of the Property or Building, or any City department or agency operating on the Property. Further, Tenant shall adhere to and in no way act in conflict with 49 CFR Part 1542 Airport Security or the TSA-approved security plan for the San Antonio International Airport. Landlord and its agents shall have the right to enter the Building and Premises at reasonable times to examine and inspect the Tower, Antenna Facilities and the Premises; however, Landlord, its employees or agents shall not impede or deny Access to Tenant, its employees, agents, or licensees. Upon at least twenty-four (24) hours' prior notice to Tenant, Landlord shall have the right to enter and inspect the Premises, and upon notifying Tenant, the right to inspect the Tenant's equipment shelter or enclosure. In the event of an emergency, Landlord may at its discretion withhold notice and enter and inspect the Premises and have the right to inspect Tennant's equipment and shelter or enclosure. In the event that Landlord must limit or prohibit access, or otherwise require the shutting down of Tenant's services as the result of an emergency, Landlord shall permit Tenant to place a temporary Antenna Facility (Cell on Wheels or similar installation) on Landlord's Property or at some other location acceptable to both Tenant and Landlord, at Landlord's costs until such time as Tenant's access and/or services are fully restored

9.2 **Photo Badges Required.** While on the Premises, Tenant's employees and contractors must wear a suitable photo ID badge, to be provided by the Tenant, which includes a nominal 1 ½" square personal photo, unique logo and labeling that identifies the Tenant and the employee or contractor by name and a telephone number where confirmation of employment may be verified.

9.3 **Electronic Security Cards.** Landlord may install electronic security card readers at the Building and Premises to allow entry to be monitored and logged, in which case Tenant will pay the cost for the issuance of security cards to authorized personnel at the rate specified in Exhibit C.

9.4 **Escort Charges.** In the event the Property and/or Building has been designated a high security campus or facility, which requires entry by escort, Tenant will incur escort charges as specified in Exhibit C and will adhere to all relevant security policies. Tenant may reach an arrangement with Landlord for access to the Tower and Antenna Facilities during emergencies.

9.5 **List of Authorized Employees and Contractors.** Prior to Tenant commencing construction on the Property and Building, Tenant shall provide Landlord with the name and contact information of authorized employees and contractors that will be performing construction and oversight of the improvements. Such employees and contractors will be identified using the forms attached as Exhibits E and F. The authorized employees and contractors will be subject to security background checks and will be issued credentials to enter the Property, Building, and Premises. Authorized employees and contractors of the Tenant must comply with all the security regulations applicable to the Property, Building, and Premises. Tenant shall maintain the list of authorized employees and contractors current and provide notice to Landlord immediately to remove the name of any employee subject to disciplinary probation or termination and timely submit additional personnel to be added to list.

9.6 **Security Background Checks.** All Tenant employees, contractors, and subcontractors with access to the Building and Premises will be subject to security background checks, and Tenant shall incur the fee indicated in Exhibit C for each background check performed. Landlord reserves the right to exclude any representative, employee, agent, contractor, and/or subcontractor of Tenant from the Building and Premises if deemed necessary for proper security reasons.

10. TERMINATION, DEFAULT AND RIGHT TO CURE

10.1 **Termination.** Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

10.1.1 upon thirty (30) days' written notice by Landlord to Tenant if Tenant fails to cure a default for payment of amounts due under this Lease within thirty (30) days of Tenant's receipt of such notice;

10.1.2 upon thirty (30) days' written notice by Landlord to Tenant if Tenant fails to conduct proper maintenance and repairs as prescribed by subsection 8.4 and Tenant fails to commence such maintenance and repairs within such thirty (30) day period;

10.1.3 upon thirty (30) day's written notice by Tenant to Landlord of unacceptable results of any title report, environmental or soil tests prior to Tenant's installation of the Antenna Facilities on the Premises;

10.1.4 upon thirty (30) days' written notice by Tenant if despite diligent effort by Tenant, Tenant is unable to obtain, maintain, or otherwise forfeits, cancels or has been canceled, or allows to expire without renewing any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary for the installation and/or operation of the Antenna Facilities;

10.1.5 upon thirty (30) days' written notice by Tenant if destruction or damage to the Antenna Facilities substantially or adversely affects their effective use;

10.1.6 upon thirty (30) days' written notice by Tenant at the time title, or the right to control or to occupy the Building and Premises transfers to a condemning authority, pursuant to a taking of all or a portion of the Premises sufficient to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Building and Premises to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

10.1.7 upon thirty (30) days' written notice by Landlord to Tenant resulting from Tenant's failure to provide written notice to and obtain consent from Landlord for assignment of the Lease pursuant to subsection 16.1.

10.1.8 upon one hundred eighty(180) days' written notice by Landlord to Tenant if the San Antonio City Council passes an ordinance calling for the Property and/or Building to be sold, transferred, developed, redeveloped, renovated, upgraded, or declared surplus property in such a way that the use of the Property and/or Building is no longer compatible with the Tower installation.

10.1.9 upon one hundred eighty (180) days' written notice by Landlord to Tenant if in accordance with the San Antonio City Charter, the City Council finds the use of the Premises has become a nuisance, however, in the event of an emergency brought about by such nuisance, the City Council may specify a shorter termination period.

10.1.10 Tenant may terminate this Lease by giving one hundred eighty (180) days' written notice to the Landlord.

In the event that Landlord terminates the Lease, Tenant shall be entitled to reimbursement by Landlord of any unearned rent for the remaining Term of the Lease. Such sum shall be due and payable within thirty (30) days of Landlord's written notice to Tenant.

10.2 **Default and Right to Cure.** Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each Party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 23 hereof, to take effect immediately, if the other Party fails to perform any material covenant or commits a material breach of this Lease and fails to commence the cure of such failure to perform a material covenant or material breach for a period of forty-five (45) days after receipt of written notice thereof to cure, provided Tenant shall have such extended period as may be required beyond the forty-five (45) days if the nature of the cure is such that it reasonably requires more than forty-five (45) days and Tenant commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion.

10.3 **Tenant Default.** Tenant shall be in default if it (i) fails to make any payment of Rent or other sums to Landlord when due, and does not cure such default within thirty (30) days after receipt of written notice from Landlord of such failure; (ii) removes its equipment from the Premises and fails to pay Rent; (iii) is adjudicated as bankrupt or makes any assignment for the benefit of creditors; (iii) if Tenant becomes insolvent; or (iv) Tenant failure to take action as

required by Section 4.2 of this Lease within seventy-two (72) hours after written notice of such failure.

10.4 **Landlord Remedies.** If suit shall be brought by Landlord for recovery or possession of the Premises, removal of Tenant's equipment, for the recovery of any Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant, the Tenant shall pay to the Landlord all expenses incurred therefor, including reasonable attorney fees. In addition, in the event of any default of this Lease by Tenant, the Landlord may at any time, after notice given as set forth in Section 23 herein and if Tenant fails to cure, cure the default for the account of and at the expense of the Tenant. If Landlord is compelled to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce the Landlord's rights under this Lease, the sums so paid by Landlord, with all interest, costs and damages shall be deemed to be Rent otherwise due and shall be added to the Rent following the incurring of the respective expenses and the expiration of forty-five (45) days following Tenant's receipt of written notice from Landlord as to such additional Rent and shall be due from the Tenant to Landlord on the first day of the month following the expiration of such forty-five (45) day period.

10.5 **Landlord Default.** The following will be deemed a default by Landlord and a breach of this Lease: (i) Landlord's failure to provide Access to the Premises as required by Section 9 of this Lease within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to take action as required by Section 4 of this Lease within seventy-two (72) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Lease within forty-five (45) days of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord 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 Landlord.

11. RELOCATION AND REMOVAL OF ANTENNA

11.1 **Relocation of Facilities.** In the event the Property and/or Building is sold, transferred, developed, redeveloped, renovated, upgraded, or put to another use by Landlord as directed by the San Antonio City Council, the Tenant will be required to remove the Antenna Facilities at Tenant's expense for the purpose of relocation or disposal. If appropriate, Landlord will provide another location for the relocation of the Antenna Facilities, or for the installation of new improvements. Landlord will provide Tenant at least one hundred eighty (180) days' notice of the need for removal and relocation, and Tenant shall fully cooperate in such removal and relocation. Landlord shall permit Tenant to place a temporary Antenna Facility (Cell on Wheels or similar installation) on Landlord's Property or at some other location acceptable to Tenant until such relocation is complete. If relocation is not possible, but the alteration to the Property and/or Building will accommodate the installation of new facilities, this Lease will be amended to include the description of the alternative premises. The Parties will work together in an attempt to achieve a transition to the new facilities without service interruption.

11.2 **Restoration of Premises.** Within one hundred twenty (120) days after the termination or expiration of this Lease, Tenant at its expense shall restore the Building and Premises to Landlord in the same condition as they were prior to this Lease, normal wear and tear and casualty excepted. If Landlord request that Tenant not remove all or a portion of the improvements, title to the affected improvements (which shall not include Tenant's Antenna

Facilities) shall thereupon transfer to Landlord, and thereafter the improvements shall be the sole property of Landlord, and Tenant shall be relieved of its duty to remove said improvements. Any personal property, equipment or other improvements which are not timely removed as prescribed herein shall become the property of Landlord, at Landlord's option. Notwithstanding any other provision of this Lease, Tenant's obligation to pay Rent hereunder shall continue until Tenant has complied with this subsection 11.2. If Tenant fails to remove the Antenna Facilities within the time period prescribed herein, following notice to Tenant, Landlord at its option may cash the performance bond or letter of credit required under Section 14 in order to remove said facilities and restore the Building and Premises to its original condition.

12. TAXES

12.1.1 **Right to Contest Taxes.** Tenant shall pay any personal property tax, real property tax, state franchise tax, or any other tax which is directly attributable to the leasehold estate, presence or installation of the Tenant's Antenna Facilities, or Tenant's presence or operations on the Premises. Landlord hereby grants to Tenant the right (with written notice to Landlord complying with Section 23 herein) to challenge, whether in a court, administrative proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property tax, real property tax that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment against the Landlord, which may affect Tenant and is directly or indirectly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment; such notice must comply with Section 23 herein. In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt.

13. INSURANCE

13.1 **Endorsement Copies.** Prior to the commencement of any work under this Lease, Tenant shall furnish copies of all required endorsements and a Certificate(s) of Insurance to the City of San Antonio Information Aviation Department ("Aviation"), which shall be clearly labeled "*Airport San Antonio Intl Repl*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by a broker and signed by the broker authorized to issue the certificates on behalf of the insurance company. The Landlord will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the broker's original signature, including the signer's company affiliation, title and phone number. The Landlord shall have no duty to pay or perform under this Lease until such certificate and endorsements have been received and approved by Aviation. No officer or employee, other than the City of San Antonio Risk Manager, shall have authority to waive this requirement.

13.2 **Right to Review Coverage.** The Landlord reserves the right to review the insurance requirements of this section during the effective period of this Lease and any extension or renewal hereof and to modify insurance coverages and their limits once per Term when deemed necessary and prudent by the City of San Antonio Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Lease. In no instance will Landlord allow modification whereupon Landlord may incur increased risk.

13.3 **Liability Limits.** Tenant's financial integrity is of interest to the Landlord; therefore, Tenant shall obtain and maintain in full force and effect for the duration of this Lease, and any

extension hereof, at Tenant's sole expense, insurance coverage written on an occurrence basis, by companies eligible to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Property Insurance – for physical damage to the property of Tenant, including improvements and betterments to the Antenna Facilities.	Coverage for a minimum of one hundred percent (100%) of the replacement cost of Tenant's improvements. Tenant may self-insure this coverage.

Notwithstanding the forgoing, Tenant may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Lease. In the event Tenant elects to self-insure its obligation under this Lease to include Landlord as an additional insured, the following conditions apply:

(i) Landlord shall promptly and no later than thirty (30) days after notice thereof provide Tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;
(ii) Landlord shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Tenant; and
(iii) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit, or the like.

13.4 **Specific Requirements.** Tenant agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions to the effect of:

- Include the City of San Antonio, its officers, officials, employees, volunteers, and elected representatives as an additional insured, as respects operations and activities of, or on behalf of, the named insured performed under contract with the Landlord, with the exception of the workers'

compensation / employers liability, property and professional liability policies;

- Landlord's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and, (iii) not exceed Tenant's indemnification obligation under this Lease, if any;

- Provide that the "other insurance" clause shall not apply to the City of San Antonio where the Landlord is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will include a waiver of subrogation in favor of the Landlord; and

13.5 **Loss of Insurance Coverage.** Tenant shall provide a replacement Certificate of Insurance without lapse in coverage with the expiration or cancellation of a given policy. Landlord shall have the option to suspend Tenant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Lease.

13.6 **Landlord's Remedy for Tenant's Failure to Maintain Insurance Coverage.** In addition to any other remedies Landlord may have upon Tenant's failure to provide and maintain any insurance to the extent and within the time herein required, Landlord shall have the right to order Tenant to stop work hereunder, and/or withhold any payment(s) which become due, to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof.

13.7 **No Limitation on Damages.** Nothing herein shall be construed as limiting in any way the extent to which Tenant may be held responsible for payments of damages to persons or property resulting from Tenant's or its subcontractors' performance of the work covered under this Lease.

13.8 **Tenant's Insurance Primary.** Tenant's required insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of Tenant's operations under this Lease.

13.9 **Obligation to Procure Insurance.** It is understood that the insurance required is in addition to and separate from any other obligation in this Lease.

13.10 **Tenant Responsible for Damages to Self.** Tenant and any Subcontractors are responsible for all damage to their own equipment and/or property.

13.11 **Waiver of Claims against City of San Antonio.** Tenant waives all claims against the City of San Antonio for injury to persons or property on or about the Property or Premises not caused by Landlord's negligence or willful misconduct.

14. PERFORMANCE BOND

14.1 **Construction and Removal Bond.** Tenant shall, prior to commencing any construction on the Property, Building, and Premises, post a performance bond in form and with a surety company reasonably acceptable to Landlord, assuring that the improvements will be constructed without the attachment of any construction liens, which bond shall expire after the completion of the lien filing period. Tenant shall following completion of construction post a removal bond (or, at Tenant's option, a letter of credit) from a surety or bank reasonably acceptable to Landlord, and in an amount of $50,000 to assure that the funds will be available at the termination of the Lease for removal of the Antenna Facilities, and to pay any outstanding Rent during the Term this Lease.

14.2 **Survival Clause.** This Section 14 shall survive the expiration of this Lease.

15. INDEMNIFICATION

15.1 The Tenant covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the City of San Antonio (and the elected officials, employees, officers, directors, and representatives of the City), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the City directly arising out of the installation, use, maintenance, repair or removal of the Antenna Facilities or Tenant's breach of any provision of this Lease, except to the extent attributable to the negligent or intentional act or omission of Landlord, its elected officials, employees, officers, directors, and representatives employees, agents or independent contractors, all without, however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law. The City shall have the right to participate in such defense without relieving the Tenant of any of its obligations; provided, however, any duplicate actions taken by the City shall be at the City's sole cost and expense.

15.2 THE INDEMNITY PROVIDED FOR IN THE FOREGOING PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE CITY, ITS OFFICERS, ELECTED OFFICIALS, DIRECTORS, REPRESENTATIVES OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. HOWEVER, IN THE EVENT TENANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

15.3 THE TENANT SHALL ADVISE THE CITY IN WRITING WITHIN 30 DAYS OF ANY CLAIM OR DEMAND AGAINST THE CITY RELATED TO OR ARISING OUT OF THE TENANT'S ACTIVITIES UNDER THIS LEASE AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE TENANT'S COST TO THE EXTENT REQUIRED UNDER THIS LEASE.

15.4 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

16. ASSIGNMENT

16.1 **Tenant's Assignment Rights.** Tenant shall have the right to assign or otherwise transfer this Lease to any person or business entity which (i) holds a currently valid FCC license to provide to the public from the Premises what are commonly known as cellular telephone services or are services permitted under Section 1.1 hereof, or (ii) is a parent, subsidiary or affiliate of Tenant, is merged or consolidated with Tenant or purchases more than fifty percent (50%) of either an ownership interest in Tenant or the assets of Tenant in the "Metropolitan Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the Property is located. Upon notice to Landlord of such assignment, Tenant shall be relieved of all liabilities and obligations hereunder accruing after such assignment, and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder; provided assignee accepts this Lease in full, without amendments or changes thereto, steps into the shoes of Tenant, including being responsible and liable for events or defaults which occur after the assignment, and Tenant cures any outstanding defaults. All other proposed assignments not covered in (i) to (ii) herein will require 60 days prior notice to Landlord and the affirmative consent of Landlord, which will not be unreasonably withheld, conditioned or delayed. Failure to obtain the affirmative consent of Landlord to the proposed assignment shall result in making the proposed assignment null and void.

16.2 **Effect of Bankruptcy.** Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC Sections 101, et seq., shall be deemed without further act to have assumed all of the obligations of Tenant arising under this Lease both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Landlord, shall be the exclusive property of Landlord, and shall not constitute property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to Landlord.

16.3 **Landlord's Assignment Rights.** Landlord may assign or transfer this Lease, and, upon written notice to Tenant of such assignment, shall be relieved of all liabilities and obligations hereunder provided that such assignee or transferee agrees in writing to fulfill the duties and obligations of the Landlord in said Lease, including the obligation to respect Tenant's rights to non-disturbance and quiet enjoyment of the Premises during the remainder of the Term hereof.

16.4 **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives, and assigns.

17. WAIVER OF LIENS

17.1 **Waiver of Liens.** Neither Party shall have the right to create or impose any extrajudicial liens or any other encumbrance on the Property, Building, Premises, Antenna Facilities, and any other property owned by the other Party. Specifically, Landlord hereby waives any and all

lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent. Should Tenant fail to remove its Antenna Facilities as required by this Lease, then the waiver of lien rights is void. In addition, Tenant shall not bind, or attempt to bind, the Landlord for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on, or about the Tower and Antenna Facilities. Further, if any lien is filed against the Premises, Building, or Property as a result of acts or omissions of Tenant or Tenant's employees, agents or contractors, Tenant shall remove, discharge, bond or otherwise reasonably secure the lien, within sixty (60) days after Tenant receives written notice that the lien has been filed, and Tenant shall indemnify Landlord in connection with such liens to the extent Landlord incurs any damages, expenses, attorney's fees, or court costs.

18. QUIET ENJOYMENT AND AUTHORITY TO LEASE

18.1 **Quiet Enjoyment and Authority to Lease.** Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has title to the Property and Building free and clear of any liens or mortgages, except those disclosed to Tenant, of record, or which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the Term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

19. ENVIRONMENTAL LAWS [Landlord to re-review the proposed changes and provide comments.]

19.1 **Environmental Law Compliance.** Landlord and Tenant 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. Tenant, its officers, agents, affiliates, contractors and subcontractors and employees, shall, in conducting any activity or business on the Property, Building, or Premises, including environmental response or remedial activities, comply with all environmental laws, including, but not limited to, those regarding the generation, storage, use, transportation and disposal of solid wastes, hazardous materials, toxic chemicals, special wastes or other contaminants, and all laws, regulations and notice requirements pertaining to releases or threatened releases of hazardous materials, toxic chemicals, special wastes or other contaminants into the environment. Tenant its officers, agents, affiliates, contractors and subcontractors and employees shall not introduce, release or use any Hazardous Substance on the Property, Building, or Premises in violation of any applicable law. "HazardousSubstance" means 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 pursuant to any 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. To the extent any such release may exceed quantities or volumes permitted by applicable federal, Texas or local law, Lessee shall immediately notify the Aviation Director, TNRCC, and Local Emergency Planning Committee, as may be required under the federal Emergency Planning and Community Right To Know Act. The Tenant, or any occupant of Leased Premises, shall be responsible for compliance with said Act, in the event of any such release.

19.2 **Environmental Remedy.** Tennant shall remedy any release or threatened release, as described above and, whether resulting from such release or otherwise, remove any hazardous substance, special wastes and any other environmental contamination caused by Tenant on, under or upon the Leased Premises, as may be necessary to protect the public health, safety and environment from actual or potential harm and bring such Premises into compliance with all environmental laws and regulations. Such work shall be performed, at Tenant's sole expense, after Tenant submits to Landlord a written plan for completing such work. Tenant shall have the right to review and inspect all such work at any time, using consultants and representatives of its choice, at Tenant's sole cost and expense. Specific cleanup levels for any environmental remedial work shall be designed to meet all of the applicable environmental laws and regulations, to the satisfaction of the appropriate regulatory agency and Landlord.

19.3 **Indemnification by Tenant.** With the exception of environmental matters not caused by, or reasonably discoverable by, Tenant prior to the commencement of this Lease Agreement, Tenant agrees to defend, indemnify and hold harmless Landlord, its elected and appointed officials, officers, agents and employees from and against any and all administrative and judicial actions and rulings, claims, actions, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments, injunctive relief, injuries to person, property or natural resources, enforcement actions, and reasonable attorney fees that the Landlord may suffer or incur due to the existence of, discovery of, or in connection with the release, threatened release or presence of any Hazardous Substances on the Leased Property, Building, Premises or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that arise from Tenant's actions or inactions, or those of its officers, agents, affiliates, contractors and subcontractors and employees. The indemnification in this section specifically includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 19 shall survive the termination or expiration of this Lease.

19.3 **Discovery of Hazardous Substances.** In the event Tenant becomes aware of any Hazardous Substances on the Property, or any environmental, health or safety condition or matter relating to the Property, that, and Tenant reasonably believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or third party, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Lease upon written notice to Landlord.

19.4 **Right of inspection of Premises.** In addition to any other rights of access herein regarding the Leased Premises, Landlord shall have access thereto in order to inspect and confirm that the Tenant is using same in accordance with all applicable environmental laws and regulations.

Tenant shall, upon the Aviation Director's demand and at Tenant's sole expense, demonstrate to said Director (through such tests, professional inspections, samplings, or other methods as may be reasonably required by said Director) that Tenant has not caused or permitted any release of hazardous substances or contaminants in excess of quantities or volumes permitted by applicable federal, Texas or local law. Any such tests and assessments shall be conducted by qualified independent experts, chosen by Tenant, subject to Landlord's approval. Copies of reports from any such testing or assessments shall be provided to Landlord upon receipt by Tenant. Should Tenant not provide same to Landlord, Landlord may conduct, or cause to be conducted, such tests, inspections, samplings and assessments, and Lessee shall reimburse Landlord for all costs of such actions, no later than thirty (30) days following receipt by Tenant of invoices therefor. Landlord reserves the right to conduct any of the above actions, at the Aviation Director's discretion, when in the opinion of same, additional or supplemental assessments are in Landlord's best interest.

19.5 **Right of inspection of documents**. Tenant, at Landlord's request, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the documents and materials Tenant has prepared pursuant to any environmental law or regulation, which may be retained by Landlord or submitted to any governmental regulatory agency; provided, such documents and materials relate to environmental regulatory compliance and pertain to the Airport or the Leased Premises. If any environmental law or regulation requires Tenant to file any notice or report of a release or threatened release of regulated materials on, under or about the Leased Premises or the Airport, Tenant shall promptly submit such notice or report to the appropriate governmental agency and simultaneously provide a copy of such report or notice to Landlord. In the event that any allegation, claim, demand, action or notice is made against Tenant regarding Tenant's failure or alleged failure to comply with any environmental law or regulation, Tenant immediately shall notify Landlord in writing and provide same with copies of any such written allegations, claims, demands, notices or actions so made.

19.6 **Restrictions on Activity**. The parties to this Lease Agreement, including the tenants or sublessees who may enjoy a future right of occupation through tenant, acknowledge a right and a duty in Landlord, exercised by the Aviation Director, to review safety and potential environmental impacts of any proposed operation, business, maintenance or other activity of the Tenant and its sublessees. To this end, said Director shall have authority to disapprove an activity of the Tenant and/or any sublessee, on the basis of a risk assessment. The parties understand that Airport premises are not intended for use involving refining, processing, manufacturing, maintenance, overhaul, or similar heavy industrial activities entailing use, storage, manufacture, or transport of critical volumes of regulated or hazardous materials or toxic chemicals. For purposes of this Lease Agreement, "critical volumes" are those which, in the discretion and judgment of the Aviation Director, pose or may pose an unreasonable risk to Airport property, its occupants, employees or the traveling public. Discretion and judgment are reserved to the Aviation Director due to the fact that combinations and proximity of such materials are synergistic. The Aviation Director's decision in this regard is final, and said Director shall exercise such review prior to any lease or sublease, from time to time, as he may deem necessary for appropriate risk assessment of existing leases

20. DISPUTE RESOLUTION AND CASUALTY [Landlord to re-review the proposed changes and provide comments.]

20.1 **Dispute Resolution.** Except as otherwise provided in this Lease, any controversy between the Parties arising out of this Lease or breach thereof, is subject to the mediation process described below.

20.2 **Dispute Resolution Process.** A meeting will be held promptly between the Parties to attempt in good faith to negotiate a resolution of the dispute. Tenant will be represented by individual(s) with decision making authority, and in the case of Landlord, the Director or his designee(s) will attend the meeting regarding the dispute. If within twenty (20) days after such meeting the Parties have not succeeded in resolving the dispute, they will, within twenty (20) days thereafter submit the dispute to a mutually acceptable third Party mediator who is acquainted with dispute resolution methods. Landlord and Tenant will participate in good faith in the mediation and in the mediation process. The mediation shall be nonbinding. Neither Party is entitled to seek or recover punitive damages in considering or fixing any award under these proceedings.

20.3 **Cost of Mediation.** The costs of mediation, including any mediator's fees, and costs for the use of the facilities during the meetings, shall be borne equally by the Parties. Each Party's costs and expenses will be borne by the Party incurring them.

20.4. **Casualty.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. In the event that the Property shall be partially damaged by fire, the elements, civil disorder or other casualty, Landlord, in its sole discretion shall determine whether to repair or rebuild the Property.. In the event Landlord elects not to repair or rebuild the Property, and upon notice to Tenant, this Lease shall cease and come to an end and rent shall be apportioned and paid up to date of such damages. The Landlord's obligations to rebuild or repair shall be limited to the extent insurance proceeds available to the Landlord for such rebuilding or repair. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at a mutually agreeable location, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Lease, such temporary facilities will be governed by all of the terms and conditions of this Lease, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Antenna Facilities, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Antenna Facilities is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. . Landlord agrees that the Rent shall be abated until the Property and/or the Premises, so long as Tenant shall promptly complete the restoration of its Premises, are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

21. TREATMENT IN BANKRUPTCY

21.1 **Treatment in Bankruptcy.** The Parties to this Lease hereby expressly agree and acknowledge that it is the intention of both Parties that in the event that during the Term of this Lease Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Code"), this Lease is and shall be treated as an "unexpired lease of nonresidential real

property" for purposes of Section 365 of the Code, 11 U.S.C. § 365, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365.

22. FORCE MAJEURE

22.1 **Force Majeure.** If a Party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrections, war, acts of God or other reasons of like nature, not the fault of the Party delayed in performing work or doing acts, and where reasonable measures by such Party could not have avoided or mitigated the effects of such acts, then such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay. In the event that Tenant invokes this provision because damage to the electronic equipment, Antenna Facilities or Premises has hindered, delayed, or prevented Tenant from using the Premises, Tenant may immediately erect any temporary electronic equipment on the Premises and such temporary antennas at such location as Landlord and Tenant may agree as is necessary to resume service, provided that such temporary facilities do not unreasonably interfere with Landlord's use of the Property and Building, or ability to repair or restore the Premises, Building, or Property. If, in Landlord's sole and absolute discretion, it elects to repair or restore the Premises, Building, and Property, upon completion of such repair or restoration, Tenant is obligated to repair or restore the electronic equipment and Antenna Facilities in accordance with the terms of this document.

23. NOTICE

23.1 **Notices Regarding Lease.** Any communication regarding this Lease shall be in writing and deemed delivered when delivered personally (with receipt acknowledged), or three days after deposit in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service for expedited delivery to be confirmed in writing by such courier, at the addresses listed or to such other address as either party may designate in writing.

<u>If intended for Landlord, to</u>:

City of San Antonio
Office of City Attorney
100 S. Flores Street
City Hall, 3rd Floor
San Antonio, Texas 78205

<u>If intended for Tenant, to:</u>

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: SX0200; Cell Site Name: SA Airport Relo (TX)
Fixed Asset No.: _11674098
575 Morosgo Drive NE
Suite 13-F West Tower
Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
Attn.: Legal Department

Re: Cell Site #: SX0200; Cell Site Name: SA Airport Relo (TX)
Fixed Asset No.: _11674098
208 S. Akard Street
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

23.2 **Operational and Emergency Contacts.** The operational and emergency contacts of the Parties shall initially be as follows. Landlord and Tenant shall each notify the other as the following change from time to time:

Tenant Emergency Services contact:

Network operations center –

If to Landlord, for general operational matters:

Aviation Department: 210-207-7242

Landlord Emergency Services contact:

Operational Control Center: 210-207-3433

24. CITY OF SAN ANTONIO ETHICS CODE

24.1 **Prohibited Financial Transactions by City Personnel.** The San Antonio City Charter and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: (i) a City officer or employee; (ii) his parent, child or spouse; (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (a) 10% or more of the voting stock or shares of the business entity, or (b) 10% or more of the fair market value of the business entity; and (iv) a business entity in which any individual or entity above listed is a (a) subcontractor on a City contract, (b) a partner, or (c) a parent or subsidiary business entity.

24.2 **Tenant Not City Personnel.** Tenant warrants and certifies that Tenant and its officers, employees and agents are neither officers nor employees of the City.

24.3 **Discretionary Contracts Disclosure Statement.** Tenant has tendered to City a Discretionary Contracts Disclosure Statement, in the form prescribed in Exhibit G, in compliance with the Ethics Code and acknowledged that City's reliance on the above warranties and certifications is reasonable.

25. GENERAL PROVISIONS

25.1 **Compliance.** The Parties will comply with all applicable current local, state and federal laws, regulations, ordinances, and orders.

25.2 **No Brokers.** Each Party represents that no broker was involved in this transaction or is entitled to a commission.

25.3 **Legal Authority.** The signatories to this Lease guarantee they have full legal authority to execute this Lease and to bind Party to all of the terms, conditions and obligations in this Lease, which shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

25.4 **No Fixtures.** Tenant's Antenna Facilities will remain the sole property of Tenant whether or not attached to the Tower, Property, Building, or Premises provided that any structural modifications to the Tower (including mounting platforms or supports, but excluding Antenna Facilities), or to the equipment shelters or enclosures (including mounting racks), will become property of the Landlord, at Landlord's option, upon termination or final expiration of this Lease, and Tenant shall leave such on the Premises upon vacating. Tenant agrees that ownership of all structural modifications made to the Tower or equipment shelters or enclosures by, on behalf of, or for Tenant shall transfer to Landlord, and Tenant will transfer title of such facilities to Landlord.

25.5 **Severability.** If any provision of this Lease is held unconstitutional, void or invalid, the remainder of this Lease will remain in effect and the provision so held shall be reformed to reflect the parties' intent as closely as legally possible.

25.6 **Applicable Law. THIS LEASE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

25.7 **Venue.** Any legal action or proceeding brought or maintained, directly or indirectly, resulting from this Lease shall be determined in the City of San Antonio, Bexar County, Texas.

25.8 **No Warranties.** Landlord makes no warranty, expressed or implied, and hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the Premises. Subject to Landlord's obligations herein, Tenant accepts the Premises "As Is."

25.9 **Non-Waiver.** Failure of either Party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but such Party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Tenant to Landlord after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

25.10 **Exhibits Incorporated.** All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.

25.11 **Entire Agreement.** This Lease with attached Exhibits A to G constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and

other agreements. This Lease may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing, executed by both Parties, and by the San Antonio City Council.

25.12 **Execution of Lease in Counterpart Copies.** This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

25.13 **Prior Terminated Agreement.** Landlord and Tenant agree that this Lease replaces the agreement between the City of San Antonio, a Texas Municipal Corporation, and San Antonio MTA, L.P. dated November 6, 1997 referenced by Tenant as Contract #NG 26203 ("Terminated Agreement"). Landlord and Tenant acknowledge that notwithstanding the termination of the Terminated Agreement and the commencement of this Lease, Tenant may continue to make, and the Landlord may continue to receive, rental and other payments pursuant to the Terminated Agreement. In such event, any rental or other payments made pursuant to the Terminated Agreement after its termination shall be applied and credited against any rentals or other payments due under this Lease.

(SIGNATURE PAGE TO FOLLOW)

26. SIGNATURES

IN WITNESS THERETO, the Parties affirm their signatures to this Lease following City Council approval of said Lease.

LANDLORD:

City of San Antonio

By: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to Form:

_____
City Attorney

TENANT:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company
By: AT&T Mobility Corporation, its Manager

By: _____

Printed Name: [Insert name]

Title: [Insert Title]

Date: _____

EXHIBIT A

(See Attached)

Site Plans

The notation of "(N)" as reflected throughout the attached Site Plans reflects the location(s) of Tenant's installation and construction of the wireless communication facility.

EXHIBIT B

APPLICATION TO USE CITY PROPERTY FOR:

___ Tower Lease for Installation of New Tower on City Property
___ Tower Lease for Installation of New Tower on City Building
___ Collocation License for Installation of Antenna Facilities on Existing Tower
___ Collocation License for Installation of Antenna Facilities on Building Tower
___ Antenna License for Installation of Small Cell Devices on City Structure

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Applicant: _____ Date: _____

Business Classification: _____ Site ID No.: _____

Site: _____ Date Needed: _____

Communications Tower Preferred Attachment Height (ft): _____

Alternate Heights: Maximum height above ground (ft): _____
Minimum height above ground (ft): _____

Number of Antennas: _____ Antenna Dimensions: _____

Number of Coaxial/Fiber Cables: _____ Size(s) of Coaxial/Fiber Cable: _____

Equipment Shelter Space Requested:
Inside Shelter:_____ Outside Shelter: _____

FCC License No. /Permit No.: _____

Collocators at this Site:

_____

APPLICANT SHALL PROVIDE THE FOLLOWING IF APPLICABLE:

- Site plan and engineering design and specifications for installation of tower, equipment shelter and antenna facilities, including any photo simulations of installed facilities.
- Copy of the manufacturer's detailed specifications for each proposed antenna, including a photograph or similar illustration and a complete description of all pertinent physical and electrical characteristics.
- Description of the environmental operating requirements (ambient temperature, humidity, etc.) of all facilities to be installed.
- Total electrical loading requirements, including peak and average real and reactive power required, of all facilities to be installed.
- The total heat (BTUs) generated by all facilities to be installed during normal and maximum load conditions.
- The number, size, type and proximity to the facilities of all communications conduit(s) and coaxial cables to be installed, if any required;
- Description of the utility services, if any, required to support the facilities to be installed.

- Description of any known interference restrictions associated with existing or potential collocators.
- All permits and letters of authorization from all affected parties.
- Valid FCC license or other appropriate certificates or permits as required.
- General description of the services to be provided.
- List of the company names(s), contact person(s), and telephone numbers of all subcontractors, if any, Applicant intends to use for installing, maintaining, or operating equipment facilities associated with the Agreement;
- Completed Employee Authorization List (Exhibit F); and
- Description of any security requirements for Applicant's facilities to be installed.

$3,500.00 CHECK OR MONEY ORDER MUST ACCOMPANY THE APPLICATION. THIS PROCESSING FEE IS NON-REFUNDABLE AND NON-TRANSFERABLE.

CITY WILL APPROVE/DENY THIS APPLICATION WITHIN 90 DAYS OF RECEIPT DATE. THIS APPLICATION WILL EXPIRE, 120 DAYS FROM APPLICATION APPROVAL DATE, UNLESS AN AGREEMENT IS EXECUTED BY APPLICANT AND CITY FOR THIS SITE.

Information submitted is subject to the Texas Public Information Act and may be use the City to negotiate an appropriate agreement with Applicant for access to the site for facilities installation.

APPLICANT REPRESENTATIVE: _____

PRINT NAME: _____
TITLE: _____

----------**FOR CITY USE ONLY**----------

RECEIPT DATE: _____ APPLICATION NO.: _____

APPROVED BY: _____

PRINT NAME: _____

TITLE:_____

APPROVAL DATE: _____

EXHIBIT C

ADMINISTRATIVE FEES

Administrative Fees: The following rates may apply:

Application Fee: $3,500
This fee applies to any request for a new application or request to amend an existing contract.

Review of Tenant Requested Changes to Premises: $1,500
City review of any changes, alterations, addition or deletions to the Premises as depicted in Exhibit A.

Structural Analysis: Actual Cost plus $500
City will hire and manage an outside firm to conduct the structural analysis and will bill the customer the actual costs plus a $500 fee.

RF Interference Analysis: Actual Cost plus $500
City will hire and manage an outside firm to conduct radio frequency interference analysis and will bill the customer the actual costs plus a $500 fee.

Security Background Check $75 (or Going Rate)
Tenant will be required to conduct security background checks on authorized employees and contractors that will be providing construction and oversight services throughout the contract term.

Electronic Security Cards $250 (or Going Rate)
This fee applies to the issuance of one electronic security card per authorized personnel necessary to enter certain facilities.

Key Deposits: Rate at Time of Request
Tenant will be required to post a deposit for City keys issued to them. Tenant and its contractors are not allowed to give their keys to anyone else or allow their keys to be used by anyone else at any time. Tenant must inform City within 24 hours if keys are lost or stolen.

Identification Badge: $35 (or Going Rate)
This fee applies to the issuance of one identification card per authorized personnel necessary to work at certain facilities. To receive an identification badge, Tenant must complete the fingerprint-based Criminal History Records Check (CHRC), Security Threat Assessment (STA) background check, SIDA training, Authorizing Signatory training. There are additional charges for replacement badges and failing to return a badge.

EXHIBIT D
Rent Schedule

Note: This rent schedule is for informational purposes only. The contractual language in Section 3 of the Lease is controlling concerning the payment of rent.

Year	Annual Increase	AT&T Annual Rent	Year	Annual Increase	AT&T Monthly Rent
1		$50,000.00	1		$4,166.67
2	3%	$51,500.00	2	3%	$4,291.67
3	3%	$53,045.00	3	3%	$4,420.42
4	3%	$54,636.35	4	3%	$4,553.03
5	3%	$56,275.44	5	3%	$4,689.62
6	3%	$57,963.70	6	3%	$4,830.31
7	3%	$59,702.61	7	3%	$4,975.22
8	3%	$61,493.69	8	3%	$5,124.47
9	3%	$63,338.50	9	3%	$5,278.21
10	3%	$65,238.66	10	3%	$5,436.56
11	3%	$67,195.82	11	3%	$5,599.65
12	3%	$69,211.69	12	3%	$5,767.64
13	3%	$71,288.04	13	3%	$5,940.67
14	3%	$73,426.68	14	3%	$6,118.89
15	3%	$75,629.48	15	3%	$6,302.46
16	3%	$77,898.36	16	3%	$6,491.53
17	3%	$80,235.31	17	3%	$6,686.28
18	3%	$82,642.37	18	3%	$6,886.86
19	3%	$85,121.64	19	3%	$7,093.47
20	3%	$87,675.29	20	3%	$7,306.27
21	3%	$90,305.55	21	3%	$7,525.46
22	3%	$93,014.72	22	3%	$7,751.23
23	3%	$95,805.16	23	3%	$7,983.76
24	3%	$98,679.31	24	3%	$8,223.28
25	3%	$101,639.69	25	3%	$8,469.97
		$1,822,963.06			$151,913.60

EXHIBIT E

AUTHORIZED EMPLOYEES AND CONTRACTORS

Company Name: _____ Date Updated: _____

Please provide the name and contact information for employees and contractors who are authorized to work on behalf of your company.

Employee or Contractor Name	*Name of Company*	*Telephone Number*	*Email Address*	*Work Type*

Authorized Company Agent: _____

Printed Name: _____

EXHIBIT F

AGENT WORK AUTHORIZATION

As the authorized representative for _____ (hereinafter "Company"), I grant City permission to work directly with the employees and contractors below that are authorized agents of Company within the associated scope of work on behalf of Company (hereinafter "Agents"). These Agents and all work conducted by these Agents are subject to all terms and conditions of the Lease between City and Company.

Name: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Office Phone: _____ Cell Phone: _____

Type of work: _____

Authorization end date: _____
(Enter "Until written notice is given" if you would like this authorization to be ongoing)

Name: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Office Phone: _____ Cell Phone: _____

Type of work: _____

Authorization end date: _____
(Enter "Until written notice is given" if you would like this authorization to be ongoing)

EXHIBIT G

DISCRETIONARY CONTRACTS DISCLOSURE STATEMENT