XPR
11/7/13
Item No. 31

AN ORDINANCE 2013-11-07-0762

AUTHORIZING A COLLOCATION LICENSE AGREEMENT FOR THE CITY'S TOWER LOCATED AT 601 SOUTH FRIO STREET, SAN ANTONIO, TEXAS 78237 IN CITY COUNCIL DISTRICT 5 WITH STX WIRELESS OPERATIONS, LLC.

* * * * *

WHEREAS, City Council approves STX Wireless Operations, LLC's application to place telecommunications facilities on the City's Tower located at 601 South Frio, San Antonio, Texas 78237 in accordance with the terms of the Collocation License Agreement; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is authorized to execute the Collocation License Agreement, for the City Tower located at 601 South Frio Street, San Antonio, Texas 78237 attached hereto as **Exhibit I.**

SECTION 2. Funds generated by this Ordinance will be deposited into Fund 74001000, Internal Order 209000000023 and General Ledger 4401170.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 7th day of November, 2013.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Michael D. Bernard, City Attorney

Agenda Item:	**31 (in consent vote: 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, , , 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35)**
Date:	11/07/2013
Time:	11:18:38 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Collocation License Agreement for the City's Tower located at 601 South Frio Street, San Antonio, Texas 78237 with STX Wireless Operations, LLC. [Ben Gorzell, Chief Financial Officer; Hugh Miller, Chief Technology Officer]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

EXHIBIT "I"

COLLOCATION LICENSE FOR INSTALLATION OF ANTENNA FACILITIES ON WIRELESS TOWER ON CITY PROPERTY

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COLLOCATION LICENSE FOR INSTALLATION OF ANTENNA FACILITIES ON WIRELESS TOWER ON CITY PROPERTY

This non-exclusive Collocation License (the "Grantor") is entered into, by and between the City of San Antonio, a Texas Municipal Corporation, ("Grantor" or "City") as licensor, and STX Wireless Operations, LLC, a Delaware limited liability company ("Grantee") as licensee. The Grantor and Grantee, referred to individually as "Party" or collectively as "Parties," enter into this License pursuant to San Antonio City Ordinance No. _____.

WITNESSETH:

WHEREAS, Grantor owns or controls real property located at 601 South Frio Street), San Antonio, Texas 78207 (the "Property"), along with the wireless tower erected at that site (the "Tower"), both of which are described in Exhibit A; and

WHEREAS, Grantee wishes to collocate wireless facilities on the Tower, including the placement of antennas, lines and cables, along with the accompanying electronic equipment cabinets to be installed at or near the foot of the Tower on the Property; and

WHEREAS, as a result, Grantee wishes to lease from Grantor a parcel of land for the placement of Grantee's electronic equipment shelter and seeks a license to collocate wireless facilities on the Tower, including antennas, lines and cables, a non-exclusive easement for utilities, and access for ingress and egress to the Property and Tower (the "Premises" as defined in Exhibit B).

NOW THEREFORE, in consideration of the mutual promises, covenants, undertakings, and other consideration set forth in this License, Grantee and Grantor agree as follows:

1. PERMITTED USE

1.1 **Permitted Use of Premises.** The Premises may be used by Grantee for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance and repair of wireless facilities (such as antennas, microwave dishes, equipment shelters and/or cabinets) but only for the provision of what is commonly known as cellular telephone service (whether or not technically referred to as Personal Communications Service, or some other term) by the use of "personal wireless service facilities" (as such phrase is defined in §704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), partially codified at 47 U.S.C. § 332(c)(7)(C)(2), hereinafter "1996 Act Section 704") and not for any other purpose. Grantee shall, at its expense, comply with all present and future federal, state, 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 License applies to the installation of the wireless facilities depicted in the engineering designs and plans incorporated in Exhibit B. Any network upgrades, replacement of antennas and/or ground equipment (other than repairs made by Grantee in the ordinary course of business), installation of additional antennas and/or radio equipment on an existing array, installation of additional equipment arrays are not permitted uses, nor increase in the footprint of ground space. These activities will require an amendment to this License, and said amendment will be subject to a market based increase in rental fees prevailing at the time of the amendment.

1.2 **Application Process.** Prior to the execution of this License, Grantee shall submit to Grantor a written application in the form required by Exhibit C (the "Application") for the proposed installation accompanied with the appropriate fees required by Exhibit D. Grantor, in its sole discretion will determine whether the Property and Tower are suitable for the proposed collocation. Grantor shall review the Application to ensure compliance with local laws and policies. The proposed height, specifications, and collocation on the Tower must be in compliance with Section 35-385 of the City of San Antonio Unified Development Code ("UDC § 35-385").

1.3 **Collocation on Existing Towers.** As required by UDC § 35-385, wireless towers installed on City property must support a minimum of two collocators, and Grantor shall contract with third-parties to collocate on those wireless towers. In the event a third-party provider wishes to extend the height of a wireless tower in order to accommodate collocation, Grantor will accommodate the request provided (i) the upgrade does not result in any interference with the equipment of any other party, (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.

1.4 **Fencing and Landscaping.** As required by UDC § 35-385, Grantee must incorporate fencing and landscaping components into its engineering design plans.

1.5 **Building Permit Required.** Prior to the installation of any wireless facilities and construction of an equipment shelter, Grantee must apply for a building permit in compliance with UDC § 35-385. No improvement, construction, installation or alteration on the Property shall be commenced until a building permit is properly issued.

1.6 **Camouflage or Stealth Towers.** Collocation on a camouflage or stealth wireless tower, such as a clock tower, flagpole, or artificial tree shall be subject to the same regulations of this License and the requirements of UDC § 35-385.

2. TERM

2.1 **Initial Term.** The initial term of the License shall be for ten years commencing on the effective date of the License and ending at midnight on the last day of the initial term ("Initial Term"). The effective date of the License shall be the date on which both Parties execute the License following approval of the License by the City Council (the "Effective Date").

2.2 **Renewal Terms.** Grantee shall have the right to extend this License for two additional five-year terms (each a "Renewal Term") subject to approval by Grantor. Each Renewal Term shall be based on the same terms and conditions as set forth herein, including the 4% annual increases but subject to the revised rental fees and administrative fees consistent with the prevailing market conditions at the time of the renewal and the costs incurred by the City. Grantee may request renewal of the License by sending 90 days notice to Grantor prior to expiration of the Initial Term or any Renewal Term.

2.3 **Hold Over License.** Any holding over by Grantee after the expiration of the Initial Term and any Renewal Term, with the consent of the City, shall be construed to be a month-to-month license on the terms and conditions herein, except that the Annual Payment shall be twice the amount set forth, prorated and paid monthly in advance.

3. RENT AND ADMINISTRATIVE FEES

3.1 **Rent.** Grantee shall pay Grantor, as rent, $21,600.00 per year for the first year of the Initial Term of this License, and starting on the calendar year following the Effective Date, and each calendar year thereafter during the Initial Term, said rent will be increased and compounding by 4% per year (collectively "Rent"). Rent is subject to revised rental fees and administrative fees consistent with the prevailing market conditions at the time of the renewal and the costs incurred by the City

3.2 **Timing of Annual Rent Payments.** The annual Rent for the first year will be due on the Effective Date and will be the prorated amount for the days remaining in the current year following the Effective Date. Thereafter, the annual Rent shall be due in full on February 1st of each year. Annual Rent payments will be paid consistent with the schedule included in Exhibit E.

3.3 **Late Payment Interest.** Any Rent not paid within 10 days of the due date shall be assessed a 5% late fee and shall bear interest at 2% per month.

3.4 **Administrative Fees.** In addition to the Rent, the Grantee will be responsible for paying administrative fees, as applicable, associated with the operation and maintenance of the wireless tower and supporting equipment, as provided in Exhibit D. Grantee reserves the right to update the schedule of administrative fees for contract and oversight administration.

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

City of San Antonio
Information Technology Services Department
Attn: _Tower Lease Section
P.O. Box 839966
San Antonio, TX 78283-3966

4. INTERFERENCE, TESTING AND RESERVATION

4.1 **Interference with Use of Property Prohibited.** Grantee shall not use the Premises in any way which interferes with the use of any portion of the Property by Grantor and any of its City departments and agencies, or by lessees or licensees of Grantor with rights in any portion of the Property prior or subsequent to execution of this License. Similarly, Grantor shall not use, nor shall Grantor permit its lessees, licensees, grantees, employees, invitees or agents to use, any portion of the Property in any way which materially interferes with the operations of Grantee. Such interference shall be deemed a material breach by the interfering Party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the Parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured Party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this License immediately upon written notice.

4.2 **Radio Frequency Emission and Interference.** Both Grantor and Grantee shall be allowed to conduct radio frequency emission and interference studies to determine whether Grantee's use of the Antenna Facilities (as defined below) will interfere with Grantor's or Grantor's lessee's or Licensee's current or proposed use of the Premises or Property. In the event that such a study indicates that Grantee's use will potentially interfere with Grantor's or its lessee's or licensees current or proposed use of the Premises or Property, Grantee shall immediately correct or disconnect services to eliminate current operational interference and have 90 days to remedy any interference to Grantor's satisfaction. If the problem is not so remedied within 90 days, then Grantor may require Grantee, at Grantee's full expense, to relocate Grantee's Antenna Facilities so as to remove or minimize the interference, to the extent Grantor deems necessary. Grantor may permit Grantee to place a temporary Antenna Facility (Cell on Wheels or similar installation) on Grantor's Property or at some other location acceptable to Grantee and Grantor, during relocation of Premises. In the event Grantee's Antenna Facilities interfere with Grantor's emergency communications radio system, Grantee will be required to cease the interference immediately upon receiving notice from Grantor. In the event such interference cannot be remedied within 24 hours, Grantee or Grantor will shut down the offending parities Antenna Facilities and remove the facilities if necessary at Grantee's expense.

4.3 **Radio Frequency Compliance Tests.** On an annual basis, Grantor may, at Grantee's expense, perform tests as necessary to determine compliance of the Antenna Facilities and equipment located on the Premises with Federal radio frequency exposure limit rules, currently set forth at 47 C.F.R. Section 1.1310, or subsequent Federal rules as from time to time in effect.

4.4 **Initial Radio Frequency Compliance Testing.** Grantee shall conduct an initial test for compliance with Federal radio frequency exposure limit rules prior to placing Grantee's equipment on the Premises into commercial operation, and Grantee 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 work necessary to bring it into compliance) until subsequent tests again show compliance with such rules.

4.5 **Reservation of Rights.** Grantor 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, subject to Section 4.1.

5. GRANTEE IMPROVEMENTS

5.1 **Grantee Improvements.** Grantee shall have the right, at its expense, to collocate 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 and/or cabinets and related cables and utility lines and a location based system (the "Equipment Shelter" when referenced individually), 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 both Exhibit A and Exhibit B. Exhibit A shall contain a survey and legal description of the Property and Tower. Exhibit B shall contain a site plan which includes all buildings, structures, Tower, equipment cabinets, utility boxes, fences, generators, fuel tanks, backup battery cabinets, and parking; elevation drawings for the Tower, and equipment cabinets; fence detail; and specifications for all exterior colors, paint, other finishes and landscaping. The engineering specifications for Antenna Facilities subject to collocations shall specify the height of the collocation and designate the exact location, size, and type of Antenna Facilities to be collocated on the Tower. There shall be a fifteen feet clearance between antenna arrays, unless a closer clearance is technically feasible and agreed to by Grantor. Consistent with UDC § 35-385, the Tower shall consist of a steel lattice structure, monopole, or other similar self-supporting structure, including camouflage or stealth tower applications; and must be spaced from any residential structures, at a minimum equal to 115% of the height of the Tower. UDC § 35-385 limits unmanned equipment shelters to no more than 750 square feet of gross floor area and no more than 12 feet in height. Grantee may include photo simulations of what the Property and Tower will look like upon construction of the Equipment Shelter and collocation of Antenna Facilities and incorporate them in Exhibit B.

5.2. **Tower Requirements.** Grantee shall abide by specific requirements related to the collocation of Antenna Facilities on or about the Tower, including, but not limited to following:

5.2.1 the maximum height of all towers, or monopoles, shall not exceed 199 feet;

5.2.2 the structure shall not be used to support signs other than those required by governmental agencies for aircraft warning or other safety purposes;

5.2.3 the structure shall be designed to accommodate at least two separate collocators;

5.2.4 unless otherwise governed by State or Federal requirements, the structure shall be a galvanized finish;

5.2.5 the design must include a landscaping plan consistent with the requirements of the particular zoning district where the structure will be installed;

5.2.6 all structures shall meet the minimum and structural load standards specified in the City of San Antonio building code;

5.2.7 all structures will meet the requirements of Chapter 37 of the San Antonio City Code and Section 35-385 of the San Antonio Unified Development Code;

5.2.8 any structure which was originally used, but is no longer used for telecommunication purposes for a continuous period of six months may be removed at Grantee's expense;

5.2.9 in historically sensitive areas, the collocation is subject to review by the City of San Antonio Historical Preservation Office;

5.2.10 the installation must comply with the City of San Antonio's regulations for the Airport Overlay Zone, River Overlay District, and Edward Aquifer Recharge Zone District;

5.2.11 within City Parks, the installation is subject to review by the San Antonio Parks Board;

5.2.12 additional requirements, procedures or covenants from home owner's associations may apply to the Property; and

5.2.13 failure to complete installation within six months of execution of this License may forfeit the right to collocation.

The Grantor may waive certain technical requirements as appropriate and necessary to accommodate the collocation of Antenna Facilities on or about the Tower and Property.

5.3 **Approval of Plans.** Prior to commencing construction, Grantee shall use the form attached as Exhibit C to submit plans and specifications for all improvements and installations to Grantor for Grantor'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 Grantor and all necessary permits have been properly issued, which such approval shall not be unreasonably withheld.

6. CONSTRUCTION

6.1 **No Construction Liens.** Grantee 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 or Property as a result of acts or omissions of Grantee or Grantee's employees, agents or contractors, Grantee shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Grantor within 30 days after Grantee receives written notice that the lien has been filed.

6.2 **No Interference with Construction.** Grantor acknowledges that except for Grantee's non-compliance with this License it shall not interfere with Grantee's construction and installation activities within the Premises including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities.

6.3 **Backup Generation.** Consistent with the current use of the Property, the Parties will negotiate whether the Grantee shall install a permanent generator or battery powered backup power supply on the Premises.

6.4 **Equipment Shelters.** Grantee will be required to install the Equipment Shelter at or near the foot of the Tower in compliance with UDC § 35-385 to house Grantee's appropriate Antenna Facilities. Grantee may not install lead acid batteries in the Equipment Shelter, and will not be required to share its Equipment Shelter with other parties that may collocate on the Tower. Access to the Equipment Shelter will be via locked gates and/or doors.

6.5 **Relocation of Utility Facilities.** If construction of the Equipment Shelter and collocation of Antenna Facilities results in the necessary relocation of any utility facilities of third-parties on the Property, City of San Antonio rights-of-way, or on private easements, Grantee shall be responsible for paying the cost for the relocation of utility facilities as appropriate to complete construction and installation activities.

7. UTILITY FACILITIES

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

8. MAINTENACE

8.1 **Maintenance of Antenna Facilities.** Grantee shall, at Grantee's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property and Tower in commercially reasonable condition and repair during the Term of this License, normal wear and tear and casualty excepted. Grantee 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 License to the extent that such changes do not differ from improvements depicted on Exhibit B. However, the installation of any additional Antenna Facilities without prior written notice to Grantor shall result in Grantee being liable under this License for an additional monthly charge of $3,000.00 until such time that Grantor approves the addition. The monthly charge shall be deemed to commence on the Effective Date of the License, unless Grantee can demonstrate by convincing evidence that installation occurred later.

8.2 **Signage.** Grantee 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 30 days' notice to remove, Grantor at any time may enter the Premises and undertake any activities necessary to abate or remove graffiti located therein. Grantee shall reimburse Grantor all costs incurred by Grantor in connection with such abatement or removal within 30 days of Grantor's presenting Grantee with a statement of such costs.

8.3 **Facilities Management.** Grantee shall, at its own expense, maintain the Premises and all of Grantee's improvements, equipment and other personal property on the Premises in good working order, condition and repair, normal wear and tear and casualty excepted. Grantee 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 Grantee's lack of maintenance creates a public hazard or endangers the health or safety of Grantor's employees, agents or licensees accessing the Property or Premises, the Grantee will address the situation within 10 days of receiving notice from Grantor, unless a longer

timeframe is mutually agreed to by the Parties. Failure to comply will serve as grounds for termination of this License.

8.4 **Material Improvements and Alterations.** Grantee shall not construct any material improvements or structures not otherwise allowed under the terms of this License, nor shall Grantee make any material alterations other than repairs in the ordinary course of business. Any material improvements and alterations over and above the plans provided in Exhibit B, including but not limited to network upgrades except as allowed in Sections 1.1 and 8.1, shall be considered impermissible uses of the Premises and will require an amendment to this License and renegotiation of applicable Rent.

9. ACCESS

9.1 **Access to Property and Premises.** As partial consideration for Rent paid under this License, Grantor hereby grants Grantee non-exclusive access to the Property and Premises 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 Initial Term of this License and any Renewal Terms. Grantee shall have 24-hours-a-day, 7-days-a-week access to the Premises ("Access") at all times during the Initial Term of this License and any Renewal Term, consistent with the regulations applicable to the Premises. Grantee shall use the Premises and any City facilities to which it is granted access under this License with the same degree of care as it accords its own property, and shall in no way interfere with the operations of the Property, Premises, or any City department or agency. Grantor and its agents shall have the right to enter the Premises at reasonable times to examine and inspect the Tower, equipment and structures and the Premises; however, Grantor, its employees or agents shall not impede or deny Access to Grantee, its employees, agents, or licensees. Grantor shall have the right to enter and inspect the Premises, and upon notifying Grantee, the right to inspect the Grantee's equipment shelter. In the event that Grantor must limit or prohibit access, or otherwise require the shutting down of Grantee's services, Grantor shall permit Grantee to place a temporary Antenna Facility (Cell on Wheels or similar installation) on Grantor's Property or at some other location acceptable to Grantee, at Grantor's costs.

9.2 **Photo Badges Required.** While on the Premises, Grantee's employees and contractors must wear a suitable photo ID badge, to be provided by the Grantee, which includes a nominal 1½" square personal photo, unique logo and labeling that identifies the Grantee and the employee or contractor by name and a telephone number where confirmation of employment may be readily confirmed.

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

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

9.5 **List of Authorized Employees and Contractors.** Prior to Grantee commencing construction on the Property, Grantee shall provide Grantor 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 F and G. The authorized employees and contractors will be subject to security background checks and will be issued credentials to enter the Property and Premises. Authorized employees and contractors of the Grantee must comply with all the security regulations applicable to the Property and Premises. Grantee shall maintain the list of authorized employees and contractors current and provide notice to Grantor 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 Grantee employees, contractors, and subcontractors with access to the Property and Premises will be subject to security background checks, and Grantee shall incur the fee indicated in Exhibit D for each background check performed. Grantor reserves the right to exclude any representative, employee, agent, contractor, and/or subcontractor of Grantee from the Premises if deemed necessary for proper security reasons.

10. TERMINATION

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

10.1.1 upon 30 days' written notice by Grantor to Grantee if Grantee fails to cure a default for payment of amounts due under this License within that 30 day period;

10.1.2 upon 12 months written notice by Grantee if despite diligent effort by Grantee, Grantee 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;

10.1.3 upon 90 days' written notice by Grantee if destruction or damage to the Antenna Facilities substantially and adversely affects their effective use; or

10.1.4 at the time title, or the right to control or to occupy the 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 Grantee's use. Grantor and Grantee shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the 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.

10.1.5 upon 30 days' written notice by Grantor to Grantee if this License and/or Grantee's operations there under impair, increase the cost of or prevent financing (such as the issuance of bonds or revenue bonds, including bonds whose income is generally exempt from Federal income tax under the U.S. Internal Revenue Code), by Grantor or any municipal utility of which the Property is a part.

10.1.6 upon 180 days' written notice by Grantor to Grantee if the San Antonio City Council passes an ordinance calling for the Property and/or Premises to be sold,

transferred, developed, redeveloped, renovated, or upgraded in such a way that the use of the Property and/or Premises is no longer compatible with Antenna Facilities collocation.

10.1.7 upon 180 days 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.

10.2 **Effect of Termination or Expiration of License.** Upon the termination or expiration of this License, the Antenna Facilities shall be removed as prescribed in subsection 11.2.

11. RELOCATION AND REMOVAL OF TOWER

11.1 **Relocation of Facilities.** In the event the Property is sold, transferred, developed, redeveloped, renovated, upgraded, or put to another use by Grantor as directed by the San Antonio City Council, the Grantee will be required to remove the Antenna Facilities at Grantee's expense for the purpose of relocation or disposal. If appropriate, Grantor will provide another tower location for the relocation of the Antenna Facilities, or for the installation of new improvements. Grantor will provide Grantee at least 180 days notice of the need for removal and relocation, and Grantee shall fully cooperate in such removal and relocation. Grantor shall permit Grantee to place a temporary Antenna Facility (Cell on Wheels or similar installation) on Grantor's Property or at some other location acceptable to Grantee until such relocation is complete. If relocation is not possible, but the alteration to the Property will accommodate the installation of new facilities, the License will terminate and the parties may negotiate a new License or lease agreement appropriate for the new installation. 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 60 days after the termination or expiration of this License, unless Grantor requests otherwise, Grantee at its expense shall restore and return the Premises to Grantor in the same condition as they were prior to this License, normal wear and tear and casualty excepted. If Grantor requests that Grantee not remove all or a portion of any improvements or fixtures (excluding Antenna Facilities), title to the affected improvements and fixtures shall thereupon transfer to Grantor, and thereafter the improvements shall be the sole and entire property of Grantor, and Grantee shall be relieved of its duty to otherwise remove same. Any personal property, equipment or other improvements which are not timely removed as prescribed herein shall become the property of Grantor, at Grantor's option. Notwithstanding any other provision of this License, Grantee's obligation to pay Rent hereunder shall continue until Grantee has complied with this subsection 11.2. If Grantee fails to remove the Antenna Facilities in a timely manner, Grantor at its option may cash the performance bond or letter of credit required under Section 15 in order to remove said facilities and restore the Premises to its original condition.

12. DEFAULT AND RIGHT TO CURE

12.1 **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 License on written notice pursuant to Section 24 hereof, to take effect immediately, if the other Party (i) fails to perform any material covenant

for a period of 30 days after receipt of written notice thereof to cure or (ii) commits a material breach of this License and fails to diligently pursue such cure to its completion after 60 days' written notice to the defaulting Party.

12.2 **Grantee Default.** Grantee shall be in default if it (i) fails to make any payment of Rent or other sums to Grantor when due, and does not cure such default within 30 days after receipt of written notice from Grantor of such failure; (ii) abandons or vacates the Premises without payment of Rent; (iii) is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or (iv) if Grantee becomes insolvent.

12.3 **Grantor Remedies.** If suit shall be brought by Grantor for recovery or possession of the Premises, removal of Grantee's equipment, for the recovery of any Rent or any other amount due under the provisions of this License, or because of the breach of any other covenant, the Grantee shall pay to the Grantor all expenses incurred therefore, including reasonable attorney fees. In addition, in the event of any default of this License by Grantee, the Grantor may at any time, after notice given as set forth in Section 24 herein, cure the default for the account of and at the expense of the Grantee. If Grantor is compelled to pay or elects 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 Grantor's rights under this License, the sums so paid by Grantor, with all interest, costs and damages shall be deemed to be Rent otherwise due and shall be added to the Rent and shall be due from the Grantee to Grantor on the first day of the month following the incurring of the respective expenses.

13. TAXES

13.1 **Right to Contest Taxes.** Grantee shall pay any personal property tax, real property tax, state franchise tax, or any other tax which is directly or indirectly attributable to the License, presence or installation of the Grantee's Antenna Facilities, or Grantee's presence or operations on the Premises. Grantor hereby grants to Grantee the right (with written notice to Grantor complying with Section 24 herein) to challenge, whether in a court, administrative proceeding, or other venue, on behalf of Grantor and/or Grantee, any personal property tax, real property tax that may affect Grantee. If Grantor receives notice of any personal property or real property tax assessment against the Grantor, which may affect Grantee and is directly or indirectly attributable to Grantee's installation, Grantor shall provide timely notice of the assessment to Grantee sufficient to allow Grantee to consent to or challenge such assessment; such notice must comply with Section 24 herein.

14. INSURANCE

14.1 **Endorsement Copies.** Prior to the commencement of any work under this License, Grantee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City of San Antonio Information Technology Services Department ("ITSD"), which shall be clearly labeled "Frio Street Telecommunications Tower/*Cricket*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The Grantor will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized

representative to the Grantor. The Grantor shall have no duty to pay or perform under this License until such certificate and endorsements have been received and approved by ITSD. No officer or employee, other than the City of San Antonio Risk Manager, shall have authority to waive this requirement.

14.2 **Right to Review Coverage.** The Grantor reserves the right to review the insurance requirements of this section during the effective period of this License and any extension or renewal hereof and to modify insurance coverages and their limits 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 License. In no instance will Grantor allow modification whereupon Grantor may incur increased risk.

14.3 **Liability Limits.** Grantee's financial integrity is of interest to the Grantor; therefore, Grantee shall obtain and maintain in full force and effect for the duration of this License, and any extension hereof, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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 not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Broad Form 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 Grantee, including improvements and betterments to the Tower and Antenna Facilities.	Coverage for a minimum of 100% of the replacement cost of Grantee's improvements

14.4 **Copies of Insurance Policies, Declaration Page and Endorsements.** The Grantor shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the Grantor, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Grantee shall be required to comply with any such requests and shall submit a copy of the replacement

certificate of insurance to Grantor within 10 days of the requested change. Grantee shall pay any costs incurred resulting from said changes.

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

- Name the City of San Antonio, its officers, officials, employees, volunteers, and elected representatives as an additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the Grantor, with the exception of the workers' compensation and professional liability policies;

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

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

- Provide 30 calendar days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 calendar days advance notice for nonpayment of premium.

14.6 **Loss of Insurance Coverage.** Within ten calendar days of a suspension, cancellation or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee'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 License.

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

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

14.9 **Grantee's Insurance Primary.** Grantee's 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 operations under this License.

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

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

14.12 **Waiver of Claims against City of San Antonio.** Grantee waives all claims against the City of San Antonio for injury to persons or property on or about the Property and Premises not caused by Grantor's negligence.

15. PERFORMANCE BOND

15.1 **Construction and Removal Bond.** Grantee shall, prior to commencing any construction on the Premises, post a performance bond in form and with a surety company reasonably acceptable to Grantor, 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. Grantee shall following completion of construction post a removal bond (or at Grantee's option, a letter of credit) from a surety or bank reasonably acceptable to Grantee, and in an amount of $50,000, to assure that the funds will be available at the termination of the License for removal of the Antenna Facilities, and to pay any outstanding rent during the Term and any Renewal Term of this License.

15.2 **Survival Clause.** This Section 15 shall survive the expiration of this License.

16. INDEMNIFICATION

16.1 The Grantee 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 or indirectly arising out of, resulting from or related to Grantee's activities under this License, including any acts or omissions of the Grantee, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of the Grantee, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this License, 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 Grantee of any of its obligations.

16.2 THE INDEMNITY PROVIDED FOR IN THE FOREGOING PARAGRAPHS SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. HOWEVER, IN THE EVENT GRANTEE 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.

16.3 THE GRANTEE SHALL ADVISE THE CITY IN WRITING WITHIN 24 HOURS OF ANY CLAIM OR DEMAND AGAINST THE CITY RELATED TO OR ARISING OUT OF THE GRANTEE'S ACTIVITIES UNDER THIS LICENSE AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE GRANTEE'S COST TO THE EXTENT REQUIRED UNDER THIS LICENSE.

16.4 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.

17. ASSIGNMENT

17.1 **Grantee's Assignment Rights.** Grantee shall have the right to assign or otherwise transfer this License 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, (ii) is a parent, subsidiary or affiliate of Grantee, is merged or consolidated with Grantee or purchases more than 50% of either an ownership interest in Grantee or the assets of Grantee in the "Metropolitan Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the Property is located, and (iii) which has a credit rating from one of the three largest national credit rating agencies greater than or equal to than that of Grantee at the time of the assignment. Upon notice to Grantor of such assignment, Grantee shall be relieved of all liabilities and obligations hereunder and Grantor shall look solely to the assignee for performance under this License and all obligations hereunder; provided assignee accepts this License in full, without amendments or changes thereto, steps into the shoes of Grantee, including being responsible and liable for events or defaults which occurred prior to the assignment, and cures any outstanding defaults. In the event that assignee wishes to accept the License subject to amendments, the Grantor will be notified and the proposed assignment will be subject to Grantor's written approval. Grantor may still hold Grantee liable under this License if the assignment is to an assignee which has a credit rating from one of the largest three national credit rating agencies lower than that of the Grantee at the time of assignment.

17.2 **Assignment to Mortgagee.** Additionally, Grantee may, upon notice to Grantor, mortgage or grant a security interest in this License and the Antenna Facilities, and may assign this License and the Antenna Facilities to any bona fide mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this License. In such event, Grantor shall execute such consent to financing as may reasonably be required by Mortgagees. Grantor agrees to notify Grantee and Grantee's Mortgagees simultaneously of any default by Grantee and to give Mortgagees the same right to cure any default as Grantee or to remove any property of Grantee or Mortgagees located on the Premises, except that the cure period for any Mortgagees shall not be less than 30 days after receipt of the default notice, as provided in Section 24 of this License. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Grantee. Failure by Grantor to give Mortgagees such notice shall not diminish Grantor's rights against Grantee, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Grantee or Mortgagees located on the Premises as provided in Section 18 of this License.

17.3 **Effect of Bankruptcy.** Any person or entity to which this License 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 Grantee arising under this License both before and after the date of such assignment. Any such assignee shall upon demand execute

and deliver to Grantor 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 Grantor, shall be the exclusive property of Grantor, and shall not constitute property of the Grantee or of the estate of Grantee within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Grantor's property under the preceding sentence not paid or delivered to Grantor shall be held in trust for the benefit of Grantor and be promptly paid to Grantor.

17.4 **Grantor's Assignment Rights.** Grantor may assign or transfer this License, and, upon written notice to Grantee 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 Grantor in said License, including the obligation to respect Grantee's rights to non-disturbance and quiet enjoyment of the Premises during the remainder of the Term hereof.

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

18. WAIVER OF LIENS

18.1 **Waiver of Liens.** Neither Party shall have the right to create or impose any extrajudicial liens or any other encumbrance on the Property, Premises, Antenna Facilities, and any other property owned by the other Party. Specifically, Grantor 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 License, whether or not the same is deemed real or personal property under applicable laws, and Grantor gives Grantee 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 License, in Grantee's and/or Mortgagee's sole discretion and without Grantor's consent. Should Grantee fail to remove its Antenna Facilities as required by this License, then the waiver of lien rights is void. In addition, Grantee shall not bind, or attempt to bind, the Grantor for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on, or about the Antenna Facilities. Further, Grantee shall remove, within 30 days after filing, by payment or performance bond, any mechanic's or materialman's liens filed against the Antenna Facilities and shall indemnify Grantor in connection with such liens to the extent Grantor incurs any damages, expenses, attorney's fees, or court costs.

19. QUITE ENJOYMENT AND AUTHORITY TO LICENSE

19.1 **Quiet Enjoyment and Authority to License.** Grantor covenants and warrants to Grantee that (i) Grantor has full right, power and authority to execute this License; (ii) it has title to the Property free and clear of any liens or mortgages, except those disclosed to Grantee, of record, or which will not interfere with Grantee's rights to or use of the Premises; or alternatively, the Property qualifies as municipal right-of-way on which Grantee is entitled to install wireless communications facilities under this License pursuant to UDC § 35-385; and (iii) execution and performance of this License will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Grantor. Grantor covenants that at all times during the Term of this License, Grantee's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Grantee is not in default beyond any applicable grace or cure period.

20. ENVIRONMENTAL LAWS

20.1 **Environmental Laws.** Grantee, its officers, agents, affiliates, contractors and subcontractors and employees, shall not introduce or use any Hazardous Substance on the Property or Premises in violation of any applicable law. "Hazardous substance" 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. Grantee agrees to defend, indemnify and hold harmless Grantor from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the Grantor may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that relate to or arise from Grantee's activities, 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. Grantor represents that it has provided Grantee with copies of all environmental reports and information which Grantor has performed or received related to the Property as listed on Exhibit J (collectively, the "Environmental Reports"). Grantee shall not be liable for any environmental conditions that may be described in the Environmental Reports or that otherwise may exist at the Property prior to the commencement of this License, or which may be found to be existing during or after the Term of this License which are not caused by Grantee, its employees, agents and contractors. This Section 20 shall survive the termination or expiration of this License.

21. DISPUTE RESOLUTION

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

21.2 **Dispute Resolution Process.** A meeting will be held promptly between the Parties to attempt in good faith to negotiate a resolution of the dispute. Grantee will be represented by individual(s) with decision making authority, and in the case Grantor, the Director or his designee(s) will attend the meeting regarding the dispute. If within 20 days after such meeting the Parties have not succeeded in resolving the dispute, they will, within 20 days thereafter submit the dispute to a mutually acceptable third Party mediator who is acquainted with dispute resolution methods. Grantor and Grantee 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.

21.3 **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 born equally by the Parties. Each Party's costs and expenses will be born by the Party incurring them.

22. TREATMENT IN BANKRUPTCY

22.1 **Treatment in Bankruptcy.** The Parties to this License hereby expressly agree and acknowledge that it is the intention of both Parties that in the event that during the Term of this License Grantee 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 License is and shall be treated as an "unexpired License 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.

23. FORCE MAJEURE

23.1 **Force Majeure.** If a Party is delayed or hindered in, or prevented from the performance required under this License (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 Grantee invokes this provision because damage to the Electronic Equipment, Antenna Facilities or Premises has hindered, delayed, or prevented Grantee from using the Premises, Grantee may immediately erect any temporary Electronic Equipment on the Premises and such temporary antennas at such location as Grantor and Grantee may agree as is necessary to resume service, provided that such temporary facilities do not unreasonably interfere with Grantor's use of the Property or ability to repair or restore the Premises or Property. If, in Grantor's sole and absolute discretion, it elects to repair or restore the Premises and Property, upon completion of such repair or restoration, Grantee is obligated to repair or restore the Electronic Equipment and Antenna Facilities in accordance with the terms of this document.

24. NOTICE

24.1 **Notices Regarding License.** Any communication regarding this License 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.

If intended for Grantor, to: City of San Antonio
Information Technology Services Department
P.O. Box 839966
San Antonio, TX 78283-3966

If intended for Grantee, to: STX Wireless Operations, LLC
c/o Cricket Communications, Inc.

Attn: Property Management
5887 Copley Drive
San Diego, CA 92111

With a copy to:
STX Wireless Operations, LLC
c/o Cricket Communications, Inc.
Attn: Legal Department-Real Estate Counsel
5887 Copley Drive
San Diego, CA 92111

24.2 **Operational and Emergency Contacts.** Notice for all operational and emergency contacts shall initially be as follows. Grantor and Grantee shall each notify the other as the following change from time to time:

If to Grantee, for general operational matters:	Grantee Emergency Services contact:
Property Management zenta@cricketcommunications.com 866-688-6058 NOC Technicians NOCTech@cricketcommunications.com	Network operations center – 866-688-6058

If to Grantor, for general operational matters:	Grantor Emergency Services contact:
City of San Antonio Information Technology Services Department Tower Lease Section (210) 207-7022	City of San Antonio Information Technology Services Department Customer Service (210) 207-8888

25. CITY OF SAN ANTONIO ETHICS CODE

25.1 **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.

25.2 **Grantee Not City Personnel.** Grantee warrants and certifies that Grantee and its officers, employees and agents working on this License are neither officers nor employees of the City.

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

26. GENERAL PROVISIONS

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

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

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

26.4 **No Fixtures.** Grantee's Antenna Facilities will remain the sole property of Grantee whether or not attached to the Premises provided that any Equipment Shelter or structural modifications to the Tower (including mounting platforms or supports, but excluding Antenna Facilities), or to the Equipment Shelter (including mounting racks), will become property of the Grantor, at Grantor's option, upon termination or final expiration of this License, and Grantee shall leave such on the Premises upon vacating. Grantee agrees that ownership of all structural modifications made to the Tower or Equipment Shelters by, on behalf of, or for Grantee shall transfer to Grantor, and Grantee will transfer title of such facilities to Grantor.

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

26.6 **Applicable Law.** THIS LICENSE 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.

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

26.8 **No Warranties.** Grantor makes no warranty, expressed or implied, and hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the Premises. Except as may be expressly provided in this License, Grantee accepts the Premises "As Is."

26.9 **Non-Waiver.** Failure of Grantor to insist on strict performance of any of the conditions, covenants, terms or provisions of this License or to exercise any of its rights hereunder shall not waive such rights, but Grantor 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 Grantee to Grantor after a breach of this License shall not be deemed a waiver of such breach unless expressly set forth in writing.

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

26.11 **Entire Agreement.** This License with attached Exhibits A to I constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and other agreements. This License 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 License must be in writing, executed by both Parties, and by the San Antonio City Council.

26.12 **Execution of License in Counterpart Copies.** This License 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.

27. SIGNATURES

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

GRANTOR:

City of San Antonio, a Texas municipal corporation

Signature: _____

Printed Name: _____

Title: _____

Date: _____

GRANTEE:

STX Wireless Operations, LLC, a Delaware limited liability company

By: Cricket Communications, Inc., a Delaware corporation

Its Manager

Signature: _____

Printed Name: Robert Strickland

Title: CTO

Date: 10/4/13

Approved as to Form:

_____

City Attorney

EXHIBIT A

Description of Property and Existing Tower

Legal Description of Parcel Owned by Grantor and Diagram of Existing Tower Installation
Lot 38, Block 90, New City Block 268, Vista Verde – S.A.P.D. Central within Corporate City Limits of San Antonio, Bexar County, Texas as recorded in Volume 9533, Page 223 Deed and Plat Records, Bexar County, Texas

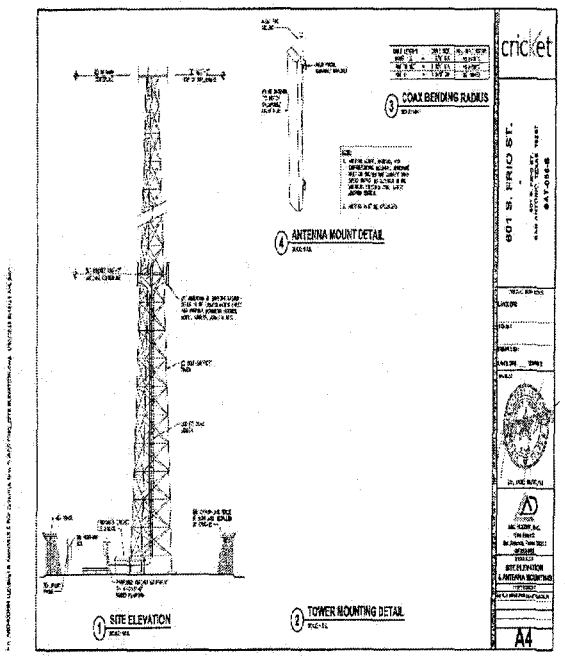

EXHIBIT B

The Legal Description of the Premises Subject to License by Grantee and the Location of the Premises within the Property

A 12' x 15' lease area, the Premise, located at 601 S. Frio being a part of Lot 38, Block 90, New City Block 268, Vista Verde – S.A.P.D. Central within Corporate City Limits of San Antonio, Bexar County, Texas as recorded in Volume 9533, Page 223 Deed and Plat Records, Bexar County, Texas

Site Plans - Engineering Design of Antenna Facilities Subject to Collocation

Applicable Photo Simulation of the Appearance of the Premises and Property upon Completion of Collocation

EXHIBIT C

APPLICATION TO USE CITY PROPERY FOR:

___ Tower Lease for Installation of New Tower on City Property
___ Tower Lease for Installation of New Tower on City Building
_X__ 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: STX Wireless Operations, LLC. Date: _____

Business Classification: Wireless Communications Site ID No.: SAT-056-B

Site: 601 S. Frio, San Antonio Texas 78207 Date Needed: _____

Communications Tower Preferred Attachment Height (ft): 150'

Alternate Heights: Maximum height above ground (ft): N/A
Minimum height above ground (ft): N/A

Number of Antennas: 3 total; 1 per sector Antenna Dimensions: 81.1"(H), 7.7" (W), 4.8" (D)

Number of Coaxial Cables: 3 total Size(s) of Coaxial Cable: 1 5/8"

Equipment Shelter Space Requested:
Inside Shelter:_____ Outside Shelter: outside ground space for platform 180 sq. ft. or 12' x 15'

FCC License No. /Permit No.: WQGB268

Collocators at this Site: None – only the City of San Antonio police communications

APPLICANT SHALL PROVIDE THE FOLLOWING IF APPLICABLE:

- Site plan and engineering design and specifications for construction of equipment shelter and collocation of antenna facilities on tower, 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 G); 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 used by the City to negotiate an appropriate agreement with Applicant for access to the site for facilities installation.

APPLICANT REPRESENTATIVE: _____

PRINT NAME: Allen Males **TITLE:** President – Males & Associates

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~**FOR CITY USE ONLY**~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

RECEIPT DATE: _____ APPLICATION NO.: _____

APPROVED BY: _____

PRINT NAME: _____ TITLE: _____

APPROVAL DATE: _____
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EXHIBIT D

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.

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 (Going Rate)
Grantee 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 (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
Grantee will be required to post a deposit for City keys issued to them. Grantee and its contractors are not allowed to give their keys to anyone else or allow their keys to be used by anyone else at anytime. Grantee must inform City within 24 hours if keys are lost or stolen.

EXHIBIT E

Schedule of Rent During Term of License

SAT-056	Rent Schedule		
	From	To	Amount
Initial term ten (10) years	Commencement Date	1/31/2014	$ 21,600.00
	2/1/2014	1/31/2015	$ 22,464.00
	2/1/2015	1/31/2016	$ 23,362.56
	2/1/2016	1/31/2017	$ 24,297.06
	2/1/2017	1/31/2018	$ 25,268.94
	2/1/2018	1/31/2019	$ 26,279.70
	2/1/2019	1/31/2020	$ 27,330.89
	2/1/2020	1/31/2021	$ 28,424.13
	2/1/2021	1/31/2022	$ 29,561.09
	2/1/2022	1/31/2023	$ 30,743.54
1st Renewal Term	2/1/2023	1/31/2024	$ 31,973.28
	2/1/2024	1/31/2025	$ 33,252.21
	2/1/2025	1/31/2026	$ 34,582.30
	2/1/2026	1/31/2027	$ 35,965.59
	2/1/2027	1/31/2028	$ 37,404.21
2nd Renewal Term	2/1/2028	1/31/2029	$ 38,900.38
	2/1/2029	1/31/2030	$ 40,456.39
	2/1/2030	1/31/2031	$ 42,074.65
	2/1/2031	1/31/2032	$ 43,757.64
	2/1/2032	1/31/2033	$ 45,507.94

EXHIBIT F

AUTHORIZED EMPLOYEES AND CONTRACTORS

Company Name: Cricket Communications 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*
Armando Menchaca	Cricket Communications	210-678-4017	amenchaca@cricketcommunications.com	Network Operations
Randy Emerson	Cricket Communications	468-446-4491	Remerson3025@cricketcommunications.com	Construction Man.
Larry Easter	Cricket Communications	816-606-0050	leaster@cricketcommunications.com	Construction Man.
Alfonza Gilmer	Cricket Communications	210-678-4012	agilmer@cricketcommunications.com	Operation Technicians
Damon Bindock	Cricket Communications	210-678-4071	dbindock@cricketcommunications.com	Operation Technicians
Richard Diaz	Cricket Communications	210-678-4013	rdiaz@cricketcommunications.com	Operation Technicians
Scott Adams	Global One Comm	. 830-456-1604	sadams@globalonetelcom.com	General Contractor

Authorized Company Agent: _____

Printed Name: _____

EXHIBIT G

AGENT WORK AUTHORIZATION

As the authorized representative for Cricket Communications (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 License between City and Company.

Name: Scott Adams_____

Company: Global One Communicatiuons Co._____

Address: 750 South Washington Street_____

City: Fredricksburg_____ State: Texas_____ Zip: 78624_____

Office Phone: 830-456-1604_____ Cell Phone: _____

Type of work: General Contractor_____

Authorization end date: Until written notice is given_____
(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 I

DISCRETIONARY CONTRACTS DISCLOSURE STATEMENT

EXHIBIT J

ENVIRONMENTAL REPORTS REGARDING PROPERTY

- Limited Phase I Environmental Site Assessment dated September 14, 2010 prepared by Weston Solutions, Inc.

- Phase II Environmental Site Assessment dated January 1, 2011 prepared by Weston Solutions, Inc.

- Capital Improvement Management Services Environmental Management Division memo (re: Excavation of soils) dated January 7, 2011 prepared by City of San Antonio

- Environmental Monitoring and Oversite Report dated May 23, 2012 prepared by Weston Solutions, Inc.

- Release Determination Report Form (UST Removal) dated June 27, 2012 prepared by Weston Solutions, Inc.

- Release Determination Activities (NFA Letter) dated August 1, 2012 prepared by the Texas Commission on Environmental Quality