



# REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF  
November 20, 2012

Honorable Members of the  
Law and Legislation Committee

**Title: Ordinance Amendment: Telecommunications Facilities on City Property**

**Location/Council District:** Citywide

**Recommendation:** Approve and forward to City Council an ordinance repealing Section 3.76.050 and adding Section 3.68.140 to the Sacramento City Code relating to locating telecommunications facilities on City property.

**Contact:** William Sinclair, Program Manager, (916) 808-1905; Reina Schwartz, Director of General Services, (916) 808-7195

**Presenters:** William Sinclair, Program Manager, (916) 808-1905

**Department:** General Services

**Division:** Facilities and Real Property Management

**Organization No:** 13001551

## Description/Analysis

**Issue:** City Code Section 3.76.050 sets forth the procedure for locating telecommunications (telecom) facilities on City property, which includes a requirement for the telecom facilities provider to execute an agreement for issuance of a revocable permit. Telecom facilities providers have been critical of the City for the use of revocable permits, as opposed to lease agreements, because of the risk of revocation they must assume and because issuing revocable permits for telecom facilities is inconsistent with market norms. The recommended ordinance amendments will replace the use of revocable permits with lease agreements and update the associated City fees, and are intended to encourage telecom providers to locate their facilities on City property and increase City revenue.

**Policy Considerations:** The recommendations in this report are consistent with the City Strategic Plan goals of economic development, public safety, and sustainability and livability by improving cellular phone service for the City's residents, business community, and visitors.

**Economic Impacts:** None

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** This report concerns general policy and procedure. Section 15378(b)(2) of the CEQA Guidelines states that continuing administrative or maintenance activities, such as general policy and procedure making not related to a project subject to CEQA review, are not considered to be “projects” and are therefore exempt from CEQA.

**Sustainability Considerations:** Not Applicable

**Committee/Commission Action:** The Parks Review Commission (PRC) reviewed the proposed telecomm policies and procedures in September 2011. The PRC recommended to support the proposed amendment to the City’s telecom policy and fee schedule, and recommend to the Planning Commission to consider increasing the notification radius for new sites from 500 feet to 2,500 feet, notice park permittees if the proposed site is in a City park, and expend lease revenues within the City planning area.

**Rationale for Recommendation:** The recommended ordinance amendments will replace the use of revocable permits with lease agreements and update the associated City fees, and are intended to encourage telecom providers to locate their facilities on City property and increase City revenue.

**Financial Considerations:** Financial considerations related to the recommendations in this report include rental revenue from allowing telecom facilities to be located on City property, and fee and charge revenue to cover the cost of City staff time to research, negotiate, and administer leases. Currently, revenue from telecom facilities installed on General Fund properties and structures is deposited into the General Fund. Revenue from installations on non-General Fund properties and structures is deposited into the fund responsible for the property or structure (25%) and into the General Fund (75%).

Rental revenue

Executing lease agreements for telecom facilities on City property is preferable to issuing revocable permits because: 1) lease agreements will provide the opportunity for more frequent adjustments in rental rates; and 2) lease agreements are the standard “industry” practice and will therefore encourage more telecom providers to place their facilities on City property. More information about rental rates and a comparison of key information for lease agreements and revocable permits is provided in Attachment 1.

Fee and charge revenue

Fees and charges associated with placing telecom facilities on City property were last updated in August, 1997. Department of General Services staff has completed a statewide study on fees and charges in other cities and counties, which support an increase in the City’s fees and charges. The current fees range between \$15,000

per year and \$21,000 per year depending on the size of the tower and amount of equipment on the ground. The new fees will range between \$26,000 per year and \$34,000 per year. More information about the current and recommended fees and charges is provided in Attachment 1.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased as a result of this report.

Respectfully Submitted by:   
William Sinclair  
Program Manager

Approved by:   
Reina J. Schwartz  
Director, Department of General Services

Attachments

- 1 Background
- 2 Draft Ordinance relating to use of city property for telecommunications facilities
- 3 Draft Resolution repeal and establish fees
- 4 Draft Resolution repeal and establish new lease agreement.

**Background Information**

The City encourages the placement of telecom facilities on City property when the facilities will have minimal operational impacts, mitigated visual impacts, and meet City engineering guidelines. The City has been negotiating with telecom facilities providers since the late 1980s and issued its first revocable permit for telecom facilities in 1991. In 1997, the City standardized its agreement and fee schedule for telecom facilities. Before 1997, the terms of the permit and the annual rents were negotiated on a site by site basis resulting in non-uniform rents and business terms.

Since 1991, the City has utilized a revocable permit when approving the installation of telecom facilities on City property. These permits have always included an initial term of 10 years with one ten-year renewal option. Because these permits can be unilaterally revoked at any time, their use places a high economic risk on the telecom facilities providers since they may result in the forfeiture of installation costs at any time with little input in the process. Because of this, many companies, such as Nextel Wireless, chose not to do business with the City. Changes in the economy and resulting local budget shortfalls have made revenue from telecom facilities providers much more desirable. In order to encourage more telecom facilities installations on City property, this report recommends replacing the use of revocable permits with a fixed term lease agreement. This is consistent with the private sector and most public agencies. The telecom industry has long sought a fixed term lease from the City. In practice, the City has never revoked a permit in the 20 years of using this document.

Many of the existing revocable permits are approaching the end of their second ten-year term and so it is an opportune time to have them all switch to leases as the permits term out. Department of General Services staff performed an outreach to the telecom providers that do business with the City and received comments from three companies on the proposed lease. Those comments were considered and where appropriate, were incorporated in the proposed lease document. The following table provides a comparison of some key information between the current revocable permit and the proposed lease agreement.

	<b>Revocable Permit</b>	<b>Lease Agreement</b>
Initial term	10 years	5 years
Maximum term	20 years	15 years
Amendment fees	No	Yes
Revocable by City	Yes, during initial term	No

Market Rent

Market rents are often difficult to determine since the telecom equipment takes up relatively little ground space and the rent charged is not truly a function of the real estate market but the industry health as a whole. Further, neither the private nor public sectors publish market data for this rental revenue and information has to be obtained through an often slow and imperfect process. Starting rents for telecom

facilities installations on publicly owned property currently range from approximately \$20,000 to \$36,000 for similar installations in similar sized cities as Sacramento. This wide range in starting rents is due to rental rate information being difficult to obtain and because many local agencies view telecom facilities installations as nuisance land uses and do not actively solicit this use or focus on revenue maximization.

The following tables provide information on the rent survey, and current and proposed City rents. Rental rates are a function of the size of the installation. Installations typically fall into one of three categories, commonly referred to as microcell, minicell, and macrocell. The difference between these categories is determined by the number of antennas installed on the facility and amount of telecom equipment on the ground.

<b>Market Rent Survey</b>	
<b>Agency</b>	<b>Annual Rents</b>
County of Sacramento	\$24,000 for all categories
Caltrans	\$25,128 for microcell to \$35,184 for macrocell
City of San Jose	\$23,942 for microcell to \$34,476 for macrocell
Vacaville	\$20,247 for microcell to \$31,200 for macrocell
Oakland	\$30,000 for microcell to \$36,000 for macrocell
San Diego	\$30,000 for all categories

<b>City of Sacramento Current and Proposed Rent</b>			
<b>Installation Category</b>	<b>Current Rent</b>	<b>Proposed Rent</b>	<b>Percent Change</b>
Microcell	\$15,000	\$26,000	60%
Minicell	\$18,000	\$30,000	67%
Macrocell	\$21,000	\$34,000	62%

**Fees and Charges**

Department of General Services staff has performed a thorough statewide fee study and has concluded the proposed fees and charges are market supported and consistent with other similar sized agencies and land holding departments within the State of California. The following tables provide information on the fee and charge survey, and the current and proposed City fees and charges.

<b>Fee and Charge Survey</b>			
Agency	Application Fee	Amendment Fee	One time Capital Improvement Fee
County of Sacramento	\$5,000	None	None
Caltrans	\$1,000	None	None
Long Beach	\$5,000	None	None
Las Vegas	\$1,000	None	\$25,000
San Diego	\$3,970	None	\$45,000

<b>City of Sacramento Current and Proposed Fees and Charges</b>		
	Current Fees	Proposed Fees
One-time Initial Fee	One year's rent on Parks property only	\$30,000 on all City properties
Application Fee	\$5,000	\$10,000
Amendment Fee (with no change in Special Use Permit)	None	\$2,500
Amendment Fee (with change in Special Use Permit)	None	\$4,000
Late Fee	None	1% per month

**ORDINANCE NO. 2012-**

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE REPEALING SECTION 3.76.050 AND ADDING SECTION 3.68.140 TO CHAPTER 3 OF THE SACRAMENTO CITY CODE, RELATING TO THE USE OF CITY PROPERTY FOR TELECOMMUNICATIONS FACILITIES**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

**SECTION 1.**

Section 3.76.050 of the Sacramento City Code is repealed.

**SECTION 2.**

Section 3.68.140 is added to the Sacramento City Code to read as follows:

**3.68.140 Telecommunications facilities located on city-owned property.**

- A. Exclusive Procedure. The procedures specified in this section shall be the exclusive procedure governing leases for telecommunications facilities to be located on city-owned property. An applicant for a lease shall also comply with :
  - 1. All applicable land use regulations, including but not limited to city zoning regulations and guidelines;
  - 2. Chapter 12.12 of this code, relating to excavation permits and street cuts; and
  - 3. Chapter 3.08 of this title, relating to business operations tax certificates.

The lease application required by this section may be filed by an applicant while land use and other applications are pending; provided, however, that no lease shall be issued unless and until all other required city, state or federal permits have been obtained by the applicant, and all other state, federal and city requirements have been met.

- B. Definitions. The following definitions shall apply to terms used in this section:

“City-owned property” means any property owned, rented or leased by the city, or which the city has the right to use or occupy by virtue of a lease, easement, or other similar interest in property; provided, however, that the provisions of this

section shall not apply to street easements or rights-of-way owned by the city, where the telecommunications provider will be installing wire, conduit or similar equipment within the street. For purposes of this section, "property" includes real property or improvements thereon, and personal property, fixtures or equipment. City-owned property shall also include traffic signals, city lighting or other poles or similar equipment, whether within or outside the street right-of-way, where telecommunications facilities are to be located or installed thereon.

"Co-location" means the location by the same or different telecommunication providers of telecommunication facilities together in the same location or on the same tower, pole, or other structure.

"Personal wireless services" means personal wireless services, as defined in 47 U.S. Code 332(c)(7)(C).

"Telecommunications facilities" means facilities designed for the provision of cellular telephone facilities and other personal wireless services, including, but not limited to, transmitters, towers and other equipment.

"Telecommunications provider" means a provider of cellular telephone or other personal wireless services.

"Utility relocation" means any required move or relocation of an existing installation or equipment owned by any provider of utility or utility-related services, whether such provider is a private or public entity, including but not limited to the city, where such move or relocation is necessitated by installation, improvement, renovation or repair of telecommunications facilities installed on city-owned property.

"Utility relocation costs" means any actually incurred cost or expense associated with a utility relocation.

C. Application.

1. A telecommunications provider proposing to locate telecommunications facilities on city-owned property shall make application to the City Director of General Services through the Asset Management, Daily Operations Program Manager, on a form provided for that purpose.
2. The application shall clearly describe the telecommunications facilities proposed to be installed, the city property on which the facilities are proposed to be installed, and their exact proposed location thereon, including such specifications, drawings, maps and other illustrations as are required by the city director of public works, through the Asset Management section Program Manager.



- a. The Asset Management Section, Program Manager shall, within thirty (30) days from the date of receipt of the application, make a determination as to whether the application is complete in all respects, and whether the applicant has applied for all other required land use entitlements and other required state, federal or city permits or licenses. If no such determination is made within the thirty (30) day period, the application shall be deemed complete. In the event that the application is determined incomplete, the applicant shall be notified in writing of the nature and extent of the deficiencies.
  - b. Upon a determination that the application is complete, or upon expiration of the thirty (30) day period for making that determination, the Asset Management Section Program Manager shall process the application and meet with the applicant as required in order to determine whether the application should be granted or denied. The application may be denied for good cause, may be conditionally approved, or may be approved, subject to required procedures for approval by the City Council. No application or agreement may be approved or conditionally approved by the City Council unless all required land use entitlements, including, but not limited to, those required by city zoning regulations and guidelines, have been obtained by the applicant.
  - c. In the event that the application is denied, the applicant shall be notified in writing of the denial, with a written statement of the reasons for the denial. The notice shall be sent by United States mail to the applicant at the address listed on the application or by other electronic means such as email or facsimile.
  - d. An applicant whose application has been denied may appeal the denial to the City Manager, whose determination shall be final. Any such appeal shall be by letter or other written communication delivered to the City Manager within fifteen (15) days from the date that the notice of denial was mailed or sent.
3. The application shall be accompanied by an estimated processing fee, established by resolution of the City Council, designed to recover all City staff costs in processing the application, including but not limited to the City Department of General Services, the Departments of Parks and Recreation and Department of Utilities and the City Attorney. The application shall contain a statement that by executing the application, the applicant agrees to pay any processing costs in excess of the estimated application fee, upon billing thereof by the City.
4. The application process shall be administered by the City in a nondiscriminatory manner, through the use of standardized procedures for establishing fair market rental, and a uniform schedule of initial, one-time fees. All negotiations and discussions shall be conducted by assigned city staff.

D. Lease Agreement

1. The City Council shall adopt a form lease that shall be utilized for all applicants proposing to locate telecommunications facilities on city-owned property. The lease shall specify all of the terms and conditions upon which the lease is to be issued, including, but not limited to: the term; provisions for renewal and termination; compensation to the city, including, but not limited to, a one-time initial fee and lease rates; if applicable, provisions for space requirements or reservations for public use; provisions for fee escalation based upon an index or fixed annual increases; use and nuisance restrictions; construction requirements and specifications; maintenance and repair responsibilities; insurance, liability limitation provisions, and indemnification obligations; provisions relating to payment of taxes including, but not limited to, possessory interest taxes, to the extent applicable; assignment restrictions; provisions requiring a lessee to notify before excavation (“one call” requirements); and other provisions as may be required by the city attorney.
2. Upon approval by the City Director of General Services through the Asset Management Section, Daily Operations supervisor of an application pursuant to subsection C of this section, the applicant shall execute a copy of the pre-approved form of agreement for issuance of a lease. Upon execution of the agreement, City staff shall seek approval of the City Council. Upon City Council approval of the agreement, and upon approval as to form by the City Attorney, the City Manager or designee shall execute the agreement.
3. Upon full execution of the agreement, and subject to subsection A of this section and payment by the applicant of any further processing fees owing, the one-time initial fee and any lease payments due, the City Director of General Services through the Asset Management Section, Daily Operations supervisor shall issue the lease. Each such lease shall be nonexclusive, and shall be in a form approved by the City Director of General Services through the Asset Management Section, Daily Operations supervisor. The agreement for issuance of lease shall govern the lease during its entire term.

E. Relocation. Where utility relocation is required either because of the applicant’s construction or installation of its facilities, or by virtue of a subsequent city project, the entire utility relocation cost shall be payable by the lessee whose telecommunication facilities are required to be relocated. Nothing in this section shall be interpreted to affect, adversely or otherwise, a lessee’s ability to recover all or any part of the relocation cost from another utility or provider located on or adjacent to the city-owned property.

F. Co-location. Where appropriate and feasible, telecommunication facilities located on city-owned property shall be collocated.

**RESOLUTION NO. 2012-XXXX**

Adopted by the Sacramento City Council

NOVEMBER ----, 2012

**RESOLUTION TO REPEAL RESOLUTION 97-551 AND RE-ESTABLISH NEW FEES AND RATES TO BE UTILIZED FOR ALL APLICANTS PROPOSING TO LOCATE TELECOMMUNICATIONS FACILITIES ON CITY-OWNED PROPERTY.**

**BACKGROUND**

- A. In 1997, the City of Sacramento standardized its fee schedule to be used for cell tower installations.
- B. The City is updating its application fee and adding an administrative amendment fee and memorializing existing inspection and removal bond fees. The City is also proposing to impose a \$25,000 one-time site impact fee. The City currently receives a one-time impact fee for park sites only; this proposal would expand the fee to all City sites.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

Section 1. Repeal Resolution 97-551

Section 2. Adopt a new Fee and Rate Chart for Telecommunication Facilities on city-owned properties shown in Exhibit A.

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Exhibit A Telecom Fees and Rates Chart

## TELECOM FEE AND CHARGES

An “Annual Fair Market Rental” will be calculated on the equipment and building space utilized at telecommunications sites. The equipment and building space utilized will be divided into three categories: Macrocell, Minicell and Microcell. These categories are defined as follows:

**Macrocell:** Facility with 9 or more antennas and/or equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined, encumber 500 or more square feet, not to exceed 19 antennas or 2,500 square feet. A standard telecommunications facility with a vault or enclosed building is an example of a macrocell site.

**Minicell:** Facility with 4 to 8 antennas and/or equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined, encumber an area of 300 or more square feet, but less than 500 square feet. A standard telecommunications facility with freestanding cabinets on a pad is an example of a minicell site.

**Microcell:** Facility with 1 to 3 antennas and/or equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined, encumber an area of less than 300 square feet (Spread spectrum radio with a power level of one (1) watt or less that does not require a FCC license is exempt from this fee schedule).

### BASE RENT

#### Starting Annual Fees for Leases Commencing in years 2013 thru 2017

Adjustment is 3.5% per year, rounded to nearest whole dollar.

	Jan. 1 2013	Jan. 1 2014	Jan. 1 2015	Jan. 1 2016	Jan. 1 2017
Macrocell	\$34,000	\$35,190	\$36,422	\$37,696	\$39,016
Minicell	\$30,000	\$31,050	\$32,137	\$33,262	\$34,426
Microcell	\$26,000	\$26,910	\$27,852	\$28,827	\$29,836

**FEES**

- A.** One-Time Capital Improvement Fee: \$30,000 on all City properties
- B.** Application Processing Fees: \$10,000
- C.** Amendment Fee: \$2,500 for Real Estate Staff only if no modification of SUP is required. If modification of SUP is required and subsequent review of Departmental staff assigned to managing the site: \$4,000.
- D.** Costs of Inspection: \$150.00 per hour, not to exceed \$10,000.
- E.** Removal Bond Amount: \$30,000

**RESOLUTION NO. 2011-XXXX**

Adopted by the Sacramento City Council

NOVEMBER ----, 2012

RESOLUTION TO REPEAL RESOLUTION 2004-149 AND ESTABLISH A NEW LEASE AGREEMENT TO BE UTILIZED FOR ALL APPLICANTS PROPOSING TO LOCATE TELECOMMUNICATIONS FACILITIES ON CITY-OWNED PROPERTY.

**BACKGROUND**

- C. In 1997, the City of Sacramento standardized a Revocable Permit to be used for cell tower installations.
- D. The City is changing this agreement to a lease to shorten the potential term from 20 years to 15 years and to create a document that is consistent with market norms and would encourage greater use of City owned property for telecom installations

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

Section 1. Repeal Resolution 2004-149

Section 2. Adopt a new Lease Agreement for Telecommunication Facilities on city-owned properties shown in Exhibit A.

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Exhibit A Lease Agreement

## TELECOMMUNICATION LEASE

THIS LEASE is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Sacramento, a municipal corporation of the State of California, designated as "City," and \_\_\_\_\_, designated as "Tenant."

:

### 1. PREMISES

City, in consideration of the payment of rent to be paid by Tenant and of the covenants and agreements to be performed and observed by Tenant, leases to Tenant for the purposes specified, that certain property ("the Premises"), located at \_\_\_\_\_, \_\_\_\_\_ (Street, City), also known as Assessor Parcel Number \_\_\_\_\_ delineated on Exhibit "A" (the "Premises") consisting of approximately \_\_\_\_\_ (\_\_\_\_) square feet of ground space for the placement of Tenant's equipment and tower, plus utility and access routes to the Premises as shown, and being a portion of the real property described in Exhibit "B" (the 'Property') attached and incorporated by reference.

### 2. TERM OF LEASE

- A. Initial Term:** The term shall be for five (5) years, commencing thirty (30) days after execution of the Lease, or on the date which is thirty (30) days after the issuance of a building permit for installation of the telecommunication facility, or upon commencement of construction, whichever date is earliest ("Commencement Date") and ending five (5) years later.
- B. Renewal Term:** Tenant shall have the option to extend the term of this Lease for two (2) successive five (5) year periods after the Initial Term expires (each an "Extended Term") by giving City notice no later than thirty (30) days prior to the expiration of the Initial Term or First Extended Term, whichever is applicable. The base rent during the extension term shall increase as set forth in Section 4(c), below.

### 3. RENT

- A. Base Rent:** Tenant agrees to pay City, as Base Rent for the Premises commencing upon the Commencement Date, the annual sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), as set forth in the City Council's adopted telecom fees and charges ("Adopted Fees") payable in advance on or before the first day of the original term hereof and yearly thereafter to the City at 5730 24<sup>th</sup> Street, Sacramento CA 95822.

**C. Base Rent Adjustment.** The amount of Base Rent payable shall be adjusted annually, the "Adjustment Date," commencing with the first annual anniversary date (twelve (12) months after the Commencement Date of the Initial Term) and on each anniversary date of the Commencement Date during the Initial Term or any extensions (the "Adjustment Date"). Every twelve (12) Months of the Initial Lease Term and first Extended term, the annual rent shall increase by three (3.5%) percent over the prior year's lease rental rate.

**C. Second Extended Term Rent.** Commencing with the first day of the first year of the second Extended five-year Term, the rent will be based on a percentage equal to the increase in the following: the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-W), San Francisco-Oakland-San Jose, 1982-84 = 100, Sub-group "All Item," the "Index". The Index published as of the most recent month prior to the Adjustment Date shall be compared with the Index at the month and year of the commencement of the lease.

If at the Adjustment Date the Consumer Price Index is not of the format as recited in this section, any such official index as may be published by the Bureau of Labor Statistics, or any successor or similar governmental agency as may then exist or be most nearly equivalent thereto may be used. . Any adjustment shall become effective on the adjustment date. Failure to apprise tenant of the rent adjustment or to collect it at any time shall not constitute a waiver of City's right to collect such amount at any time during the term of this lease. Annual rent adjustments within the 2<sup>nd</sup> Extended Term shall be made as stated in Paragraph 4 (b).

#### 4. FEES

**A. One-Time Capital Improvement Fee.** Tenant shall pay a one-time fee of -  
-----(\$ --, ---), per the City's Adopted Fees, to the City as additional consideration for the issuance of the Lease ("One-Time Capital Improvement Fee"), as set forth in the City's Adopted Fees..

**B. Application Processing Fees.** 1) Tenant shall pay an application fee, as set forth in the City's Adopted Fees, in the amount of ----- (\$ -  
-, ---), to recover staff costs associated with processing this Agreement, including, but not limited to, costs of the various City Departments for review and preparation of documents. Tenant agrees that the Application Processing Fee represents a fair and accurate estimate of the costs of providing the review needed for the Application and this Agreement. If the City's actual review costs exceed the initial application processing fee, Tenant agrees to pay to the City such excess costs upon billing by the City.



- C. **Amendment Fee:** Fees for changing or altering this Lease, without the need of additional departmental review, shall be -----\$ -, --- as set forth in the City's Adopted Fees. If a modification of the Special Use Permit is required with additional departmental review, the fee to changing or altering this Lease shall be -----\$ -, ---, as set forth in the City's Adopted Fees.
  
- D. **Costs of Inspection: The parties agree and understand** that during the course of construction or re-construction, City may be required to provide on-site supervision and inspection services because Tenant may be performing work on and around City's facilities. Tenant shall, upon billing by City, promptly pay the entire cost of such on-site supervision and inspection services as are directly related to the construction activities of Tenant during the course of construction and until final City inspection and approval. City's reimbursement rate shall be ----- (\$ . --) per hour, as set forth in the City's Adopted Fees. The total reimbursement shall not exceed a total sum of -----(\$ , . ).
  
- D. **Late Fee:** The parties agree and understand that rent payments are due and payable within 10 business days of the anniversary date of the lease. If the entire rent payment is not received within this time period, the Lessee will be subject to a 1% per month late fee, based on the entire annual rent, until such time as the rent is collected.

5. **USE OF THE PREMISES**

- A. **Nature of the Use Allowed.** Tenant shall use the Premises strictly in accordance with the terms of this Lease , solely for the purpose of installation and maintenance of a Wireless Telecommunication Facility ("Equipment"), Tenant shall use the Premises only for the purpose of installing, maintaining, operating, replacing, and removing including, without limitation, related antenna equipment and fixtures. Tenant shall have reasonable rights of ingress and egress to the Premises to conduct, at the sole expense of Tenant, surveys, structural strength analyses, subsurface boring tests, and other similar activities with the written consent of City, which consent shall not be unreasonably withheld. Tenant may, at its sole expense, make such improvements on the Premises as it deems necessary from time to time for the operation of a transmitting and receiving site for wireless voice and data communications; provided, however, that any alteration other than replacing equipment with equipment of like kind will require written approval of the City.

- B. Non-interference with City Use.** Tenant shall use the Premises in a manner which is at all times subordinate to and consonant with City's use of the Property and the Premises.
- C. Non-interference with City Communications and Other Uses.** Tenant agrees and understands that City maintains a communications system, including associated installations and equipment, which provides routine and emergency communications with its officers and employees, as well as officers and employees of other jurisdictions, and that it is imperative that there be no interference with that system by virtue of Tenant's use of the premises. Tenant agrees to resolve technical interference problems with other equipment located at the Premises as of the Effective Date. Tenant agrees to resolve any such technical interference problems associated with any future equipment that Tenant adds or attaches to the Premises during the term of this Lease.
- D. Nuisance.** Tenant shall at all times conduct its use of the Premises in such a manner that it shall not constitute a public or private nuisance.
- E. Damage to City Property.** Tenant shall at all times conduct its use of the Premises in such a manner so as not to damage City property. Tenant shall be liable to City for any damage to any City property, including but not limited to, trees, sprinklers, lawn, other landscaping, fixtures, equipment, structures, vehicles, or other City property, arising out of or in any way directly or indirectly related to or resulting from the installation, maintenance or operation of Tenant structures and equipment on the premises, or any action or activity of Tenant, or its employees, agents, or contractors.
- F. Non-interference with Tenant's Use.** City agrees that, subject to all other provisions of this Agreement, and subject to City's right to grant other or additional permits, Tenant is entitled to reasonable access to the Premises at all times throughout the Initial Term and the Renewal Term so long as Tenant is not in default beyond the expiration of any cure period. If City desires to permit another communications provider to install equipment on the Premises with the potential to cause interference problems with Tenant's then-existing equipment, then prior to entering into an agreement with such proposed communications provider, City will give written notice to Tenant of such proposed installation. Such notice shall include technical information from the proposed provider which is sufficient to determine whether the proposed use will interfere with Tenant's operation of the Equipment. Tenant agrees to cooperate with the proposed provider to resolve any such interference problem(s). City agrees that any future agreement which permits the installation of communications equipment on the Premises shall be conditioned upon not interfering with Tenant's then-existing operation of the Equipment. Tenant shall not be required to modify Tenant's then-existing Equipment to prevent interference with any new communications use of the Premises so long as Tenant operates the

Equipment within its assigned frequencies and in compliance with all applicable FCC Rules and Regulations.

- G. Co-location.** Tenant acknowledges and agrees that the City may allow other providers of communications facilities to locate on the same Premises and/or on the same facilities as Tenant, including such facilities as may be constructed by Tenant. In the event any other facilities are co-located on facilities constructed and/or used by Tenant, Tenant agrees not to dismantle or otherwise alter the facilities being used by Tenant for as long as those facilities are being used by any other lessee(s). At the expiration of all uses on the facilities used by Tenant, Tenant agrees, at City's option, either to remove the facility used by Tenant or leave the facility used by Tenant in its then current condition.
- H. Reservation for Public Use.** Tenant shall provide space on its facilities for public communications use by public agencies in such location(s) and in such manner(s) as may be determined by City. Such space shall be provided at no cost if used by City.
- I. Ownership of Towers:** If Tenant, by virtue of construction requirements, replaces an existing structure, including but not limited to light standards, air raid sirens or existing communication towers, with another structure of sufficient strength to accommodate their Equipment, the replacement structure shall remain the ownership of City upon termination of the lease.

## **6. CONSTRUCTION REQUIREMENTS**

- A. Location of Structures and Equipment.** The initial location of the structures and equipment to be installed by Tenant shall be in the sole and exclusive discretion of the City. In the event City determines that structures or equipment need to be moved, City shall meet and confer with Tenant to discuss the necessary relocation of structures or equipment; provided, however, that the determination that the structures and equipment need to be moved shall be in the sole and exclusive discretion of City. The ultimate location of Tenant's structures and equipment shall be mutually agreeable to both parties; provided, however, that in no event shall Tenant be required to relocate its antennas to a different place on a tower, or to pay for the relocation of its base station equipment, in order to accommodate another telecommunications provider.
- B. City Approval of Plans, Specifications and Design.** Tenant shall submit to City, prior to commencing any construction on the Premises, complete plans and specifications, including detailed site plans, for the structures and equipment to be installed on the Premises. City shall have absolute discretion to specify design requirements, aesthetic requirements, and specifications excepting those technical requirements relating to operation of the Equipment. The plans and specifications and site plan shall also be

part of Exhibit "B" hereof. Tenant shall not commence any construction on the Premises until and unless the City has approved all plans and specifications for that construction. Any damage to City's facilities during construction shall be promptly repaired by Tenant. Tenant shall complete construction and installation of structures and equipment within ninety (90) days of execution of the Lease.

- C. Seismic Safety.** Because Tenant's equipment will, in part, be located above ground level in areas where falling heavy equipment would likely result in personal injury or death, and property damage, Tenant shall employ the professional services of qualified engineers for the purpose of investigating the seismic risks at the Premises related to attaching Tenant's equipment to the Premises, and for recommendations concerning measures required to strengthen the methods and equipment used to attach the Tenant's equipment to the Premises. Tenant shall consult with City prior to selecting an engineer, and shall furnish to City a copy of all reports and recommendations of the engineer, together with any supporting data, calculations or studies upon which the engineer has based conclusions and/or findings. City shall have the right to approve or disapprove the report and recommendations prior to construction by Tenant. No such construction shall commence prior to delivery to City of a report and recommendations approved by City.
- D. Costs of Inspection. See paragraph 4D.**
- E. One Call Requirement.** Tenant shall inform City in writing in the manner designated in paragraph 26 at least twenty-four (24) hours prior to any intended excavation on or around the Premises.
- F. Temporary Relocation of Structures and Equipment.** In the event that construction or renovation of City property requires removal of Tenant's structures and/or equipment, the City may agree to temporary relocation in lieu of removal. At the conclusion of the construction or renovation, the Tenant's structures and/or equipment shall be returned to its previous location within a reasonable amount of time unless the parties agree to a different location in writing. All costs related to temporary relocation shall be paid by Tenant.
- G. Condition of Premises:** Tenant agrees that upon completion of the installation of its facilities, Tenant shall promptly return as near as possible the surface of the ground to the condition in which it was prior to the commencement of the work and Tenant shall not commit or suffer to be committed any waste upon the Premises or any nuisance thereon and agrees to keep the Premises in a neat, clean, sanitary and orderly condition at all times during occupancy, and not to permit rubbish, tin cans, garbage or refuse to accumulate and remain thereon at any time. If Tenant fails so to keep the Property as stated, then after thirty (30) days written notice to

Tenant, City may perform the necessary work at the reasonable expense of Tenant, which expense Tenant agrees to pay to City upon demand.

**7. MAINTENANCE & REPAIR**

Tenant shall at all times during the term of this Lease maintain its structures, equipment, and required landscaping on the Premises, in good and safe operating order and condition.

**8. UTILITIES**

Tenant agrees to furnish at Tenant's own cost and expense, all water, gas, heat, light, power and all other utilities required at the Premises and to pay all costs and charges for the same prior to delinquency, and to hold City and the Premises free and harmless from any liability for such costs. City will not supply utilities to Tenant on a reimbursement basis.

**9. LESSOR'S RIGHTS**

City reserves the right to use the Premises excluding the area delineated on Exhibit "A," at any and all times, for City's operations. The construction, reconstruction, maintenance, and use of the facilities or improvements of City, present or future, upon said Property shall at all times be paramount to any rights under this Lease, provided that City will not unreasonably interfere with Tenant's use of the Premises. The construction, reconstruction, maintenance, and use of the facilities of Tenant, and all work upon or in connection therewith, shall at no time and in no way whatever interfere with the present or future operations of City; the location of the facilities, the construction, reconstruction, and maintenance thereof, and all work in connection therewith, shall be done and made under the supervision and to the reasonable satisfaction of City.

**10. ACCESS**

City grants Tenant access to the Premises as delineated in Exhibit "A", and a right of access to the source of electrical and telephone facilities, twenty-four (24) hours a day, seven (7) days a week, subject to any access restrictions from City's various departments for sensitive City infrastructure. If Tenant uses City's existing access road, Tenant will share in road maintenance costs. City agrees to permit Tenant free ingress and egress to the Premises to conduct such surveys, structural strength analyses, subsurface boring tests and other activities of a similar nature as Lessee may deem necessary at the sole cost of Tenant. If Tenant utilizes an existing road, sidewalk or bike trail for access, all future cracks

and tripping hazards shall be repaired upon notice to Tenant within 30 days of notice from the City.

**11. FREQUENCY COMPATIBILITY/NON-INTERFERENCE WITH CITY COMMUNICATIONS**

Tenant shall provide for complete frequency compatibility with all other radio transmitting equipment currently existing at the site and any future equipment owned and properly installed by City. In the event an interference problem arises and cannot be eliminated by Tenant within thirty (30) days after notification to do so by City, the equipment causing such interference shall be taken out of service until the problem is corrected to the complete satisfaction of City. During the term of this Lease, City will not grant a similar Lease to a third party if such third party's facilities would interfere with the operation of Tenant's facilities on the Premises. Nothing in this Lease shall prohibit the co-locating of telecommunication equipment on or in Tenant's facilities as long as said co-location is approved in writing by both Tenant and City.

**12. ENTITLEMENTS**

Prior to the commencement of the Lease, Tenant shall at its sole and exclusive expense, obtain all necessary local land use entitlements, building permits, and other City, County, State or Federal permits as may be necessary to operate the facilities contemplated by Tenant. These Permits shall not be construed as a waiver of any requirement, fee, or procedure required to obtain any such entitlement or permit. By executing the Lease, Tenant warrants and represents that it has obtained all necessary local land use entitlements, building permits, and other City, County, State or Federal permits to operate the facilities contemplated by Tenant.

**13. INDEMNIFICATION**

- a. **Hold Harmless:** Tenant expressly agrees to indemnify, defend and hold harmless City, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorney's fees, arising out of Tenant's operation or performance under this Lease, including all costs, claims, and damages (including property and personal injury) arising out of any hazardous substance, hazardous material, or hazardous wastes (including petroleum) within the leased Premises or on the adjacent City's property to the extent caused, released by Lessee's construction, reconstruction, maintenance, use or removal of its facilities, all testing, or surveys.
- b. **Damages:** Tenant shall be responsible for and shall reimburse City for any damage or loss to City's present or future facilities, to the extent directly or indirectly contributed to or caused by tenant's operation or performance under this Lease, including, but not limited to, any damage or loss due to

Tenant's deposit of hazardous substance, hazardous material or hazardous wastes including petroleum onto the Premises.

- c. Assumption of Risk: Tenant agrees to assume all risk of damage to the structure and to any other property of Tenant or any other property under the control or custody of Tenant while upon the property or premises of Tenant or in proximity thereto, caused by or contributed to in any way by the construction, reconstruction, operation, maintenance, repair, or use of pipelines, or other facilities or improvements or roadways, of City, present or future. In accordance with California law, this assumption does not apply to damage resulting from City's gross or willful misconduct.

#### **14. HAZARDOUS MATERIALS**

City represents that it has no knowledge of any substance, chemical or waste (collectively, "Substance") on the Premises identified as hazardous, toxic or dangerous in any applicable federal, state, or local law or regulation. Tenant shall not introduce or use any such Substance on the Premises in violation of any applicable law. Tenant shall be responsible for the complete cost of removal and/or remediation of any such Substance introduced by Tenant as may be required by any applicable federal, state, or local law or regulation.

#### **15. INSURANCE REQUIREMENTS.**

During the term of this Lease, and until final completion and acceptance of any work required by this Lease, Tenant shall maintain in full force and effect at its own cost and expense the following insurance coverage. By requiring this insurance, City does not represent that the coverage and limits will necessarily be adequate to protect Tenant. It is understood and agreed by Tenant that the required insurance coverage and limits shall not be deemed as a limitation on Tenant's liability under the indemnity granted to City in this Lease.

Insurance requirements are subject to review and revision every five (5) years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards for comparable premises and buildings.

##### **A. Minimum Scope & Limits of Insurance Coverage**

- (1) General Liability Insurance is required providing coverage at least as broad as ISO GL Form 00 01 on an occurrence basis for bodily injury including death of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000). The policy shall include coverage for premises, operations, products and completed operations and contractual liability for the term of the policy. The policy shall include a fire legal liability limit of \$50,000 for a small leased space or \$250,000 for a

large leased space.

- (2) All Risk Property Insurance including coverage for special perils is required all improvements, fixtures and equipment. All property insurance must be for replacement value and name the City as loss payee.
- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000) are required. The Worker's Compensation policy shall include a waiver of subrogation.
- (4) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Tenant. No automobile liability insurance shall be required if Tenant completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." \_\_\_\_\_ (Tenant initials)

#### B. Additional Insured Coverage

General Liability Insurance The City, its officers, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects general liability arising out of activities performed by or on behalf of the Tenant including products and completed operations of Tenant and premises owned, leased or used by Tenant.

#### C. Other Insurance Provisions

The policies are to contain or be endorsed to contain the following provisions.

- (1) Tenant's insurance shall be primary as respects the City, its officers, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Tenant's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees and volunteers.
- (3) Coverage shall state that Tenant's insurance shall apply separately to



each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

- (4) The City will be provided with thirty (30) days written notice of cancellation or material change in the policy terms or language.

D. Acceptability of Insurers

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self insured retentions, policy terms or other variations that do not comply with the requirements of this section must be declared to City's representative and approved by the City Risk Management Division.

E. Verification of Coverage

- (1) Tenant shall provide initial insurance documents to the City representative upon request, prior to execution of the final contract. The initial insurance documents are attached as Exhibit 'D'. All future insurance renewal documents shall be sent to:

EBIX BPO  
212 Kent Street  
Portland, MI, 48875  
Phone: (517) 647-1700  
Fax: (517) 647-7900  
Email: [CertsOnly@periculum.com](mailto:CertsOnly@periculum.com)

- (2) City may withdraw its offer or cancel this Lease if the certificates of insurance and endorsements required have not been provided prior to execution of this Lease. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach by Tenant of this Lease.

F. Contractors

Tenant shall require and verify that all contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsections A, C and D above.

- G. Removal Bond. Tenant shall provide to City a bond, letter of credit, or other security instrument, of a type and in such an amount of thirty thousand dollars (\$30,000), as set forth in the City's Adopted Fees ,to pay for the removal of structures and facilities installed on the Premises by Tenant ("Removal Bond"). Tenant shall keep the Removal Bond in effect for the duration of this Lease, including any extensions or renewals hereof. Tenant may meet its Removal Bond obligations by providing to City a cash payment adequate to pay for the removal of structures and facilities installed on the Premises by Tenant. Upon a Surety's written notice to City of cancellation of a Removal Bond, Tenant must

submit written notice and proof of a replacement Removal Bond within thirty (30) days. A copy of the Removal is shown on Exhibit "C".

**16. ASSIGNABILITY**

Tenant shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or in the Premises, without City's prior written consent. Notwithstanding the foregoing, Tenant shall have the right to assign this Lease, with notification to City (but without the need for prior consent), to its general partner or any entity which controls, is controlled by, or is under common control with Tenant, to any entity resulting from merger or consolidation with Tenant, or to any person or entity which acquires substantially all of Tenant's assets, provided that such assignee assumes in full all of Tenant's obligations under the Lease.

**17. DEFAULT**

It is understood and agreed that if Tenant fails to pay any installment of said rent as the same becomes due, or if default shall be made by Tenant in any of the covenants, agreements or terms herein contained on Tenant's part to be performed other than the payment of rent and if upon receipt of ten (10) days' written notice in the case of a monetary default, or thirty (30) days' written notice in the case of a non-monetary default thereof, Tenant shall fail or refuse to correct said last mentioned default, then City at its option may re-enter the Premises and remove all improvements, and in such event City may at its option terminate this Lease or take possession of said Premises as the agent and for the account of Tenant, and if it so elects may lease or rent the whole, or any part of said Premises, for the balance or any part of the term of this Lease and retain all rents thus received and apply the same in payment on account of the rents for the account of Tenant; but the performance of any or all of said acts by City shall not release Tenant from the full and strict compliance with all of the terms, conditions and covenants of this Lease on Tenant's part to be performed or observed and Tenant in such event agrees to forthwith pay any deficiency that may exist in the amount due hereunder after deducting said rents received, if any. If the nature of Tenant's default is such that more than thirty (30) days are reasonably required for cure thereof, then tenant shall not be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

**18. WAIVER**

The waiver by City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent by City shall not be

deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than failure of Tenant to pay the particular rental so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

**19. REMEDIES**

The remedies provided for City in case of a violation of the terms of this Lease by Tenant are not exclusive, but are in addition to the remedies now provided by law, and any of which remedies City shall have the right to use at its option.

**20. RELOCATION**

Tenant hereby specifically waives any rights to, and releases City from, any and all claims for relocation benefits and/or relocation payments to which Tenant might otherwise be entitled. Tenant shall hold City harmless from and indemnify City against any and all liability, cost, and expense suffered or incurred by City and arising in connection with any such right or claim asserted by Tenant.

**21. CONDEMNATION**

If any part of the Premises shall be condemned for a public use and a part of said Premises remains, which is susceptible of occupation and use as herein authorized, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor; if all of the Premises be condemned or if such part be condemned so that there does not remain a portion susceptible for occupation and use as herein authorized, this Lease shall thereupon terminate. If a part or all of the Premises be condemned, all compensation awarded upon such condemnation, except such compensation as shall be specifically awarded to Tenant for loss of or damages to fixtures owned by Tenant, or business interruption or moving expenses, shall go to City and Tenant shall have no claim thereto and Tenant irrevocably assigns and transfers to City any and all rights to all other compensation or damages to which Tenant may become entitled during the term hereof by reason of condemnation.

**22. POSSESSORY INTEREST TAX**

Tenant agrees to pay all possessory interest taxes assessed on the Premises during the term of this Lease or until such time as this Lease is terminated and Tenant no longer has possession of the Premises.

**23. TERMINATION**

- A. City's Right to Terminate. After expiration of the first five (5) year term of this Lease, provided the conditions of this section are satisfied, City may terminate this Lease upon at least one (1) year notice to Lessee. Prior to

exercising such right to terminate, City shall make good faith efforts to provide a similar area on the Property for Tenant, at tenant's cost, to relocate Tenant's antennas, equipment cabinets and supporting equipment.

In the event tenant's facility is relocated to a similar area on the Property as provided in this section, then City shall cooperate with Tenant to prevent any interruption of Tenant's service during the period of such relocation. During the period of relocation, tenant shall have the right, at its option, to bring onto the Property and operate a portable facility in a location acceptable to both City and Tenant, subject to the provisions of section 8.

- B. **Homeland Security.** The City may terminate the lease at any time if it is determined by the City in its sole discretion that national or local security emergency requires the revocation of the permit. If such determination is made by the City Manager of the City the Tenant will be required to remove the structures and equipment as indicated in this agreement. Access to structures and equipment may be denied by the City pending arrangements for removal.
- C. **Tenant's Right to Terminate.** If the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of the facilities is revoked or withdrawn, or if City fails to have proper ownership of the Property or authority to enter into this Lease, or if tenant, for any other reason determines that it will be unable to use the Premises for their intended purpose, then Tenant shall have the right to terminate this Lease upon at least 180 days written notice to City.

Upon termination, neither party will owe any further obligation under the terms of this Lease except for Tenant's responsibility of removing all of Tenant's facilities from the Premises and restoring the Premises to its original condition, as near as practicable in accordance with Section 25, below.

Upon any early termination of this Lease, any prepaid rent shall be prorated from the date of termination and returned to Tenant.

- D. **Termination for Cause.** Each party shall have the right to terminate this Lease immediately for breach by the other party of any material term or condition of this Lease, by giving the breaching party written notice of default specifying the exact cause or causes for the default and specifying that the breaching party shall have thirty (30) days to cure the default. The notice shall also state that in the event the default is not so cured, this Lease is terminated effective retroactively to the earlier of date of mailing of the notice as specified herein, or the date of personal delivery of the notice to an employee or agent of the breaching party at the location specified in this Lease.

**24. HOLD-OVER**

Any holding over after the expiration of the initial term, with the consent of City, shall be construed to be a tenancy from month to month on the same terms and conditions specified herein so far as applicable.

**25. REMOVAL OF TENANT'S FACILITIES**

City agrees that all improvements of every kind and nature constructed, erected, or placed by Tenant on the Premises, shall be and remain the Property of the Tenant, except in the case where an existing pole or structure is replaced with a new to accommodate both existing facilities and Tenant's antennas. Tenant shall complete the removal of facilities within thirty (30) days following termination of this Lease. Tenant agrees to fill in all excavations with solidly compacted earth and to leave said Premises in a neat and clean condition following any such removal save and except normal wear and tear and acts beyond tenant's control. Should Tenant fail to remove its facilities within a reasonable time after request by City so to do, then the work may be performed by City or its contractors or agents and with proceeds paid by the redeemed removal bond for the reasonable cost for said work.

**26. NOTICES**

Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail. All notices must be in writing and are effective upon receipt or five (5) days after deposit in the U.S. mail, certified and postage prepaid, to the addresses set forth below:

**A. To City:**

City of Sacramento  
Department of General Services  
Facilities and Real Property Management Division  
c/o Facilities Manager  
5730 24th Street, Building 4  
Sacramento, CA 95822

**B. To Tenant:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**27. EXISTING CONDITION**

This Lease is made subject to all existing liens, encumbrances, conditions and restrictions of record affecting the Premises and is also subject to all existing rights, rights-of-way, licenses, leases, reservations, and easements by whomsoever held, in and to the Premises which predate this Lease.

**28. BINDING PROVISIONS**

It is understood and agreed that, subject to the provisions of Paragraph 14, this Lease shall be binding upon and inure to the benefit of the executors, administrators and permitted assigns of the respective parties hereto.

**29. TITLE AND QUIET POSSESSION**

City represents and agrees that it is the owner of the Property; and that the Tenant is entitled to access to the Premises at all times, unless Premises are in a secured area, and to the quiet possession of the Premises throughout the term so long as Tenant is not in default beyond the expiration of any cure period; and (e) that, except in case of emergency. City shall not handle or otherwise disturb Tenant's antennas or equipment. For Premises that are located within a secured area, see Paragraph 10 for provisions.

**30. ENTIRE AGREEMENT**

This Lease (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal representations or understandings between the parties.

**31. SEVERABILITY**

If any provision of this Lease is invalid or unenforceable with respect to any party, the remainder will not be affected and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

**33. RELOCATION ASSISTANCE**

Tenant acknowledges it is not entitled to any relocation assistance payments at the conclusion of this Lease, or the conclusion of the Lease issued pursuant to this Lease, under State or federal law (California Government Code Section 7260 et seq. and 42 USC 4601 et seq., respectively) and Tenant further agrees that it will not file or pursue any such claim.

**34. FORFEITURE OF OVERAGE RENTS:**

Tenant acknowledges that rents paid over and above the amount due and payable are forfeited 60 days after written notification by the City of such overpayment, unless tenant sends City an invoice within the same 60-day period requesting reimbursement of the overage amounts.

IN WITNESS WHEREOF, City and Licensee have executed this Lease on the date hereinabove first written.

**TENANT:**

**CITY: CITY OF SACRAMENTO,**  
a municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
For John Shirey, City Manager  
Dated: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Program Manager

By: \_\_\_\_\_  
City Attorney

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

## **Exhibit “A”**

### **Leased Premises**



**Exhibit “B”**

**Plans and Specs**

**Exhibit “C”**

**Removal Bond**

**Exhibit “D”**

**Insurance Certificate**

Subject:

Meeting Date

Respectfully Submitted by: \_\_\_\_\_  
Typed Name Here, Title

Approved by: \_\_\_\_\_  
Type Name Here, Title

Recommendation Approved:

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**JOHN F. SHIREY**  
City Manager

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