

AN ORDINANCE 2018-06-21-0496

**AUTHORIZING A FIVE-YEAR JOINT USE AGREEMENT WITH SAN ANTONIO MTA, L.P., DBA VERIZON WIRELESS TO ALLOW EQUIPMENT TO IMPROVE CELLULAR PHONE RECEPTION FOR VERIZON CUSTOMERS IN THE TERMINALS AT THE SAN ANTONIO INTERNATIONAL AIRPORT.**

\* \* \* \* \*

**WHEREAS**, the San Antonio Airport System wishes to improve the cellular reception within Terminals A and B at San Antonio International Airport; and

**WHEREAS**, the Verizon Wireless would like to install microcells, rerads or other similar devices and the antennas that would serve them, which will improve cellular reception within the terminals and requires access to Terminals A and B to install and maintain this equipment; and

**WHEREAS**, it is now necessary to authorize the attached Joint Use Agreement required for the completion of this project; **NOW THEREFORE**,

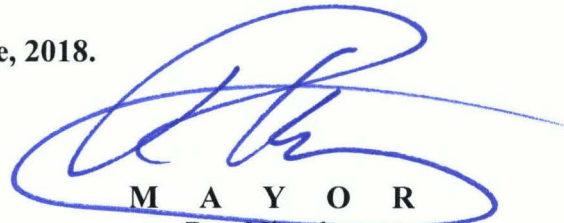
**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee is authorized to execute a Joint Use Agreement with San Antonio MTA, L.P., dba Verizon Wireless, attached as **Exhibit 1**, for the installation and maintenance of microcells, rerads and antennas required for improved cellular reception for Verizon customers at San Antonio International Airport.

**SECTION 2.** San Antonio MTA, L.P., dba Verizon Wireless is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like, for any property placed by Verizon Wireless at San Antonio International Airport. There is no cost to be borne by the Airport.

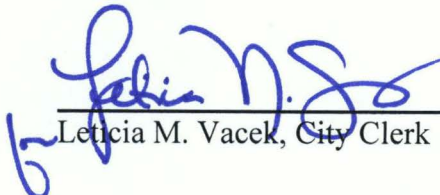
**SECTION 3.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.


**PASSED and APPROVED this 21<sup>st</sup> day of June, 2018.**

  
**M A Y O R**  
Ron Nirenberg

**ATTEST:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

for   
\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	38 ( in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18A, 18B, 19, 20, 21, 22, 23, 24, 25A, 25B, 25C, 27, 28, 29, 30, 31, 34, 35A, 35B, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 49, 50, 51, 52, 53, 54, 56A, 56B, 56C, 56D, 56E )						
<b>Date:</b>	06/21/2018						
<b>Time:</b>	09:39:05 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Ordinance approving a five-year joint use agreement with San Antonio MTA, L.P. dba Verizon Wireless to allow the equipment to improve cellular phone reception for Verizon customers in the terminals at the San Antonio International Airport. [Carlos Contreras, Assistant City Manager; Russell Handy, Director, Aviation]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

MAT  
06/21/18  
Item No. 38

**EXHIBIT 1—VERIZON JOINT USE AGREEMENT**

## Joint Use Agreement

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### ARTICLE 1. PERTINENT INFORMATION

**City:** City of San Antonio

**City's Address:** 9800 Airport Boulevard, San Antonio, Texas 78216  
(Attention: Director, Aviation Department)

**Joint User:** San Antonio MTA, L.P. d/b/a Verizon Wireless

**Joint User's Address:** One Verizon Way, Mail Stop 4AW100, Basking Ridge,  
New Jersey 07920

**Notice Address:**

180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

**Term:** Five (5) years, subject to rights of termination set out in Section 7.5 of this agreement. The term shall commence on August 16, 2018, and shall terminate on August 15, 2023, or unless terminated earlier pursuant to the terms of this agreement.

- Premises:** Portion of 9800 Airport Blvd., San Antonio, Texas 78216, Terminals A and B of the San Antonio International Airport, and adjacent areas. Said Premises being more particularly described and shown by Exhibit A attached hereto and incorporated herein.
- Scope of Permission:** The joint use and benefit of the Premises by Joint User and its contractors and subcontractors, including ingress and egress over adjacent land for the purpose of installation of microcell(s), rerad(s), or other similar devices ("IBRDs") and the installation of antennas serving such IBRDs ("IBRD Antennas"), together with a space for cables, fibers or the equivalent connecting such IBRDs and IBRD Antennas and/or connecting to the public right-of-way or utility source on the property, whether through conduit or otherwise for the improvement of cellular phone reception in the airport terminals.

## ARTICLE 2. PERMISSION

- 2.1 City hereby licenses to Joint User the right to use the Premises for the Scope of Permission ("Permission"). City acknowledges that Joint User's activities, if within the Scope of Permission and conforming to the terms and conditions of this Agreement, do not currently unreasonably interfere with the operations of San Antonio International Airport which remains the dominant use of the Premises. The Permission is non-exclusive and limited to the stated Term. This instrument does not create an easement, but only a license defined by the terms of this instrument.
- 2.2 Joint User shall place the IBRDs and IBRD Antennas in the locations set out in Exhibit A, Premises.
- 2.3 This Permission does not exempt Joint User from rules of general applicability that govern activities within the Scope of Permission or from getting permits required generally for activities Joint User will be conducting within the Scope of Permission.

## ARTICLE 3. RESTRICTIONS ON USE

1. This Permission does not grant Joint User authority to use any area beyond the Premises.
2. This Permission grants only a privilege to use the Premises. City conveys no real property interest. City may enter and use the Premises at any time for any purpose not unreasonably interfering with the permitted use.

#### ARTICLE 4. CONSTRUCTION, MAINTENANCE, AND OPERATIONS

4.1. Costs. Joint User is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property placed by Joint User in the Premises (hereafter "Joint User's Responsibilities").

4.2. [OMITTED].

4.3. Installation and Maintenance. All IBRDs and IBRD Antennas and Appurtenances must be installed in the locations set out in Exhibit A. Joint User must maintain all improvements constructed or installed by Joint User. In so doing, Joint User must adhere to all applicable safety standards and must adhere to all federal, state, or local laws, rules, or regulations. Without limiting the foregoing, Joint User must assure that nothing it does causes the Premises to fail to comply with any aspect of the Unified Development Code relating to drainage.

4.4. No Power to Bind. Joint User cannot bind or permit another to bind City for payment of money or for any other obligation.

4.5. Contractors and Subcontractors. Joint User must promptly pay anyone who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, and is not paid or bonded off within 10 days of notice, City may treat it as an event of default and terminate this agreement by delivering 10 days prior written notice to Joint User. Joint User remains obligated to clear the lien without cost to City even after termination.

*[The remainder of this page left intentionally blank]*

## ARTICLE 5. INSURANCE

5.01. Without limiting City's rights to indemnity, Joint User must provide and maintain insurance, at its own expense, with companies admitted to do business in the State of Texas and with a rating of A- or better by A. M. Best and Company in the following types and amounts:

Type	Amount
a. Worker's Compensation during the performance of improvements to the Premises or an approved alternate plan at other periods during the Term.	Statutory, with a waiver of subrogation in favor of City
b. Employers' Liability during improvements to the Premises or an approved alternate plan at other periods during the Term.	\$1,000,000 each accident/disease/policy limit, with a waiver of subrogation in favor of City
c. Commercial General (Public) Liability – to include coverage for the following where the exposure exists: (a) Premises/Operations (b) Independent Contractors (c) Products/Completed (d) Personal and Advertising Injury Liability (e) Contractual Liability (f) Explosion, Collapse and Underground Property	For Bodily Injury and Property Damage: \$1,000,000 per Occurrence, \$2,000,000 general aggregate.
d. Property Insurance -- for physical damage to the property of Joint User including improvements and betterments to the Premises.	Coverage for a minimum of 80% of the actual cash value of the improvements.

Any substitute for Workers' Compensation and Employer's Liability must be approved in advance by City's Risk Manager.

5.02. City's Risk Manager may reasonably modify the requirements set forth above if he determines that such modification is in the City's best interest. If Joint User believes the requested change is unreasonable, Joint User has 60 days to give notice of termination. The termination provisions hereof then apply.

5.03. With respect to the above required insurance, each insurance policy required by this Permission must contain the following clauses:

“Any insurance provided by Joint User is primary to any insurance maintained by the City of San Antonio.

“Any insurance maintained by the City of San Antonio is non-contributory, with, insurance provided by this policy.”

5.04 Upon receipt of notice from its insurer(s) Joint User shall provide the City with thirty (30) days prior written notice of cancellation. Such notice shall be sent to:

- (a) City Clerk, City of San Antonio  
City Hall/Military Plaza  
P.O. Box 839966/2nd Floor, City Hall  
San Antonio, Texas 78283-3966  
Attention: Risk Manager

**And**

- (b) Department of Aviation  
City of San Antonio  
9800 Airport Boulevard  
San Antonio, Texas 78216  
Attention: Aviation Director

5.05. Each insurance policy required by this Permission, excepting policies for Workers' Compensation, Employer's Liability and Professional Liability shall include:

“The City Of San Antonio, its elected officials, employees, agents, and representatives are added as additional insureds as their interest may appear under this Agreement.”

5.06. Joint User must deliver to City, within 30 days after the Effective Date, certificates of insurance and all applicable endorsements to the above-required policies adding the applicable clauses referenced above. Such endorsements must be signed by an authorized representative of the insurance company and show the signatory's company affiliation and title. Joint User must deliver to City documentation acceptable to City confirming the authority of those signing the endorsements.



5.07. The Certificates of Insurance and all applicable endorsements must be provided to the same addresses as for notice of cancelation or nonrenewal:

- (a) City Clerk, City of San Antonio  
P.O. Box 839966/2nd Floor, City Hall  
San Antonio, Texas 78283-3966  
Attn: Risk Manager

And

- (b) Department of Aviation  
City of San Antonio  
9800 Airport Boulevard  
San Antonio, Texas 78216  
Attention: Aviation Director

5.08. This Permission does not limit Joint User's liability arising out of or related to the Premises or Joint User's activities thereon.

## ARTICLE 6. INDEMNITY

6.01. These definitions apply to the indemnity provisions of this agreement:

6.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, including attorneys' fees and court costs, directly or indirectly arising out of the acts or omissions of any person other than indemnitees. Indemnified Claims include those arising from property damage and from personal or bodily injury, including death.

6.01.02. "City Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

6.01.03. OMITTED.

6.02. To the extent permitted to Municipalities under Texas Law, City and Joint User shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other party, its employees, contractors or agents.

6.03. If City and/or one or more other City Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Joint User need not further indemnify the so-adjudged City Indemnitees from liability arising from the City Indemnitees' adjudicated share of liability. But despite allegations of City Indemnitee negligence, Joint User must

nevertheless defend all City Indemnitees until final adjudication. Joint User may not recover sums previously spent defending or otherwise indemnifying the City Indemnitee who has been adjudged to be negligent and must continue to indemnify other City Indemnitees.

6.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of City Indemnitees.

6.05. The indemnifying party must promptly advise the indemnified party in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City is a City Indemnitee as to a particular Indemnified Claim, the indemnified party will cooperate appropriately with the indemnifying party in connection with the indemnifying party's defense of such claim. The indemnifying party shall defend any indemnified party, at the indemnified party's request, against any claim with counsel reasonably satisfactory to the indemnified party. Regardless of who selects the counsel, the counsel's clients are the indemnified party, not the indemnifying party.

6.06. In addition to the indemnity required under this agreement, each indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing the indemnifying party's obligations under this indemnity paragraph.

6.07. The indemnifying party may not settle any Indemnified Claim without the consent of the indemnified party, whether or not the City is a indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by the indemnifying party and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any indemnified party. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

6.08. Nothing in this agreement waives governmental immunity or other defenses of Indemnitees under applicable law.

#### ARTICLE 7. TERMINATION/RENEWAL

7.1 In the event that City, in its reasonable discretion, determines that Joint User's Scope of Permission conflicts or interferes with City's use of the Premises as an airport or Aviation Department project, the initiation of an Aviation Department capital or operations project, or a Federal Aviation Administration requirement or directive, City may terminate this agreement at any time before expiration by giving Joint User 60 days prior written notice.

- 7.2 Joint User may terminate this agreement at any time in Joint User's sole discretion by abandoning its use of the Premises and delivering notice to City.
- 7.3 Upon expiration or termination, all rights and privileges cease, and Joint User must promptly cease use of the Premises. Joint User shall be responsible for all costs of (A) removing existing facilities permitted by this agreement, and (B) restoring the Premises to a condition substantially equivalent to the condition of the Premises prior to this Agreement, substantial equivalence to be reasonably determined by City, provided that reasonable wear and tear and casualty damage are excepted.
- 7.4 Joint User shall remove its improvements within 60 days of termination or expiration of the term. In the event Joint User fails to remove its improvements as required, City may notify Joint User of such failure to remove. Improvements or appurtenances not removed within 30 days after such notice, become the property of City. City may, without liability to Joint User, dispose of such property at a public or private sale, without notice to Joint User.
- 7.5 In the event this agreement is not terminated earlier, **this agreement shall terminate upon the conclusion of the Five (5) Year term. Likewise, either party may terminate upon the date that the planned Distributed Antenna System (DAS) becomes fully operational.**
- 7.6 Any notice of termination must be in writing, and provided to the other party via Certified Mail, Return Receipt Requested at the address listed in Article I of this Agreement.

#### ARTICLE 8. ASSIGNMENT

This Permission cannot be assigned by Joint User except to (i) any entity in which Joint User directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in Joint User; or (iii) any entity directly or indirectly under common control with Joint User; or (iv) any entity which acquires all or substantially all of Joint User's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business.

#### ARTICLE 9. CONDEMNATION

If the Premises are taken, in whole or in part, by eminent domain, then this Permission, at the option of City, ceases on the date title to the land so taken or transferred vests in the condemning authority. Joint User may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to Joint User's communications equipment, relocation costs and, specifically excluding loss of Joint User's leasehold interest, any other damages Joint User may incur as a result of any such condemnation.

#### ARTICLE 10. TAXES

City is a governmental entity and does not expect to pay taxes. Joint User is responsible for any taxes arising from its use of the Premises under this agreement directly attributable to the Joint User's equipment or Joint User's use and occupancy of the Premises. In no case will City ever be responsible for any taxes, local, state, or federal assessed against Joint User.

#### ARTICLE 11. DISPUTE RESOLUTION

- 11.1 As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.
- 11.2 Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

- 11.3 Mediation must be conducted in San Antonio, Bexar County, Texas.
- 11.4 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.
- 11.5 If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.
- 11.6 Mediator fees must be borne equally.
- 11.7 The parties need not mediate before going to court to seek emergency injunctive relief.

#### ARTICLE 12. MISCELLANEOUS PROVISIONS

- 12.1 **Relationship Limited.** This instrument creates only the relationship of City and Joint User. The parties are not principal and agent, partners, joint venturers, or participants in any common enterprise.
- 12.2 **Nondiscrimination.** Joint User understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
- 12.3 **Consent/Approval of City.** As to any matter hereunder in which City's consent is required, the consent may be granted by the Aviation Director, City of San Antonio, as designee of the City Manager, without council action, unless the City Charter requires City Council action.
- 12.4 **Severability.** If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.
- 12.5 **Successors.** This Permission inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

- 12.6 **Integration.** This written permission represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no oral agreements between the parties.
- 12.7 **Modification.** This Permission may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.
- 12.8 **Third Party Beneficiaries.** This Permission is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof except as specifically provided in Section 6.04.
- 12.9 **Notices.** Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.
- 12.10 **Captions.** Paragraph captions in this agreement are for ease of reference only and do not affect the interpretation hereof.
- 12.11 **OMITTED.**
- 12.12 **Further Assurances.** The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. But no such additional document(s) may alter the rights or obligations of the parties as contained in this Permission.
- 12.13 **Consideration.** In consideration for the rights granted herein, City's property will receive the benefits of enhanced wireless communications arising from operation of the IBRD and IBRD antennas.

- 12.14 **Quiet Enjoyment.** City covenants that Joint User, upon performing all the covenants, shall peaceably and quietly have, hold and enjoy the Premises and City further covenants that City is seized of good and sufficient title and interest to the Premises and has full authority to enter into this agreement.
- 12.15 **Waiver of Revocable License at Will.** Notwithstanding the fact that this agreement is a license and that a license is normally revocable at will by the grantor, the parties hereto agree that the license granted by this agreement is not revocable at will and that this agreement can only be terminated in accordance with the provisions of this agreement or as a result of a default that is not cured within any applicable notice and cure period set forth in this agreement or otherwise as ordered by a court of competent jurisdiction.
- 12.16 **Interference.** Licensee agrees to only install radio equipment of the type and frequency that will not cause measurable interference to the equipment of Licensor or other tenants of the San Antonio International Airport existing as of the date of this Agreement. Should Licensee's equipment cause measurable interference, and provided Licensor gives written notice, Licensee will take all steps necessary to correct and eliminate the interference. Licensor agrees that it shall make its best good faith efforts to insure that any other tenant of the San Antonio International Airport (current or future) will install only such radio equipment that is of the type and frequency that will not cause measurable interference to the existing equipment of the Licensee. Should another tenants' equipment cause measurable interference with Licensee, and provided Licensee gives written notice to Licensor of it, Licensor will take all reasonable steps to attempt to correct and eliminate the interference, including good faith efforts to cause other tenants of the San Antonio International Airport causing such interference to correct and eliminate the interference. The parties acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, either party shall have the right to specifically enforce the provisions of this paragraph in a court of competent jurisdiction.

### ARTICLE 13. PUBLIC INFORMATION

Joint User acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

City:

Joint User:

City of San Antonio, a Texas municipal corporation

San Antonio MTA, L.P. d/b/a Verizon Wireless

By Verizon Wireless Texas, LLC Its General Partner

By: \_\_\_\_\_

By:  \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: Jacob Hamilton

Title: \_\_\_\_\_

Title: Director-Network Field Engineering

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

Date: 5/18/18

Approved As To Form:

\_\_\_\_\_  
City Attorney



**Exhibit A**  
**Premises**

