

SAN ANTONIO MUSEUM OF ART (“SAMA”) LEASE AGREEMENT

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This non-exclusive Antenna Equipment Site Lease Agreement (the "Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation and Home-Rule Municipality ("City"), acting herein through its City Manager, or designee, pursuant to Ordinance No. \_\_\_\_\_, passed and approved on \_\_\_\_\_, 2016, and the San Antonio Museum of Art ("SAMA"). The City and SAMA may be referred to individually as "Party" or collectively as "Parties".

**WITNESSETH:**

**WHEREAS**, SAMA owns or controls real property located at 317 Arden Grove San Antonio, TX 78215, as described in **Exhibit A** (the "Property"); and

**WHEREAS**, the City plans to install wireless communications antenna facilities that support the City's public safety radio system on a Tower located on adjoining property owned by Graham Media Group, San Antonio, Inc. d/b/a KSAT-12 Television Station ("KSAT Tower"), located at 1408 N. St. Mary's Street; and

**WHEREAS**, City wishes to lease property from SAMA, as described in **Exhibit B** ("Premises"), to install equipment shelters and/or cabinets, and related cables and utility lines; including coaxial cable, base units, ice bridge (that protects cables as they traverse the Property to the KSAT Tower), and other associated equipment ("Base Station") and a Backup Generator on the Premises, as described in **Exhibit C**, to support the wireless communications antennas, microwave dishes and related facilities to be installed on the KSAT Tower; and

**WHEREAS**, SAMA wishes to demolish a building located on the Property referred to as the KONO Building; and

**WHEREAS**, SAMA has filed a petition to close a portion of Arden Grove adjacent to 220 Arden Grove and 317 Arden Grove, which will be presented to City Council for its consideration on August 18, 2016, or the next available council date should City Council not convene or consider the item on that date, as described in **Exhibit D**; and

**WHEREAS**, as a result of the City's agreement to demolish of the KONO Building and City Staff's support of the petition for the Arden Grove street closure, SAMA will provide City: a) space for the installation of a Base Station and Backup Generator at a nominal rate, as set out in Section 4 of this Agreement; and b) access for ingress and egress to the Premises and for the purpose of installing, maintaining, upgrading, and operating the Base Station equipment and Backup Generator on the Premises;

**NOW THEREFORE**, in consideration of the mutual promises, covenants, undertakings, and other consideration set forth in this Agreement, City and SAMA agree as follows:

## 1. PERMITTED USE

1.1 **Permitted Use of Premises.** The Premises may be used by City for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, and upgrade of wireless facilities (such as equipment shelters and/or cabinets) but only for the purpose of installing Base Station and Backup Generator to support Antenna Equipment on the KSAT Tower to operate the City's public safety radio system, and not for any other purpose. City shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use of (and operations, maintenance, construction and/or installations at) the Premises. All installations and construction must be approved by SAMA, in advance.

1.2 **Backup Generator.** The City shall have the right to install an emergency generator or battery powered backup power supply on the Premises.

## 2. TERM

2.1 **Initial Term.** The initial term of the Agreement shall be for twenty (20) years commencing on the effective date of the Agreement and ending at midnight on the last day of the initial term ("Initial Term"). The effective date of the Agreement shall be the date on which both Parties execute the Agreement following approval of the Agreement by the City Council (the "Effective Date").

2.2 **Renewal Terms.** City shall have the right to extend this Agreement for two (2) additional five-year (5) terms (each a "Renewal Term"). Each Renewal Term shall be based on the same terms and conditions as set forth herein. City may request renewal of the Agreement by sending ninety (90) days notice to SAMA prior to expiration of the Initial Term or any Renewal Term.

2.3 **Hold Over.** Any holding over by City after the expiration of the Initial Term and any Renewal Term, with the consent of SAMA, shall be construed to be a tenancy from month-to-month based on the terms and conditions herein.

## 3. CONSIDERATION - DEMOLITION OF KONO BUILDING AND STREET CLOSURE

3.1. **Demolition.** The Parties are entering into this Agreement in consideration of the mutual undertakings provided for herein, each of which is deemed to be material and significant consideration. The SAMA requires demolition of a structure on the Property referred to as the old KONO Building (the "Structure"), and hereby authorizes the City to carry out the demolition and obtain all approvals necessary for such demolition on behalf of the SAMA. In consideration for the Site Payments set out in Section 4, the City agrees to demolish the Structure, and raze, remove and clean up the demolished area in accordance with generally accepted demolition practices and procedures. The City may accomplish the demolition utilizing City employees or

subcontracting the work out to a third party. The City shall provide all necessary labor, materials and equipment to demolish the Structure, clean up the affected area where the Structure was located prior to the demolition and remove all debris from the demolition area in accordance with generally accepted demolition practices. The City may dispose of the Structure and debris in any manner, in its sole discretion, provided in accordance with all applicable statutes, ordinances and regulations of the State of Texas and City of San Antonio. The SAMA shall ensure that all meters, utilities, lines, cables and other such infrastructure shall be disconnected, abandoned and/or removed prior to commencement of any demolition and/or site clearance.

The SAMA covenants for itself, its administrators, successors, and assigns that it hereby releases, acquits, and forever, discharges any and all claims, actions, and causes of action against City, its officers, agents, and employees for any injuries, damages, losses, costs, or expenses arising out of or resulting from City's demolition of the Structure, or the use or occupation of the Premises.

**SAMA covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to City's demolition activities under this Agreement, including any acts or omissions of SAMA, any agent, officer, director, representative, employee, consultant or subcontractor of SAMA, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in the instances where such negligence causes personal injury, death, or property damage. IN THE EVENT THE SAMA THE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

3.2. **Street Closure.** City staff shall process and support the petition for street closure submitted by SAMA on June 22, 2016, which requests closure of a portion of Arden Grove Street adjacent to 220 Arden Grove and 317 Arden Grove (the "Street Closure"), as shown in Exhibit D. In addition, an ordinance requesting approval of the Street Closure shall be submitted for City Council's consideration on August 18, 2016 or the next available council date should City Council not convene or consider the item on that date. The City agrees to pay for all metes and bounds surveys that are required as part of the street closure process , and further agrees not to proceed beyond demolition of the KONO building under this Agreement until the Street Closure is approved by City Council, or an alternate solution acceptable to both parties is agreed

to in writing.

#### 4. SITE PAYMENTS

4.1 **Site Payment.** The City shall pay SAMA, as rent, One Hundred Dollars (\$100) for the first year of the Initial Term of this Agreement, and annually for the remaining years of the Initial Term and any Renewal Terms.

4.2 **Timing of Annual Rent Payment.** The annual Rent for the first year will be due one month after the Effective Date and will be the prorated amount for the days remaining in the current calendar year following the Effective Date. Thereafter, the annual Rent for the next calendar year shall be due in full on December 1st of each year and will be subject to the annual appropriation of funds by the San Antonio City Council; provided that if the San Antonio City Council fails to appropriate the full amounts due hereunder, SAMA may pursue the remedy in section 11.1.1 herein. Annual Rent payments will be paid consistent with the schedule included in **Exhibit E**.

4.3 **Payment of Site Payment.** City shall pay SAMA the Site Payment based on the schedule set out in **Exhibit D** and sent to:

San Antonio Museum of Art  
200 W. Jones Avenue  
Attn: Finance – Arden Grove Lease  
San Antonio, TX 78215

#### 5. INTERFERENCE, TESTING AND RESERVATION

5.1 **Interference with Use of Property Prohibited.** City shall not use the Premises in any way which interferes with the use of any portion of the Property by SAMA or by other licensees of SAMA with rights in any portion of the Property prior to execution of this Agreement. Similarly, SAMA shall not use, nor shall SAMA permit its licensees, grantees, employees, invitees or agents to use, any portion of the Property in any way which materially interferes with the operations of the City's public safety radio system. Such interference shall be deemed a material breach by the interfering Party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease following the process described in Section 5.2, the Parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured Party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Agreement immediately upon written notice.

5.2 **Radio Frequency Emission and Interference Studies.** Both SAMA and City shall be allowed to conduct radio frequency emission and interference studies from time to time to determine whether City's use of the Base Station will interfere with SAMA's or other licensees' current use of the Property. In the event that such a study indicates that City's use interferes with SAMA's or its licensees' current use of the Property, City and SAMA (or other affected licensee) shall work together to eliminate

the interference. After good faith attempts to eliminate the interference have been exhausted without success, City and SAMA shall agree on a transition period to relocate City's Base Station at the City's expense. This Agreement shall terminate upon removal of City's Base Station. SAMA shall permit City to place a temporary Base Station (Cell on Wheels or similar installation) on SAMA's Property during relocation to another location.

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

## 6. INSTALLATION OF CITY'S PERSONAL PROPERTY

6.1 **City Improvements.** **Exhibit A** shall contain a survey and legal description of the Property, including the KONO Building. City shall have the right, at its expense, to install, operate, maintain, and upgrade on the Premises personal property consisting of the Base Station and Backup Generator to support its public safety radio system, as set forth in **Exhibit B.** **Exhibit C** shall include engineering design documents specifying the description of the Arden Grove Street Closure.

6.2 **Approval of Plans.** Prior to commencing installation of Base Station, or any subsequent modification, modification, replacement and upgrade, City shall submit its construction plans for SAMA approval, which shall not to be unreasonably withheld. No installation or network upgrade shall be commenced until plans for such work have been approved by the SAMA and all necessary permits have been properly issued.

## 7. CONSTRUCTION

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

7.2 **No Interference with Construction.** SAMA acknowledges that except for City's non-compliance with this Agreement it shall not interfere with City's construction within the Premises including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Base Station and Backup Generator.

## 8. UTILITY FACILITIES

8.1 **Installation of Utility Facilities.** City shall have the right to install utility lines

serving the Premises, at City's expense, and to improve the present utilities on the Property if necessary to properly serve the Base Station, all at City's expense. SAMA agrees to use reasonable efforts in assisting City to acquire necessary utility service. City shall install separate meters for utilities on the Premises used by City. City shall pay when due all utility charges it incurs during the Term of the Agreement.

## 9. MAINTENANCE

9.1 **Maintenance of Base Station and Backup Generator.** City shall, at City's expense, keep and maintain the Base Station and Backup Generator now or hereafter located on the Premises in commercially reasonable condition and repair during the Term of this Agreement, normal wear and tear and casualty excepted. City shall have the right to conduct testing and maintenance activities, and repair and replace the Base Station and Backup Generator at any time during the Term of this Agreement.

9.2 **Signage.** City may not place or allow the placement of any signs or graffiti on the Premises, except for those required for emergency notification and identification, or as required by law or rule.

9.3 **Facilities Management.** City shall, at its own expense, maintain the Premises and all improvements, equipment and other personal property on the Premises in good working order, condition and repair. City shall keep the Property free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.

9.4 **Network Upgrades.** City shall give SAMA thirty (30) days advanced written notice of any planned network upgrade of the Base Station. The engineering design drawings for the network upgrade shall replace and supersede the then current engineering design plans incorporated into **Exhibit C**. Following notice, the Parties will agree on the date for implementing the network upgrade.

## 10. ACCESS TO PREMISES

10.1 **Access to Premises.** As partial consideration for Site Payments paid under this Agreement, SAMA hereby grants City non-exclusive access to the Premises for ingress, egress, and utilities installation and maintenance, which include, but are not limited to, the installation of power and telecommunications service cables, and to access and service the Base Station and Backup Generator at all times during the Initial Term of this Agreement and any Renewal Terms. City shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the Initial Term of this Agreement and any Renewal Term, consistent with the regulations applicable to the Property. City shall use the Premises with the same degree of care as it accords its *own* property, and shall in no way interfere with the operations of the Property. SAMA and its agents shall have the right to enter the Premises at reasonable times to examine and inspect the Base Station, Backup Generator and related equipment and structures; however, SAMA, its employees or agents shall not impede or deny Access to City, its employees, or agents. SAMA shall have the right to enter and inspect the Premises.

10.2 **Photo Badges Required.** While on the Premises, City's employees and contractors must wear a suitable photo ID badge, to be provided by the City, which includes a nominal 1 1/2" square personal photo, unique logo and labeling that identifies the City and the employee or contractor by name and a telephone number where confirmation of employment may be readily confirmed.

## 11. TERMINATION

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

- 11.1.1 upon ninety (90) days written notice by SAMA to City if City fails to cure a default for payment of amounts due under this Agreement within that ninety (90) day period; and
- 11.1.2 upon ninety (90) days written notice by City if destruction or damage to the Base Station or Emergency Generator substantially and adversely affects their effective use.
- 11.1.3 upon one hundred eighty (180) days written notice by City to SAMA if City decides to remove all Base Station and Backup Generator equipment for any reason prior to the end of the Initial Term or any Renewal Term.

11.2. **Early Termination.** Site Payment will be returned to City on a pro rata basis, calculated over the Term and any Renewal Term, if the Agreement is terminated before the end of the Term or any Renewal Term for any reason other than the City's default for payment of amounts due under this Agreement.

## 12. RELOCATION AND REMOVAL OF BASE STATION

12.1 **Relocation of Facilities.** In the event the Property is sold, transferred, developed, redeveloped, renovated, upgraded, or put to another use which is inconsistent with retaining the Base Station and Backup Generator on SAMA Property, the City will be required to remove the Base Station at City's expense for the purpose of relocation or disposal. SAMA will provide City at least one hundred eighty (180) days' notice of the need for removal and relocation, and City shall fully cooperate in such removal and relocation. SAMA shall permit City to place a temporary Base Station (Cell on Wheels or similar installation) on SAMA's Property until such relocation is complete. The Parties will work together in an attempt to achieve a transition to the new location without service interruption.

## 13. DEFAULT AND RIGHT TO CURE

13.1 **Default and Right to Cure.** Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each Party shall have the right, but not the obligation, to terminate this Agreement on written notice pursuant to Section 11.1 hereof, if the other Party: (i) fails to perform any material covenant for a period of ninety (90) days after receipt of written notice thereof to cure; or (ii) commits a material breach of this Agreement and fails to diligently pursue such cure to its completion after ninety (90) days' written notice to

the defaulting Party.

**13.2 City Default.** City shall be in default if it: (i) fails to make Site Payment and does not cure such default within ninety (90) days after receipt of written notice from SAMA of such failure; (ii) abandons or vacates the Premises; (iii) is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or (iv) if City becomes insolvent.

## **14. TAXES**

**14.1 Right to Contest Taxes.** SAMA shall pay any personal property, real estate, state franchise, or any other taxes assessed on the Property and operation of the Property. SAMA hereby grants to City the right (with written notice to SAMA complying with Section 21 herein) to challenge, whether in a court, administrative proceeding, or other venue, on behalf of SAMA and/or City, any personal property tax that may affect City. If SAMA receives notice of any personal property tax that is directly attributable to City's Base Station and Backup Generator installations, SAMA shall provide timely notice of the assessment to City sufficient to allow City to consent to or challenge such assessment; such notice must comply with Section 21 herein.

## **15. INSURANCE**

**15.1 Proof of Insurance.** The City maintains a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their applicable statutory obligations to its employees.

It is the City's stated policy not to acquire commercial general liability insurance for torts committed by employees who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the City under this chapter is limited to monetary damages in the stated amounts for bodily injury or death of any individual, or for the loss or destruction of, or damage to, any property. Employees of City are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

**15.2 Certificates of Insurance.** SAMA requires all third-party vendors, hired by the City to conduct work on the Premises, to maintain and provide proof of insurance, as described in Exhibit F. The City shall require that SAMA and the City be listed as additional insureds on the certificate of insurance provided by third-party vendors to the Parties. The City shall provide copies of the certificates of insurance to SAMA prior to allowing the third-party vendors to enter upon the Premises.

## **16. ASSIGNMENT**

**16.1 SAMA's Assignment Rights.** SAMA may assign or transfer this Agreement, and, upon written notice to City of such assignment, shall be relieved of all liabilities and obligations hereunder provided that such assignee or transferee agrees in writing to fulfill the duties and obligations of SAMA in said Agreement, including the

obligation to respect City's rights to non-disturbance and quiet enjoyment of the Premises during the remainder of the Term hereof.

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

## 17. WAIVER OF LIENS

17.1 **Waiver of Liens.** Neither Party shall have the right to create or impose any extrajudicial liens or any other encumbrance on the Premises, Property, Base Station, Backup Generator, and any other property owned by the other Party. Specifically, SAMA hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Base Station and Backup Generator or any portion thereof, which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and SAMA gives City the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in City's sole discretion and without SAMA's consent.

## 18. QUITE ENJOYMENT AND AUTHORITY TO ENTER AGREEMENT

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

## 19. DISPUTE RESOLUTION

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

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

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

**20. FORCE MAJEURE**

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

**21. NOTICE**

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

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

If intended for SAMA, to: San Antonio Museum of Art  
Attn: Finance – Arden Grove Lease  
200 W. Jones Avenue  
San Antonio, Texas 78215

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

If to City, for general operational matters: City Emergency Services contact:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If to SAMA, for general operational matters:

SAMA Emergency Services contact:

- 1. Pam Hannah 210-978-8100 (office)  
210-426-5713 (mobile)
- 2. Scott Sanders 210-978-8127

- 1. SAMA 24 hr. Desk 210-894-6391
- 2. Pam Hannah 210-426-5713

## 22. GENERAL PROVISIONS

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

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

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

22.4 **No Fixtures.** City's Base Station and Backup Generator will remain the sole property of City whether or not attached to the Property provided that any structural modifications to the Property, including mounting platforms or supports, but excluding Base Station and Backup Generator, will become property of the SAMA, at SAMA's option, upon termination or final expiration of this Agreement, and City shall leave such on the Property upon vacating. City agrees that ownership of all structural modifications made to the Property by, on behalf of, or for City shall transfer to SAMA, and City will transfer title of such facilities to SAMA.

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

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

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

22.8 **No Warranties.** SAMA makes no warranty, expressed or implied, and hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the Property. City accepts the Property "As Is."

22.9 **Non-Waiver.** Failure of SAMA to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but SAMA shall have the right to enforce such rights at any time and take such action as might be lawful or authorized

hereunder, either in law or equity.

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

22.11 **Entire Agreement.** This Agreement with attached **Exhibits A to D** constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and other agreements. This Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing, executed by both Parties, and approved by the San Antonio City Council.

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

**23. SIGNATURES**

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

**CITY:**

**SAMA:**

*City of San Antonio*

*San Antonio Museum of Art*

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

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

Printed Name: Hugh Miller

Printed Name: Katherine C. Luber, Ph.D.

Title: Chief Information/Technology Officer

Title: The Kelso Director

Date \_\_\_\_\_

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

**Approved as to Form:**

\_\_\_\_\_  
Martha G. Sepeda, Acting City Attorney

**EXHIBIT A**

**Property Description, including Description of KONO Building**

**Legal Description of Parcel Owned by SAMA on which Base Station and Backup Generator will be Installed**

**EXHIBIT B**

**Metes & Bounds Description of Leased Property (“Premises”)**

**EXHIBIT C**  
**Engineering Drawing of Premises**

**EXHIBIT D**

**Request by SAMA for Arden Grove Property to be Closed**

## **EXHIBIT E**

### **Site Payment Schedule**

The Site Payment will be due one month after the Effective Date of the Agreement.

**EXHIBIT F**

**Proof of Insurance**