

**SAN ANTONIO INTERNATIONAL AIRPORT COMPLEX
NEUTRAL HOST
DISTRIBUTED ANTENNA SYSTEM (DAS)
LICENSE AGREEMENT**

made as of _____, 2019

by City of San Antonio, Texas

Aviation Department

And

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

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**SAN ANTONIO INTERNATIONAL AIRPORT COMPLEX NEUTRAL-HOST
DISTRIBUTED ANTENNA SYSTEM
LICENSE AGREEMENT**

This San Antonio International Airport Complex Neutral-Host Distributed Antenna System (“**DAS**”) License Agreement (the “**Agreement**”) is made by the **City of San Antonio**, a Texas Municipal Corporation (“**City**”), acting by and through its City Manager, pursuant to Ordinance No. 2019- XX-XX-XXXX passed and approved on the ____ day of _____, 2019, and **San Antonio MTA, L.P. d/b/a Verizon Wireless** (“**Verizon Wireless**”), with an address at 180 Washington Valley Road, Bedminster, New Jersey 07921. The City and Verizon Wireless may be individually referred to as a “**Party**” or collectively as the “**Parties**.”

WHEREAS, the City is a home-rule city under the laws of the State of Texas and the owner of the San Antonio International Airport Complex (“**Facility**”) located at 9800 Airport Blvd, San Antonio, Texas 78216, and is authorized to enter into such agreements as the City deems necessary in conjunction with the management and operations of the Facility, including, without limitation, this Agreement;

WHEREAS, on September 1, 2017, the City issued a Request for Proposal (RFP) for San Antonio International Airport Complex Neutral-Host Distributed Antenna System to design, install, operate and maintain a neutral-host Distributed Antenna System at the Facility, and Verizon Wireless submitted a proposal in response to the RFP;

WHEREAS, it is the desire of the City and Verizon Wireless in response to the RFP to enter into this Agreement in order to implement a neutral-host DAS in the Facility to provide extended and improved wireless communications for their existing and future technologies including “4G” and “5G” technologies therein;

WHEREAS, the neutral-host DAS will include a Public Safety System, that includes a separate electric power source specified by the City and a separate antenna system that incorporates certain radio frequencies and the complete rebroadcast of all channels in use by the City at the time of Verizon Wireless' installation of the Public Safety System;

WHEREAS, the Parties agree and intend that the DAS is being designed and installed so that the general public will have improved wireless communications connectivity inside and outside of the Facility, including expanded data connectivity on the frequencies licensed by the CMRS Carriers;

WHEREAS, the Parties intend to implement a neutral-host DAS program to assure equal, non- discriminatory access to the DAS to all qualified (as defined in Section 2(b)) CMRS operators. “**CMRS**” means Commercial Mobile Radio Systems that are existing or emerging and licensed services and technologies that include operators (Cellular, Enhanced Specialized Mobile Radio (ESMR), and Personal Communication Services (PCS)) and their commercially provided wireless services;

WHEREAS, Verizon Wireless, is the initial CMRS Carrier of what is proposed to be a group of future participating Qualified CMRS operators (each such Qualified CMRS operator being a "Future Participating Carrier" and together with Verizon Wireless being the "CMRS Carriers" and each being a "CMRS Carrier");

WHEREAS, Verizon Wireless is designated as the CMRS Carrier that will have the obligation for the design, installation, operation, maintenance and management of the neutral host DAS program in the Facility; and

WHEREAS, Verizon Wireless desires to acquire and the City desires to grant Verizon Wireless a license to the Facility for the limited purposes hereinafter designated to implement the DAS.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Project Scope.**

a. **Grant of Access to Facility.** As of the Effective Date (as defined in Section 13.q. of this Agreement), the City hereby grants Verizon Wireless the exclusive license, as defined further in Section 4(a), to access portions of the Facility as further defined herein to work to develop the DAS as defined herein in the Facility subject to the terms of this Agreement. The Parties understand the difficulty of the undertaking of designing, developing and installing of the DAS, and the logistical difficulty that multiple antenna systems within the Facility would present. Therefore, the City agrees to grant this license to Verizon Wireless to develop the neutral-host DAS which Verizon Wireless will make available to other Qualified CMRS operators as sub-licensees on a non-discriminatory basis such that no term of access, compensation or otherwise, will prejudice any CMRS licensed operator that desires to use the DAS. Verizon Wireless, however, shall coordinate with, and receive prior approval by, City Staff designated by the Director of the Facility to access the Facility during installation of the DAS to coordinate facility events and the construction schedule.

b. **The DAS.** The City, as provided herein, is providing the CMRS Carriers with access to the Facility so that Verizon Wireless may install the DAS in the Facility in the areas set forth on **Exhibit A** ("**Preliminary DAS Plans and Specifications**"), as the same may be amended from time to time, to provide extended and improved wireless communications, including expanded broadband service, in the Facility's "**DAS Coverage Area**". The "**DAS Coverage Area**" includes: (i) those portions of the interior of the Facility included in the Preliminary DAS Plans and Specifications (as defined in Section 7(a) below), (ii) those portions of the Facility parking structures, loading dock areas, and adjacent sidewalks, walkways, stairs, and ramps included on the Preliminary DAS Plans and Specifications, and (iii) rooftop space on the Facility for future antenna node locations, and new power/fiber conduit paths to the roof of the Facility, which may, or may not, be depicted on the Preliminary DAS Plans and Specifications. The DAS shall consist of the wireless network systems, including without limitation, a series of hubs, repeaters, and multiple band antennas within and on the Facility to accommodate and extend radio frequency ("RF") signals from the CMRS Carriers and their commercially-provided

wireless services. The DAS includes all hardware and software associated with uplink and downlink RF including, but not limited to, power systems and back-ups, antennas, base stations, multiplexers, personal computers, cable and fiber, network monitoring and alerting systems, equipment rooms (including HVAC and fire suppression systems) and network operations systems owned, installed, operated, maintained, and managed by Verizon Wireless in and on the DAS Areas. The DAS Areas include the CMRS Carriers base station equipment room(s), equipment closets, and space reserved for the CMRS Carriers' headend equipment (as depicted in Exhibit A. Additionally, the City will grant to Verizon Wireless and/or the local fiber or utility provider a license for fiber running from the nearest public right of way to the DAS Areas to the extent necessary to serve the DAS, in City's sole determination, provided the location of the license shall discussed by Parties prior to City designating the location of the license. Upon approval by the City, , any other additions or modifications to the DAS Areas will be automatically included in the Agreement by exchange of correspondence with Verizon Wireless.

c. Public Safety System. The DAS shall not interfere with the City's and Bexar County's public safety 700/800 MHz radio frequencies. The frequencies range from 806 MHz – 825 MHz and 851 MHz – 870 MHz for our 800 MHz; and 769 MHz – 775 MHz and 799 MHz – 805 MHz for our 700 MHz layer (InterOp). The DAS shall include a separate antenna system that incorporates these frequencies and the complete rebroadcast of all channels in use by the City at the time of Verizon Wireless' installation of the Public Safety System. A complete list of channels shall be provided to Verizon Wireless by City, and 8-12 channel "channelized" public safety repeaters shall not be acceptable. The City requires the complete rebroadcast of all channels in use by the City at the time of Verizon Wireless' installation of the Public Safety System. The coordinates of the primary 800/700 MHz public safety tower donor site to the Facility is: 29-29-10.7N, 98-27-3.9W, Austin Hwy Tower, 1051B Austin Highway, San Antonio TX 78209; secondary public safety tower donor site is 29-32-54N, 98-20-34W, Topperwein/Fratt Tower, 11890 Topperwein Rd, San Antonio, Texas 78233; and tertiary public safety tower donor site is at 29-25-14.1N, 98-30-23.3, Frio Tower, 601 S. Frio St, San Antonio, Texas 78207. The DAS must meet current San Antonio Fire Code, Section 510 Emergency Responder Radio Coverage for the installation and acceptance testing. Verizon Wireless shall purchase and install the Public Safety System, and the City shall provide a separate, dedicated electrical source for the use of the Public Safety System, including required back-up power as outlined in Exhibit B. Upon completion of the Public Safety System, Verizon Wireless shall transfer ownership of the Public Safety System to the City pursuant to execution and delivery of a Bill of Sale in the form attached hereto as Exhibit I, which City shall execute within 60 days after final testing and acceptance of the Public Safety System. Verizon Wireless shall maintain, at no cost to the City, the Public Safety System for one (1) year from the date of the Bill of Sale; however, Verizon Wireless will not own, operate, or otherwise maintain the Public Safety System.

2. Additions to the CMRS Carriers and Sublicensing.

a. Future Participating Carriers. The City acknowledges that while Verizon Wireless is the only CMRS Carrier currently developing the DAS at the Facility, it is anticipated to include Future Participating Carriers. The City further acknowledges and agrees that from time to time, upon written notice from Verizon Wireless, a Future Participating Carrier may be added as a CMRS Carrier. Such Future Participating Carrier will be added as a CMRS Carrier when Verizon Wireless and such Future Participating Carrier execute and deliver to City a

sublicense agreement whereby such Future Participating Carrier agrees to be bound by the obligations of a CMRS Carrier under this Agreement, including, but not limited to, its indemnification, insurance, and access requirements, and agrees to participate thereunder on an equal, pro rata basis. City is entitled to rely upon the decisions, notices, elections, and communications of Verizon Wireless as contemplated hereunder as if each such CMRS Carrier made such decisions, notices, elections or communications, and each such CMRS Carrier is hereby and forever estopped from claiming that such decisions, notices, elections or communications by Verizon Wireless do not bind any such CMRS Carrier. Except in the event of any emergencies, Verizon Wireless will be the point of contact for the City with respect to all other CMRS Carriers regarding any communications, defaults, notices or other actions with respect to the DAS, including assistance in overall coordination between the City and the CMRS Carriers, and each CMRS Carrier hereby consents to the receipt of all notices from the City hereunder by Verizon Wireless on behalf of such CMRS Carrier. A copy of the form of sublicense agreement is attached hereto as **Exhibit E**. If Verizon Wireless materially deviates from this form, the City will be given an advanced opportunity to review any such changes to the sublicense agreement with the Future Participating Carrier(s) in order to verify compliance with this Agreement.

b. CMRS Carrier Contracts. Verizon Wireless may require the Future Participating Carrier(s) to enter into the contracts Verizon Wireless deems necessary with the terms of those contracts being offered to all Qualified CMRS operators on equal terms and conditions and with installation, operation, maintenance and monitoring costs and expenses being charged to all Qualified CMRS operators on a pro-rata basis. “Qualified” means that such CMRS operator must possess all required federal, state, local and other licenses applicable to that CMRS operator.

c. Assignment or Sublicensing by CMRS Carriers. Consistent with the requirements of this Agreement, each CMRS Carrier will, whenever in its sole discretion it is required or appropriate for the operation of its business, have the right without prior notice to, or consent of, the City or any other Party to this Agreement, to transfer to a third party its license or sublicense (or otherwise transfer or allow the use of) all or any portion its rights to participation in the DAS, or its equipment, connections or space used in connection with the DAS, or assign its rights under this Agreement in whole or in part, to: (a) any entity controlling, controlled by or under common control with that CMRS Carrier; (b) any entity acquiring substantially all of the assets of that CMRS Carrier; (c) any entity lawfully authorized to use the equipment, or to use, operate, or resell the licensed frequencies or services of that CMRS Carrier; (d) any successor entity in a merger or consolidation involving that CMRS Carrier; or (e) a party providing financing to the CMRS Carrier. Provided, however, that any such assignment or sublicensing is subject to all the terms and conditions of this Agreement. Otherwise, the written consent by the City will be required and approved by ordinance. Verizon Wireless will provide the City written notice of any assignment, transfer, or sublicensing event under this Section 2(c) within 30 days following such event.

3. Development of the DAS.

a. The City will designate a “City Designated Representative” who will be the point of contact with respect to the Facility for Verizon Wireless regarding the installation of

the DAS in the Facility, including assistance in overall coordination.

b. Verizon Wireless will designate a "**Project Manager**" as its appointee responsible for the implementation and management of all aspects of the day-to-day operations of the DAS.

c. As between the City and Verizon Wireless, Verizon Wireless will have the sole responsibility as appropriate under the terms of the Agreement for the design, installation, operation, repair, modification, upgrade, alteration, maintenance, relocation, and removal of the DAS.

d. Safety. Verizon Wireless is responsible for initiating and maintaining all safety precautions and programs in connection with its performance of this Agreement. The installation, operation or maintenance of the DAS shall not endanger or interfere with the safety of persons or property located at the Facility.

e. Facility information and site/floor plan. The coverage area for both the DAS and Public Safety DAS includes the entire interior of Terminal A, Terminal B, Ramps and Tarmac, and the CONRac Building of the San Antonio International Airport Complex, including all levels, exhibit space, multipurpose space, meeting rooms, walkways, common areas, hallways, business center, administrative offices, security offices, maintenance offices, kitchens, storage areas, utility/mechanical rooms (Public Safety System, only), and loading docks. The aggregate area is approximately 2,200,316 sq. ft. (inside), as delineated in Exhibit A. A copy of the site and floor plans are attached hereto as Exhibit F (Facility Information and Site/Floor Plan).

4. Grant of License; Use of the Facility; Marketing.

a. Subject to the terms and conditions of this Agreement, City hereby grants to Verizon Wireless, its permitted successors or assigns and any Future Participating Carrier(s) sublicensing the DAS and their permitted successors or assigns, an exclusive license (the "**License**") for the sole purpose of installing, operating, repairing, modifying, upgrading, altering, or replacing to accommodate future technologies, spectrum or end user requirements, and maintaining, inspecting, relocating, and removing, where necessary, but at the CMRS Carriers' sole expense (except as otherwise specified in this Agreement), the equipment required for the operation of the DAS in and on the Facility in the DAS Areas, including but not limited to, wires, cables, fiber, and antennas, system monitoring, management, and alerting. The City represents that it has the full authority, through ordinance(s) granted by the City or otherwise, to grant the License provided in this Agreement. The City hereby reserves the right to grant, renew or extend non-DAS licenses to others, provided that such grant, renewal, or extension does not interfere with the DAS or any equipment appurtenant thereto. In the event of any such interference, the City will ensure that the interference is removed or resolved to allow for Verizon Wireless' restoration of service to the original specifications within 24 hours. Nothing contained herein will be construed as granting to any CMRS Carrier any ownership rights in the Facility or to create a partnership or joint venture between the City and the CMRS Carriers. This Agreement is limited so that the CMRS Carriers may only install, maintain, upgrade, alter, replace and operate the DAS in the DAS Areas. Provided, however, the

City shall allow the CMRS Carriers to use any available, existing conduit or interducts in the Facility for installation of wires, cables, and fiber, subject to the requirements of Section 7.b. of this Agreement.

b. Except as expressly provided herein, each CMRS Carrier will accept the DAS Areas in their "**As Is, With All Faults**" conditions and understands and agrees that City is under no obligation to make any improvements, perform any work, or provide any materials to prepare the DAS Areas for the CMRS Carriers. CITY HEREBY DISCLAIMS, AND VERIZON WIRELESS ON BEHALF OF ITSELF AND ALL FUTURE PARTICIPATING CARRIERS HEREBY WAIVES ANY AND ALL WARRANTIES OF ANY KIND WHATSOEVER, WHETHER STATUTORY, EXPRESS, OR IMPLIED WITH RESPECT TO THE DAS AREAS (INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE). NOTHING CONTAINED HEREIN SHALL LIMIT ANY WARRANTIES PROVIDED BY THIRD PARTY MANUFACTURERS AS TO THE DAS EQUIPMENT INSTALLED IN THE DAS AREAS.

c. Other Qualified CMRS Operators. The City hereby grants Verizon Wireless, its permitted successors or assigns, and any Future Participating Carrier(s) and their permitted successors or assigns, the exclusive right to install and offer the use of the DAS to wireless service providers for placement of wireless sites to be integrated into the DAS. The City agrees to refer all inquiries received from CMRS operators for the placement of wireless sites, or fiber-based microcellular (distributed antenna) systems, to Verizon Wireless, and will use its best efforts to encourage non-participating Qualified CMRS operators to utilize the DAS. If at any time during the Term of this Agreement, less than all Qualified CMRS operators in the San Antonio, Texas market are CMRS Carriers on the DAS, Verizon Wireless will be responsible for: (1) offering use of the DAS to those non-participating Qualified CMRS operators in the San Antonio, Texas market, and (2) maintaining a plan designed to periodically inform the nonparticipating Qualified CMRS operators in the San Antonio, Texas market of the capabilities of the DAS, and (3) encouraging non-participating Qualified CMRS operators in the San Antonio, Texas market to participate on the DAS under the terms and conditions set forth in this Agreement. The City agrees that it is in its best interest to grant these exclusive rights to Verizon Wireless in consideration of the significant capital investment necessary to develop the DAS. Verizon Wireless will use its best commercially-reasonable efforts to enter into Sublicense Agreements with at least two (2) of the major CMRS Carriers for use of the DAS, including AT&T, Sprint, and T-Mobile. If Verizon Wireless is unable to enter into a Sublicense Agreement with at least one (1) other major CMRS Carrier for use of the DAS within two (2) years of the execution of this Agreement, Verizon Wireless and the City shall cooperate in good faith to determine if the exclusive rights granted hereunder are in the City's best interests, and the City will make a final determination. Notwithstanding anything to the contrary contained in this Agreement, if Verizon Wireless does not have the exclusive right to offer use of the DAS to other Qualified CMRS operators as provided in this Section 4(c), Verizon Wireless may terminate this Agreement at any time upon ninety (90) days prior written notice to the City. If Verizon Wireless elects to terminate this Agreement pursuant to the provisions of this Section 4.c., it shall be entitled to reimbursement of the DAS Costs (as defined below) pursuant to the provisions of Section 5.d. of this Agreement.

d. Wi-Fi not included. The provision or propagation of Wi-Fi is specifically not included in the scope of services requested by the City and Verizon Wireless shall not incorporate Wi-Fi as part of the DAS.

5. **Term, Default and Termination.**

a. The “**Initial Term**” of this Agreement will be ten (10) years commencing on the Effective Date. Upon expiration of the Initial Term and if Verizon Wireless is not in default hereunder beyond any applicable cure period, this Agreement will automatically renew for two (2) consecutive five (5) year renewal periods unless either Party terminates it at the end of the then-current term by giving the other Party written notice of the intent to terminate at least 90 days prior to the end of the then-current term (such renewal period together with the Initial Term being the “**Term**”).

b. Verizon Wireless may terminate this Agreement at the end of the Initial Term or any renewal period by providing written notice of intent to terminate to the City at least ninety (90) days prior to the end of the Initial Term or applicable renewal period.

c. If fewer than two (2) CMRS Carriers are participating in the DAS, the City may terminate this Agreement at the end of the Initial Term or any renewal period by providing written notice of intent to terminate to Verizon Wireless at least ninety (90) days prior to the end of the Initial Term or applicable renewal period. If the City elects to terminate this Agreement pursuant to the provisions of this Section 5.c., Verizon Wireless shall be entitled to reimbursement of the DAS Costs (as defined below) pursuant to the provisions of Section 5.d. of this Agreement.

d. For Convenience. The City may terminate this Agreement without cause upon giving one hundred eighty (180) days’ prior written notice to Verizon Wireless and upon payment of any applicable reimbursement amount in accordance with this Section 5.d. If the City exercises its right to terminate for convenience during the Initial Term, the City will reimburse Verizon Wireless the following percentage of the actual cost of the DAS (including without limitation, all costs relating to the design, construction, operation, maintenance and repair of the DAS) and the cost to remove all of the CMRS Carriers’ base stations or CMRS Carrier-specific equipment (collectively, the “**DAS Costs**”), provided that such DAS Costs shall be capped at \$5,000,000:

Year of Term	Percentage (%) Reimbursement
1	100%
2	90%
3	80%
4	70%
5	60%

6	50%
7	40%
8	30%
9	20%
10	10%

The City agrees to pay such reimbursement amount to Verizon Wireless prior to the effective date of the termination of this Agreement; provided however, that in the event that the City's budget appropriation process cannot reasonably accommodate such reimbursement during the fiscal year that the City provides its termination notice under this Section 5(d), the City shall have ninety (90) days following the commencement of the fiscal year immediately following such year to pay such amount to Verizon Wireless.

Following installation of the DAS, Verizon Wireless agrees to provide the City with an inventory of all equipment, instruments, software, and hardware installed as a part of the DAS including all equipment, instruments, software, and hardware installed by sublicensees (the "**Inventory**"). Verizon Wireless shall provide an updated Inventory within 30 days after any modification or addition of equipment, instruments, software, and hardware installed as a part of the DAS by either Verizon Wireless, or any sublicensees. If the City exercises the right to terminate the Agreement under this section 5(d), Verizon Wireless will provide the City a detailed accounting of the current total of all DAS Costs, documented to the City's reasonable satisfaction. The City will have no obligation to reimburse Verizon Wireless under this section 5(d) until said accounting is delivered in writing and approved by the City. Any proprietary information provided by Verizon Wireless as part of the DAS Costs will be marked as such, and the City will protect such information from public disclosure subject to the protections of the Public Information Act, Chapter 552 of the Texas Government Code. All inventories shall be uploaded by Verizon Wireless to: ConcessionsSalesReports@sanantonio.gov.

e. The City may avail itself of any remedies set forth in this Agreement, including the remedies set forth in Section 5(f) upon written notice to Verizon Wireless if: (i) the License hereunder granted is taken on execution or other process of law in any action brought against Verizon Wireless, (ii) Verizon Wireless is bankrupt, insolvent, a receiver or trustee is appointed for Verizon Wireless or Verizon Wireless petitions or has a petition filed under the US Bankruptcy Code or takes any other similar action, or (iii) Verizon Wireless fails to comply with any material provision of this Agreement and such default is not cured within sixty (60) days after receipt of written notice (unless the nature of the event takes longer to cure and Verizon Wireless commences a cure within such 60 day period and thereafter diligently pursues it).

f. Remedies. Upon the occurrence of any event or events of default by Verizon Wireless lasting beyond the applicable cure period, the City will have the option to: (i) terminate the License granted under this Agreement, in which event Verizon Wireless' rights with respect to the DAS will be immediately terminated; or (ii) cure the default with Verizon Wireless agreeing to reimburse for the costs of such cure, and City will not be liable for any damages resulting to the DAS or any CMRS Carrier from such action. The City may also pursue any other remedies available under the terms of this Agreement, in law or equity.

g. If the City fails to comply with any material provision of this Agreement and such default is not cured within sixty (60) days after receipt of written notice from Verizon Wireless (unless the nature of the event takes longer to cure and the City commences a cure within such 60 day period and thereafter diligently pursues it), Verizon Wireless may terminate this Agreement upon written notice to the City and pursue any other remedies available under the terms of this Agreement, in law or equity.

h. If Verizon Wireless' rights under this Agreement are terminated, any CMRS Carrier may propose for approval by the City a substitute CMRS Carrier to assume the duties of Verizon Wireless under this Agreement, which approval will not be unreasonably withheld or delayed. If Verizon Wireless' rights under this Agreement are terminated and there are no other CMRS Carrier(s) to fulfill the role of Verizon Wireless, this Agreement shall be terminated.

6. Fees and Taxes.

a. Annual License Fee. Commencing on the first day of the month following the Effective Date, and thereafter on the first day of each month during the Term, Verizon Wireless shall pay to City a monthly payment equal to 1/12 of the Annual License Fee at the rate of \$45,000 per year per CMRS Carrier participating in the DAS (the "**Annual License Fee**"). Commencing on the sixth (6th) annual anniversary of the Effective Date, and on each annual anniversary thereafter during the Term, the Annual License Fee will be increased by two percent (2%) of the Annual License Fee with respect to the immediately-preceding year. The initial Annual License Fee for CMRS Carriers entering into Sublicense Agreements with Verizon Wireless will be equal to the then-current Annual License Fee paid by Verizon Wireless at the time the Sublicense Agreement is entered into, and will be subject to the two percent (2%) annual escalation thereafter. Each CMRS Carrier will pay its applicable License Fee directly to Verizon Wireless. Verizon Wireless shall transmit all applicable License Fees to City on or before the first day of each month. The monthly License Fee payment for each CMRS Carrier entering into Sublicense Agreements with Verizon Wireless will commence on the first day of the month following the effective date of the CMRS Carrier's Sublicense Agreement. City acknowledges and agrees that Verizon Wireless' initial monthly License Fee payment(s), and the initial License Fee payment(s) of the additional CMRS Carriers, may not be sent for up to 90 days after the commencement date of the payment(s).

b. Performance Guarantee. Within thirty (30) days after the Effective Date, Verizon Wireless shall deliver to the City an irrevocable standby letter of credit ("**LOC**") to guarantee the full and faithful performance by Verizon Wireless of all the terms and conditions of this Agreement and to stand as security for payment by Verizon Wireless of all claims by the City. The initial required amount of the LOC is FIVE MILLION AND 00/100 (\$5,000,000.00) DOLLARS. Sixty (60) days after completion of the construction and installation of the DAS, Verizon Wireless may reduce the amount of the LOC to TWO HUNDRED THOUSAND AND 00/100 (\$200,000.00) DOLLARS for remainder of the Term.

The LOC shall be issued in a form that is satisfactory to the City and the City must be able to draw upon the LOC at any of the financial institution's establishments. The language of the LOC will unequivocally state that at the time this Agreement terminates or is terminated by the City

without cause, if there is consideration due and owing to the City from Verizon Wireless, then the amount equal to the consideration due the City shall be paid from the LOC, and shall be applied toward the settlement of said claim(s). Provided that if Verizon Wireless is not in payment default at the end of the Term, the City agrees to release the LOC, and Verizon Wireless shall have no further obligation to provide the LOC.

c. Fees and Taxes. All costs related to the DAS, including but not limited to the design, installation, construction, operation, maintenance, improvement or otherwise will be completely funded by the CMRS Carriers and will be at no cost to the City. The CMRS Carriers will be completely responsible on a pro rata basis for paying all taxes levied on the DAS and its equipment. Except for the payment of Annual License Fees as outlined in this Agreement, there will be no other compensation due to the City by the CMRS Carriers.

d. Electricity. Verizon Wireless will install a new transformer and provide all required electrical power to its head-end, and to the head-end for all additional CMRS Carriers. The City will provide Verizon Wireless and each CMRS Carrier access to electrical power, including without limitation, access to the City's existing backup power facilities, during the construction, monitoring, operation, maintenance, or repair of all portions of the DAS outside of the head-end (as delineated in Exhibit A), and the City will make available electrical power in quantities that are reasonably necessary for operation of the DAS (excluding Verizon Wireless' and the CMRS Carriers' head-end), as delineated in Exhibit A, at no cost to Verizon Wireless or the CMRS Carriers. The CMRS Carriers will pay all costs associated with extending and connecting the DAS to such electrical power, and all costs associated with extending and connecting power to the head-end and/or base stations. As provided in Section 1.c., the City will provide a separate, dedicated electrical source for the use of the Public Safety System, including required back-up power.

e. Late Fee. Should Verizon fail to timely make any payments required hereunder, are delinquent for a period of ten (10) days or more from the date when such payment is due to the City, Verizon shall pay the City late fees from the date such payment became payable to the date of payment at the rate of one and one-half percent (1.5%) per month. City may, but is not obligated to, provide Verizon with a written reminder when payment has not been received within ten (10) days of the due date.

f. Payment Instructions. Any amounts due hereunder shall be paid by Verizon by check payable to the City of San Antonio, which shall be delivered or mailed postage prepaid to the address in this section or to such other address as may be designated in writing:

City of San Antonio
c/o Frost National Bank
P.O. Box 1958, San Antonio, Texas 78297-1958

Payments may also be made by Automatic Clearing House (ACH) transfer, or other alternative means, if agreed to, in writing by all parties.

7. **Construction, Installation, Operation, Maintenance, Interference and Ownership of the DAS.**

a. Verizon Wireless will install the DAS in a good and workmanlike manner in accordance with: (i) industry standards and practices; (ii) the Aviation Standards and Specification for Construction Manual attached as **Exhibit B**; and (iii) the drawings, plans and specifications (the "**Plans and Specifications**") and bill of materials that will be provided to the City for review and approval prior to commencement of construction. The preliminary plans for the DAS are attached hereto as **Exhibit A** ("**Preliminary DAS Plans and Specifications**"). Review and approval of the Plans and Specifications will be provided by the Director of the City's Aviation Department, or his designee, by way of a written notice (which may include email) to proceed. Verizon Wireless agrees to provide the City Fire and Electrical Inspector staff with any pertinent information relating to the equipment installation and cabling upon their reasonable request. City's approval, which will not be unreasonably withheld, conditioned, or delayed, of such Plans and Specifications shall not be deemed a representation that they comply with applicable laws, ordinances, rules, and regulations.

b. Upon completion of the DAS installation, as consideration for Verizon Wireless' use of existing City conduit and interducts throughout the Facility, for each fiber cable that is installed in existing City conduit and interducts as part of the DAS within the Facility, Verizon Wireless shall provide the City with exclusive "rights of use" to eight (8) strands of Single Mode Fiber to existing closets (IDF/MDF) (designated as "**City's Fiber**"). The City's Fiber will not be available for use by the Licensee. Should the License Agreement be terminated by either Verizon Wireless or the City pursuant to the terms and conditions of the License Agreement, the City will retain ownership of the City's Fiber.

c. Verizon Wireless must coordinate with the City all activities and hardware installations that affect the use of electrical, fiber, conduit, and cable trays. All installations by Verizon Wireless shall comply with all local electrical and fire codes. Any required cabling will be installed throughout the Facility within cable trays, conduits, J-hooks, or interducts. Verizon Wireless will supply and install all cable trays beyond what is currently available within the Facility needed for the DAS. Verizon Wireless shall obtain City approval prior to the installation of any additional cable trays, such approval not to be unreasonably withheld, conditioned, or delayed. The CMRS Carriers will provide lockable equipment cabinets. The CMRS Carriers' equipment will be stored in a neat and orderly fashion and will only be stored in areas authorized by the City for such storage. The City is not prescribing whether the DAS architecture should be dedicated for each CMRS Carrier or shared, but the City will not allow redundant cabling and antennas for each CMRS Carrier.

d. City will have the right of prior notice of any contractors performing installation, modification or maintenance work on behalf of the CMRS Carriers that will be in the Facility. Verizon Wireless will submit the name of each contractor to City prior to such contractor performing any work at the Facility.

e. **Hazardous Substances.** If any CMRS Carrier encounters any environmentally hazardous substances in the Facility, such CMRS Carrier will immediately notify City of such discovery and take all reasonable precautions to avoid the handling or disturbance of any such

environmentally hazardous substances in any manner. If a CMRS Carrier handles or disturbs such environmentally hazardous substances in the Facility, then such CMRS Carrier will conduct such activities it is required to conduct according to applicable environmental and safety laws and those specific rules established by City. If environmentally hazardous substances are discovered in the DAS Areas, the CMRS Carriers and the City will make all reasonable attempts: (1) to relocate the affected DAS Areas, (2) to modify the Plans and Specifications to address the impact of the environmentally hazardous substances in the Facility, and (3) to provide for an alternative location for the DAS away from that part of the DAS Areas originally contemplated for the DAS installation. Each CMRS Carrier will agree that no semiconductors or other electronic equipment containing polychlorinated biphenyls (PCB's), or other environmentally hazardous materials, will either be used or stored by any CMRS Carrier in or around the DAS Areas or in the Facility, and no such materials will be used in any of the equipment installed by any CMRS Carrier as part of or connected to the DAS within the Facility. However, a CMRS Carrier may use or install those materials commonly used in the provision of telecommunications services that may contain environmentally hazardous materials, such as batteries, provided it does so in compliance with applicable law. Notwithstanding anything to the contrary, no CMRS Carrier will have any responsibility for managing, monitoring, or abating, nor be the owner of, nor have any liability for, any environmentally hazardous substances that it did not bring into the Facility.

f. Each CMRS Carrier will agree not to use or permit the use of the DAS by its employees, subcontractors, agents or representatives for any purpose which is illegal or dangerous to life, limb, or property.

g. Verizon Wireless will commission the design and construction of the DAS, and use commercially reasonable efforts to ensure that the DAS will be capable of accommodating the performance needs of the Future Participating Carriers.

h. The CMRS Carriers will perform the DAS "**DAS Acceptance Test Procedures**" as outlined on Exhibit C to ensure that the DAS is operationally acceptable and will bear any expenses to remedy and implement any changes that are necessitated by the failure of the DAS to pass the Acceptance Test Procedures.

i. The CMRS Carriers will operate the DAS on a twenty-four (24) hour basis.

j. After the DAS is installed in accordance with the approved Plans and Specifications, no CMRS Carrier may make any improvements or alterations affecting the appearance of DAS in those areas of the Facility that are generally visible to the public ("**Public Areas**") without the City's prior written approval, which approval will not be unreasonably withheld, conditioned, or delayed. All actions undertaken by a CMRS Carrier and all equipment, improvements or alterations made by a CMRS Carrier in any way related to this Agreement will be undertaken in compliance with all applicable laws, ordinances, building and safety codes, regulations and orders. The CMRS Carriers will have the right to upgrade or modify the DAS and the related equipment and implement new technologies or use different and additional spectrum to better serve end users of the DAS; provided however, that if additional Facility space is needed for such upgrade or modification, such additional space will be subject to the City's approval, such approval not to be unreasonably withheld,

conditioned or delayed.

k. The CMRS Carriers may select and enter into a maintenance contract with a qualified third-party vendor ("**Contractor**") to provide for routine maintenance, monitoring and repair of the DAS. If any CMRS Carrier enters into a maintenance contract with a Contractor, that contract will include the same indemnification, insurance, and limitations on liability clauses as set forth in this Agreement. The Contractor will be subject to the access requirements set forth in Section 8 of the Agreement. The CMRS Carriers will bear the cost to maintain the DAS on an equal, pro-rata basis at no cost to the City. The CMRS Carriers will use their best commercially-reasonable efforts to maintain the DAS in accordance with the system uptime and performance criteria attached hereto and incorporated herein as **Exhibit D** ("**DAS Uptime and Performance Criteria**"). The CMRS Carriers will schedule any maintenance and repair, which may result in a service interruption, during periods when no major events are scheduled for the Facility, in the sole reasonable determination of the City. The CMRS Carriers will provide a copy of the maintenance, monitoring and repair contract to the City promptly after it is executed.

l. Upon completion of the DAS installation, the CMRS Carriers will conduct radio frequency interference studies as necessary to determine interference with existing third-party communications systems caused by the DAS or any CMRS Carrier's equipment. The operation of the DAS or any CMRS Carrier's equipment will not interfere with the mechanical or electrical systems of the Facility, or the operation of any existing radio or telecommunication equipment operated on or from the Facility. The CMRS Carriers will take the steps necessary to correct and eliminate measurable interference with existing third-party communications systems within forty-eight (48) hours of receipt of notice. If the CMRS Carriers are unable to resolve the interference issue within this timeframe, they will voluntarily power down (turn off) the portion of DAS or CMRS Carrier's equipment causing the interference, except for intermittent testing, until such time as the interference is remedied. Any significant and or harmful interference detected throughout the operation of the DAS shall be a cause for immediate shutdown of the portion of the DAS that is causing the interference until such time as the interference is corrected by the CMRS Carriers. Under no circumstances will the DAS interfere with communications from the Public Safety System at the Facility. Such interference, if it occurs, will be addressed immediately by the CMRS Carriers.

m. With the exception of a termination by the City under subsection 11(b), the DAS and all equipment appurtenant thereto installed by a CMRS Carrier, (excluding the base station equipment) that is then remaining in the Facility at the expiration of this Agreement will be deemed abandoned and become the property of the City in its "**as-is,**" "**where is**" condition.

n. The CMRS Carriers will agree to keep all improvements and alterations free and clear of all mechanic liens. In the event that a lien is filed against the Facility as a result of labor or material supplied in connection with the DAS, the CMRS Carriers, agrees to diligently contest such lien, and regardless of the success of such contest, obtain the release and discharge of such lien, or bond off such lien, within thirty (30) days after receipt of notice of such lien.

o. All construction, installations, and improvements now or hereafter placed on the Facility will be installed or made in accordance with the standards, procedures, and requirements

of the applicable City Building Codes. No monitoring or inspection of any work on the DAS or otherwise by City representatives will be deemed supervision of any such employees or contractors of the CMRS Carriers. The CMRS Carriers will monitor and supervise all of their employees, agents, representatives, and contractors, and will assume full responsibility for them and the expertise and quality of all work, and in no event will they rely upon City, or any of its agents, employees, or representatives for all or any portion of the same. The CMRS Carriers will be responsible for any and all cost or expense arising from its installation, maintenance, operation or repair of any facilities installed or used by them in relation to the DAS pursuant to this Agreement, which will be shared among the CMRS Carriers on an equal, pro rata basis.

p. Reports. Verizon Wireless will provide City with weekly construction status reports until the DAS is operational. Status reports shall be uploaded by Verizon Wireless to: ConcessionsSalesReports@sanantonio.gov. Within sixty (60) days after the DAS is operational, Verizon Wireless and applicable CMRS Carriers (or their Contractor) will provide the following reports to the City via email, web-based portal or in HTML format, such reports to be updated on a monthly basis in the event of any changes:

- (i) A complete list of major components showing a description and location for each;
- (ii) A complete cable record and wiring diagram identifying all cable and system components by location, distribution cable, and key sheet as related to instrument assignments;
- (iii) Documentation of all technology used for the DAS including, but not limited to: software database configurations; hardware equipment itemizations and configurations; electrical requirements; space requirements; peripheral equipment diagrams; rack profile diagrams; equipment shelf profile diagrams; cable plant interconnectivity charts; and wiring diagrams sufficient to facilitate effective operational support of the DAS;
- (iv) Any changes to CMRS Carriers' frequency operations and/or power outputs if applicable; and monthly electrical usage; and
- (v) Diminished coverage, and down time for the DAS.

q. Meetings. Verizon Wireless will attend meetings or teleconferences with City staff, consisting of routine or emergency meetings concerning DAS operational issues and planning, as reasonably requested by City.

r. Support. Verizon Wireless will provide on-site maintenance and technical support for the Public Safety System for a period of one (1) year following the date of the Bill of Sale. During this period, Verizon Wireless and its chosen contractor(s) will be designated as the primary point(s) of contact for any reported issues relating to the performance of the Public Safety System. Verizon Wireless will provide City personnel with a document detailing

contact procedures, including the name of the chosen contractor(s), list of contractor(s) personnel, and phone numbers to contact chosen contractor(s), to request support in the event of system issues. Verizon Wireless will agree to abide by established city standard response times for Public Safety Communications issues, including *(but not limited to)* a two hour minimum response for any major issue that renders public safety communications unavailable. Immediately prior to the expiration of one (1) year following the date of the Bill of Sale, Verizon Wireless agrees to provide City personnel with detailed support information to continue maintenance of the Public Safety System portion of the DAS system, including "as-built" wiring diagrams, prints and drawings, and access to the related monitoring module that is used in the continued monitoring and diagnostics of the Public Safety System. Verizon Wireless will insure that the Public Safety System portion of the DAS monitoring module is configured to notify the Facility's Airport Communications Center of all alarm and alert notifications generated by the Public Safety System portion of the DAS. Verizon Wireless will also provide any necessary training to City personnel as to the use of the software or systems used in the Public Safety System maintenance.

8. **Access to the Facility.**

a. The CMRS Carriers and their Authorized Personnel must coordinate and receive prior approval by assigned City Staff to gain access to, and use of, the Facility seven (7) days per week, 24 hours per day to construct, operate and maintain, upgrade, test, repair, relocate, and replace the DAS, or a CMRS Carrier's equipment, as applicable. **"Authorized Personnel"** will include the employees, engineers, technicians, consultants, agents, sub-licensees, contractors, and subcontractors of the CMRS Carriers. The CMRS Carriers will conduct all work in a manner to minimize interference with the operations of other contractors. If installation activities are disruptive to persons, events or activities at the Facility, the disruptive activities will be, to the maximum extent possible, completed during times that will minimize the disruption.

b. The CMRS Carriers and their employees, agents, vendors, and invitees will comply with City rules and regulations governing access to and conduct on the City's property. Contractor's staff shall enter the Facility through entrances designated by the City.

c. The City will have the right upon reasonable notice to inspect the DAS to verify compliance with this Agreement. Absent a bona fide emergency, the City will refrain from accessing any portion of a CMRS Carrier's equipment without prior written notice and direct supervision by the CMRS Carrier or its authorized representative.

d. **Identification Security Badges.** For security purposes, the CMRS Carriers and their contractors will be required to obtain identification security badges from the City and the City reserves the right to institute a reasonable charge for the issuance and replacement of these identification security badges. All badges must clearly indicate the employee and CMRS Carrier or subcontractor name.

e. The use of any mechanical vehicles within the Facility by the CMRS Carriers, their subcontractors or suppliers shall require prior approval by City.

f. Deliveries. Deliveries of all supplies, goods, and equipment shall be made at locations and times mutually agreed to by the Parties to avoid interference with Facility operations.

g. Security. Verizon Wireless shall be fully responsible, at its sole cost, for providing security for the Premises with no right of reimbursement from the City. Notwithstanding the foregoing, Verizon Wireless shall take such reasonable security precautions with respect to the Premises and its operations and personnel as the City in its discretion may require from time to time. To the extent applicable with respect to security requirements for the Air Operations Area (A.O.A.) and/or Security Identification Display Area (S.I.D.A.), Verizon Wireless shall provide for the security of the A.O.A. and/or S.I.D.A. to prevent entry or movement of unauthorized persons thereupon in accordance with Chapter 3, Section 3-23 of the City Code of San Antonio, Texas as such section currently exists or as it may be amended or replaced in the future. Additionally, in appropriate cases, physical barriers to prevent access to the A.O.A. and/or the S.I.D.A. must be placed by Verizon Wireless upon the Premises and supervised by Verizon Wireless during construction upon the Premises. Verizon Wireless's employees who have demonstrated a requirement to access the A.O.A. and/or the S.I.D.A. will, after a needs assessment by the Airport Security Compliance Division of the Aviation Department, be provided with proper identification security badges. Qualified employees must complete the appropriate forms and provide appropriate employment history and other background investigation materials as mandated by law and the City from time to time.

h. Verizon Wireless shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States of America or of the State of Texas regarding security requirements or security measures upon the Airport, including, but not limited to, compliance with any badging requirements for all of its personnel employed at the Airport. Verizon Wireless shall also comply with the mandates of the FAA and/or the TSA for background investigations of its personnel, as such mandates now exist or as they may be changed, amended or replaced with new or different mandates in the future. Verizon Wireless shall indemnify and hold harmless the City, its elected officials, officers, designated management representatives and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States of America, including the FAA, the TSA or of the State of Texas by reason of Verizon Wireless's failure to comply with any applicable security provision and/or with any provision or requirement for compliance set forth in this Section h.

9. Insurance.

- a) Prior to the commencement of any work under this Agreement, CMRS Carriers shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "*Distributed Antenna System for San Antonio International Airport* " in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) must be signed by the Authorized Representative of the insurance carrier, and list the agent's signature and phone number. The Certificate(s) shall be mailed, with copies

of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until the required Certificate(s) and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- b) The City reserves the right to review the insurance requirements of this Article during any extension or renewal hereof and to reasonably modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereby City may incur increased risk.
- c) A CMRS Carrier's financial integrity is of interest to the City; therefore, subject to the CMRS Carrier's right to maintain reasonable deductibles in such amounts as are approved by the City, CMRS Carriers shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the CMRS Carrier's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of \$3,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Fidelity or Commercial Crime Insurance Employee Dishonesty Policy – City will be named as Loss Payee	\$100,000

- d) The CMRS Carriers agree to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of the CMRS Carriers herein, and to provide a certificate of insurance and endorsement that names the CMRS Carriers and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of the CMRS Carriers. The CMRS Carriers shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor.
- e) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the declaration page, and all required endorsements. Vendor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Vendor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Aviation Department
Attn: Concessions
9800 Airport Blvd., Suite # 185
San Antonio, Texas 78216

- f) The CMRS Carriers agree that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds, as their interests may appear under this Agreement by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured

shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

g) Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, the CMRS Carrier shall provide a replacement Certificate of Insurance and applicable endorsements to the City. City shall have the option to suspend Vendor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

h) In addition to any other remedies the City may have upon a CMRS Carrier's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order the CMRS Carrier to stop work hereunder, and/or withhold any payment(s) which become due to the CMRS Carrier until the CMRS Carrier demonstrates compliance with the requirements hereof.

i) Nothing herein contained shall be construed as limiting in any way the extent to which the CMRS Carriers may be held responsible for payments of damages to persons or property resulting from a CMRS Carrier's, or its subcontractors', performance of the work covered under this Agreement.

j) It is agreed that the CMRS Carriers' insurance shall be deemed primary and noncontributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

k) It is understood and agreed that the insurance required is in addition to, and separate from, any other obligation contained in this Agreement, and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

l) The CMRS Carriers and any Subcontractors are responsible for all damage to their own equipment and/or property.

10. **Indemnity and Limitation of Liability.**

Verizon Wireless and each Future Participating Carrier (each an "Indemnitor") covenant and agree 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 the Indemnitor(s)' activities under this Agreement, including any acts or omissions of the Indemnitor, any agent, officer, director, representative, employee, vendor or subcontractor of the Indemnitor, 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 the CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IF THE INDEMNITOR(S) 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.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The Indemnitor(s) shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the Indemnitor(s) known to the Indemnitor(s), related to, or arising out of the Indemnitor(s)' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at the Indemnitor(s)' cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving the Indemnitor(s) of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by the Indemnitor in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. The Indemnitor shall retain CITY-approved defense counsel within ten (10) business days of CITY's written notice that CITY invoking its right to indemnification under this Contract. If the Indemnitor fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and the Indemnitor shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of an Indemnitor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnitor or any subcontractor under worker's compensation or other employee benefit acts.

Limitation of Liability - NEITHER VERIZON WIRELESS, ANY FUTURE PARTICIPATING CARRIER, NOR THE CITY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT.

11. Damage, Destruction, or Actions of the City.

- a. CMRS Carriers' Rights. In the event of any damage, destruction, action of the City or Verizon Wireless or CMRS Carriers, or loss that impairs the CMRS Carriers' ability to install, maintain or operate the DAS in the Facility that is so substantial that the repair,

rerouting, restoration or rehabilitation of the DAS and/or the Facility cannot reasonably be expected to be completed within one hundred eighty (180) days from the date of such damage or action, Verizon Wireless may, on behalf of itself and all CMRS Carriers, elect to terminate this Agreement and all sublicenses by giving written notice to the City within one hundred twenty (120) days of the date of the damage or action. If Verizon Wireless or the City elects not to terminate the Agreement, but such damage is not repaired or such action cannot be compensated for within one hundred eighty (180) days, Verizon Wireless and/or the City may terminate the Agreement and all sublicenses upon written notice to the City at any time prior to the completion of the repairs or modifications of the DAS and/or the Facility. With respect to damage or action of the City or Verizon Wireless or CMRS Carriers that impairs or limits any CMRS Carrier's ability to use any of the Facility or impairs the installation of the DAS in the DAS Areas, then CMRS Carriers may cease to use such portion of the Facility or request a reroute of the DAS from such impaired portion of the DAS Areas.

b. City's Rights. The City may terminate this Agreement by giving Verizon Wireless nine (9) months' written notice if the City substantially alters the use of the Facility such that it is: (i) closed to the public, (ii) repurposed for non-public use, (iii) demolished, or (iv) sold to a private entity. If the City terminates this Agreement under this subsection, Verizon Wireless shall have the right to remove some or all of the DAS equipment from the Facilities at its cost, and Verizon Wireless shall be entitled to reimbursement of the DAS Costs pursuant to the provisions of Section 5.d. of this Agreement.

12. **Recovery of the Facility; Renovations; Relocation of the DAS.**

a. If the City or other governing authority, in the exercise of any of its prescribed powers decides to recover any portion of the Facility or require the relocation of all or any part of the DAS, the City agrees to provide at least six (6) months prior written notice to Verizon Wireless; provided however, that if a governing authority other than the City exercises any such prescribed powers, the City agrees to give Verizon Wireless as much notice as reasonably possible. At the City's sole cost and expense, the City will use commercially-reasonable efforts to work with the CMRS Carriers to determine a new location within the Facility to relocate any affected portions of the DAS, which new location for any part of the DAS will be subject to Verizon Wireless' reasonable approval.

b. In the event of Facility improvements that may affect the DAS, City may direct the CMRS Carriers to remove or relocate their wires, conduits, cables and other property located in, on, or around the Facility. In the event of minor Facility improvements, the City will be responsible for reimbursing the CMRS Carriers for any costs to relocate portions of the DAS located in non-public areas of the Facility, and the CMRS Carriers will be responsible for any relocation costs of portions of the DAS located in the public areas of the Facility. If the City undertakes a major renovation of the Facility, the City will be responsible for all relocation costs of the DAS.

c. Except as provided in Section 12.a. or in the event of a major renovation as set forth in Section 12.b. above, in no other event will Verizon Wireless be obligated to relocate the Headend room.

13. Miscellaneous.

a. Notices. Notices concerning this Agreement shall be in writing via email to Verizon Wireless and/or the City's official point(s) of contact as provided and maintained under this Agreement, and must be followed by certified or registered mail, express mail or other overnight delivery service, or hand-delivery, proper postage or other charges paid and addressed or directed to the respective Parties as follows:

If to Verizon Wireless:	Verizon Wireless Attn: Manager – Network Real Estate 600 Hidden Ridge Irving, TX 75038
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with a copy to:	Verizon Wireless, Legal Department Attn.: General Counsel 180 Washington Valley Road Bedminster, NJ 07921
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If to City:	City of San Antonio Aviation Department Attn: Concessions 9800 Airport Blvd., Suite # 185 San Antonio, TX 78216
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Or at such other address(es) as either Party gives written notice of to the other Party. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

b. Non-Discrimination. The CMRS Carriers agree not to discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of any contractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination in connection with its performance of this Agreement. The CMRS Carriers will incorporate the obligations in this Section 13.b. in all contracts they enter into with subcontractors or other parties with respect to the performance of this Agreement. The CMRS Carriers are also subject to the mandatory federal contract provisions set out in Exhibit 9 of the RFP, attached hereto and incorporated herein as Exhibit G (Mandatory Federal Contract Provisions).

c. Prompt Payment of Subcontractors. If applicable, upon execution of this Agreement by Verizon Wireless, Verizon Wireless shall be required to submit to the City accurate progress payment information with each invoice regarding each of its subcontractors, including HUBZone subcontractors, to ensure that the Verizon Wireless' reported subcontract participation is accurate. Verizon Wireless shall pay its subcontractors within forty-five (45) days of receipt of undisputed invoices from subcontractors. In the event of Verizon Wireless' noncompliance with these prompt payment provisions, this Agreement may be suspended, and no new City contracts

shall be issued to the Verizon Wireless, until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the applicable contract.

d. Non-Binding Mediation. Prior to filing suit, the Parties to this Agreement shall use non-binding mediation to resolve any controversy, claim or dispute arising under this Agreement, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this Agreement or the preemptive effect of federal law.

(i) Initiation of Mediation. To initiate non-binding mediation, a Party shall give written notice to the other Party. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties. If the Parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endipute at the request of either Party. Any mediator so designated must be acceptable to both Parties.

(ii) Mediation Process. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any findings by the mediator shall be a non-binding determination.

e. Conflict of Interest. The City of San Antonio Ethics Code prohibits contracts between the City and its local public officials, employees and agents from being either officers or employees of City or any City agency such as City-owned utilities. It further prohibits Verizon Wireless' officers, employees and agents from having a prohibited financial interest in an agreement with the City. A prohibited financial interest means a City officer or employee, his or her parent, child or spouse, a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly, owns ten percent (10%) of more of the voting stock or shares of the business entity; or ten percent (10%) or more of the fair market value of the business entity; or a business entity of which any individual or entity above listed is a subcontractor on a City contract, a partner, or a parent or subsidiary business entity. Verizon Wireless warrants that it has disclosed whether there are any existing or potential conflicts of interest related to this provision and that it has completed a Discretionary Contracts Disclosure Form.

f. Ownership and Retention of Public Records. In accordance with Texas law, Verizon Wireless acknowledges and agrees that all local government records created or received in the transaction of official business pursuant to this Agreement are declared to be public property and subject to the provisions of the Local Government Records Act, Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of the City pursuant to this Agreement shall be subject of any copyright or proprietary claim by Verizon Wireless or any Future Participating CMRS Carriers.

- (i) Exception to Public Records. The Parties, however, acknowledge that Verizon Wireless' internal documents with associated trade secrets may be subject to claims of confidentiality or proprietary information by Verizon Wireless. Any such documents identified by Verizon Wireless, in whole or in part, as confidential or proprietary in nature will be treated as such by the City, subject to the applicability of the Public Information Act, Chapter 552 of the Texas Government Code.
- (ii) Nature of Local Government Records. The term "local government records" as used herein shall mean any documents, papers, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or character and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business. Verizon Wireless acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement, will belong to and be the property of the City.
- (iii) Exception to Local Government Records. To the extent a local government record includes information Verizon Wireless considers confidential or proprietary, it will identify such information as such when providing the local government record to the City. Any information identified as confidential or proprietary by Verizon Wireless will be treated as such by the City, subject to the applicability of the Public Information Act, Chapter 552 of the Texas Government Code.
- (iv) Compliance with Records Retention Laws. In accordance herewith, Verizon Wireless agrees to comply with the Public Information Act and Local Government Records Act.

g. Entire Agreement. This Agreement is the entire agreement between the Parties and supersedes any and all prior agreements and understandings, either oral or written, between the Parties.

h. No Waiver. The failure of any Party to insist at any time upon the strict performance of any provision contained herein or to exercise any option, right, power or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

i. Amendment, Successors and Assigns. This Agreement may only be amended by a written instrument duly executed by each Party. This Agreement will extend to and bind the heirs, personal representatives, successor and assigns of the Parties hereto.

j. GOVERNING LAW. THE INTERPRETATION, VALIDITY, AND

ENFORCEMENT OF THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED UNDER THE INTERNAL LAWS OF THE STATE OF TEXAS, INCLUDING ITS PRINCIPLES OF CONFLICT OF LAWS. THE PARTIES AGREE THAT THE VENUE OF ANY LITIGATION RELATED HERETO WILL BE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

k. Quiet Enjoyment and Recordation. The City agrees that upon each CMRS Carrier's performance of all the terms, covenants and conditions to be observed and performed pursuant to the terms of this Agreement, each CMRS Carrier may peacefully and quietly enjoy that portion of the Facility where the DAS is located in accordance with the terms hereof.

l. No Personal Liability. This Agreement does not create any personal liability on the part of any officer, employee, or agent of any Party. No officer, employee, or agent of any Party will be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement.

m. Force Majeure. In the event that either Party hereto is prevented from fully and timely performing any of its obligations hereunder due to acts of public enemy, restraining by government, unavailability of materials, civil unrest, floods, hurricanes, tornadoes, earthquakes, or other severe weather condition, or other acts of God (collectively call "**Force Majeure Event**") such Party shall be relieved of the duty to perform such obligation until such time as the Force Majeure Event has been alleviated; provided, that upon the remove of the Force Majeure Event, the obligation prevented from being fulfilled will be automatically reinstated without necessity of any notice whatsoever.

n. Independent Contractors. Verizon Wireless' relationship to the City under this Agreement will be that of independent contractor. Nothing in this Agreement will be construed to designate any Party, or any of its employees, as employees, agents, joint venturers, or partners of the other Party.

o. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be void, voidable, invalid, or unenforceable, the remainder of this Agreement will not be affected thereby, and this Agreement will be valid and enforceable to the fullest extent permitted by law.

p. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

q. Effective Date. 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 of San Antonio City Council (the "**Effective Date**").

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

**SAN ANTONIO MTA, L.P.,
d/b/a Verizon Wireless**

By: Verizon Wireless Texas, LLC
Its: General Partner

By: 
Jacob Hamilton
Director - Network Field Engineering

Date: 2/7/19

**CITY OF SAN ANTONIO,
a Texas municipal corporation**

By: _____
Name: _____
Title: City Manager

Date: _____

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Andrew Segovia
City Attorney