



DEPARTMENT HEAD'S SUMMARY REQUISITION FOR COUNCIL ACTION (RCA)

DEPARTMENT: Information Technology
DATE: July 10, 2012
CONTACT PERSON/PHONE: Miguel A. Gamiño, IT Director/ 541-4746
Bertha Ontiveros, City Attorney/ 541-4550
DISTRICT(S) AFFECTED: All

SUBJECT: That the City Manager be authorized to sign a Communications Site Agreement between the Texas Department of Public Safety (TDPS) and the City of El Paso for antenna, shelter and/or antenna space, including any wires, generator(s), equipment, etc. necessary to carry out the City's operation of the radio tower (Tower Equipment) at 11612 Scott Simpson Drive, El Paso, Texas 79936, at no cost to the City.

BACKGROUND/DISCUSSION:
This agreement allows the City to install Microwave Point-to Point (P-P) Base Station equipment along with Point-to-Multi-Point (PMP) equipment at the TDPS site as part of the City's Microwave project.

The Site Agreement is a no cost agreement, and is effective on the date it is signed by the last of the two parties and the initial term of the Site Agreement shall be through August 31, 2013. The agreement shall be automatically renewed each year for a one-year period under the same terms and conditions.

The City shall have no right, title or interest in the Site except the non-exclusive use of the stated site location. The City is responsible to abide by all federal, state and local rules and regulations pertaining to the operation of the Site and their equipment.

PRIOR COUNCIL ACTION:
No.

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson



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AMOUNT AND SOURCE OF FUNDING:

Department: Information Technology
Amount: No cost agreement
Funds Available: No cost agreement
Funds Source: No cost agreement

BOARD/COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

**Miguel A. Gamiño, Information Technology
Director**

Information copy to appropriate Deputy City Manager

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson



RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Communications Site Agreement between the Texas Department of Public Safety and the City of El Paso for antenna, shelter and/or antenna space, including any wires, generator(s), equipment, etc. necessary to carry out City's operation of the radio tower ("Tower Equipment") at 11612 Scott Simpson Drive, El Paso, Texas 79936, at no cost to the City.

ADOPTED this _____ day of July, 2012.

CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Bertha A. Ontiveros
Assistant City Attorney

Miguel Gamino Jr., Director
Information Technology Department

COMMUNICATIONS SITE AGREEMENT

This Communications Site Agreement (the "Site Agreement") is entered into as of the **final execution date** by and between **Texas Department of Public Safety (TXDPS)** ("Site Owner" or "Lessor") having an address at **5805 North Lamar, Austin, Texas 78752**, and **City of El Paso ("Lessee")** having an address at **#2 Civic Center Plaza; El Paso, Texas 79901**.

In consideration of the mutual promises, conditions, covenants and considerations passing between the parties hereto, it is understood and agreed by and between the parties to this Site Agreement as follows:

Site Agreement is for **antenna and/or shelter and/or antenna space, including any wires, generator(s), equipment, etc. necessary to carry out Lessee's operation of the radio tower ("Tower Equipment")** as listed in the attached Exhibit "A" on TXDPS tower located at El Paso Scott Simpson Office site located at **11612 Scott Simpson Drive; El Paso, Texas 79936** in **El Paso County, Texas**. Latitude: **31.44.45 N** Longitude: **106.17.47 W** together with access thereto ("Site"). Exhibit "A" is attached hereto and incorporated herein. The Tower Equipment will be installed and maintained by and at the expense of the **LESSEE**.

1. **TERMS:** The Term of this Site Agreement shall be effective on the date it is signed by the last of the two parties to this contract. The initial term of the Site Agreement shall be through August 31, 2013. The agreement shall be automatically renewed each year for a one-year period under the same terms and conditions by mere presence of **LESSEE** on property. This is a no-cost agreement. This agreement is for public safety use.
2. **TITLE:** **LESSEE** shall have no right, title or interest in the Site except the non-exclusive use thereof as expressly set forth in this Site Agreement.
3. **ELECTRICITY:** Site Owner will provide electricity at the Site for the benefit of **LESSEE**.
- 3.1 **LESSEE** shall have the right to use the existing emergency stand-by generator(s) at the Site if available; however Site Owner makes no representations or warranties as to the fitness of such generator(s) for **LESSEE's** requirements.
4. **PERMITS, LICENSES AND REGULATIONS:** **LESSEE** agrees and understands that it is **LESSEE's** responsibility to abide by all federal, state, and local rules and regulations pertaining to the operation of the Site and of **LESSEE's** equipment; including without limitations, those pertaining to the installation, maintenance, height, location, use, operation, and removal of its equipment, antenna systems, and other alterations or improvements authorized herein. **LESSEE** hereby represents that **LESSEE** has obtained the necessary licenses and permits required to use said Site, or that **LESSEE** will obtain said licenses or permits, at **LESSEE's** own expense, prior to any such use. **LESSEE** will provide Site Owner with a copy of all required licenses prior to placement of Tower Equipment on the tower. Site Owner will provide **LESSEE** with a copy of the Antenna Structure Registration as provided to the Site Owner by the FCC.
5. **USE:** It is expressly agreed by **LESSEE** that: (1) while using the Site, **LESSEE** shall be responsible for proper operation and compliance with Federal Communications Commission ("FCC") rules; (2) **LESSEE** hereby consents to the execution of agreements between Site Owner and other parties eligible to share the Site, whereby such parties may utilize and share said Site with **LESSEE**; and (3) **LESSEE** represents that it has independently ascertained that the Site is adequate and proper for **LESSEE's** intended use and has entered into this Site Agreement based solely upon said independent investigation, and not by any representation by Site Owner.

LESSEE will not increase the size of its Tower Equipment or alter the wind load or structural impact of its equipment upon the tower without the prior written consent of Site Owner.

6. **COVERAGE AND INTERFERENCE:** Site Owner makes no representations concerning the distance at which useable radio signals may be transmitted and received from the Site or location thereof. **LESSEE** is hereby notified that the Site is subject to degradation of performance from, but not limited to, natural and man-made phenomena such as so-called "skip" interference, power line, and ignition noise, intermodulation, co-channel interference, and interference from users of the same or other radio frequencies.

LESSEE shall be responsible for taking such reasonable steps as may be necessary to prevent any spurious radiation or objectionable interference with the broadcasting or transmission facilities of Site Owner or other users on the Site caused by **LESSEE**. The determination of what is reasonable shall be within the sole discretion of Site Owner. If **LESSEE** has not taken corrective measures within three business days after **LESSEE** has been notified that its equipment is causing objectionable interference, then Site Owner may, in addition to its other rights or remedies, at its discretion: (1) disconnect power to **LESSEE**'s equipment, and/or (2) take corrective action and charge **LESSEE** for reasonable costs of labor and materials necessary to eliminate such interference and/or spurious radiation. If such objectionable interference or spurious radiation cannot be reduced to levels reasonably acceptable to Site Owner, Site Owner may elect to terminate this Site Agreement by giving **LESSEE** written notice. Site Owner or its designated representatives shall have the sole right, initially and during the term of this Site Agreement, to: (a) determine the location of the equipment on the Site, and (b) require **LESSEE** to take whatever action is necessary to eliminate objectionable interference by **LESSEE**'s equipment with devices approved by Site Owner to minimize spurious radiation.

- 6.1 Nothing contained in this Site Agreement shall be deemed to entitle **LESSEE** to the exclusive possession of any vertical span of space on the Site; it is the intention of the parties that the vertical span of space may be used by others at the direction of the Site Owner, provided that no objectionable interference is caused to **LESSEE**'s radio transmission activity.

It is understood and agreed that Site Owner intends to and shall have the right to accommodate other transmitters and/or receivers at the Site. In that connection, it is understood and agreed that Site Owner shall have the right, at any time during the term of this Site Agreement, to locate the antenna or other equipment of other users within the same vertical space on the Site as **LESSEE** may occupy, including the right to require the multiplexing or the transmission of other user(s), provided that: (1) no objectionable interference is caused to **LESSEE**'s transmission activities thereby, and (2) **LESSEE** does not incur any cost in connection therewith.

For purposes of this Site Agreement, objectionable interference shall be deemed to exist if:

- (1) a determination to that effect is made by an authorized representative of the FCC;
- (2) a condition exists which constitutes interference within the meaning of the provisions of the Rules and Regulations of the FCC at that time in effect;
- (3) there is a material impairment of sound, picture, data, or other transmission in any material portion of the protected service area of such activity, as such area is or may be defined by the FCC at any hour during the period of operation of such activity, as compared with that which would be obtained if no other users were transmitting from the Site or had any equipment at the Site; or
- (4) a user is prevented from using or having access to its equipment at reasonable and usual times to an extent to which it interferes to a material degree with the operation and maintenance thereof—it being understood that a reasonable temporary interference, which does not materially interfere with the operation or maintenance of said equipment and which is occasioned by the installation of the new equipment by another user or by repairs to or maintenance of existing equipment of another user, shall not be considered objectionable interference.

6.2 If appropriate to maintain safe or efficient operation of the Site, LESSEE shall be required to participate in any transmitter and receiver combining and multicoupling systems, operating from one or more antennas installed by Site Owner.

7. LESSEE'S MAINTENANCE AND REMOVAL OF EQUIPMENT AND COAXIAL CABLES:

7.1 LESSEE shall install only the equipment, (including antenna and transmission line) which is listed in the attached Exhibit "A" and which has been approved by Site Owner. LESSEE agrees that the installation will be done in a neat, professional manner and in compliance with all applicable laws and regulations. All costs (including repair of damages caused thereby to LESSEE's equipment) will be the responsibility of the LESSEE. LESSEE is responsible for any damages caused by LESSEE to the tower, Site Owner's equipment, and any other users' equipment. LESSEE is responsible for any damages caused by LESSEE's agents or LESSEE's contractors at the Site.

If LESSEE wants to add any additional equipment to the tower, other than LESSEE's equipment referenced herein, LESSEE cannot install such additional equipment until the parties execute an amendment to Exhibit A of this Site Agreement, authorizing the additional equipment.

7.2 LESSEE shall properly ground all antenna equipment at the uppermost location of its equipment on the tower and properly ground its coaxial cable at the base of the tower, or at locations identified by the Site Owner.

7.3 Site Owner retains the right to paint all coaxial cables attached to the tower, including LESSEE's coaxial cable, as necessary, in order to prevent "black leg."

7.4 LESSEE is required to remove all of LESSEE's Tower Equipment at LESSEE's sole risk and expense, within a reasonable amount of time, not to exceed 120 days, after the termination of this Site Agreement. In the event that LESSEE does not timely remove its Tower Equipment within 120 days after termination, the Tower Equipment shall be considered abandoned by LESSEE and shall become the property of Site Owner.

8. **INSPECTION AND ACCESS:** Site Owner will provide LESSEE unlimited ingress and egress to the Tower Equipment for the purposes of operating, maintaining, inspecting, using, replacing, repairing, moving, and removing the Tower Equipment and for complying with any reasonable request for inspection by representatives of the FCC. LESSEE shall have access only to its own equipment and under no circumstances will LESSEE gain access to other equipment located at the Site or allow anyone else access to equipment other than its own.

In advance in writing, LESSEE will provide Site Owner with the identity of individual or entity who is authorized to have access to LESSEE's equipment for maintenance purposes; only those so named will be admitted by Site Owner. LESSEE must ensure that any third party permitted access to LESSEE's Tower Equipment carry insurance as set forth in Section 13 of this Site Agreement.

9. **COORDINATION OF INSTALLATION, REPAIR AND MAINTENANCE:** In the event of the need for installation, repair, or maintenance of the tower, equipment building, or other common facility, Site Owner agrees to coordinate such activities in such a manner as to minimize any downtime that may be caused to LESSEE's operations. LESSEE agrees to reduce or shut down the power of its transmitter if necessary at a coordinated time so that such installation, repair, or maintenance may take place.

10. **FAILURES AND MAINTENANCE:** LESSEE is hereby notified and understands that the Site will not provide communications 100% of the time and it will, by its very nature, fail and require maintenance from time to time without notice. Such facts have been taken into consideration by LESSEE prior to the execution of this Site Agreement, and such failures shall not constitute nonperformance or negligence on the part of the Site Owner. The Site Owner is not liable or responsible for interruptions or termination of service caused by strikes, lockouts, governmental acts, acts of God, or other conditions beyond its control. Any such interruption or termination of service shall not be considered

to be a breach of this Site Agreement by Site Owner. **LESSEE**, at its own expense, shall be totally responsible for any and all maintenance of its equipment due to lightning, power line surges, ground faults, excessive voltage, or any other causes.

11. **CASUALTY:** If the Site becomes completely unusable due to fire or other casualty and **LESSEE's** Tower Equipment becomes inoperable for a period of at least sixty (60) days as a result thereof, either party may elect to terminate this Site Agreement upon thirty (30) days' written notice to the other given prior to the completion of repairs. Without limiting the foregoing, Site Owner shall not, under any circumstances, be responsible for any losses or damages to **LESSEE's** Tower Equipment or loss of service from **LESSEE's** Tower Equipment as a result of fire, theft, vandalism, lightning, loss of AC power by serving utility, loss of accessibility, power line surges, ground faults, excessive voltage, shut down of Site for necessary repairs or normal maintenance work, or any other causes.
12. **TERMINATION:** Upon giving the other party 30 days written notice, either party may terminate this Site Agreement for convenience.
13. **INSURANCE:** Site Owner provides no insurance on **LESSEE's** Tower Equipment or personnel. **LESSEE** shall carry throughout the term of this Site Agreement at least the following insurance (or substantially equivalent self-insurance, provided that **LESSEE** maintains current assets of at least \$50 million) in such form, with such companies, and in such amounts (unless otherwise specified) as Site Owner may require:
 - (1) Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limit of not less than One Million Dollars (\$1,000,000) per accident or disease. Policies must include All States Endorsement and a waiver of all rights of subrogation and other rights against TXDPS;
 - (2) Commercial General Liability Insurance, for at least One Million Dollars (\$1,000,000) per occurrence on an occurrence basis; and
 - (3) Comprehensive Automobile Liability Insurance covering all owned, non-owned, or hired automobiles to be used by **LESSEE**, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.

LESSEE shall deliver to TXDPS:

- (1) Evidence satisfactory to TXDPS, in its sole discretion, evidencing the existence of all such insurance (or substantially equivalent self-insurance, provided that **LESSEE** maintains current assets of at least \$50 million) promptly after the execution and delivery of this Site Agreement and prior to placement of **LESSEE's** Tower Equipment on the tower; and
- (2) Additional evidence, satisfactory to TXDPS in its sole discretion, of the continued existence of all such insurance not less than thirty (30) days prior to the expiration of any such insurance.

If **LESSEE** permits a third party access to its Tower Equipment for maintenance or repair purposes in accordance with Section 8 of this Site Agreement, **LESSEE** must require that the third party maintain insurance of the same types and in the same amounts as required of **LESSEE** and listed above.

14. **INDEMNITY:** To the extent permitted by law, **LESSEE** shall indemnify, defend, and hold Site Owner and the State of Texas harmless from and against all of the following that arise out of or result from **LESSEE's** (including **LESSEE's** contractors') negligence, fault, action, failure to act, breach of this Site Agreement, violation of any state or federal law or regulation, or violation of any treaty: claims; lawsuits; liabilities; penalties; fines; interest; expenses (including attorneys' fees, court costs, and all direct and indirect costs incurred in defending against any claim, lawsuit, alternative dispute resolution, or other proceeding); any and all damages, however characterized, such as direct, general, incidental, indirect, consequential, punitive, or special damages or any kind arising out of or in connection with this Site Agreement or the rights provided therein. **LESSEE** shall coordinate its defense with the Texas Attorney General, as requested by Site Owner.

In any and all claims against Site Owner, the State of Texas, and/or its employees and agents by any employee of **LESSEE** or any employee of **LESSEE**'s contractors, the indemnification obligation under this Site Agreement will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for **LESSEE** or any of **LESSEE**'s contractors under Worker's Disability Compensation Acts, Disability Benefits Acts, or other employee benefits acts.

This section shall survive the termination or expiration of this agreement.

15. **GENERAL PROVISIONS:** The undersigned certifies that he or she has read and understands all of the terms and conditions of this Site Agreement, and each party acknowledges receipt of a true copy hereof at the time of execution. All of the terms and conditions hereof are part of this Site Agreement, and there are no express or implied warranties, modifications, or performance guarantees other than those expressly stated herein.
16. **CONTACTS/NOTICE:** Any notices required under this contract between the parties shall be submitted in writing to the other party to the contact person and address listed below. If either party wants to change the contact person or address, the party shall provide reasonable notice of the change to the contact person and address listed below. Any notice required or permitted under this contract shall be deemed given: (1) when delivered in hand and a receipt granted; or (2) when received if sent by certified mail, return receipt requested.

For TXDPS/Site Owner/Lessor:

Texas Department of Public Safety
Attn: Law Enforcement Support Tower Site Coordinator
5805 N Lamar
Austin, Texas 78752

With a copy to:
Texas Department of Public Safety
Procurement & Contract Services
5805 N Lamar
Austin, Texas 78752

For City of El Paso/Lessee:

City of El Paso
Attn: City Manager
#2 Civic Center Plaza
El Paso, Texas 79901

With a copy to:

City of El Paso
Attn: City Information Technology Department Head
#2 Civic Center Plaza
El Paso, Texas 79901

17. **DISPUTE RESOLUTION:** The dispute resolution process provided for in Texas Government Code, Chapter 2009 shall be used by the parties to attempt to resolve any claim for breach of contract made by any of the parties that cannot be resolved in the ordinary course of business.
18. **AUTHORITY:** Any individual signing this Site Agreement represents and warrants that he or she has full authority to do so as authorized by the governing body of each party, in accordance with Section 791.001(d) of the Interlocal Cooperation Act, found in Texas Government Code, Chapter 791.

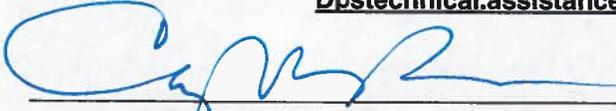
- 19. **WRITTEN MODIFICATION:** No modification or amendment to this Site Agreement shall become valid unless in writing and signed by both parties, as authorized by the governing body of each party, in accordance with Section 791.001(d) of the Interlocal Cooperation Act, found in Texas Government Code, Chapter 791.
- 20. **INDEPENDENT CONTRACTORS:** This Site Agreement will not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the parties. Both parties are independent contractors. Both parties agree and understand that this Site Agreement does not grant to employees of one party any rights or privileges established for employees of the other party.
- 21. **NO ASSIGNMENT:** LESSEE may not assign, sublease, or transfer its interests under this Site Agreement.

This Site Agreement shall be binding upon the respective successors, assigns, and personal representatives of the parties.

FOR SITE OWNER: TEXAS DEPARTMENT OF PUBLIC SAFETY:

Address: **5805 North Lamar Blvd., Austin, Texas 78752**

Contact Person: **Tower Site Coordinator 512-424-7134
Dpstechnical.assistance@dps.texas.gov**

 5/31/12

Cheryl MacBride
Deputy Director, Services

Date



FOR LESSEE: CITY OF EL PASO:

Address: **#2 Civic Center Plaza; El Paso, Texas 79901**

Contact Person: **Frank Mendez 915-771-1058
Public Safety Technology Manager, Information Technology
mendezf@elpasotexas.gov**

Joyce A. Wilson, City Manager

Date

Contract Number: 405-LES-12-23132

Requires Power for Ubiquity POE injectors and Juniper Switching equipment to include UPS, estimated at 6 RU of Rack space.