

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: DEPARTMENT OF INFORMATION TECHNOLOGY
AGENDA DATE: DECEMBER 18, 2012
CONTACT PERSON/PHONE: MIGUEL GAMINO, DEPARTMENT OF INFORMATION TECHNOLOGY DIRECTOR, 541-4746
DISTRICT (S) AFFECTED: ALL

SUBJECT:

That the City Manager be authorized to sign a License Agreement between Madison River Investments, LLC and the City of El Paso for antenna(s) and related equipment on the roof and in a designated equipment room, necessary to carry out City's public safety communications system at 221 N. Kansas Street, El Paso, Texas for an initial 10-year term with two 10-year options to extend, at an initial annual rent of \$40,800.

BACKGROUND / DISCUSSION:

The City Of El Paso, in cooperation with other governmental entities in El Paso County, is in the process of building a Project 25 (P25) compliant radio communications system, which was approved by City Council on October 23rd, 2012. P25 is an industry standard for digital mobile radio systems that enables the ability of diverse public safety agencies to communicate among each other. The upgrade and expansion of the P25 radio system builds on the P25 foundation the City implemented in 2008. The proposed infrastructure can be divided in the following categories:

1. Master Site
2. Simulcast Antenna Repeaters
3. Standalone repeater sites

The agreement with Well Fargo provides a secured equipment room and roof top space for a Simulcast Antenna repeater site. Simulcast sites provide continuous coverage over a large geographic region using a single set of frequencies. Simulcast solutions extend a system's Radio Frequency coverage, especially in areas where available frequencies are limited, and in areas where physical barriers (e.g. mountains and buildings) can cause reduced signal coverage. The Wells Fargo location will replace the some of the legacy Public Safety equipment and antennas which must be replaced or relocated before demolition of City Hall.

PRIOR COUNCIL ACTION:

On October 23, 2012, see background discussion.

AMOUNT AND SOURCE OF FUNDING:

Department: Information Technology Services
Amount: \$40,800 annually
Funding Source: 239-1000-15070-524000

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: Miguel Gamino, IT Director

Name  Signature _____ Date

RESOLUTION

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

That the City Manager be authorized to sign a License Agreement between Madison River Investments, LLC and the City of El Paso for antenna(s) and related equipment on the roof and in a designated equipment room, necessary to carry out City's public safety communications system at 221 N. Kansas Street, El Paso, Texas for an initial 10-year term with two 10-year options to extend, at an initial annual rent of \$40,800.

ADOPTED this _____ day of December, 2012.

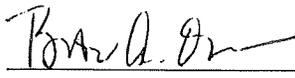
CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Senior Assistant City Attorney



Miguel Gamino Jr., Director
Information Technology Department

LICENSE AGREEMENT

BETWEEN

MADISON RIVER INVESTMENTS, LLC

AS LICENSOR,

AND

CITY OF EL PASO

AS LICENSEE.

221 N. Kansas Street
El Paso, Texas

This License Agreement (this "*License*") by and between Madison River Investments, LLC ("*Licensor*"), and City of El Paso ("*Licensee*"), is entered into as of the ____ day of _____, 2012 (the "*Effective Date*").

1. **DEFINITIONS.**

In addition to other defined terms set forth elsewhere in this License, the following terms shall have the following meanings:

(a) **Building:** The building and improvements located at 221 N. Kansas Street, El Paso, Texas and otherwise known as "Wells Fargo Plaza" as shown on Exhibit A1 attached hereto.

(b) **Commencement Date:** Approximately December 19, 2013.

(c) **Administrative Fees:** \$2,500.00

(d) **License Fees:** Commencing upon the Commencement Date and continuing throughout the Term hereof, Licensee shall pay Licensor License Fees in twelve (12) equal monthly installments in accordance with the provisions of the following schedule and amounts:

TERM DATE	MONTHLY	ANNUALLY
Year 1-5	\$3,600.00	\$43,200.00

(e) **Utility Fee:** Licensee will be billed monthly for sub-metered utility charges.

(f) **Annual Percentage Increase:** 10- 20%

(g) **Licensee's Permitted Use:** The Licensed Premises shall be used and occupied for the transmission and reception, and for the construction, installation, operation, maintenance, repair and removal of Licensee's Telecommunications Equipment.

(h) **Licensed Premises:** Sufficient space within the Telecommunication Spaces of the Building for the placement of the Telecommunications Equipment. The location and orientation of the Licensed Premises is generally depicted and described on the attached Exhibit "A-2" and "A-3".

(i) **Master Antenna System:** As described on Exhibit "B-1".

(j) **Property:** That portion of the land underlying the Building that is owned by Licensor and upon which the Building is located.

(l) **Technical Standards:** Technical standards as may from time to time be established by Licensor for the Telecommunication Spaces relating to frequency compatibility, radio interference protection, antenna type and location and physical installation as shown on Exhibit "C" attached hereto.

(m) **Telecommunications Equipment:** Radio transmitting and receiving antennas, microwave dishes, equipment shelters and/or cabinets and related cables and utility lines and other associated equipment as set forth on Exhibit "B".

(n) **Telecom Manager:** Any entity that may be designated by Licensor to manage the Telecommunication Spaces in the Building during the Term of this License.

(o) **Telecommunication Spaces:** The applicable portions of the roof and the mechanical, penthouse and equipment areas of the Building as designated by Licensor as shown on Exhibit "A-2" attached hereto.

(p) **Term:** The Term of this License shall begin as of the Effective Date and shall continue thereafter for a period of one hundred twenty (120) months plus the first partial calendar month, if any, after the Commencement Date. Unless either party shall deliver written notice to the other party of its intent not to renew at least ninety (90) days prior to the expiration of the initial Term or any Renewal Term (as defined hereafter), Licensee shall have the right to extend the Term of this License for two (2) additional ten(10)-year terms (each a "Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein except that the license fees shall increase by 10%. Any reference to "Term" herein shall include a Renewal Term" unless the context requires otherwise.

2. **EXHIBITS AND ADDENDA.**

The exhibits and addenda listed below are incorporated by reference in this License:

Exhibit "A-1" - The Building and Property Description

Exhibit "A-2" - The Telecommunication Spaces

Exhibit "A-3" - The Licensed Premises

Exhibit "B" - The Telecommunications Equipment

Exhibit "B-1" - The Master Antenna System

Exhibit "C"-The Technical Standards

Exhibit "D" - The Building Rules and Regulations

Exhibit "E" - Site Access Procedures

3. **LICENSE OF PREMISES.** Subject to and upon the terms, provisions and conditions hereinafter set forth, and in consideration of the duties, covenants and obligations of Licensee hereunder, Licensor grants unto Licensee, a non-exclusive license to use the Telecommunication Spaces solely for Licensee's Permitted Use and for no other purpose. Licensee agrees to take the Licensed Premises In its 'AS IS", "WITH ALL FAULTS" condition, and acknowledges that Licensor (a) except as may be expressly provided herein, hasn't made and is under no affirmative duty to make any representations or warranties, express or implied (which Licensor hereby expressly disclaims any implied warranties), whatsoever with respect to any of the Telecommunication Spaces or the Master Antenna System, and (b) has not agreed to construct any improvements in connection with this License. Licensor reserves the right to affect such other licenses and uses in the Building as Licensor, in its sole business Judgment, determines best promotes the interests of the Building and Licensor.

4. **LICENSE REVIEW OBLIGATIONS OF LICENSOR AND LICENSEE.** Licensor and Licensee acknowledge and agree that each has personally reviewed and approved the contents of this License and have had (or the opportunity to have had) this License reviewed, approved, and modified by their respective attorneys before this License was signed.

5. **LICENSE FEES.**

5.1. **Payment of License Fees.** Licensee agrees to pay the License Fees during the Term for its use and occupancy of the Licensed Premises commencing on the Commencement Date. License Fees shall be payable in advance on the first day of each calendar month of the Term without notice, set-off or deduction, In twelve (12) equal monthly installments during each year of the Term. If the Term begins on other than the first day of a calendar month, the License Fees for the Initial partial month shall be prorated on a daily basis, based on a thirty (30)-day month.

5.2. **Property Taxes.** Licensee shall also pay to Licensor the amount of real property taxes and assessments levied and assessed for any year by reason of this License of Licensee's use of the Licensed Premises. Licensee is a municipal corporation and is exempt from all taxes and assessments levied against any personal property, tenant improvements or trade fixtures of Tenant in or about the Premises.

5.3. **Interest and Late Charges.** Licensee will pay Licensor a fee of \$25.00 for any check returned for any reason by Licensee's bank. Licensor may impose a late fee equal to ten percent (10%) for each month for any amounts more than five (5) days overdue until paid, in order to reimburse Licensor for the extra administrative time involved in collecting such amounts. In addition, any payment more than ten (10) days overdue will bear interest from the date due to the date of actual payment at the lesser of eighteen percent (18%) per annum or the highest lawful rate permitted by state or federal law.

5.4. **Application Fee.** Waived

5.5. **Inspection Fee.** Upon completion of the installation of the Telecommunications Equipment, Licensor may engage a Telecom Manager to inspect the installation of the Telecommunication Equipment at the Licensed Premises, and for resolution of any post-installation issues that may arise out of Licensee's installation activities. In the event Licensee's installation does not meet with the terms of this agreement, Licensee shall be reimburse Licensor for the Inspection Fee, payable within thirty (30) days of Invoice.

5.6. **Payment of Fees.** Licensee shall pay all License Fees and other payments due under this License directly to Madison River Investments, LLC, c/o BCT Property Services at 201 E., Main, Suite 104, El Paso, Texas, 79901 or at such other place as Licensor may specify in writing from time to time.

5.7 All payments by Licensee under this License are payable only out of current City of El Paso revenues. In the event that funds relating to this License do not become available, such as by City Council not appropriating the funds, Licensee shall have no obligation to pay or perform any services related herein to Licensor for Licensee's fiscal year during which time such funding is not available or appropriated. Should Licensee experience a funding unavailability, either party may choose to terminate the Agreement subject to the terms of this License.

6. POSSESSION AND USE.

6.1. **Permitted Uses and Prohibited Conduct.** Licensee shall use the Licensed Premises solely for Licensee's Permitted Use and for no other purpose. Subject to the terms and conditions of this License, no Telecommunications Equipment shall be installed on or about the Licensed Premises or the Building without first obtaining, in each instance, the prior written consent of Licensor, as applicable. Any Telecommunications Equipment so Installed without Licensor's prior written consent may be removed by Licensor or Telecom Manager without notice or liability therefor at any time, at Licensee's expense.

6.2. **Insurance Coverage Use Restrictions.** Licensee shall not do anything in or about the Licensed Premises which tends to increase the insurance rates on Licensor's Building or which impairs Licensor's ability to maintain insurance coverage on Licensor's Building. Licensee agrees to pay to Licensor promptly upon demand the amount of any increases in Licensor's insurance premiums caused by Licensee's violation of these restrictions, whether or not Licensor has consented to such act(s) by Licensee, except so long as the Licensed Premises are used solely for Licensee's Permitted Use, which Licensor hereby consents to and approves.

6.3. **Interference.** If, at any time during the Term, (i) any electrical output, electromagnetic output, radio frequency, or other electromagnetic signals or noise resulting from the operation of the Telecommunications Equipment, in Licensor's reasonable opinion, adversely affects the equipment, machinery, or systems of Licensor or causes degradation of reception or transmission on the equipment of other licensees in the Building (collectively, "interference, and (ii') Licensee does not correct the Interference within twenty four (24) hours after receipt of telephonic or written notice from Licensor, Licensee will immediately cease operations (except for intermittent testing on a schedule approved by Licensor), until the Interference has been corrected, if such Interference has not been corrected within thirty (30) days after notice, Licensor will, in addition to any other remedies, have the right to

Immediately terminate this License by notice to Licensee. If, in Licensor's reasonable opinion, Interference is creating imminent danger of injury to person or property (Emergency"), Licensor will give verbal notice (either in person or by telephone) of the Emergency to Licensee, who will immediately remedy the Emergency; and Licensor will have the right to shut down the Telecommunications Equipment immediately, until the Emergency is resolved.

6.4. **Compliance with Laws.** Licensee hereby agrees and acknowledges that Licensee's access to, and installation, maintenance and operation of the Telecommunications Equipment must at all times be in strict compliance with the Technical Standards and all applicable federal, state and local laws, rules, ordinances, and regulations (including without limitation those of the Federal Communications Commission and the Federal Aviation Administration, and the local zoning, building and fire codes) and the rules and regulations of the Building. Licensee, at its sole cost and expense, shall obtain any permits, licenses, variances, or other approvals required with respect to the installation or operation of the Telecommunications Equipment to be installed by Licensee or to the alterations to be performed by Licensee. Licensee shall deliver true and complete copies thereof to Licensor prior to commencing any installations or alterations.

6.5. **Right to Relocate Equipment.** At any time during the Term of this License, Licensor may, upon one hundred eighty (60) days' prior written notice ("Relocation Notice"), cause Licensee to relocate all or any portion of the Telecommunications Equipment to any other space in the Building ("*Substitute Space*") as designated by Licensor. If the Substitute Space (i) is substantially less suitable than the Licensed Premises for Licensee's operations in the Building, or (ii) is not concurrently available to permit relocation without interruption of Licensee's services, then Licensee will have the option to terminate this License by written notice delivered to Licensor no later than thirty (30) days after receipt of the Relocation Notice. Licensee will have up to one hundred eighty (180) days after receipt of the Relocation Notice to complete the relocation. Licensee may perform a brief parallel cutover, if reasonably required by the relocation, to ensure that the relocated Telecommunications Equipment is continuously operational. Licensor will reimburse Licensee for the reasonable out-of-pocket costs paid to third parties in connection with the relocation, exclusive of property losses and damage resulting from the relocation. Licensor will make such reimbursement within thirty (30) days of receipt of an invoice and such other backup information as Licensor may reasonably request.

6.6. **Screening of Equipment.** At any time during the Term of this License, Licensor may require Licensee to install, at Licensee's sole expense, a device screening the Telecommunications Equipment from public view ("*Screening Device*"), provided the Screening Device will not materially and adversely interfere with the operation of the Telecommunications Equipment. The Screening Device will be installed in accordance with plans and specifications approved by Licensor. At the option of Licensor, Licensee will remove the Screening Device at the expiration or earlier termination of this License, and restore the area in which the Screening Device was installed to its original condition. Notwithstanding anything herein to the contrary, Licensor and Licensee agree that the antennae equipment box on the roof provides sufficient screening of the equipment.

7. UTILITIES SERVICES.

7.1. **Utilities.** Licensee will pay the utilities directly however if necessary Licensor shall allow Licensee to connect the Telecommunications Equipment to the Building's electrical system, provided Licensee shall pay the Utility Fee as set forth in Paragraph 1(e) above on a monthly basis with the license Fee. At any time during the Term of this License, Licensor shall have the right to require Licensee to be responsible for the cost of the installation of a meter or submeter to measure the electricity used by the Telecommunications Equipment, (ii) the cost of the installation of any electrical facilities in excess of those which Licensor may desire to make available to Licensee and the cost of separate meters required thereby, and (iii) the sums charged Licensor by the applicable utility for such service as reflected by such submeter, or if separately metered, pay the applicable utility directly.

7.2. **No Licensor Liability for Interruption of Utilities.** Except as provided hereafter, no interruption in the power provided by such facilities shall render Licensor liable in any respect for damages to either person or property nor relieve Licensee from fulfillment of any covenant or agreement hereof. If any of Licensee's Telecommunications Equipment fails because of a loss of electrical power, Licensor shall use reasonable diligence to restore electrical power promptly, but Licensee shall have no claim for damages on account of any interruption in electrical service occasioned thereby or resulting therefrom; however, should any such interruption in electrical

service, not caused in whole or in part by Licensee or its agents or employees, continue for a period in excess of twenty-four (24) hours, then, in such event, the License Fees shall be reduced proportionately, to the extent Licensee's Telecommunications Equipment is unusable until such time as electrical power is restored to Licensee's Telecommunications Equipment. Notwithstanding the foregoing, Licensor shall at all times have the right to shut down the electrical service to the Licensed Premises and Licensee's Telecommunications Equipment in connection with any maintenance operation conducted for the Building without liability to Licensee for damages. Licensor agrees to make a reasonable effort to schedule any such shutdown outside the Building's normal business day. Licensor acknowledges that the Licensee's use of the Premises is critical emergency services and that Licensee's equipment will include an emergency power source in the event of any utility failure or scheduled maintenance operations. Licensor also agrees to make all reasonable efforts to cooperate with Licensee in obtaining temporary alternate power during scheduled maintenance operations, but Licensor shall have no obligation to provide alternate power from emergency power sources. In connection therewith, Licensor agrees to give Licensee reasonable prior notice of scheduled maintenance operations, except in emergency situations, which notice may be verbal.

8. INDEMNITY.

8.1. **Indemnity of Licensor.** [intentionally deleted]

8.2. **Indemnity of Licensee.** Licensor hereby agrees to indemnify, defend and hold harmless the Licensee, its officers, directors and employees, from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including without limitation reasonable attorney's fees and court costs incurred in connection with the enforcement of this), arising out of (i) any activity at the licensed Premises not related to the installation or operation of Licensee's Telecommunications Equipment, (ii) material breach of any Licensor agreements, obligations or responsibilities contained in this License, or (iii) the gross negligence, fraud or willful misconduct of the Licensor and its partners and their respective officers, directors and employees.

9. INSURANCE - WAIVER OF SUBROGATION.

9.1 **Licensee's Insurance Obligations.** (1) Worker's Compensation with statutory benefits and limits which shall fully comply with all federal, state and local laws; (2) Employer's Liability Insurance with limits of not less than \$1,000,000 per accident and \$500,000 per occurrence; (3) Comprehensive Automobile Liability Insurance, including owned, non-owned, leased and hired coverage, with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and (4) Commercial General Liability Insurance containing such endorsements and riders as may be required by Licensor and Telecom Manager, with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and \$2,000,000 in the aggregate; (5) Umbrella liability policy in amount not less than \$1,000,000; and (8) property insurance for full replacement costs of Licensee's property, plant and equipment located on the Licensed Premises. All policies will be issued by insurance carriers having ratings of Best InsuranceGuide AVIII or better. Notwithstanding the foregoing, Licensor agrees that Licensee may self-insure against the risks described in clauses (1), (4), (5) and/or (8) above. Licensee further agrees to name Licensor and Telecom Manager as an additional insured on all third-party liability policies and to require all contractors and sub-contractors to have the insurance specified for Licensee in items 1-4 above naming both Licensor and Telecom Manager additional insureds. Each of Licensee's third-party policies shall include an endorsement providing that Licensor shall receive thirty (30) days prior written notice of any cancellation of, nonrenewal of, reduction of coverage or material change in coverage on said policies.

9.2 **Licensor's Insurance Obligations.** (1) Worker's Compensation with statutory benefits and limits which shall fully comply with all federal, state and local laws; (2) Employer's Liability Insurance with limits of not less than \$1,000,000 per accident and \$500,000 per disease; (3) Comprehensive Automobile Liability Insurance, including owned, non-owned, leased and hired coverage, with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage; (4) Commercial General Liability Insurance with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and \$2,000,000 in the aggregate; (5) Umbrella liability policy in amount not less than \$1,000,000; and (6) property insurance in an amount equal to full replacement costs or otherwise in conformity with the requirements of the mortgage.

9.3 **Waiver of Subrogation.** (i) Licensor, on behalf of itself and its insurers, waives its rights of recovery against Licensee and its officers, directors and employees, for damages sustained by Licensor as a result of any damage to any property arising from any risk or peril generally covered or coverable by any property insurance policy actually carried by or required to be carried by Licensor pursuant to the terms of this License, regardless of cause, including negligence or misconduct of Licensee; and Licensor agrees that no party shall have any such right of recovery by way of subrogation or assignment; (ii), Licensee hereby waives its right of recovery against Licensor of any amounts paid by Licensee or on Licensee's behalf to satisfy applicable worker's compensation laws. The policies or duly executed certificates showing the material terms for the same, together with satisfactory evidence of the payment of the premiums therefor, shall be deposited with Licensor on the date Licensee first occupies the Premises and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. If certificates are supplied rather than the policies themselves, Licensee shall allow Licensor, at all reasonable times, to inspect the policies of insurance required herein. Each of Licensee's third-party policies shall also include a waiver of subrogation provision or endorsement in favor of Licensor and Telecom Manager and their partners and their respective officers, directors and employees, for damages sustained by Licensee as a result of any damage to any property arising from any risk or peril generally covered or coverable by any property insurance policy actually carried by or required to be carried by Licensee pursuant to the terms of this License, regardless of cause, including negligence or misconduct of Licensor.. Licensor and Licensee shall each promptly notify their respective third-party insurance carriers in writing of the mutual waivers herein contained, and shall cause their respective insurance policies required hereunder to be properly endorsed, ii necessary, to prevent any invalidation of coverage as a result of the mutual waivers herein contained.

10. CONSTRUCTION AND INSTALLATION.

10.1. **Construction requirements.** Pursuant to Paragraph 6.1 above, all installations or modifications made or to be made with respect to the Telecommunications Equipment by Licensee shall be performed under the supervision of competent personnel and shall be made in accordance with plans and specifications first approved in writing by Licensor or the Telecom Manager before the commencement of work. All improvements to be made to the Licensed Premises shall be constructed in a good and workmanlike manner in accordance with all applicable laws (Including any laws relating to the use of hazardous materials, such as asbestos containing materials) and diligently and expeditiously completed. Licensee shall provide Licensor with 'as built' plans, copies of all construction contracts, and proof of payment for all labor and materials in connection with any improvements made to the Licensed Premises within thirty (30) days after such improvements have been completed.

10.2. **Submission of Plans and Specifications.** Prior to installing or allowing any Telecommunications Equipment to be Installed In or on the Licensed Premises pursuant to Paragraph 10.1 above, licensee shall submit to the Telecom Manager detailed plans and specifications of the planned installation for Licensor's and Telecom Manager's approval. Licensor and Telecom Manager shall have a reasonable period of time to review and approve such plans which must in all events be in compliance with the Technical Standards. In no event will Licensor's approval of such plans be deemed a representation that they comply with applicable laws, ordinances or rules and regulations or will not cause interference with other communications operations, such responsibility being solely Licensee's.

10.3. **Approval of Contractors.** Licensor shall have the right to approve or disapprove any contractors performing installation, modification or maintenance work on behalf of Licensee on the Licensed Premises, which approval shall not be unreasonably withheld, and which once given may be rescinded by Licensor. If Licensee performs its own installation, modification or maintenance work, Licensor's right of prior approval shall also extend to Licensee as a contractor, and any withholding, conditioning or rescission of Licensor's approval of Licensee as a contractor due to licensee's negligence or willful misconduct shall not relieve Licensee of its obligations hereunder. Licensee shall submit the name of any proposed contractor and any other facts or details regarding such contractor requested by Licensor or Telecom Manager to Telecom Manager prior to such contractor performing any work on behalf of Licensee on the Licensed Premises and the Telecom Manager shall notify Licensee within a reasonable period of time thereafter as to whether Licensor has approved such contractor.

10.4. **Hazardous Materials.** Licensee will not cause or permit the storage, use, generation, release, or disposal of any Hazardous Materials In the Telecommunication Spaces without the prior consent of Licensor, except for the use and storage of supplies in the ordinary course of Licensee's business but not including backup universal

power supply/battery which is approved Equipment), provided (i) such materials are in insubstantial quantities, properly labeled, and contained, (ii) such materials are used, transported, handled, and disposed of In accordance with the more stringent of applicable law or the highest industry standards, and (iii) for each such Hazardous Material, Licensee will give Licensor notice of its presence and a copy of the current, applicable national safety data sheet For purposes of this License, the term *Hazardous Materials*" means any explosives, radioactive materials, or other hazardous substances that are regulated or governed by applicable law.

11. **MECHANICS' LIENS.** Licensee will not permit any mechanic's liens or other liens to be placed upon the Licensed Premises or the Building and nothing in this License shall be deemed or construed in any way as constituting the consent or request of Licensor, express or Implied, by inference or otherwise, to any person for the performance or any labor or the furnishing of any materials to the Licensed Premises, or any part thereof, nor as giving Licensee any light, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to any mechanic's or other liens attaching to the Licensed Premises or Building. In the event any such lien attaches to the Licensed Premises or Building, then, in addition to any other light or remedy of Licensor, Licensor may, but shall not be obligated to, discharge the same and Licensee shall promptly reimburse Licensor for all costs of such discharge upon written request.

12. **REMOVAL OF TELECOMMUNICATIONS EQUIPMENT; SURRENDER.**

12.1 **Removal and Replacement.** Without in any manner eliminating or reducing its obligation to pay the License Fees, subject the provisions of this License, Licensee may, upon prior written notice to Telecom Manager, remove all or any portion of the Telecommunications Equipment at any time prior to the termination of this License provided Licensee repairs any damage to the Building including the Licensed Premises) caused thereby excluding ordinary wear and tear.

12.2 **Holding Over.** If Licensee does not remove its Telecommunications Equipment (to the extent such is entitled to be removed) on or prior to the expiration or earlier termination of this License without the prior written consent of Licensor to maintain the Telecommunications Equipment at the Licensed Premises after such expiration or termination, Licensor shall have the option to treat Licensee as having held over and if Licensor should exercise this option, Licensee shall, throughout the entire holdover period from the date of such expiration or termination, pay to Licensor license fees ("Holdover Fees") equal to one hundred fifty percent (150%) of the monthly License Fees in effect immediately prior to the expiration or termination of this License. In the event that Licensor does not exercise the option set forth in the preceding sentence, Licensee's Telecommunications Equipment shall be conclusively deemed to be abandoned and shall become Licensor's property and Licensor may remove and/or dispose of such Telecommunications Equipment in Licensor's sole discretion, all at Licensee's cost and expense. In connection therewith, Licensor agrees that if Licensee requests Licensor's prior written consent to maintain its Telecommunications Equipment on the Licensed Premises after the expiration or earlier termination of this License, Licensor shall not unreasonably withhold its consent thereto, but in no event shall Licensee be permitted to maintain its Telecommunications Equipment on the Licensed Premises for more than sixty (60) days after the expiration or earlier termination of this License. In granting such consent, Licensor may charge a reasonable storage fee (not the Holdover Fees) respecting such Telecommunications Equipment By way of example and not limitation, the fact that such space has been relet or the marketing of such space would be inhibited by the presence of the Telecommunications Equipment, would be considered reasonable grounds for withholding consent.

12.3 **Abandonment.** Pursuant to Paragraph 12.2 above, if Licensee elects to abandon any of its Telecommunications Equipment, and if Licensor consents to such abandonment, then Licensee shall forfeit the Security Deposit and said Telecommunications Equipment shall become the sole property of Licensor. Otherwise, Licensee agrees, at its expense, to remove all Telecommunications Equipment which are its property, and further agrees to assume the responsibility for any damage during the removal operation to transmission line(s) or other equipment belonging to others.

124 **Indemnity.** [intentionally deleted].

13. **ASSIGNING AND SUBLETTING.**

13.1. **Assignment; Subletting.** If Licensee desires to assign this license or sublicense the Licensed Premises (a "*Transfer*") to anyone other than a successor, subsidiary, affiliated or controlling corporation of Licensee (an "*Affiliate*") or to the El Paso County 911 District, Licensee shall give written notice ("*Transfer Notice*") to Licensor at least sixty (60) days before the effective date of any such proposed Transfer for Licensor's written consent. The Transfer Notice shall state (a) whether Licensee proposes to assign this License, sublicense the Licensed Premises, or change ownership, (b) the proposed effective date of the Transfer, (c) the identify of the proposed transferee ("*Transferee*"), and (d) all other material terms of the proposed Transfer. The Transfer Notice shall be accompanied by a copy of the proposed agreement documenting the Transfer, or If none, a copy of any offers, draft agreements, letters of commitment or intent and other documents pertaining to the proposed Transfer. Licensor may, at any time, within thirty (30) days after its receipt of Transfer Notice, grant or withhold consent to such proposed Transfer by mailing written notice to Licensee of its decision and any conditions to its granting of consent, if any ("*Decision Notice*"); provided Licensor's failure to respond shall not be deemed as Licensor's consent to the Transfer. If Licensor consents with or without conditions to the proposed Transfer, Licensee may thereafter promptly effect a Transfer in accordance with the terms of Decision Notice. Licensee shall, promptly upon demand, reimburse Licensor for Licensor's costs, including, without limitation, reasonable attorneys' fees incurred in conjunction with the processing and reviewing of any requested Transfer. The minimum reimbursement due and owing from Licensee shall be \$500.00 for each Transfer, subject to increases for additional costs and expenses incurred by Licensor. If Licensor consents to the proposed Transfer and Licensee does not consummate the proposed Transfer within thirty (30) days after receipt of Decision Notice, the provisions of the first paragraph of this Section shall again apply.

13.2 **Release from Liability.** Except in the event of a Transfer to a pre-approved Transferee that is an Affiliate or the El Paso County 911 District as set forth in Section 13.1, no Transfer shall relieve Licensee or any guarantor of Licensee's obligations under this License, from its covenants and obligations hereunder during the Term.

13.3 **Transferee's Obligations.** Each Transfer, whether Licensor's consent is required or not, shall be evidenced by a written instrument in form satisfactory to Licensor, and executed by Licensee and the Transferee. Each such Transferee shall agree in writing for the benefit of Licensor to assume, be bound by, and perform the terms, covenants and conditions of this License to be performed, kept or satisfied by Licensee, including the obligation to pay to Licensor all amounts due and owing under this License. One fully executed copy of such written instrument shall be delivered to Licensor upon execution by Licensee and Transferee.

14. **REPAIR AND MAINTENANCE OF THE PREMISES.**

14.1. **Licensee's Obligations.** Licensee shall keep the Licensed Premises, its Telecommunications Equipment and all related equipment in a neat and clean condition. Licensee shall conduct its business and control its agents, employees, invitees and visitors in such manner as not to create any nuisance, or interfere with, annoy or disturb any other licensee or tenant of the Building or Licensor in its operation of the Building (including the Licensed Premises). Licensor shall have no obligation to maintain, operate or safeguard the Licensed Premises or the Telecommunications Equipment. If Licensee fails to repair or maintain the Licensed Premises, or any part thereof, in a manner reasonably satisfactory to Licensor, Licensor shall have the right (in addition to all other rights and remedies provided herein for breach of this License), upon giving Licensee reasonable written notice of its election to do so (and a fifteen (15) day opportunity to cure after receipt of such written notice), to make such repairs or perform such maintenance on behalf of and for the account of Licensee. In such event, the cost of such work shall be paid to Licensor by Licensee promptly following receipt of a bill therefor.

14.2. **Licensor's Right of Entry.** Licensor or its authorized representatives may enter the licensed Premises at all times to inspect the Licensed Premises, make repairs to the Telecommunication Spaces or the Building (I) authorized hereunder or (II) needed to comply with any laws, ordinances, rules or regulations of any public authority or Licensor's insurance carriers or underwriters or any similar body, (iii) that Licensor deems necessary to prevent waste or deterioration In or to the Licensed Premises if Licensee fails to make repairs or perform required work promptly after receipt of written demand from Licensor, or (iv) that Licensor deems necessary In connection with the expansion, reduction, remodeling, or renovation of any portion of the Licensor's Building or the Property. Nothing herein implies any duty of Licensor to do any such work which, under any provision of this License, Licensee is required to do, nor shall Licensor's performance of any repairs on behalf of

Licensee constitute a waiver of Licensee's default in failing to do such work. No exercise by Licensor of any rights hereunder shall entitle Licensee to any compensation, damages or abatement of any amounts due hereunder for any injury or inconvenience occasioned by such exercise. If Licensor makes or performs any repairs provided for in (i) or (ii) above, Licensee shall pay the cost thereof to Licensor promptly upon receipt of a bill or Invoice therefor.

15. CASUALTY AND TAKING.

15.1 **Licensor's Right to Terminate.** If all or a portion of the Building Is damaged by fire or other casualty (Casualty, or is taken, condemned, or conveyed In lieu of condemnation ("*Taking*"), and whether or not the Licensed Premises or any portion thereof has been damaged or taken, Licensor may terminate this License by notice to Licensee within sixty (60) days after the date of the Casualty or the Taking if (a) substantial alteration or reconstruction of the Building will, in Licensor's sole opinion, be required, or (b) any mortgagee of Licensor requires that the award or insurance proceeds be applied to the payment of the mortgage debt, or (c) the Casualty is not covered by Licensor's insurance.

15.2 **Licensee's Right to Terminate.** If (i) any portion of the Telecommunication Spaces or the Building is damaged by a Casualty or subject to a Taking, and (ii) as a result of such Casualty or Taking, Licensee's operations are materially and adversely affected, and (iii) the Licensed Premises or the Building cannot be repaired or reconstructed within sixty (60) days after said Casualty or Taking such that Licensee's operations are no longer materially and adversely affected, Licensee may, in Licensee's reasonable discretion, terminate this License by notice to Licensor within thirty (30) days after the Casualty or Taking.

15.3 **Restoration.** If, after a Casualty or Taking, this License is not terminated by either Licensor or Licensee pursuant to this Paragraph 15, Licensor will commence and proceed with reasonable diligence to restore the Building; but in no event will Licensor be required to spend more than the insurance proceeds or condemnation award actually received by Licensor in connection with such Casualty or Taking or to replace any portion of the Telecommunication Spaces. Upon completion of Licensor's work, Licensee will promptly replace its Telecommunications Equipment. Licensee waives the right to assert any claims for the Taking of any right or interest under this License. However, Licensee may, to the extent permitted by law, pursue a claim for Its moving expenses, inconvenience and business Interruption in a proceeding Independent of a proceeding filed by Licensor, so long as Licensor's award Is not thereby reduced or delayed. Licensee waives all claims against Licensor and/or the Telecom Manager arising, or alleged to arise, from inconvenience or annoyance to Licensee or injury to Licensee's business or to the Telecommunications Equipment as a result of the Casualty or Taking.

16. BUILDING RULES; ACCESS.

16.1. **Rules and Regulations.** Licensor and/or the Telecom Manager shall have the right to establish, and from time to time change, alter and amend, and to enforce against Licensee and the other users of the Telecommunication Spaces, such reasonable rules and regulations as Licensor may deem necessary or advisable for the proper and efficient operation and maintenance of the Telecommunication Spaces and the Building. Licensee shall comply with the Rules and Regulations attached to this License as Exhibit "D", as may be amended from time to time.

16.2. **Notice.** Licensee will use reasonable efforts to provide to the Telecom Manager at least twenty four (24) hours' advance notice of any need for access, except for disruption of Licensee's services (Disruption") or Emergency, and at least two (2) hours' advance notice of any need for access because of a Disruption or Emergency. In the event Licensor receives less than twenty four (24) hours' notice of Licensee's desire to access the Licensed Premises If no Disruption or Emergency exists, or less than two (2) hours' notice if an Disruption or Emergency exists, Licensor will use commercially reasonable efforts to accommodate Licensee's request.

16.3. **Procedure.** Prior to the initial installation of the Telecommunications Equipment, Licensee will deliver to Licensor, in care of Telecom Manager, and thereafter keep current a list of Licensee's employees and contractors that are permitted to access the Licensed Premises. Access to the Licensed Premises may be arranged through the Telecom Manager or, after the normal business hours for the Building, through the security personnel at or servicing the Building. Licensee authorizes Licensor to deny access to Licensed Premises to any of Licensee's employees or contractors that are not on Licensee's permitted access list or do not present satisfactory proof of

identity to Building management or security; provided, however, Licensor will have no liability to Licensee as to any access granted by Licensor. Licensor may require that a representative of Licensor accompany Licensee during such access. If Licensee requests access to the Licensed Premises at times other than the normal business hours for the Building, Licensee may be required to reimburse Licensor for reasonable trip charges and overtime charges incurred by Licensor. Site Access Procedures are attached herein as Exhibit SE”.

17. DEFAULT AND REMEDIES.

17.1 **Licensee Default.** If Licensee (a) fails to pay the License Fees or any other monetary obligation under this License when due, and such failure continues after fifteen (15) days’ written notice, or (b) fails in the performance of any of the other terms, covenants, and conditions of this License, and such failure continues after the lesser of thirty (30) days’ written notice or any shorter cure period expressly provided for herein(provided, however, that if the nature of Licensee’s obligation is such that more than thirty (30) days are required for its performance, Licensee shall not be in default if Licensee commences to cure such default within the thirty (30) day period and thereafter diligently prosecutes the same to completion), then Licensor may do any or all of the following: (i) disconnect the Telecommunications Equipment; (ii) prohibit Licensee’s access to the Building; (iii) terminate this License; . or (iv) exercise any other rights or remedies permitted at law or under equity. All rights and remedies are cumulative and not exclusive of any other rights or remedies available to Licensor under this License, at law, or in equity. No failure or delay by Licensor in exercising any remedy provided in this License will be construed as a forfeiture or waiver of the same or any other remedy at a later time.

17.2 **Licensor Default.** If Licensor fails in the performance of any of the other terms, covenants, and conditions of this License, and such failure continues after the lesser of thirty (30) days’ written notice or any shorter cure period expressly provided for herein, then Licensee may do any or all of the following: (i) terminate this License; or (ii) exercise any other rights or remedies permitted at law or under equity. All rights and remedies are cumulative and not exclusive of any other rights or remedies available to Licensee under this License, at law, or in equity. No failure or delay by Licensee in exercising any remedy provided in this License will be construed as a forfeiture or waiver of the same or any other remedy at a later time.

18. **ATTORNEYS’ FEES.** In any dispute in connection with this License, the prevailing party will be entitled to recover reasonable attorneys’ fees, court (or other venue of dispute resolution) costs, and expenses from the other party.

19. SUBORDINATION - ATTORNMENT.

This License will be subordinate to all deeds of trust, mortgages, and ground leases now or hereafter encumbering the Building. Licensee will, within ten (10) days alter Licensor’s request, execute and deliver to Licensor an estoppel letter as to such matters relating to this License as are reasonably requested by Licensor.

20. **QUIET POSSESSION.** Licensor agrees that Licensee, upon paying the License Fees and timely performing its obligations under this License, may quietly have, hold and enjoy the Licensed Premises during the Term or any extension thereof subject, however, to any rights of entry specifically granted to Licensor hereunder, and any mortgages, deeds of trust, ground or underlying leases, agreements, encumbrances and/or other matters of record.

21. CAPTIONS; JOINT AND SEVERAL LIABILITY.

21.1. **Captions.** The captions of the Articles and Sections of this License are for convenience only, are not operative parts of this License and do not in any way limit or amplify the terms and provisions of this License.

21.2. **Joint and Several Liability.** If two or more persons or entities execute this License as Licensor or Licensee then such persons of entities shall be jointly and severally liable for compliance with and performance of all the terms, covenants and provisions of this License.

22. **NOTICES.** No notice, consent, approval or other communication provided for herein or given in connection herewith shall be validly given, made, delivered or served unless it is in writing and delivered personally, sent by electronic (e-mail) or facsimile transmission, sent by overnight courier or sent by registered or certified United States mail, postage prepaid, with return receipt requested, as addressed as follows:

If to Licensor, at: BCT Property Services, LLC Agent
for Madison River Investments, LLC
201 E. Main, Suite 104
El Paso, Texas 79901
Attn: Property Manager
PH: (915) 533-4636 Fax: (915) 533-4655

If to Licensee, at: City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901
Attn: CITY MANAGER
PH: (915) _____ Fax: (915) _____

With a copy to: City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901
Attn: REAL ESTATE COORDINATOR

or to such other addresses or facsimile numbers as either party hereto may from time to time designate in writing and deliver in a like manner to the other party. Notices, consents, approvals, and communications shall be deemed delivered and received three (3) days after deposit in the United States mail, if sent by United States mail; upon receipt, if delivered personally or by overnight courier and upon electronic verification of receipt or transmission, if delivered electronically or by facsimile.

23. **OBLIGATIONS OF SUCCESSORS.**

Except as otherwise provided herein, all of the provisions of this License shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

24. **SECURITY DEPOSIT.**

[Intentionally Deleted].

25. **MISCELLANEOUS.**

25.1. **Relationship of the Parties.** Nothing contained in this License shall be deemed to construed to create a partnership or joint venture between Licensor and Licensee or between Licensor and any other party, or cause Licensor to be responsible in any way for the debts or obligations of Licensee or anyone else.

25.2. **Severability.** If any provision of this License is determined to be void or unenforceable by any court of competent jurisdiction, such determination shall not affect any other provision of this License and all such other provisions shall remain in full force and effect to the extent legally possible.

25.3. **Authority.** Any person signing this License on behalf of Licensee or Licensor represents and warrants that he/she has full authority to do so and that this License binds Licensee and Licensor, respectively.

25.4. **Entire Agreement.** This license contains the entire agreement of the parties regarding the Licensed Premises. There are no representations, warranties, or promises between the parties not contained in this License. No amendment or termination of this License will be effective, in whole or in part, unless in writing and duly signed by the party against whom enforcement is sought.

25.5. **Governing Law.** The laws of the state in which the Building is located shall govern the validity, performance and enforcement of this License and venue shall be in the County in which the Building is located.

25.6. **Waiver of Consent Limitations.** A waiver of any breach or default under the License shall not be a waiver of any other breach or default. Licensors consent to or approval of any act by Licensee requiring Licensor's consent or approval shall not be deemed to waive or render unnecessary Licensor's consent to or approval of any subsequent similar act by Licensee.

25.7. **Force Majeure.** Whenever a period of time is herein prescribed for the taking of any action by Licensor, Licensor shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, litigation brought by third parties to enjoin Licensor's activities at the Building, or any other cause whatsoever beyond the control of Licensor.

25.8. **Amendments.** To be effective and binding on Licensor and Licensee, any amendment, modification, addition or deletion to the provisions of this License must be in writing and executed by both parties in the same manner as the License itself.

25.9. **Definition of Licensor.** As used in this License, the term "*Licensor*" means only the current Licensor of the fee title to the Licensor's Building and the Property or the leasehold estate thereof under a ground lease at the time in question. Each Licensor is obligated to perform the obligations of Licensor under this license only during the time such Licensor owns such interest or title. Any Licensor who transfers its title or interest in the Building is relieved of all liabilities for the obligations of Licensor under this License to be performed on or alter the date of transfer.

25.10. **No Trial by Jury.** Each party hereby irrevocably and unconditionally waives all rights to trial by jury in connection with any litigation arising out of this License or the transactions contemplated under this License.

25.11. **Legal Construction.** This License may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will be deemed one and the same document. Time is of the essence of this License and every provision of this License. Pursuant to Paragraph 4 above, the parties acknowledge that each party has reviewed this License and had an opportunity to have legal counsel review this License and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in) interpretation of this License.

IN WITNESS WHEREOF, LICENSOR AND LICENSEE have executed this License as of the date set forth above.

LICENSOR:

Madison River Investments, LLC

By: _____
Its: _____
Date: _____

LICENSEE:

City of El Paso

By: _____
Its: _____
Date: _____

EXHIBIT "A"

THE BUILDING AND PROPERTY DESCRIPTION

221 N. KANSAS STREET EL PASO TX 79901

Legal description here

EXHIBIT "A-2"

DESCRIPTION OF TELECOMMUNICATIONS SPACES

Licensor will allow Licensee space for the following in and through the Building:

- | | |
|--|-----------------------|
| • _____ () 4" Conduit Runs from sub-basement to Roof, approximately 285 linear feet | \$ |
| • Telecommunications Closet located on 22 nd Floor, approximately 300 square feet | \$ |
| • _____ () Rooftop Antennae Locations | <u>\$ 0.00</u> |
| Total Annual: | <u><u>\$ 0.00</u></u> |

As of the signing of this License Agreement, Licensee represents and warrants that Licensee will install only the above referenced conduit and antennae's (the "Equipment") within the Building to be used solely by Licensee for the purposes outlined herein.

In the event Licensee desires to install additional Equipment, Licensee shall be required to obtain Licensor's prior written consent. In the event Licensor consents to Tenant's installation of additional Equipment, additional use fees will be collected on a monthly basis for the placement of such additional Equipment calculated on the following:

Licensor has the right to audit and confirm usage of the Equipment at any time, and in the event Tenant is using more Equipment than allowed by the terms of this Lease, Tenant shall remove such additional Equipment within ten (10) days following written notice from Licensor. In the event Licensee fails to remove such additional Equipment within such ten (10) days period, Licensor shall have the right to remove such Equipment at Licensee's sole cost and expense.

EXHIBIT "A3"
LICENSED PREMISES

Drawings to be submitted by Licensee

EXHIBIT "B-1"

DESCRIPTION OF TELECOMMUNICATIONS EQUIPMENT

To be submitted by Licensee

EXHIBIT "B-I"

EXHIBIT "C"

THE TECHNICAL STANDARDS

Licensee agrees to comply with the following technical standards to the extent that they are applicable to Licensee's Equipment and use thereof.

1. General

- a. All users shall furnish the following to Licensor/Telecom Manager prior to installation of any equipment
- i. Site applications
 - ii. Copies of FCC licenses/construction permits.
 - iii. Accurate block diagrams showing operating frequencies, all system components (active or passive) with gains and losses in dB, along with power levels.
 - iv. Copies of manufacturers equipment specifications, including all frequencies.
 - v. All building Rules and Regulations provided by Licensor/Telecom Manager shall be reviewed and complied with during construction.
- b. The following will not be permitted without the written consent of Licensor/Telecom Manager, which consent shall not be unreasonably withheld:
- i. Equipment, which does not conform to FCC Rules and Regulations.
 - ii. Any equipment without FCC type acceptance.
 - iii. Non-continuous duty rated transmitters used in continuous duty applications.
 - iv. Equipment not designed for high-density site applications.
 - v. Nickel-plated connectors.
 - vi. Add-on power amplifiers.
 - vii. Digital/analog abrading in exciters, unless type-accepted.
 - viii. Transmitter outputs without a harmonic filter and antenna matching circuitry.
 - ix. Ferrite devices looking directly at an antenna.
 - x. Active or passive devices hidden in inconspicuous locations.
 - xi. Cascaded receiver multicouplers/preamps.
 - xii. Hybrid equipment with different manufacturers' RF designated markings.
 - xiii. Equipment with crystal oscillator modules which have not been temperature compensated.
 - xiv. Open rack mounted receivers and transmitters.
 - xv. Change in operating frequency(lea).

2. Communication Service Installation Standards

- a. All cable and other installations made in connection with this License will comply with the following:
- i. CSI (Construction Specification Institute)
 - ii. NFPA 70 (National Electric Code)
 - iii. EIA/TIA 569 (Commercial Building Standards for Telecommunication Pathways)
 - iv. EIA/TIA 568 (Commercial Building Wiring Standard)
 - v. IEEE (international Electrical, Electronic, Engineers Standards)
- b. If any conflict exists between the foregoing and any applicable law, the stricter will apply.
- i. In general, the following minimum specifications will apply:
 - 1. 30-88MHZ
 - a. Isolators — minimum 20 dB isolation
 - b. TX output cavity — minimum of 20 dB rejection at ± 5 MHZ
 - c. High power type, continuous duty for all paging transmitters
 - 2. 130-174MHZ

a Isolators — minimum of 30 dB with at least one bandpass cavity set to the highest insertion loss allowable

3. 406-512 MHZ

a. Isolators — minimum of 40 dB with at least one bandpass cavity set to the highest insertion loss allowable.

4. 806-944 MHZ

a. Isolators — minimum of 60 dB with at least one bandpass cavity set to the highest insertion loss allowable.

c. It should be emphasized that the above specifications are minimum requirements. Additional protective devices may be required upon evaluation of the following information.

- i. Theoretical transmitter mixes, especially second and third order products.
- ii. Antenna location and type.
- iii. Combiner/multicoupler configurations.
- iv. Transmitter specifications.
- v. Receiver specifications.
- vi. Historical problems.
- vii. Transmitter to transmitter(s) or receiver(s) isolation.
- viii. Calculated and measured level of intermod products.
- ix. Transmitter output power and ERP.
- x. Spectrum analyzer measurements.
- xi. VSWR measurements.
- xii. Existing cavity selectivity.

3. **Receivers**

- a. No RF preamps permitted in front end unless authorized by Licensor Telecom Manager.
- b. All shields must be in place.
- c. VHF and up must use helical resonator type front ends.
- d. Must meet manufacturer's specifications, specifically regarding bandwidth, discriminator, drift width, and spurious responses.
- e. Crystal filters/preselectors/cavities must be installed in receiver ports and inputs where required.
- f. All repeater CTCSS circuitry must use "AND" logic and be able to be defeated for testing.
- g. No RF preamps permitted in front end unless authorized by Licensor Manager.
- h. All shields must be in place.
- i. VHF and up must use helical resonator type front ends.
- j. Must meet manufacturer's specifications, specifically regarding bandwidth, discriminator, drift width, and spurious responses.
- k. Crystal filters/preselectors/cavities must be installed in receiver ports and inputs where required.
- l. All repeater CTCSS circuitry must use "AND" logic and be able to be defeated for testing.

4. **Transmitters**

- a. Must meet original manufacturer's specifications.
- b. All shielding must be in place and secure.
- c. Must have a visual indication of transmitter operation.
- d. Must be tagged with Licensee's name, equipment model number, serial number and operating frequency(ies).
- e. All low level, pre-driver and driver stages in exciter must be shielded.
- f. All power amplifiers must be shielded.
- g. Output power may not exceed 250 watts.

5. **Combiners/Multicouplers**

- a. Shall at all times meet manufacturer's specifications.
- b. Must be tuned using manufacturer approved procedures.

- c. Must provide a minimum of 80 dB transmitter to transmitter isolation.
 - d. Unused combiner ports must be terminated with the proper length shorted stubs or loads.
6. **Cabinets**
- a. All cabinets must be bonded together and grounded to the supplied ground cable.
 - b. All doors must be on and closed.
 - c. All non-original holes larger than 1' must be covered with copper screen or solid metal plates.
7. **UPS Systems.**
- a. Only sealed batteries will be accepted.
 - b. All systems must be approved prior to Installation by Licensor/Telecom Manager.
8. **Antennas.**
- a. Mounted only on posts or other speafled mounts and only per mount unless authorized in writing.
 - b. All mounting hardware galvanized or non-corroding metal.
 - c. Tagged with weatherproof labels showing manufacturer, model, frequency range, and owner.
 - d. Bonded with copper braid to building ground system, when available.
 - e. Connections to be taped with stretch vinyl tape (Scotch #33 or equivalent) and Scotchkoted (including booted pigtails).
 - f. Must meet manufacturers VSWR specifications.
 - g. Antennas with corroded elements must be repaired or replaced.
 - h. Must be DC grounded type, or have the appropriate lightening protection as determined by the Licensor/Telecom Manager.
 - i. Unless otherwise authorized by Licensor/Telecom Manager, all antennas must be encased in fiberglass radomes and be painted or Impregnated with a color designated by Licensor/Telecom Manager as the standard antenna color for aesthetic uniformity.
 - j. Mounting pipes must be cut such that they do not extend above the antenna mounting sleeve.
 - k. All antennas will be supported by a sleeve mount where the antenna mounting section slips into the sleeve and is secured by a set of compression bolts that hold and secure the antenna in the sleeve mount
 - l. All antenna installations need to have drawings signed and sealed by a P.E. licensed in that state.
 - m. Equipment weight load and placement needs to be approved at discretion of Licensor/Telecom Manager (i.e., P/E calculation may be required for weight distribution).
9. **Antenna Mounts.**
- a. 2" or greater heavy well galvanized mounting pipes must be used
 - b. No welding or drilling on mounts will be permitted.
 - c. Any corroding hardware must be replaced.
10. **Hazardous Materials.** All Hazardous Materials used in connection with the installation of the Telecommunications Equipment and all work that will be performed in proximity of, or might disturb, any Hazardous Materials present in the Building, will also be subject to the provisions of the Building Rules and Regulations of Licensor/manager and Paragraph 10.4 of the License.
11. **Lightening Protection.** Antennas and equipment must be connected to the Lightening Protection System in place at the Building.
12. **Construction, Cable.**
- a. All Cable that runs through air plenum ceilings and/or spaces must be plenum- rated.
 - b. No Cable may run through any air duct, fire damper, supply air duct, return air duct, or air transfer duct. No HVAC-related ductirig may be used as a cable chase.
 - c. All Cable that runs above a false or hanging ceiling, or in any crawl space, must be permanently tied and hung so that it does not lay on the ceiling, ceiling grid, or ceiling tiles.
 - d. Provider will ensure that all components of the Telecommunications Equipment, including Cables, are identified with permanently marked, weather proof labels in each telephone closet through which Cables pass, each antenna bracket, at the transmission line building entry point, at the interior wall feed-through or any other

transmission line exit point, and at any transmitter combiner, duplexer or multi-feed receive port, with Licensee's name, type of line, circuit number, and floor where cable originates and terminates, and other information as may be reasonably required by Licensor/Telecom Manager.

e. No Cable or Telecommunications Equipment may be installed in any existing chases, conduit, common areas, electrical rooms, storage rooms, utility rooms, mechanical rooms, equipment rooms, HVAC rooms, or telephone rooms, without prior approval of Licensor/Telecom Manager and, if applicable, any affected Tenant

f. If any existing Cable or Telecommunications Equipment is being replaced, the old Cable or Telecommunications Equipment must be removed and disposed of by Licensee, unless otherwise agreed by Licensor/Telecom Manager.

g. AU Cable must be installed by Licensor/Telecom Manager's designated contractor.

h. All unused Cable lines must be tagged at both ends showing termination points on both ends.

i. All transmission lines must be tied to antenna mounting posts with appropriate Cable/Transmission supports.

j. All antenna transmission lines shall be grounded at both the antenna and the rack located in the equipment room with appropriate grounding kits.

k. All AC power cords must be three (3) conductor with approved grounding pin.

l. The use of extension cords is prohibited.

13. **Electrical, Air Conditioning and Heating**

a. No cooling, heating, or electrical power will be provided by Licensor/Telecom Manager to any Telecommunications Equipment or any of Licensee's contractors unless otherwise agreed in writing by Licensor/Telecom Manager.

b. Unless Licensor/Telecom Manager expressly agrees to the contrary in writing, any cooling, heating, or electrical power that Licensor/Telecom Manager agrees to provide will be sub-metered or measured in a manner that allows Licensor/Telecom Manager to generate accurate utility billings.

14. **Landscaped and Lawn Areas.**

a. All trenching and digging on any part of the property (including all common areas, landscaped areas, walkways, and lawn areas) must be pre-approved by Licensor/Telecom Manager.

b. Before any trenching or digging occurs, all utilities (including natural gas, electric, water sprinkler lines, sprinkler control wiring, heating, ventilation, and air conditioning lines, cable television lines, and communication lines) must be located, clearly identified, and staked through the entire length and width of the dig/trench area. All providers of such utilities must be notified in advance of any trenching or digging.

c. All backfilling must use the same quality of dirt that was found in the dig area(s), to help ensure continuity of the adjoining surfaces.

d. All trenches and holes must be properly compacted by wetting, mechanically compacting, and tamping down the till dirt, to prevent settling of the trench or dig areas. In the event of any subsequent settling of the trench, or dig areas, Provider will correct any such settling at its sole expense and risk.

15. **Drilling, Hammering, Cutting, Etc.** All core drilling, saw cutting, drilling, hammer drilling, and jack hammering, and all modifications to any building system, wall, floor, or ceiling, must be approved by Licensor/Telecom Manager before any such work is started.

16. **Fire Stop and Fireproofing.**

a. The fire rating and fireproofing integrity of all walls, floors, ceilings and doors must be maintained, in connection with all penetrations and Cable runs.

b. There will be no modification of any fire rated building door, i.e., cutting a vent or louver in an existing fire rated door.

c. Any fire stop, fire barrier material, or fireproofing removed, damaged, or disrupted must be properly reinstalled and repaired on the same day of such removal, damage, or disturbance.

d. Any penetration through fire rated walls, floors, ceilings, or doors must be sealed and made fire rated to the same or greater fire rating on the same day the penetration is made.

17. **Roof.** Licensee will not penetrate the Roof membrane. If any Roof penetrations are approved by Licensor/Telecom Manager, Licensor/Telecom Manager may require that Licensee use a contractor specified by Licensor/Telecom Manager.

a. Installation may take place only after Licensor/Telecom Manager has been notified of the date and time, and only during normal working hours unless otherwise specifically authorized.

b. Equipment may not be operated until the installation has been approved by Licensor/Telecom Manager which approval shall not be unreasonably withheld.

c. Equipment must remain within its designated floor space at all times.

18. **Maintenance/Tuning Procedures**

a. All external indicator lamps must be working.

b. Equipment parameters must meet manufacturer's specifications.

c. All cover, shield and rack fasteners must be in place and securely tightened.

d. Local speakers must be turned off except during service.

19. **Interference Diagnosing Procedures**

a. All licensees must cooperate in a timely fashion with Licensor/Telecom Manager when called upon to investigate a source of interference, whether or not it can be conclusively proven that their equipment is involved.

b. Licensor/Telecom Manager will provide best efforts to assist in locating and curing all interference problems brought to the Licensor/Telecom Manager by the Licensee. If a specific interference problem as brought to the Licensor/Telecom Manager by Licensee is found to exist in Licensee's equipment, then Licensee will reimburse Licensor/Telecom Manager for technical assistance at a rate of \$125.00 per hour (4 hour minimum), plus any reasonable expenses.

20. **Miscellaneous**

a. All installations must be maintained in a neat and orderly manner.

b. Doors to equipment and antenna spaces shall be closed and locked at all times.

c. Access to equipment and antennas shall be by authorized personnel only, and only for purposes of installation, service or maintenance.

EXHIBIT "D"

BUILDING RULES & REGULATIONS

1. Sidewalks, doorways, vestibules, corridors, stairways and other similar areas shall not be obstructed by Tenant or used by Tenant for any purpose other than ingress and egress to and from the Premises and for going from or to another part of the Building.

2. Plumbing fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable materials shall be thrown or placed therein. Damage resulting to any such fixtures or appliances or surrounding areas from misuse by Tenant shall be repaired at the sole cost and expense of Tenant, and Landlord shall not in any case be responsible therefor.

3. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or other parts of the Building except of such color, size and style and in such places as shall be first approved in writing by Landlord. No nails, hooks or screws shall be driven or inserted in any part of the Building except by the Building maintenance personnel nor shall any part of the Building be defaced by Tenant

4. Landlord will provide and maintain an alphabetical directory of each Tenants firm name on the first floor (main lobby) of the Building and no other directory shall be permitted unless previously consented to by Landlord in writing.

5. Tenant shall not place any additional lock or locks on any doors in or to the Premises without Landlord's prior written consent. Two keys to the locks on the doors which access the Premises from the Common Areas shall be furnished by Landlord to Tenant, and Tenant shall not have any duplicate keys made, Additional keys required by Tenant shall be made by Landlord at Tenant's sole expense. Upon termination of the Lease. Tenant shall return all keys to Landlord and shall provide to Landlord a means of opening all safes, cabinets and vaults being left with the Premises.

6. With respect to work being performed by Tenant in the Premises with the approval of Landlord, Tenant will refer all contractors, contractor's representatives and installation technicians rendering any service to them to Landlord for Landlord's supervision, approval and control before the performance of any contractual services. This provision shall apply to work performed in the Building including, but not limited to, installation of telephones, telegraph equipment, electrical devices and attachments, and any and all installation of every nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment and any other physical portion of the Building. Tenant must have Landlord's written approval prior to employing any contractor. Any and all such contractors shall comply with these Rules and Regulations for such services including, but not limited to, insurance requirements. All work in or on the Building shall comply with any and all codes. Tenant shall take no action which would disturb the ceiling tiles or cause any work to be performed above the acoustical ceiling in the Building.

7. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by Tenant of any bulky materials, merchandise or materials which require use of elevators or stairways, or movement through the Building entrances or lobby shall be restricted to such hours as Landlord shall designate. All such movement shall be under the supervision of Landlord and in the manner agreed between Tenant and Landlord by prearrangement before performance. Such prearrangement initiated by Tenant will include determination by Landlord, and subject to its decision and control, as to the time, method and routing of movement and as to limitations for safety or other concerns which may prohibit any article, equipment or any other item from being brought into the Building. Tenant is to assume all risk as to damage to articles moved and injury to person or public engaged or not engaged in such movement, including equipment, property and personnel of Landlord and other tenants if damaged or Injured as a result of acts in connection with carrying out this service for Tenant from the time of entering the property to completion of work and Landlord shall not be liable for acts of any person engaged in, or any damage or loss to any of said property or persons resulting from any act in connection with such service performed for Tenant.

8. Landlord shall have the power to prescribe the weight and position of safes and other heavy equipment, which shall, in all cases, be positioned to distribute the weight and stand on supporting devices approved by Landlord. All damage done to the Building by taking in or putting out any property of Tenant, or done by Tenant's property while in the Building, shall be repaired at the expense of Tenant

9. Corridor doors, when not in use, shall be kept closed.

10. Tenant shall cooperate with Landlord's employees in keeping its Premises neat and clean. Tenant shall not employ any person for the purpose of such cleaning other than the Buildings cleaning and maintenance personnel. Landlord shall be in no way responsible to Tenant, its agents, employees or invitees for any loss of property from the Premises or public areas or for any damage to any property thereon from any cause whatsoever.

11. To insure orderly operation of the Building, no ice, mineral or other water, towels, newspapers, etc. shall be delivered to the Premises except by persons approved by Landlord in writing.

12. Should Tenant require telegraphic, telephonic, annunciator or other communication service, Landlord will direct the electrician where and how wires are to be introduced and placed and none shall be introduced or placed except as Landlord shall direct. Electric current shall not be used for power in excess of standard office use or heating without Landlord's prior written permission.

13. Tenant shall not make or permit any improper noises in the Building or otherwise interfere in any way with other tenants or persons having business with them.

14. Nothing shall be swept or thrown into the corridors, halls, elevator shafts or stairways. No animals shall be brought into or kept in, on or about the Premises.

15. No machinery other than standard office equipment shall be operated by Tenant in its Premises without the prior written consent of Landlord, nor shall Tenant use or keep in the Building any flammable or explosive fluid or substance.

16. No portion of the Premises shall at any time be used or occupied as sleeping or lodging quarters.

17. Landlord will not be responsible for money, jewelry or other personal property lost or stolen in or from the Premises or public areas regardless of whether such loss or theft occurs when the area is locked against entry or not

18. The Premises shall not be occupied by an average of more than one (1) person per 150 square feet of Rentable Space in the Premises without the prior written consent of Landlord.

19. Landlord reserves the right to rescind any of these rules and regulations and to make such other and further rules and regulations as in its judgment shall from time to time be advisable for the safety, protection, care and cleanliness of the Building, the use and operation thereof, the preservation of good order therein and the protection and comfort of the tenants and their agents employees and invitees, which rules and regulations, when made end written notice thereof is given to Tenant, shall be binding upon Tenant in like manner as if originally herein prescribed.

EXHIBIT "E"
SITE ACCESS PROCEDURES

Due to the state of heightened security and to ensure the safety of all building occupants, the following procedures must be followed in order for personnel to be authorized to have access to the rooftop and equipment room areas of the building:

1. For ALL ACCESS, PLEASE CALL 915-533-4636, and provide the following information:
 - Name of person(s) requiring access
 - Reason for visit (i.e., routine maintenance, etc.)
 - Date & time of arrival
 - Call back phone number
2. Upon arrival all personnel requiring access must present photo ID(s) to building management and/or security personnel.
3. All personnel must be listed by name on the Licensee Access List and a current Certificate of Insurance for the Licensee and all contractors must be on file with Licensor in the building management office.
4. All personnel must sign the provided access log noting the date and time upon check in and check out. For routine maintenance, please provide at least 24 hour notice.

IN THE EVENT OF AN EMERGENCY, access will be provided as soon as reasonably possible.

Under no circumstances will access be allowed for equipment installations or removal without Landlord consent and approval, as required by the license agreement.

Licensor requires that all licensees follow this procedure for access to better protect the interests of the building owners, management, as well as the interests of all licensees that maintain equipment on or in the building. Everyone's cooperation will enable each Licensee to access the equipment space with minimum disruption or unnecessary delays.

Failure to Meet ANY of These Requirements Will Result in Immediate Denial of Access.