

AN ORDINANCE

2013-02-21-0138

AUTHORIZING AN ALAMODOME NEUTRAL-HOST DISTRIBUTED ANTENNA SYSTEM LICENSE AGREEMENT WITH SAN ANTONIO MTA, P.L. D/B/A VERIZON WIRELESS.

* * * * *

WHEREAS, this Ordinance authorizes a License Agreement with San Antonio MTA, L.P. d/b/a Verizon Wireless (“Verizon Wireless”) for the design, installation, operation and maintenance of a neutral-host Distributed Antenna System (DAS) at the Alamodome to provide extended and improved wireless communications for an initial term of ten (10) years with two (2) automatic five (5)-year renewal periods in exchange for annual license fees payable to the City of \$25,000.00 per participating wireless carrier; and

WHEREAS, Verizon Wireless will be responsible for all costs for the design, installation, and ongoing operation and maintenance of the DAS, and may recoup its actual capital investment costs, as well as operational and maintenance costs, from each participating wireless carrier on an equal, pro rata basis; and

WHEREAS, the DAS will be available to other participating wireless providers whom the City and Verizon Wireless will work together to recruit as participating carriers; and

WHEREAS, the Alamodome currently has two temporary DAS license agreements with Verizon Wireless and AT&T, which systems will be replaced by the permanent DAS; and

WHEREAS, many of the sporting and entertainment venues that cater to large marquee events provide reliable wireless communications as a prerequisite for hosting those events, and the DAS will make the Alamodome more competitive in attracting such marquee events to San Antonio; and

WHEREAS, installation of the DAS at the Alamodome will provide an enhanced level of wireless communications service requested by the two permanent tenants at the Alamodome, UTSA and the San Antonio Talons; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the License Agreement between the City of San Antonio and Verizon Wireless, attached as **Exhibit A**, are hereby approved, and the City Manager or her designee is authorized to execute said agreement.

SECTION 2. Under the license agreement, each participating wireless carrier will pay the City an annual license fee of \$25,000.00. This license agreement is expected to generate between \$250,000.00 and \$1,000,000.00 in license fees over the initial term, depending on the number of participating wireless carriers. Funds generated by the license agreement will be deposited into Fund 29016000, Internal Order 245000000006 and General Ledger 4401170.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.


SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 21st day of February, 2013.



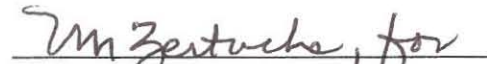
M A Y O R
Julián Castro

ATTEST:



Leticia M. Vadek, City Clerk

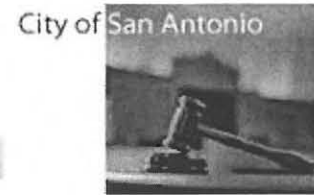
APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 23

Name:	23, 24						
Date:	02/21/2013						
Time:	11:21:32 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Alamodome Distributed Antenna System License Agreement with San Antonio MTA, L.P. d/b/a Verizon Wireless. [Ed Belmares, Assistant City Manager; Michael Sawaya, Director, Convention, Sports, and Entertainment Facilities]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x			x	
Carlton Soules	District 10	x					

EXHIBIT A

**ALAMODOME NEUTRAL-HOST
DISTRIBUTED ANTENNA SYSTEM (DAS)
LICENSE AGREEMENT**

made as of _____, 2013 by

City of San Antonio, Texas

Convention, Sports, and Entertainment Facilities Department

and

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

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ALAMODOME NEUTRAL-HOST DISTRIBUTED ANTENNA SYSTEM
LICENSE AGREEMENT

This Alamodome Neutral-Host Distributed Antenna System (“DAS”) License Agreement (the “Agreement”) is made on _____, 2013 (the “Effective Date”) by the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 20____, and San Antonio MTA, L.P. d/b/a Verizon Wireless (“Verizon Wireless”), with an address at 180 Washington Valley Road, Bedminster, New Jersey 07921. The City and Verizon Wireless may be individually referred to as a “Party” or collectively as the “Parties.”

WITNESSETH:

WHEREAS, the City is a home-rule city under the laws of the State of Texas and the owner of the Alamodome (“Facility”) located at 100 Montana Street, San Antonio, Texas 78203, and is authorized to enter into such agreements as the City deems necessary in conjunction with the management and operations of the Facility, including, without limitation, this Agreement;

WHEREAS, on March 29, 2012, the City issued a Request for Proposal (RFP) for Alamodome Distributed Antenna System to design, install, operate and maintain a neutral-host Distributed Antenna System at the Facility, and Verizon Wireless submitted a proposal in response to the RFP;

WHEREAS, it is the desire of the City and Verizon Wireless in response to the RFP to enter into this Agreement in order to implement a neutral-host DAS in the Facility to provide extended and improved wireless communications therein;

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

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

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

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

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

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

1. **Project Scope.**

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

b. **The DAS.** The City, as provided herein, is providing the CMRS Carriers with access to the Facility so that Verizon Wireless may install the DAS in the Facility in the areas set forth on **Exhibit A** ("**DAS Areas**") to provide extended and improved wireless communications, including expanded broadband service, in the Facility's "**DAS Coverage Area**". The "**DAS Coverage Area**" includes: (i) those portions of the interior of the Facility included in the Preliminary DAS Plans and Specifications (as defined in Section 7(a) below) and (ii) those portions of the Facility parking lots, loading dock areas, and adjacent sidewalks, walkways, stairs, and ramps included on such Preliminary DAS Plans and Specifications. The DAS shall consist of the wireless network systems including a series of hubs, repeaters and multiple band antennas within the Facility to accommodate and extend radio frequency ("**RF**") signals from the CMRS Carriers and their commercially provided wireless services. The DAS includes all hardware and software associated with uplink and downlink RF including, but not limited to, power systems and back-ups, antennas, base stations, multiplexers, personal computers, cable and fiber, network monitoring and alerting systems, equipment rooms (including HVAC and fire suppression systems) and network operations systems owned, installed, operated, maintained, and managed by Verizon Wireless on the DAS Areas. The DAS Areas include office space, CMRS Carriers base station equipment room(s), equipment closets and a location for a backup generator. Upon approval by the City, any other additions to the DAS Areas will be automatically included in the Agreement by exchange of correspondence with Verizon Wireless.

2. **Additions to the CMRS Carriers and Sublicensing.**

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

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

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

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

3. **Development of the DAS.**

a. The City will designate a "City Designated Representative" who will be the point of contact with respect to the Facility for Verizon Wireless regarding the installation of the DAS in the Facility, including assistance in overall coordination.

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

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

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

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

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

b. Except as expressly provided herein, each CMRS Carrier will accept the DAS Areas in their "**As Is, With All Faults**" conditions and understands and agrees that City is under no obligation to make any improvements, perform any work, or provide any materials to prepare the DAS Areas for the CMRS Carriers. CITY HEREBY DISCLAIMS, AND VERIZON WIRELESS ON BEHALF OF ITSELF AND ALL FUTURE PARTICIPATING CARRIERS HEREBY WAIVES ANY AND ALL WARRANTIES OF ANY KIND WHATSOEVER, WHETHER STATUTORY, EXPRESS, OR IMPLIED WITH RESPECT TO THE DAS AREAS

(INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE). NOTHING CONTAINED HEREIN SHALL LIMIT ANY WARRANTIES PROVIDED BY THIRD PARTY MANUFACTURERS AS TO THE DAS EQUIPMENT INSTALLED IN THE DAS AREAS.

c. Other Qualified CMRS Operators. The City hereby grants Verizon Wireless, its permitted successors or assigns and any Future Participating Carrier(s) and their permitted successors or assigns the exclusive right to install and offer the use of the DAS to wireless service providers for placement of wireless sites to be integrated into DAS. The City agrees to refer all inquiries received from CMRS operators for the placement of wireless sites, or fiber-based microcellular (distributed antenna) systems, to Verizon Wireless and will use its best efforts to encourage non-participating Qualified CMRS operators to utilize the DAS. If at any time during the Term of this Agreement, less than all Qualified CMRS operators in the San Antonio, Texas market are CMRS Carriers on the DAS, Verizon Wireless will (1) be responsible for offering use of the DAS to such non-participating Qualified CMRS operators in the San Antonio, Texas market and (2) maintain a plan designed to periodically inform such non-participating Qualified CMRS operators in the San Antonio, Texas market of the capabilities of the DAS and encourage them to participate on the DAS under the terms and conditions set forth in this Agreement. The City agrees that it is in its best interest to grant such exclusive rights to Verizon Wireless in consideration of the significant capital investment necessary to develop the DAS. If on the third (3rd) anniversary of the Effective Date or anytime thereafter, fewer than two (2) CMRS Carriers are participating in the DAS, Verizon Wireless and the City shall cooperate in good faith to determine if the exclusive rights granted hereunder are in the City's best interests and the City will make a final determination. Notwithstanding anything to the contrary contained in this Agreement, in the event that Verizon Wireless does not have the exclusive right to offer use of the DAS to other Qualified CMRS operators as provided in this Section 4(c), Verizon Wireless may terminate this Agreement at any time upon ninety (90) days prior written notice to the City.

5. Term, Default and Termination.

a. The "Initial Term" of this Agreement will be ten (10) years commencing on the Effective Date. Upon expiration of such Initial Term and if Verizon Wireless is not in default hereunder beyond any applicable cure period, this Agreement will automatically renew two (2) consecutive five (5) year renewal periods, unless terminated by Verizon Wireless or the City in accordance with the provisions hereof (such renewal period together with the Initial Term being the "Term").

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

c. If fewer than two (2) CMRS Carriers are participating in the DAS, the City may terminate this Agreement at the end of the Initial Term or any renewal period by providing written notice of intent to terminate to Verizon Wireless at least ninety (90) days prior to the end of the Initial Term or applicable renewal period.

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

Year of Term	Percentage (%) Reimbursement
1	100%
2	90%
3	80%
4	70%
5	60%
6	50%
7	40%
8	30%
9	20%
10	10%

The City agrees to pay such reimbursement amount to Verizon Wireless prior to the effective date of the termination of this Agreement; provided however, that in the event that the City's budget appropriation process cannot reasonably accommodate such reimbursement during the fiscal year that the City provides its termination notice under this Section 5(d), the City shall have thirty (30) days following the commencement of the fiscal year immediately following such year to pay such amount to Verizon Wireless.

Upon the City's request, not more than annually, Verizon Wireless agrees to provide the City with a summary of the current total DAS Costs, documented by Verizon Wireless to the City's reasonable satisfaction. Notwithstanding the foregoing, in no event shall Verizon Wireless or any CMRS Carrier be required to provide the City with any proprietary pricing information unless otherwise required by applicable law.

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

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

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

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

6. Fees and Taxes.

a. Annual License Fee. Commencing on the first day of the month following the Effective Date and thereafter on the first day of each month during the Term, the CMRS Carriers shall pay to City a monthly payment equal to 1/12 of the Annual License Fee at the rate of \$25,000 per year per CMRS Carrier participating in the DAS. The CMRS Carriers will pay the applicable License Fee based on the number of CMRS Carriers participating on the DAS at the Facility, such fees to be pro-rated for any portion of a year that a CMRS Carrier participates. Each CMRS Carrier will have the option to pay its full Annual License Fee (including any pro-rated portion thereof) on a single annual installment paid in advance on January 1 of each year.

b. Performance Guarantee. Within thirty (30) days after the Effective Date, Verizon Wireless shall deliver to the City an irrevocable standby letter-of-credit ("LOC") to guarantee the full and faithful performance by Verizon Wireless of all the terms and conditions of this Agreement and stand as security for payment by Verizon Wireless of all claims by the City. The required amount of the LOC for this Agreement is an amount equal to ONE HUNDRED THOUSAND AND 00/100 (\$100,000.00) DOLLARS.

The LOC shall be issued in a form that is satisfactory to the City and the City must be able to draw upon the LOC at any of the financial institution's establishments. The language of the LOC will unequivocally state that if at the time this Agreement terminates or is terminated by the City without cause, there is consideration due and owing to the City from Verizon Wireless the amount of the LOC shall be applied toward the settlement of said claim(s).

Provided that Verizon Wireless is not in payment default at the end of the Term, City agrees to release the LOC and Verizon Wireless shall have no further obligations to provide such LOC.

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

d. Electricity. To the extent requested, the City will provide each CMRS Carrier access to electrical power during the construction, monitoring, operation, maintenance, or repair of the DAS, and the City will make available electrical power in quantities that are reasonably necessary for operation of the DAS (excluding the head end and base stations) at no cost to the CMRS Carriers. The CMRS Carriers will pay all costs associated with extending and connecting the DAS to such electrical power or the head end and base stations.

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

a. Verizon Wireless will install the DAS in a good and workmanlike manner in accordance with: (i) industry standards and practices; (ii) the City's General Building and Cabling Specifications attached as Exhibit D; and (iii) the drawings, plans and specifications that will be provided to the City for review and approval (the "Plans and Specifications") prior to installation. The preliminary plans for the DAS (including the head-end room) are attached hereto as **Exhibit C** ("Preliminary DAS Plans and Specifications"). Review and approval of the Plans and Specifications will be limited to departmental policies applicable to the DAS installation at the Facility, including the City's General Building and Cabling Specifications. Such approval will be provided by the Director of the City's Convention, Sports, Entertainment and Facilities Department, or his designee, by way of a written notice (which may include email) to proceed. City's approval, which will not be unreasonably withheld, conditioned or delayed, of such Plans and Specifications shall not be deemed a representation that they comply with applicable laws, ordinances, rules and regulations.

b. Verizon Wireless will coordinate all activity and hardware installation that affects the use of electrical, fiber, conduit, and cable trays with the City. Any required cabling will be installed throughout the Facility within cable trays or conduits and Verizon Wireless will supply and install all cable trays beyond what is currently available within the Facility needed for the DAS. Verizon Wireless will obtain City approval prior to the installation of any additional cable trays, such approval not to be unreasonably withheld or delayed. The CMRS Carriers will provide lockable equipment cabinets. The CMRS Carriers' equipment will be stored in a neat and orderly fashion and will only be stored in areas authorized by the City for such storage.

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

d. Verizon Wireless will install eight (8) strands of fiber for the City's use in the DAS fiber routes installed by Verizon Wireless (the "City's Fiber"). Notwithstanding anything

to the contrary contained in this Agreement, the CMRS Carriers will have no liability or obligations with respect to the City's Fiber except that it shall be installed to the standards prescribed by the City's ITSD department in accordance with City fiber plant installation standards attached as **Exhibit G**. Following the installation of the City's Fiber, the City's use and maintenance of the City's Fiber shall be at its sole expense. This provision will survive the Agreement and the City will be entitled to ownership of the fiber during the Term of the Agreement. Should the Agreement be terminated by either Party pursuant to the terms and conditions of the Agreement prior to the end of the Term, City's Fiber will remain the property of the City.

e. **Hazardous Substances.** If any CMRS Carrier encounters any environmentally hazardous substances in the Facility, such CMRS Carrier will immediately notify City of such discovery and take all reasonable precautions to avoid the handling or disturbance of any such environmentally hazardous substances in any manner. If such environmentally hazardous substances in the Facility are handled or disturbed, then such CMRS Carrier will conduct such activities according to applicable environmental and safety laws and those specific rules established by City. In the event environmentally hazardous substances are discovered in the DAS Areas, the CMRS Carriers and the City will make all reasonable attempts to relocate the affected DAS Areas and modify the Plans and Specifications to address the impact of the environmentally hazardous substances in the Facility and to provide for an alternative location for the DAS away from that part of the DAS Areas originally contemplated for the DAS installation. Each CMRS Carrier will agree that no semiconductors or other electronic equipment containing polychlorinated biphenyls (PCB's) or other environmentally hazardous materials will either be used or stored by any CMRS Carrier in or around the DAS Areas or in the Facility and no such materials will be used in any of the equipment installed by any CMRS Carrier as part of or connected to the DAS within the Facility. Notwithstanding anything to the contrary, however, no CMRS Carrier will have any responsibility for managing, monitoring, or abating, nor be the owner of, nor have any liability for, any environmentally hazardous substances that it did not bring into the Facility.

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

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

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

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

j. After the DAS is installed in accordance with the approved Plans and Specifications, no CMRS Carrier may make any improvements or alterations affecting the

appearance of DAS in those areas of the Facility that are generally visible to the public (“Public Areas”) without the City’s prior written approval, which approval will not be unreasonably withheld, conditioned or delayed. All actions undertaken by a CMRS Carrier and all equipment, improvements or alterations made by a CMRS Carrier in any way related to this Agreement will be undertaken in compliance with all applicable laws, ordinances, building and safety codes, regulations and orders. The CMRS Carriers will have the right to upgrade or modify the DAS and the related equipment and implement new technologies or use different and additional spectrum to better serve end users of the DAS; provided however, that if additional Facility space is needed for such upgrade or modification, such additional space will be subject to the City’s approval, such approval not to be unreasonably withheld, conditioned or delayed.

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

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

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

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

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

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

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

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

r. Verizon Wireless and City will cooperate to provide on-site maintenance and technical support for the DAS during up to six (6) major events held at the Facility, subject to fourteen (14) days advance notice to Verizon Wireless by the City.

8. **Access to the Facility.**

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

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

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

d. Identification. For security purposes, the CMRS Carriers and their contractors will (if required by the City) wear photo identification badges while onsite at the Facility. All badges must clearly indicate the employee and CMRS Carrier or subcontractor name. Any persons entering the Facility on behalf of the CMRS Carriers shall sign in and out at the Facility's security office upon entering and exiting the Facility and will be issued and must return proper temporary City identification badges, if any.

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

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

9. **Insurance.**

a. Each CMRS Carrier will procure and (i) with respect to the CMRS Carriers, at all times during the Term, or (ii) with respect to a Future Participating Carrier, for the term of its sublicense, maintain in effect and at its own expense insurance policies on an occurrence basis

(unless otherwise indicated) of the kind and limits listed below and with insurers with an A.M. Best's Rating of not less than A- (VII) and no work may be commenced at the Facility without the procurement of the following policies and the delivery of all applicable certificates (with agent's/broker's signature and phone number) evidencing such policies:

- (i) Commercial general liability insurance including: (1) premises/operations, (2) products/completed operations liability, (3) third-party property damage, (4) broad form contractual, (5) personal injury and advertising injury, (6) contractor's liability, and (7) bodily injury, with limits not less than:
 - (A) \$1,000,000 each occurrence
 - (B) \$2,000,000 general aggregate
- (ii) Commercial automotive, bodily injury and property damage insurance for business use covering all vehicles operated by such CMRS Carrier, its officers, agents, and employees in connection with this Agreement, whether owned by such CMRS Carrier or otherwise, with a combined single limit for bodily injury and property damage of \$1,000,000 per occurrence (including an extension of hired and non-owned coverage);
- (iii) Worker's Compensation insurance which meets applicable statutory requirements including employer's liability with limits of:
 - (A) \$500,000 bodily by accident – each accident
 - (B) \$500,000 bodily injury by accident – each employee
 - (C) \$500,000 bodily injury by disease – policy limit

b. The carrying of the insurance described herein will in no way be interpreted as relieving any CMRS Carrier of any responsibility or liability under this Agreement. All vehicles, equipment and materials owned and/or leased by any CMRS Carrier will not be covered by the City's insurance. All above listed insurance policies will, be provided without liability of any kind on the part of the City for premiums thereof and each will include a requirement to provide notice to the City at least ten (10) days prior to the cancellation, non-renewal or termination of such policy as allowed by law. Within five (5) days of any cancellation, non-renewal or adverse material change in coverage, the CMRS Carrier will provide a replacement certificate of insurance with applicable endorsements to the City. An endorsement adding the City, its officers, officials, employees, volunteers and elected representatives as additional insureds will be included on policies (i) and (ii) above and policies (i) through (iii) above will contain a waiver of subrogation provision in favor of the City. Additionally, all of the required insurance will be primary as it relates to the CMRS Carrier's DAS operations and any other valid and collectible insurance or self-insurance maintained by or in the name of the City and will be excess of the City's insurance which will not contribute to the required insurance in any way, in this respect and an endorsement that the "other insurance" clause will not apply to the City where the City is an additional insured will be shown on the policies for general and automobile liability insurance coverage. The CMRS Carriers' and any other Future Participating Carrier's insurance will cover the actions of that entity's personnel, contractors or subcontractors related to the Agreement.

c. Each CMRS Carrier may at its sole discretion may provide the coverage described herein through a combination of primary and umbrella insurance policies, or may self-insure or place coverage with any non-rated insurers for any of the risks referred to above as long as the Long-Term Issue Credit Rating of the respective party's legal parent entity is at least rated "BBB" or higher by the current Rating Definitions and Terminology of Standard & Poor's. Any self-insured retentions or deductibles equal to or greater than 25% of the applicable limits herein referenced below are considered self-insurance.

d. The CMRS Carriers will require all contractors performing work at the Facility on behalf of the CMRS Carriers to provide a certificate of insurance required above to the City prior to the commencement of work.

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

a. **Indemnity.** Verizon Wireless and each Future Participating Carrier (each an "Indemnitor") covenants and agrees (or will covenant and agree) to fully indemnify, defend (with counsel reasonably acceptable to City) and hold harmless, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Indemnitor's activities under this Agreement, including any acts or omissions of Indemnitor, any agent, officer, director, representative, employee, consultant or subcontractor of Indemnitor, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or willful misconduct of City, and the elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT AN INDEMNITOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this indemnity are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Verizon Wireless will use reasonable efforts to advise the City in writing within twenty-four (24) hours of any claim or demand against the City known to Verizon Wireless related to or arising out of City's activities under this Agreement. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving the Indemnitors of any of their obligations under this paragraph.

In any and all claims against the City and the elected officials, employees, officers, directors, volunteers and representatives of the City by a subcontractor or anyone directly or

indirectly employed by any CMRS Carrier, the indemnification obligations herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CMRS Carrier or any subcontractor under worker's compensation or other employee benefit acts.

b. THE CITY HEREBY RELEASES EACH CMRS CARRIER AND ITS DIRECTORS, OFFICERS, MEMBERS, MANAGERS, PARTNERS, JOINT VENTURERS, EMPLOYEES, REPRESENTATIVES AND AGENTS TO THE MAXIMUM EXTENT PERMITTED BY LAW FROM ANY LIABILITY THAT MAY ARISE FROM USE OF THE CITY'S FIBER.

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

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

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

b. **City's Rights.** The City may terminate this Agreement by giving Verizon Wireless one hundred twenty (120) days written notice if the City substantially alters the use of the Facility such that it is (i) closed to the public, (ii) repurposed for non-public use, (iii) demolished, or (iv) sold to a private entity. If the City terminates this Agreement under this subsection, Verizon Wireless shall have the right to remove some or all of the DAS equipment from the Facilities at its cost.

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

a. In the event that the City or other governing authority, in the exercise of any of its prescribed powers decides to recover any portion of the Facility or require the relocation of all or

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

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

c. Except as provided in Section 12(a) or in the event of a major renovation as set forth in Section 12(b) above, in no event will the CMRS Carriers be obligated to relocate the head end room.

13. **Miscellaneous.**

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

If to Verizon Wireless: Verizon Wireless

with a copy to: Verizon Wireless, Legal Department
180 Washington Valley Road
Bedminster, NJ 07921
Attn.: General Counsel
Insert Name and email address

If to City: City of San Antonio
Convention, Sports, and Entertainment Facilities
Department
P.O. Box 1809
San Antonio, TX 78296-1809
Insert designee and contact information

Or at such other address(es) as either Party gives written notice of to the other Party.

b. Non-Discrimination. The CMRS Carriers agree not to discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of any contractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination in connection with its performance of this Agreement. The CMRS Carriers will incorporate the obligations in this paragraph (b) in all contracts they enter into with subcontractors or other parties with respect to the performance of this Agreement.

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

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

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

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

e. Conflict of Interest. The City of San Antonio Ethics Code prohibits contracts between the City and its local public officials, employees and agents from being either officers or employees of City or any City agency such as City-owned utilities. It further prohibits Verizon Wireless' officers, employees and agents from having a prohibited financial interest in an agreement with the City. A prohibited financial interest means a City officer or employee, his or

her parent, child or spouse, a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly, owns ten percent (10%) of more of the voting stock or shares of the business entity; or ten percent (10%) or more of the fair market value of the business entity; or a business entity of which any individual or entity above listed is a subcontractor on a City contract, a partner, or a parent or subsidiary business entity. Verizon Wireless warrants that it has disclosed whether there are any existing or potential conflicts of interest related to this provision and that it has completed a Discretionary Contracts Disclosure Form.

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

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

(iv) Compliance with Records Retention Laws. In accordance herewith, Verizon Wireless agrees to comply with the Public Information Act and Local Government Records Act.

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGES FOLLOW]

DRAFT

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

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

CITY OF SAN ANTONIO, a Texas
municipal corporation

By: _____
Its: General Partner

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Sheryl L. Sculley
City Manager
Date: _____

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Michael D. Bernard
City Attorney

EXHIBIT A

DAS AREAS

DRAFT

EXHIBIT B

GENERAL BUILDING AND CABLING SPECIFICATIONS

DRAFT

EXHIBIT C

PRELIMINARY DAS SYSTEM PLANS AND SPECIFICATIONS

DRAFT

EXHIBIT D

DAS SYSTEM ACCEPTANCE TEST PROCEDURES

DRAFT

EXHIBIT E
DAS SYSTEM UPTIME AND PERFORMANCE CRITERIA

DRAFT

EXHIBIT F
FORM SUBLICENSE AGREEMENT

DRAFT

EXHIBIT G
CITY FIBER STANDARDS

DRAFT



City of San Antonio Discretionary Contracts Disclosure Update

Office of the
City Clerk

Please fill out this form online, print completed form and submit with proposal to originating department. All questions must be answered.

For details on use of this form, see Section 2-59 through 2-61 of the City's Ethics Code.

*This is a New Submission or Correction or Update to previous submission.

***1. Name of person submitting this disclosure form.**

First: Lee M.I. _____ Last: Maschmann Suffix: _____

***2. Contract information.**

a) Contract or project name: Alamodome Distributed Antenna System

b) Originating department: Convention Sports and Entertainment Facilities

***3. Name of individual(s) or entity(ies) seeking a contract with the city (i.e. parties to the contract).**

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

***4. List any business entity(ies) that is a partner, parent, or subsidiary business entity(ies) of the individual or entity listed in Question 3.**

Not applicable. Contracting party(ies) does not have partner, parent, or subsidiary business entities.

Names of partner, parent, or subsidiary business entities:

General Partner: Verizon Wireless Texas, LLC
Limited Partners: TU Acquisition Co, LLC and Verizon Wireless Personal Communications, LP

***5. List any individuals or entities that will be subcontractors on this contract.**

Not applicable. No subcontractors will be retained for this contract.

Subcontractors may be retained, but have not been selected at the time of this submission.

List of subcontractors:

Ericsson, Inc

***6. List any attorneys, lobbyists, or consultants retained by any individuals listed in Questions 3, 4, or 5 to assist in seeking this contract.**

Not applicable. No attorneys, lobbyists, or consultants have been retained to assist in seeking this contract.

List of attorneys, lobbyists, or consultants retained to assist in seeking this contract:



City of San Antonio Discretionary Contracts Disclosure Update

Office of the
City Clerk

Dean Hunt, Baker & Hostetler LLP
Sarah Tobin, Baker & Hostetler LLP

*7. Disclosure of political contributions.

List any campaign or officeholder contributions made by the following individuals in the past 24 months totaling more than \$100 to any current member of City Council, former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections:

- a) any individual seeking contract with the city (Question 3)
- b) any owner or officer of entity seeking contract with the city (Question 3)
- c) any individual or owner or officer of an entity listed above as a partner, parent, or subsidiary business (Question 4)
- d) any subcontractor or owner/officer of subcontracting entity retained for the contract (Question 5)
- e) the spouse of any individual listed in response to (a) through (d) above
- f) any attorney, lobbyist, or consultant retained to assist in seeking contract (Question 6)

Not applicable. No campaign or officeholder contributions have been made in preceding 24 months by these individuals.

List of contributions:

Updates on Contributions Required

Information regarding contributions must be updated by submission of a revised form from the date of the submission of this form, up through the time City Council takes action on the contract identified in response to Question 2 and continuing for 30 calendar days after the contract has been awarded.

Notice Regarding Contribution Prohibitions for "High-Profile" Contracts

Under Section 2-309 of the Municipal Campaign Finance Code, the following listed individuals are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10th business day after a contract solicitation has been released until 30 calendar days after the contract has been awarded:

- a) Legal signatory of a high-profile contract
- b) Any individual seeking a high-profile contract
- c) Any owner or officer of an entity seeking a high-profile contract
- d) The spouse of any of individual listed in response to (a) through (c) above
- e) Any attorney, lobbyist, or consultant retained to assist in seeking a high-profile contract

Penalty. A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the contribution "black-out" period, which is the 10th business day after a solicitation has been released until 30 calendar days after the contract has been awarded.

*8. Disclosure of conflict of interest.

Are you aware of any fact(s) with regard to this contract that would raise a "conflict of interest" issue under Sections 2-43 or 2-44 of the City Ethics Code for any City Council member or board/commission member that has not or will not be raised by these city officials?

I am not aware of any conflict(s) of interest issues under Section 2-43 or 2-44 of the City Ethics Code for members of City Council or a city board/commission.

I am aware of the following conflict(s) of interest:



City of San Antonio Discretionary Contracts Disclosure Update

Office of the
City Clerk

Acknowledgements

***1. Updates Required**

I understand that this form must be updated by submission of a revised form if there is any change in the information before the discretionary contract is the subject of action by the City Council, and no later than 5 business days after any change has occurred, whichever comes first. This includes information about political contributions made after the initial submission and up until 30 calendar days after contract has been awarded.

***2. No Contact with City Officials or Staff during Contract Evaluation**

I understand that a person or entity who seeks or applies for a city contract or any other person acting on behalf of that person or entity is prohibited from contacting city officials and employees regarding the contract after a Request for Proposal (RFP), Request for Qualification (RFQ), or other solicitation has been released.

This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If contact is required with city officials or employees, the contact will take place in accordance with procedures incorporated into the solicitation documents. Violation of this prohibited contacts provision set out in Section 2-61 of the City Ethics Code by respondents or their agents may lead to disqualification of their offer from consideration.

Acknowledgements (continued)

***3. Contribution Prohibitions for "High-Profile" Contracts**

- This is not a high-profile contract.
- This is a high-profile contract.

***4. Conflict of Interest Questionnaire (CIQ)**

Chapter 176 of the Local Government Code requires all contractors and vendors to submit a Conflict of Interest Questionnaire Form (CIQ) to the Office of the City Clerk, even if contract is not designated as "High Profile".

I acknowledge that I have been advised of the requirement to file a CIQ form under Chapter 176 of the Local Government Code. *H. Lee Maschmann for H. LEE MASCHMANN 02/06/13*

*Oath

I swear or affirm that the statements contained in this Discretionary Contracts Disclosure Form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.

Your Name: H. Lee Maschmann Title: Executive Director-Network Central TX Region

Company Name or DBA: San Antonio MTA, L.P. dba Verizon Wireless Date: 02/06/2013

Please fill this form out online, print completed form and submit with proposal to originating department. All questions must be answered.

If necessary to mail, send to:
Purchasing
P.O. Box 839966
San Antonio, Texas 78283-3966



Item # 23

Alamodome Distributed Antenna License Agreement with



City Council
February 21, 2013

Convention, Sports, and Entertainment Facilities
Michael Sawaya, Director

Background



- ❖ A Distributed Antenna System, or DAS, is a network of antennas connected by fiber-optic cable that provides wireless services within an area or structure.



Background cont'd.

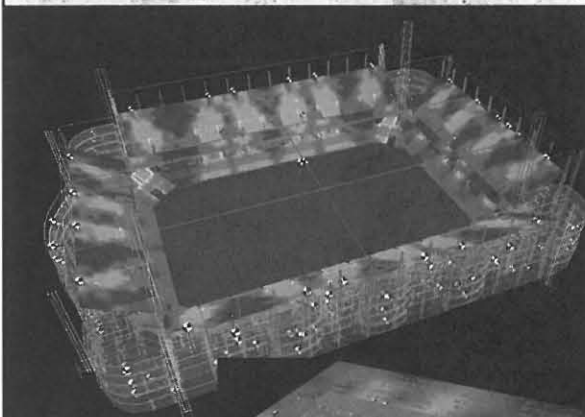


❖ The DAS can be driven by a direct connection to a carriers radio base station or an "off-air" repeater/signal booster.

❖ Extends coverage and capacity to specific areas or structures and connects to external networks for seamless customer experience.



Coverage – All Seating Areas



Exterior areas around the Alamodome



RFP Process



- ❖ **March 2012 – RFP Issued**
 - **86+ vendors notified**
 - **One respondent – Verizon Wireless (VzW)**
- ❖ **Proposal evaluation:**
 - **experience, background and qualifications**
 - **ability to perform the required services**
 - **overall responsiveness**

License Agreement Key Provisions



- ❖ **License: Neutral-host DAS with multiple wireless carriers TBD**
- ❖ **Term: 10 years with 2, 5-year renewals**
- ❖ **Coverage: Interior and exterior of the Alamodome**
- ❖ **Technology: Cellular and enhanced 3G/4G coverage**
- ❖ **Cost: VzW covers all costs to design, install, operate and maintain**
- ❖ **Revenue: City receives lease payment of \$25K annually per participating wireless carrier**
- ❖ **O&M: DAS will be operated and monitored continuously by VzW**

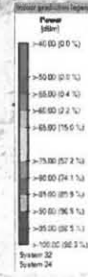
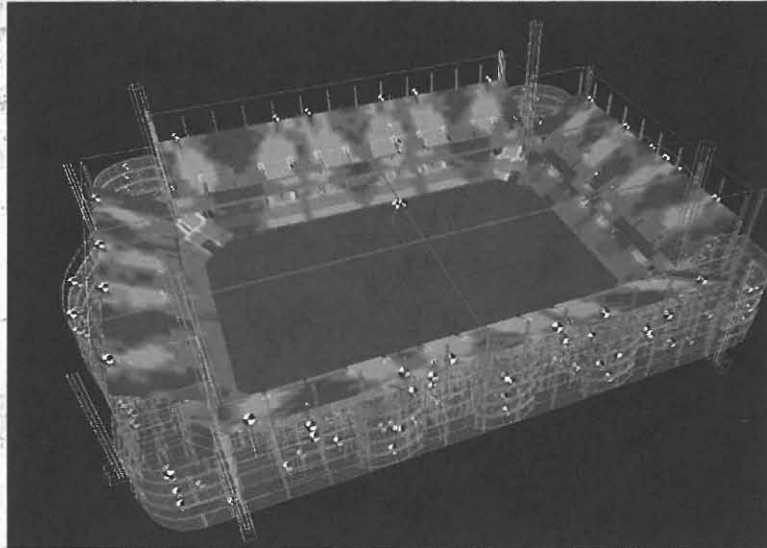


**Staff Recommends Approval of an
Alamodome Distributed Antenna System
License Agreement with**

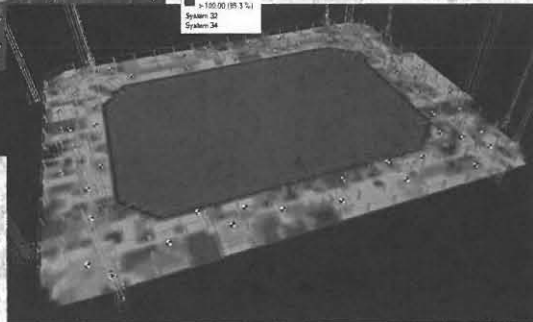
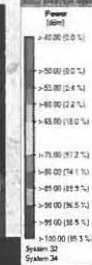
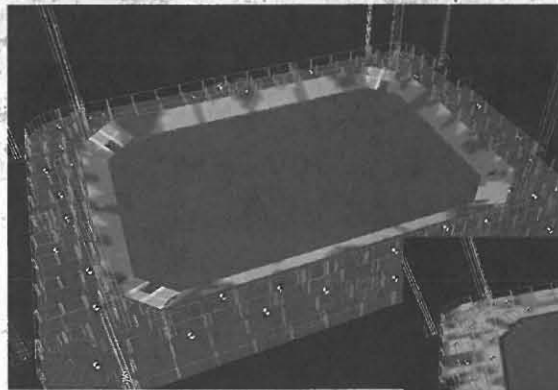


BACKUP SLIDES

Coverage – All Seating Areas



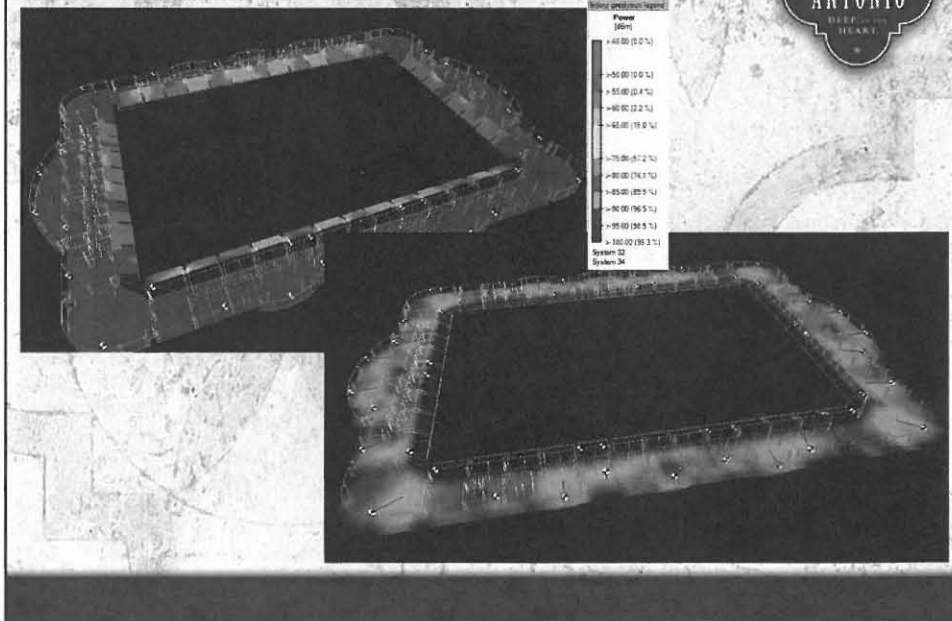
Coverage – Field Level



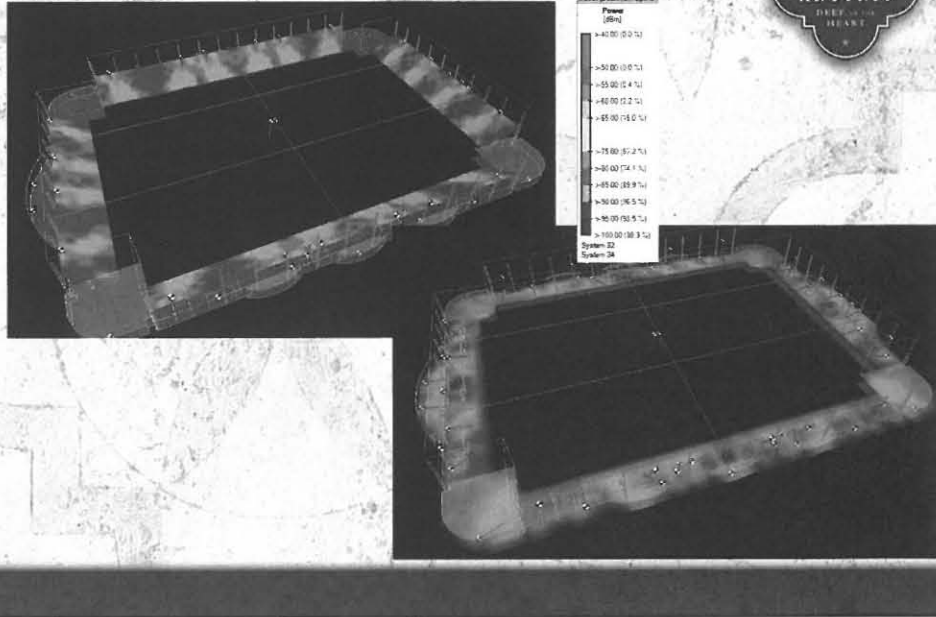
Coverage – Plaza Level



Coverage – Club Level



Coverage – Upper Level



Coverage – Exterior

