

RESOLUTION NO. 49-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, REPEALING SECTION 2 OF RESOLUTION NO. 59-2015 AND ADOPTING A RESOLUTION AUTHORIZING THE EXECUTION OF A REVISED USE AGREEMENT WITH DALLAS MTA, L.P., D/B/A VERIZON WIRELESS, RELATIVE TO THE INSTALLATION OF A COMMUNICATIONS TOWER, DIRECTIONAL ANTENNAS AND RELATED SUPPORTING EQUIPMENT ON CITY-OWNED PROPERTY LOCATED AT VANSTON PARK, 3003 OATES DRIVE, CITY OF MESQUITE, DALLAS COUNTY, TEXAS.

WHEREAS, the City of Mesquite (the "City") seeks to promote the availability of high quality telecommunications services for its businesses, residents and visitors; and

WHEREAS, the City seeks to minimize the adverse visual impact on the community caused as the result of telecommunications towers and antennas; and

WHEREAS, Dallas MTA, L.P., d/b/a Verizon Wireless, desires to install a communications tower, directional antennas and related supporting equipment on a portion of Vanston Park property located at 3003 Oates Drive, City of Mesquite, Dallas County, Texas; and

WHEREAS, following a public hearing held on December 7, 2015, notice of which had been properly posted, the City Council, in accordance with the requirements of state law, made the following findings: (i) the Project requires the use or taking of a portion of property located at Vanston Park which is currently being used as a City park; (ii) the Project includes all reasonable planning to minimize harm to Vanston Park; and (iii) that there is no feasible and prudent alternative to the use of the park land; and

WHEREAS, Verizon Wireless wishes to defer the commencement date, add a right of first refusal provision and increase the signing bonus contained in the Agreement attached as Exhibit "1" in Section 2 of Resolution No. 59-2015; and

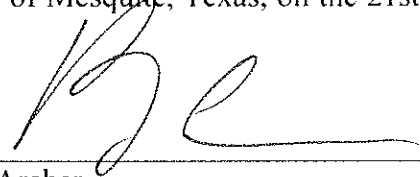
WHEREAS, this change to Resolution No. 59-2015 is minor in nature and does not impact or change the previous findings of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council of the City of Mesquite, Texas (the "City Council"), hereby authorizes a change to the terms of Resolution No. 59-2015 by deferring the commencement date of the Project from October 1, 2016, to October 1, 2019, granting Dallas MTA, L.P., d/b/a Verizon Wireless ("Verizon Wireless"), the right to first refusal prior to the new commencement date, and as additional consideration for granting the right of first refusal increasing the one-time, non-refundable, lump-sum signing bonus from \$10,000.00 to \$25,000.00, and otherwise makes no change to the resolution as previously approved.

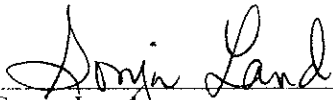
SECTION 2. That Section 2 of Resolution No. 59-2015 is hereby repealed and that the City Council approves the terms and provisions of the Use Agreement attached hereto as Exhibit "1" and authorizes the Mayor to execute the Use Agreement with Verizon Wireless and all other documents in connection therewith on behalf of the City substantially according to the terms and conditions set forth in the Use Agreement for the installation of a communications tower, directional antennas and related supporting equipment on a portion of Vanston Park property located at 3003 Oates Drive, City of Mesquite, Dallas County, Texas.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21st day of November, 2016.




Bruce Archer
Mayor Pro Tem

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

THE STATE OF TEXAS
COUNTY OF DALLAS

§
§
§

USE AGREEMENT

APPROVED BY CITY COUNCIL

DATE 11.21.16

AGENDA ITEM NO. 9

KNOW ALL BY THESE PRESENTS:

This Use Agreement ("Agreement") is made by and between the **City of Mesquite, Texas**, a Texas home rule municipality and local governmental entity located in Dallas County, Texas, acting by and through its City Manager or designee (hereinafter referred to as the "CITY") and Dallas MTA, L.P., d/b/a **Verizon Wireless**, having a principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (hereinafter referred to as "USER"), for the use of certain premises and/or facilities according to the following terms and conditions:

WITNESSETH:

WHEREAS, CITY is the owner in fee simple of land located in the City of Mesquite, County of Dallas, State of Texas, legally described on the attached Exhibit "A" (the "Property"), on which the Vanston School Park Complex is located.

WHEREAS, USER is in the commercial wireless telephone services business and desires to use space on the Property as described below for the construction and operation of a communications tower ("Tower"), certain antennas ("Antennas"), associated connecting cables and appurtenances, associated facility (equipment compound) on the Property (collectively, the "Facilities") for use in connection with its wireless telephone business.

In consideration of the mutual covenants contained herein, the parties are entering into this Agreement as follows:

I.

**Property Subject To Right of First Refusal
Prior to Commencement Date**

- A. Prior to the COMMENCEMENT DATE provided in Section III, should CITY receive a bona fide third party offer to lease, license or utilize the Tower Site, Access Drive and Utility Easement, as shown on the Site Plan attached as Exhibit "B" (the "Offer"):
 - (1) CITY shall notify USER of the Offer in writing within thirty (30) days of its receipt of the Offer;
 - (2) USER shall have the right of first refusal to match the terms and conditions of the Offer within forty-five (45) days after written notice thereof from

CITY;

- (3) Any exercise by USER of this Right of First Refusal must be in writing;
- (4) The exercise by USER of this Right of First Refusal in writing shall terminate this Agreement and constitute a binding contract between CITY and USER upon the same terms and conditions as stated in the Offer;
- (5) If USER fails to match the terms and conditions of the Offer within thirty (30) days after written notice thereof from CITY, CITY may accept the Offer from the Third Party;
- (6) If CITY accepts the Offer, this Agreement will terminate upon CITY's acceptance of the Offer; and
- (7) Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder.

II. Use Of Property

- A. Unless this Agreement is terminated by application of Section I, CITY grants to USER the exclusive use of a portion of the Property ("Tower Site"), together with a nonexclusive license for ingress and egress to the Facilities ("Access Drive" and "Access Drive License") and a nonexclusive easement for the provision of utilities to the Facilities ("Utility Easement"), as shown on the Site Plan attached as Exhibit "B." USER intends to locate its Facilities on the Property as described more fully on the attached Exhibit "C." This Use Agreement is not a franchise but does not preclude CITY from implementing a franchise that pertains to USER. This Use Agreement is not a permit to use CITY rights-of-way, but this Use Agreement does not preclude CITY from requiring USER to obtain a permit or a rights-of-way license and pay consideration therefore before the CITY's rights-of-way is used. USER may terminate this Agreement immediately and without penalty if CITY implements a franchise or a permit process (except current CITY permit type fees) and charges consideration, other than that provided in this Agreement, to USER with respect to USER's use of the Property. USER will advise CITY of any and all backhaul providers or other entities connecting in any way to USER's equipment or facilities. Failure to notify CITY within thirty (30) days of a connection or change in connection will automatically terminate this Use Agreement.
- B. The Tower Site, Access Drive and Utility Easement shall be used by USER only for the purpose of constructing, installing, operating and maintaining the Facilities for the transmission, reception and operation of a communications system and

uses incidental thereto and for no other uses. CITY may permit others to use other portions of the Property (but not the Tower Site) and particularly other uses of the nonexclusive Access Drive and Utility Easement. User's use of the Property shall be in strict compliance with the terms of this Agreement and the attached Exhibits "B" and "C." In no event shall USER use the Tower Site, Access Drive or Utility Easement, or any part thereof, for any unlawful purpose, nor for any purpose not directly related to wireless services in accordance with the terms of this Agreement. USER may erect and operate antennas, associated connecting cables and appurtenances as shown on Exhibit "C."

- C. USER and CITY understand and agree that the primary function of the Property is to serve the recreational needs of the City of Mesquite and the Mesquite Independent School District ("MISD"), and that the interests of the USER are superseded by the public health, safety and welfare of the citizens of Mesquite served by the Parks and Recreation Department.
- (1) CITY may terminate this agreement in the event that the Mesquite City Council or Mesquite City Manager declares a public emergency or if, within their sole discretion, the Mesquite City Council or Mesquite City Manager determines that there exists a threat that would impact public health, safety and welfare (not including radio frequency emissions from USER's equipment and facilities if USER complies with FCC rules unless current law provides otherwise). In these circumstances, if CITY determines that immediate action is necessary, USER shall, upon request by CITY, immediately remove its Facilities from the Property. In the event that the USER is not able to immediately respond, CITY may remove USER's Facilities without incurring any liability for damages of any type except in the case of CITY's negligence or intentional acts or omissions. Costs of removal and replacement of Facilities shall be borne by USER. CITY is not subject to any liability to USER and USER releases CITY from any claim for damages of any kind for termination under this Paragraph (C)(1), including but not limited to, lost or anticipated profits.
 - (2) In the event that the Mesquite City Council or Mesquite City Manager reasonably determines that it is in the best interest of the public health, safety or welfare (not including radio frequency emissions if USER is in compliance with FCC rules unless current law provides otherwise) to terminate this Agreement in a non-emergency situation, except for month to month use under Section III.B. of this Agreement, CITY must provide USER with one-year written notice of its intention to terminate this Agreement, provided however, CITY agrees not to exercise its right to terminate in a non-emergency situation prior to the end of the initial five-year term. For month-to-month use under Section III.B. of this Agreement, to terminate this Agreement in a non-emergency situation, CITY must provide USER with thirty (30) days written notice of its intention to terminate this Agreement.

- D. USER shall, at its own expense, comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations (including laws and ordinances relating to health, safety, electronic frequency emissions and radiation) in connection with the use, operation, maintenance, construction and/or installation of the Facilities.

III.
Term

- A. This Agreement shall be for an initial term of five (5) years, beginning on the first day of the month following USER's commencement of installation of equipment on the Tower Site or the start of installation of utilities to the Tower Site, or on October 1, 2019, whichever occurs first ("COMMENCEMENT DATE"), and ending on the fifth (5th) anniversary date of the COMMENCEMENT DATE, unless terminated earlier in accordance with the provisions of this Use Agreement.
- (1) For a period not to exceed one hundred eighty (180) days following the COMMENCEMENT DATE, USER shall have the right to terminate this Agreement by giving thirty (30) days written notice to CITY of such termination if USER is unable to obtain all licenses and permits or authorizations ("Governmental Approvals") required for USER's use of Property from all applicable government and/or regulatory entities or USER determines that it will be too costly to obtain such Governmental Approvals.
 - (2) During the term of this Agreement, and during any renewal term of this Agreement, USER shall have the right to terminate this Agreement by giving thirty (30) days written notice to CITY of such termination if any such Governmental Approval lapses, expires or is canceled.
 - (3) Additionally, in the event USER, in its sole discretion, determines (i) that the Tower Site is no longer technically compatible for its use; or (ii) that the use of the Tower Site is obsolete or unnecessary, and USER is not then in default of any provision of this Agreement, USER shall have the right to terminate this Agreement by giving thirty (30) days notice to CITY as provided in Section XXVII.
 - (4) All use fees paid prior to said termination date shall be retained by CITY and Use Fees shall continue to be due until all of USER's Facilities have been removed from the Tower Site and the Property is restored as provided in Section IX.

- (5) Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder.
- B. After the initial term expires, USER is granted the option to renew this Agreement for four (4) additional five-year terms. This Agreement shall automatically renew for successive terms upon the expiration of the previous term unless USER gives written notice of a decision not to renew to CITY no less than one hundred eighty (180) days prior to the expiration of the current term or period. All the terms and covenants of this Agreement apply to all extension periods, subject to amendment by the mutual written agreement of the parties, in writing and signed by both parties. At the expiration of all of the extension periods provided herein, or at the expiration of a term during which USER does not exercise its option to renew in a timely manner, unless otherwise renewed or superseded, this Agreement shall continue from month to month under Section XXIII and the terms and conditions set forth herein, so far as applicable, and it may be terminated by either party upon at least thirty (30) days written notice to the other party.

IV. Use Fee

- A. USER shall pay CITY a Use Fee for use of the Property each year during the term of this Agreement in the sum of Fifteen Thousand Dollars \$15,000.00 ("Use Fee"). USER shall make the initial payment within thirty (30) days after the Commencement Date. Thereafter, USER shall pay the Use Fee annually in advance on each anniversary of the Commencement Date as adjusted in accordance with this Agreement. The Use Fee shall be increased each year as described hereafter.
- B. USER shall pay CITY a late payment charge equal to five percent (5%) of the late payment for any payment not paid when due in accordance with this Agreement. Any amounts not paid when due shall also bear interest until paid at the rate of two percent (2%) per month. The late payment charge and interest shall accrue immediately, without the necessity for written notice of default from City.
- C. The Use Fee shall be increased annually effective as of each anniversary of the Commencement Date by an amount equal to three percent (3%) of the Use Fee in effect during the previous year.
- D. The Use Fee and all other consideration to be paid or provided by USER to CITY shall constitute Use Fee and shall be paid or provided without offset.
- E. If this Agreement is terminated at a time other than on the anniversary of the Commencement Date, the Use Fee shall be prorated as of the date of termination.
- F. As additional consideration for the right of first refusal contained in Section I,

USER shall pay CITY a one-time, non-refundable, lump-sum signing bonus of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) which shall be considered as "Additional Right of First Refusal Option Fee" for the Tower Site for the period beginning on the date of this Agreement until the Commencement Date, and which shall be paid within forty-five (45) days from the date of full execution of this Agreement by the Parties.

V.

USER Improvements and Plans

- A. USER may improve the Tower Site by constructing the Facilities, the Access Drive and Tower-required utility installations in the Utility Easement, for use in connection with its wireless telephone business. Such Tower and appurtenances shall not exceed the maximum height of one hundred fifty feet (150'), and the equipment compound shall not exceed fifty-five feet (55') by forty-eight feet (48') in dimension. Prior to commencing construction, USER shall submit plans and specifications for all improvements to CITY for CITY's written approval, including but not limited to approval of the Director of Parks and Recreation for the compliance of the plans and specifications with the Vanston Park Masterplan. No improvement, construction, installation or alteration shall be commenced until plans for such work have been approved by the CITY, all necessary permits have been properly obtained, all existing public and private underground utilities have been located and marked in accordance with Chapter 251 of the Texas Utilities Code, and USER receives a written Notice To Proceed issued by the CITY.
- B. In addition to structural details of the Tower certified by a licensed structural engineer, plans submitted to CITY shall include a Site Plan drawn to scale with all dimensions and show:
- (1) the proposed location of the Tower;
 - (2) the proposed location of the antennas, shelter compound and equipment;
 - (3) the proposed changes in the landscape;
 - (4) the proposed type and height of masonry screening wall and access gate;
 - (5) the proposed color of all structures, including masonry screening wall to match as closely as reasonably possible to the existing masonry of the adjacent concession stand;
 - (6) the proposed type of construction material for all structures, including screening wall;
 - (7) the proposed location of any fiber, transmission or utility lines;

- (8) the proposed landscaping and any required irrigation;
 - (9) sufficient details to show compliance with the provisions of Section 1-700 of the Mesquite Zoning Ordinance;
 - (10) the proposed location and dimensions of the Access Drive with construction details consistent with the Vanston Park Master Plan, demonstrating load bearing capabilities for all proposed use of the Access Drive by both parties;
 - (11) the proposed location of the Utility Easement, which must be consistent with the Vanston Park Master Plan, and which shall include the City's relocated utilities as provided in Subsection (F) of this section; and
 - (12) any other details that the CITY may reasonably request.
- C. Prior to commencing construction, USER shall also provide CITY with the name of the contractor that will be constructing the improvements. The contractor is subject to the prior written approval of CITY, such approval not to be unreasonably withheld. All improvements shall be constructed in a workmanlike manner without the attachment of any liens to the Property and shall be completed in compliance with all applicable laws, rules, ordinances and regulations. CITY reserves the right to require USER to paint the Facilities or to otherwise shield the Facilities from view with landscaping, a masonry screening wall, or combination thereof.
- D. No improvements or modifications to the Facilities shall be made without the CITY'S consent, such consent not to be unreasonably withheld. Proposed minor modifications may be approved by the City Manager or his/her designee. "Minor modifications" are modifications that do not substantially alter the character of the plans and specifications first approved by the City. Proposed modifications other than minor modifications shall require City Council approval. Moreover, any such improvements or modifications are subject to the conditions set forth above. Notwithstanding the foregoing, without the consent of CITY, USER shall have the right to replace (like for like), or repair its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto. USER shall promptly thereafter provide CITY with a revised Exhibit "C" showing the changes made hereunder.
- E. USER's installation of all such Facilities shall be done according to plans approved by CITY. Any damage done to the Property or adjacent MISD property during installation and/or during operations shall be immediately repaired or replaced at USER's expense and USER shall restore such Property to its condition immediately prior to the damage to CITY's or MISD's reasonable satisfaction. In

connection with the installation and operation of the Facilities, USER shall not make any penetrations or cuts in the ground, pavement or other structural materials without CITY's prior written consent or without properly locating all underground utilities. USER shall pay all costs and expenses in relation to maintaining the integrity of CITY's property in connection with USER's installation and operations of the Facilities. Within thirty (30) days after the completion of construction and installation of landscaping, USER shall provide CITY with as-built drawings of the Facilities and other improvements installed on the Property, which show the actual location of all equipment and improvements consistent with Exhibits "B" and "C." Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and Facilities, as well as an electronic copy of the drawings on CD-ROM, DVD or flash drive in AutoCAD (.dwg file) format, TIFF (Class IV, 400 dpi) format and PDF format.

Screening shall be designed to accommodate and prevent the view of the ground equipment of USER and all Other Providers. The installation of ground equipment by USER or Other Providers to a height higher than the required screening (i.e. "stacking") shall constitute an impairment of USER's access to and use of the Facilities.

- F. USER shall locate its electrical utility lines underground as approved by CITY, at USER's sole expense, within the shared electrical conduit located in the Utility Easement, running east from Forrest Drive to the concession stand.
- G. CITY reserves the right to require USER to relocate its Facilities to another location on the Property, provided that USER'S operations, including the transmission and reception of radio signals, shall not be adversely affected by such relocation in USER's reasonable determination. In the event that USER believes that relocation shall adversely affect the operation of USER, it will provide to CITY an explanation of the grounds for such belief. If the relocation will not adversely affect USER's operation in USER's reasonable determination, USER shall relocate its Facilities within ninety (90) days after written notice from the CITY. In any event, the relocation shall be at the expense of the party for whom USER relocates unless relocation is needed to insure the health, safety, and welfare (not including radio frequency emissions from USER's equipment and facilities if USER complies with FCC rules unless current law provides otherwise) of the citizens of the CITY. USER shall bear no cost for the relocation otherwise. In no event shall any such relocation be required in order to accommodate another party conducting business in competition with USER. Additionally, conditions for USER's relocation of its Facilities are: (i) the new location shall be similar to USER's existing location in size and shall be fully compatible for USER's use, in USER's reasonable determination, (ii) USER's use at the Tower Site will not be unreasonably interrupted or diminished during the relocation and (iii) USER shall be allowed, if necessary, in USER's reasonable determination, and with CITY's prior approval, to place a temporary installation

on the Property during any such relocation.

- H. USER shall not cause or allow any type of electrical generating equipment except for an emergency back-up generator, or any flammable fuels, liquids or substances including, but not limited to, gasoline or diesel fuel (collectively "Prohibited Materials"), to be stored or used on the Property, except that USER may store sealed cell batteries on the premises and diesel fuel for purposes of emergency power. User may temporarily transport onto property, but not store, cleaning solutions, solvents, pesticides, or other materials commonly employed during USER's normal course of business. Any violation of this paragraph by the USER shall constitute default under this Agreement.
- I. No subcontractor, materialmen, contractor or other person or entity providing products or services to USER pursuant to USER's use of the Property shall place a lien or any encumbrance upon the Property or seek to recover from CITY any costs or amounts due from USER. **USER AGREES TO INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LOSSES OR EXPENSES ARISING FROM SUCH ENCUMBRANCE OR LIEN AND FROM ANY SUCH ATTEMPTS TO COLLECT FROM CITY.**

VI.

Use by Other Providers

- A. USER shall design and construct the Tower and Facilities to accommodate three other wireless communication providers ("Other Providers"). Toward this end, USER shall design and construct the Tower so that there is capacity for three additional Other Providers. USER shall make space within the Tower Site available to Other Providers; provided this obligation does not impair USER's ability to access and use the Facilities. The term "Other Providers" shall apply to any third party allowed by USER to co-locate communication equipment on the Tower Site. All rights and responsibilities of USER set forth in this Agreement shall be enjoyed by and binding on any Other Provider.
- B. USER shall provide written notice to CITY of all agreements entered into with Other Providers. Such written notice shall identify the facilities to be placed on the Facilities by such Other Provider, and shall set forth the amount of fees charged to the Other Provider by USER. Agreements entered into by USER and Other Providers shall, at a minimum, include all applicable obligations of USER to CITY and MISD under this Agreement, including but not limited to the Interference provisions of Section VII of this Agreement, the Default provisions of Section XVII of this Agreement and the Indemnity and Insurance provisions of Section XXI of this Agreement. USER shall not allow any third party to use the Tower Site, Access Drive, Utility Easement or Facilities without compensation.
- C. The Facilities shall remain the property of USER, regardless of use thereof by

Other Providers. In consideration for CITY's agreement to allow Other Providers access to the Property and use of the Tower Site, USER shall pay CITY fifty percent (50%) of all use fees demanded by USER from Other Providers under agreements entered into under the provisions of this paragraph. This additional Use Fee shall be paid monthly by USER, and is due to CITY regardless of whether USER has actually collected such fee from Other Provider.

- D. Each Other Provider shall be solely responsible for the cost of locating and placing their equipment onto the Property and the Tower and onto any ancillary support facilities including any ice bridges. Other Providers shall also be responsible for any liabilities that arise from the Other Provider's use of the Tower. CITY shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Other Provider's construction, maintenance, repair, use, operation, condition or dismantling of the Facilities unless by CITY's negligence or intentional acts or omissions. Each Other Provider must expressly indemnify the CITY from all such liability.
- E. USER shall have the sole right to determine whether it will allow Other Providers to install their facilities on any portion of the Tower Site or whether it will allow such use by any specific Other Provider.

VII. **Interference**

- A. USER's installation, operation, and maintenance of its Facilities shall not damage or interfere in a material way with CITY's or MISD's operations or related repair and maintenance activities on the Property. USER agrees to cease all such actions that materially interfere with CITY's or MISD's use of the Property immediately upon actual notice of such interference, provided however, in such case, USER shall have the right to terminate the Agreement. CITY, at all times during this Agreement, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the Property (but not the Tower Site) in connection with its operations as may be necessary.
- B. CITY does not guarantee to USER subsequent noninterference with USER's communications operations by CITY. CITY agrees that any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency that will not cause harmful interference (measurable in accordance with then existing industry standards to the then existing equipment of USER).
- C. USER shall not cause interference to CITY or MISD at any time prior to, during, or after installation or operation of USER's equipment. Moreover, USER's use will not in any way adversely affect or interfere with CITY's or MISD's signal operations or communications systems. Should such interference occur, USER

will promptly take all steps necessary to correct such interference within ten (10) days after receiving notice of the problem and, if such interference cannot be eliminated within thirty (30) days of receiving such notice, USER shall suspend operations (transmission) at the site while the interference problems are studied and a means to eliminate the problem is found, provided that USER may power up for the limited purpose of testing. Any such method for correction of an interference problem must be acceptable to both CITY and USER. If the interference complained of cannot be eliminated, USER will cease its operations, remove all equipment from the Property, and this Agreement shall be terminated upon ten (10) days written notice by either party. This paragraph controls correction of interference rather than the provisions for cure in Sections XIV and XVII of the Agreement.

- D. USER shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the Property is causing material interference, as well as for otherwise enforcing USER's rights under this Agreement. CITY shall not be responsible for the costs associated with the resolution of any dispute between USER and other users of the Property, or enforcement of any of USER's rights under this Agreement.

VIII.

Compliance Audit

USER agrees that CITY shall, until the expiration of one (1) year after final payment under this Agreement, have access to and the right to examine USER's engineering, construction, and building plans and any agreements for engineering, construction, building, and maintaining the Property or the Facilities. USER may produce such documents to CITY, at CITY'S expense, or provide adequate space for CITY to review the above-referenced documents. CITY shall give USER ten (10) business days written notice of its desire for examination of these plans and agreements.

IX.

Removal Of Facilities

- A. The Facilities shall remain the property of USER and USER shall remove the Facilities not later than sixty (60) days following termination of the Agreement for any reason. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Property, including use of the Property by MISD, CITY or any of CITY's assignees. Any personal property, equipment or other improvements that are not removed in accordance with this Agreement shall become the property of CITY, at CITY's option.
- B. Upon removal of the improvements as provided above, USER shall restore the affected area of the Property to the condition it was in immediately prior to the Commencement Date to the reasonable satisfaction of CITY, reasonable wear and

tear and casualty excepted. All costs and expenses for the removal and restoration to be performed by USER pursuant to above shall be borne by USER, and USER shall hold CITY and MISD harmless from any portion thereof.

X.

Charges Against Property

CITY shall not be required to make any expenditures of any kind in connection with this Agreement or to make any repairs or improvements to the Property. In addition to the Use Fee reserved above, USER shall pay to the parties entitled thereto all taxes, assessments, insurance premiums, charges, and any other charges, costs and expenses against the Property which may be contemplated under any provisions of this Agreement.

XI.

Signs/Graffiti

USER may place signs on the Property subject to applicable governmental regulations; however, USER shall first obtain a sign permit from the City as to design, size and location. In no instance shall USER erect signs on the Tower, or signs that advertise or otherwise promote merchandise or services offered by USER or others. CITY at any time may enter the Property and undertake any activities necessary to abate or remove graffiti located therein. USER shall reimburse CITY all costs incurred by CITY in connection with the abatement or removal of graffiti located on USER's equipment or facilities within thirty (30) days of CITY's presenting USER with a statement of such costs.

XII.

**Maintenance of Tower Site
and Management of Other Providers**

- A. USER shall, at its own expense, maintain the Tower Site and all improvements, fencing, landscaping, equipment and other personal property on the Tower Site associated with the Facilities in good working order, condition and repair. USER shall keep the Tower Site free of debris, weeds or grass exceeding eight inches in height, and anything of a dangerous, noxious or offensive nature, including Prohibited Materials, or which would create a hazard or undue vibration, heat, noise or interference to the extent placed upon the Tower Site or used by USER. USER has no obligation to clear any material from the Property placed by CITY or a third party not affiliated with USER. USER may hire a maintenance company and/or a management company to perform these maintenance and management functions.
- B. **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, CITY SHALL NOT BE REQUIRED TO PAY FOR THE MAINTENANCE OF THE TOWER OR THE MANAGEMENT OF THE OTHER PROVIDERS OR THE FEES, IF ANY, PAYABLE TO A MAINTENANCE**

COMPANY AND/OR MANAGEMENT COMPANY RETAINED TO PERFORM THESE MAINTENANCE AND MANAGEMENT FUNCTIONS.

XIII.

Access

- A. USER shall have reasonable access to the Property in order to install, operate and maintain its Facilities. USER shall have access 24 hours per day, 7 days per week to the Facilities on the grounds of the Property with two (2) hours advance notice to the CITY's Recreation Manager, telephone number (972) 216-6420. USER shall not cut any locks, if any, to gain access to the Property.
- B. CITY and its agents shall be allowed and granted access to the Facilities at reasonable times to examine and inspect the Facilities for safety reasons, or to ensure that the USER's covenants are being met. Provided however, in the case of a non-emergency inspection other than property maintenance, CITY shall notify USER of its intent to access the Facilities and allow a reasonable time for USER to have a representative to accompany the CITY when accessing the Facilities.

XIV.

Complaint Resolution

If either USER or CITY receives a complaint regarding USER's operations, USER shall either cure or respond to the complaint within five (5) business days of receipt of such complaint. If not cured, USER shall respond with a written explanation to each such complaint with detail of its investigation into the incident or condition upon which the complaint was based and the actions that USER has taken and/or will take to fully resolve the incident or condition. USER shall keep records of all complaints, USER's responses to complaints, and whether resolution was achieved, and shall provide reasonable access to such records by CITY. CITY shall have no authority to impose a resolution upon USER unless USER violates this Agreement or federal, state or municipal law or regulation.

XV.

Utilities

USER shall be responsible for obtaining any utility service to the Property that it desires. USER shall pay when due all charges for utilities to the Property during the term of the Agreement. CITY shall grant the USER easements to such parts of the Property as required for USER to provide such utilities during the term of this Agreement but only as specifically designated in Exhibit "B" of this Agreement.

XVI.

Governmental Approvals

This Agreement is contingent upon USER's obtaining and maintaining all necessary governmental approvals, permits or licenses as required by law or ordinance.

XVII.
Default

- A. It shall be a default if USER fails to pay the Use Fee, the proportion of additional Use Fees charged to Other Providers, property taxes or any other sums to CITY when due, and does not cure such default within thirty (30) calendar days; or if either party defaults in the performance of any other covenant or condition of this Agreement and does not cure such other default within thirty (30) calendar days after written notice from the other party specifying the default complained of; or if USER abandons or vacates the Tower Site; or if USER is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or if USER becomes insolvent.
- B. In the event of a default, CITY shall have the right, at its option, in addition to and not exclusive of any other remedy CITY may have by operation of law, without any further demand or notice, to re-enter the Tower Site and eject all persons therefrom, and declare this Agreement at an end, in which event, USER shall immediately remove the Facilities and pay CITY a sum of money equal to the total of any amount necessary to compensate CITY for all reasonable costs incurred by CITY in order to enforce its rights hereunder and to perform USER's duties and obligations under this Agreement.
- C. No re-entry and taking of possession of the Tower Site by CITY shall be construed as an election on CITY's part to terminate this Agreement, regardless of the extent of renovations and alterations by CITY, unless a written notice of such intention is given to USER by CITY. Notwithstanding any reletting without termination, CITY may at any time thereafter elect to terminate this Agreement for such previous breach. If suit shall be brought by CITY and CITY prevail in such suit for recovery of possession of the Tower Site, for the recovery of any rents or any other amount due under the provisions of this Agreement, or because of the breach of any other covenant, the USER shall pay to the CITY all reasonable expenses incurred therefor, including reasonable attorney fees.

XVIII.
Remedies

In the event of any default of this Agreement by USER, the CITY may at any time, after notice, cure the default at the expense of the USER. If CITY is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce the CITY's rights under this Agreement, the sums so paid by CITY, with all costs due to the negligence of USER shall be due from the USER to CITY within thirty (30) days of the incurring of the

respective expenses.

XIX.

Damage or Destruction of Facilities

If the Facilities or any portion of the Facilities are destroyed or damaged so as to hinder effective use of the Facilities through no fault or negligence of USER, USER may elect to terminate this Agreement upon thirty (30) days written notice to CITY. In such event, USER shall, within sixty (60) days of notice to terminate under this Section, remove the Facilities from the Property in accordance with Section IX. of this Agreement, and the parties shall proceed as set forth above. This Agreement (and USER's obligation to pay Use Fee) shall terminate upon USER's fulfillment of the obligations set forth in the preceding sentence, at which termination USER shall be entitled to the reimbursement of any rents prepaid by USER. CITY shall have no obligation to repair any damage to any portion of the Tower Site, Access Drive or Utility Easement.

XX.

Condemnation

In the event the Property is taken by eminent domain, this Agreement shall terminate as of the date title to the Property vests in the condemning authority. In the event a portion of the Property is taken by eminent domain so as to materially hinder effective use of the Property by USER, either party shall have the right to terminate this Agreement as of said date of title transfer, by giving thirty (30) days written notice to the other party. In the event of any taking under the power of eminent domain, USER shall not be entitled to any portion of the award paid for the taking and the CITY shall receive full amount of such award. USER shall hereby expressly waive any right or claim to any portion thereof. Although all damages, including but not limited to those awarded as compensation for diminution in value of the use of the property, shall belong to CITY, USER shall have the right to claim and recover from the condemning authority, but not from CITY, such compensation as may be separately awarded or recoverable by USER on account of any and all damage to USER's business and any costs or expenses incurred by USER in moving/removing its equipment, personal property, and use of Property. USER shall be entitled to the prorated reimbursement of any annual use fees prepaid by USER in the fiscal year.

XXI.

Indemnity and Insurance

- A. **Disclaimer of Liability:** CITY shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of USER's construction, maintenance, repair, use, operation, condition or dismantling of the Facilities unless by CITY's negligence or intentional acts or omissions.

B. INDEMNIFICATION: USER SHALL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD HARMLESS CITY AND ITS RESPECTIVE OFFICERS, BOARDS, COMMISSIONS, EMPLOYEES, AGENTS, ATTORNEYS, AND CONTRACTORS (HEREINAFTER REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST:

- (1) ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF USER, ITS PERSONNEL, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, RESULTING IN PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, LIBEL, SLANDER, INVASION OF PRIVACY AND UNAUTHORIZED USE OF ANY TRADEMARK, TRADE NAME, COPYRIGHT, PATENT, SERVICE MARK OR ANY OTHER RIGHT OF ANY PERSON, FIRM OR CORPORATION, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THE CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE, USE OF THE PROPERTY OR THE USER'S FAILURE TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION EXCEPT TO THE EXTENT SUCH LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES MAY BE DUE TO OR CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS EMPLOYEES, CONTRACTORS OR AGENTS.
- (2) ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY CLAIM OR LIEN ARISING OUT OF WORK, LABOR, MATERIALS OR SUPPLIES PROVIDED OR SUPPLIED TO USER, ITS CONTRACTORS OR SUBCONTRACTORS, FOR THE INSTALLATION, CONSTRUCTION, OPERATION, MAINTENANCE OR USE OF THE PROPERTY AND, UPON THE WRITTEN REQUEST OF CITY, USER SHALL CAUSE SUCH CLAIM OR LIEN COVERING CITY'S PROPERTY TO BE DISCHARGED OR BONDED WITHIN

THIRTY (30) DAYS FOLLOWING SUCH REQUEST.

- C. ASSUMPTION OF RISK: USER UNDERTAKES AND ASSUMES FOR ITS OFFICERS, AGENTS, AFFILIATES, CONTRACTORS AND SUBCONTRACTORS AND EMPLOYEES (COLLECTIVELY "USER" FOR THE PURPOSE OF THIS SECTION), ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT THE PROPERTY CREATED OR CAUSED BY USER, ITS EMPLOYEES, OR SUBCONTRACTORS AND USER HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST AND FROM ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY OR PROPERTY DAMAGE TO ANY PERSON (OTHER THAN FROM INDEMNITEE'S NEGLIGENCE) ARISING OUT OF THE USER'S INSTALLATION, OPERATION, MAINTENANCE, CONDITION OR USE OF THE PROPERTY OR USER'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION EXCEPT TO THE EXTENT SUCH CLAIMS OR LIABILITIES MAY BE DUE TO OR CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS EMPLOYEES, CONTRACTORS OR AGENTS.
- D. DEFENSE OF INDEMNITEES: IN THE EVENT ANY ACTION OR PROCEEDING SHALL BE BROUGHT AGAINST THE INDEMNITEES BY REASON OF ANY MATTER FOR WHICH THE INDEMNITEES ARE INDEMNIFIED HEREUNDER, USER SHALL, UPON NOTICE FROM ANY OF THE INDEMNITEES, AT USER'S SOLE COST AND EXPENSE, RESIST AND DEFEND THE SAME.
- E. Notice, Cooperation and Expenses: CITY shall give USER prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent CITY from cooperating with USER and participating in the defense of any litigation by CITY's own counsel.

If USER requests CITY to assist it in any defense then USER shall pay all reasonable expenses incurred by CITY in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all expenses such as reasonable attorney fees and shall also include the costs of any services rendered by the CITY'S attorney, and the actual expenses of CITY's agents, employees or expert witnesses, and disbursements and liabilities assumed by CITY in connection with such suits, actions or proceedings.

- F. Insurance: During the term of the Agreement, USER shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:
- (1) Workers' compensation insurance meeting applicable statutory

requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident/disease per employee.

- (2) Commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage including blanket contractual liability, products and completed operations liability, independent contractor's liability and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
 - (3) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by USER, and its employees, with combined single limits of Five Hundred Thousand Dollars (\$500,000) as the combined single limit for each accident for bodily injury and property damage.
 - (4) At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Facilities. Upon completion of the installation of the Facilities, USER shall substitute the foregoing insurance with policies of fire, extended coverage and vandalism and malicious mischief insurance on the Property. The amount of insurance at all times shall be representative of the insurable values installed or constructed.
 - (5) All policies shall be written on an occurrence and not on a claims made basis.
 - (6) USER may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against risks described in this section. USER shall provide the City with evidence of the form and basis for insurance coverages or self-insurance prior to the effective date of this Agreement. Should USER elect to change the form or basis of insurance during the term of this Agreement, USER shall notify the CITY. USER shall provide all documentation necessary for review by the CITY of the changed circumstances of USER.
- G. Additional Insureds: All general and automobile policies shall include CITY and its respective officers, boards, commissions, and employees as additional insureds as their respective interests may appear under this Agreement (herein referred to as the "Additional Insureds"). Each policy shall contain cross-liability wording to the effect:

"In the event of a claim being made hereunder by one insured for which

another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

- H. Waiver of Subrogation Rights: The insurance required under this Agreement shall waive subrogation rights for the loss or damage so that the insurer has no right to recovery or subrogation against the CITY.
- I. Evidence of Insurance: Certificates of insurance for each insurance policy required to be obtained by USER in compliance with this paragraph shall be provided to the CITY upon execution of this document. Within ten (10) days' notice of the expiration of any certificate of insurance a new current certificate of insurance will be forwarded to CITY's Legal Office at 1515 North Galloway Avenue, Mesquite, Texas 75149. USER shall immediately advise CITY of any claim or litigation that may result in liability to CITY.
- J. Cancellation of Policies of Insurance: Upon receipt of notice of cancellation from its insurer, USER shall provide CITY with thirty (30) days prior written notice of cancellation.
- K. Insurance Companies: All insurance shall be affected under valid and enforceable policies, insured by insurers licensed, authorized or permitted to do business by the State of Texas or surplus line carriers on the State of Texas Insurance Commissioner's approved list of companies qualified to do business in the State of Texas. All insurance carriers and surplus line carriers shall be rated A Minus VII or better by A.M. Best Company or approved by CITY.
- L. Deductibles: USER AGREES TO INDEMNIFY AND SAVE HARMLESS CITY, THE INDEMNITEES AND ADDITIONAL INSURED FROM AND AGAINST THE PAYMENT OF ANY DEDUCTIBLE AND FROM THE PAYMENT OF ANY USER PREMIUM ON ANY INSURANCE POLICY REQUIRED TO BE FURNISHED BY THIS AGREEMENT.
- M. Contractors: USER shall require that each and every one of its contractors who perform work on the Facilities to carry, in full force and effect, substantially the same coverage with substantially the same limits as required of USER.
- N. Review of Limits: Once during each calendar year during the term of this Agreement CITY may review the insurance coverage to be carried by USER. If CITY reasonably determines that higher limits of coverage are necessary to protect the interests of CITY or the Additional Insureds, USER shall be so notified and shall obtain the additional limits of insurance, at its sole cost and expense.

XXII.

Hazardous Substance Indemnification

CITY will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the specific activities of USER on the Property.

USER REPRESENTS AND WARRANTS THAT ITS USE OF THE PROPERTY HEREIN WILL NOT GENERATE ANY HAZARDOUS SUBSTANCE, AND IT WILL NOT STORE OR DISPOSE ON THE PROPERTY NOR TRANSPORT TO OR OVER THE PROPERTY ANY HAZARDOUS SUBSTANCE OTHER THAN SULFURIC ACID IN SEALED GEL-CEL BATTERIES OR DIESEL OR PROPANE FUEL TRANSPORTED TEMPORARILY ONTO THE PROPERTY AND CONTAINED IN A PORTABLE GENERATOR USED FOR EMERGENCY POWER. ANY STORAGE OF DIESEL FUEL SHALL BE IN AN ABOVE GROUND STORAGE TANK THAT IS EQUIPPED WITH SECONDARY CONTAINMENT. USER FURTHER AGREES TO HOLD CITY HARMLESS FROM AND INDEMNIFY CITY AGAINST ANY RELEASE OF ANY SUCH HAZARDOUS SUBSTANCE THAT IS STORED ON OR TRANSPORTED TO PROPERTY BY USER AND ANY DAMAGE, LOSS, OR EXPENSE OR LIABILITY RESULTING FROM SUCH RELEASE INCLUDING ALL REASONABLE ATTORNEYS' FEES, COSTS AND PENALTIES INCURRED AS A RESULT THEREOF EXCEPT ANY RELEASE CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACTS OF CITY, ITS EMPLOYEES OR AGENTS. "HAZARDOUS SUBSTANCE" SHALL BE INTERPRETED TO MEAN ANY SUBSTANCE OR MATERIAL DEFINED OR DESIGNATED AS HAZARDOUS OR TOXIC WASTE, HAZARDOUS OR TOXIC MATERIAL, HAZARDOUS OR TOXIC OR RADIOACTIVE SUBSTANCE, OR OTHER SIMILAR TERM BY ANY APPLICABLE FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAW, REGULATION OR RULE PRESENTLY IN EFFECT OR PROMULGATED IN THE FUTURE, AS SUCH LAWS, REGULATIONS OR RULES MAY BE AMENDED FROM TIME TO TIME.

XXIII.
Holding Over

Any holding over after the expiration of the term hereof, with the consent of the CITY, shall be construed to be a tenancy from month to month at 150% of the Use Fees in effect upon termination, prorated on a monthly basis ("Month to Month Use Fee") and shall otherwise be for the term and on the conditions herein specified, so far as applicable. USER shall pay the Month to Month Use Fee no later than the first day of each month.

XXIV.

Subordination to Mortgage

Any mortgage or deed of trust now or subsequently placed upon any property of which the Tower Site is a part shall be deemed to be prior in time and senior to the rights of the USER under this Agreement. USER subordinates all of its interest in the Tower Site created by this Agreement to the lien of any such mortgage or deed of trust; provided, however, any such subsequent mortgagee shall recognize USER's right to remain in occupancy of and have access to the Tower Site as long as USER is not in default of this Agreement beyond applicable notice and cure periods. USER shall, at CITY's request, execute any additional documents necessary to indicate this subordination.

XXV.

Acceptance of Property

By taking possession of the Property, USER accepts the Property in the condition existing as of the Commencement Date. CITY makes no representation or warranty with respect to the condition of the Property.

XXVI.

Estoppel Certificate

CITY shall, at any time and from time to time upon not less than thirty (30) days prior request by USER, deliver to USER a statement in writing certifying that (a) the Agreement is unmodified and in full force (or if there have been modifications, that the Agreement is in full force as modified and identifying the modifications); (b) the dates for which the Use Fee and other charges have been paid; (c) so far as the person making the certificate knows, USER is not in default under any provisions of the Agreement; and (d) such other matters as USER may reasonably request.

XXVII.

Notices

All payments, notices, reports, filings, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if mailed, certified mail, return receipt requested or delivered by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender; to the following addresses:

If to CITY, to:

City Manager
City of Mesquite
1515 N. Galloway Ave.

Mesquite, Texas 75149

And with a copy to:

City Attorney's Office
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

If to USER, to:

Dallas MTA, L.P., d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

XXVIII.
Assignment

USER shall not assign this Agreement in whole or in to any unaffiliated entity without the CITY's prior written consent. For purpose of this section, "Affiliate" should be defined as follows: A person, association, partnership, corporation or joint-stock company, trust or other business entity, however organized, ("Person") is an affiliate of that entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Person. Control shall be defined as (i) ownership of a majority of the voting power of all classes of voting stock or (ii) ownership of a majority of the beneficial interests in income and capital of an entity other than a corporation, or (iii) an entity purchasing all or substantially all of USER's assets in the market defined by the Federal Communication Commission in which the Property is located by reason of merger, acquisition or other business reorganization. Consent by CITY to any assignment shall not constitute a waiver of the necessity of such consent to any subsequent assignment. This prohibition against any assignment shall be construed to include a prohibition against any assignment by operation of law. If this Agreement is assigned, or if the Property or any part thereof is occupied by anyone other than USER, CITY may collect from the assignee or occupant and apply the net amount collected to the Use Fee and other obligations of USER hereunder reserved, but no such assignment, occupancy or collection shall be deemed a waiver or release of USER from the further performance by USER of the covenants on the part of USER hereunder contained. Notwithstanding any assignment, USER shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions of this Agreement.

Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Sections 101, et seq., shall be deemed without further act to have assumed all of the obligations of USER arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to CITY an instrument confirming such assumption. Any

monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to CITY, shall be the exclusive property of CITY, and shall not constitute property of the USER or of the estate of USER within the meaning of the Bankruptcy Code. Any monies or other considerations constituting CITY's property under the preceding sentence not paid or delivered to CITY shall be held in trust for the benefit of CITY and be promptly paid to CITY.

XXIX.

Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

XXX.

Agreement Non-Exclusive

Nothing in this Agreement shall preclude CITY from entering into other Agreements for use of the Property (other than the Tower Site).

XXXI.

Non-Waiver

Failure of a Party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but each Party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by USER to CITY after a breach of this Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.

XXXII.

Taxes

- A. USER shall have the responsibility to pay any personal property, or ad valorem taxes, assessments, or charges owed on the Property that CITY demonstrates are owed as the result of USER's use of the Tower Site and/or the installation, maintenance, and operation of the USER's Facilities, and any sales tax imposed on the Use Fee (except to the extent that USER is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in ad valorem taxes at the Property that CITY demonstrates arises from the USER's improvements and/or USER's use of the Tower Site. USER shall be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by USER at the Property. Notwithstanding the foregoing, USER shall not have the obligation to pay any tax, assessment, or charge that USER is disputing in good faith in appropriate proceedings prior to a

final determination that such tax is properly assessed provided that no lien attaches to the Property. Except as set forth in this paragraph, USER shall have the responsibility to pay any personal property, ad valorem taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

- B. USER shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which USER is wholly or partly responsible for payment.

XXXIII.

Miscellaneous

- A. CITY and USER represent that each, respectively, has full right, power, and authority to execute this Agreement.
- B. This Agreement constitutes the entire Agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.
- C. This Agreement shall be construed in accordance with the laws of the State of Texas.
- D. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- E. CITY agrees to provide USER Internal Revenue Service Form W-9 upon written request.
- F. USER shall not enter into a similar agreement with Calvary Hill Baptist Church (or any subsequent owner of the property located at 3300 La Prada Drive, Mesquite, Dallas County, Texas). This restriction shall be in effect for a period of five (5) years from the date of full execution of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written herein.

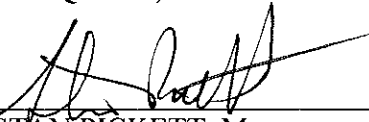
DALLAS MTA, L.P., d/b/a Verizon Wireless

BY: Verizon Wireless Texas, LLC, its sole general partner

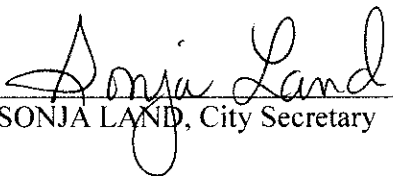
BY: 
Name: APARNA KHURJEKAR
Title: Vice President – Field Network

Date: 8/22/16

CITY OF MESQUITE, TEXAS

BY 
STAN PICKETT, Mayor

ATTEST:


SONJA LAND, City Secretary

APPROVED AS TO FORM:

BY 
B. SMITH, City Attorney

STATE OF NORTH CAROLINA:

COUNTY OF MECKLENBURG:

ACKNOWLEDGEMENT

On this 22 day of August, 2016, before me, personally appeared Aparna Khurjekar, to me personally known, who, being by me duly sworn, did say that she is the Vice President – Field Network of Verizon Wireless Texas, LLC, general partner of **DALLAS MTA, L.P., d/b/a VERIZON WIRELESS**, a Delaware limited partnership, and that said instrument was signed on behalf of said limited partnership and said Aparna Khurjekar acknowledged signing said instrument to be her free act and deed.

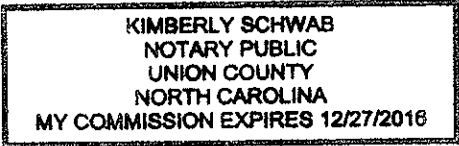
In witness whereof, I have hereunto set my hand and affixed my seal at my office in said County and State on the day and year first above written.

Sworn to and subscribed before me this 22 day of August, 2016.

Notary Public



My Commission Expires Dec. 27, 2016



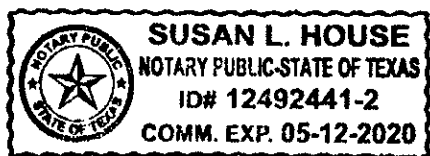
THE STATE OF TEXAS §

City Acknowledgment

COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Stan Pickett, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF MESQUITE, TEXAS**, a municipal corporation of Dallas County, Texas, and as the Mayor thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 20th day of November, 2016.



5.12.2020
My Commission Expires

Susan L. House
Notary Public In and For
The State of Texas

Susan L. House
Notary's Printed Name

USER Site Name: Athletic_Club

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

All that certain lot, tract, or parcel of land situated in Dallas County, Texas, to wit:

Being a part of a tract of land in the T. Thomas Survey, Abstract No. 1461, Dallas County, Texas, conveyed by Genell, Inc., to the Mesquite Independent School District, Dallas County, Texas, by Deed dated May 2, 1956, recorded in Volume 4489, page 472, Deed Records, Dallas County, Texas and described by metes and bounds as follows:

COMMENCING at a point in the Northwesterly right of way of Oates Drive, a 60-foot width street, said point being North 44 deg. 43 min. East, a distance of 475 feet from the Northeasterly line of Gus Thomasson Road, a 60-foot width street; THENCE North 45 deg. 11 min. West a distance of 10 feet to a point for corner, the point of beginning; THENCE North 45 deg. 11 min. West along the South west line of said tract a distance of 450 feet to a point for corner; THENCE North 44 deg. 43 min. East a distance of 537.19 feet to a point for corner in the Northeast line of said tract; THENCE South 45 deg. 18 min. East along the Northeast line of said tract a distance of 450 feet to a point for corner; THENCE South 44 deg. 43 min. West along the Northwest line of Gus Thomasson Road a 70 width street, a distance of 537.85 feet to the point of beginning, containing 5.55 acres of land;

(WARRANTY DEED RECORDED IN VOLUME 5295 PAGE 271, OFFICIAL PUBLIC RECORDS OF DALLAS COUNTY, TEXAS.)

USER Site Name: Athletic_Club

**EXHIBIT B
SITE PLAN**

See attached



ATHLETIC CLUB

 OATES DRIVE
 MESQUITE, DALLAS COUNTY, TEXAS
 (288417)

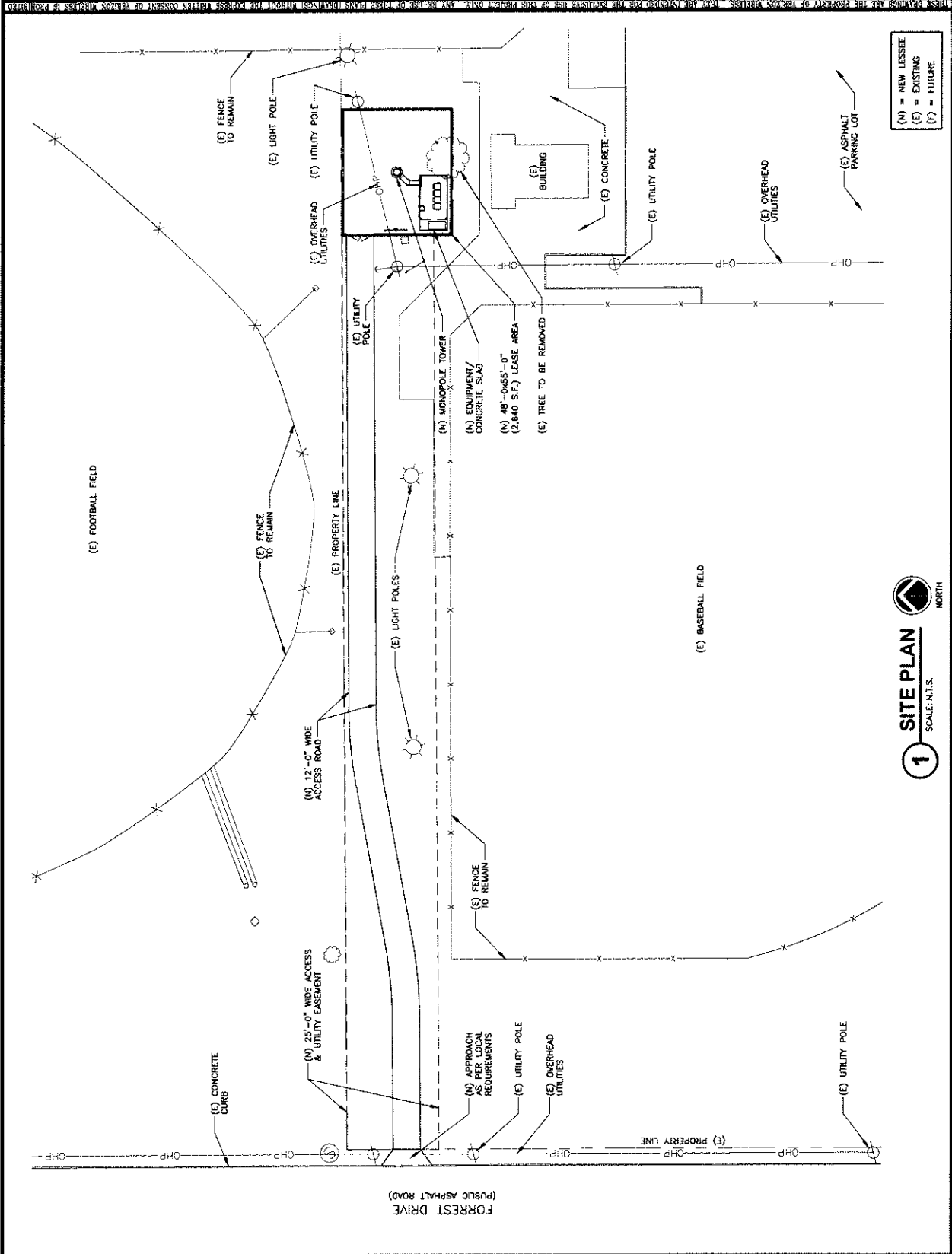
APPROVAL SIGNATURES
 LANDLORD
 LEASING
 CONSTRUCTION

THIS IS AN INCOMPLETE
 SET NOT FOR
 CONSTRUCTION OR
 PERMITTING.
 APPROPRIATE
 PROFESSIONAL SEAL
 WILL BE APPLIED TO
 FINAL CONSTRUCTION
 SET

ARCHCOMM, L.L.C.
 1000 Beckett
 San Antonio, Texas 78213
 (210) 349-9000
 TBPE NO. F. 15689

SUBJECT TITLE:
SITE PLAN
 SUBJECT HISTORY
 08.21.16 ISSUE

EN1



(N) = NEW LESSEE
 (E) = EXISTING
 (F) = FUTURE

1 SITE PLAN
 SCALE: N.T.S.
 NORTH



ATHLETIC CLUB

 GATES DRIVE
 MESQUITE, DALLAS COUNTY, TEXAS
 (288417)

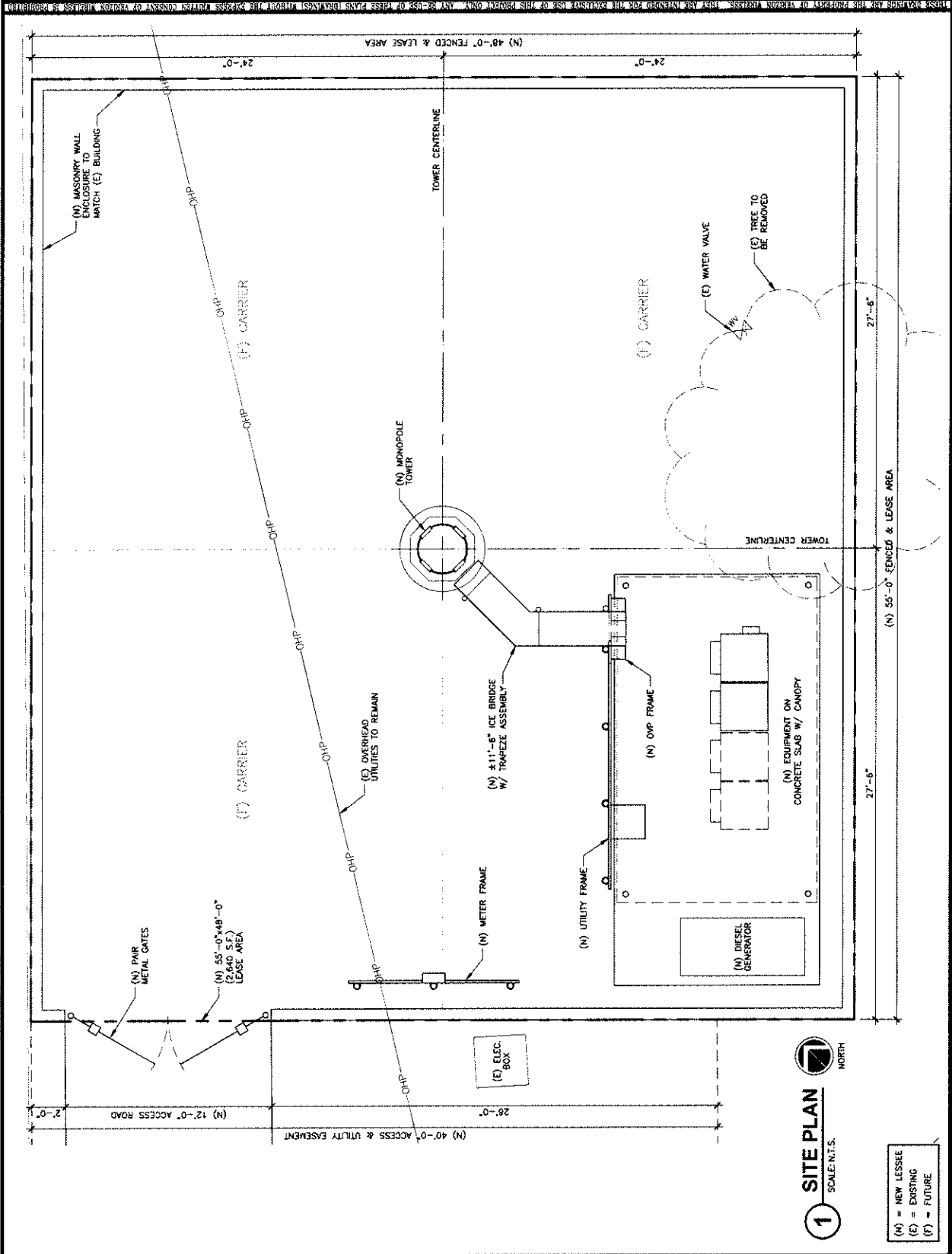
APPROVAL/REMARKS/REVISIONS
 LANDLORD
 LEASING
 CONSTRUCTION

THIS IS AN INCOMPLETE
 SET NOT FOR
 CONSTRUCTION OR
 PERMITTING.
 PROFESSIONAL SEAL
 WILL BE APPLIED TO
 FINAL CONSTRUCTION
 SET

ARCHCOMM, L.L.C.
 1006 Beckett
 San Antonio, Texas 78213
 (210) 304-8800
 TXPE NO. F-156589
 SHEET TITLE

SITE PLAN
 SHEET HISTORY
 08.21.15 ISSUE

EN2




(N) = NEW LESSEE
 (E) = EXISTING
 (F) = FUTURE

USER Site Name: Athletic_Club

EXHIBIT C
TOWER ELEVATION SHOWING EQUIPMENT COMPOUND
AND ANTENNA FACILITIES

See attached



ATHLETIC CLUB

DATES DRIVE
MESQUITE, DALLAS COUNTY, TEXAS
(288417)


APPROVAL SIGNATURES

LANDLORD

LEASING

CONSTRUCTION

THIS IS AN INCOMPLETE SET NOT FOR CONSTRUCTION OR PERMITTING. APPROPRIATE PROFESSIONAL SEAL WILL BE APPLIED TO FINAL CONSTRUCTION SET



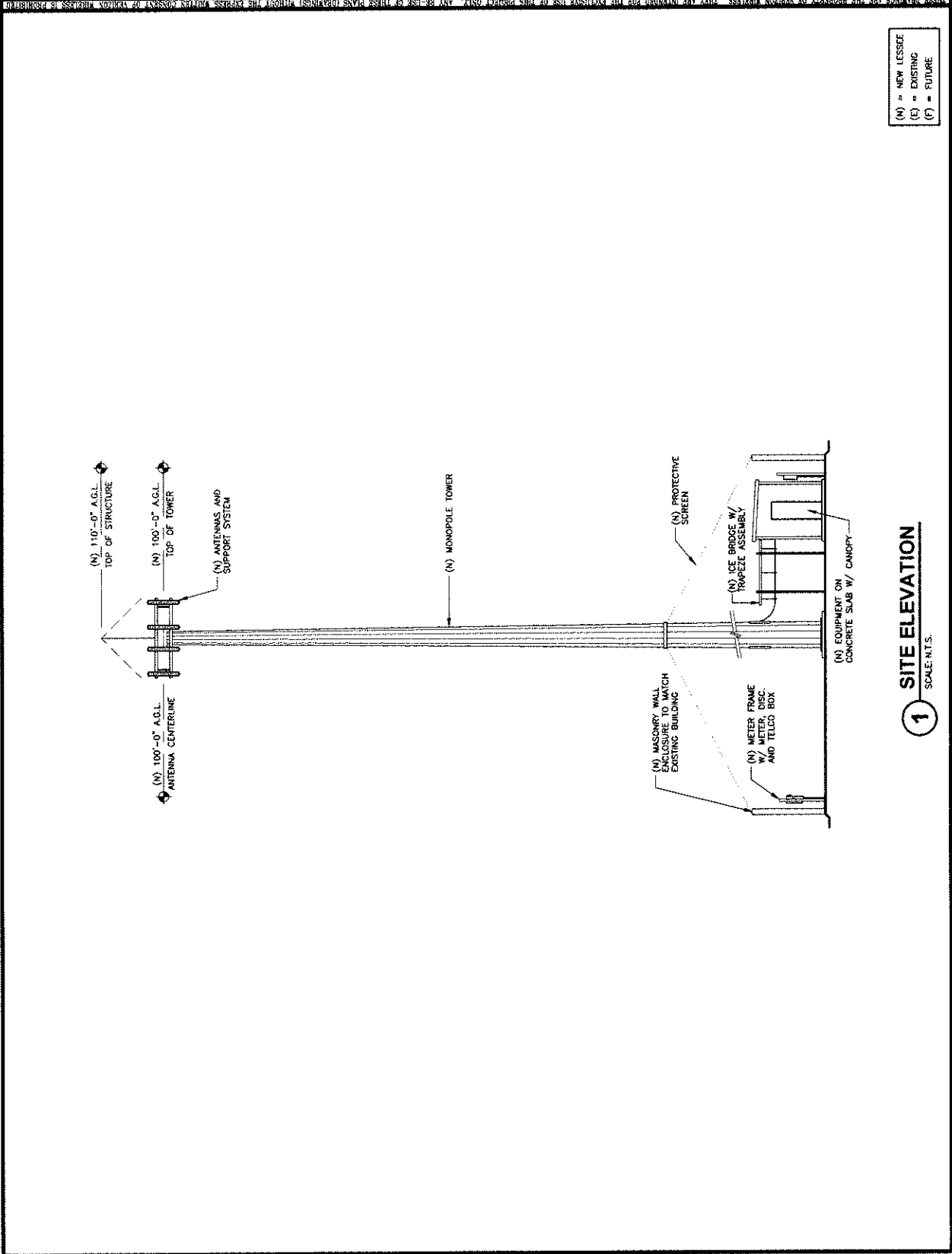
ARCHCON, LLC.
10000 North Loop West
Suite 78213
San Antonio, Texas 78213
(210) 308-8905
TYPE NO. F-18849
SHEET TITLE

SITE ELEVATION

SHEET HISTORY

08.21.15 ISSUE

EN3



(N) = NEW LESSEE
(E) = EXISTING
(F) = FUTURE

1 SITE ELEVATION
SCALE: N.T.S.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
Dallas MTA, L.P. d/b/a Verizon Wireless
Basking Ridge, NJ United States

Certificate Number:
2016-135935

Date Filed:
11/11/2016

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
City of Mesquite

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
Resolution 49-2016 Vanston Par
Lease of real estate for construction and operation of a telecommunications tower."

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Griffin, Mason	Dallas, TX United States		X
Franks, David	Irving, TX United States		X
Verizon Wireless Personal Communications LP	Basking Ridge, NJ United States	X	
Verizon Wireless (VAW) LLC	Basking Ridge, NJ United States	X	
Verizon Wireless Texas, LLC	Lake Mary, FL United States	X	

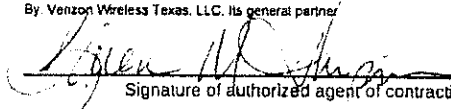
5 Check only if there is NO interested Party.

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

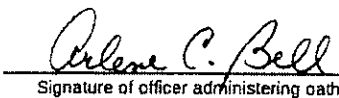
Dallas MTA, L.P. d/b/a Verizon Wireless

By: Verizon Wireless Texas, LLC, its general partner


Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Karen M Shipman, this the 11th day of November, 2016, to certify which, witness my hand and seal of office.


Signature of officer administering oath

Arlene C. Bell
Printed name of officer administering oath

Notary Public
Title of officer administering oath