



Meeting Date: 09 / 13 / 2011

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s) _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s) _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Luly A. Lopez *L.L.*

Agenda Item No. **I-6**

Reviewed By: City Manager *[Signature]*

City Attorney *S.M.F.*

Finance *[Signature]*

Other (Specify)

DATE: September 1, 2011

TO: City Council

FROM: Robert Holden, Executive Director
Performing Arts and Convention Center

Martin R. Erickson, Special Assistant to the City Manager
City Manager's Office *[Signature]*

SUBJECT: Lease Agreement between the City of Oxnard and Verizon, Inc. for Wireless Communications Equipment at the Performing Arts and Convention Center

RECOMMENDATION

That City Council:

1. Approve and authorize the City Manager to negotiate and the Mayor to execute a Lease Agreement with Verizon Wireless (A-7431) for the placement of wireless communications equipment in the premises of the Performing Arts and Convention Center (PACC) at 800 Hobson Way, Oxnard, California.
2. Authorize the City Manager to sign any other documents that are necessary to enter into the lease agreement with Verizon.

DISCUSSION

Staff and representatives of Verizon, Inc. (Verizon) have virtually completed negotiations of a lease for the use of space at the PACC, located at 800 Hobson Way for a wireless communication tower and related facilities. Verizon will pay \$2,700 per month rent for the five-year initial term of the lease. The lease provides for three additional five-year automatic extensions, at the tenant's option. The rental fee will increase by fifteen percent for each additional lease extension. A small building will be constructed to contain necessary cellular equipment. The lessee has also agreed to pay the City a one-time payment of \$25,000 that the PACC will use for improvements. There are some minor outstanding insurance issues that need to be finalized. Staff requests that City Council authorize the City Manager to conclude these matters, rather than delay the start date of the lease.

Subject: Lease Agreement between the City of Oxnard and Verizon Corporation
For Wireless Communications Equipment at the PACC.

September 13, 2011

Page 2

FINANCIAL IMPACT

The lease will increase the revenue of the PACC by \$32,400 in FY 2011/12. The one-time payment of \$25,000 and the monthly rental fee of \$2,700 will be deposited in the PACC project account (#101-5601-554-7351.)

Attachment #1 – Draft Lease Agreement with Verizon

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Agreement No. 7431

SITE LEASE

THIS SITE LEASE ("Lease") is entered into this ____ day of _____ 2011, between the City of Oxnard ("Landlord") and Los Angeles SMSA Limited Partnership, a California limited partnership dba Verizon Wireless ("Tenant").

1. Leased Premises:

- a. As of the Commencement Date (as that term is defined below) Landlord grants to Tenant a lease of specified areas within the Performing Arts and Convention Center, which Landlord represents that it owns, located at 800 Hobson Way, Oxnard, California 93030 (the "Property"), together with certain rights of ingress and egress and a license for utilities as more particularly provided herein. The legal description of the Property is set forth in Exhibit A and is attached hereto and incorporated herein by this reference. Landlord will lease to Tenant approximately four hundred fifty (450) square feet of ground space ("Land Space") for Tenant's equipment, space on the on the roof of that certain building located on the Property (the "Building") sufficient for the installation, operation and maintenance of antennas (the "Antenna Space"); together with such additional space within the Building and on the roof of the Building for the installation, operation and maintenance of wires, cables, conduits and pipes (the "Cabling Space") running between and among the Land Space, and Antenna Space and to all necessary electrical and telephone utility sources located within the Building or on the Property. The Land Space, Antenna Space and Cabling Space, together with such licenses and access rights granted herein are altogether referred to herein as the "Premises." The Premises and the general location and orientation of Tenant's Antenna Facilities (as that term is defined below) are more particularly shown on the plans approved by the Planning Division of the City of Oxnard which are attached hereto and incorporated herein as Exhibit B.
- b. Landlord shall deliver the Antenna Space to Tenant on the Commencement Date, as hereinafter defined, in a condition ready for Tenant's construction of its improvements and clean and free of debris. Landlord represents and warrants to Tenant that as of the Commencement Date, the existing structure of the Building (including without limitation the roof, foundations, exterior walls), the common areas and all Building systems (including, without limitation, the plumbing, electrical, ventilating, air conditioning, heating, and loading doors, if any) are (a) in good operating condition and free of any leakage; (b) in compliance with all applicable laws; and (c) free of all Hazardous Materials, as such term is defined in Section 22 below. If a breach of the representation and warranty contained in this Section 1 is discovered at any time during the Term, as hereinafter defined, Landlord shall, promptly after receipt of written notice from Tenant setting forth a description of such non-compliance, rectify same at Landlord's expense. Landlord further represents and warrants to Tenant that Landlord has no knowledge of any claim having been made by any governmental agency that a violation of applicable

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building codes, regulations, or ordinances exists with regard to the Building, or any part thereof, as of the Commencement Date.

2. Government Approvals: Tenant shall obtain and maintain, at Tenant's sole expense and as quickly as reasonably feasible, all land use approvals, licenses and permits required for Tenant's use of the Premises ("Governmental Approvals") for a communications facility. Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all such Governmental Approvals and Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits, and Landlord expressly grants to Tenant a right of access to the Property to perform surveys, soils tests, and other engineering procedures or environmental investigations on the Property necessary to determine that Tenant's use of the Premises for the purposes hereunder will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. Notwithstanding the foregoing, Tenant may not change the zoning classification of the Property without first obtaining Landlord's written consent.

3. Term: The term of this Lease shall be five (5) years, commencing based on Tenant's commencement of construction of the Antenna Facilities, and terminating at midnight on the last day of the month in which the fifth annual anniversary of the Commencement Date shall have occurred ("Initial Term"). In the event the date Tenant commences installation of the Antenna Facilities falls between the 1st and 15th of the month, this Lease shall commence on the 1st of that month and if such date falls between the 16th and the last day of the month, then this Lease shall commence on the 1st day of the following month (either, the "Commencement Date"). Tenant shall have the right to extend this Lease for three (3) additional terms of five (5) years each (each, a "Renewal Term" and collectively, "Renewal Terms"). Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be renewed for each successive Renewal Term unless Tenant shall notify Landlord of Tenant's intention not to renew this Lease at least ten (10) days prior to the expiration of the Initial Term or then-current Renewal Term. The Initial Term and Renewal Terms shall be collectively referred to as the "Term" throughout this Lease.

4. Use:
 - a. The Premises may be used by Tenant only for the installation, repair, modification, operation, replacement and removal of a wireless communications site. Under this Lease, Tenant may install, place, use, maintain, repair, replace and operate on the Premises such antennas, transmitting and receiving equipment, conduits, wires, batteries, back-up generators, utility lines and facilities, supporting structures, storage facilities, telephone facilities, microwave equipment, radio equipment and other related equipment (collectively "Antenna Facilities") as are permitted by the Governmental Approvals. Tenant, subject to the limitations of this Lease, may perform construction, maintenance, repairs, additions to, and replacement of the Antenna Facilities as necessary, desirable and appropriate for its ongoing business and as required for Tenant's communications operations at the Property, subject to the provisions of Section 7(a) below. Tenant shall not sublease the Premises for any purpose.

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- b. In using the Premises, Tenant shall comply with all applicable local, state and federal laws and regulations but shall not be required to remedy any prior existing condition of the Property which is out of compliance therewith. In the event any such existing noncompliance adversely affects Tenant's ability to use the Premises for the purposes permitted hereunder, Landlord shall cure such noncompliance.
- c. Tenant shall maintain the Premises and all Antenna Facilities in good condition and repair, reasonable wear and tear excepted.
- d. During the Term, Landlord shall maintain, in reasonably good operating condition and repair, the structural elements of the Building and the Antenna Space, and all Building systems and the common areas. Landlord shall repair any defect in the above within thirty (30) days after receipt of written notice from Tenant describing such defect, unless the defect constitutes an emergency, in which case Landlord shall cure the defect as quickly as possible, but not later than five (5) days after receipt of notice. If Landlord fails to make such repairs, Tenant may do so, and Tenant may deduct the cost thereof from any Rent (as defined below) payments or other sums that may be due or owing under this Lease. In the event of an emergency, Tenant, at its option, may make such repairs at Landlord's expense, before giving any written notice, but Tenant shall notify Landlord in writing within three (3) business days following such emergency.

5. Rent.

- a. Commencing on the Commencement Date, Tenant shall pay Landlord, as rent, the sum of Two Thousand Seven Hundred and 00/100 Dollars (\$2,700.00) per month ("Rent"). Landlord and Tenant agree that they shall acknowledge in writing the Commencement Date. Landlord and Tenant acknowledge and agree that initial Rent payment(s) shall not actually be sent by Tenant until thirty (30) days after a written acknowledgement confirming the Commencement Date. By way of illustration of the preceding sentence, if the Commencement Date is January 1 and the written acknowledgement confirming the Commencement Date is dated January 14, Tenant shall send to Landlord the Rent payments for January 1 and February 1 by February 13. Thereafter, Rent shall be paid to Landlord on the first day of the month, in advance, at Landlord's address specified in Section 16 below, or to such other person, firm or place as Landlord may, from time to time, designate in writing at least thirty (30) days in advance of any Rent payment date by notice given in accordance with Section 16 below. Upon agreement of the parties, Tenant may pay Rent by electronic funds transfer and in such event, Landlord agrees to provide to Tenant bank routing information for such purpose upon request of Tenant.
- b. In consideration of delaying the Commencement Date, Tenant shall pay to Landlord a one-time lump sum payment of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) as additional Rent, which payment shall be due within forty-five (45) days after the Commencement Date.
- c. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination, and, in the event of termination for any reason other than non-payment of Rent, all prepaid Rents shall be refunded to Tenant.

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- d. Upon the commencement of any Renewal Term hereunder, Rent will be increased for each such Renewal Term over the Rent payable during the preceding Renewal Term by fifteen percent (15%).
- e. Tenant acknowledges that late payment of Rent may cause Landlord to incur administrative costs and expenses which are difficult and impractical to fix. Therefore, if any installment of Rent or other payment due from Tenant is not received by Landlord within three (3) business days after Tenant's receipt of a notice of late payment, Tenant shall pay Landlord an additional sum equal to five percent (5%) of the overdue amount as a late charge which shall be deemed additional Rent. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that Landlord may incur by reason of Tenant's late payment and shall accrue as of the date initially due.

6. Interference.

- a. Landlord shall not use, nor shall Landlord permit its employees, tenants, licensees, invitees or agents to use any portion of the Property in any way which unreasonably interferes with the prior existing physical or technological operations of Tenant. Such interference shall be deemed a material breach by Landlord, and Landlord shall have the responsibility to terminate said interference. In the event any such interference does not cease within ten (10) business days after Tenant's receipt of Landlord's notice, the parties acknowledge that continuing interference will cause irreparable injury to Tenant, and therefore, Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Lease.
- b. Nothing in this Lease shall be construed to limit Landlord's right to sell the Property (provided any purchaser of the Property acknowledges in writing that the Property is subject to this Lease and assumes all of Landlord's obligations hereunder), or assign or lease the Property or portions thereof, provided, however, that Landlord shall include in any leases of portions of the Property a requirement that the tenant shall not unreasonably interfere with the prior existing physical or technological operations of Tenant. Similarly, Tenant shall not use the Premises in any way which unreasonably interferes with the then current use of the Property by Landlord, or lessees or licensees of Landlord or with equipment installed by any of them prior in time to Tenant's installation.
- c. Nothing in this Lease shall be construed to limit or interfere with Landlord's right to repair, maintain and improve the Premises. Tenant agrees to reasonably cooperate with Landlord and its contractors as necessary to accomplish such repairs, maintenance and improvements, and when necessary, upon no less than sixty (60) days prior written notice, agrees to temporarily relocate its Antenna Facilities within the Antenna Space and utilities, described in Section 4 above, to another location on the Property while Landlord or its contractors perform such repairs, maintenance, or improvements. To the extent reasonably possible, Landlord shall cooperate with Tenant to minimize any inconvenience or disruption to Tenant in connection with any such repairs, maintenance, or improvements, which cooperation shall include but not be limited to allowing the use of temporary facilities by Tenant so as to avoid an interruption or diminishment of services provided by Tenant from the Property without additional fee or charge by

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Landlord to Tenant. Landlord shall, to the extent Landlord may legally and properly do so, expedite any and all City of Oxnard permits and approvals for the allowance of Tenant's temporary facility. The responsibility for the costs and expenses associated with any temporary relocation of Tenant's Antenna Facilities as provided for in this subsection shall be allocated as follows: Landlord shall be responsible for the first One Thousand Dollars (\$1,000.00) of such costs and expenses; Landlord and Tenant shall each bear responsibility for one-half of such costs and expenses in excess of One Thousand Dollars (\$1,000.00).

7. Improvements; Utilities; Access.

- a. Tenant shall have the right, at its expense, to install, construct, repair, replace, modify, maintain and remove the Antenna Facilities in the Premises. The installation and construction of any improvements shall be in accordance with the design set forth in the Governmental Approvals allowing such installation and construction. The design permitted by the Governmental Approvals is attached hereto as Exhibit B. The design of the initial installation of the Antenna Facilities may not be materially altered without the prior written approval of Landlord which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing however, Tenant shall have the right, upon notice to Landlord, to: (i) install additional equipment within the Land Space; and (ii) make like-for-like exchanges of equipment located within the Antenna Space, provided in both cases that doing so complies with all required Governmental Approvals and provided further that in the event of a like-for-like equipment exchange within the Antenna Space, that such replacement does not increase the load capacity of the roof of the Building.
- b. The Antenna Facilities shall remain the exclusive property of Tenant, and Tenant shall have the right to remove all or any portion of the Antenna Facilities or any portion thereof during the Term and following any termination of this Lease. Tenant shall repair any and all damages to the Premises or Property caused by any such removal.
- c. Tenant shall have the right to install utilities and to improve the present utilities, all at Tenant's expense, on the Premises and Property (including, but not limited to the installation of emergency power generators). Tenant shall have the right to permanently place utilities, at Tenant's expense, on (or to bring utilities across) the Property, including within and on the Building, in order to serve the Premises and the Antenna Facilities, together with a right to enter the Property in order to maintain, repair and replace the utilities so long as the placement of such utilities and access do not unreasonably interfere with Landlord's then current use of the Property. Landlord shall, at all times during the Term provide electrical service and telephone service access within the Premises. Landlord and Tenant shall act reasonably and cooperate with each other and the utility company concerning the placement of utilities. Landlord hereby grants a non-exclusive license to Tenant, which shall expire concurrently with the Term of this Lease, as may be extended, for access and utilities. Tenant shall furnish and install an electrical meter at the Premises for the measurement of electrical power used by the Antenna Facilities, and Tenant shall be solely responsible for the payment of all such electrical power.

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- d. Landlord shall provide Tenant ingress and egress from an open and improved public road, and access over and across the Property adequate to service the Antenna Facilities at all times during the Term of this Lease at no additional charge to Tenant. Tenant shall be entitled to access the Premises twenty-four (24) hours a day, seven (7) days per week without the necessity of prior written notice to Landlord. Tenant may not conduct any activities in a manner which unreasonably interferes with Landlord's use of the Property as described in Section 6 above.
- e. Tenant shall keep the Premises free from all liens and stop notices arising from any work performed, materials furnished, or obligations incurred by or at the request of Tenant thereon. If any lien or stop notice is filed against the Premises as a result of the acts or omissions of Tenant, or Tenant's employees, agents or contractors, Tenant shall discharge, bond, or otherwise secure the same to Landlord's reasonable satisfaction within thirty (30) days after Tenant has notice that the lien or stop notice has been filed. If Tenant fails to commence steps to discharge, bond or secure any lien or stop notice within such period, then, in addition to any other right or remedy, Landlord may, at its election, upon five (5) days' prior written notice to Tenant, discharge the lien or stop notice by either paying the amount claimed to be due, or obtaining the discharge by deposit with a court or a title company, or by bonding. Tenant shall pay, within thirty (30) days after receipt of demand and reasonable supporting documentation, any amount reasonably so paid by Landlord and all reasonable attorneys' fees and other reasonable legal expenses of Landlord incurred in defending any action or in obtaining the discharge of such lien, together with all reasonable disbursements related thereto from any such bond.

8. Default.

- a. Landlord shall be in default under this Lease if: (i) Landlord shall fail to cease any physical or technological interference within the cure periods set forth herein; or (ii) Landlord shall fail to observe or perform any of Landlord's other obligations under this Lease when such failure shall continue for thirty (30) days after written notice from Tenant to Landlord; provided, however, that if the nature of Landlord's default is such that it cannot be cured solely by payment of money and that more than thirty (30) days is reasonably required to effect such cure, then Landlord shall not be deemed to be in default under this clause if Landlord shall commence such cure within the thirty (30) day period and shall thereafter diligently prosecute such cure to completion. In the event of any breach of this Lease by Landlord, Tenant shall have the right (but not the obligation), in addition to all remedies that may be available at law or in equity, to perform Landlord's obligations under this Lease. Tenant shall have the right to set off any expense incurred as a result of Landlord's default against any Rent or other payment due under this Lease.
- b. Tenant shall be in default under this Lease if: (i) Tenant shall fail to pay the Rent due under this Lease within ten (10) days after written notice from Landlord that such Rent is overdue; or (ii) Tenant shall fail to observe or perform any of Tenant's other obligations under this Lease when such failure shall continue for thirty (30) days after written notice from Landlord to Tenant. However, if the nature of Tenant's default is such that it cannot

be cured solely by payment of money and that more than thirty (30) days is reasonably required to effect such cure, then Tenant shall not be deemed to be in default under this clause if Tenant shall commence such cure within the thirty (30) day period and shall thereafter diligently prosecute such cure to completion. In the event of any breach of this Lease by Tenant, Landlord shall have the right (but not the obligation), in addition to all remedies that may be available at law or in equity, to perform Tenant's obligations under this Lease.

9. Termination. Except or in addition to as otherwise provided herein, this Lease may be terminated, without any penalty or further liability, on thirty (30) days' written notice as follows: (a) by either party upon a default of any covenant or term hereof by the other party, which default is not cured as provided in Section 8 above; (b) by Tenant if it is unable to obtain or maintain any license, permit or other Governmental Approval necessary to the construction and/or operation of the Antenna Facilities or Tenant's business; (c) by Tenant if the Premises is or becomes unacceptable for economic reasons or under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong; or (d) Tenant, in its sole discretion, determines that the use the Premises is obsolete or unnecessary. In the event Tenant terminates this Lease under provisions (c) or (d) of this Section, Tenant will pay a one-time termination fee to Landlord as liquidated damages in an amount equal to three (3) months of the then current monthly Rent.
10. Condition of Premises upon Termination. Upon expiration or within ninety (90) days after the early termination of this Lease, Tenant will remove its building(s), antenna structure(s) (except footings), equipment, conduits, fixtures and all personal property and return the Premises to their original condition, ordinary wear and tear and casualty not caused by Tenant excepted.
11. Taxes. This Lease may create a taxable property interest in the Premises. Tenant shall pay and be solely responsible for any personal property taxes, possessory interest tax or other leasehold interest tax assessed on, or any portion of such taxes directly attributable to the Antenna Facilities or Tenant's use of the Premises. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Property. However, Tenant shall pay any increase in real property taxes levied against the Premises which is directly attributable to Tenant's use of the Premises, and Landlord agrees to furnish proof of such increase to Tenant, except for proof of possessory or other leasehold interest taxes, billings for which are submitted directly to Tenant by the taxing agency. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments that may affect Tenant, at no cost to Landlord, and upon provision of security adequate to protect Landlord's interest in the Property as reasonably determined by Landlord, provided such security shall not exceed the contested amount. If Landlord receives notice of any personal property or real property tax assessment against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment. Further, Landlord shall provide to Tenant any and all documentation associated

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with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 11.

12. Insurance.

- a. Tenant shall obtain and maintain during the performance of any services under this Lease the insurance coverage specified in Exhibit C, attached hereto and incorporated herein by this reference, issued by a company reasonably satisfactory to Landlord's Risk Manager or maintaining an AM Best's rating of A-/VII or better.
- b. Tenant shall, prior to the Commencement Date, file with Landlord's Risk Manager evidence of insurance coverage as specified in Exhibit C. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit C.
- c. Maintenance of proper insurance coverage by Tenant is a material element of this Lease. Tenant's failure to maintain or renew insurance coverage or to provide evidence of renewal may be considered as a material breach of this Lease.
- d. All insurance standards applicable to Tenant shall also be applicable to Tenant's sub-contractors. Tenant agrees to maintain appropriate agreements with sub-contractors and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.

13. Destruction of Property. If the Antenna Facilities or the Premises are destroyed or damaged so as, in Tenant's judgment, to hinder the effective use of the Antenna Facilities, Tenant may elect to terminate this Lease as of the date of the damage or destruction by so notifying Landlord not more than forty-five (45) days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction provided that such abatement shall not exceed ninety (90) days; or

14. Condemnation. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's determination, to render the Premises unsuitable for the use which Tenant was then making of the Premises, this Lease shall terminate as of the date the title vests in the condemning authority. It is the intention of the parties that neither Landlord nor the condemning authority shall have the right to terminate this Lease in the event of the condemnation of the Premises or any portion of the Property, unless Tenant's use of the Premises thereafter materially interferes with the condemning authority's use of the balance of the Property. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property (which for Tenant shall include, where applicable, the value of its Antenna Facilities, moving expenses, prepaid Rent, and business dislocation expenses) as set out by the condemning authority, or as agreed to by the parties. If the respective interests are not set forth by the condemning authority and the parties are unable to agree, their respective share shall be determined by mediation through an independent mediator or if mediation fails to resolve the controversy, then by

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arbitration under the provisions of the California Arbitration Act. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

15. Indemnity.

- a. Tenant agrees to indemnify, hold harmless and defend Landlord, its City Council, and each member thereof, and every officer, employee, representative or agent of Landlord, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration (collectively "Losses"), to the extent caused by the negligent acts or omissions related to this Lease performed by Tenant or its agents, employees, contractors, consultants and other persons acting on Tenant's behalf. This obligation to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or wrongful acts for which Tenant or its agents, employees, contractors, consultants and other persons acting on Tenant's behalf would otherwise be held legally liable. Tenant shall also indemnify Landlord for any Losses to the extent caused by Tenant's default under this Lease.
- b. Landlord agrees to indemnify, hold harmless and defend Tenant, and every officer, employee, representative or agent of Tenant, from any and all Losses to the extent caused by the negligence or willful misconduct of Landlord or its agents, employees, contractors, consultants and other persons acting on behalf of Landlord in relation to this Lease. This obligation to indemnify, hold harmless and defend shall only apply to such acts that are the product of active negligence, willfulness or wrongful acts for which Landlord or its agents, employees, contractors, consultants and other persons acting on Landlord's behalf would otherwise be held legally liable. Landlord shall also indemnify Tenant for any Losses to the extent caused by Landlord's default under this Lease.
- c. Except for indemnification pursuant to this Section 15 and Section 22 below, neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

16. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Landlord, to: Performing Arts and Convention Center
Executive Director
800 Hobson Way
Oxnard, California 93030

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With a Copy to: City of Oxnard
City Attorney
300 West Third Street
Oxnard, California 93030

Rent Payments to: Performing Arts and Convention Center
800 Hobson Way
Oxnard, California 93030

If to Tenant, to: Los Angeles SMSA Limited Partnership
dba Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attn: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing. Either party may by written notice to the other party specify a different address for notice purposes which notice shall be effective thirty (30) days following receipt thereof.

17. Title and Quiet Enjoyment.

Landlord represents and warrants that it (i) has full right, power and authority to execute this Lease; (ii) has good and unencumbered title to the Property free and clear of any ground leases, liens, mortgages or other restrictions or encumbrances upon Landlord or the Property that would interfere with Tenant's intended use of the Premises; and (iii) has the power to grant the access rights as set forth in this Lease. Landlord further warrants that Tenant shall have the quiet enjoyment of the Premises during the Term of this Lease.

18. Emergency Measures. Landlord acknowledges that Tenant, as a telecommunications carrier, has an obligation to provide its services at all times, even in times of power failures, natural disaster, civil commotion and other emergencies. Accordingly, Landlord agrees that Tenant shall have access to the Premises and the right to utilize emergency backup power batteries and generators (in compliance with applicable Governmental Approvals and federal, state and local laws), as may be reasonably necessary to allow Tenant to continue its operations in the face of such emergencies.

19. Assignment. Tenant may not assign this Lease and its other rights under this Lease (including, without limitation, any options to extend the term of this Lease) without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the preceding sentence, upon notice to Landlord, Tenant may assign this Lease to Tenant's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Tenant or transfer upon partnership or corporate dissolution of Tenant shall constitute an assignment hereunder. Upon such assignment Tenant shall be

relieved of all liabilities and obligations hereunder accruing thereafter and Landlord shall look solely to the assignee for performance of such obligations under this Lease provided such assignee accepts all such obligations in writing and is of substantially similar financial strength or credit worthiness as Tenant as of the Commencement Date. Tenant may, upon notice to Landlord, collaterally assign or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Secured Parties"). In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by such Secured Parties.

20. Successors and Assigns. This Lease shall run with the Property, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

21. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities and other equipment or trade fixtures brought onto the Premises by Tenant, all which shall be deemed personal property for the purposes of this Lease, regardless of whether or not same is deemed real or personal property under applicable laws, and Tenant shall have the right to remove all or any portion of same from time-to-time in Tenant's sole discretion and without Landlord's consent.

22. Environmental Matters.

a. Tenant shall not generate, store or dispose of any Hazardous Materials on, under or about the Property in violation of any Hazardous Substance Laws (as defined below). Tenant shall indemnify and hold Landlord, its Council members, employees, officers and agents harmless from any losses, claims, damages, penalties and liabilities to the extent caused by Tenant's violation of any Hazardous Substances Laws.

b. Landlord shall indemnify and hold harmless Tenant, its partners, directors, officers, employees, and agents, and any assignees, subtenants, or successors to Tenant's interest in the Premises, their partners, directors, officers, employees, and agents, from and against any and all losses, claims, damages, penalties, and liability, including all out-of-pocket litigation costs and the reasonable fees and expenses of counsel and experts, arising out of the use, generation, storage, release, or disposal of Hazardous Materials by Landlord, its agents, or contractors prior to execution of this Lease or at any time after execution, or by any prior owner or operator of the Property, and also from and against the cost of any required repair, cleanup, or detoxification and any closure or other required plans to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of Hazardous Materials by any person on, under, or in the Property.

c. If any cleanup, repair, detoxification, or other similar action is required by any governmental or quasi-governmental agency as a result of the storage, release, or disposal of Hazardous Materials by Landlord, its agents or contractors, at any time, or by any prior owner, possessor, or operator of any part of the Property, and such action interferes with Tenant's normal use of the Premises for greater than a twenty-four (24) hour period, then

the Rent will be abated entirely during the period beyond twenty-four (24) hours; in addition, Tenant shall have the rights set forth in this Lease.

- d. In this Section, "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances by any law or statute now or after this date in effect in the state in which the Premises are located; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "Hazardous Substance Laws").
- e. The provisions of this Section will survive the expiration or termination of this Lease.

23. Relocation of Premises. Landlord shall, following expiration of the fifteenth (15th) anniversary of the Commencement Date, have the one-time right to have the Premises permanently relocated to a different location on the Property pursuant to the following conditions: (i) the alternate location must satisfy Tenant's requirements related to quality of service, coverage area and capacity, (ii) the relocation must be performed exclusively by Tenant or its agents and must not result in an interruption of Tenant's service provided from the Property and (iii) the costs of any such relocation of the Premises and Antenna Facilities shall be solely the responsibility of Landlord. Within one (1) year after agreeing to the relocation of the Premises and its facilities located thereon, Tenant shall complete the relocation, at the expense of Landlord, provided that all Governmental Approvals required for such relocation have been obtained. Tenant shall be free to continue to use the original Premises during the period of relocation. In the event an alternate site cannot be agreed upon, or if Landlord declines to pay for the cost of any such relocation, then Landlord's ability to obtain a relocation of the Premises under this Section 23 shall terminate and be of no further force or effect.

24. Miscellaneous.

- a. The substantially prevailing party in any litigation or other proceeding arising under this Lease shall be entitled to its court costs and reasonable attorneys' fees (which, for Landlord, shall include the reasonable value of services rendered by the City Attorney's Office), including appeals, if any.
- b. Each party agrees to furnish to the other such truthful estoppel information as the other may in writing reasonably request, upon not less than thirty (30) days' prior notice.
- c. This Lease and all addenda and exhibits attached hereto constitute the entire agreement and understanding of the parties, and supersede all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

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- d. If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.
- e. Landlord agrees to cooperate with Tenant in executing (or obtaining the execution by third parties, as the case may be) any documents necessary to protect Tenant's rights under this Lease or Tenant's use of the Premises. Such documents may include, without limitation, a short-form memorandum of this Lease (which may reference the various renewal rights of Tenant under this Lease), a short-form memorandum of the easement or license agreements of this Lease, a waiver of Landlord's interest in the Antenna Facilities, or a non-disturbance agreement from any existing or future mortgagee or ground lessor assuring that Tenant may remain in possession of the Premises without reduction in its rights under this Lease should Landlord default under said mortgage or ground lease. All of the foregoing documents must be commercially reasonable in content and in a form suitable for recordation, and shall be executed by Landlord not later than thirty (30) days after Tenant's request therefore.
- f. If requested by Landlord, Tenant shall, within thirty (30) days thereafter, record a quitclaim deed to evidence the termination of Tenant's interest in the Property and the Premises.
- g. This Lease shall be construed in accordance with the laws of the State of California. The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party. If the parties delete any provisions appearing in the original draft of this Lease, this Lease shall be interpreted as if the deleted language were never a part of this Lease.
- h. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
- i. The captions contained in this Lease are inserted for convenience only and are not intended to be part of this Lease. They shall not affect or be utilized in the construction or interpretation of this Lease.

[SIGNATURES ON FOLLOWING PAGE]

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DATED as of the date first set forth above.

LANDLORD:

CITY OF OXNARD, A MUNICIPAL CORPORATION

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO CONTENT:

Edmund F. Sotelo, City Manager

APPROVED AS TO FORM:

Alan Holmberg, City Attorney

APPROVED AS TO INSURANCE:

James Cameron, Risk Manager

TENANT:

Los Angeles SMSA Limited Partnership, a California
Limited partnership, dba Verizon Wireless

By: AirTouch Cellular, its General Partner

By: _____
Name: Walter L. Jones, Jr.
Title: Area Vice President Network

Date: _____

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Exhibit A

Legal Description of the Property

ATTACHMENT 1
PAGE 15 OF 19

DRAFT

Exhibit B
Antenna Facilities

ATTACHMENT 1
PAGE 16 OF 19

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**INSURANCE REQUIREMENTS FOR LEASES OF LAND OR BUILDINGS
(WITHOUT AUTOMOBILE LIABILITY REQUIREMENT)**

1. Lessee shall obtain and maintain during the term of the lease the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the lease by lessee, its agents, representatives, employees or sublessees.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001) or its substantial equivalent. If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;

b. Workers' Compensation Insurance in compliance with the laws of the State of California, and Employer's Liability Insurance in an amount not less than \$1,000,000 per accident or disease per employee.

c. Property Insurance against all risks of loss to any tenant improvements or betterments in the amount of the full replacement cost of the improvement or betterment with no co-insurance provisions.

2. Lessee shall, prior to occupation of the premises, file with the Risk Manager certificates of insurance evidencing the coverage required by this Exhibit C. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on the attached forms or on other forms reasonably approved by the Risk Manager. All certificates are to be received and reasonably approved by the Risk Manager before occupation of the premises. The certificates of insurance shall be forwarded to the Risk Manager, addressed as follows:

City of Oxnard
Risk Manager
Reference No. _____
300 West Third Street, Suite 302
Oxnard, California 93030

3. Lessee agrees that all insurance coverages shall be provided by a California admitted or licensed insurance carrier with an A.M. Best rating of A-:VII or better and shall be endorsed to state or shall provide that coverage may not be canceled or materially changed without 30 days' prior written notice to the Risk Manager.

4. Lessee agrees that the Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to name City, its City Council, officers, employees and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of lessee; products and completed operations of lessee; premises owned, occupied or used by lessee; or automobiles owned, leased, hired or borrowed by lessee. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees and volunteers.

5. The coverages required in item 4 above shall be primary and non-contributing to or in excess of any existing City insurance coverages (**this must be endorsed**) as relates to lessee's operations. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. All insurance standards applicable to lessee shall also be applicable to lessee's sublessees. Lessee agrees to maintain appropriate agreements with sublessees and to require that lessee's sublessees provide evidence of coverage as required hereunder upon receipt of a written request from the Risk Manager.

8/11

ATTACHMENT 1
PAGE 17 OF 19



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
06/27/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York NY Office 199 Water Street New York NY 10038-3551 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (847) 953-5390	
	E-MAIL ADDRESS:	
INSURED Cellco Partnership d/b/a Verizon wireless One Verizon Way Basking Ridge NJ 07920-1097 USA	INSURER A: National Union Fire Ins Co of Pittsburgh 19445	
	INSURER B: New Hampshire Ins Co 23841	
	INSURER C: Illinois National Insurance Co 23817	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER: 570042989692** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Included GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		2449475	06/30/2011	06/30/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$2,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		CA3506323 AOS CA3506325 MA CA3506324 VA	06/30/2011	06/30/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION					EACH OCCURRENCE AGGREGATE
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N N/A	015883656 AOS 015883657 MA, MI, ND, OH, WA, WI, WV, WY	06/30/2011	06/30/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Evidence of Insurance:

CERTIFICATE HOLDER**CANCELLATION**

Evidence of Insurance NY . USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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ACORD 25 (2010/05)

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 ATTACHMENT 1
 PAGE 18 OF 19

Holder Identifier :

Certificate No : 570042989692

