

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A ) RESOLUTION NO. 16-4759  
DISTRIBUTED ANTENNA SYSTEM LICENSE )  
AGREEMENT AT THE OREGON CONVENTION ) Introduced by Chief Operating Officer  
CENTER ) Martha Bennett in concurrence with  
 ) Council President Tom Hughes

WHEREAS, the Oregon Convention Center (OCC) desires to provide the highest level of services, including fast and reliable technology, to OCC clients;

WHEREAS, in order to provide extended and improved wireless communication services to OCC visitors, on May 12, 2016, the Metropolitan Exposition Recreation Commission issued a Request for Proposals (RFP) for the design, installation, operation and maintenance of a neutral-host Distributed Antenna System (DAS) at the OCC;

WHEREAS, Insite Wireless Development, LLC was the highest ranked proposer to respond to the RFP;

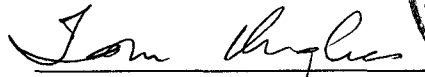
WHEREAS, OCC staff, with support from the Office of the Metro Attorney, have negotiated the terms of a proposed License Agreement, whereunder Insite Wireless Development will design, install, operate and maintain a neutral-host DAS in the OCC for a period of 10 years, with a right to extend the initial term for two additional five-year periods;

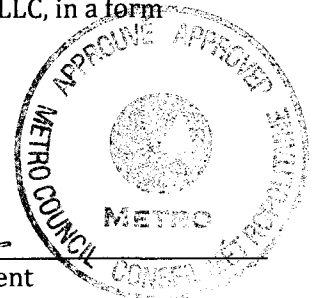
WHEREAS, on December 7, 2016, the Metropolitan Exposition Recreation Commission adopted Resolution No. 16-32 For the Purpose of Approving a Distributed Antenna System License Agreement at the Oregon Convention Center; and

WHEREAS, the Metro Council, as the fee owner of the Oregon Convention Center, is required to approve of any contracts for the transfer real property owned by Metro; now therefore

BE IT RESOLVED that the Metro Council authorizes the Metro Chief Operating Officer to enter into a long term License Agreement with Insite Wireless Development, LLC, in a form substantially similar to attached Exhibit A.

ADOPTED by the Metro Council this 15<sup>th</sup> day of December, 2016.

  
Tom Hughes, Council President



Approved as to Form:

  
Alison R. Kean, Metro Attorney

# DAS License Agreement

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## OREGON CONVENTION CENTER NEUTRAL-HOST DISTRIBUTED ANTENNA SYSTEM LICENSE AGREEMENT

This License Agreement for Distributed Antenna System (the “License” or the “Agreement” herein) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016 (the “Execution Date”) by and between the **Metropolitan Exposition Recreation Commission**, an appointed commission of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter (Metro and MERC jointly referred to herein as “Licensor”), and **InSite Wireless Development, LLC**, a Delaware limited liability company (“Licensee”).

### RECITALS:

A. Licensor is the owner and operator of certain real property generally known as the Oregon Convention Center (“OCC”) located at 777 NE Martin Luther King Jr Blvd, Portland, OR 97232, which is more fully described in **Exhibit “A”** (the “OCC Property”); and

B. On May 12, 2016, Licensor issued a formal Request for Proposals (the “RFP”) for the design, installation, operation and maintenance of a neutral-host distributed antenna system (the “DAS”) at the OCC and Licensee submitted a proposal in response to the RFP.

C. Licensor selected the proposal submitted by Licensee and issued a Notice of Intent to Award Contract on August 5, 2016, and it is now the desire of the parties to enter into this Agreement to permit Licensee to design, install, operate and maintain a neutral-host DAS in the OCC to provide extended and improved wireless communication services therein.

D. The parties agree and intend that the DAS will be designed, installed, operated, and maintained so that the OCC visitors and the general public will have improved wireless communications connectivity at the OCC.

E. The parties desire to enter into this Agreement for limited purposes set forth below.

### AGREEMENT:

#### 1. Communications Purpose; Grant of License.

1.1. Licensor hereby grants to Licensee the exclusive right to construct, install, upgrade, own, operate, repair and maintain the DAS Facilities, as defined below, on and in the Property for the Communications Purposes and the right to exclusive use of portions of the Property for the DAS Facilities. As used herein, “Communications Purpose” means to provide wireless voice and data telecommunications service providers and/or other customers and users (“Sub-Licensees”) with access to the DAS for receiving

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and transmitting radio frequency signals to wireless devices, including without limitation, any transmission of radio frequency signals by Sub-Licensees to their customers using licensed and unlicensed spectrum (whether by using LTE in unlicensed spectrum (LTE-U) or similar technologies). The DAS must be compatible with current (GSM, CDMA, EVDO, UMTS, HSPA+, and LTE) and will distribute those services deployed by the Sub-Licensees. Notwithstanding the forgoing, Licensor reserves to itself the exclusive right to provide wireless services (and the equipment necessary to do so) pursuant to Institute of Electrical & Electronic Engineers (“IEEE”) 802.11(as may be amended or replaced), and any other similar “Wi-Fi” type of service (all of which shall be referred to as “Wi-Fi Services”) to customers and users within the OCC. Licensee (and any of its Sub-Licensees) is not permitted to construct, install, operate or maintain any Wi-Fi Services at the OCC. For the avoidance of doubt, the foregoing prohibition shall not prohibit persons at the OCC from operating mobile hot spots or similar wireless networks using their mobile wireless devices.

1.2. Licensee has the exclusive right and obligation to construct, install, upgrade, own, operate, repair and maintain the DAS and related equipment, wiring, conduit, and cable (collectively, the “DAS Facilities”) on and within certain portions of OCC Property (the “Licensed Premises”) for the Communications Purpose; provided, however, that Licensee agrees it will not operate the DAS using unlicensed spectrum, nor permit the Sub-Licensees to deploy LTE in the unlicensed spectrum (LTE-U) or similar technologies using unlicensed spectrum, without Licensor’s prior written approval, which will not be unreasonably withheld, conditioned or delayed. The Licensed Premises include: (a) an identified equipment room for the DAS Facilities (the “Equipment Room”); (b) identified portions of the interior of the OCC facility for the infrastructure required to support the DAS Facilities, which may include without limitation, antennas, remotes, cables, wiring, conduits, HVAC, fire protection, security systems, spare modules, electric services and other related utility services, and other equipment as determined to be necessary or appropriate by Licensee in the ownership and operation of the DAS Facilities; and (c) identified space on the rooftop of the OCC Property for installation of GPS and/or donor antennae to support operation of the DAS Facilities. The Licensed Premises is more fully described/depicted on Exhibit “B” attached hereto. The DAS Facilities will be designed and constructed to provide extended and improved wireless communication to 100% of the publically accessed areas within the interior of the OCC (the “DAS Coverage Area”). The DAS Coverage Area is depicted on the map attached hereto as Exhibit “C”.

1.3. Licensor further grants Licensee, and its officers, agents, representatives, employees, contractors, and sub-licensees (collectively, the “Licensee Parties”) a right of ingress and egress to the Licensed Premises throughout the OCC Property as may be required for the purpose of constructing, installing, maintaining, operating and removing a Licensee Party’s equipment in accordance with the provisions of this Agreement. Licensor acknowledges that Licensee Parties require seven (7) day per week, twenty-four (24) hour access to their DAS equipment, and Licensor agrees to provide such access subject to the security procedures which shall be added to the Agreement via amendment as Exhibit “D” (the “Access Procedures”). During the Term (as defined below) of this Agreement, Licensor has the right to revise the Access Procedures upon not less than sixty (60) days’ prior written notice to the Licensee Parties.

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## 2. Due Diligence Period.

2.1. Licensee shall have ninety (90) days from the Execution Date (the “Due Diligence Period”) to conduct due diligence, including without limitation a technical, environmental, and market feasibility review in connection with the DAS Facilities. In the event Licensee determines, in its sole business judgment, that installing the DAS Facilities and operating the DAS System at the OCC Property is not feasible for Licensee, Licensee shall have the right to terminate this Agreement without penalty by providing written notice to Licensor prior to the expiration of the Due Diligence Period.

2.2. Attached as Exhibit “E” is an initial description of the scope of work for the design, construction, installation and deployment of the DAS Facilities to be built and installed by Licensee subject to the terms and conditions of this License at the OCC Property (the “Initial DAS Facilities Design”). During the Due Diligence Period Licensee will provide Licensor with preliminary drawings, design and specifications, based off the Initial DAS Facilities Design (the “DAS Plans and Specifications”). The final DAS Plans and Specifications will be provided to Licensor for review and approval prior to commencement of construction and installation of the DAS Facility. Licensor approval will not be unreasonably withheld, conditioned or delayed. Licensor approval shall in no event be deemed a representation that the DAS Plans and Specifications comply with applicable laws, ordinances, rules or regulations.

2.3. Licensor hereby designates Matt Uchtman as the point of contact with respect to the OCC regarding the development of the DAS. Licensee hereby designates Robb Alarcon as the project manager responsible for the implementation and management of all aspects of the day-to-day operations related to the development of the DAS at the OCC. Either party may change their respective designation above by providing written notice to the other party.

## 3. Duties, Rights and Responsibilities of Licensee

3.1. Licensee shall design, construct, operate and maintain the DAS at no cost to Licensor. Licensee’s obligations shall include, but are not limited to, design, planning, implementation, management, installation, utility placements and supporting infrastructure, monitoring and maintenance, and marketing and sub-licensing the DAS to broadband wireless carriers (cellular or PCS). For the avoidance of doubt, Licensee is not providing any services directly to Licensor as part of this Agreement, nor will the DAS Facilities interconnect with Licensor’s equipment or network. Furthermore, Licensor acknowledges and agrees that operation of the DAS Facilities is contingent on Licensee’s agreements with the Sub-Licenses to deploy their equipment on, and make use of, the DAS Facilities on terms and conditions (including, without limitation, payment to Licensee of sub-license fees and capital contributions (as defined below)) acceptable to Licensee in its commercially-reasonable discretion.

3.2. Licensee shall make commercially reasonable efforts to enter into at least three (3) or more communications sub-license agreements with nationally recognized cellular wireless carriers (individually or collectively, as the context may require, the “Sub-License Agreement(s)”). The Sub-License Agreements

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shall provide that (x) the term of each Sub-License Agreement shall not exceed the maximum Term of this Agreement, and (y) the Sub-License Agreements shall be subject and subordinate to this Agreement in all respects including but not limited to, the indemnification, insurance, access and removal requirements. Licensee shall remain fully liable for compliance with all of the terms and conditions, and fulfillment of all of its covenants contained in this Agreement, notwithstanding the terms of any such Sub-License Agreement. Except in the event of emergencies, Licensee shall be sole the point of contact with respect to all Sub-Licensee Carrier communications. Licensee shall be responsible for all Sub-Licensee Carrier installation and access supervision, DAS monitoring and maintenance, and RF interference management with respect to the DAS Facilities.

3.3. During the Due Diligence Period, Licensee shall coordinate with the City of Portland and its applicable local life safety (Police and Fire) agencies and personnel in order to evaluate the existing radio coverage of the applicable licensed wireless frequencies utilized by such life safety agencies within the OCC. If and to the extent reasonably determined by Licensee and the City of Portland that the existing radio coverage of such life safety licensed wireless frequencies is insufficient to support the operations or emergency response needs of the City of Portland's local life safety agencies within the OCC, then Licensee, in consultation with the City of Portland, shall develop a scope of work for the design, construction, installation and deployment of equipment and infrastructure sufficient to provide adequate radio coverage for the City of Portland's local life safety (Police and Fire) licensed wireless frequencies within the OCC, consistent with the terms and conditions of this Agreement. Such scope of work shall be added to this Agreement via mutual agreement of Licensee and Licensor and Licensee shall thereafter diligently construct and complete the installation and deployment of such equipment and infrastructure, and Licensee shall use all reasonable efforts to perform such construction concurrently with its construction of the DAS Facilities.

## 4. Construction and Maintenance of DAS Facilities.

4.1. The parties agree that Licensee's ability to use the Licensed Premises is dependent upon Licensee obtaining, at its sole cost and expense, any and all certifications, licenses, variances, permits, conditional use permits or authorizations required from all applicable federal, state, local government and/or regulatory entities (the "Governmental Approvals" or the "Permits" herein) pertaining to the work to be performed by Licensee in constructing, operating, and maintaining the DAS Facilities and other necessary equipment in the manner authorized by this Agreement. Licensee will act diligently to apply for and obtain such Permits. Licensor hereby agrees to cooperate in good faith with Licensee, at Licensee's cost and expense, in obtaining Governmental Approvals by: (i) allowing Licensee to obtain Governmental Approvals and file such applications, letters and/or documents for zoning and/or building permits as are deemed necessary or appropriate by Licensee in connection with the Communications Use of the Licensed Premises; (ii) promptly executing any documents or applications as requested by Licensee to apply for permits authorizing the construction, use, and operation of the DAS Facilities at the Licensed Premises; and (iii) undertaking any other steps reasonably necessary to obtain any Governmental Approval(s) deemed necessary or appropriate by Licensee.

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4.2. Licensee shall commence the construction of the DAS Facilities upon satisfaction of the Commencement Conditions (as defined below). Licensee shall install the DAS in a good and workmanlike manner in accordance with industry standards and practices and the DAS Plans and Specifications approved by Licensor. Licensor will have the right of prior notice of any contractors performing installation, modification or maintenance work on behalf of Licensee or the Sub-Licensees. Licensee will submit the name of each contractor to Licensor prior to such contractor performing any work at the OCC. All construction, installation and improvements placed on the Licensed Premises by Licensee will be installed and made in accordance with the standards, procedures and requirements of all applicable laws, codes and regulations. No monitoring or inspection of any work on the DAS by Licensor representatives will be deemed supervision of any such employees or contractors of the Licensee or any Sub-Licensees. Licensee, and all Sub-Licensees who have entered into Sub-License Agreements, shall monitor and supervise all of their employees, agents, representatives and contractors and will assume full responsibility for them and the expertise and quality of all work and in no event will they rely on Licensor or any of its agents, employees or representatives for all or any portion of the same.

4.3. Licensee agrees that the construction schedule in the form of a Gantt chart (and methodology thereof) will be approved by Licensor before construction of the DAS Facilities commences. Licensee's construction schedule will be coordinated with Licensor and Licensee will promptly notify Licensor of all delays known or anticipated in the construction of the DAS Facility. Licensee will provide Licensor with weekly construction status reports until the DAS is operational. Promptly following the execution of this Agreement, Licensor shall provide Licensee with all applicable warranty instructions related to the OCC roof and Licensee agrees that it will comply with such instructions throughout the term of this Agreement. Licensee shall use commercially reasonable efforts to obtain appropriate documentation and/or certification from Licensor's roof manufacturer that Licensee's installation of any portion of the DAS Facilities on the OCC rooftop will not nullify or void any existing roof warranty; provided, however, that Licensor agrees that Licensee's use of Licensor's designated roofing contractor to perform any applicable roof penetrations/installation will satisfy Licensee's obligation under this section. In addition, Licensee understands and acknowledges that Licensor is party to a Solar Power Purchase Agreement with SolarCity Corporation. Licensee recognizes that the Solar Power Purchase Agreement requires that the existing solar panels located on the OCC rooftop retain unobstructed access to sunlight. Licensee shall not take any actions during the term of this Agreement that in any way cause any material interference with the existing solar panel light access and Licensee acknowledges that Licensor's approvals of the DAS Plans and Specification will be subject to Licensor's determination that the construction and location of the DAS Facility does not interfere with or adversely affect the existing solar panels located on the OCC rooftop.

4.4. Licensee shall provide, install, and terminate, for Licensor use, 24 strands of 50/125µm Laser Optimized multimode (OM4) fiber in each of the existing 18 IDF locations at the OCC, which such IDF locations and fiber cable layout shall be indicated in writing to Licensee on plans provided by Licensor ("OCC's Fiber"). OCC's Fiber may be installed in existing raceways, as available, and connected to Licensor provided patch panels. Detailed specifications shall be added to the Agreement via amendment as Exhibit "XX". Licensee, and any of its Sub-Licensees, will have no obligation or liability with respect to OCC's fiber except that it shall be installed to the standards prescribed by OCC's IS Department with OCC's fiber plant installation standards, which shall be added to the Agreement via amendment as

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**Exhibit “YY”.** Following the installation of the OCC’s fiber, Licensor’s use and maintenance of the OCC Fiber shall be at its sole expense. Upon the expiration or earlier termination of this Agreement, the OCC’s Fiber will remain property of Licensor.

4.5. Within sixty (60) days after the post-optimization period for the initial turn-up of the DAS and acceptance of the DAS by each applicable Sub-Licensee. Licensee and any Sub-Licensees will provide the following reports to Licensor via email and such reports shall be updated from time to time in the event of any material changes:

- (a) A complete list of major components showing a description and location for each.
- (b) A complete cable record and wiring diagram identifying all cable system components by location, distribution cable, and key sheet as related to instrument assignments.
- (c) Documentation of technology used for the DAS including, but not limited to, hardware equipment itemizations and configurations, electrical requirements, space requirements, peripheral equipment diagrams, rack profile diagrams, cable plant interconnectivity charts, and wiring diagrams sufficient to facilitate effective operational support of the DAS.
- (d) RF data collection and coverage tests including on site investigation and data gathering of DAS performance parameters.
- (e) Any changes to carrier frequency operations and/or power outputs if applicable.

4.6. Licensee shall bear all costs for maintenance, repair and ongoing operating costs of the DAS Facilities and agrees to maintain the DAS Facilities in accordance with industry standards. Licensee may, from time to time during the Term of this License alter, add to, modify, or change such structures for use and/or operation of the DAS Facilities on the Licensed Premises, subject to Licensor’s written consent, which consent will not be unreasonably withheld, conditioned, or delayed. During the Term of this License, Licensee shall repair and replace the DAS Facilities as it deems necessary or appropriate. All such repair and maintenance shall be constructed in a workmanlike manner and in compliance with applicable laws, rules, and regulations, including, without limitation, building codes and ordinances.

## 5. Initial Term.

5.1. This License shall be effective as of the Execution Date. The Initial Term shall expire ten (10) years following the Commencement Date. As used herein, “Commencement Date” means the date on which both of the following conditions have been satisfied and/or waived by Licensee in writing (collectively, the “Commencement Conditions”):

- (a) Licensee shall have received all Governmental Approvals necessary to allow Licensee and/or the Sub-Licensees to use the Licensed Premises for the Communications Purpose and to install the

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DAS Facilities and related equipment as Licensee deems necessary or appropriate in support of the Communications Purpose.

(b) Licensee shall have entered into one or more Sub-License Agreements pursuant to which Sub-Licensee(s) agree to deploy their equipment on, and make use of, the DAS Facilities on terms and conditions (including, without limitation, payment to Licensee of sub-license fees and Capital Contributions (as defined below)) acceptable to Licensee in its commercially-reasonable discretion. As used herein, “Capital Contributions” shall mean the amounts payable by a Sub-Licensee to Licensee as reimbursement for Licensee’s costs and expense incurred and services provided in constructing the DAS Facilities, including installation and optimization fees, and exclusive of recurring sub-license fees, DAS Facilities maintenance, monitoring, repairs, and /or customary operating expense reimbursement(s) that become due and payable by the Sub-Licensee.

(c) Upon satisfaction or written waiver by Licensee of the conditions in Section 5.1, as set forth above, Licensee shall send written notice of the Commencement Date of this License to Licensor (the “Commencement Notice”).

5.2. If the Commencement Notice has not been provided to Licensor on or before nine (9) months after the Execution of this Agreement, then this Agreement shall automatically terminate.

## 6. Renewal Terms.

6.1. Licensee is granted the option to extend the Initial Term of this License for two (2) additional periods of five (5) years (each, a “Renewal Term”) provided that Licensee is not then in Default of its obligations hereunder beyond any applicable notice and cure period. Each Renewal Term shall be deemed to have been automatically exercised except in the event that Licensee sends written notice to Licensor of its intent not to renew this License at least ninety (90) days prior to the end of the Initial Term or any applicable Renewal Term. As used in this Agreement, “Term” includes the Initial Term and any applicable Renewal Term.

6.2. If fewer than two (2) Sub-Licensees are participating in the DAS, Licensor may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing written notice of intent to terminate to Licensor at least ninety (90) days prior to the end of the Initial Term or any applicable Renewal Term.

## 7. License Fees.

7.1. Licensee shall pay to Licensor the following one-time lump sum payments:

(a) Not later than ninety (90) days following the Execution Date, Licensee shall pay to Licensor the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) via the wire transfer of



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immediately available funds pursuant to wire transfer instructions to be provided by Licensor (which Licensor will provide in writing to Licensee);

(b) Not later than sixty (60) days following the full execution of each Sub-License Agreement, Licensee shall pay to Licensor the sum of Twenty-Five Thousand Dollars (\$25,000.00) via the wire transfer of immediately available funds pursuant to wire transfer instructions to be provided by Licensor (which Licensor will provide in writing to Licensee); and

7.2. Beginning on the Commencement Date, and continuing for the Term of this License, Licensee shall pay to Licensor a license fee (the “License Fee”) in quarterly payments in accordance with Schedule 7.2 attached hereto and made a part hereof. The License Fee payments shall be due and payable in arrears within thirty (30) days after the end of each calendar quarter. Licensee shall deliver an accounting of its net receipts with each quarterly payment, and, upon Licensor’s request, promptly provide reasonable supporting documentation therefor. The License Fee for any period during the term hereof which is less than one quarter shall be prorated based on the number of days in such applicable quarter.

7.3. Fees are deemed paid only when Licensor actually receives payment. Any fee payment referenced in this Section 7 not timely paid shall accrue simple interest at the rate of the lesser of one percent (1 %) per month or the legal rate from the date the amount first came due until paid.

## 8. Taxes; Utilities.

8.1. Licensee is solely responsible for the payment of any and all lawful taxes, fees, and assessments levied upon and assessed against the DAS Facilities, equipment and other personal property owned by Licensee or any Sub-Licensee and installed on the Licensed Premises. Licensee recognizes and understands that its use of Licensor’s property may create a possessory interest subject to real property taxation and that Licensee may be subject to the payment of real property taxes levied on such interest.

8.2. Licensor hereby grants to Licensee the right to connect to and use the existing utility systems of the OCC Property in order to operate and service the Licensed Premises and the DAS Facilities. Licensee shall pay all charges to install utilities to the Licensed Premises. Licensee shall install, at its sole cost and expense sub-meters or a separate meter (if permitted by the relevant authorities) to the Licensed Premises and shall reimburse Licensor for the usage of electricity by Licensee reflected thereon. For the avoidance of doubt, Licensee plans on installing separate sub-meters for the DAS, for each Sub-Licensee’s equipment, as well as one sub-meter at each representative node (which usage will be extrapolated for the remaining nodes, as applicable). The cost thereof is to be computed at utility rates as the same are in effect from time to time. Licensor shall read the sub-meters monthly and shall invoice Licensee on a quarterly basis (including providing commercially reasonable supporting information therefor) without mark-up. Licensee’s sub-meters shall be integrated for viewing/tracking through Licensor’s existing Alerton Building Automation System (BAS). The license granted pursuant to this Agreement includes the right of ingress, egress, and access as may be required for construction, installation and operation by the appropriate electric and telephone companies for the purpose of servicing the DAS Facilities and equipment; provided, however,

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that the manner of such ingress, egress and access shall be in accordance with the Access Procedures. Licensor acknowledges that the DAS Facilities require electrical power to operate and must operate twenty-four hours per day, seven days per week. Notwithstanding the foregoing, Licensee recognizes that in order to service OCC electrical equipment Licensor may need to cut power to the OCC Property and Licensed Premises. Licensor will provide Licensee with notice of any scheduled interruptions during which power will be cut for an extended period of time. Except for Licensor's gross negligence or willful misconduct, Licensor will not be liable to Licensee for damages related to the interruption or discontinuance of electrical power.

## 9. As Is, With All Faults; Hazardous Substances.

9.1. Except as otherwise provided herein, Licensee accepts the Licensed Premises in its **AS IS, WITH ALL FAULTS** condition and understands and agrees that Licensor is under no obligation to make any improvements, perform any work, or provide any materials to prepare the Licensed Premises for Licensee or the Sub-Licensees. Licensor hereby disclaims, and Licensee on behalf of itself and all future participating Sub-Licensees hereby waives, any and all warranties of any kind whatsoever, whether statutory, express, or implied with respect to the Licensed Premises.

9.2. If Licensee or any of its sub-licensees, contractors or agents encounters any environmentally hazardous substances in the Licensed Premises, Licensee will immediately notify Licensor of such discovery and take all reasonable precautions to avoid handling or disturbing any such environmentally hazardous substances. Licensee shall not transport to, possess or locate any hazardous substances at the OCC Property, except as may be required for Licensee's operation of the DAS Facility. Licensee shall indemnify, defend and hold harmless Licensor from and against all liabilities arising out of or relating to the existence at, on, above, below or near the Licensed Premises of any hazardous substance to the extent deposited, spilled or otherwise caused by Licensee or any of its sub-licensees, contractors or agents, except to the extent deposited, spilled or otherwise caused by Licensor or any of its contractors or agents.

## 10. Duties, Rights and Responsibilities of Licensor

10.1. All areas of the Licensed Premises, including without limitation any area of the facilities used in the operation of Licensee, shall be subject to entry upon by Licensor at reasonable times for the purposes of conducting inspections or performing required maintenance in the Licensed Premises, providing Licensor does not interfere with Licensee's operations and a representative of Licensee has an opportunity to be present during any such entry.

10.2. Licensor reserves the right, at its sole expense, to alter, expand, reduce, or require Licensee to relocate, all or any of the Licensed Premises to other areas or facilities at the OCC Property after no less than ninety (90) days' notice to Licensee, provided, however, that the relocation space is reasonably acceptable to Licensee and does not detrimentally impact Licensee's regular business operations or the performance of the DAS. To the extent any Sub-Licensees are required to relocate in accordance with the

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terms hereunder, Licensor shall also reimburse all reasonable expenses incurred by Licensee or any such Sub-Licensees arising from such relocation.

10.3. This Agreement is intended to convey limited rights and interests as set forth herein. This Agreement is not a warranty of title or interest in the OCC Property or any other property owned by Licensor. This Agreement does not deprive Licensor of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the OCC Property. Licensee's use of the Licensed Premises or any other portion of the OCC Property is subject to the existing uses and prior and continuing right of Licensor to use such areas for convention center purposes or any other municipal purposes desired by Licensor.

## 11. Insurance; Indemnity.

11.1. During the Term of this License, Licensee, at its sole cost and expense, shall procure and maintain in full force and effect (i) commercial general liability insurance coverage with a limit of not less than two million dollars (\$2,000,000) per claim for bodily injury, insuring against liability arising out of Licensee's use or occupancy of the Property; (ii) automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned, and hired vehicles, including loading and unloading operators, and (iii) workers' compensation insurance as required by the laws of the State in which the Property is located and employer's liability with limits of not less than \$1,000,000 for each accident or disease. The commercial general liability and auto insurance shall name the Licensor as additional insured. Licensee shall provide at least thirty (30) days prior written notice to Licensor of the cancellation thereof. Such insurance shall be on an occurrence basis and shall be primary and not contributory with any other valid and collectible insurance that Licensor may carry. Licensee shall provide Licensor with a certificate or certificates of insurance evidencing the insurance required by this paragraph on or before the Commencement Date and promptly upon the request of Licensor thereafter. Claims made policies are not acceptable and do not constitute compliance with Licensee's obligations under this paragraph.

11.2. Licensor is a self insured governmental entity. During the term of this Agreement, Licensor will carry the following insurance with customary coverage and exclusions: (i) Excess liability insurance relating to Licensor's operation of the Property, for personal and bodily injury and death, and damage to others' property, in the amount of at least \$2,000,000 per claim; and (ii) All-risk property insurance relating to the Property, in the amount of at least 80% of the replacement value of the Property.

11.3. Licensor and Licensee mutually covenant and agree that in connection with insurance policies required to be furnished in accordance with the terms and conditions of this Agreement, or in connection with insurance policies which they obtain insuring such insurable interest as Licensor or Licensee may have in its own properties, whether personal or real, hereby expressly waive any right of subrogation on the part of the insurer against the Licensor or Licensee, as applicable, which right, to the extent not prohibited or violative of any such policy. In accordance with the waiver of subrogation in the preceding sentence, Licensor and Licensee each mutually agree to seek recovery based solely on the policies referenced in this Section 9, and waive all right of recovery against each other, their agents, or employees for any loss,

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damage or injury of any nature whatsoever to property or person, except to the extent either party is required by this Agreement to carry insurance with respect thereto.

11.4. Licensee will indemnify, defend, and hold harmless Licensor, including, but not limited to, its elected and appointed officials, officers, employees, representatives, and agents (the “Licensor Parties”) from and against all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of actions, liability and suits of any kind and nature to the extent relating to, directly or indirectly, a claim by a third-party related to any of the following: (i) breach of any representation, warranty, covenant, or agreement of Licensee in this License; (ii) negligence, gross negligence, willful misconduct, or other wrongful act or omission of Licensee or any Sub-Licensee or any person acting on behalf of or under the direction or control of Licensee or any Sub-Licensee; (iii) infringement or other violation of any intellectual property right of any third-party; (iv) a Licensee induced condition, event, or other activity that gives rise to a third-party claim (including any, or accusation of any, libel, slander, invasion of privacy, improper trade practice, or breach of warranty or any unsafe, hazardous, or defective good or service) of or at the OCC; The foregoing indemnities shall not apply to the extent that any such claims arise from the gross negligence or willful misconduct of the Indemnified Licensor Parties. Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30, and the Oregon Constitution, Licensor shall indemnify, defend, settle or otherwise hold the Licensee Parties harmless against (x) any damage to a Licensee Party’s real or tangible personal property located at the Property or personal injury or death, caused by the negligence or willful misconduct of the Licensor Parties; or (y) the gross negligence or willful misconduct of any Licensor Parties. The foregoing indemnities shall not apply to the extent that any such claims arise from the gross negligence or willful misconduct of the Licensee Parties. Except for each party’s foregoing indemnification obligations, neither party shall be liable for any punitive, exemplary, treble, and/or consequential damages as the result of non-performance of any obligation contained in this Agreement. As used in this Section 11 (Indemnification; Limitation of Liability), an “affiliate” of a party means any entity that controls, is controlled by, or is under common control with such party. The provisions of this Paragraph shall survive the termination or expiration of this Agreement.

## 12. Estoppel, Non-Disturbance and Attornment.

From time to time during the Term of this License, each parties each agrees, upon not less than ten (10) days prior written notice from the other, to execute, acknowledge and deliver a written estoppel certificate (an “Estoppel”) certifying that as of the date of the certification: (i) the License is a valid and enforceable agreement and is in full force and effect; (ii) that neither party is not in default under any of the terms, conditions, or covenants of the License beyond or any applicable cure period or, if applicable, truthfully specifying any default by such applicable party hereunder and the cure period applicable thereto; (iii) the commencement and expiration dates of the then-current term, hereof together with any remaining Renewal Term(s); and (iv) a true and correct copy of the License and all amendments thereto shall be attached to the Estoppel.

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## 13. Rights to Personal Property Owned by Licensee on the Licensed Premises.

The DAS Facilities, including, without limitation, any and all property, machinery, equipment and trade fixtures installed by Licensee, shall remain the personal property of Licensee notwithstanding the fact that such property, machinery, equipment and trade fixtures may be affixed or attached to the OCC Property. Licensee is obligated at its sole cost to remove from the Licensed Premises said property, machinery, equipment, wiring and cabling, and trade fixtures installed and/or owned by Licensee on the Licensed Premises upon the expiration or earlier termination of this License, provided, however, that Licensee may leave any wiring, conduit, and cable at the Licensed Premises to the extent it is affixed to real property and cannot be removed without doing substantial damage to the Licensed Premises or the OCC Property. Upon the expiration or earlier termination of this License, Licensee shall return the Licensed Premises to its original condition, including the removal of DAS Facility system mounting pads or other support structures. In no case shall Licensee's removal of the DAS Facility affect the integrity of the OCC building facility, including but not limited to the OCC roof. Licensee shall leave the Licensed Premises in neat and clear order and repair any damage caused by said removal, normal wear and tear excepted. Unless otherwise agreed upon in writing by the parties and subject to the terms of this section, any of Licensee's personal property remaining on the Licensed Premises or OCC Property thirty (30) days after the expiration or ninety (90) days after the earlier termination of this License shall become the property of Licensor, free of any claim by Licensee or any person claiming through Licensee, and Licensor has the right to dispose of such property as Licensee deems fit and charge Licensee for the cost of such disposal.

## 14. Compliance with Law.

Licensee shall, at its sole cost and expense, comply with the requirements of applicable municipal, county, state and federal authorities and with Licensee's rules and regulations now in force, or which hereafter may be in force, pertaining to Licensee's construction, installation, maintenance, and operation of the DAS Facilities.

## 15. Default.

A party's failure to comply with any term, covenant, or condition of this License to be performed by it pursuant to this Agreement, which failure is not remedied within thirty (30) days after such party receives written notice from the other party specifying the failure of performance shall be deemed to constitute a "Default" under this Agreement. Notwithstanding the foregoing, in the event a non-monetary failure is not reasonably susceptible of cure within the aforementioned thirty (30) day period, a party shall not be deemed to be in Default hereunder if such party commences to cure the failure in performance within such thirty (30) day period and thereafter diligently prosecutes the cure to completion. In the event of a Default by Licensee hereunder, Licensor, at its option, may cancel and terminate this License and all of Licensee's rights hereunder in and to the Licensed Premises upon written notice to Licensee. Termination for Default by a party will not waive any claim or remedies such party may have against the other party.

# DAS License Agreement

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## 16. RF Compliance/Interference Management.

16.1. Licensee shall require that its Sub-Licensees comply with applicable regulations of the FCC governing radio frequency (RF) emissions and interference. Licensee is solely responsible for ensuring that all Sub-Licensees using the DAS are frequency compatible and Licensee shall take all commercially reasonable steps necessary to correct or eliminate any interference among its users.

## 17. Termination.

In addition to the other events permitting termination hereunder, Licensee shall have the right, but not the obligation, to terminate this License by giving ninety (90) days written notice of its intention to do so upon the occurrence of any of the following events: (i) any damage to or destruction of fifty percent (50%) or more of the DAS Facilities or the Licensed Premises, or material damage to or destruction to the OCC Property under circumstances rendering it impractical or uneconomical, in Licensee's sole discretion, to repair or replace the DAS Facilities or (ii) the condemnation or other taking of any part of the Licensed Premises, the DAS Facilities or the OCC Property by any governmental agency of appropriate jurisdiction, which condemnation or other taking materially interferes with Licensee's rights hereunder.

## 18. Assignment.

18.1. Licensee shall have the right, upon written notice to Licensor but without Licensor's consent, to assign Licensee's interest in this License to any affiliate or subsidiary of Licensee, or to any person or entity that purchases all or substantially all of the assets of Licensee whether by sale, merger, or other reorganization. Licensee shall have the right to sub-license any portion of the Licensed Premises in connection with Licensee's permitted use of the Licensed Premises by its Sub-Licensees without the prior consent of Licensor. Any other assignment by Licensee shall require the prior written consent of Licensor, which consent shall not be unreasonably withheld, conditioned or delayed.

18.2. Licensor shall have the right, upon written notice to Licensee but without Licensee's consent, to assign Licensor's interest in this License to any affiliate or subsidiary of Licensor, or to any person or entity that purchases all or substantially all of the assets of Licensor, or all or substantially all of Licensor's interest in the OCC Property, whether by sale, merger, or other reorganization. Any other assignment by Licensor shall require the prior written consent of Licensee, which consent shall not be unreasonably withheld, conditioned or delayed.

18.3. Licensor shall use good faith efforts to obtain for Licensee from the holder of any mortgage and/or deed of trust now or hereafter encumbering the OCC Property a non-disturbance and attornment agreement in a form reasonably satisfactory to Licensee, which agreement shall provide that as long as Licensee is not in default of any of its material obligations under this Agreement beyond any applicable cure period, its rights as Licensee hereunder shall not be terminated and its access to and possession of the Licensed Premises shall not be disturbed by the mortgagee or trustee, as the case may be, or by any

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proceedings on the debt which any such mortgage or deed of trust secures, and that any sale at foreclosure shall be subject to this Agreement.

18.4. Licensors consents to Licensee's pledging of its interest in this Agreement (but not to any interest in the OCC Property) to its lender(s) as reasonably required by Licensee in the ordinary course of conducting its business upon reasonable written notice to Licensors. Licensors agrees to notify Lender in writing (at any address designated in writing by Licensee from time to time) of any breach or default by Licensee of its obligations under the Agreement. In the event of any breach or default of this Agreement by Licensee, Licensors will permit Licensee's lender to cure and correct such breach or default within the applicable cure period and with the same effect as if such cure had been made or performed by Licensee; and thereafter permit Licensee's lender to attorn to Licensors under the Agreement and to perform the rights and obligations of Licensee thereunder.

## 19. Quiet Enjoyment, Authority and Exclusivity.

19.1. At all times during the term of this Agreement, Licensee may peaceably and quietly hold and enjoy the Licensed Premises consistent with Licensee's use of same for the Communications Purpose, free from disturbance by any person claiming by, through or under Licensors, subject only to those matters and conditions set forth in this Agreement.

19.2. Licensors covenants and warrants to Licensee that: (i) Licensors has full right, power and authority to execute this Agreement; (ii) execution and performance of this Agreement by Licensors will not, to the best of Licensors's knowledge, violate any laws, ordinances, covenants, or the provisions of any other agreement binding on Licensors; (iii) Licensors agrees that, during the Term of this Agreement, Licensee will have the sole and exclusive right to install and/or operate a distributed antenna system or similar type of telecommunications network and/or system servicing wireless communications carriers and/or users for the Communications Purpose, such as small cells, remote radio heads, temporary wireless base station facilities (e.g. a cellular-on-wheels (COW) or otherwise (excluding Wi-Fi Services, as set forth in this Agreement), at, within, or upon the OCC Property; (iv) there are no existing macro wireless agreements or agreements that give rights to third parties to provide facilities for the Communications Purpose (excluding Wi-Fi Services, as set forth in this Agreement) at, within, or upon the Property, and (v) during the Term of this Agreement, Licensors shall not enter into any new agreements for macro wireless facilities or agreements that give rights to third parties to provide facilities for the Communications Purpose (excluding Wi-Fi Services, as set forth in this Agreement) at, within, or upon the Property unless mutually agreed by both parties.

## 20. Notices.

Any and all notices, demands, consents, approvals, or authorizations required or permitted under this License shall be in writing. They shall be served either personally, by pre-paid certified mail, return receipt requested, or via a nationally-recognized overnight delivery service. If served personally, notice shall be deemed made at the time of service on the individual to whom the notice is addressed. If provided by certified mail, notice shall be deemed to have been given five (5) business days after deposit in the United States mail.

# DAS License Agreement

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If served by facsimile or a nationally recognized overnight delivery service, notice shall be deemed to have been given on the first (1st) business day after the sender's depositing thereof with such service. Notices shall be addressed to the parties at the following addresses, which notice addresses may be changed from time to time by notice given pursuant to this paragraph.

**If to Licensor:**

Oregon Convention Center  
Attn: Executive Director  
777 NE Martin Luther King Jr. Blvd  
Portland, Oregon 97232

*with a copy to:*

Office of the Metro Attorney  
600 NE Grand Ave.  
Portland, OR 97232-2736

**If to Licensee:**

InSite Wireless Development, LLC 1199  
N. Fairfax Street, Suite 700  
Alexandria, VA 22314 Attn:  
Legal Department

*with a copy to:*

InSite Wireless Group, LLC  
260 Newport Center Drive, Suite 421 Newport  
Beach, CA 92660  
Attn: General Counsel

## 21. Force Majeure.

Any event or circumstance beyond the reasonable control of and that cannot be reasonably avoided via the exercise of due care by a party shall be deemed to constitute a "Force Majeure Event". Force Majeure Events include, but are not necessarily limited to, earthquakes, fire, lightning, explosions, floods, wars and insurrections. Neither party shall be liable for the failure to perform hereunder if such failure is the result of the occurrence of an Event of Force Majeure. Any party so affected by a Force Majeure Event shall provide written notice to the other party thereof as soon as reasonably practicable and no later than fifteen (15) business days after the termination or elimination of the Force Majeure Event describing the relevant details



# DAS License Agreement

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thereof. Following the termination or elimination of the Force Majeure Event, the parties shall promptly resume performance hereunder in the ordinary course.

## **22. Amendment.**

Neither this License nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument.

## **23. Successors.**

The covenants and conditions contained in this License shall, subject to the provisions set forth in Section 18 above, apply to and bind the successors and/or assigns of the parties.

## **24. Application of Law.**

The validity, performance and enforcement of this License shall be construed in accordance with the laws of the State of Oregon without reference to principles of conflicts of law.

## **25. Entirety.**

This License including, without limitation, all Exhibits attached hereto, constitutes the entire understanding of the parties with respect to the matters set forth in this document and supersedes all prior or contemporaneous understandings or agreements between the parties with respect to the subject matter hereof, whether oral or written.

## **26. No Waiver.**

No waiver by either party of any failure, breach, or default of the other party shall be deemed or held to constitute a waiver of any subsequent failure, breach, or default hereunder of whatever kind or nature.

## **27. Attorneys' Fees.**

In the event that any legal action is taken to enforce the provisions of this Agreement or in the event that either party seeks to enforce claims arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expert witness fees, and related costs (including, without limitation, court costs).

# DAS License Agreement

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## **28. Rejection of License Revocation Doctrine.**

The parties specifically waive any applicable law, doctrine, or other legal interpretation or principle that licenses are revocable at the will of the Licensor, with the intent and expectation that this Agreement shall only be revocable as specifically provided for and authorized by this Agreement.

## **29. Counterparts, Electronic and Facsimile Signatures.**

This Agreement may be executed in one or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by electronic delivery (in PDF, TIF, or other document format), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

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# DAS License Agreement

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IN WITNESS THEREOF, LICENSOR and LICENSEE have caused their duly-authorized representatives to execute this License Agreement for Distributed Antenna System as of the Execution Date set forth above.

**LICENSOR:**

**The Metropolitan Exposition  
Recreation Commission**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LICENSEE:**

**InSite Wireless Development, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# DAS License Agreement

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## EXHIBIT "A" TO LICENSE AGREEMENT

### THE PROPERTY

The OCC Property is more fully described as follows:

Block 10, WHEELER'S ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah and state of Oregon.

TOGETHER WITH the following described property situated in the Northeast one-quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon:

Beginning at a point on the North line of N.E Glisan Street which intersects the Southerly extension of the East line of said Block 10, WHEELER'S ADDITION TO EAST PORTLAND; thence West along the North line of said N.E. Glisan Street to the intersection of said North line with the Southerly extension of the West line of said Block 10, WHEELER'S ADDITION TO EAST PORTLAND; thence North along the Southerly extension of said Block 10, WHEELER'S ADDITION TO EAST PORTLAND to the Southwest corner of said Block 10; thence East along the South line of said Block 10 to the Southeast corner of said Block 10; thence South along the Southerly extension of the East line of said Block 10 to the point of beginning.

EXCEPTING THEREFROM those portions of Lots 5, 6, 7 and 8 lying within N.E. Martin Luther King Jr. Boulevard (N.E. Union Avenue).

FURTHER EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, Highway Division by Deed recorded March 30, 1990 in Book 2288, Page 1519, Deed Records.

TOGETHER WITH Block 11, WHEELER'S ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah and state of Oregon.

TOGETHER WITH the following described property situated in the Northeast one-quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon:

Beginning at a point on the North line of N.E Glisan Street which intersects the Southerly extension of the East line of said Block 11, WHEELER'S ADDITION TO EAST PORTLAND; thence West along the North line of said N.E. Glisan Street to the intersection of said North line with the Southerly extension of the West line of said Block 11, WHEELER'S ADDITION TO EAST PORTLAND; thence North along the Southerly extension of said Block 11, WHEELER'S ADDITION TO EAST PORTLAND to the Southwest corner of said Block 11; thence East along the South line of said Block 11 to the Southeast corner of said Block 11; thence South along the Southerly extension of the East line of said Block 11 to the point of beginning.

EXCEPTING THEREFROM that portion of said property deeded to the State of Oregon, by and through its Department of Transportation by Deed recorded March 30, 1990 in Book 2288, Page 1519, Deed Records.  
TOGETHER WITH Block 12, WHEELER'S ADDITION TO EAST PORTLAND, in the City of Portland, County of

# DAS License Agreement

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Multnomah and state of Oregon.

TOGETHER WITH the following described property situated in the Northeast one-quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon:

An irregular tract of land situated in the Jacob Wheeler D.L.C. in Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows: Beginning at the intersection of the West line of N.E. 2nd Avenue and the North line of that certain tract known as the Samuel Heiple tract described in that certain Deed from Jacob and Jemima J. Wheeler to Samuel Heiple, dated June, 1862 and recorded in Book "C", Page 708, Deed Records of said county, said point of intersection being 128 feet Southerly along said Westerly property line of N.E. 2nd Avenue from the Northeast corner of Fractional Block 12 of WHEELER'S ADDITION TO THE CITY OF PORTLAND, now a part of the City of Portland; thence Westerly along the North line of said Heiple tract, a distance of 260 feet, more or less, to the Easterly line of Fractional Block 13 of said WHEELER'S ADDITION TO THE CITY OF PORTLAND; thence Northerly along the Easterly line of said Fractional Block 13, a distance of 128 feet, more or less, to the Northeast corner thereof; thence Westerly along the Northerly line of said fractional Block 13, a distance of 156 feet to a point; thence Southeasterly in a straight line, a distance of 617 feet, more or less, crossing said Fractional Block 13, the Heiple tract and that certain tract conveyed by Samuel and Mary Heiple to Benjamin Holladay by Deed dated July 23, 1869 and recorded in Book "I", Page 642, Deed Records of said county, to a point in the Southerly line of said Heiple tract, 25 feet Westerly of the said West line to N.E. 2nd Avenue, said South line of the Heiple tract being 30 feet Northerly of and parallel with the South line of N.E. Glisan Street; thence Easterly along the South line of the Heiple tract, distance of 25 feet to the said West line of N.E. 2nd Avenue; thence Northerly along the West line of N.E. 2nd Avenue, a distance of 345.18 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM those portions conveyed to the State of Oregon, by and through its State Highway Commission by Deed recorded September 10, 1954 in Book 1680, Page 139, Deed Records.

FURTHER EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its State Highway Commission by Deed recorded June 30, 1960 in Book 2016, Page 150, Deed Records.

FURTHER EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, Highway Division by Deed recorded March 30, 1990 in Book 2288, Page 1519, Deed Records.

TOGETHER WITH all of Blocks 20, 21, 22, 27, 28, 29, 40, 41 and 42, WHEELER'S ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah and state of Oregon.

EXCEPTING THEREFROM those portions of Blocks 22, 27 and 42 lying within N.E. Martin Luther King Jr. Boulevard (N.E. Union Avenue).

FURTHER EXCEPTING THEREFROM that portion conveyed to the City of Portland, a municipal corporation of the State of Oregon by Deed recorded June 16, 1989 in Book 2212, Page 1157, Deed Records.

FURTHER EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, Highway Division by Deed recorded March 30, 1990 in Book 2288, Page 1519, Deed Records.

AND TOGETHER WITH all those portions of N.E. 2nd Avenue, N.E. 3rd Avenue, N.E. Pacific Street, N.E. Oregon Street and N.E. Irving Street vacated by City of Portland Ordinance No. 160626 and recorded June 2, 1988 in Book 2109, Page 374, Deed Records, which inured thereto the above described tracts of land.

# DAS License Agreement

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MERC CONTRACT NO. **XXXXXX**

## **EXHIBIT B TO LICENSE AGREEMENT**

### **LICENSED PREMISES-DAS FACILITIES**

Licensor and Licensee shall mutually review and approve the initial layout of the portion of the Licensed Premises applicable to the DAS Facilities, which mutual approval shall be confirmed in writing and which design shall be deemed to have been incorporated into this Exhibit B.

# DAS License Agreement

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## **EXHIBIT C TO LICENSE AGREEMENT**

### **INITIAL DAS FACILITIES DESIGN**

Licensor and Licensee shall mutually review and approve the initial design of the DAS Facilities, which mutual approval shall be confirmed in writing and which design shall be deemed to have been incorporated into this Exhibit C.

# DAS License Agreement

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MERC CONTRACT NO. **XXXXXX**

## **EXHIBIT XX TO LICENSE AGREEMENT**

### **OCC's Fiber Specifications**

[To be added via amendment]



# DAS License Agreement

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MERC CONTRACT NO. **XXXXXX**

## **EXHIBIT YY TO LICENSE AGREEMENT**

### **OCC's Fiber Plant Installation Standards**

[To be added via amendment]

# DAS License Agreement

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MERC CONTRACT NO. **XXXXXX**

## **EXHIBIT D TO LICENSE AGREEMENT**

### **ACCESS PROCEDURES**

[To be added via amendment]

# DAS License Agreement

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## SCHEDULE 7.2

### LICENSE FEES

The License Fee amounts payable to Licensor during the Term will be equal to the below-designated percentage of the Sub-License Fee Income Stream (as hereafter defined) actually received by Licensee during the applicable period from each Sub-Licensee Carrier pursuant to the terms of a fully-executed and commenced Sub-License Agreement with Licensee authorizing the Sub-Licensee’s use of the DAS Facilities for the Communications Purpose (“Licensor’s Allocated Percentage”). As used in this Schedule 7.2, the term “Sub-Licensee Income Stream” means the monthly recurring Sub-License Fees actually received by Licensee (including applicable annual escalations thereof) pursuant to a fully-executed Sub-License Agreement with any Sub-Licensee. As used in this Agreement, “Sub-Licensee Income Stream” shall not be deemed to include any of the following: (i) any sales, use or similar tax required to be collected by Licensee from the Sub-Licensees; (ii) routine costs for maintenance and repairs of the DAS Facilities; (iii) utility costs not paid directly to Licensor by Sub-Licensees; (iv) system monitoring expenses; (v) additional payments, if any, by Sub-Licensees for reimbursement of capital, equipment, and/or construction costs, whether paid in lump sum or through a capital License payment/paid installment, or similar,; and (vi) other normal and customary operating expenses, including insurance costs incurred by Licensee.

<u>Sub-Licensee(s)</u>	<u>Licensor’s Allocated Percentage</u>
For each Sub-Licensee	55% of the applicable Sub-Licensee Income Stream

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 16-4759, ROR THE PURPOSE OF APPROVING A DISTRIBUTED ANTENNA SYSTEM LICENSE AGREEMENT AT THE OREGON CONVENTION CENTER

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Date: December 15, 2016

Prepared by: Matthew Uchtman  
OCC Operations Director  
503-731-7841

#### BACKGROUND

The OCC is an event facility that hosts hundreds of conventions, conferences, meetings and other events throughout each year. Currently, the building's infrastructure unintentionally disrupts the transmission of cellular information throughout the building. As society's reliance on technology increases, this interference in cellular communication has become problematic for attendees, guests and clients. The OCC continuously receives customer complaints and poor scores on show reviews in response to the disrupted cellular service. Installation of the DAS system will enable multiple cell phone carriers to enhance their connectivity to attendees, guest and clients while at the OCC.

On May 12, 2016, the OCC asked for proposals from bidders to finance, design, install, activate, operate and maintain a success Distributed Antenna System (DAS). The OCC received nine responses to the RFP and extended in-person interviews to three of these companies. InSite was selected based on their overall experience with convention centers and the overall financial package to OCC. InSite will design, install and implement the system and ensure that the OCC has a fully installed and functional DAS by summer of 2017. This proposal will provide a permanent resolution to customer service issues at no cost to the OCC, while providing a positive financial impact through upfront payments to OCC and ongoing revenue sharing.

The Metropolitan Exposition Recreation Commission (MERC) previously approved the DAS License, by resolution, at its meeting on December 7, 2016.

#### ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** None
3. **Anticipated Effects** This proposal will provide a permanent resolution to customer service issues at no cost to the OCC, while providing a positive financial impact through upfront payments to OCC and ongoing revenue sharing.
4. **Budget Impacts**  
The OCC will have no cost to the facility and experience a positive impact on the budget as a result of the InSite contract. InSite has agreed to an upfront payment of \$150,000 to OCC within sixty days of an executed agreement. InSite will provide an additional \$25,000 payment to OCC within sixty days of full execution of any carrier agreement between InSite and the wireless carriers. Ongoing, they will

pay OCC 55% of monthly revenues, not including capital contributions or payment of ongoing pass through expenses for utilities, taxes, monitoring, insurance and maintenance paid by the carriers.

**RECOMMENDED ACTION** Staff recommends that the Metro Council, by Resolution 16-4759, approve the contract award and written license (attached hereto) to InSite for the OCC Distributed Antenna System and delegate authority to the General Manager of Visitor Venues to execute the contract. The ten-year DAS License allows InSite the opportunity to extend the license term for two additional periods, each period for a span of five years.