

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN	)	RESOLUTION NO. 19-4986
AMENDMENT TO THE DISTRIBUTED	)	
ANTENNA SYSTEM LICENSE AGREEMENT AT	)	Introduced by Chief Operating Officer
THE OREGON CONVENTION CENTER	)	Martha Bennett in concurrence with
	)	Council President Lynn Peterson

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

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

WHEREAS, Insite Wireless Development, LLC was the highest ranked proposer to respond to the RFP and in January 2017, after obtaining approvals from both MERC (MERC Resolution 16-32, on December 7, 2016) and the Metro Council (Metro Resolution 16-4759, on December 15, 2016), the OCC entered into a long term License Agreement with InSite Wireless Development for the Distributed Antenna System; and

WHEREAS, the OCC and Insite Wireless Development have since determined that installing a rooftop Macro Facility on the OCC lower lobby roof utilizes existing DAS infrastructure to supplement exterior cellular coverage, which is beneficial to OCC customers; and

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

BE IT RESOLVED that the Metro Council hereby authorizes the Metro Chief Operating Officer to amend the long term License Agreement with Insite Wireless Development, LLC to allow for the placement of a rooftop Macro Facility at the OCC, provided such amendment is in a form substantially similar to the attached Exhibit A.

ADOPTED by the Metro Council this 11 day of April, 2019.

  
 \_\_\_\_\_  
 Sam Chase, Deputy Council President

Approved as to Form:

  
 \_\_\_\_\_  
 Nathan Sykes, Metro Attorney

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MERC CONTRACT NO. 207043

**OREGON CONVENTION CENTER  
NEUTRAL-HOST DISTRIBUTED ANTENNA SYSTEM  
SECOND AMENDMENT TO  
LICENSE AGREEMENT**

This Second Amendment to License Agreement for Distributed Antenna System (the “Second Amendment”) is made and entered into as of the \_\_\_\_ day of April, 2019 (the “Second Amendment 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. Licensee and Licensor are parties to that certain License Agreement for Distributed Antenna System dated January 31, 2017, as amended by that certain First Amendment to License Agreement dated August 9, 2018 (together with this Second Amendment, the “Agreement”); and
- B. Licensee and Licensor desire to modify the agreement to further memorialize the parties’ understanding with respect to the license rights set forth therein.
- C. Accordingly, the parties desire to enter into this Second Amendment for limited purposes set forth below.

AGREEMENT:

1. Section 1.2 of the Agreement (as it was revised by Section 1 of the First Amendment) is hereby deleted in its entirety and replaced with the following:

“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; (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; and (d) certain space on the rooftop indicated in Attachment 1 to Exhibit B (the “Rooftop Space”) and within the building located on the OCC Property (the “Building Space”) for

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the placement of Licensee's equipment, cabinet(s), shelter(s) and tower(s) for the purpose of constructing, establishing, and maintaining a radio transmission facility for Licensee's use and that of its Sub-Licensees, which facility may include tower(s), cabinet(s), shelter(s), radio transmitting and receiving antennas, communications equipment, and related cables, wires, conduits, air conditioning equipment and other appurtenances (collectively, the "Macro Facilities"); provided, however, that Licensee agrees it will not construct or operate any such Macro Facilities, nor permit a Sub-Licensee to construct or operate such Macro Facilities, without Licensor's prior written approval of the construction plans for any such construction, in each instance, which may be withheld in its sole discretion. 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 publicly 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". For the avoidance of doubt, the Communications Purpose is defined to include the construction, installation, operation, maintenance, repair, replacement and relocation of the Macro Facilities and the Licensed Premises is defined to include the Rooftop Space."

2. Section 4.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

"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; (iii) promptly executing any documents or applications as requested by Licensee to apply for permits for the use of the Rooftop Space and the deployment of Macro Facilities at the Property; (iv) using commercially reasonable efforts to promptly execute all documents/applications necessary for Licensee to submit all conditional use permit and variance applications related to the deployment of Macro Facilities at the Property, provided that such documents/applications will be prepared by Licensee in collaboration with, and with the support of, Licensor and provided that such documents/application do not result in Licensor or the Property being subjected to any conditions of approval which are not reasonably acceptable to Licensor (v) undertaking any other steps reasonably necessary to obtain any Governmental Approval(s) deemed necessary or appropriate by Licensee."

3. The following Section 4.7 is hereby added to the Agreement:

"4.7 (a) From time to time during the term of this Agreement, Licensee shall have the right, subject to the prior written approval by Licensor of applicable construction plans, to construct, install, operate, maintain, replace, remove, modify, add to, upgrade, rebuild, and/or relocate any or all of the Macro

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Facilities; provided, however, that initial installation of any Macro Facilities shall not be permitted until final design approval is provided by Licensor and the City of Portland (if necessary), which may be withheld in the sole discretion of Licensor and the City of Portland (if necessary). Notwithstanding the fact that certain equipment and appurtenances that are a part of the Macro Facilities may be classified as fixtures under applicable law, the parties agree and acknowledge that all such equipment and appurtenances are, and shall at all times remain, the sole property of Licensee or the Sub-Licensee, as the case may be, and that Licensee shall have the right, but not the obligation, to remove any or all of the same during the term of this Agreement and/or at the expiration or earlier termination hereof. Upon expiration or earlier termination of this License (or any earlier removal of any such Macro Facilities), Licensee shall return the Rooftop Space to its original condition and in no case shall Licensee's removal of the Macro Facilities affect the integrity of the OCC building facility or the Rooftop Space.

(b) The Macro Facilities shall be initially configured as generally set forth on Attachment 1 to Exhibit C (Macro Site Plan) attached hereto and incorporated herein. Licensee shall have the right to modify, replace, add to, upgrade, rebuild, and/or relocate (subject to Licensor's sole reasonable approval) the Macro Facilities at any time during the Term.

(c) Licensee shall be solely responsible for the operation, maintenance, repair of, and the insurance for, the Macro Facilities."

4. The following Section 19.3 is hereby added to the Agreement:

"19.3 Licensor shall recognize the rights of the Sub-Licensees to occupy and use the Licensed Premises (including, for the avoidance of doubt, the Rooftop Space) and will permit such Sub-Licensees to occupy and use such Licensed Premises so long as such Sub-Licensees are not in default of any material obligation under the Sub-License Agreements beyond any applicable notice and cure period."

5. Schedule 7.2 of the Agreement is hereby deleted in its entirety and replaced with the Schedule 7.2 attached hereto and incorporated herein.

### 6. **Modified Exhibits.**

Licensor and Licensee agree that, as of the Second Amendment Effective Date: (i) Attachment 1 to Exhibit B (Rooftop Equipment Space) is hereby deleted in its entirety and replaced with the Attachment 1 to Exhibit B in the form attached hereto and incorporated herein; (ii) a new Attachment 1 to Exhibit C (Macro Site Plan) is hereby added to the agreement in the form attached hereto and incorporated herein.

### 7. **No Other Modifications.**

Except as expressly amended and modified hereby, the parties hereby ratify and confirm all of the terms and provisions set forth in the Agreement, and the parties acknowledge and agree that the Agreement, as expressly amended and modified hereby, continues and shall remain in full force and effect. In the event of a conflict between the terms of the Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall control.

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### **8. Counterparts.**

This Second Amendment may be executed in one or more counterparts, each of which will be the binding agreement of the executing party and which, when taken together, shall be deemed to be one and the same instrument. Electronic copies shall be deemed to be original counterparts for all purposes.

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IN WITNESS THEREOF, LICENSOR and LICENSEE have caused their duly-authorized representatives to execute this Second Amendment to 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: \_\_\_\_\_

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## ATTACHMENT 1 TO EXHIBIT B TO LICENSE AGREEMENT

**Rooftop Space**

**[See attached]**

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**ATTACHMENT 1 TO EXHIBIT C TO LICENSE AGREEMENT**

**MACRO SITE PLAN**

Licensor and Licensee shall mutually review and approve the initial design of the Macro Facilities, which mutual approval shall be confirmed in writing and which design shall be deemed to have been incorporated into this Attachment 1 to Exhibit C.



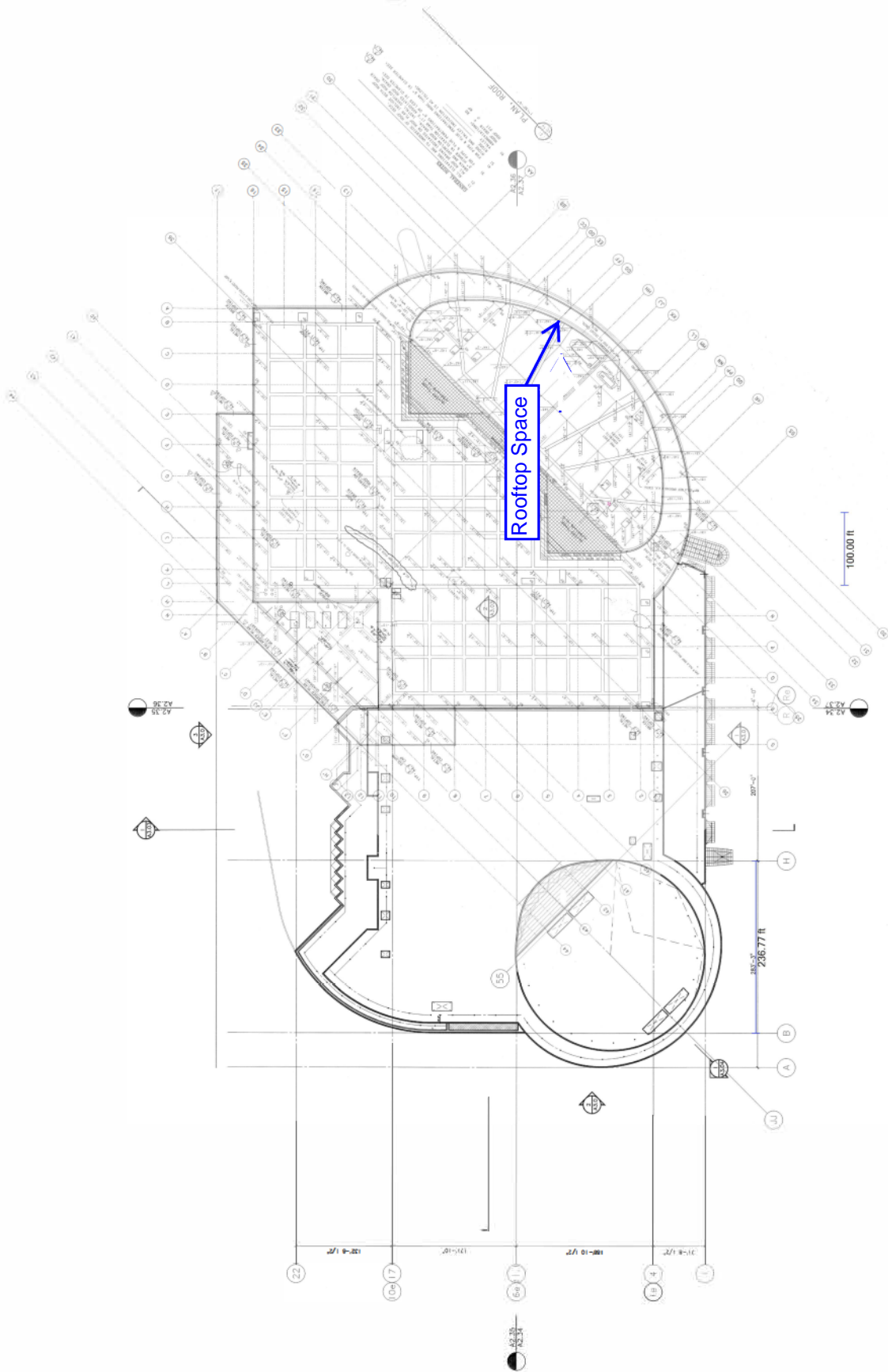
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**SCHEDULE 7.2**  
**LICENSE FEES**

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. For the avoidance of doubt, the Sub-Licensee Income Stream includes Sub-License Fees applicable to DAS Facilities and Macro Facilities. 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.

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



Rooftop Space

250.00 ft

100.00 ft

236.77 ft

## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 19-4986, FOR THE PURPOSE OF APPROVING AN AMENDMENT TO THE DISTRIBUTED ANTENNA SYSTEM LICENSE AGREEMENT AT THE OREGON CONVENTION CENTER ALLOWING A ROOFTOP MACRO FACILITY

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Date: April 11, 2019

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

[MatthewUchtman@oregoncc.org](mailto:MatthewUchtman@oregoncc.org)

Department: Oregon Convention Center

Presenter: Matthew Uchtman

Meeting date: April 11, 2019

Length:

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## **ISSUE STATEMENT**

### **ACTION REQUESTED**

[Include a timeline and work plan information]

This resolution authorizes amendment to the existing long-term License Agreement for a Distributed Antenna System with Insite Wireless Development, LLC to allow for the placement of a rooftop Macro Facility (cellular antenna) at the OCC. This installation would be at no cost to the OCC and would provide on-going revenue share funding to the OCC.

### **IDENTIFIED POLICY OUTCOMES**

[Based on prior policy direction or adopted documents from Council]

### **POLICY QUESTION(S)**

[What policy outcomes are we trying to achieve?]

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

[You should ideally be able to offer multiple policy options, and the pros and cons, anticipated effects and financial implications of each.]

### **STAFF RECOMMENDATIONS**

[Include if applicable or appropriate]

Staff recommends that the Metro Council, by Resolution, approve amendment (attached hereto) to the existing license agreement and delegate authority to the General Manager of Visitor Venues to execute the license agreement amendment.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

[Please provide strategic context where applicable and frame the discussion around how this project fits in with other Metro programs, recent public or committee engagement, stakeholder decisions, budget challenges or opportunities, etc.]

Please note, not all of the items below items will be applicable to the proposed legislation, project or issue. Include as appropriate:

- How is this related to Metro's Strategic Plan (to be developed in 2019) or Core Mission?  
*The improved cellular service that would be provided through this amendment aligns with Metro's values of Public Service and Excellence. This service would benefit residents of the region, as well as patrons of the OCC, by offering or expanding cellular signal coverage in and around the OCC, including the north plaza currently under renovation.*
- How does this advance Metro's racial equity goals?
- How does this advance Metro's climate action goals?
- Known Opposition/Support/Community Feedback  
*None known.*
- Legal Antecedents  
*The Metropolitan Exposition Recreation Commission approved forwarding the Distributed Antenna System license agreement to the Metro Council on December 7, 2016. The Metro Council approved Resolution No. 16-4759 on December 16, 2016 authorizing the current long-term license.*
- Anticipated Effects  
*This amendment will allow the Distributed Antenna System licensee to install a rooftop Macro Facility on the OCC's lower lobby roof.*
- Financial Implications (current year and ongoing)  
*The OCC will incur no costs to install the Macro Facility and receive revenue share funding. For the duration of the 10 year license, InSite Wireless Development, LLC will pay to 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 for the added rooftop Macro Facility.*

### **BACKGROUND**

[Provide a brief summary of the project, program or legislation including most recent council policy direction. This summary should include a description of how the project has moved forward since the last time it was before the Metro Council.]

OCC hosts approximately 550 events a year with total attendance exceeding 600,000. Currently, the building's infrastructure of steel and concrete disrupts the transmission of cellular signals throughout the building. Given public and client expectations for cellular usage in and around the building, OCC entered a long-term license agreement with InSite Wireless Development, LLC to install a carrier neutral Distributed Antenna System. Metro Council approved OCC entering the long-term license agreement in 2016. That system includes numerous antennas in the building and parking garage that support cellular transmissions. Installation of that system is nearing completion with an expected completion in fall of 2019. The system is being installed at no cost to OCC and OCC will receive on-going revenue share funding from system use.

InSite Wireless Development, LCC has approached the OCC to add another hardware element to the cellular antenna system - a Macro Facility. The Macro Facility would be installed on the Oregon Ballroom lobby roof and provide cellular transmissions to members of the public and OCC guests in and around that location, including the north plaza currently under renovation.

The original license agreement approved in 2016 was intended primarily to provide a system for cellular transmissions inside the building and parking garage. This amendment would add an external antenna to serve the building's north plaza as well as members of the public in proximity to the antenna. Given the slight difference in the system, Metro management believes it prudent to seek Metro Council approval to move forward with the amendment to the existing license agreement.

## **ATTACHMENTS**

[Identify and submit any attachments related to this legislation or presentation]

InSite Wireless Amendment 2 attached hereto

InSite Wireless Attachment 1 to Exhibit B attached hereto