

## **POSSIBLE MOTION**

**I MOVE TO** approve a contract with GCI/Alaska  
Wireless Network, LLC for cell service  
enhancement.

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## MEMORANDUM

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**To:** Mayor Hunter and Assembly Members  
Keith Brady, Municipal Administrator

**From:** Bryan Bertacchi, Utility Director

**Reviewed:** Jay Sweeney, Chief Finance and Administrative Officer

**Date:** May 2, 2018

**Subject:** Approval of a Contract for Cell Service Enhancement

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### **Background**

The Electric Department respectfully requests Assembly approval of the contract between GCI and the CBS Electric Department for the Cell Service Enhancement Project. GCI is a parent company of Alaska Wireless Network, LLC. Execution of this contract will allow the Electric Department to build a total of five new cell service poles within the City and Borough of Sitka. These poles will be owned by the CBS (Electric Department) and will be leased to GCI under this contract between the parties. GCI will install their cell equipment on the poles. The term of the contract is five years with an additional four extensions of five years each. For the CBS Electric Department, the financial payback on the contract is approximately three years. The contract will provide a long term revenue source for the Electric Department and thus the community while significantly improving cell service both on land and on the water. Many CBS departments have contributed significantly over the last two years to achieve this desired goal including: Finance, Planning, Assessing, and Legal.

### **Analysis**

Many community members have expressed a concern over reliability and capability of the cellular service in Sitka. Additionally, the Electric Department can benefit from a long term source of additional revenue to keep rates as low as possible in our community. GCI and the CBS Electric Department have worked together to develop a plan to provide for both of these goals. A total of five new poles will be established within the CBS. These poles will be constructed by CBS and will be subsequently leased to GCI under this term contract. GCI will install their cellular equipment on the poles.

### **Recommendation**

Approve the execution of a contract between the CBS Electric Department and GCI for the Enhancement of Cell Service.



## MASTER LEASE AGREEMENT FOR TOWER COLLOCATION AND LAND SUBLEASE

This Master Lease Agreement ("MLA") is made effective as of April 1, 2018 ("Effective Date"), by and between The City and Borough of Sitka Electric Department, a Department of the City and Borough of Sitka ("Lessor") organized and existing under the laws of Alaska with its head office located at 100 Lincoln Street, Sitka, AK 99835 and The Alaska Wireless Network, LLC, a Delaware limited liability company with offices located at 2550 Denali Street, Suite 1000, Anchorage, AK 99503-2751, on its own behalf and on behalf of its telecommunications affiliates (collectively, "Lessee") (each a "Party" and collectively, the "Parties").

### WITNESSETH:

WHEREAS, this MLA is intended to govern the relationship between the Parties at the location or site references in a particular Site Lease Agreement ("SLA"); and,

WHEREAS, Lessor owns or has agreed to construct certain communications towers (each, together with guy wires, a "Tower") that Lessee has determined are or will be suitable for use to install a telecommunications facility (each a "Site") in accordance with the provisions contained herein; and,

WHEREAS, the Parties desire to enter into this MLA to define the general terms and conditions which would govern their relationship with respect to particular sites where Lessor may wish to permit Lessee to install its facilities as hereinafter set forth.

NOW, THEREFORE, it is hereby agreed as follows:

1. **Master Lease Agreement ("MLA").** Except as otherwise stated in a Site Lease Agreement ("SLA") for the applicable Site, the Parties agree that the terms and conditions contained herein shall be binding upon each Party with respect to Lessee's use of space at any Site owned or operated by Lessor for which an SLA is entered into pursuant to this MLA. From time to time as Lessee desires to lease space at a particular Site, and Lessor agrees to lease such to Lessee, The Parties shall work in good faith to complete and mutually execute an SLA for such Site in the form attached as Exhibit A, which shall be deemed to incorporate the terms and conditions set forth herein. Upon the full execution of each SLA, the terms of this MLA shall be incorporated by reference and apply as though fully set forth in the SLA, except as otherwise specified in the SLA. In the event of a conflict between the terms of this MLA and the SLA, the terms of the SLA shall control. For the purposes herein, the term "Premises" shall refer to the portion of the tower and/or real property owned or otherwise controlled by Lessor that is leased to Lessee in the SLA.

2. **Term of the MLA.** This MLA is effective as of the Effective Date and shall remain effective until terminated by either Party with a sixty (60) day notice to the other Party, provided, however, after any termination of this MLA, its terms and conditions shall survive and continue to govern with respect to any SLAs that are still active prior to such termination of this MLA until the remaining SLAs expire or are otherwise terminated.

3. **Term of the SLA.** The initial term of each SLA will be five (5) years from the effective date of that individual SLA, with four (4), five (5) year extensions (individually, an "Extension" and collectively, the "Extensions") to be exercised at the sole option of Lessee, so long as Lessee is not in violation of any terms or conditions as set forth in this MLA or the applicable SLA but will be subject to the termination rights of the Lessor as set forth herein. The Extensions shall be automatic unless: (a) Lessee notifies Lessor at least thirty (30) days prior to the expiration of the then-current term of its intent not to renew the SLA, or (b) Lessor notifies Lessee in writing of a default, and Lessee fails to timely cure that default, or (c) Lessor notifies Lessee at least thirty (30) days prior to the expiration of the then-current term of its intent not to renew the SLA. At the conclusion of the final Extension, the SLA shall continue in force upon the same covenants, terms, and conditions for a further term of one (1) year and for annual terms thereafter.



until either Party gives written notice of termination. Notice of termination during the year to year period shall be given no later than six (6) months before the expiration of the then-current term.

**4. Build to Suit.** Lessee has identified five (5) new telecommunications tower sites within the City and Borough of Sitka that Lessee desires to have Lessor develop and construct for use by Lessee pursuant to the terms and conditions of this MLA (the "Initial Sites"). The location of the Initial Sites shall be as described in Exhibit B to this MLA. Lessor shall secure all land rights, land use permits, and other approvals and permits (including but not limited to any land rights required for access to each initial Site from the closest public right-of-way, and any building permit) required to allow Lessor to construct a monopole tower site at each of the Initial Sites to the standards required by Lessee. Each Initial Site shall be constructed in accordance with the codes, standards, and minimum specifications set forth in Exhibit C to this MLA. Lessor shall proceed to develop and construct the Initial Sites at Lessor's sole expense, in a professional and workmanlike manner and in accordance with industry standards, including, without limitation, obtaining all necessary due diligence documentation, governmental approvals and permits (including, without limitation, compliance with FCC and FAA requirements), and environmental risk analysis. The Initial Sites shall be Substantially Complete on or before April 30, 2019 (the "Completion Date"). Substantially Complete shall mean that each site: (A) is telco, fiber (if available), and power ready; (B) includes the tower, tower grounding ring, ground space, generator pad, and grounding ring for all of Lessee's ground based equipment (e.g., shelter and generator); (C) includes completion of all below-grade work and grading work associated with the construction of the Site; (D) provides for a gravel access road for vehicular use to allow physical and utility access from a public right of way; and (F) has all applicable permits and governmental approvals in place to allow Lessee to install its communications facility at such site. Lessee shall be responsible, at its sole cost, for procuring and installing its equipment at each Site. In the event Lessor fails to Substantially Complete the Initial Sites by the Completion Date, in addition to all other rights and remedies of Lessee. If the Completion Date is postponed for one hundred eighty (180) days or longer, Lessee shall have the additional right to terminate this MLA in whole or in part with sixty (60) days' written notice to Lessor. The Parties may mutually agree to extend the Completion Date to June 30, 2019. On the Completion Date, Lessor and Lessee shall execute an SLA for Lessee's Premises at each of the Initial Sites.

At any time during the Term of this MLA, Lessee and Lessor further agree that Lessee may request that Lessor complete construction of additional sites pursuant to the requirements and provisions set forth in this Section and that Lessor shall construct such sites subject to a reasonable timeline to be negotiated by the Parties if mutually agreeable to the Parties.

**5. Premises.** In each SLA, Lessor leases to Lessee, and Lessee leases from Lessor space on a Tower ("Tower Space"), constructed, owned and operated by Lessor, and certain land and connections between the land and the Tower (collectively, the "Premises") as defined within each SLA. Lessor also will provide Lessee a non-exclusive access for ingress and egress, parking, utilities, construction, maintenance, operation and removal relating to Tenant's use of each site on, over, under and upon the adjacent land of Lessor and the Tower, subject to the conditions and restrictions set forth herein.

The Premises shall be used for the purpose of installing, constructing, maintaining, repairing, operating, inspecting, and removing a communications facility as provided in the applicable SLA. Unless otherwise stated in the SLA, the following shall be included in the Premises:

(a) Transmission lines, mounting and grounding hardware which lines and equipment shall be installed on (or inside of, as may be appropriate) the Tower in accordance with good and accepted engineering practices.

(b) If a SLA allows for ground space for a communications building, and/or outdoor equipment facilities (collectively, "Communications Building"), it shall be placed at the Site containing, without limitation and in Lessee's reasonable discretion, wireless communications equipment including, but limited to, radio-telephone base station(s), wireless data, microwave



equipment, radio-telephone and or other commutation switch(es), power supplies, battery(ies), and accessories.

(c) In the event of an emergency power outage, and for the duration of such outage, Lessee may install a temporary portable generator to be located adjacent to the Communications Building. The fuel tank for the generator will be self-contained (gasoline or diesel) and shall be used in accordance with all applicable environmental and other laws, building codes, and regulations.

(d) The Premises leased under this MLA and applicable SLAs are leased for the purposes of Lessee's telecommunications services and activities. Any sublease or assignment of this MLA or any SLA by Lessee shall be subject to the assignment or transfer provisions of this MLA. Lessee shall be in compliance with all laws and regulations applicable to the use of the tower for cell services.

For the purposes of this MLA, all of Lessee's antennas, dishes, lines, equipment, switches, power supplies, batteries, Communications Building, accessories, and necessary appurtenances hereinafter shall be referred to collectively as the "Communications Facility." The Communications Facility may be installed by Lessee or by any of Lessee's agents or contractors, and in the installation thereof, said agent(s) or contractor(s) may tie into the Tower's grounding system. Lessee has the right to make alterations of the Communications Facility from time to time so long as such alterations do not adversely affect the structural integrity to the Tower or interfere with those uses being made or reasonably anticipate to be made of the Tower as of the date of such alteration.

Tenant shall keep the Premises, Communication Facility, and improvements thereon in a neat, safe and orderly condition and in good repair at all times, and shall promptly repair any damage caused by Tenant, its agents or contractors to the Real Property, Tower or other improvements.

6. **Rent.** The rent for each Premises ("Rent") will be defined in each SLA and is payable on the first (1<sup>st</sup>) day of each month. Payment shall be made by check, bank draft, or money order made payable to Lessor. If this Lease commences on a date other than the first day of a month, Rent shall be prorated as of, and paid on, the Commencement Date. If this Lease is terminated at any time other than the last day of a month, rent shall be prorated as of the date of termination. In the event of termination for any reason other than nonpayment of rent, all prepaid rent shall be refunded to Lessee. All unpaid rents and fees will accrue interest at 10% percent per annum beginning 30 days after payment is due.

7. **Access and Easements.** Lessor grants to Lessee, for use by Lessee, its employees, agents, contractors and by utility companies, a non-exclusive easement and non-exclusive licenses over, under, upon and across the adjoining lands of Lessor, the Tower and rights-of-way or easements owned or leased by Lessor, on a twenty-four (24) hour daily basis, for (a) ingress and egress to and from each Premises (the "Access Easement"), and (b) the installation, operation and maintenance of necessary utilities for each Premises (the "Utility Easement"). Such Access Easement and Utility Easement shall be over and lie within existing roads, parking lots and/or roads that access each Premises. Lessee shall have the right, but not the obligation, to improve the Access Easement by grading, graveling and/or paving same, subject to Lessor's prior written consent. Lessee shall obtain prior written approval from Owner prior to any change in a particular Site of any Access Easement or Utility Easement.

Lessor agrees that no part of Lessee's Communications Facility at any site installed, constructed, erected or placed by Lessee on the Premises will be or become, or be considered as being, affixed to or a part of Lessor's property, any and all provisions and principles of law to the contrary notwithstanding and it is the specific intention of Lessor to agree hereby that all such Tenant's Communications Facility (exclusive of improvements made by Lessor to the Tower itself, which will remain part of the Tower) will be and remain the property of Lessee despite any termination of the applicable SLA.



Lessee shall remove all Lessee's Communications Facility at its sole expense within ninety (90) days of the expiration or earlier termination of the applicable SLA, and Lessee shall repair any damage to the Premises, Tower and Real Property caused by such removal. In the event of Lessee's failure to remove same, and make such repairs prior to the expiration or permitted termination of the applicable SLA, at Lessor's option, Lessor may treat Lessee as a holdover tenant, subject to the provisions herein for same, until such removal and repairs are completed.

8. **Utilities.** Terms for utility usage at each Site will be defined in each SLA.

9. **Holding Over.** If Lessee holds over after the expiration of an SLA, the holding over will not operate as a renewal or extension of an SLA, but only creates a tenancy from month to month, regardless of any rent payments accepted by Lessor. Both Parties' obligations for performance under this MLA and the applicable SLA will continue until the month-to-month tenancy is terminated by either Party by giving the other Party at least 30 days' prior written notice.

10. **Notices.** Any notices to be given under this MLA by either Party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested, to the recipient at the address indicated below:

**Lessor:**

City and Borough of Sitka Electric Department  
Attn: Bryan Bertacchi  
100 Lincoln St.  
Sitka, AK 99835  
Telephone: 907-747-4000  
Email: bryan.bertacchi@cityofsitka.org

**Lessee:**

The Alaska Wireless Network, LLC  
Attn.: Cathy Manka  
2550 Denali St., Suite 1000  
Anchorage, AK 99503  
Telephone: 907.868.5723  
Email: cmanka@gci.com

**With a copy of legal notices to:**

City and Borough of Sitka  
Attn: City Clerk  
100 Lincoln St  
Sitka, AK 99835

**With a copy of legal notices to:**

GCI Communication Corp.  
Attn: Corporate Counsel  
2550 Denali St., Suite 1000  
Anchorage, AK 99503

or such other address or to the attention of such other person as the recipient Party shall have specified by prior written notice to the sending Party. Such notice shall be effective as of the date of its receipt.

11. **Indemnity.** Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from or related to the installation, use, maintenance, repair or removal of the Lessee's improvements or Lessee's breach of any provision of this MLA or the SLA, except to the extent attributable to the negligent or intentional act or omission of Lessor, its employees, agents or independent contractors. Lessor agrees to indemnify, defend and hold Lessee harmless from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from or related to the actions or failure to act of Lessor its employees or agents (when an obligation to act is provided for in this lease or has been established in a court of competent jurisdiction), or Lessor's breach of any provision of this MLA or the SLA, except to the extent attributable to the negligent or intentional act or omission of Lessee, its employees, agents, or independent contractors.

12. **Termination.** With respect to each SLA, Lessor may cancel an SLA and recover possession of the Premises by giving Lessee thirty (30) days' prior written notice, upon the happening of any of the events listed below, that are not cured within thirty (30) days of such notice:

- (a) Lessee's failure to pay when due the rents or fees specified in an SLA.
- (b) The return for insufficient funds of checks for payment of rents or fees.
- (c) The use of the Premises by Lessee for any purpose not authorized by this MLA or the applicable SLA.
- (d) The appointment of a trustee or receiver for the Lessee's assets in a proceeding brought by or against the Lessee.
- (e) The failure of Lessee to perform any provision or covenant in this MLA or the applicable SLA. If such provision or covenant is not possible to perform within such thirty (30) day notice and cure period, Lessee shall not be in default under this Lease if it has promptly commenced and is diligently pursuing the cure thereof.

Lessee may cancel an SLA with thirty (30) days' written notice to Lessor if (a) for any reason the Premises become unsuitable for Lessee's communications purposes, including but not limited to Lessee's inability to obtain any necessary permits or regulatory approvals for the construction or ongoing operation of Lessee's improvements, (b) a trustee or receiver for the Lessor's assets is appointed in a proceeding brought by or against Lessor, or (c) Lessor fails to perform any provision or covenant in this MLA or the applicable SLA and such nonperformance is not cured within thirty (30) days of Lessee notice. In the alternative, if Lessor remains in default beyond the cure period, Lessee shall have the right to cure Lessor's default and to deduct the costs of such cure from any monies due to Lessor from Lessee. If such provision or covenant is not possible for Lessor to perform within such thirty (30) day cure period, Lessor shall not be in default under this MLA if it has promptly commenced and is diligently pursuing the cure thereof.

Notwithstanding anything herein to the contrary, any termination or default by a Party hereunder of under an SLA shall only apply to the Site and SLA to which such defaulted obligations relate and not to any other Site or SLA (each of which shall remain unaffected thereby and in full force and effect). The Parties acknowledge and agree that no default under an individual SLA shall result in a default of this MLA.

13. **Laws and Taxes.** The Parties will conduct all activities authorized by this MLA and the applicable SLA in compliance with all applicable federal, state, and local laws, including but not limited to matters of health, safety, sanitation, pollution and communications. Lessee shall pay all taxes imposed by the City and Borough of Sitka on the Premises and Lessee's improvements thereon and any other taxes relating to Lessee's operations during the Term. Lessor shall pay all property taxes directly to the relevant taxing authority, except that Lessee shall pay any property taxes as a possessory interest attributable to the property and levied upon Lessee's improvements.

14. **Insurance.** Each Party shall secure and keep in force during the term of this MLA insurance as follows:

- 1. Property damage arising from one occurrence in the amount of not less than \$2,000,000.00.
- 2. Personal injury or death in an amount of not less than \$1,000,000.00 per person and \$1,000,000.00 per occurrence.
- 3. Name the other Party as an additional assured.
- 4. Provide that the other Party be notified prior to any reduction, termination or cancellation in the insurance coverage.
- 5. Include a waiver of subrogation by which the insurer waives all rights of subrogation against the other Party for payments made under the policy.
- 6. The requirement of insurance coverage does not relieve either Party of any other obligations under this MLA or an SLA. Lessee may self-insure against the risks undertaken herein.
- 7. Each Party shall provide one certificate of insurance to the other Party which shall apply to all SLAs governed by this MLA.



15. **Tests.** Lessee will hereby be given the right to survey, soil test, radio coverage test, and to conduct any other investigations needed to determine if the surface and location of the Premises are suitable for Lessee's use as intended by this MLA and the applicable SLA. This will be granted following the signing by both Parties of this MLA and the applicable SLA and Lessee producing the aforementioned insurance for the site. The test period shall last sixty (60) days from the Effective Date of the applicable SLA.

16. **Fixtures and Improvements.** At no additional charge, Lessee may operate, maintain, add and replace equipment at the Premises so long as the size of Lessee's Premises is not increased thereby. Any construction on the Premises must be neat, presentable, and compatible with its use and surroundings.

17. **Permits.** Lessor shall obtain all building permits and approvals, zoning changes and/or approvals, variances, use permits, and other governmental permits and approvals, including Federal Aviation Administration approval, if required (collectively, "Permits") necessary for the installation, construction, operation, and maintenance of the Tower and Premises. Lessee agrees to fully cooperate with Lessor in obtaining the Permits and to execute any applications, maps, certificates, or other documents that may be required in connection with the Permits. As a condition of the applicable SLA, Lessee agrees at all times to comply with all applicable local, state and federal codes, laws, regulations and ordinances of any kind, and to obtain all necessary consents, permits and approvals which may be required to allow Lessee to lawfully construct, maintain or operate its Communications Facility on the Tower and Premises.

18. **Consent.** Except as otherwise specifically stated herein, whenever under this MLA or the applicable SLA, the consent or approval of either Party is required or a determination must be made by either Party, no such consent or approval shall be unreasonably withheld, conditioned, or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

19. **Sale, Assignment or Sublease of MLA and SLA.** Lessee will have the right to assign this MLA with the Lessor's written consent which shall not be unreasonably withheld. With respect to each SLA, Lessee will have the right to assign the SLA, sublease the Premises and its rights herein, in whole or in part, with Lessor's written consent. Lessor's consent will include confirmation that any assignee or sublease has sufficient financial capability to fulfill all MLA and SLA obligations, or that Lessee agrees to fulfill any financial obligations of any prospective assignee or sublease. Upon notification to Lessor of any such assignment, Lessee will be relieved of all future performance, liabilities, and obligations under this MLA and/or the applicable SLA to the extent of such assignment, if Lessor consents to look only to assignee or sublease to fulfill all obligations. Lessee's sublessee(s) will be entitled to the same rights and privileges as Lessee. Lessor may not sell or assign any SLA to a party that is not the legal fee owner of the Tower without the written consent of Lessee, which consent may be withheld at Lessee's sole discretion. In the event an SLA is assigned by either Party to a third party in conjunction with the provisions of this section without this MLA being assigned, said SLA shall continue to be governed by the terms and conditions of this MLA as it read on the effective date of such assignment. Amendments to this MLA following the effective date of such assignment shall not be binding on the assigned SLAs.

20. **Hazardous Materials.** Lessor represents and warrants, to the best of its knowledge and belief, that each Site, as of the effective date of each SLA, is free of hazardous substances including asbestos-containing materials and lead paint, and that the Site has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry, or remediation. The Parties agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that Party's activity conducted in or on the Site. The Parties agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for payment of penalties, sanctions, forfeitures, losses, costs or

damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("Claims"), to the extent arising from that Party's breach of its obligations or representations under this section. Lessor agrees to hold harmless and indemnify Lessee from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Lessor for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Site with hazardous substances prior to the effective date of the applicable SLA or from such contamination caused by the acts or omissions of Lessor during the term of the SLA. Lessee agrees to hold harmless and indemnify Lessor from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Lessee for payment of penalties, sanctions, forfeitures, losses, costs damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Site by Lessee. In the event Lessee becomes aware of any hazardous substances on the Site, or any environmental, health, or safety condition or matter relating to the Site that, in Lessee's sole determination, renders the condition of the Site unsuitable for Lessee's use, or if Lessee believes the leasing or continued leasing of the Premises would expose Lessee to undue risks of liability to a government agency or other third party, Lessee will have the right, in addition to any other rights it may have at law or in equity, to terminate the applicable SLA upon written notice to Lessor. In the event of a material spill of fuel or other hazardous materials on the Premises, Lessee shall promptly notify Lessor and act promptly to contain the spill, repair any damage, absorb and clean up the spill area, and restore the Premises to a condition reasonably satisfactory to Lessor.

**21. Title.** Lessor represents and warrants to Lessee that Lessor has good and marketable title to the Tower and that Lessor has a good and valid leasehold interest in the Premises, the ground beneath the Tower, Access Easement and Utility Easement. If Lessor is a corporation, partnership or other legal entity, the individual who executes this MLA and each SLA on behalf of Lessor represents and warrants to Lessee that he or she is duly authorized to do so.

However, if, but only if, Lessor is required to obtain prior written consent from the owner of the Real Property to sublease space on the Real Property or Tower, Lessor shall seek to obtain such consent ("Consent to Sublease"), which shall be attached to the applicable SLA prior to execution of the SLA. Lessee agrees to cooperate with Lessor in Lessor's efforts to obtain the Consent to Sublease.

**22. Condemnation of Premises.** In the event Lessor receives notification of any condemnation proceedings affecting the Site, Lessor will provide notice of the proceeding to Lessee within forty-eight (48) hours. If a condemning authority takes all of the Site, or a portion sufficient, in Lessee's sole determination, to render the Premises unsuitable for Lessee, the applicable SLA will terminate as of the date the title vests in the condemning authority. The Parties will each be entitled to pursue their own separate awards in the condemnation proceedings, which for Lessee will include, where applicable, the value of its improvements, moving expenses, prepaid Rent, and business dislocation expenses. Lessee will be entitled to reimbursement by Lessor for any prepaid rent on a pro rata basis. If a condemning authority takes a portion of the Premises but Lessee determines that the Premises remain suitable for Lessee use, the applicable SLA will remain in full force and effect and Lessee shall be entitled to a pro rata reduction in the Rent reflecting the portion of the Premises so taken.

**23. Quiet Enjoyment.** Owner covenants that Tenant, upon paying the rent and observing the other covenants and conditions herein upon its part to be observed, shall peaceably and quietly hold and enjoy the right to use the Premises, Access Easement, and Utility Easement on the terms and conditions and for the purposes stated herein during the term of this Lease, as it may be extended, without hindrance, ejection or molestation by Owner or any person(s) or entity(ies) claiming under Owner, and regardless of any sale, transfer, assignment or foreclosure of the Premises.

**24. Maintenance of Sites.** At Lessor's expense, Lessor shall maintain in good condition and repair the Tower, Lessor's Real Property space beneath and surrounding the Tower, the Access Easement and the Utility Easement, but shall have no such responsibility as to Lessee's Communications Facility. Lessor shall comply with all local, State, and Federal laws, rules, and regulations applicable to Lessor as the owner of each Site and Tower, including but not limited to Tower lighting requirements



under federal, state and local ordinance and regulations, if any, and keeping applicable records (including records of notification to Federal Aviation Administration of any failure or repairs of the Tower and any corrections of it). If the Premises, Access Easement or Utility Easement is damaged for any reason other than Lessee's willful acts or negligence, or the willful acts or negligence of Lessee's employees, agents or contractors, so as to render all or any part of the Premises, Access Easement or Utility Easement substantially unusable for Lessee's intended use, rent shall abate while Lessor, at Lessor's option and expense, promptly restores the Premises, Tower, Access Easement and Utility Easement to its condition prior to such damage. In the event Lessor fails to repair the Premises, Access Easement or Utility Easement, as the case may be, or fails to comply with Tower lights requirements, if any, within thirty (30) days of said damage or failure to maintain, Lessee shall have the right to terminate the applicable SLA without further obligations from Lessee to Lessor.

Lessee shall keep and maintain its Communications Facility in good repair and condition and in accordance with all applicable local, State, and Federal laws, rules and regulations. Lessee shall acquire no interest in the land or in the Tower by virtue of this MLA or the applicable SLA, other than as set forth in this MLA or the applicable SLA.

**25. Dispute Resolution.** In any disputes between the Parties, the laws of the State of Alaska will govern. Any lawsuit must be brought in the courts of the Superior Court of Sitka Alaska. Either Party may request a mediation of any unresolved dispute. Lessee agrees to notify Lessor of any claim, demand, or lawsuit arising out of Lessee's occupation or use of the Premises. Upon Lessor's request, Lessee will reasonably cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit affecting the Premises. **THE PARTIES AGREE TO WAIVE THE RIGHT TO A JURY TRIAL.**

**26. Prime Lease.** Notwithstanding any other terms in this MLA or the applicable SLA, to the extent that the terms and conditions of the "Prime Lease" (may be known as the third party ground lease), a copy of which will be attached to each applicable SLA, are applicable to the Premises, and are not inconsistent with the terms of this MLA or the applicable SLA (which terms and conditions shall include, without limitation, the default and remedy provisions of the Prime Lease), and except as otherwise provided in this MLA or the applicable SLA, such terms and conditions of the Prime Lease are incorporated into and made a part of the applicable SLA. To the extent the terms of the Prime Lease and this MLA or the applicable SLA conflict with each, this MLA and the applicable SLA are subject to such terms of the Prime Lease. As between the Prime Lease and this MLA or the applicable SLA, the more restrictive term or provision dealing with rights or privileges under either agreement shall apply to Lessee.

Lessor shall not commit or suffer any act or omission that will violate any of the provisions of the Prime Lease. However, Lessor, and not Lessee, shall be responsible for obligations under the Prime Lease relating to Lessor's rights thereunder other than those relating to the Premises herein, and Lessor shall be responsible for maintenance and repair of the Tower and Real Property, except as otherwise expressly stated in this MLA or the applicable SLA.

Notwithstanding anything to the contrary contained elsewhere in this MLA, the applicable SLA or in the Prime Lease, if the Prime Lease terminates or expires prior to the termination or expiration of the applicable SLA, then the applicable SLA shall terminate on the effective date of the termination of the Prime Lease. Owner shall give Tenant notice thereof as provided for herein.

**27. Quiet Enjoyment.** Lessee shall have the right of quiet enjoyment of the Premises for the Term and all Extensions thereof, regardless of any sale, transfer, assignment or foreclosure of the Premises. This Lease shall be binding on each Party's successors and assigns.

**28. Binding Agreement; Counterparts.** Each SLA shall run with the land and be binding upon each Party's heirs, representatives, executors, successors and assigns. The Parties may execute this MLA and each SLA in counterparts, each of which shall be deemed an original, and both of which, collectively, taken together shall constitute one and the same agreement. Delivery of an executed counterpart by electronic transmission email or fax shall be as effective as physical delivery of an



executed counterpart.

29. **Non-Disclosure Agreement.** Neither Party shall disclose the terms and conditions of this MLA nor an SLA, including the rent due, outside its organization, except Lessee may disclose this MLA and the applicable SLA with potential sublessees who have submitted a collocation application; prior to disclosure Lessee will redact financial information and any other sensitive materials that will not pertain to a sublessee. Notwithstanding the foregoing and subject to the terms of this MLA governing assignment, either Party may disclose the terms and conditions of the MLA and the applicable SLA to a potential purchaser or assignee of such Party's interest in the SLA upon execution of a non-disclosure agreement by such purchaser or assignee. Notwithstanding the foregoing, the Parties agree that the MLA and all SLAs may be subject to disclosure by Lessor as public records under state and local law. Lessor shall endeavor to retain the confidentiality of the MLA and the SLAs and shall disclose only as affirmatively required by law.

30. **Recording.** This MLA and each SLA shall not be recorded. Contemporaneously with the execution of each SLA, the Parties shall execute a recordable Memorandum of Lease substantially in the form set forth in Exhibit D. Either Party may record this Memorandum at any time during the Term in its absolute discretion. During the Term of the applicable SLA, either Party will, at any time and upon fifteen (15) days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

31. **Survival.** All provisions of this MLA relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this MLA that by their sense and context are intended to survive the termination or expiration of this MLA shall so survive.

32. **W-9.** As a condition precedent to payment, Lessor agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this MLA and at such other times as may be reasonably requested by Lessee, including any change in Lessor's name or address.

33. **Attorneys' Fees.** In the event that any dispute between the Parties related to this MLA or an SLA should result in litigation, the prevailing Party in such litigation shall be entitled to recover from the other Party all reasonable attorneys' fees and expenses. Prevailing Party means the Party determined by the court to have most nearly prevailed even if such party did not prevail in all matters.

34. **Natural Disasters.** If any cause which occurs without the fault or negligence of either Party renders the Premises permanently unusable, the applicable SLA may be terminated by either Party upon thirty (30) days' written notice to the other. Causes include but are not restricted to acts of God or the public enemy, acts of the United States, fires, floods, epidemics, quarantine restrictions, or strikes. No Party shall be liable for any delay or failure in performance due to such events outside of the defaulting Party's reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

35. **Entire Agreement.** This MLA and the exhibits attached hereto, together with the applicable SLA for the Site and all exhibits and attachments thereof, constitute the entire agreement of the Parties and shall supersede all prior offers, negotiations, and agreements with respect to the subject matter of this MLA and an SLA. Except as otherwise stated in this MLA, each party shall bear its own fees and expenses incurred in connection with the negotiation, drafting, execution, and performance of this MLA and the transactions it contemplates. Any addition, variation or modification to this MLA or any SLA shall be void and effective unless made in writing and signed by the Parties.

**[END OF SECTIONS AND TEXT]**



**THE ALASKA WIRELESS NETWORK, LLC**

By: [Signature]

Name: Ben Benton

Title: VP, RF & Switch Engineering

Date: 4/25/18

**CITY AND BOROUGH OF SITKA ELECTRIC DEPARTMENT,  
A DEPARTMENT OF THE CITY AND BOROUGH OF SITKA**

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

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

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

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



## **Exhibit A: Form Site Lease Agreement**

### **SITE LICENSE AGREEMENT**

This Site Lease Agreement ("SLA"), is made effective as of \_\_\_\_\_, 201\_\_ ("Effective Date") between The Alaska Wireless Network, LLC, a Delaware limited liability company whose business office is located at 2550 Denali Street Suite 1000 Anchorage, AK 99503 ("Lessee"), and \_\_\_\_\_, a \_\_\_\_\_ [limited liability company / sole proprietorship / corporation] ("Lessor") organized and existing under the laws of \_\_\_\_\_ with its head office located at \_\_\_\_\_ [address] (each a "Party" and collectively, the "Parties"). This Site License Agreement is a SLA as referenced in that certain Master License Agreement between the Parties dated \_\_\_\_\_ ("MLA"). All of the terms and conditions of the MLA are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the MLA. Capitalized terms used in this SLA shall have the same meaning described for them in the MLA unless otherwise indicated herein.

1. **Description of Premises.** Lessor leases to Lessee space to install equipment on the Tower and Real Property located at \_\_\_\_\_ as follows ("**Premises**"):

\_\_\_\_\_ Antennas at \_\_\_\_\_ feet  
\_\_\_\_\_ Microwave Dishes at \_\_\_\_\_ feet  
Other Equipment to be listed \_\_\_\_\_  
\_\_\_\_X\_\_\_\_ of ground space

2. **Effective Date; Term of SLA.** The initial term of this SLA shall commence on the Effective Date and be subject to the terms of the MLA.

3. **Rent.** The rent for the Premises ("**Rent**") will be One thousand six hundred sixty-seven dollars (\$1,667.00) per month, payable on the first (1<sup>st</sup>) day of each month subject to the terms of the MLA.

4. **Utilities.** Lessee shall be solely responsible for and promptly pay all charges for gas, electricity, telephone service, or any other utility used or consumed by Lessee on the Premises. Lessee shall have an electrical current meter installed at the Premises for Lessee's electrical usage, and Lessee shall pay for the cost installation, maintenance, and repair of same. Such meter will be billed by and paid directly to the power company. Lessee shall have the right, at its expense, to improve the present utilities on the Premises and to permanently place new utilities on (or to bring utilities across) the Property in order to service the Premises. Lessee shall also have the right to install emergency power generators on the Premises

5. Lessor represents that the Site is not subject to a prior lease, sublease license or sublicense agreement and agrees that it will be obligated to obtain any consents necessary for the Parties to enter into this SLA.



**Exhibit 1 to Exhibit A**  
**Prime Lease**



**Exhibit 2 to Exhibit A**  
**Consent to Sublease**



**Exhibit 3 to Exhibit A**

**Memorandum of Lease**

Record in the Sitka Recording District  
After Recording, Return to:  
The Alaska Wireless Network  
Attn: Catherine Manka  
2550 Denali St., Suite 1000  
Anchorage, AK 99503

1. This Memorandum of Lease ("Memorandum") relates to that Site Lease Agreement ("SLA") between \_\_\_\_\_, as Lessor, and THE ALASKA WIRELESS NETWORK, LLC (AWN), as Lessee, dated effective as of \_\_\_\_\_, 201\_. The Lease relates to the following described "Premises":

[FULL PROPERTY DESCRIPTION, INCLUDING LEGAL DESCRIPTION OF  
PROPERTY AND DIMENSIONS OF THE PREMISES]

as shown on the Attached Exhibit A.

2. Term. The SLA's term is five (5) years, and shall be automatically renewed for four (4) five (5) year renewal periods unless Lessee elects to terminate the SLA by providing Lessor written notice of its intent to terminate at least thirty (30) days prior to the expiration of the then-current term.
3. Purpose. The purpose of the SLA is to provide Lessee with the use of the Premises for telecommunication purposes, related equipment and support structures.
4. Incorporation of Lease. This Memorandum is for informational purposes only and nothing contained in this Memorandum shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the SLA, the terms of which are incorporated in this Memorandum by reference. This instrument is merely a memorandum of the SLA and is subject to all of the terms, provisions and conditions of the SLA. In the event of any inconsistency between the terms of the SLA and this instrument, the terms of the SLA shall prevail.
5. Binding Effect. The rights and obligations set forth in this Memorandum shall be binding upon and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors, and assigns.
6. Authority. Lessor and Lessee represent and warrant to each other that they have full right, power, and authority to enter into this Memorandum of Lease without the consent or approval of any other entity or person and make these representations knowing that the other party will rely thereon. The signatory on behalf of Lessor and Lessee further represent and warrant that they have full right, power, and authority to act for and on behalf of Lessor and Lessee in entering into this Memorandum of Lease.

***[SIGNATURE BLOCK ON NEXT PAGE]***





**Exhibit B: Initial Sites**

The Initial Sites shall each be constructed within fifty (50) feet of the following GPS coordinates:

**5 Sites in process of being Finalized**



### Exhibit C: Codes, Standards, and Specifications

#### CODES

Lessor shall provide to the Lessee for approval a design for each of the site locations based on the codes and specifications in this section. Lessee shall provide written approval of the submitted designs within thirty (30) days from submittal by the Lessor. Approval by the Lessee will represent agreement by the Lessee that the Lessor has complied with the codes, standards and specifications in this section. Upon approval by the Lessee, the Lessor shall proceed with the work, provided, however, that Lessee shall have the right to inspect the work at the site at the conclusion of the work to ensure it was done in accordance with the Lessee approved plans. The design shall be in accordance with all the applicable latest legally enacted editions of national, state and local codes including, without limitation:

- TIA-222 Rev H
- NFPA 70 – National Electrical Code (NEC)
- NFPA 72 and 101 – National Fire Alarm Code and Life Safety Code
- ANSI/IEEE C2 – National Electrical Safety Code (NESC)
- International Building Code (IBC)
- International Fire Code (IFC)
- State of Alaska and local (municipal) amendments to NEC, IBC and IFC
- Alaska Administrative Code §8.70 Electrical Safety Code
- Clean Water Act, Oil Spill Prevention, Control, and Countermeasures Program ("SPCC"), and Emergency Planning and Community Right to Know Act ("EPCRA"), if applicable

#### STANDARDS

Lessor shall provide all equipment materials and installation in conformance with the following latest current publications and standards as applicable.

- Telecordia GR-1502 core and GR-1275 core
- Underwriters Laboratory (UL)
- American National Standards Institute (ANSI)
- American Society of Testing and Materials (ASTM)
- Institute of Electrical and Electronics Engineers (IEEE)
- National Electrical Contractors Association (NECA)
- National Electrical Manufacturer's Association (NEMA)
- International Electrical Testing Association (IETA)
- National Fire Protection Association (NFPA)
- National Institute of Standards and Technology (NIST)
- Network Equipment Building System (NEBS) Criteria

#### SPECIFICATIONS

Each Initial Site shall include the following elements:

- One net sixty foot (60') wood monopole (120' Douglas Fir pole with top 40' cut off and embedment 20'), engineered per the applicable SLA.
- 8' x 12' equipment platform (Minimum ground space required is 20'X20' or as agreed by the parties for each site)
- Ground ring complete per TIA-222 Rev H standards, with two (2) ground tails left above ground level upon completion
- Passing structural analysis for the final GCI proposed loading, provided to Lessee, signed and sealed by a P.E. Civil/Structural Engineer, upon completion (per TIA-222 Rev H Standards)