

Amendment 2

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

”

Amendment 2

MERC CONTRACT NO. 207043

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

Amendment 2

MERC CONTRACT NO. 207043

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.

Amendment 2

MERC CONTRACT NO. 207043

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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Amendment 2

MERC CONTRACT NO. 207043

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: _____

Amendment 2

MERC CONTRACT NO. 207043

ATTACHMENT 1 TO EXHIBIT B TO LICENSE AGREEMENT

Rooftop Space

[See attached]

Amendment 2

MERC CONTRACT NO. 207043

ATTACHMENT 1 TO EXHIBIT C TO LICENSE AGREEMENT

MACRO SITE PLAN

Licensors and Licensees 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.

Amendment 2

MERC CONTRACT NO. 207043

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.

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