

Tower: 2004E / T-Mobile

Ortiz Tower (Address redacted per FL Statute 119.071(3)(e))

Fort Myers, FL 33905

T-Mobile Site #6FM1031A

LEE COUNTY TOWER ANTENNA SITE LICENSE AGREEMENT

This Lee County Tower Antenna Site License Agreement ("Agreement") is entered into this ____ day of _____, 2024, between **Lee County**, a political subdivision and charter county of the State of Florida, whose mailing address for purposes of this Agreement is Department of County Lands, 1500 Monroe Street, 4th Floor, Fort Myers, FL 33901 (the "**County**"), and **T-Mobile South LLC**, a Delaware limited liability company, whose mailing address is 12920 SE 38th Street, Bellevue, WA 98006 ("**Licensee**"); the County and Licensee being collectively referred to as the "**Parties**", and each, a "**Party**".

RECITALS

A. Pursuant to that certain (i) *Fort Myers Municipal Land Lease – Lee County Operations at the Ortiz Site* between the City of Fort Myers (the "**City**") and the County dated June 16, 1998 (as the same may hereafter be amended or superseded from time to time, the "**Land Lease**"), and (ii) *Ortiz Telecommunications Tower Interlocal Agreement* between the City and County dated January 6, 1998 (as the same may hereafter be amended or superseded from time to time, the "**Interlocal Agreement**"), the County owns and operates a telecommunications tower (the "**Tower**") on City-owned land located at 2501 Ortiz Avenue, Fort Myers, Lee County, Florida, near the SW intersection of Ortiz Ave and Martin Luther King Jr Blvd. All of the City-owned property at the site is referred to herein as the "**City Property**", and the fenced-in portion of the City Property on which the Tower and associated ground space is located, depicted on the attached **Exhibit A**, is referred to herein as the "**Tower Property**".

B. Licensee, together with other carriers, have been continuously occupying space on the Tower and associated ground space for its equipment pursuant to that certain *Ortiz Cellular Tower Site License Agreement* dated April 13, 2004 between the County and Omnipoint Holdings, Inc. d/b/a T-Mobile (Licensee's predecessor-in-interest), as amended by a *First Amendment to Ortiz Cellular Tower Site License Agreement* dated February 18, 2014 (said Agreement, as amended, being referred to herein as the "**Terminated Agreement**").

C. But for the parties' execution of this Agreement, the current term of the Terminated Agreement would have expired on May 11, 2024, with one (1) remaining 5-year renewal option which, if exercised, would have extended the term to May 11, 2029.

D. Licensee has requested the County's consent to Licensee's proposed modifications to its equipment at the Tower Property (the "**Communications Equipment**") as reflected on the attached **Exhibit B-4** and the construction drawings attached hereto as **Exhibit E**.

E. The Parties desire to terminate the Terminated Agreement effective retroactively to May 31, 2024 and enter into this Agreement to memorialize the terms and conditions applicable to the requested modifications as well as make other changes.

F. Licensee acknowledges and agrees that Licensee may not utilize the Licensed Property (defined below) or City Property in any way that may (i) materially interfere with the ability of the County to grant a lease or license to other users of the City Property, or (ii) interfere with the use of the City Property by the County or other authorized third parties, or (iii) cause a violation of the Land Lease or Interlocal

Agreement, and that this understanding shall control the interpretation and application of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual terms, covenants and conditions contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. LICENSED PROPERTY.

(A) Grant of License. The County hereby grants to Licensee a license to use the following areas of the City Property for the Permitted Use (defined below) throughout the Term (defined below) and on the terms and conditions set forth in this Agreement; subject, however, to the rights of the City and County under the Land Lease and Interlocal Agreement (and further subject to the County's relocation rights under Paragraph 14 below):

- (i) Ground Space: an existing 10' x 16' elevated equipment platform containing Licensee's cabinets and other equipment, as depicted on Exhibit B-1 (the "Ground Space");
- (ii) Tower Space: space on the Tower, at elevation 140 feet above ground level, as depicted on Exhibit B-2 (the "Tower Space"; and together with the Ground Space, the "Licensed Property"); and
- (iii) Utility Installations: designated areas of the City Property outside the Licensed Property, in locations approved by the County, for the installation of utility lines (excluding fiber optic cables unless expressly approved by the County in writing as necessary for the operation of the Communications Equipment, as depicted on Exhibit B-3 ("Utility Installations").

(B) Common Access Areas. Throughout the Term, Licensee shall have the non-exclusive right to use the existing driveways and access roads on the City Property to gain access to the Tower, 24 hours a day, 7 days a week, 365 days a year, provided Licensee shall (i) abide by all security measures, (ii) provide prior notice to the County under Paragraph 1(C) below, and (iii) not create a safety hazard or interfere with the use of such areas by the County, City, or third parties.

(C) Notification Required Prior to Entry. Licensee acknowledges that the City Property is a secure facility. Notwithstanding any other provisions of this Agreement to the contrary, (i) prior to entering upon the City Property for any reason (other than construction), Licensee shall provide no less than 24 hours prior written or verbal notice to the County's Communications System Manager; and (ii) prior to entering upon the City Property for construction-related activities, Licensee shall provide at least two (2) business days prior written or verbal notice to the County's Communications System Manager. The current contact number for the County's Communications System Manager is: **(239) 533-3911**.

2. TERM; RENEWAL.

(A) Term (5 years). The initial term of this Agreement ("**Term**") shall commence on **June 1, 2024** (the "**Commencement Date**") and, unless extended or sooner terminated as herein provided, shall expire on **May 31, 2029**. From and after the end of the Term (whether by expiration or termination), neither Party shall have any further rights or obligations to the other under this Agreement, except that all obligations that have accrued but remain unperformed as of such expiration or termination, including without limitation indemnity obligations and unperformed Surrender Obligations (defined below), shall survive such expiration or termination until fully performed.

(B) Automatic Renewal (5 years). At the end of the initial Term of this Agreement (**May 31, 2029**), the Term shall automatically be extended for one renewal period of five (**5**) years (a "**Renewal Period**"),

through May 31, 2034, unless Licensee notifies the County in writing that it is *not* extending the Term at least ninety (90) days prior to the end of the initial Term. As used herein, the "Term" of this Agreement means the initial Term and, if applicable, the Renewal Period.

(C) Automatic Termination Upon Termination of Land Lease and/or Interlocal Agreement. Notwithstanding the Term provided for herein, this Agreement shall automatically terminate upon the expiration or termination of the Land Lease and/or Interlocal Agreement. Licensee acknowledges that Licensee shall have no legal right to remain on the City Property following such expiration or termination. The County shall notify Licensee upon such expiration or termination and shall use reasonable efforts to provide Licensee with a reasonable period of time thereafter (not exceeding sixty (60) days) to complete its Surrender Obligations under Paragraph 9 below.

3. LICENSE FEE; OTHER PAYMENTS.

(A) License Fee. Beginning on the Commencement Date, Licensee shall pay the County an annual license fee, in advance, in the amount shown on the attached Exhibit C. The annual license fee shall be increased on each anniversary of the Commencement Date by an amount equal to **four percent (4%)** of the prior year's license fee as shown on Exhibit C.

(B) Address for Payment. Licensee shall pay the annual license fee, payable to the "Lee County Board of County Commissioners", at the following address: Lee County, Department of County Lands, Attention: County Lands Manager, 1500 Monroe Street, 4th Floor, Fort Myers, Florida 33901; or to such other person, firm or place as the County may from time to time specify by giving Licensee written notice thereof at least thirty (30) days in advance of the next payment date. The County shall provide Licensee with a completed IRS Form W-9, or its equivalent, upon Licensee's request.

(C) Application Fee for Proposed Modifications; Payment for Reports. Upon submitting an application to the County for approval of a proposed modification under Paragraph 6 (*Modification of Equipment*) below, Licensee shall pay the County a non-refundable application fee in the then current amount (currently \$1,000.00). Licensee shall also pay for the cost of Reports (defined below) obtained by the County under Paragraph 6 below.

(D) Taxes and Other Fees. Licensee shall pay to the applicable taxing authority, if billed directly to Licensee, or if billed to the County, Licensee shall pay the County upon thirty (30) days after receiving an invoice from the County, any and all taxes and assessments, including, without limitation, personal property taxes and real property taxes, that the County reasonably demonstrates is attributable to the Licensed Property or Communications Equipment. If Licensee is required by law to pay sales tax on its payments to the County, Licensee shall add the amount of the tax to Licensee's payments to the County. If the County adopts or levies a telecommunications tax, franchise tax or other similar tax in accordance with any federal, state or local law, the amount of such tax shall be added to the license fee payable by Licensee.

(E) Audits. If at any time during the Term the County obtains an Audit (defined below) of the Tower or Tower Property, Licensee shall pay the County for Licensee's pro rata share of the County's actual cost of obtaining the Audit, payable within thirty (30) days after receiving an invoice from the County. Licensee's pro rata share shall be calculated based upon the total number of third party carriers that are on the Tower at the time of the Audit. (For example, if there are then 3 carriers on the Tower, Licensee's pro rata share shall be 1/3.) As used herein, an "Audit" includes any study that pertains to the Tower Property or Tower generally (as opposed to a study that is specific to only one carrier or to fewer than all of the carriers); including, without limitation, a comprehensive structural audit to physically inspect and assess all then existing equipment on the Tower Property, a comprehensive market assessment of the fees then being paid to the County by all carriers on the Tower, an assessment of the compliance of the Tower Property and equipment with Governmental Requirements (defined below), and any other study pertaining to the

County's ownership or operation of the Tower Property or the use of the Tower Property by all users thereof that the County in its sole discretion deems necessary or appropriate.

4. PERMITTED USE.

Licensee may use the Licensed Property for the installation, operation, maintenance, repair, replacement and removal of the Communications Equipment and for no other purpose (the "**Permitted Use**"); provided however that Licensee shall not do anything to cause a violation of the Land Lease or Interlocal Agreement. Licensee shall utilize the Licensed Property and operate the Communications Equipment in strict compliance with all applicable federal, state and local laws, rules, regulations, and other governmental requirements (collectively, "**Governmental Requirements**").

5. INSTALLATION OF EQUIPMENT.

(A) Initial Plans and Specifications. The Parties acknowledge that, prior to the execution of this Agreement, Licensee has submitted professionally prepared plans and specifications for the Communications Equipment to the County for approval. Licensee represents to the County that **Exhibit B-4** and **Exhibit E** accurately and completely describe all of the Communications Equipment that is currently located or will be installed on the Licensed Property pursuant to this Agreement. Licensee shall cause all Communications Equipment located within the Ground Space to be placed wholly within that area, including clearance for all open cabinet doors. Within 45 days after installing any new or modified equipment, Licensee shall provide the County with "as-built" engineering plans of the installed equipment. In the event of a discrepancy between the "as built" plans and **Exhibit E**, Licensee shall provide evidence to the County that Licensee has corrected such discrepancy within 30 days after providing the "as built" plans to the County.

(B) Utility Installations. Licensee represents to the County that **Exhibit B-3** accurately and completely describes all of the Utility Installations that are currently located on the City Property. Licensee represents that, pursuant to the Terminated Agreement, Licensee has installed an electric meter to measure its electricity consumption. Licensee shall pay all utility charges and other costs associated with the Utility Installations.

(C) Ownership of Equipment. All Communications Equipment and Utility Installations shall remain the personal property of Licensee and shall not be deemed to be fixtures on the land. The County hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Communications Equipment and Utility Installations. Licensee has the right to remove all or any portion of the Communications Equipment and Utility Installations at any time during the Term, without needing prior consent to the removal from the County or City. Licensee shall remove all of the Communications Equipment and Utility Installations from the City Property at the end of the Term as part of its Surrender Obligations under Paragraph 9 (*Removal of Equipment; Surrender Obligations; Holdover Fee*) below. For clarity, the provisions of this Paragraph 5(C) are not intended to relieve Licensee of its obligation under Paragraph 1(C) above to notify the County prior to entering upon the City Property for the purpose of removing its equipment, or its obligation to obtain the County's consent to proposed equipment modifications under Paragraph 6 (*Modification of Equipment*) below if Licensee intends to replace the equipment being removed with other equipment.

(D) No Liens. Licensee shall keep the City Property free from liens arising out of work performed, materials furnished, or obligations incurred by or for Licensee. If any such lien is filed, Licensee shall cause it to be released or bonded off within thirty (30) days thereafter; and failure to do so shall constitute an Event of Default (defined below). No work performed by Licensee shall be deemed to be for the benefit of the County or City, and no mechanics or other lien shall be allowed against the County, City, or City Property by reason of the County's consent to such work. The County may post notices that it is not responsible for payment for any such work, and Licensee shall expressly state in any and all contracts entered into by

Licensee or its agents that the County and City are not responsible for any work performed, materials furnished, or obligations incurred by Licensee.

6. MODIFICATION OF EQUIPMENT.

(A) Submission of Application for Proposed Modifications. If at any time during the Term Licensee desires to modify the Communications Equipment, Utility Installations, or Licensed Property, Licensee shall submit an application to the County using the County's prescribed form, together with the County's application fee and plans and engineering drawings for the proposed modifications. If the County determines that an independent site license assessment, structural analysis for the Tower, market assessment, interference study, and/or any other inspections or reports ("**Reports**") are necessary in evaluating the proposed modification, the County may obtain bids for such Reports and send a copy of such bids to Licensee. The County shall order such Reports upon receiving payment from Licensee. (For clarity, if Licensee's sole activity consists of removing equipment, and does not include modifying or replacing equipment, Licensee shall notify the County of such removal but shall not be required to submit an application.)

(B) Review and Approval by County and City. The County has the right to approve or disapprove the proposed modifications in its sole discretion, based upon the County's current or intended future use of the Tower, the impact of such proposed modifications on current or anticipated future users of the Tower, the County's concurrent evaluation of equipment modifications proposed by other carriers, safety concerns, aesthetic concerns, and other relevant factors. Without limitation of the foregoing, the County shall not approve any proposed modifications that the County determines may negatively impact the County's current or future use of the Tower or City Property. If a structural analysis obtained by the County recommends modifications to the Tower to support an increase in loading, Licensee shall bear all costs associated with such modifications to the Tower. Licensee acknowledges that, under the *Interlocal Agreement*, the County is required to consult with the City concerning Licensee's use of the Licensed Property. Licensee acknowledges that the County's ability to maintain up-to-date, complete and accurate information about all equipment on the Tower and elsewhere on the Tower Property belonging to Licensee and third parties is of utmost importance to the County.

(C) Governmental Approvals. In addition to obtaining the County's approval of proposed modifications under this Agreement, Licensee, at its expense, shall obtain all permits and other approvals required by all applicable federal, state and local authorities. Licensee acknowledges that (i) various governmental approvals under this Agreement are issued by the Department of County Lands, (ii) building permits and other approvals required by the Lee County Building and Permitting Services division of the County's Department of Community Development or any other County department must be obtained separately by Licensee, and (iii) approval by one County department does not represent approval by any other County department. To the extent feasible, the County agrees to cooperate with Licensee to obtain all required governmental approvals and to execute and deliver all applications and other documents as may be needed in order for Licensee to obtain such approvals. Licensee shall pay for all costs incurred by the County in providing such assistance. The County shall not be liable for Licensee's inability to obtain the required approvals and makes no representations or other assurances that such approvals are obtainable.

(D) Execution of Amendment. If the County approves a proposed modification requested by Licensee, the Parties shall execute an amendment to this Agreement to memorialize the same.

(E) Construction and Installation. Upon the Parties' execution of an amendment reflecting an approved modification, and upon Licensee's receipt of all required permits and other approvals, Licensee shall cause the work to be completed in a good and workmanlike manner, in accordance with sound engineering practices and industry standards, and in compliance with all applicable Governmental Requirements. Licensee shall be responsible for all construction methods, techniques, sequences and procedures and the coordination of all construction activities relating thereto. Prior to entering upon the City Property for construction purposes, Licensee shall provide notice to the County under Paragraph 1(C)

above. Licensee shall immediately repair any and all damage to the City Property, the County's equipment, or property belonging to third parties caused by Licensee's work. Within forty-five (45) days after installing the new or modified equipment, Licensee shall provide the County with "as-built" engineering plans of the installed equipment. In the event of a discrepancy between the "as built" plans and the engineering drawings previously approved by the County, Licensee shall provide evidence to the County that Licensee has corrected such discrepancy within thirty (30) days after providing the "as built" plans to the County.

(F) Co-Existence of Old and New Equipment. If, in connection with Licensee's proposed modifications, Licensee proposes to remove existing equipment and replace it with other equipment, Licensee shall not allow the equipment being removed to co-exist with the replacement equipment for a period of longer than thirty (30) days. Within forty-five (45) days after Licensee has completed the removal of the old equipment, Licensee shall provide the County with written certification that all of the old equipment has been completely removed and that all damage caused thereby has been repaired.

(G) Approval of Proposed Modifications. The County hereby approves the proposed equipment modifications reflected on the construction drawings attached hereto as **Exhibit E**. Prior to implementing the modifications, Licensee shall obtain all required permits and other governmental approvals.

7. MAINTENANCE AND REPAIRS.

(A) Licensee's Maintenance Obligations. Throughout the Term, Licensee, at its expense, shall maintain the Licensed Property, Communications Equipment and Utility Installations in good and safe condition and repair and in compliance with all applicable Governmental Requirements. Upon the County's written request, Licensee shall provide the County with written certification or other documentation establishing that Licensee is meeting these requirements.

(B) County's Maintenance Obligations. Throughout the Term, the County, at its expense, shall maintain the Tower in substantially the same condition as exists on the Commencement Date and in accordance with the County's maintenance standards for other similar County-owned towers (but subject to ordinary wear and tear and casualty damage); provided that Licensee shall be responsible for all maintenance expenses that are directly related to Licensee's use of the Licensed Property. Licensee acknowledges that the Tower and other improvements on the City Property may periodically require maintenance, including painting. Except in cases of emergencies where prior notification is not feasible, the County agrees to use reasonable efforts to notify Licensee no less than thirty (30) days in advance of any scheduled maintenance that may adversely affect Licensee's operation of the Communications Equipment. The County and Licensee agree to cooperate in an effort to minimize interference with Licensee's operation of the Communications Equipment during the work.

(C) Temporary Emergency Equipment. If, due to the County's maintenance work, or in the event of casualty damage to the Tower under Paragraph 19 (*Casualty Damage*) below, Licensee is unable to operate the Communications Equipment for longer than twelve (12) consecutive hours, the County agrees to use reasonable efforts to identify suitable space elsewhere on the City Property for Licensee to install and operate temporary emergency equipment as necessary to maintain its telecommunications capability; provided that (i) such temporary equipment does not materially interfere with the County's work, or with the operation of communications equipment belonging to the County or other carriers; (ii) Licensee obtains all necessary permits and authorizations for the installation and operation of the temporary equipment; and (iii) Licensee promptly removes the temporary equipment once Licensee's use of the Communications Equipment is fully restored. Licensee shall bear all costs associated with the installation, operation and removal of the temporary emergency equipment.

8. INTERFERENCE.

(A) Interference Caused by Licensee. Licensee shall install and operate its Communications Equipment and Utility Installations in a manner designed to avoid causing interference with or damage to

equipment belonging to the County, City, or third parties (and similarly, the County agrees to use reasonable efforts to prohibit third parties from interfering with the Communications Equipment as described in Paragraph 8(C) below). Within thirty (30) days of execution of this Agreement, Licensee shall provide the County with proper evidence of Licensee's licensed frequencies and the frequencies in use on the Tower. In the event Licensee's Communications Equipment or Utility Installations causes damage or interference with equipment or other property belonging to the County, City or third parties, Licensee shall immediately, upon written or verbal notice from the County, take all steps necessary to completely remedy such damage and eliminate such interference at Licensee's sole expense. If the damage or interference requires repairs or alterations to the City Property, the County may perform such work, whereupon Licensee shall pay for the entire cost within thirty (30) days after receiving an invoice from the County. If the County determines that interference caused by the Communications Equipment or Utility Installations constitutes an emergency, (i) the County may take any and all actions needed to immediately address such emergency and shall notify Licensee of such actions when feasible given the nature of the emergency, and (ii) Licensee shall pay for all costs associated with the County's actions within thirty (30) days after receiving an invoice from the County.

(B) Interference Caused by County. Licensee acknowledges that (i) the County's use of the City Property and operation of the County's equipment takes priority over Licensee's use of the Licensed Property and operation of the Communications Equipment; (ii) the County's activities at the City Property may necessitate temporarily shutting off power to the Tower and requiring that the Communications Equipment remain de-energized for the duration of the work; and (iii) except for notifying Licensee of the need to temporarily de-energize the Communications Equipment, it may not be feasible for the County to inform Licensee or other carriers of activities of the County or changes to the County's equipment that may potentially cause interference. If Licensee determines that the County's use of the City Property or the County's equipment is interfering with Licensee's use of the Licensed Property or operation of the Communications Equipment, Licensee shall notify the County. Upon receiving such notice, the County shall investigate the cause and inform Licensee of whether or not the County is able to eliminate or reduce the interference, and if so, the proposed course of action.

(C) Interference Caused by Third Parties. The County recognizes the importance of providing uninterrupted communications services to customers and the time and expense associated with prolonged interruptions and the installation and operation of temporary emergency equipment. With that in mind, the County agrees to use reasonable efforts to prevent, eliminate and reduce interference among all users of the City Property to the extent reasonably possible; including exercising care to prohibit other carriers from installing new or modified equipment following the Parties' execution of this Agreement in such a manner as may cause interference. If Licensee notifies the County of interference caused by a third party, the County agrees to take reasonable measures to promptly address such interference, to the extent the County is legally permitted to do so under the provisions of the County's separate agreement with such third party; provided however that the County shall not be liable to Licensee if such interference cannot, with reasonable effort and at a reasonable cost, be rectified to Licensee's satisfaction, nor shall the County be obligated to commence legal action against any third party.

(D) Licensee's Right to Terminate Due to Interference by County or Third Parties. If Licensee determines that interference with Licensee's use of the Licensed Property or operation of the Communications Equipment or Utility Installations is being caused by the County or third parties and that such interference is likely to be an ongoing problem, Licensee's sole remedy shall be to terminate this Agreement under Paragraph 15 (*Early Termination*) below.

9. REMOVAL OF EQUIPMENT; SURRENDER OBLIGATIONS; HOLDOVER FEE.

(A) Removal of Equipment at end of Term. No later than the last day of the Term (whether by expiration or termination), Licensee shall (i) remove all of the Communications Equipment, Utility Installations, and other personal property belonging to Licensee from the Licensed Property and restore the Licensed Property to its original condition as near as practicable to the County's reasonable satisfaction,

normal wear and tear and damage not caused by Licensee excepted; (ii) repair all damage to the Tower, City Property, and property belonging to the County or third parties caused by such removal; and (iii) surrender possession of the Licensed Property to the County.

(B) Surrender Obligations; Holdover Fee for Failure to Provide Notice of Surrender. No later than ten (10) days after the Term of this Agreement expires, or no later than sixty (60) days after the effective date of termination if this Agreement is terminated in accordance with the termination provisions of this Agreement, whichever is applicable, Licensee shall provide written certification to the County (a "**Notice of Surrender**") that Licensee has completed all removal and restoration work under Paragraph 9(A) above and surrendered possession of the Licensed Property to the County (the giving of such notice, performance of such work, and surrender of possession being referred to as "**Surrender Obligations**"). For clarity, all work shall be completed no later than the last day of the Term as provided under Paragraph 9(A) above, and Licensee shall have no right to utilize the Licensed Property or enter upon the City Property during such 10-day or 60-day period to perform such work or for any other reason. If Licensee fails to provide a Notice of Surrender to the County within ten (10) days after the expiration of the Term, or within sixty (60) days after the effective date of termination specified in the notice of termination (whichever is applicable), Licensee shall pay the County a holdover fee of Five Hundred Dollars (**\$500**) per day for each day after the last day of the Term that Licensee fails to provide a Notice of Surrender, and in addition shall be liable for all costs and damages suffered or incurred by the County arising from Licensee's failure to timely complete its Surrender Obligations.

(C) Abandoned Property. All property of Licensee that has not been removed from the Licensed Property on or before the last day of the Term shall be deemed abandoned by Licensee, whereupon the County may remove, store, sell, destroy, or otherwise dispose of the same in any manner the County sees fit, at Licensee's expense and without any liability to Licensee. For clarity, Licensee shall not be allowed to abandon its property in lieu of removing it, and its failure to remove all of its property by the end of the Term shall constitute a failure to timely complete its Surrender Obligations.

(D) County's Notice of Deficiency. If, following the expiration or termination of this Agreement, the County determines that Licensee has failed to timely complete all of Licensee's Surrender Obligations, the County shall endeavor to notify Licensee thereof in writing as soon as the County becomes aware of such failure (a "**Notice of Deficiency**"), but in any event within ninety (90) days after the County receives Licensee's Notice of Surrender. The County shall use reasonable efforts to provide Licensee with up to thirty (30) days following the Notice of Deficiency within which to enter upon the Tower Property to complete the Surrender Obligations (or such longer period of time as the County may agree to); however the County's agreement to allow Licensee additional time to complete the Surrender Obligations shall not relieve Licensee from liability for all costs and damages suffered or incurred by the County arising from Licensee's failure to timely complete its Surrender Obligations. If the County issues a Notice of Deficiency, Licensee shall pay the County the daily holdover fee described in Paragraph 9(B) above for the period between the last day of the Term through the date that Licensee certifies to the County in writing that it has rectified the deficiencies described in the County's Notice of Deficiency and otherwise completed all of its Surrender Obligations.

10. HAZARDOUS MATERIAL.

Licensee shall not use, generate, store or dispose of any Hazardous Material on the City Property in violation of applicable Governmental Requirements. "**Hazardous Material**" means any substance, chemical or waste identified as hazardous, toxic or dangerous to the environment or human health and safety in any applicable federal, state or local law or regulation, including petroleum and asbestos. In the event Licensee violates this restriction, Licensee shall promptly notify the County and take all corrective action as determined by the County, and shall defend, indemnify and hold the County harmless from and against all Claims (defined in Paragraph 17 below) arising therefrom. Licensee shall not be responsible for any contamination or other environmental condition on the City Property not caused by Licensee. If Licensee identifies Hazardous Material at the City Property not caused by Licensee that impacts Licensee's

operations, the Parties agree to work cooperatively to address the same, including for example identifying a possible temporary alternate site at the City Property for Licensee's Communications Equipment during remediation.

11. DEFAULT.

(A) Event of Default by Licensee. The occurrence of each of the following events shall constitute an "Event of Default":

- (i) Licensee's failure to pay the license fee or any other payment hereunder to the County when due, if such failure to pay continues for a period of thirty (30) days after the County notifies Licensee that such payment is due;
- (ii) Construction, modification, or other changes to Licensee's Communications Equipment, Utility Installations, or the Licensed Property without the County's prior written approval;
- (iii) Licensee's failure to immediately remedy damage and eliminate interference caused by Licensee under Paragraph 8 (*Interference*) above;
- (iv) The County's determination that Licensee has made misstatements or misrepresentations of a material nature on any questionnaire, site plan, construction drawing, equipment listing, application or other document provided to the County related to this Agreement; or
- (v) Licensee's failure to observe or perform any other covenant or provision of this Agreement if such failure continues for a period of thirty (30) days after the County notifies Licensee of such failure. The foregoing notwithstanding, an Event of Default under this subparagraph (v) shall not be deemed to have occurred if, within such 30-day period, Licensee notifies the County that such failure can be cured but cannot with reasonable diligence be completed within 30 days provided Licensee commences to cure such failure within said 30-day period and thereafter diligently completes the cure.

(B) Security Deposit. In lieu of requiring Licensee to pay a security deposit upon execution of this Agreement, the County reserves the right to demand immediate payment of a security deposit in the amount of **\$20,000** (the "**Security Deposit**") upon the occurrence of an Event of Default. The County may apply the Security Deposit to pay amounts that are not timely paid to the County and other costs and fees associated with Licensee's breach of this Agreement, including but not limited to the cost of an analysis to determine the amounts owed to the County as a result of Licensee's breach of this Agreement. If the County uses any portion of the Security Deposit, the County shall notify Licensee of the expenditure, whereupon Licensee shall replenish the Security Deposit to the full amount within fourteen (14) days. The Security Deposit is not intended as a prepayment of the license fee or other amounts payable by Licensee to the County hereunder. The County shall return the balance of the Security Deposit to Licensee, without interest, at the end of the Term provided Licensee has paid all amounts due to the County hereunder, fully and timely performed its Surrender Obligations, and is not otherwise in breach of this Agreement. Licensee's failure to timely pay or replenish the Security Deposit shall constitute an Event of Default.

(C) County's Default. The County shall be in default under this Agreement if the County fails to cure a breach under this Agreement within thirty (30) days after receiving a written notice and demand from Licensee specifying the breach. The foregoing notwithstanding, the County shall not be deemed in default if such failure can be cured but cannot with reasonable diligence be completed within 30 days provided the County commences to cure such failure within said 30-day period and thereafter diligently completes the cure in accordance with applicable County laws, regulations, policies and procedures.

(D) Remedies. Upon a default that is not cured within the applicable notice and cure periods provided for in this Paragraph 11, and in addition to any and all other rights and remedies available to the Parties under this Agreement or at law or in equity (all rights and remedies being cumulative), the non-defaulting Party shall have the right to terminate this Agreement by written notice to the other Party; whereupon this Agreement shall terminate effective as of the effective date specified in the termination notice. If the County's notice of termination specifies an effective date of termination that is less than sixty (60) days from the date of the County's notice, the County agrees to use reasonable efforts, depending upon the nature of the default, to allow Licensee a reasonable period of time (not exceeding sixty (60) days) following the effective date of the termination within which to complete the Surrender Obligations under Paragraph 9 above. The prevailing Party in any legal proceeding to enforce this Agreement shall be entitled to receive payment of all actual expenses incurred in connection therewith, including reasonable attorneys' fees and expenses, through all appeals, from the non-prevailing Party as determined by the court; provided that the foregoing shall not be deemed a waiver by the County of any protections afforded to governmental entities under applicable laws. In no case shall either Party be liable to the other for consequential or special damages of any kind whatsoever, regardless of a breach or default under this Agreement by the other Party, including, but not limited to, lost revenues, lost profits, or other unforeseen damages.

12. NOTICE.

All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if personally delivered or delivered by Federal Express or other recognized courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the Parties at their addresses set forth below. Notices shall be deemed given on the day of delivery if personally delivered or delivered by courier (or on the following business day if the delivery date is a weekend or holiday), and 3 business days after deposit with the U.S. Postal Service if mailed by registered or certified mail. Each Party may change its address for purposes of receiving notices under this Agreement by giving the other Party written notice in accordance with this Paragraph. The foregoing notwithstanding, if this Agreement expressly permits verbal notice in certain instances, verbal notice in those instances shall be sufficient.

To the County:

Lee County Dept of County Lands
Attention: Director
PO Box 398
Fort Myers, FL 33902

To Licensee:

T-Mobile South LLC
Attention: Lease Compliance/Site No. 6FM1031A
12920 SE 38th Street
Bellevue, WA 98006

13. ASSIGNMENT BY LICENSEE.

Licensee shall not sublet or otherwise permit third parties to utilize the Licensed Property or assign its interests under this Agreement to a third party, in either case without the County's prior written consent, which may be granted or denied in the County's sole discretion, and if granted, under such terms and conditions as the County may prescribe. The foregoing notwithstanding, and provided Licensee is not then in breach of this Agreement, Licensee shall, upon prior written notice to the County but without needing the County's consent, have the right to assign its interests under this Agreement to any affiliate of Licensee provided the assignee assumes such interests in writing. As used herein, an "affiliate" means:

- (i) Licensee's parent company,
- (ii) a subsidiary of Licensee's parent company,
- (iii) a subsidiary of Licensee, or
- (iv) any entity that acquires all or substantially all of the assets of Licensee in the market in which the City Property is located by reason of a merger, acquisition or other business reorganization.

Upon a permitted assignment, Licensee shall provide the County with a copy of the executed assignment and assumption agreement prior to (or if not feasible, within ten (10) business days after) the effective date of such assignment. If Licensee is a corporation, partnership, or limited liability company, no change in stock ownership, partnership interests, or membership interests shall constitute an assignment for purposes of this Agreement. As between the County and Licensee, Licensee's assignment of this Agreement to an affiliate or other third party shall not relieve Licensee of any obligations or liability to the County under this Agreement absent an express written release from the County. If Licensee requests a written release, Licensee shall provide financial statements, business information, and other evidence or documentation requested by the County to establish the assignee's ability to fulfill all financial and other obligations of Licensee under this Agreement. Notwithstanding the foregoing, Licensee shall not assign this Agreement to any entity that is not legally authorized to do business in the State of Florida or that has been debarred from entering into contracts with the federal, state or local government.

14. RELOCATION.

(A) Relocation to Alternate Space. Notwithstanding the description of the Licensed Property under Paragraph 1 above, if the County (i) requires the use of all or any portion of the Licensed Property for public purposes during the Term of this Agreement, and (ii) determines that other suitable space on the City Property is available for Licensee's operation of the Communications Equipment, the County shall give Licensee a written notice ("**Relocation Notice**") no less than one (1) year prior to the date on which Licensee shall be required to relocate the Communications Equipment to the alternate space and surrender possession of the Licensed Property or such portion thereof (the "**Relocation Date**"). The County and Licensee shall work cooperatively to complete the relocation of the Communications Equipment to the alternate space on or before the Relocation Date. Licensee shall bear all costs associated with such relocation.

(B) Licensee's Right to Terminate. Notwithstanding the provisions of Paragraph 11(A) above, if Licensee determines that the alternate space proposed by the County is not suitable for Licensee's operation of the Communications Equipment, Licensee's sole remedy shall be to terminate this Agreement by giving the County a written notice of termination within one hundred twenty (120) days after receiving the Relocation Notice, whereupon this Agreement shall terminate effective as of (and Licensee shall complete its Surrender Obligations no later than) the Relocation Date.

(C) County's Right to Terminate. If the County (i) requires the use of all or any portion of the Licensed Property for public purposes, and (ii) determines that no other suitable space on the City Property is available for Licensee's operation of the Communications Equipment, the County may terminate this Agreement by giving Licensee a written notice of termination no less than one (1) year prior to the effective date of the termination specified in such notice; whereupon Licensee shall complete its Surrender Obligations no later than such date.

15. EARLY TERMINATION.

(A) Licensee's Termination Rights. In addition to Licensee's other termination rights under this Agreement, Licensee may terminate this Agreement in its sole discretion for the following reasons:

- (i) If the approval of any agency, board, court or other governmental authority necessary

for the construction or operation of the Communications Equipment cannot be obtained or is not obtained after due diligence, or is revoked, canceled, expires or is withdrawn or terminated;

- (ii) If any government or public body takes by eminent domain all or part of the City Property such that Licensee is unable to use the Licensed Property for the Permitted Use;
- (iii) If Licensee determines that the County lacks proper control of the City Property and/or authority to enter into this Agreement;
- (iv) In the event of interference with Licensee's operation of the Communications Equipment or Utility Installations under Paragraph 8 (*Interference*) above;
- (v) If for any other reason Licensee determines that the Licensed Property is no longer technically, structurally or otherwise compatible for the Permitted Use.

(B) County's Termination Rights. In addition to the County's other termination rights under this Agreement, the County may terminate this Agreement in its sole discretion if the County decides to cease using the Tower for telecommunication purposes or if for any other reason the County determines that terminating this Agreement is in the best interest of the County.

(C) Exercise. To exercise the Parties' termination rights under this Paragraph 15, the Party exercising such right shall give a written notice of termination to the other Party not less than ninety (90) days prior to the effective date of such termination as specified in the termination notice. Licensee shall complete its Surrender Obligations during such period.

16. INSURANCE; WAIVER OF CLAIMS.

Throughout the Term, Licensee, at its sole cost, shall maintain insurance coverage as described in the attached Exhibit D. Licensee shall be solely responsible for safeguarding the Communications Equipment and Utility Installations from theft, vandalism, weather damage, and the like. Neither the City nor the County has any obligation to safeguard the Communications Equipment, Utility Installations, or any other property belonging to Licensee. Notwithstanding any provision of this Agreement to the contrary, in the event of loss or damage to the Communications Equipment, Utility Installations, or other property belonging to Licensee, Licensee shall look solely to its insurance carrier for recovery and hereby waives all claims and rights of subrogation against the City and County in connection with such loss or damage, no matter how caused.

17. INDEMNIFICATION AND LIMITATION OF LIABILITY.

(A) By Licensee. Licensee shall defend, indemnify and hold the County harmless from and against all liability, claims, demands, actions, losses, damages, orders, judgments, costs and expenses, including, without limitation, reasonable attorney's fees and expenses (collectively, "**Claims**"), resulting from (i) personal injury or property damage arising out of, or caused by, the negligent acts or omissions or willful misconduct of Licensee, its agents, contractors, and/or employees on the City Property, except to the extent such Claims are due to or caused by the negligent acts or omissions or willful misconduct of the County, its agents, contractors, and/or employees, or (ii) Licensee's breach of any covenants or provisions of this Agreement.

(B) By County. To the extent permitted under Section 768.28 of the Florida Statutes, as amended from time to time, the County shall defend, indemnify and hold Licensee harmless from and against all Claims resulting from personal injury or property damage arising out of, or caused by, the negligent acts or

omissions or willful misconduct of the County, its agents, contractors, and/or employees while acting within the scope of their employment on the City Property under circumstances in which the County, if a private person, would be liable to the claimant, in accordance with the general laws of the State of Florida, except to the extent such Claims are due to or caused by the negligent acts or omissions or willful misconduct of Licensee, its agents, contractors, and/or employees. Nothing contained herein is intended or shall be construed to waive the County's rights and immunities under Section 768.28 of the Florida Statutes or under other applicable laws.

18. SALE OR TRANSFER BY COUNTY.

Upon the County's sale or other transfer of the County's interest in the City Property or Tower to a third party, the County may assign the County's interests under this Agreement to such third party. Upon the closing of such transaction, the County shall be automatically released of all further obligations under this Agreement, such third party shall be deemed to have assumed all obligations of the County under this Agreement, and thereafter Licensee shall look solely to such third party for the fulfillment of the County's obligations hereunder. The County shall notify Licensee of any such assignment at the time of the closing or promptly thereafter.

19. CASUALTY DAMAGE.

(A) Damage to Tower. If the Tower is damaged or destroyed by fire, wind, or other casualty and (i) the County has not commenced repair or replacement of the Tower within sixty (60) days after the date of the casualty, or (ii) the County has not completed such repair or replacement of the Tower within one hundred eighty (180) days after the date of the casualty, Licensee may, as its sole remedy, terminate this Agreement by giving a written notice of termination to the County within thirty (30) days after the expiration of such 60-day period or 180-day period, as applicable. Upon such termination, and provided Licensee is not in breach of this Agreement on the date of termination, the County shall refund a pro rata portion of the prepaid annual license fee to Licensee for the period during which Licensee was deprived of the full use of the Licensed Property due to such casualty, minus of the amount of Licensee's recovery, if any, under Licensee's business interruption insurance.

(B) Temporary Emergency Facilities. If damage or destruction of the Tower renders the Communications Equipment inoperable for a period that Licensee reasonably expects to exceed five (5) consecutive days, the County shall use reasonable efforts to identify a suitable area elsewhere on the City Property for Licensee to install and operate temporary emergency equipment as necessary to maintain its telecommunications capability, in accordance with Paragraph 7(C) above.

(C) Termination Under Interlocal Agreement. Notwithstanding the foregoing, Licensee acknowledges that the Interlocal Agreement provides for the termination of the Interlocal Agreement if the Tower is destroyed or rendered unusable, which shall in turn cause the simultaneous termination of this Agreement.

20. GENERAL PROVISIONS.

(A) Amendments. All amendments to this Agreement, including any changes to the attached Exhibits, shall be in writing and executed by both Parties.

(B) Authority. The Parties represent and warrant that their signatories have the full right, power and authority to enter into this Agreement and to fully bind the Parties to this Agreement.

(C) Binding Effect. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

(D) Construction. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly or favorably against either Party.

(E) Entire Agreement. This Agreement, together with the Terminated Agreement, contains the entire agreement of the Parties as pertains to the subject matter hereof.

(F) Governing Laws. This Agreement shall be interpreted and governed by the laws of the City of Fort Myers, Lee County, and the State of Florida. All disputes arising under this Agreement shall be brought solely in the Circuit Court in Lee County, Florida, and the Parties hereby agree to such venue.

(G) No Third-Party Beneficiaries. Except for the City, no third-party beneficiary rights are intended to be created by this Agreement.

(H) Non-Revocable. Notwithstanding the fact that this Agreement creates a license and that a license is normally revocable at will by the grantor, the license granted by this Agreement is not revocable at will and can only be terminated in accordance with the termination provisions of this Agreement.

(I) Recording. This Agreement is a public record and is subject to Chapter 119 (*Public Records*), Florida Statutes. Licensee may, at its option and expense, record this Agreement in the public land records. No such recording however shall be construed as creating a leasehold interest or other interest in real property.

(J) Severability. If any provision of this Agreement is determined by a court of law to be illegal or invalid, such provision shall be deemed severed from this Agreement and shall in no way affect or invalidate the remainder of this Agreement.

21. TERMINATION OF TERMINATED AGREEMENT.

The parties acknowledge that this Agreement supersedes the Terminated Agreement. The Terminated Agreement shall automatically terminate at 11:59 pm on **May 31, 2024** (being the day immediately preceding the Commencement Date of June 1, 2024 under Paragraph 2(A) above); *provided, however*, that any and all obligations of the Parties under the Terminated Agreement that have accrued but that remain unsatisfied as of such termination (including without limitation indemnity obligations) shall survive such termination until fully performed. If, as of the Commencement Date, Licensee shall have prepaid the license fee to the County under the Terminated Agreement for a period extending beyond the June 1, 2024 Commencement Date of this Agreement, the County shall apply the portion of such prepayment that is allocable to the period extending beyond the Commencement Date to the license fee payable by Licensee to the County under this Agreement.

(End of Provisions – signature page follows)

IN WITNESS WHEREOF, the Parties have set their hands and affixed their respective seals the day and year first set forth above.

WITNESSES:

DocuSigned by:
Mila Kachenovska
A253CEA11CB4CA

Print Name: Mila Kachenovska

DocuSigned by:
Brittnee Zimmerman
DF22EFC30E31483

Print Name: Brittnee Zimmerman

LICENSEE:

T-MOBILE SOUTH LLC

DocuSigned by:
Tim B. Chandler
BY: 39FBCF7B79E7A9E

Print Name: Tim B. Chandler

Title: Senior Director, Network Engineering & Operations



Approved and accepted for and on behalf of Lee County, Florida, this ____ day of _____, 2024.

ATTEST:

KEVIN C. KARNES
CLERK OF CIRCUIT COURT

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

BY: _____
Deputy Clerk

BY: _____
Mike Greenwell, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office

Exhibits:

- Exhibit A – Photo Showing Tower Property
- Exhibit B-1 – Depiction of Ground Space
- Exhibit B-2 – Depiction of Tower Space
- Exhibit B-3 – Location of Utility Installations
- Exhibit B-4 – Chart of Communications Equipment
- Exhibit C - License Fee
- Exhibit D - Insurance Requirements
- Exhibit E – Construction Drawings for Equipment Modifications

Exhibits A through B-4 and Exhibit E are redacted per F.S. 119.071 (3)(e)

EXHIBIT A

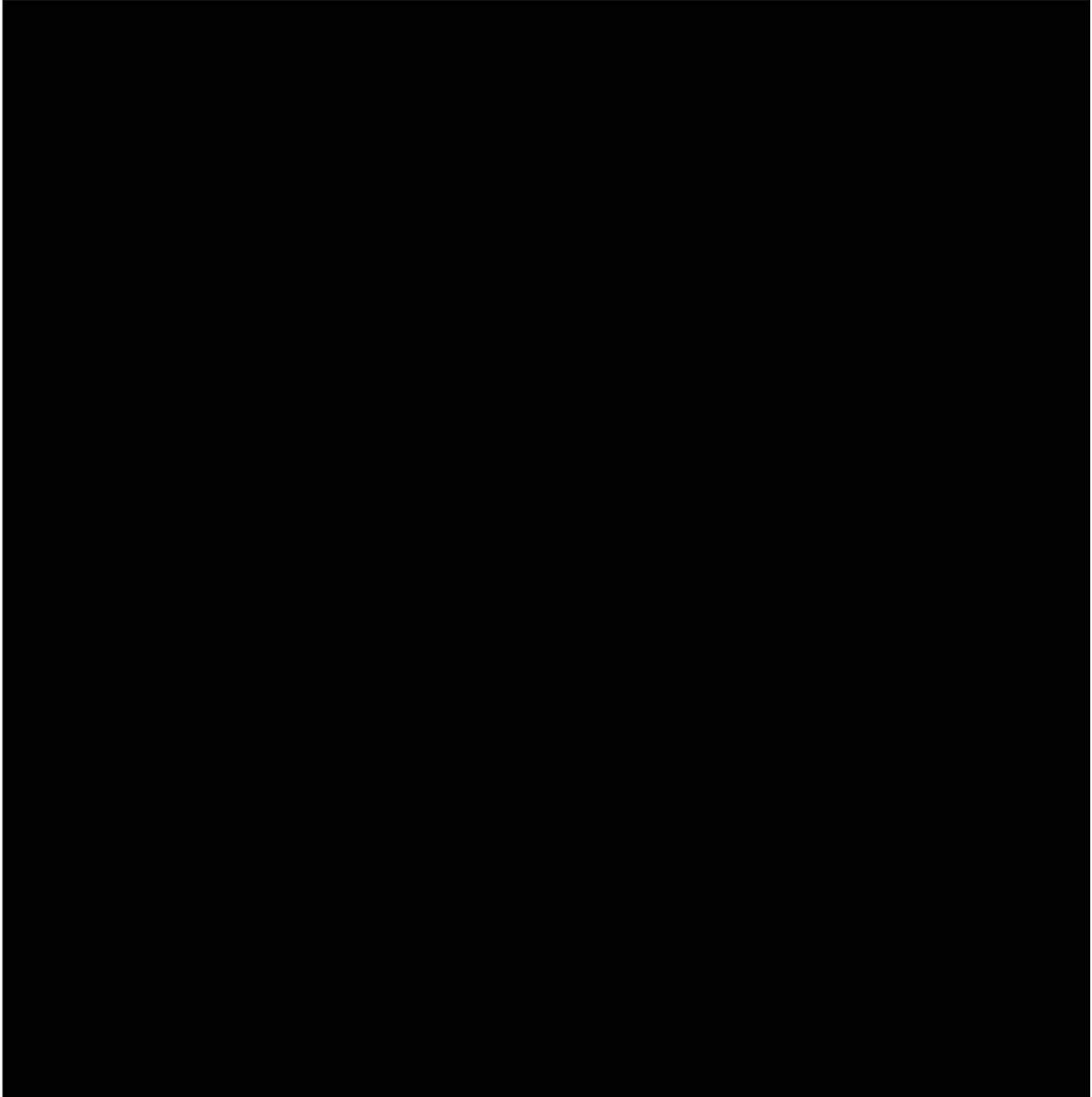


EXHIBIT C

License Fee

June 1, 2024 – May 31, 2025	\$56,612.86
June 1, 2025 – May 31, 2026	\$58,877.37
June 1, 2026 – May 31, 2027	\$61,232.47
June 1, 2027 – May 31, 2028	\$63,681.77
June 1, 2028 – May 31, 2029	\$66,229.04
<i>Renewal Period:</i>	
June 1, 2029 – May 31, 2030	\$68,878.20
June 1, 2030 – May 31, 2031	\$71,633.33
June 1, 2031 – May 31, 2032	\$74,498.66
June 1, 2032 – May 31, 2033	\$77,478.61
June 1, 2033 – May 31, 2034	\$80,577.75

NOTE: As provided in section 21 (*Termination of Terminated Agreement*) of this Agreement, if Licensee shall have prepaid the license fee to the County under the Terminated Agreement for a period extending beyond the June 1, 2024 Commencement Date, the County shall apply such prepaid amount to the license fee payable by Licensee to the County under this Agreement.

EXHIBIT D

Insurance Requirements

I. Minimum Insurance Requirements: *The County's Risk Management division in no way represents that the insurance required under this Agreement is sufficient or adequate to protect Licensee's interest or liabilities. Licensee shall maintain the following insurance throughout the Term of this Agreement, together with such additional insurance coverage as Licensee deems necessary or appropriate.*

a. Commercial General Liability – Coverage must apply to Licensee's operations, products and completed operations, independent contractors, and contractual liability, with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations aggregate
\$1,000,000 personal and advertising injury

b. Commercial Auto Liability – Automobile Liability covering all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL) each accident for bodily injury and property damage

c. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all employees regardless of the number of employees and Employers' liability with minimum limits of:

\$1,000,000 each accident
\$1,000,000 disease - each employee
\$1,000,000 disease – policy limit

d. Pollution Liability Insurance - Pollution Liability insurance with minimum limits of:

\$1,000,000 per occurrence
\$1,000,000 general aggregate

for bodily injury, property damage, and environmental damage resulting from "sudden accidental" or "gradual" pollution and related cleanup costs incurred by Licensee arising out of the Licensee's work, use, services (including the transportation risk, when applicable) or occupancy of the Licensed Property under this Agreement.

II. Verification of Coverage:

Coverage must be in place prior to the commencement of any work and throughout the Term of this Agreement. Prior to the Commencement Date, Licensee shall provide a Certificate of Insurance to the County's Risk Manager. Licensee shall provide a copy of its insurance policies to the County's Risk Manager upon the County's request, together with such other insurance information as the County may reasonably request.

- a. The certificate holder must read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902

- b. *“Lee County, a political subdivision and Charter County of the State of Florida, its employees, and public officials”* and the *“City of Fort Myers”* shall each be included as an Additional Insured as their interest may appear under this Agreement on the Commercial General Liability policy for work or services provided under this Agreement.

III. **Special Requirements:**

It is the responsibility of Licensee to ensure that all of Licensee's contractors and subcontractors obtain and maintain substantially the same insurance as required of Licensee under this Agreement.