

**FIRST AMENDMENT TO SITE LICENSE AGREEMENT**  
**CONTRACT # 129389— I**

THIS FIRST AMENDMENT TO SITE LICENSE AGREEMENT, CITY CONTRACT #129389 (“**First Amendment**”) is entered effective as of May 17, 2013 (the “**Effective Date**”), between the ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University (“**Owner**”), and the CITY OF PHOENIX, a municipal corporation of the State of Arizona, (“**Holder**”), and amends that certain SITE LICENSE AGREEMENT, City Contract #129389 entered as of August 19, 2010 (the “**Original Agreement**”).

1. Defined Words. Except as specifically modified herein, defined words in this First Amendment shall have the same meaning as ascribed to them in the Original Agreement.

2. Grant and Duration of License. Paragraph 1 of the Original Agreement is deleted and the following is substituted in place thereof:

1. Grant and Duration of License. Owner grants the License to Holder for a term of ten (10) years, with a “**Commencement Date**” of August 19, 2010 and terminating at midnight on the last day before the tenth (10th) anniversary of the Commencement Date (the “**Initial Term**”). Owner or Holder may extend the Initial Term of this License, on the same terms and conditions as set forth herein, as modified in this First Amendment, for one additional ten (10) year term (the “**Renewal Term**”), as follows. The term of this License shall renew automatically at the end of the Initial Term unless either Owner or Holder gives the other party written notice at least two hundred seventy (270) days prior to the expiration of the Initial Term of such party's election not to renew the Initial Term, and either party can provide such non-renewal notice for any reason whatsoever. **Notwithstanding the foregoing or anything to the contrary in this Agreement, either party may terminate this Agreement at any time and for any reason by giving two hundred seventy (270) days' advance notice in writing to the other party.**

3. Permitted Use. Paragraph 3 is deleted, and the following is substituted in place thereof:

3. Permitted Use. Holder may, at its sole cost and expense, construct, install, operate, maintain, repair, replace or remove radio transmitters, microwave antennae, cabling, emergency power generators, support mounts, equipment storage structures and other necessary improvements relating thereto, including sleeves, conduit and cable on and across the Premises solely to serve as an emergency and public safety communications tower for Holder (collectively the “**Antenna Facilities**”), no part of which shall become a fixture and all of which shall remain the personal property of Holder. Owner waives all Owner liens against the

Antenna Facilities. Holder shall have the right, at its expense, to modify, supplement, replace, or upgrade the Antenna Facilities within the Premises, at any time during the term of the License so long as the relocation, replacement or upgrade is made for the purpose of improving the operation of its Antenna Facilities, with prior written consent of Owner, which shall not be unreasonably withheld. Reasonable grounds for objection shall include, but not be limited to, interference with existing or planned telecommunications activities or uses by Owner or other licensees. Holder may, without the prior written consent of Owner, replace identical or similar portions of the Antenna Facilities for the purpose of routine maintenance and ongoing operation. Holder shall, at Holder's sole expense, keep and maintain the Premises and the Antenna Facilities in commercially reasonable condition and repair throughout the Initial Term and all Renewal Terms. Holder shall be responsible for any damage to Owner's facilities caused by Holder's activities (including installation, maintenance, repair, replacement and removal of facilities) under this Agreement.

4. ASU's Use of the Antenna Facilities . The following additional Paragraph 17 is added to the Original Agreement:

17. ASU's Use of the Antenna Facilities.

(a) Holder agrees and hereby authorizes Owner to install, operate and maintain transmitters and ancillary equipment for ASU Police communications (the "ASU Antenna Facilities") on Holder's Antenna Facilities, more specifically described as Holder's tower and equipment building ("Owner's Use"). Holder agrees that Holder will be responsible for and pay all utility charges associated with Owner's Use. The ASU Antenna Facilities installed by Owner shall be the personal property of Owner. Owner shall, at Owner's sole expense, keep and maintain the ASU Antenna Facilities in commercially reasonable condition and repair.

(b) Owner will indemnify and hold harmless Holder from and against any and all claims, losses, liability, costs or expenses (including reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to Holder are caused by the act, omission, negligence, misconduct or other fault of Owner, its officers, officials, agents or employees with respect to the ASU Antenna Facilities or the Owner's Use. Any other provision of this Agreement to the contrary notwithstanding, the parties acknowledge that Owner is a public institution and any indemnification or hold harmless provision provided by it is limited as required by State law, including without limitation Article 9, Sections 5 and/or 7 of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") §§ 35-154 and 41-621. Owner's liability under any

claim for indemnification is limited to claims for property damage, personal injury, death, or copyright or patent infringement damages caused by acts or omissions of Arizona State University employees.

(c) Owner will carry commercial general liability insurance in a minimum amount of \$1,000,000. Owner, its officers, agents and employees are covered against liability through the State of Arizona Department of Administration Risk Management Division's program of self insurance for acts or omissions while acting in authorized government or proprietary capacities and in the course and scope of employment or authorization (the "**Liability Insurance**"). The Liability Insurance is provided in accordance with and subject to the provisions of A.R.S. § 41-621. Such insurance coverage is confirmed by a letter dated March 12, 2013 from Owner's Risk Manager addressed to Holder. Liability Insurance provided by Owner shall be primary and noncontributing to any coverage maintained by or on behalf of Holder.

5. Condition of Premises and Property at Surrender. The following new Paragraph 18 is added to the Original Agreement:

18. Removal of Antenna Facilities. On the expiration of the Initial Term or Renewal Term of this Agreement, as applicable, or any earlier termination, at Owner's option, exercised in Owner's sole discretion, Holder shall either (i) remove the Antenna Facilities and restore the Premises and Property to their original condition, normal wear, excepted, or (ii) surrender the Premises, Property and Antenna Facilities in good order, condition and repair, in broom clean condition, reasonable wear excepted, in which event, the Antenna Facilities will be Owner's personal property, free and clear of any claims or liens arising out of Holder's prior ownership thereof. If Owner elects to cause Holder to remove the Antenna Facilities, Holder shall cause the Antenna Facilities to be removed within ninety (90) days following the expiration or earlier termination of the Term (or the Renewal Term) of this Agreement, and until the Antenna Facilities are fully removed and Owner's property restored as required by this Agreement, Holder's insurance and indemnification obligations, as set forth in Paragraph 8 of the Agreement, shall remain in place and be fully enforceable. If Holder fails to do so, Owner may do so at Holder's cost and expense, and Holder shall pay to Owner all reasonable costs and expenses incurred by Owner in removing the Antenna Facilities and restoring the Premises and Property within ten (10) days after receipt of a statement therefor from Owner. All amounts incurred by Owner on Holder's behalf in connection therewith shall bear interest at the rate of ten percent (10%) per annum from the date incurred until fully repaid, with such interest, to Owner.

6. License Fee. Paragraph 4 of the Original Agreement is hereby deleted in its entirety.

7. Consideration. As consideration for Holder allowing Owner to conduct Owner's Use on Holder's Antenna Facilities as set forth in this Amendment, and for Holder's payment of all utility charges required to facilitate Owner's Use, from and after the Effective Date, Owner shall not charge Holder a license fee for the Premises; provided, however, that there shall be no reduction in, or rebate of, the License Fee applicable to the year in which the Effective Date occurs.

8. Utilities and Access. Paragraph 6 of the Original Agreement is hereby amended to add the following:

Owner will be responsible for monitoring access to the Premises for installations, repairs or preventive maintenance activities by Owner and any vendor or contractor of Owner. Such access shall be subject to Owner's policies and procedures, including 24-hour per day, seven-day per week access for Owner and its designated vendors. Owner shall not allow any employees of Owner to have access to the ASU Antenna Facilities until Owner has completed a background check on such employees in accordance with Owner's background check policies. Upon receipt of a statement from Owner that Owner has completed a background check on an employee that complied with Owner's background check policies, Holder shall issue a badge to such employees. Owner shall require all non-employee vendors and contractors of Owner to comply with Holder's badging and access requirement policies and to provide evidence to Owner that such vendor or contractor has complied with such badging and access requirement policies before granting such vendor or contractor access to the ASU Antenna Facilities.

9. No Other Changes. Except as specifically modified by this First Amendment, the terms of the Original Agreement shall remain unchanged and in full force and effect.

10. Counterparts. This First Amendment may be signed in counterpart, which together shall constitute an enforceable agreement between Owner and Holder.

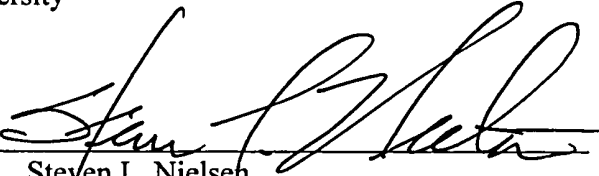
11. Authority to Sign. The persons who have executed this First Amendment represent and warrant that they are duly authorized to execute this First Amendment in the representative capacity indicated.

**[SEE SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, ASU and the City have caused their respective duly authorized representatives to execute this FIRST AMENDMENT TO SITE LICENSE AGREEMENT, CITY CONTRACT #129389 on their behalf as of the Effective Date..

**OWNER/LICENSOR:**

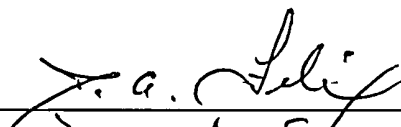
**ARIZONA BOARD OF REGENTS,**  
a body corporate, for and on behalf of Arizona State University

By:   
Steven L. Nielsen  
Assistant Vice President  
University Real Estate Development

**HOLDER/LICENSEE:**

**CITY OF PHOENIX,** a municipal corporation of the State of Arizona

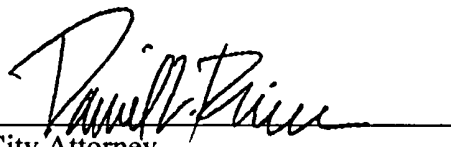


By:   
Name: DAVID A. FELIX  
Its: RWC EXECUTIVE DIRECTOR

ATTEST:

  
City Clerk

The above First Amendment has been reviewed pursuant to A.R.S. § 11-952, by the undersigned attorney for City of Phoenix, Arizona, who has determined that it is in the proper form and is within the powers and authority granted to the City of Phoenix, Arizona.

  
ACTING City Attorney  
rf

CITY CLERK DEPT.  
2013 JUL 29 PM 3:38