

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 20-63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ,
ALASKA, ESTABLISHING A LEASE RATE FOR COMMUNICATIONS
SITE USE AT THE VALDEZ CONTAINER TERMINAL

WHEREAS, the rate for communication site use previously established in
Resolution #15-34 shall hereby be rescinded and replaced by Resolution No. 20-63;
and

WHEREAS, the City Council has determined that adjustments in rates and fees
are necessary in order to provide for adequate funding for Port operations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF VALDEZ, ALASKA that:

Section 1. Resolution #15-34 remains in effect for all Port Fees except
Communications Site Use.

Section 2. The following rate for Communications Site Agreements and
charges provided by the City of Valdez are hereby established:

- | | |
|---|--|
| 1. Communications Site Agreement | \$20,000.00 annually
+ 3% annual increase |
| 2. Communications Site Agreement
Electric | Per KWH cost
+ \$0.025 per KWH per month |
| 3. Communications Site Agreement
Application for Amendment | \$1,500.00 per application |

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
VALDEZ, ALASKA, this 17th day of November, 2020.

CITY OF VALDEZ, ALASKA


Sharon Scheidt, Mayor Pro-Tem

ATTEST:


Sheri L. Pierce, MMC, City Clerk



CITY OF VALDEZ, ALASKA

RESOLUTION #15-34

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, NAMING THE RATES AND FEES FOR PORT PERMITS, AGREEMENTS, AND CHARGES AND REPEALING RESOLUTION 12-22 FORMERLY NAMING SUCH RATES AND FEES

WHEREAS, the City of Valdez has established section 11.05 of the Valdez Municipal Code governing the use of the City's Port Facilities; and

WHEREAS, the City issues a variety of permits and agreements for use of the Port Facilities; and

WHEREAS, Resolution No. 99-19 established the fee for Port Vendors and Resolution No. 02-73 Set a Rate for Communication Site Use Agreements; and

WHEREAS Resolution No. 03-09 established a Waterfront Commercial Work Permit; and Waterfront Commercial Work Permit Policies and Procedures; and

WHEREAS Resolution No. 03-12 established a Waterfront Commercial Work Permit fee and named all Port Facility fees and repealed all previous resolutions establishing various fees; and

WHEREAS Resolution No. 09-15 repealed Resolution No. 03-09 establishing a Waterfront Commercial Work Permit and Waterfront Commercial Work Permit Policies and Procedures; and

WHEREAS Resolution No. 10-19 established fees for the use of the John Thomas Kelsey Municipal Dock uplands and named all Port Facility fees and repealed all previous resolutions establishing various fees; and

WHEREAS, cruise ships no longer call at the Valdez Container Terminal and Port Vendors no longer require access to the facility; and

WHEREAS, Resolution No. 12-22 eliminated the Port Vendor Permit fee; and

WHEREAS, the City Council has determined that adjustments in rates and fees are necessary in order to provide for adequate funding for Port operations.

NOW, THERFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA that:

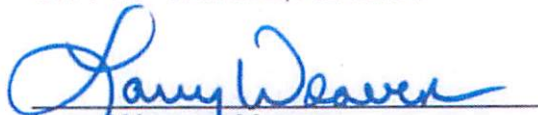
Section 1. Resolution No.12-22 is hereby repealed.

Section 2. The following rates for Port Permits, Agreements, and charges provided by the City of Valdez are hereby established:

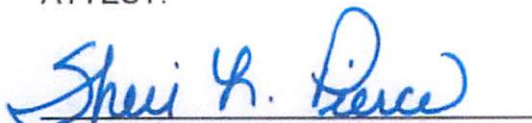
- | | |
|--|--|
| 1. Stevedoring Services Permit | \$5,000.00 6,922.00 annually |
| 2. Special Use Permit | Approved by Council on an individual basis |
| 3. Building Lease Agreement | 10% of Fair Market Value |
| 4. Communications Site Agreement | \$750 800.00 per month |
| 5. Special Use Agreement | Approved by Council on an individual basis |
| 6. John Thomas Kelsey Municipal Dock Uplands Fees: | |
| A. Rental for Plaza or Parking Lot | \$50 per 6 hour period
\$150 per 24 hour period |
| B. Rental for Plaza or Parking Lot Commercial Rate | \$20 per hour
\$300 per 24 hour period |
| C. Damage/Cleaning Deposit | \$75 |
| D. Electricity Charge | \$20 per 24 hour period |
| E. Use of Propane Heaters | \$22 per Heater |

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this 3rd day of August, 2015.

CITY OF VALDEZ, ALASKA


Larry Weaver, Mayor

ATTEST:


Sheri L. Pierce, MMC, City Clerk



Appraisal Company of Alaska

3940 ARCTIC BOULEVARD, SUITE 103
ANCHORAGE, ALASKA 99503
office@appraisalalaska.com

July 7, 2015

Diane Kinney, Port Director
City of Valdez
P.O. Box 307
Valdez, Alaska 99686

Re: Valdez Container Terminal Cell Site

Dear Ms. Kinney:

I have researched the market for information and lease data regarding for the container terminal cellular site. The range of value for cell site depends on a number of factors. These included but are not limited to the following:

- 1) area of the site
- 2) size of any structures
- 3) drop radius of the tower
- 4) location (coverage area)
- 5) who pays for electricity

In general site leases are based on the above criteria and ranged from \$633.00 per month to \$1650.00 per month.

Rates appear to be in relation to size of the market area.

Also the larger the site, and the extent of utilities provided, the higher the lease rate.

In Alaska, the following communities have negotiated cellular sites:

Seward	8% of the fair market value of the land.
Kenai Peninsula Borough	\$7,600/year (\$633 per month) with 3% increase per year.
Anchorage	\$1650/month for a larger site with 5 year escalation.
Kivalina	\$700/month for a 3925 SF site.

Other Alaska cell sites for smaller installations ranged from \$220/month to \$500/month in the Kenai Peninsula Borough, plus a 3% increase per year. Other Anchorage sites were as high as \$800 to \$1200 a month plus a 3% increase per year.

Considering the location within Valdez in comparison to other Alaskan communities, I would recommend the amended lease rate at \$800.00 per month.

Sincerely,

APPRAISAL COMPANY OF ALASKA



Michael C. Renfro
Contract Assessor
City of Valdez



Appraisal Company of Alaska

MEMORANDUM

To: Mr. Jeremy Talbott and Ms. Jenessa Ables

Cc: Mr. Jake W. Staser, Esq.

From: Mr. Todd Ruggiero, Cell Site Support Services, LLC

Date: July 20, 2020

Subject: Analysis of City of Valdez Use Agreements

This memorandum is intended to provide specific analysis of the City of Valdez's current Use Agreements with multiple wireless carriers (and a tower company) located at the Valdez Grain Terminal. The analysis is informed by the review of hundreds of site agreements between cell carriers, tower companies and municipalities, counties and other governmental entities over the past twenty years. Our review and analysis is limited to the documents that were provided to us. Any additional documentation that becomes available may be provided to us and we will review to determine its affect, if any, on our analysis.

Since 9/11, site agreements with governmental entities for cell sites changed dramatically in favor of governmental entities due to a renewed focus on public safety and the provision of services to the public being of paramount importance. Initially, carriers and tower companies struggled with accepting relatively unilateral terms and conditions in favor of the cities, counties and other governmental entities, but over the years, it has become much more common for carriers and tower companies to accept site agreements with unilateral terms protecting the government entity. The recommendations in regards to the City's existing Use Agreements are made in line with the above background and in line with common practice today in with respect to site agreements in the governmental and quasi-governmental sector.

This memorandum does not consider federal regulations that pertain specifically to collocations which affect a municipality's discretion over whether to approve a zoning permit for a proposed site where there is already an existing lessee/licensee/permittee/user. Other recent regulations promulgated by the FCC affect small cell deployments and installations in public right of ways. The analysis of the Use Agreements herein does not include zoning approvals and permits, nor sites located in public right of ways. This analysis focuses on the existing leases for the macro cell sites located in, around and on the Grain Terminal and makes recommendations for improving the City's current Use Agreements as outlined below.

Existing Use Agreements

I. **AT&T** (originally McCaw) Use Agreement, dated May 8, 1995, as amended four times

1) Equipment (Section 5):

a) Terminal: MW dishes, antennas, wave guides, coax cables and related electrical equipment;

b) Ground: 288 sf of ground space for 1 building no taller than 15' plus sufficient area for a snow roof;

c) **Recommendation:** Add exhibit(s) to Use Agreement depicting location of equipment on Terminal and location of all ground equipment, including utilities and access.

2) **Current Annual Use Fee (Amendment No. 4):** \$9,600.00

a) **Recommend Annual Use Fee:** \$20,000.00+ (depending on equipment on Terminal)

3) **Annual Escalation:** None in Amendment No. 4

a) **Recommend Annual Use Fee Escalation:** 3%

4) **Term (Sections 3-4):** There is one 5-year extension remaining under the original Use Agreement. The City has the right to increase the Use Fee to fair market value of the use. **Recommend** increasing the monthly Use Fee to \$20,000.00+. Although this might seem like a steep increase from the current Use Fee, that is really because the current Use Fee is way below market rents.

a) With respect to commencement dates, Jenessa raised a good point regarding the administration of the City's Use Agreements. Many municipalities have elected to have all of their agreements be tied to the calendar year or their fiscal year for ease of administration. This makes it easier to track payments and escalations, expirations, etc. The carriers are familiar with this request and will likely not have an objection.

5) **Consent Required (Section 6): Recommendation:** Included with the City's right to consent to alterations, additions or improvements, AT&T must be obligated to provide the City with a set of construction drawings detailing the proposed changes for City's review, comment, changes and approval.

6) **Insurance (Section 10): Recommend** that this section be expanded upon, both from a coverage and limits standpoint. City must be named as an additional insured on all policies. We recommend \$3MM CGL with an umbrella of \$5MM, plus workers' comp, employer's liability, business auto liability. If City owns the Terminal, then we recommend that only certified climbers climb the Terminal and that they carry the requisite Tower Climbing Insurance. Tower climbing has been ranked as the most dangerous job in American for many years.

7) **Termination (Section 11): Recommendation:** Expand City's termination rights to include the right to terminate, upon 180 days prior written notice, if the City Council determines that AT&T's Use is inconsistent with the City's desired use of the Terminal and/or Real Property.

8) **Electrical Installation/Usage (Section 16):** AT&T agrees to pay for its electrical usage, but has the right to use the existing port master meter and then have the City bill AT&T for reimbursement. **Question:** Is AT&T paying for its own utilities directly? Or is AT&T submetering off of the master meter and then reimbursing the City for its usage?

9) **Environmental (Section 17):** City has some indemnity obligations under the Use Agreement to AT&T. Many municipalities have refused to include any indemnification in their agreements with third parties for a number of reasons, including public entity liability, advice of counsel and the fact that, for \$9,600.00 per year, or even \$24,000.00 per year, it is not worth indemnifying one of the largest for profit corporations in the U.S. **Recommendation:** Require AT&T to accept the Terminal and real property in its AS IS, WHERE IS condition, with all faults, and no express or implied warranties, or representations that the leased premises is fit for any particular purpose.

10) **Removal. Recommendation:** Add removal provision to site agreement specifically requiring AT&T, at its sole cost and expense, to remove all of its equipment from the Terminal and Real Property and to restore both to their original condition, reasonable wear and tear excepted. This may require a change to **Section 18, Waiver of City's Lien**, as if AT&T leaves equipment at the site after termination, the City needs the right to remove and dispose of it at AT&T's cost. The waiver of lien could present a challenge to removing and disposing of the abandoned equipment. If on the property more than 30 days after the expiration or terminate of the Use Agreement, the property should be deemed abandoned and the City should have the right to do what it needs to do to reclaim the premises, all at AT&T's cost and expense.

11) **Miscellaneous:**

a) **Third Recital of Original Use Agreement:** Alaska Grain Company, Inc. owns the Valdez Grain Terminal and operates it on the property pursuant to a license agreement between the City and AGC dated 12/28/82, modified on 5/31/89. **Recommendation:** If this is not correct, have parties acknowledge such in the next amendment or new use agreement.

b) Add Section 10 from Vertical Bridge Use Agreement to Agreement with AT&T in next amendment, i.e., **"Transportation Worker Identification Credential (TWIC)"**.

c) Include an **"Access"** provision with access protocols for routine maintenance, construction work, and emergency access. Limit hours of access except in the event of an emergency and provide a call-in number for emergency access if desired.

d) Add a **"Notice"** provision to the agreement in the next amendment to detail current addresses and methods of delivery of legal notices, etc.

II. Port of Valdez Communications Site Agreement dated October 1, 2015 with **Vertical Bridge Tower II, LLC (VB II)**, via transfer The Alaska Wireless Network, LLC (**AWN Wireless**), successor in interest to GCI Communication Corp. (GCI). The transfer from AWN to VB II was approved by the City on August 3, 2016.

Vertical Bridge is a tower company that is not a wireless operator, but rather acquires cell towers, rooftop sites and other facilities to sublease to carriers. AWN Tower Company, LLC (**AWN Tower**) is a subsidiary of Vertical Bridge. AWN Wireless subleases space from AWN Tower (VB II). City consented to the sublease in the letter dated May 2, 2016 signed by the Mayor on August 3, 2016. Thus, AWN Tower pays the City a Use Fee (way below market) and AWN Wireless pays AWN Tower a sublease or license fee. As a result, it is likely that VB II is making a substantial profit off of this site.

1) **Equipment (Section 5) and Exhibit A:**

a) Terminal: **Recommendation:** Review equipment and locations shown in drawings for accuracy and obtain list of equipment on Terminal;

b) Ground: One (1) building not to exceed 288 sf in area and 15' in height, plus sufficient area for a snow roof on building. **Recommendation:** Review drawings attached as Exhibit A with current survey of equipment;

c) Exhibit A – Drawings are very old. **Recommendation:** Have lessee provide updated drawings depicting location of equipment and utilities.

2) **Annual Use Fee (Amendment No. 1):** \$9,600.00 through 9/30/2020

a) **Recommend Annual Use Fee: \$20,000.00+** (depending on equipment on Terminal)

3) **Annual Escalation:** None.

a) **Recommend Annual Use Fee Escalation: 3%**

4) **Term (Sections 3-4):** The current term expires on 9/30/2020 and there are 3x5 extensions if the Lessee is not in default. The City has the right to increase the Use Fee to fair market value of the use. **Recommend** increasing the monthly Use Fee to \$20,000.00+.

a) Align commencement dates between Use Agreements per Jenessa's inquiry about doing so previously.

5) **Consent Required (Section 6):** **Recommendation:** Require Lessee to pay for third party structural analysis when Lessee desires to make equipment modifications on the Terminal.

6) **Insurance (Section 13):** **Recommend** that specific types of coverage and limits be incorporated into this provision. We recommend \$3MM CGL with an umbrella of \$5MM, plus workers' comp, employer's liability, business auto liability. If City owns the Terminal, then we recommend that only certified climbers climb the Terminal and that they carry the requisite Tower Climbing Insurance.

7) **Electrical Installation/Usage (Section 19):** Lessee agrees to pay for its electrical usage, but has the right to use the existing port master meter and then have the City bill Lessee for reimbursement. **Question:** Is Lessee paying for its own utilities directly? Or is Lessee submetering off of the master meter and then reimbursing the City for its usage?

8) **Environmental (Section 20):** City makes some representations and warranties under the Use Agreement. Due to the high profitability of this site for VB II, the fact that there are sometimes, or have been, ordinance in and around the Port, and the fact that the Use Fee revenue is relatively low in relation to the potential liability, I recommend removing any such representation or warranties by the City. **Recommendation:** As with AT&T, require Lessee to accept the Terminal and real property in its AS IS, WHERE IS condition, with all faults, and no express or implied warranties, or representations that the leased premises is fit for any particular purpose.

10) **Removal.** **Recommendation:** Add removal provision to site agreement specifically requiring Lessee, at its sole cost and expense, to remove all of its equipment from the Terminal and Real Property and to restore both to their original condition, reasonable wear and tear excepted. This may require a change to **Section 21, Waiver of City's Lien**, as if Lessee leaves equipment at the site after termination, the City needs the right to remove and dispose of it at Lessee's cost. The waiver of lien could present a challenge to removing and disposing of the abandoned equipment. If on the property more than 30 days after the expiration or terminate of the Use Agreement, the property should be deemed abandoned and the City should have the right to do what it needs to do to reclaim the premises, all at Lessee's cost and expense.

11) **Miscellaneous:**

- a) Include an “Access” provision with access protocols for routine maintenance, construction work, and emergency access. Limit hours of access except in the event of an emergency and provide a call-in number for emergency access if desired.

III. Port of Valdez Communications Site Agreement dated October 1, 2015 with Copper Valley Telephone Cooperative.

1) Equipment (Section 5) and Exhibit A:

a) Terminal: No number of MW dishes, antennas, coax, wave guides or electrical equipment is provided. Combined with the very basic Exhibit A, it is difficult to know what equipment Lessee is permitted to maintain. **Recommendation:** Review equipment and locations at site and require Lessee to provide survey of all of its equipment at the site;

b) Ground: One (1) building not to exceed 288 sf in area and 15’ in height, plus sufficient area for a snow roof on building; one (1) 12KW diesel standby generator with integrated 100-gallon fuel tank mounted in a weather enclosure. **Recommendation:** Review location of generator in Exhibit A for accuracy and obtain current survey of building location from Lessee;

i) Valdez PD allowed to maintain 2 antennas on the Terminal utilizing Lessee’s building for a small 3’x5’ receiving box) – **Question:** Does the PD maintain this equipment currently?

c) Exhibit A – Single page drawing is very rudimentary and not reflective of any equipment, other than the generator location. **Recommendation:** Have Lessee provide updated drawings depicting location of equipment and utilities.

2) Annual Use Fee (Amendment No. 1): \$9,600.00 through 9/30/2020

- a) **Recommend Annual Use Fee: \$20,000.00+** (depending on equipment on Terminal)

3) Annual Escalation: None.

- a) **Recommend Annual Use Fee Escalation: 3%**

4) Term (Sections 3-4): The current term expires on 9/30/2020 and there are 3x5 extensions if the Lessee is not in default. The City has the right to increase the Use Fee to fair market value of the use. **Recommend** increasing the monthly Use Fee to \$20,000.00+.

- a) Align commencement dates between Use Agreements per Jenessa’s inquiry about doing so previously.

5) Consent Required (Section 6): **Recommendation:** Require Lessee to pay for third party structural analysis when Lessee desires to make equipment modifications on the Terminal. Require Lessee to coordinate non-routine work at site with the City.

6) Insurance (Section 13): **Recommend** that specific types of coverage and limits be incorporated into this provision. Minimum recommend coverage and limits: (i) \$3MM CGL, (ii) with an umbrella of \$5MM, (iii) workers’ comp in compliance with state statutory requirements, (iv) employer’s liability, and

(v) business auto liability of \$2MM. If City owns the Terminal, then we recommend that only certified climbers climb the Terminal and that they carry the requisite Tower Climbing Insurance.

7) **Electrical Installation/Usage (Section 19)**: Lessee agrees to pay for its electrical usage, but has the right to use the existing port master meter and then have the City bill Lessee for reimbursement.

Question: Is Lessee paying for its own utilities directly? Or is Lessee submetering off of the master meter and then reimbursing the City for its usage?

8) **Environmental (Section 20)**: City makes some representations and warranties under the Use Agreement, e.g. that the entire property is free of hazardous substances. Due to the fact that CVT uses the site for a profitable enterprise (using a public asset), the fact that there are sometimes, or have been, ordinance in and around the Port, and the fact that the Use Fee is relatively low in relation to the potential liability, I recommend removing any such representation or warranties by the City. **Recommendation**: As with the other users, require Lessee to accept the Terminal and real property in its AS IS, WHERE IS condition, with all faults, and no express or implied warranties, or representations that the leased premises is fit for any particular purpose.

9) **Removal**. **Recommendation**: Add removal provision to site agreement specifically requiring Lessee, at its sole cost and expense, to remove all of its equipment from the Terminal and Real Property and to restore both to their original condition, reasonable wear and tear excepted. This may require a change to **Section 21, Waiver of City's Lien**, as if Lessee leaves equipment at the site after termination, the City needs the right to remove and dispose of it at Lessee's cost. If on the property more than 30 days after the expiration or terminate of the Use Agreement, the property should be deemed abandoned and the City should have the right to do what it needs to do to reclaim the premises, all at Lessee's cost and expense.

10) **Miscellaneous**:

a) Include an "Access" provision with access protocols for routine maintenance, construction work, and emergency access. Limit hours of access except in the event of an emergency and provide a call-in number for emergency access if desired.

IV. Summary: Overall, the City has done a good job of updating its Use Agreement over the years. There are some terms that the City may want to address as outlined above and of course, there is a lot of room to increase the annual use fees.

The City may choose to continue using the "Use Agreement" format, or consider a "License", "Permit" or "Revocable Use Permit" format, utilized by other governmental entities. In any event, changing the term of the User/Carrier from "Lessee" to "Permittee" or "Licensee" is recommended so as to avoid any confusion that the agreement is in any way intended to be a lease. Using the License or Permit format allows for incumbent revocation/termination rights of both as a matter of law.

From: [Todd Ruggiero](#)
To: [Jenessa Ables](#)
Cc: [Jake Staser](#); [Jeremy Talbott](#)
Subject: [External Attachment *Caution*]-Re: Original Contract Scope - "Industry Standard" Rate Inquiry
Date: Tuesday, October 13, 2020 9:33:21 AM

Hi Jenessa,

For 20 years, I worked for 2 of the major carriers, which involved negotiating hundreds of agreements with cities, counties and states. For the past 8 years, I've worked with approximately 70 government entities in assisting them with their wireless telecom site leasing and zoning issues. While some of the information related to the wireless site leases and rental rates is publicly available via the internet, most of it requires a public records request. Unfortunately, I cannot directly share the information for my clients without obtaining their consent.

That said, the rental/use rate that I recommended to the City is conservative and is based on rent data that I have accumulated throughout my career. My experience includes working on piecemeal pricing of equipment for carriers with respect to collocations on existing towers and working on master license agreements between the carriers and the tower companies which also involves a pricing schedule.

A rate of \$5,000.00 - \$10,000.00 per year for a cell site on municipal property would be the very low end of the range, in fact, I cannot recall working on a lease with a municipality for a starting rent of \$10,000.00 in the past 10 years. The average rent for municipal leases on which I work is \$2,250.00. Note, that rate is for a macro-cell site, not a small cell site.

With respect to the sites on the City's silos, they could even garner a premium because the carriers get the advantage of using the existing silos instead of having to build a tall communications tower. I know the information in this email may not be the backup or support for which the City is looking, but it's the best that I can offer without culling through publicly available data for rental rates charged by other municipalities or obtaining waivers from municipal clients to share their rental rate data.

Please let me know if you would like to discuss.

Thank you,

Todd

Todd D. Ruggiero
[415.235.8494](tel:415.235.8494) (direct)
[866.853.3772](tel:866.853.3772) (fax)
todd@cellsitesupport.com

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**PORT OF VALDEZ
COMMUNICATIONS SITE AGREEMENT**

This COMMUNICATIONS SITE AGREEMENT (Agreement) is hereby entered into on this ____ day of _____ by and between the **CITY OF VALDEZ, ALASKA** (City), an Alaska municipal corporation, whose address is P.O. Box 307, Valdez, Alaska 99686 and _____ (User), a _____ corporation whose address is _____.

WITNESSETH:

WHEREAS, the City is owner of that certain parcel of real property that is located in the Valdez Recording District, Third Judicial District, State of Alaska, described as follows:

Island F, a portion of ADL Nos. 201084 & 212412, also known as "Ammunition Island," referenced in Alaska Tidelands Survey 564, located in Township 8 South, Range 6 West, Copper River Meridian, Valdez Recording District, Third Judicial District, State of Alaska; and

Located upon that real property is the Valdez Container Terminal ("Terminal") including a certain grain handling facility with grain silos and an access tower upon which communications equipment may be placed ("Premises"); and

WHEREAS, User is engaged in the business of providing communication services in and around Valdez, Alaska, and desires to place certain equipment that is associated with the provision of communication services on and upon certain Terminal towers and structures and, further, desires to make and place certain improvements to and upon the Real Property whose function is to be associated with the operation of such equipment; and

WHEREAS, the City seeks to facilitate the provision of improved and innovative communications within Valdez and specifically find that this Agreement conforms therewith.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the City and User as follows:

1. Use of Premises. The City grants user the right and privilege to use of the Premises as further defined in **Exhibit A** attached hereto.

User agrees to accept the premises AS IS, WHERE IS condition with all faults, and understands that the City makes no express or implied warranties, or representations that the Premises is fit for any particular purpose.

The City grants to User the right and privilege to come and be present upon and to make use of the Premises for the following purpose only:

To place, install, maintain and operate equipment associated with the provision of communications services within the City of Valdez and the surrounding vicinity. The equipment that User is permitted to place, install, operate, and maintain upon the Premises under this Agreement is depicted in **Exhibit B** attached hereto ("Equipment") as is the permitted location and configuration of the Equipment.

User shall not commit or allow to be committed waste upon or to the Premises or Terminal or any public or private nuisance or other act or thing (including but not limited to noise or vibration) which disturbs City, any neighboring property owner or tenant.

Prior to the execution of this Agreement, User shall provide the City with a detailed description of the Equipment and drawings indicating the location and configuration of the Equipment on the Terminal and all ground Equipment including utilities and access.

2. Fees. User shall pay to the City, in exchange for the right and privilege to use the Premises as is permitted under this Agreement, and for the Term thereof, the sum of TWENTY THOUSAND DOLLARS and NO CENTS (\$20,000.00) per year. The fee shall increase annually by THREE (3) PERCENT rounded to the nearest dollar unless otherwise adjusted by resolution of the Valdez City Council. Annual fees for the term of this Agreement shall be:

2020 – \$5,041 (Pro-rated)
2021 – \$20,000
2022 – \$20,600
2023 – \$21,218
2024 – \$21,855
2025 – \$22,510

Fees for any period during the term hereof which is less than one year shall be prorated based on a three hundred sixty-five (365) day year.

These fees shall be paid in advance in one annual payment on or before January 31, of each year. Fees shall be paid directly to the Port of Valdez, P.O. Box 787, Valdez, Alaska 99686.

3. Term. This Agreement shall be for a term of FIVE (5) years, commencing on October 1, 2020 and terminating on December 31, 2025, unless this Agreement is terminated at some earlier date under the terms and conditions set out hereinafter.

4. Extended Term. User shall have the right to extend the Term of this Agreement for a period of FIVE (5) years if and insofar as User gives written notice to the City of an intention to exercise this option no later than THIRTY (30) days prior to the expiration of the Term and that, at such time, User is not in default in the performance of any of the terms and conditions of this Agreement or has failed to comply with any of the terms and conditions hereof. Two additional FIVE (5) year extensions may be granted by the City if User is in compliance with this Agreement

and the City deems this to be in the best interest of the City. At each extension, the City may increase the use rate based upon the fair market rental value of the use by User.

5. Consent Required for Modifications. User shall not place or install any equipment, or make any alteration, addition, or improvement to any existing equipment previously placed or installed, or place or put any improvements on or to the Premises or Terminal, or commence any such undertaking without the prior written consent of the City after submitting a Modification Application Form attached as **Exhibit C** and a \$1,500 modification application fee.

As a condition precedent to such consent, User shall deliver to the City written plans, drawings, and specifications for all such work and provide a third-party structural analysis of such modifications and/or improvements. The plans shall show the layout of all proposed buildings, modifications to existing buildings or structures, and all other modifications, dimensions and locations of utilities if modified, specific use of said improvements, and a schedule of the completion dates for such modifications and other improvements. It is not the intent of this paragraph to restrict or prevent any required maintenance.

6. Interference with Terminal or City Operations. User shall not place, install, maintain, or operate any equipment on or come upon, occupy or use the Terminal or Premises so as to hamper the operation or use of the Terminal, cement powder storage and distribution facility, or any other facility or that interferes with or impairs any of the rights or benefits of the City. The use of the Terminal and Premises for purposes deemed of higher public benefit by the City takes precedent over any use by User. User shall interfere with the Valdez Police Department or Valdez Fire Departments use of the premises for communication purposes including the maintenance of two antennas located on the Terminal towers and a receiver box.

7. Multi-Use Facility. User recognizes that the Valdez Container Terminal (VCT) is a multi-use facility. There will be occasions when User's personnel may be restricted from access to the Terminal due to Coast Guard, Department of the Army, Department of Defense, or any other applicable regulations. In addition, the City may restrict access to the Terminal as required for Port operations or otherwise. Any business interruptions associated with the City restricting access or otherwise closing the Terminal shall create no financial obligation upon the City for any cost of such interruption to User operations.

9. Compliance with Government Regulations. User shall comply and assumes sole responsibility for compliance with any and all economic, operational, safety, and other requirements as are or may be imposed by federal, state, municipal, or other law or regulatory body, that apply or relate thereto pursuant to its involvement in the communications business generally or cellular communications specifically; User agrees to reimburse the City its entire costs, including but not limited to the amounts of fines or penalties and costs of counsel, arising from any assertion or finding of a lack of compliance with any aforesaid laws and/or regulations arising out of or with respect to User's operations of the equipment associated with this Agreement.

10. Access. User understands that the Terminal is located on a regulated facility as defined by the U.S. Coast Guard, Department of Homeland Security and agrees to comply with

any and all regulations in 33 CFR, Chapter 1, Subchapter H, Part 105 – Maritime Security: Facilities.

User agrees to provide the Port office with a list of all employees or contractors needing access to the Terminal. All employees and contractors shall have a valid Transportation Worker Identification Credential (“TWIC”) or be escorted by a valid TWIC holder that has been approved for access to the Terminal and contact the Port Office to register TWIC for facility access in advance of arrival on site. Employees and contractors requiring access to the Terminal must pay the gate registration fee under the Port of Valdez Terminal Tariff (“Tariff”) in effect at the time of registration and will incur additional administration/maintenance charges under the Tariff when City assistance or escort is required to access the terminal.

Only certified climbers covered by the requisite tower climbing insurance may climb the tower located at the Terminal.

11. Nuisance. User shall immediately remove from the Terminal and Premises any of the following which are determined to be abandoned: buildings, improvements, vehicles, equipment, machinery or fixtures. User shall not allow a public nuisance to exist or to be created or maintained on the Premises or Terminal. If the City Manager or Port Director determines that User has failed to perform as required by this subsection, the City Manager or Port Director may direct User to secure a labor force to so perform at the sole expense of User and User shall do so immediately. If User fails to commence such performance within twenty-four hours after notice from the City Manager or Port Director, the City Manager or Port Director may arrange for such performance at the sole expense of User and User shall pay those expenses.

12. Indemnification. To the maximum extent permitted by law, User (Indemnitor) agrees to defend, indemnify, and hold harmless, the City, the City’s employees, and any/all other entities for which the City is, or may become, legally responsible (Indemnitees), against and from any and all claims in any way associated with anyone’s conduct under, induced by, and/or enabled by, this Agreement, alleged to have arisen in whole or in part as a result of any conduct on the part of the Indemnitor and/or one or more of the Indemnitees.

13. Insurance Requirements. All insurance policies required to be maintained by User under this paragraph shall name the City, and its officers, employees and agents, as additional insureds. All policies issued under paragraph shall contain an agreement by the insurers that such policies shall not be cancelled without at least twenty (20) days prior written notice to the City, and certificates or copies of all such insurance policies shall be furnished to the City promptly upon request therefor. All policies shall contain a waiver of any subrogation rights any insurer might have against the City. User shall maintain, at its own expense, insurance as follows:

General Commercial Liability: User shall Maintain a General Commercial Liability insurance policy covering the User and the City for any and all claims for personal injury, bodily injury (including death) and property damage (including environmental degradation or contamination) arising from any activity occurring as a result of this Agreement.

A. Minimum limits:

1. \$1,000,000 Each occurrence
2. \$100,000 Damage to rented premises
3. \$1,000,000 Personal injury
4. \$3,000,000 General aggregate
5. \$3,000,000 Products and completed operations aggregate

B. Coverages:

1. The policy shall contain additional insured endorsement CG 20 10 04 13 and CG 20 37 04 13 or equivalent as approved by Contractor.

Auto Liability: User shall maintain business auto liability insurance covering liability arising out of any auto (including owned, hired, and non-owned autos).

A. Minimum Limits:

1. \$1,000,000 Combined single limit for each accident.

B. Coverages:

1. Additional insured endorsement
2. Waiver of subrogation
3. Contractual liability

Workers' Compensation: User shall maintain Workers' Compensation and Employer's Liability Insurance.

A. Minimum Limits:

1. Workers' compensation – statutory limit
2. Employer's liability:
 - \$1,000,000 bodily injury for each accident
 - \$1,000,000 bodily injury by disease for each employee
 - \$1,000,000 bodily injury disease aggregate

B. Coverages:

1. The policy shall provide for a waiver of subrogation in favor of the parties required to be named additional insured under the User's General Liability policy.

Umbrella Liability: User shall maintain shall Maintain an Umbrella Liability insurance policy covering the User and the City.

A. Minimum Limits:

1. \$5,000,000 per occurrence.

14. **Termination.** This Agreement may be terminated by the City should User's use interfere with the City's use of the Premises or Terminal for purposes deemed by the City as in the Communications Site Agreement

best interest of the public, by providing User with one hundred eighty (180) days prior written notice of termination. This Agreement may be terminated by the City upon User's failure to perform or comply with any of the conditions or obligations contained in this Agreement, or the filing of a petition in bankruptcy or insolvency, or for reorganization or for the appointment of a receiver or trustee, by or against User; in such event, the City shall give User ten (10) days prior written notice of the termination and User shall have thirty (30) days to remove any of its equipment from the Terminal and Premises. This Agreement may be terminated by User upon thirty (30) days prior written notice of the termination and User shall then have thirty (30) days from the date of such notice to remove all of its equipment from the Terminal and Premises. The City reserves the right to terminate this agreement if it is in the best interest of the public to do so.

15. Radio Interference. At the City's request, User shall discontinue the use of the Terminal as a transmitting/receiver site should User's use interfere with any FCC licensed transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

16. Assignability/ Use by Other Parties. User shall not assign (by operation of law or otherwise) or transfer this Agreement or any interest therein without the prior written consent of the City. User may not allow other parties to utilize User's equipment installed on the Premises without the prior written consent from the City. User shall immediately disclose any use of the Premises or User's equipment installed thereon by any party other than User. Failure to make such a disclosure will result in the imposition of a penalty in the amount of \$20,000 per year that User failed to make such a disclosure. Execution of this Agreement by User shall serve as a certification by User that no other parties are utilizing User's equipment installed on the Premises as of the date of execution.

17. Non-exclusive Use. The use of the Terminal and Premises by User will not be an exclusive use and therefore others who request to use it for similar purposes may also be allowed to do so by the City.

18. Snow and Bird Waste Removal. User will be responsible for all snow and bird waste removal necessary for its use under this Agreement.

19. Utility Installation/Usage. User will be responsible for the cost of installation of and the utilization of electricity needed for its use. User may utilize, if feasible, the existing port master meter to access power to the site of User's facilities. The City will bill User for reimbursement for the cost of power plus \$0.025 per KWH and the cost of other utilities used by User under this Agreement. User is responsible for obtaining and maintaining a separate electricity meter for its use under this Agreement.

20. Removal of Equipment. Upon the expiration or termination of this Agreement, User, at its sole cost and expense, will be responsible for the removing all equipment installed on the Terminal and/or Premises and restoring the Terminal and/or Premises to its condition prior to installation of the equipment except for normal wear and tear. Failure to remove the Equipment and restore the Premises as required in this paragraph within SIXTY (60) days of the expiration or termination of this Agreement will result in the Equipment being deemed abandoned

21. Environmental Laws.

- (a.) User represents, warrants, and agrees that it will conduct its activities on the Premises in compliance with all applicable Environmental Laws, and will keep the Premises free of Hazardous Substances, except for fuel for emergency generators. The City represents, warrants, and agrees that it has in the past and will in the future conduct its activities on the Premises in compliance with all applicable Environmental Laws and that the Premises is free of Hazardous Substances as of the date of this Agreement.
- (b.) The City shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law, of all spills or other releases of Hazardous Substance, caused by the City, that have occurred or which may occur on the Premises. User shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law, of all spills or other releases of Hazardous Substance, caused by the User, that have occurred or which may occur on the Premises.
- (c.) User agrees to defend, indemnify, and hold the City harmless from and against any and all claims, causes of action, demands, and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments, and attorney's fees that the City may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment arising solely from User's activities on the Property.
- (d.) The indemnifications in this section specifically include costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any governmental authority.

22. Notices. All notices hereunder must be in writing and shall be deemed validly given if hand delivered or sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service, addressed to the City or User at the addresses indicated below (or any other address that the Party to be notified may have designated to the sender by like notice). Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

USER

	Cell Site / Technician	Lease Management	Billing Division
Name:			
Address:			
Phone:			
Email:			
*			

* Check for Notification of Terminal Closures and Planned Outages

CITY

Name: Jeremy Talbott
Address: P.O Box 307
Valdez, AK 99686
Phone: (907) 835-4564
E-Mail: JTalbott@valdezak.gov

23. Governing Law/Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Alaska. Any legal action brought to enforce this Agreement must be filed in the appropriate Alaska state court located in Valdez, Alaska.

24. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters covered by this lease, and no other agreement, statement or promise made by any party which is not contained in this lease shall be binding or valid.

IN WITNESS WHEREOF, the parties to this presence have executed this **CONTRACT** in two (2) counterparts, each of which shall be deemed an original, in the year and day first mentioned above.

INSERT USER NAME HERE

BY: _____

DATE: _____

TITLE: _____

FEDERAL ID #: _____

Mailing Address

City, State, Zip Code

Signature of Company Secretary or Attest

Date: _____

**CITY OF VALDEZ, ALASKA
APPROVED:**

Mark Detter, City Manager

Date: _____

ATTEST:

Sheri L. Pierce, MMC, City Clerk

Date: _____

RECOMMENDED:

Jeremy Talbott, Ports and Harbors Director

Date: _____

APPROVED AS TO FORM:
Brena, Bell & Walker, P.C.

Jake W. Staser

Date: _____

DRAFT - NOT FOR SIGNATURE

EXHIBIT A

Map/Description of Premises

DRAFT - NOT FOR SIGNATURE

EXHIBIT B

List of Specific Uses and Equipment to be Installed on Premises

DRAFT - NOT FOR SIGNATURE

EXHIBIT C

Modification Application Form

User: _____

Address: _____

Modification Requested: _____

Describe New or Modified Equipment: _____

Dates Requested for Completion of Modification: _____

Names of Certified Climber(s) Completing Modification: _____

Submitted Revised Exhibit B? YES/NO

Submitted \$1,500 Modification Application Fee? YES/NO

Signature: _____

Name: _____

Date: _____