A SUBSTITUTE ORDINANCE
BY FINANCE EXECUTIVE COMMITTEE

10-O-0167

A N ORDINANCE TO AUTHORIZE THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN IN-BUILDING RADIO DISTRIBUTION AGREEMENT WITH VERIZON WIRELESS TO ALLOW BETTER RADIO SYSTEMS PERFORMANCE FOR ATLANTA POLICE DEPARTMENT ("APD") PERSONNEL AT THE 3493 DONALD LEE HOLLOWELL PARKWAY ANNEX FOR APD AT NO EXPENSE TO THE CITY OF ATLANTA.

WHEREAS, APD personnel have had difficulty getting reception on cellular and radio telecommunications equipment at the Public Safety Annex Building (hereinafter, "Annex") at 3491 Donald Lee Hollowell Parkway; and

WHEREAS, Verizon Wireless (VAW) LLC d/b/a Verizon Wireless is a telecommunications service provider which provides cellular service to the City of Atlanta; and

WHEREAS, Verizon Wireless has agreed to provide, at no cost to the City, enhanced equipment at the Annex to provide for better radio frequency coverage in the Annex with the use of microcells, re-radiators, repeaters or similar in-building radio distribution devices, antennas and other equipment.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF ATLANTA GEORGIA, HEREBY ORDAINS AS FOLLOWS:

Section 1. That the Mayor or his designee be and is hereby authorized to enter into an In-Building Radio Distribution Agreement with Verizon Wireless for the Public Safety Annex located at 3491 Donald Lee Hollowell Parkway in Atlanta, Georgia.

Section 2. That the City of Atlanta accept the installation of the equipment under Article 1 §1-102(c) (7) of the City of Atlanta Code of Ordinances as a donation.

Section 3. That Verizon Wireless be authorized to install the radio distribution system at said site.

Section 4. That the In-Building Radio Distribution System substantially in the form attached hereto is hereby authorized to be executed by the Mayor.

Section 5. That the In-Building Radio Distribution System Agreement not become binding on the City of Atlanta and the City of Atlanta shall incur no obligation upon same until such In-Building Radio Distribution System Agreement has been executed by Verizon Wireless, approved by the City Attorney as to form, executed by the Mayor, sealed by the Municipal Court Clerk and duly approved in accordance with their respective rules and regulations.

Section 6. That all Ordinances and resolutions and parts of resolutions in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of such conflict.

RCS# 43
2/01/10
2:07 PM

Atlanta City Council

REGULAR SESSION

CONSENT II

REFER

YEAS:	13
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	2
EXCUSED:	0
ABSENT	1

B Smith	Y Archibong	Y Moore	Y Bond
NV Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

AN ORDINANCE
BY FINANCE EXECUTIVE COMMITTEE

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Section 6. That all Ordinances and resolutions and parts of resolutions in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of such conflict.

EXHIBIT A

MASTER IN BUILDING RADIO DISTRIBUTION AGREEMENT

This Master In Building Radio Distribution Agreement ("Agreement") is made as of _____ ___, 2009 ("Effective Date") between **City of Atlanta, a municipal corporation under the laws of the State of Georgia** located at 55 Trinity Avenue, Atlanta, GA 30303, ("Licensor"), and **Verizon Wireless (VAW) LLC d/b/a Verizon Wireless ("Verizon Wireless")**, whose principal place of business is 1 Verizon Place, Alpharetta, GA 30004, ("Licensee"). Licensor and Licensee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WHEREAS, Licensor is the owner of certain buildings and facilities located at (INSERT ADDRESS), which are located within the geographic area of a license to provide wireless services licensed by the Federal Communications Commission ("FCC") to Licensee; and

WHEREAS, Licensee intends to purchase and install network enhancements at no cost to Licensor for use in certain buildings and facilities located at (INSERT ADDRESS), which shall include in-building radio distribution systems to provide wireless services to said buildings and facilities using the frequencies licensed to Licensee by the FCC; and

WHEREAS, the FCC rules applicable to the licenses granted by the FCC require that Licensee control the frequencies which it has been licensed to use, and resolve interference complaints created by the use of those frequencies; and

WHEREAS, Licensor and Licensee desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to particular sites at which Licensee has or will install its in-building radio distribution systems as hereinafter set forth; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

Agreement

1. General. Licensee hereby licenses to Licensor the right to use the Licensee's equipment within certain buildings and facilities identified in the Supplement pursuant to

all of the terms and conditions of this Agreement and the Supplement. Within the buildings and facilities, and subject to the terms and conditions of this Agreement and the Supplement attached hereto as Exhibit A, Licensee permits Licensor to benefit from use of a portion of its FCC licensed frequencies to provide radio frequency coverage in the building and/or facility via network enhancements consisting of the microcells, reradiators, repeaters or similar inbuilding radio-distribution devices, antennas serving such devices, and the cables, wires or equivalent connecting them and other related equipment, and of the design/configuration (the "Systems"). The Systems components and design principles are to be described in the Supplement. Licensor shall not add any of its own equipment to the Systems except as may be agreed to in writing by parties. The Systems were designed by Licensee; however, Licensee does not warrant and specifically disclaims warranties, except the Warranty of Merchantiability and Fitness for Particular Use, regarding the Systems including, without limitation, operational levels of the Systems in terms of coverage or signal levels to be provided by the Systems.

2. Authorized Licensees. This Agreement is entered into by Licensee on its own behalf and for the benefit of: (i) any entity in which Licensee directly or indirectly holds a majority equity or similar interest; (ii) any entity which directly or indirectly holds a Majority equity or similar interest in Licensee; or (iii) any entity directly or indirectly under common control with Licensee. Licensee and each of the entities described above are referred to herein as an "Authorized Licensee". No obligation is incurred or liability accepted by any Authorized Licensee until that Authorized Licensee enters into a site specific agreement with Licensor. Only Licensee and the Authorized Licensee executing a Supplement are responsible for the obligations and liabilities related thereto arising under that Supplement and this Agreement. All communications and invoices relating to a Supplement must be directed to the Authorized Licensee signing the Supplement. A default by any Authorized Licensee will not constitute or serve as a basis for a default by any other Authorized Licensee not a party to the applicable Supplement.

3. Operational Requirements. (a) Licensee owns the entire Systems and shall be responsible for its physical requirements, inputs (e.g. electrical requirements) and outputs, as well as assuring that the Systems are maintained, repaired and replaced as needed so as to remain in good operating condition at all times. Nonetheless, Licensee shall have full control of the use of the Systems to transmit and receive Licensee's frequencies on the Systems at all times, including full right of access and the right to shut down Licensee's frequencies operating on the Systems with prior reasonable notice to the Licensor.

(b) Licensor and its vendors/contractors will work with Licensee and its contractors throughout the process of designing, installing, maintaining, adjusting, fixing, modifying and removing the Systems. No installation or work will be performed on Licensor's premises without prior notice to and written approval from Licensor. For example, Licensee will consult with Licensor on the creation (or, in the case of an existing system, the modification) of the Systems design and only implement that design after receiving Licensor's written approval. The Systems will only provide coverage in the

certain building and/or facility identified in the Supplement. All System power requirements ---

(c) Licensee warrants and covenants that the Systems shall not cause any radio frequency interference or redundant electronic noise. .

4. Power. Licensor will supply electrical power in quality, quantity, and levels currently available at the Premises, and customary for the operation of similar IBRD Systems, at Licensor's cost. Notwithstanding the foregoing, no interruption or discontinuance of such electrical power will render Licensor liable to Licensee for damages or relieve Licensee of any of its obligations hereunder..

5. Ownership & Control. The Systems are the personal property of the Licensee and shall be removed by Licensee at Licensee's sole cost and expense upon termination, default or termination for convenience of either party.

6. Term and Termination. The term of this Agreement shall be five (5) years with 5 automatically renewable 5 year terms, unless a Party gives the other Party ninety (90) days written notice of termination

Either party may terminate this Agreement upon 30 days prior written notice to the other party. Licensee shall immediately remove all of its equipment under the System at its sole cost and expense.

In the event Licensor defaults in the performance of any of its covenants or obligations hereunder and such default continues for a period of sixty (60) days after written notice thereof from Licensee (unless the nature of the event takes longer to cure and Licensor commences a cure within the time period and diligently pursue it), Licensee may thereafter terminate this Agreement by written notice to Licensor.

7. Cessation. Licensor agrees that the Systems shall be deemed to be and remain at all times personal property of Licensee and not part of the real estate on which it is located. Licensee agrees to keep free and remove and lien or obligation which may be levied against the System. If Licensor decides to vacate the Premises, Licensor agrees to give Licensee thirty (30) days prior written notice.

8. Consideration. In consideration for the rights granted herein, Licensor's premises will receive the benefits of enhanced wireless communications arising from operation of the Systems.

9. Access. Licensor agrees to provide Licensee, its employees and/or agents reasonable access to the building and/or facility during normal business hours for the purpose of testing of the radio frequency coverage of the area. In case of an emergency, Licensor will provide access to the building upon reasonable notice at all other times.

10. Indemnification, Insurance, Waiver of Consequential Damages. Verizon agrees to and hereby indemnifies and holds Purchaser harmless from and against any and all liabilities which may accrue against Purchaser on account of direct physical damage to tangible property or personal injury to the extent the damage or injury is caused by Verizons's negligence or recklessness or that of Verizon's officers, agents, employees, subcontractors, or persons working on Verizon's behalf and performing any services under this Agreement.
(

(b) Licensee shall indemnify, defend, and hold harmless Licensor, its affiliates and each of their respective directors, officers, employees, agents, and/or any assignees thereof (and their respective heirs and legal representatives) ("Indemnified Parties") against any obligations, losses, damages, actions, suits, costs, judgements or liabilities (including, but not limited to, reasonable fees and disbursements of counsel and court costs) ("Claim") arising or alleged to have arisen in whole or in part from Licensee's installation, maintenance, operation and use of the System or Licensee equipment, including any acts or omissions of Licensee or Licensee's contractors or vendors. Licensor will provide Licensee with written notice of any Claim covered by this indemnification and will cooperate reasonably with Licensee in connection with Licensee's defense thereof. Promptly after receipt of such request, Licensee shall assume the defense of such Claim with counsel reasonably satisfactory to the Indemnified Party. In such case, Licensee shall not settle or compromise any such Claim or consent to the entry of any judgment without the prior written consent of each Indemnified Party and without an unconditional release of all claims by each claimant or plaintiff in favor of each Indemnified Party.

(c) During the entire term of this Agreement, including any renewals or extensions of this Agreement, Licensee shall procure and maintain insurance. Licensee shall procure and maintain throughout the term of this Agreement comprehensive general public liability insurance, and property damage insurance under policies with limits of not less than one million dollars ($3,000,000) per bodily injury, death, or for damage or injury to or destruction of property (including the loss of use thereof) for any one occurrence. Licensee is responsible damage to its equipment and System as a result of fire or other insurable acts other casualty. Licensee waives and releases any and all rights of action for negligence against the Licensor which may arise on account of damage to the building and/or facilities resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. All policies of insurance covering property damage obtained by either party concerning or including the building and/or facilities

To Licensee:

Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless
1 Verizon Place
Alpharetta, GA 30004
Attention: Network Real Estate

City of Atlanta
55 Trinity Ave
Atlanta, GA 30303
Attention: Ken Dawson
Telecom Director

To Licensor:

City of Atlanta
Department of Information Technology
Attn: Ken Dawson, Telecom Director
55 Trinity Avenue
Atlanta, GA 30303

City of Atlanta
Atlanta Police Deptment
Attn: Communications Commander

City of Atlanta
Law Dept
Attn: Telecom Attorney
68 Mitchell Street
Atlanta, GA 30303

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

16. Publicity. Licensee may only publicize its services according to these conditions:

Licensee shall not in any way or form publicize or advertise in any manner the fact that it is providing products or services to Licensor without the express written approval of Licensor's Mayor's office Communications Department, obtained in advance, for each item of advertising or publicity.

17. 18. Confidentiality. Licensee will be engaged in the performance of services for Licensor set forth herein and in connection therewith will be furnished or given access to knowledge, information, data and documents, and privileged documents ("Documentation") which is confidential and proprietary to Licensor. Licensee agrees that during, or at any time after the termination of the performance of services pursuant to this Agreement, Licensee shall use such Documentation only for the purposes of performing services under this Agreement and shall not use for itself or for any other person or business; or divulge or convey to any person or business any such Documentation.

identified shall waive the insurer's right of subrogation against the other party.

11.

12. Limitation of Liability. Licensee shall not be liable for any grossly negligent act or omission of Licensor hereunder or in connection with the Systems. The foregoing notwithstanding, whether the cause of any damage, loss or liability is insurable, insured or not insured, foreseen or unforeseen, in no event shall Licensee be responsible or liable to Licensor for anticipatory profits or any indirect, special, incidental or consequential damages of any kind or nature arising directly or indirectly in connection with the construction, use or operation of the building and/or facilities identified in each Supplement or the exercise of any rights related thereto, whether based on an action or claim in contract or tort, including negligence, strict liability or otherwise.

Licensee indemnifies Licensor against all actions, claims, demands, costs, charges, and expenses arising from or incurred by reason of any infringement or alleged infringement of United States letters patent, design, or copyright, by use of any products supplied by Licensee but such indemnity shall not cover any use of products other than for the purpose indicated by or reasonably to be inferred from this Agreement or to any infringement which is due to use of any products in association or combination with any other products not supplied by Licensee.

Except as otherwise provided in the preceding sentence, Licensee shall defend or settle at its own expense any claim, suit or proceeding brought against Licensor insofar as it is based on a claim that the product or any part thereof furnished under this Agreement constitutes an infringement of a US patent, US copyright or trade secret rights of any third party located in the US, so long as Licensee is notified promptly in writing by Licensor as to any such action and is full authority, information and assistance (at Licensee's expense) for defense or settlement thereof. Licensee shall pay all damages, costs and expenses finally awarded to third parties against Licensor but shall not be responsible for any compromise made without its consent or for Licensor's expenses incurred without Licensee's written authorization, which authorization shall not be unreasonably withheld. If Licensee receives notice of alleged infringement of product or any part thereof and use of said product is enjoined, Licensee shall at its option, either procure for Licensor the right to continue using the System or modify or replace the same so that it is no longer infringing.

13. Assignment. Neither party may assign this Agreement without the written consent of the other party except as stated herein. This Agreement may be assigned by Licensee to its affiliates or any entity which acquires all or substantially all of Licensee's assets in the market defined by the FCC in which the building and/or facility identified is located, without the consent of the Licensor.

14. .

15. Notices. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

IN WITNESS WHEREOF, the authorized representatives of the parties hereto execute this Agreement below, intending to be bound.

LICENSEE:

Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

_____ By: _____ (SEAL)

WITNESS Name: Hans F. Leutenegger

Title: Area Vice President

_____ Network

WITNESS

LICENSOR:

CITY of Atlanta

_____ By: _____ (SEAL)

WITNESS Name: _____

Title: _____

_____

WITNESS

This Documentation expressly excludes information which has been previously published or is otherwise in the public domain (other than by or through Licensee in breach of this Agreement). Licensee further agrees not to reproduce, or use for any purpose other than the work specified hereunder such information delineated above without the prior written approval of Licensor. Use of said information above shall be restricted to Licensee's personnel who have an express need to know in order that the obligations of the Agreement be fully met. Licensee further agrees to take all necessary steps, as Licensor may direct to assure the obligations of this section are fulfilled and that any subcontract hereunder contains the provisions set forth in this section.

Licensee acknowledges that the unauthorized use of disclosure of Documentation may give rise to irreparable injury to Licensor and that accordingly it may seek and obtain injunctive relief against Licensee or any individual furnished by Licensee hereunder to prevent the breach or threatened breach of any promise made in this Agreement in addition to any other legal remedies which may be available to them. The obligations of Licensee stated in this paragraph shall remain in full force and in effect after termination of this Agreement.

19. Miscellaneous. This Agreement contains all agreements, promises and understandings between Licensor and Licensee regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either Licensor or Licensee in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. This Agreement and the performance thereof shall be governed interpreted, construed and regulated by the laws of the State of Georgia without reference to its choice of law rules.

(REMAINDER OF PAGE LEFT BLANK INTENTIONALLY)

(SIGNATURES APPEAR ON NEXT PAGE)

EXHIBIT A-1

LICENSE SUPPLEMENT

This License Supplement ("Supplement"), is made this ____ day of _____, 2009, between **City of Atlanta, a municipal corporation under the laws of the State of Georgia** located at 55 Trinity Ave, Atlanta GA 30303, ("Licensor"), and **'Verizon Wireless (VAW) LLC d/b/a Verizon Wireless ("Verizon Wireless")**, whose principal place of business is 1 Verizon Place, Alpharetta, GA 30041 ("Licensee").

1. **Master In Building Radio Distribution Agreement.** This Supplement is a Supplement as referenced in that certain Master In Building Radio Distribution Agreement between City of Atlanta and 'Verizon Wireless (VAW) LLC d/b/a Verizon Wireless dated _____ ____, 2009, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. **Premises.** Licensor hereby licenses to Licensee certain spaces on and within Licensor's premises located at 3493 Hollowell Parkway, Atlanta, GA 30331.

3. **General.** The IBRD System components and design principles are attached hereto and incorporated herein as Exhibit 1. The Licensor shall not add any equipment to the System without prior written approval from Licensee. \

4. **Consideration.** In consideration for the rights granted herein, Licensor's premises will receive the benefits of enhanced wireless communications arising from operation of the IBRD System.

5. **Site Specific Terms.** (Include any site-specific terms)

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seal the day and year first above written.

LICENSOR

City of Atlanta

EXHIBIT 1

EQUIPMENT LIST

IN-BUILDING SYSTEM TO BE INSTALLED IN THE PREMISES

Receiver(s)

Repeater(s) **850/1900 LGC Fusion Main Hub**

Conduit or space for the wire/fiber/cable to connect the receiver(s) and the repeater(s)

Space provided by the customer.

Wire/fiber/cable **LMR 600 1/2" Cable**

Antennas **850-2500 MHZ CellMax 0-25 Indoor Omni Antennas**
CSI -ARC 1.6/2-14
AY 806-960/11

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: FINANCE/EXECUTIVE

Caption:
A N ORDINANCE TO AUTHORIZE THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN IN-BUILDING RADIO DISTRIBUTION AGREEMENT TO ALLOW BETTER RADIO SYSTEMS PERFORMANCE FOR ATLANTA POLICE DEPARTMENT ("APD") PERSONNEL AT THE 3493 DONALD LEE HOLLOWELL PARKWAY ANNEX FOR APD AT NO EXPENSE TO THE CITY OF ATLANTA.
SYSTEMS); AND FOR OTHER PURPOSES.

Council Meeting Date: February 15, 2010

Requesting Dept.: Information Technology

B. To be completed by the department:

1. **Please provide a summary of the purpose of this legislation (Justification Statement).**
   DIT would like to enter into an In-Building Radio Distribution Agreement with Verizon Wireless for the Public Safety Annex located at 3491 Donald Lee Hollowell Parkway in Atlanta, Georgia.

2. **Please provide background information regarding this legislation.**
   APD personnel have had difficulty getting reception on cellular and radio telecommunications equipment at the Public Safety Annex Building (hereinafter, "Annex") at 3491 Donald Lee Hollowell Parkway; and Verizon Wireless has agreed to provide, at no cost to the City, enhanced equipment at the Annex to provide for better radio frequency coverage in the Annex with the use of microcells, re-radiators, repeaters or similar in-building radio distribution devices, antennas and other equipment.

3. **If Applicable/Known:**

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**

(b) **Source Selection**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) **Term of Contract:** 5Year s w/ 5 Renewable 5-year terms

4. **Fund Account:** N/A

5. **Source of Funds:** **N/A**

6. **Fiscal Impact:** N/A

7. **Method of Cost Recovery:**

This Legislative Request Form Was Prepared By: Kathleen Lane, DIT Compliance Analyst

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE **ATTN: CANDACE BYRD**

Dept.'s Legislative Liaison: Kathleen Lane

Contact Number: 404-335-1983

Originating Department: Department of Information Technology

Committee(s) of Purview: Finance/Executive Committee

Chief of Staff Deadline: January 12, 2010

Anticipated Committee Meeting Date(s): February 10, 2010

Anticipated Full Council Date: February 15, 2010

Legislative Counsel's Signature:

Commissioner Signature:

Chief Procurement Officer Signature: Not Applicable AYS/CAC

CAPTION

A N ORDINANCE TO AUTHORIZE THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN IN-BUILDING RADIO DISTRIBUTION AGREEMENT TO ALLOW BETTER RADIO SYSTEMS PERFORMANCE FOR ATLANTA POLICE DEPARTMENT ("APD") PERSONNEL AT THE 3493 DONALD LEE HOLLOWELL PARKWAY ANNEX FOR APD AT NO EXPENSE TO THE CITY OF ATLANTA.

Mayor's Staff Only

Received by CPO: _____ (date) Received by LC from CPO: _____ (date)

Received by Mayor's ~~Office:~~ 1/12/10 (date) Reviewed by: 1/15/10 (date)

Submitted to Council: _____