

RESOLUTION NO. R-2004-350

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE ATTACHED TOWER SITING AGREEMENT BETWEEN METROPCS CALIFORNIA/FLORIDA, INC. AND THE CITY OF HOLLYWOOD, FOR THE LOCATION OF A WIRELESS COMMUNICATIONS SYSTEM AT 2600 HOLLYWOOD BOULEVARD, FOR AN INITIAL TEN (10) YEAR TERM, WITH THE OPTION TO RENEW FOR ONE (1) ADDITIONAL TEN YEAR TERM, BASED ON AN ANNUAL LICENSE FEE OF \$25,000.00, SUBJECT TO AN INCREASE OF FIVE PERCENT PER YEAR FOR EACH YEAR OF THE INITIAL AND ANY RENEWAL TERMS.

WHEREAS, one of the most difficult challenges facing municipalities today is the aesthetically unpleasing proliferation of wireless communications facilities, resulting from an ever increasing consumer demand for wireless services; and

WHEREAS, Congress passed the Telecommunications Act of 1996 revamping the structure of the telecommunications industry by which local governments are encouraged to find locations for the placement of personal wireless service facilities; and

WHEREAS, METROPCS, in a spirit of cooperation, requested assistance from the City due to gaps in their coverage area within the City of Hollywood, more specifically in the area around City Hall; and

WHEREAS, a tower, located on the roof of City Hall, was made surplus by the recent Regional Communications Project; and

WHEREAS, the location of the aforementioned tower remedied a critical gap within METROPCS's wireless grid; and

WHEREAS, METROPCS has agreed to, at their expense, reduce the height of the tower by eighty (80) feet, thereby improving the appearance of the site; and

WHEREAS, the license fee is consistent with the rents paid to other municipalities and provides \$25,000.00 in annual revenue from a structure that was to be dismantled and sold for surplus;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:


Section 1: That it hereby approves and authorizes the execution, by the appropriate City Officials, of the attached agreement between METROPCS CALIFORNIA/FLORIDA, INC. and the City of Hollywood, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 2: That this resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 20 day of Oct, 2004.

  
MARA GIULIANTI, MAYOR

ATTEST:

  
PATRICIA A. CERNY, MMC, CITY CLERK

APPROVED AS TO FORM AND LEGALITY  
For the use and reliance of the  
City of Hollywood, Florida, only.

  
DANIEL L. ABBOTT, CITY ATTORNEY

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## TOWER SITING AGREEMENT

**THIS AGREEMENT** made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the CITY OF HOLLYWOOD, a Florida municipal corporation (hereinafter "CITY") and METROPCS CALIFORNIA/FLORIDA, INC., a Delaware corporation authorized to do business in the State of Florida (hereinafter "METROPCS").

### WITNESSETH:

**WHEREAS**, CITY is the owner of City Hall located at 2600 Hollywood Boulevard, Hollywood, Florida; and

**WHEREAS**, Congress passed the Telecommunications Act of 1996 revamping the structure of the telecommunications industry by which local governments are encouraged to find locations for the placement of personal wireless services; and

**WHEREAS**, changes in wireless telecommunications technology and the additional licenses granted by the Federal Communications Commission will increase demand for wireless communications services, leading to an increased demand for facilities throughout the CITY; and

**WHEREAS**, METROPCS has requested from CITY authorization to place three (3) private telecommunication facilities (antennas) on the roof of City Hall either on the existing tower or by installing the antennas along with three equipment boxes;

**WHEREAS**, the parties desire to set forth in this Agreement the terms and conditions of their relationship;

**NOW THEREFORE**, in consideration of the mutual promises herein contained, the parties agree as follows:

1. **Premises and Use:** CITY grants to METROPCS a license to use the following areas in, on and around the City Hall roof:

Tower antenna space, limited to three antennas at approximately one-hundred (100) feet above ground, which will be affixed to the existing tower and will be in a matching color, along with a site area of six (6) feet by six (6) feet adjacent to the Tower for the location of equipment, cables, power supplies, transmitter cabinet and concrete pad, a cable run with supports and other improvements relating thereto, all as shown in Exhibit "A" (collectively, the "Antenna Facility") attached hereto and incorporated herein by reference, together with a non-exclusive right of reasonable access thereto and to appropriate utility sources.

METROPICS understands that said tower is located on the City Hall roof and that access to the tower and associated facilities is only available through the City Hall building. METROPICS also understands that City Hall is only open and occupied Monday through Friday, from 8:00 a.m. through 5:00 p.m., therefore reasonable access, as mentioned above, will involve CITY giving METROPICS emergency contact information, rather than unlimited access to the site.

The Antenna Facility will be used by METROPICS solely for the purpose of installing, removing, replacing, maintaining and operating, at its sole expense, a wireless communications system. Use for any other purpose shall constitute an event of default. CITY has no exclusive agreements with regard to this Site that would be violated by this Agreement.

2. **Term and Renewals:** The Term of this Agreement (the "Initial Term") shall commence on the date METROPICS signs this Agreement, or if METROPICS signs first, the date CITY signs this Agreement, which date shall be then known as the License Fee Start Date. The Initial Term shall be the period of time from the License Fee Start Date to the tenth (10th) anniversary of the License Fee Start Date.

This Agreement may be renewed for one (1) additional ten (10) year term commencing on the tenth (10th) anniversary of the initial License Fee Start Date, contingent upon City Commission approval. The parties agree that ninety (90) days prior to the expiration date of the initial term, providing the Agreement is in full force and effect, they may begin negotiations for renewal of this Agreement for an additional ten (10) year term, with no changes to the financial terms of the agreement. If either party intends not to renew, written notice of their intent not to renew is to be given by either party to the other party no later than ninety (90) days prior to the end of the initial term.

3. **License Fee:** METROPICS shall pay CITY, on the License Fee Start Date, a Twenty-five Thousand Dollar (\$25,000) license fee, which fee shall be increased on each anniversary date of the License Fee Start Date by an amount equal to five (5%) percent of the amount paid for the previous year for the life of the Agreement, including any renewal terms. All payments due under this Agreement shall be sent to the CITY's address, indicated under Paragraph 24, to the attention of the Treasury Manager.
4. **Assignment:** There shall be no assignment or transfer of the rights under this Agreement without prior written consent of CITY, which shall not be unreasonably withheld; provided, however, METROPICS may assign without CITY's prior written consent to any party controlling, controlled by or under common control with METROPICS or to any party which acquires substantially all of the assets or voting stock of METROPICS. This

Agreement shall be binding and inure to the benefit of METROPCS, its successors and, to the extent noted above, assigns.

5. **Improvements:** Subject to prior written consent by CITY's Communications Director, which will not be unreasonably withheld, along with all other approvals and permits (collectively, "approval") required from any governmental authority, METROPCS may make, at its expense, such improvements on the Site as it deems necessary from time to time, consistent with the operation of a wireless antenna system and/or its routine maintenance and repairs. Provided, however, that such improvements result in no interference with rights of others at the Site, including but not limited to telecommunication companies which co-locate equipment on the Site and use of the Site by the CITY.

Upon termination of this Agreement, METROPCS shall remove its antenna facilities, equipment, and improvements and will restore the Site to the condition existing on the commencement of this Agreement, ordinary wear and tear excepted.

6. **Compliance with Laws:** CITY represents that the property, including the Site and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. METROPCS will comply with all applicable laws relating to its possession and the use of the Site.
7. **Interference:** Prior to installation of its equipment or of future upgrades, METROPCS shall have an interference analysis performed demonstrating that there will be no interference with existing facilities, including, but not limited to Broward County's 800MHz Regional Communication Radio System. Prior to, during or after installation, METROPCS will resolve any problems of technical interference with other equipment located at the Site in accordance with FCC rules and regulations. The CITY will not permit installation, upgrades or enhancements of any future equipment by others which results in technical interference problems with METROPCS's then existing equipment, unless CITY, in its sole discretion, believes it is needed for the interests of health, safety and welfare of its residents. CITY reserves the right to utilize the tower, site and premises for its own use and as it determines is in its best interest. METROPCS does not have authority to permit co-location to the site.
8. **Utilities and City Engineer Approval:** METROPCS will pay for and provide all its own utilities requirements used by it at the Site. Proposed access to all utilities shall be subject to the approval of the City Engineer.

9. **Termination:** METROPCS may terminate this Agreement at any time by notice to CITY, without further liability, if METROPCS does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority or any easements required from any third party to operate the Antenna Facility, or if any such approval is canceled, expires or is withdrawn or terminated, or if CITY fails to have proper ownership of the Site or authority to enter into this Agreement, or if METROPCS, for any other reason, in its sole discretion, determines that it will be unable to use the Site. Upon termination, all prepaid rent will be retained by CITY unless such termination is due to CITY'S failure of proper ownership or authority, or such termination is a result of CITY's default and neither party will have any further liability to the other except METROPCS responsibility of removing all of the Antenna Facility from the Site and any terms or conditions of this Agreement that survive the termination of this Agreement.

This Agreement may be terminated on one-hundred and eighty (180) days written notice by CITY, for convenience, at any time during the initial or any subsequent renewal terms without further liability as provided herein. CITY may not terminate this agreement for convenience, solely for the purpose of siting a different vendor to improve revenue generation on the site. Upon termination by CITY, for convenience, CITY will refund a prorated portion of annual site license fee based on termination date. If this Agreement is terminated by CITY for default, as provided herein, all license fees will be retained by CITY.

10. **Default and Right to Cure:**

- (A) Each of the following shall be considered an event of default:
- 1) Any material misrepresentation, written or oral, made by METROPCS to CITY.
  - 2) Failure by METROPCS to perform timely and/or strictly observe any or all of the covenants, rules, regulations, guidelines or terms and conditions of this Agreement, including but not limited to payment of the License Fee.
  - 3) Interference resultant from METROPCS transmissions not corrected within twenty-four (24) hours of notification thereof.
- (B) If either party is in default under this Agreement for a period of (1) Ten (10) days following receipt of notice from the non-defaulting party, with respect to a default which may be cured solely by the payment of money, or (2) thirty (30) days following receipt of notice from the non-defaulting party with respect to a default which may

not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including but not limited to the right to terminate this Agreement. If the non-monetary default may not reasonably be cured within a thirty (30) day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such thirty (30) day period and proceeds with due diligence to fully cure the default.

11. **Indemnity:** In consideration of the CITY's grant of a license to METROPICS, METROPICS agrees to defend, indemnify and hold forever harmless, CITY, its affiliates, officers, agents, servants and employees, against all loss, liability and expense, including reasonable attorneys' fees, by reason of bodily injury including death and property damage, sustained by any person or persons including but not limited to employees of METROPICS and its affiliates, as a result of the maintenance, use, operation, storage, erection, dismantling, servicing or transportation of any equipment, including vehicles, but not due to the sole negligent acts, omissions or willful misconduct of CITY, its employees, or agents. Such indemnification shall survive the termination of this Agreement.
12. **Insurance:** METROPICS will provide Commercial General Liability Insurance in an aggregate amount of \$2,000,000 and name CITY as an additional insured on the policy or policies. METROPICS may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance maintained by METROPICS. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard "All Risk" Insurance policy.
13. **Hazardous Substance Indemnification:** METROPICS represents and warrants that its use of the Premises/Site will not generate any hazardous substance, and it will not store or dispose on the Premises/Site nor transport to or over the Premises/Site any hazardous substance, including, but not limited to the use of LP Gas. METROPICS further agrees to hold CITY harmless from and indemnify CITY against any release of any such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release cause by the sole negligence of CITY or its employees or agents. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations, or rules may be amended from time to time; and it shall

be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Such indemnification shall survive the termination of this Agreement.

14. **Bankruptcy:** CITY shall have the right to cancel this agreement and to terminate all of its obligations under it in the event that METROPICS shall be adjudicated as bankrupt by a United States District Court or through any legal proceeding of any kind, or that a receiver shall be appointed to take possession of the assets of METROPICS.
15. **Franchise Fees:** Any compensation paid under this Agreement is independent of, and not in lieu of, any franchise fee to be imposed by law, ordinance or future agreement.
16. **Mechanics Liens:** METROPICS will not permit any mechanic's lien (for labor and/or materials) to be placed upon the Site or any portion thereof. In the event such lien is claimed against the Site, METROPICS shall discharge same within fifteen (15) days of notice or provide CITY with a surety bond issued by a surety company reasonably satisfactory to the CITY, protecting CITY from any losses resulting from nonpayment of such lien claim and further shall indemnify and save harmless the CITY from and against any and all costs, expenses, claims, losses, or damages, including reasonable counsel fees. In the event METROPICS fails to discharge or otherwise remove any such liens, the CITY, at its option, may discharge the same without saving any rights or remedies. Any amount paid by the CITY for any of the aforesaid purposes shall be charged to METROPICS as a supplement to the License Fee and shall be collectible in the same manner.
17. **Care of the Site by METROPICS:** METROPICS shall, at its own cost and expense, repair any damage done to the Site, the Premises upon which the Site is located, or any part thereof including replacement of damaged portions or items, where such damages are caused by METROPICS or its agents, employees, invitees or visitors, normal wear and tear excepted. METROPICS agrees to make all such repairs as may be required to restore the Site or Premises to as good a condition as it was prior to such damage. If METROPICS fails to make such repairs or replacements promptly, the CITY may, at its option make such repairs or replacements and charge the actual cost thereof to METROPICS.
18. **Rules and Regulations:** METROPICS agrees to comply with, and will cause all of its agents, employees, invitees and visitors to comply with reasonable rules and regulations adopted and altered by CITY. Such rules and regulations shall be adopted for all licensees co-located on the Premises who will be given adequate notice of their adoption or change.



19. **Assumption of Risk:** The CITY shall not be liable to METROPCS or its licensees, agents, employees or guests, their successors or assigns, for any loss, injury or damage to persons or property by any cause whatsoever, including, but not limited to acts or omissions of any other co-licensee on the Premises or occasioned by or through the acts or omissions of persons occupying an adjoining Site or any part of the Premises adjacent to or connected with the Site or any part of the buildings located on the Site. METROPCS expressly assumes all liability for or on account of any such injury, loss, or damage to persons or property upon the Premises. The CITY shall not be responsible or liable to METROPCS for any loss or damage resulting from failure or defects, whether or not within the control of the CITY, nor from any force majeure, strikes, riots, acts of God, labor or material shortages, war or any other cause whatsoever beyond the control of the CITY except as to the sole negligent acts, omissions or willful misconduct of CITY, its employees or agents.
20. **Taxes:** METROPCS shall be liable for all taxes levied or assessed against personal property or equipment belonging to METROPCS.
21. **Bonds:** METROPCS shall provide a cash deposit and/or performance bond in the amount of Twenty-five thousand dollars (\$25,000) to assure that funds will be available at the termination of this Agreement for the removal of the equipment/facilities from the Premises.
22. **Complete Agreement:** This Tower Siting Agreement, together with the Exhibits attached hereto, contains the entire agreement and understanding between the parties. There are no understandings, terms, or conditions and neither party has relied on any representation, express or implied, not contained in this Agreement or Exhibits attached hereto. All amendments must be in writing and executed by both parties. All prior understandings, terms or conditions are deemed to be merged in this Agreement.
23. **Governing Law:** This Agreement is governed by the laws of the State of Florida. In and all legal action necessary to enforce the Agreement will be held in Broward County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy shall preclude any other or further exercise thereof and all legal action necessary to enforce the Contract will be held in Broward County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such

remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

24. **Memorandum of Agreement:** If requested by METROPCS, the CITY agrees to promptly execute and deliver to METROPCS a recordable Memorandum of this Agreement.

25. **Notices:** All notices, objections, or other communications between the parties must be in writing and are effective upon receipt by certified and postage prepaid hand delivery, or Federal Express (or other courier service), to the address set forth below, or as otherwise provided by law:

To METROPCS: METROPCS California/Florida, Inc.  
1401 NW 136<sup>th</sup> Avenue, Suite 304  
Sunrise, Florida 33323  
Attn. Michael Haggerty

To CITY: City Manager  
City of Hollywood  
2600 Hollywood Boulevard  
Hollywood, FL 33020

With copy to: Office of the City Attorney, Rm. 407  
City of Hollywood  
2600 Hollywood Boulevard  
Hollywood, FL 33020

26. **Severability:** If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature:

Witnesses: METROPCS, CALIFORNIA/FLORIDA INC., a Delaware corporation authorized to do business in the State of Florida

\_\_\_\_\_  
Signature By: \_\_\_\_\_  
Name

Print Name: \_\_\_\_\_ Title \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Signature City, \_\_\_\_\_ State, Zip Code

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

CITY OF HOLLYWOOD, FLORIDA, a municipal corporation of the State of Florida

ATTEST: \_\_\_\_\_  
MARA GIULIANTI, MAYOR

Date: \_\_\_\_\_

\_\_\_\_\_  
PATRICIA A. CERNY, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGALITY for the use and reliance of the City of Hollywood, Florida, only.

\_\_\_\_\_  
DANIEL L. ABBOTT  
CITY ATTORNEY

# EXHIBIT A ANTENNA FACILITY

