

Commonwealth of Massachusetts
REQUEST FOR PROPOSALS
Wireless Telecommunications Leasing Project
Massachusetts Bay Community College
Wellesley Hills, Massachusetts
May, 2010



David B. Perini, Commissioner
Division of Capital Asset Management and Maintenance
Office of Real Estate Management

This RFP may be withdrawn without prior notice.

DCAM Contact Person:
Nicholas J. Tsaparlis, Real Estate Transactions Manager
Office of Real Estate Management
One Ashburton Place, 15th Floor,
Boston, Massachusetts 02108-1511
(617) 727-8090 X 245

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I. PROJECT OVERVIEW

Background

The Asset Management Board ("**AMB**") of the Commonwealth of Massachusetts by Board Action dated September 30, 2002, approved a Final Project Proposal dated September 13, 2002 ("**FPP**") of the former Board of Higher Education ("**BHE**"), which is now known as the Department of Higher Education ("**DHE**"), on behalf of Massachusetts Bay Community College ("**College**") for telecommunications leasing at portions of the site located at 50 Oakland Street, Wellesley Hills, Massachusetts ("**Site**"). The College is one of thirty-one (31) campuses approved in the FPP. A copy of the Board Action is attached to this Request for Proposals ("**RFP**") as Appendix A. The FPP is on file with the Contact Person at DCAM listed in Section VII.

The Board Action authorizes the Division of Capital Asset Management and Maintenance ("**DCAM**") to enter into long-term nonexclusive leases at portions of the Site for telecommunications purposes. The telecommunications leasing program is intended to enhance wireless communication service throughout the Commonwealth of Massachusetts, to improve the provision of emergency and other communications systems for state and local safety personnel, and to generate revenue for the Commonwealth. The College has concluded that portions of the Site are currently underutilized and can be used by the telecommunications industry without interfering with the current use and operation of the property by the College.

Invitation to Submit a Proposal

The purpose of this RFP is to solicit lease proposals from the telecommunications industry through an open, fair, and competitive process, consistent with the best interests of the Commonwealth of Massachusetts. The lease term will be ten (10) years with options to extend for two additional five-year (5) periods. Proposals are sought from individuals or entities (i) that provide wireless telecommunications services (e.g., cellular and personal communication providers, radio common carriers, and paging companies) and are licensed by the Federal Communications Commission ("**FCC**") ("**Wireless Telecommunications Service Provider(s)**" or "**Service Provider(s)**"), or (ii) that, install, manage, and operate telecommunications equipment and can procure Service Providers to the Site ("**Facilities Management Company**" or "**Companies**").

The number of leases that may be approved under this RFP will be determined by DCAM, in consultation with the College, in their sole discretion. The available site for lease is the main campus building, as highlighted in red on the Site map in Section II of this RFP. The actual lease sites will not exceed 5,000 square feet. The portion or portions of the Site available for lease are referred to in this RFP, as the context so requires, as the "**Lease Site or Sites**." The leases will permit the installation, operation, and maintenance of antennas and other similar telecommunications equipment, together with related equipment ("**Wireless Telecommunications Facility or Facilities**"), on the Lease Site.

Proposers must identify the area (not to exceed 5,000 square feet, including equipment cabinets, shelters, and similar equipment, but excluding proposed access thereto) they wish to lease from within the Lease Site. The desired lease area must be shown with sufficient detail on the Premises Location Plan, which also must include a proposed access plan (see Appendix D).

DCAM is seeking well-designed proposals that will provide the Commonwealth with favorable financial benefits and overall benefits consistent with this RFP. Stealth antenna installations are strongly encouraged. In any event, installations on the building shall not extend (a) more than 12 feet above the highest point of the roof; (b) more than 18 inches beyond the face of any wall; and (c) more than 8 feet below the top of the wall of a multi-story building and shall not be more than 50 feet in area.

Proposals may include sublet or license arrangements with other Service Providers as co-locators on the Facilities, provided the proposal includes additional co-location rent payable to the Commonwealth (see Appendix G).

The Lease Sites are being offered and will be leased in "AS IS"-"*WHERE IS*" condition without any representations or warranties of any kind whatsoever by DCAM, DHE, the College, or the Commonwealth of Massachusetts.

Process

The process involves the submission of leasing proposals responsive to this RFP; review of timely, properly submitted and complete proposals by DCAM and the College; interviews with one or more proposers at DCAM's and the College's discretion; provisional selection of a proposal(s) at DCAM's discretion, in consultation with the College; fulfillment of the terms and conditions of the provisional selection by the proposer(s); and lease execution.

Please refer to Section IV for the complete Submission Requirements and Section V for the Selection Process and Evaluation Criteria.

Before submitting a proposal, proposers should review the form of "Lease Agreement Wireless-Telecommunications Facilities" ("**Lease**") attached to this RFP as Appendix C. Several provisions of the Lease are unique to the Commonwealth of Massachusetts.

The submission of a proposal will be deemed to constitute a representation by the proposer that if selected and electing to proceed, the proposer will execute the Lease in the form attached to this RFP without material modification. Please refer to Section VI for an overview of the Legal Requirements for the transaction.

Submission Deadline

This RFP will remain open from 9:00 AM on May 5, 2010, until 5:00 PM on each of the following unexpired Submission Deadline Dates:

August 6, 2010

November 5, 2010

February 4, 2011

May 6, 2011

Proposals must be received by DCAM at the address specified in this RFP no later than 5:00 PM on the earliest unexpired Submission Deadline Date to be considered for review with any proposals in that group. The RFP will automatically close upon posting of such closure on the DCAM website listed in Section VII of this RFP, or at 5:00 PM on May 6, 2011, whichever is the first to occur.

Conditions and Reservations (IMPORTANT, PLEASE READ THOROUGHLY)

Any capitalized term used in this RFP, but not specifically defined herein, shall have the meaning set forth in the Lease. The Commonwealth of Massachusetts makes no representations or warranties of any kind whatsoever as to the accuracy and/or completeness of the information provided in this RFP, which shall be deemed to include, without limitation, any appendices, exhibits, attachments, and/or supplements of any nature or in any form (e.g., hard copy, facsimile, electronic, or on-line).

This RFP is made subject to errors, omissions, prior sale, lease or other disposition, subsequent modifications, additions and/or changes in lease terms and conditions, to changes in costs, conditions, economics, engineering, and to changes in or different interpretations of laws and regulations.

The information provided in this RFP is for convenience only, is subject to differing interpretations, analyses, and conclusions and must be independently investigated, analyzed, and verified by the proposer.

DCAM reserves the right to amend, suspend, or withdraw this RFP at anytime for any or no reason whatsoever, without notice, in DCAM's sole discretion.

DCAM reserves the right to seek clarification of information supplied, to request additional information, to negotiate with any or all proposers, to request best and final offers from all proposers, to cease negotiations at any time, to waive portions of the RFP, to waive any minor inconsistencies or informalities in proposals, to reject any and all proposals or portions thereof, to select another proposal(s), to discontinue its selection

process, to solicit other proposals, or to issue a new RFP, all for any reason whatsoever in DCAM's sole discretion.

The preparation and submission of a proposal is at the sole cost and expense of the proposer.

DCAM will not consider any proposals which are comprised, in whole or in part, directly or indirectly, without limitation, through ownership or control of individuals or entities which have directly or indirectly had any involvement in the subject of this RFP (involvement means, without limitation, involvement relating to legal, planning, environmental, or other consulting).

DCAM encourages, to the greatest extent possible, the active and meaningful equity participation of Minority Owned Business Enterprises (MBEs) and Women-Owned Business Enterprises (WBEs) as certified by the State Office of Minority and Women Business Assistance (SOMWBA). DCAM also encourages proposers to utilize MBE and WBE firms to provide services and/or materials to the project and to provide other opportunities for women and minorities.

II. SITE INFORMATION

Site Description: Massachusetts Bay Community College

Address: 50 Oakland Street
Wellesley Hills, MA

Owner: Commonwealth of Massachusetts, under the care and control of the Department of Higher Education/Massachusetts Bay Community College

Approximate Coordinates: 71°15'47.941"W; 42°18'40.323"N

Zoning: Educational

Assessor Info: Map 45, Lots 50 and 2

Proposers must identify the area they wish to lease on the Site from among the area highlighted in **red** on the Site map in this Section of this RFP. The actual lease area may not exceed 5,000 square feet, including equipment cabinets, shelters, and other associated

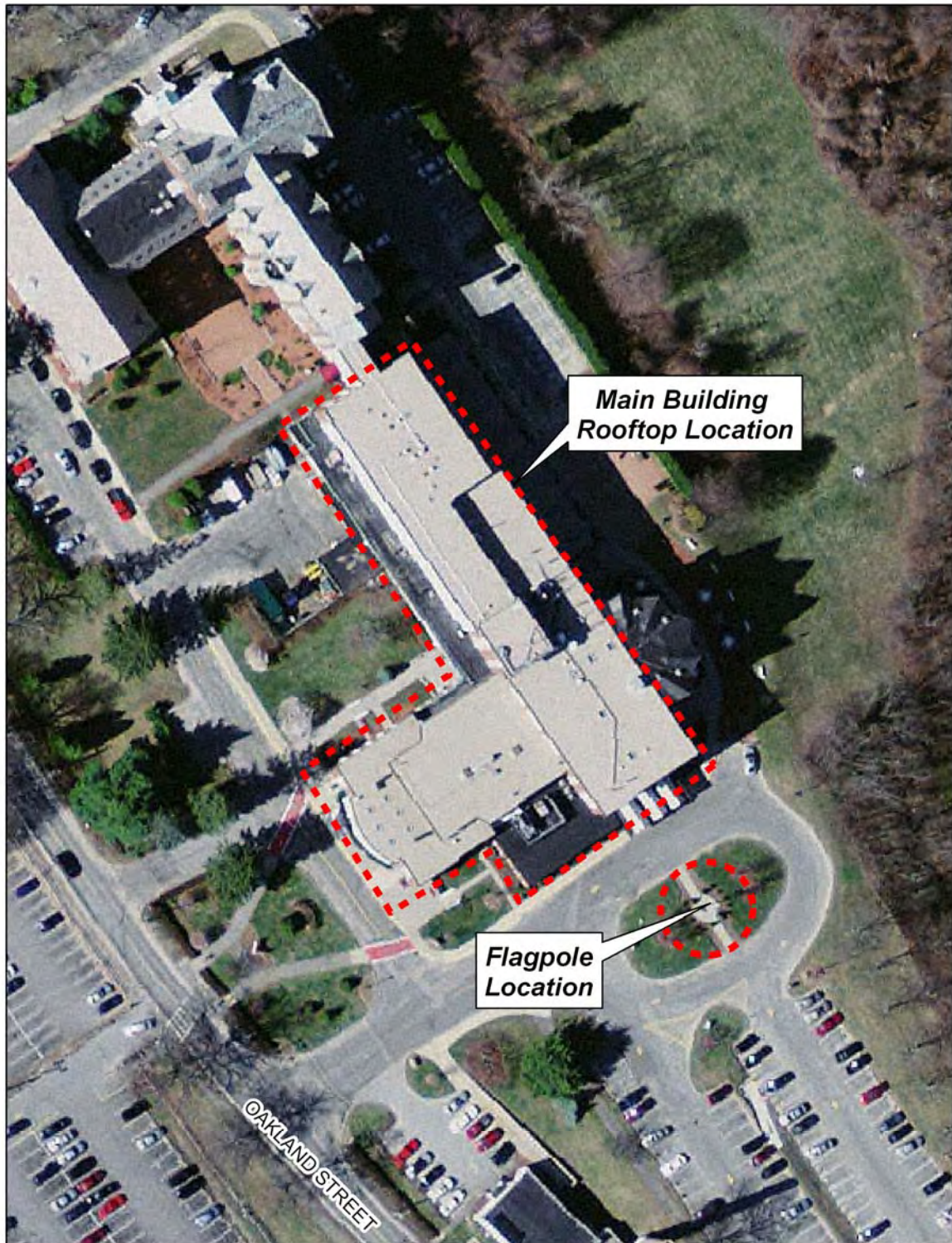
equipment, but excluding the proposed access route thereto. The desired lease area must be shown with sufficient detail on the Proposed Premises Location Plan and Access Route attached as Appendix D.

Under this RFP, the number of proposals that may be selected will be at the sole discretion of DCAM, in consultation with the College.

Lease Sites:

The available Lease Site consists of areas on the existing main building on the Site outlined in **red** on the following Site map.

Site Map



Massachusetts Bay Community College Campus

General Information

The Commonwealth makes no representations or warranties, express or implied, whatsoever regarding the physical or environmental condition of the Site including, without limitation, the presence or potential presence of environmental hazards, pollutants, or contaminants within any structures or in the underlying land.

Proposers must undertake their own review and analysis of physical conditions, structural integrity of existing buildings or structures, environmental conditions, access, title, utilities, applicable federal, state, and local laws and regulations, required permits and approvals, use potentials, and other legal considerations.

Proposers must also conduct their own feasibility tests to determine whether they can utilize the Lease Site for their particular use and their proposed Wireless Telecommunications Facilities. No representations or warranties, express or implied, are made concerning the suitability of the Lease Site for the purposes contemplated by the proposer.

Local, State, and Federal Laws and Regulations

Proposers will be required to comply with applicable zoning and other local laws and regulations, as well as all applicable state and federal laws and regulations, and to obtain all necessary permits and approvals thereunder. The Commonwealth makes no representations or warranties whatsoever regarding the applicability of federal, state, and local laws and regulations to the proposed use of the Lease Site and the proposed Wireless Telecommunications Facilities to be installed thereon.

Massachusetts Environmental Policy Act ("MEPA")

Proposers must independently identify and confirm any MEPA requirements for the proposed use of the Lease Site and the proposed Wireless Telecommunications Facilities to be installed thereon.

Any Tenant under a Lease will be required to sign the MEPA Agreement attached to the Lease.

Utilities

The Commonwealth makes no representations or warranties whatsoever regarding the condition or availability of any utility services or connections at or to the Lease Site. The Tenant under the Lease, at its sole cost and expense, will be responsible for ensuring the adequacy of all utilities, must arrange and pay for the installation of all necessary utility infrastructure, and must contract directly with utility service providers for utility services to the Lease Site. The Landlord has the right to approve the placement of any utility conduits. All utilities must be separately metered and all costs for on-going utilities to

the Lease Site are the Tenant's responsibility. In the event that a utility conduit must be installed, the Tenant, at its sole cost, will be responsible for including an additional sleeve to be used at the College's sole discretion at a future date, and to re-landscape the Lease Site to its condition prior to the installation.

Title, Easements and Encumbrances

The Lease Sites will be leased subject to all restrictions, easements, and encumbrances of record.

Proposers must independently analyze and verify all title matters.

Physical and Environmental Conditions

The Lease Sites are being offered for lease and will be leased in "**AS IS**" - "**WHERE IS**" condition, notwithstanding any change in their condition or the condition of the Site (including land, buildings, structures, and improvements thereon) prior to the Lease commencement date. DCAM, the College and the Commonwealth will not be required to make any repairs or improvements to any portion of the Lease Sites or the Site before or during the term of the Lease.

Proposers may be given access to the Site prior to the Submission Deadline Date to conduct a visual inspection by contacting Marco Brancato, Director of Facilities at (781) 239-2571 to arrange for a site visit. No invasive testing will be permitted. Any prospective proposer also wishing to conduct network capacity evaluation tests prior to submitting a proposal must submit a written request to DCAM, which must include a scope of work. This request also must include a signed Assumption of Risk and Indemnification Agreement, a copy of which is attached to this RFP as Appendix H, together with required certificates of insurance. All such testing must be completed before the Submission Deadline Date.

III. PROJECT DESCRIPTION AND TERMS

The purpose of this RFP is to solicit proposals to lease portions of the Site to Wireless Telecommunications Service Providers or Facilities Management Companies for Wireless Telecommunications Facilities under nonexclusive leases of up to five years with options to extend for two additional and successive five-year periods. The Lease will permit the following uses:

- Installation, operation, and maintenance of a wireless telecommunications facility, together with associated equipment, cables, and all other appurtenances necessary for the operation thereof, and associated transmission lines and mounting apparatus on the Lease Site;
- Installation, operation, and maintenance of an equipment shelter or cabinet for the housing of associated telecommunications equipment within the Lease Site; and

- Nonexclusive pedestrian and vehicular access to the Lease Site and access for utilities.

The Tenant, at its sole cost and expense, will be responsible for installing, operating, and maintaining its Facilities, including any equipment shelter or cabinet on the Lease Site.

The Tenant, at its sole cost and expense, will be required to comply with all applicable federal, state, and local laws and regulations, and will be required to obtain all required permits and approvals for its proposed use of the Lease Site and the proposed Wireless Telecommunications Facilities thereon.

FCC-licensed Wireless Telecommunications Service Providers may be allowed to co-locate, as provided in the Lease.

The Tenant will be required to make space available within its designated site for the installation of telecommunications equipment, at no cost, to any governmental entity when DCAM determines it is in the public interest to do so. The tenant shall also include up to \$5,000 in its development budget for the purchase and/or installation of such equipment on behalf of such governmental entity.

Proposers must be capable of successfully performing the obligations of Tenant under the Lease.

The College's Additional Comments and Conditions

The location, installation, use, operation, and maintenance of any Wireless Telecommunications Facilities on the Lease Site shall be subject to the College's following additional comments and conditions:

1. Where the Lease Site involves shared use with the College, the College may, at Tenant's sole cost and expense, hire an independent contractor to advise the College of the condition of the Lease Site both before and after Tenant's access, and to advise the College as to whether Tenant caused any personal injury, property damage, or loss after such entry. Tenant shall be responsible to indemnify and hold harmless the College and the Commonwealth for any and all such injury and loss. (This also applies to co-locators.)
2. Tenant shall have access to the Lease Site at such times and in such manner as deemed appropriate by the College for the particular building or structure on the Lease Site, and the Tenant shall comply with any and all of the College's security measures, access, and notification requirements. (This also applies to co-locators.)
3. The successful proposer(s) shall be required to ensure that any building or structure on which they propose to install their equipment is structurally sound for the purposes of the proposer's intended use and the uses of any co-locators. Under no

circumstances will any agency of the Commonwealth be responsible for any repairs or maintenance of any building or structure on the Lease Site or the Site.

4. Upon termination of the Lease, either at the end of the term or if the Lease is terminated early, Tenant must restore the Lease Site to the same or better condition as it was before the Lease term. The College shall make a determination as to whether the Lease Site has been returned in satisfactory condition and, in concert with DCAM, shall assess charges for any work that must be done in order to restore the Lease Site to satisfactory condition.
5. Tenant shall exercise responsible care in the use and occupancy of the Lease Site, and shall keep and maintain same in good condition, normal wear and tear excepted, said care and condition to be determined to the satisfaction of the College.
6. Items remaining on the Lease Site within 30 days after expiration of the Lease shall become Landlord's property.

IV. SUBMISSION REQUIREMENTS

General Requirements

A separate proposal is required for each Lease Site that a proposer wishes to lease. Proposers may submit more than one proposal. Each proposal in response to this RFP must include all of the information and materials that this RFP requires. Any proposal not meeting the submission requirements may be rejected by DCAM in consultation with the College in their sole discretion.

Submission Deadline Date and Requirements

1. This RFP will remain open from 9:00 AM on May 5, 2010, until 5:00 PM on each of the following unexpired Submission Deadline Dates: August 6, 2010, November 5, 2010, February 4, 2011, and May 6, 2011.

Proposals must be received by DCAM at the address specified in this RFP no later than 5:00 PM on the earliest unexpired Submission Deadline Date to be considered for review with any other proposals in that group. The RFP will automatically close upon posting of such closure on the DCAM website listed in Section VII of this RFP, or at 5:00 PM on May 6, 2011, whichever is the first to occur.

2. Proposals must:
 - (a) be received by DCAM not later than 5:00 PM on the **earliest unexpired** Submission Deadline Date;
 - (b) be in compliance with all requirements of this Section IV;

(c) be properly packaged, marked, and delivered to the correct DCAM address, all in accordance with this Section IV; and

(d) include all of the items required in the **Contents of Proposal** heading of this Section IV.

3. Any proposal received by DCAM later than 5:00 PM on the earliest unexpired Submission Deadline Date shall be deemed non-responsive and will be rejected. If delivered late in person, delivery will be refused; if delivered late by mail, the proposal will be returned to the sender. Proposers who hand-deliver their proposals should allow sufficient time for the security clearances that are required at One Ashburton Place.

Proposers who have their proposals delivered by mail or other delivery service should allow sufficient time for transit and delivery.

4. If a proposal is received by DCAM and, as of the date of receipt, is marked for a Submission Deadline Date other than the earliest unexpired Submission Deadline Date, such proposal shall be premature and shall be rejected. For example, if a proposal is received on or before the first Submission Deadline Date but is marked for a later Submission Deadline Date, such proposal shall be deemed to be premature and shall be rejected.
5. Proposals will be time-stamped by DCAM as they are received. The DCAM time stamp shall be conclusive, controlling, final, and dispositive as to the timeliness of the receipt of a proposal.
6. The original proposal, four (4) complete sets of copies of same, along with a compact disc ("CD") containing an additional complete set of the proposal in pdf. format must be sealed in an envelope. If sent by delivery service or courier, the proposal must be in a sealed inner envelope inside the delivery package. Both the outer and the inner envelopes or packages (if applicable) must bear the name and return address of the sender and must be marked as shown in the example below:

(Your Name) _____



(Your Return Address) _____

SEALED PROPOSAL:

RE: MASSACHUSETTS BAY COMMUNITY COLLEGE
Wireless Telecommunications Leasing Project

**DO NOT OPEN UNTIL 5:00 PM (U.S. EASTERN
TIME ZONE) ON: [SUBMISSION DEADLINE DATE]**

**TO: Division of Capital Asset Management and
Maintenance
One Ashburton Place, 15th Floor Front Desk
Boston, MA 02108-1511**

Telecopied or faxed proposals will be rejected regardless of the date received.

7. Timely and properly submitted proposals will be opened after 5:00 PM on the Submission Deadline Date in the offices of DCAM, at which time only the names and addresses of proposers will be made public.
8. DCAM will not accept any information or materials submitted after the Submission Deadline Date unless such information or materials are provided in response to DCAM's written request for such information or materials.
9. Proposals shall be unconditional. Prior to the Submission Deadline Date, proposers may correct or modify a proposal by written notice to the DCAM Contact Person.
After the opening of Proposals, a proposer may not correct or modify its proposal in any manner unless in response to a written request by DCAM in its sole discretion.

Contents of Proposal

All proposals must include the following materials and information and must satisfy the following requirements:

A. Proposal Cover Sheet and Exhibits

The proposal must include a completed and signed Proposal Cover Sheet (attached to this RFP as Appendix B). Proposers must also complete and include in the proposal the following documents:

- Proposed Premises Location Plan and Access Route (Appendix D);
- Proposed Premises Development Plan (Appendix E);
- Proposed Tenant Rent Schedule (Appendix F); and
- Proposed Co-Locator Rent Schedule (Appendix G).

B. Proposal Narrative

The proposal shall include a detailed description of the concept for Wireless Telecommunications Facilities on the Lease Site. The description shall include:

- The approximate square footage of the area required for the proposed Facilities;
- A description of the proposed access route to the Lease Site;
- A discussion of the relationship between the proposed developer, co-locators, and manager or operator if they are not all the same entity;
- A description of the physical plan (stealth antenna installations are strongly encouraged) and a discussion of how the various physical elements of the Facilities relate to one another;
- A description of the relationship (benefits and detriments) of the proposed Facilities to the surrounding area and to the Town, and any measures that will be taken to mitigate any negative impacts upon nearby properties; and
- A summary and analysis of the ways in which the proposal satisfies each of the requirements and preferences in this RFP, including, without limitation, a specific discussion of how the proposal satisfies all of the School's conditions.

C. FCC License

The proposal must include a copy of the proposer's current FCC license, unless the proposer is a Facilities Management Company. All proposers are encouraged to provide at least two Letters of Intent to co-locate from FCC-licensed Wireless Telecommunications Service Providers stating the intent to be a subtenant or licensee on the proposer's Facility. These letters may be considered in the Selection Process.

D. Application Fee

A non-refundable application fee of \$250.00, payable to the Commonwealth of Massachusetts, in the form of a corporate, bank, or certified check, is required for each proposal. The application fee will only be returned if the proposal is refused because it was not timely submitted in accordance with this Section IV, or if the proposal is not selected for provisional selection in accordance with Section V of this RFP.

E. Project Financing

The proposer must provide a statement of the proposed method of financing the project. Financing information must be sufficient to demonstrate the proposer's ability to finance the project and must include the following:

- Audited financial statements for proposer's last fiscal year or reasonable substitute and explanation why audited statements are not available, and any material changes in the proposer's financial position since the statements were prepared; and
- A three-year history of income and expenses for the proposing entity and its parent company (if applicable), and for each general partner, principal, affiliate, or owner that will participate in the project.

F. Implementation Plan and Project Schedule

Proposals must include:

- A list of all required local, state, and federal land use, environmental, operational, and any other regulatory or licensing permits and approvals;
- A project schedule for securing necessary permits and approvals and for performing all design and installation work necessary to make the Lease Site fully operational for the permitted use under the Lease; and
- A proposed maintenance schedule and program of capital repairs, replacements, and improvements during the entire term of the Lease that can be tracked and documented for the purpose of keeping the Lease Site and Facilities in good working condition as well as a proposed schedule for access to the grounds, buildings, and Facilities.

G. Proposer

The proposal must include the following information concerning the proposing Wireless Telecommunications Service Provider or Facilities Management Company and the individuals to be involved in the project and their experience:

- The name, address, and telephone number of the proposer, the name of any representative authorized to act on the proposer's behalf, and the name of the contact to whom all correspondence should be addressed;
- The names and primary responsibilities of each principal of the Service Provider or Facilities Management Company and of each person who will have management responsibility for the Lease Site;

- If the proposer is not an individual doing business under the proposer's name, the proposal must describe the status of the entity (whether a non-profit or charitable institution, a general, limited, or limited liability partnership, a for-profit corporation, limited liability company, unincorporated association, or joint venture) and indicate the jurisdiction in which it is registered to do business;
- The exact name and legal status of the entity to be named as Tenant in the Lease if different from the proposer;
- A summary of the proposer's experience, collectively and individually, with similar projects, containing an explanation of the proposer's ability to pursue permits, financing, engineering, design, and installation of the Wireless Telecommunications Facilities on the Lease Site;
- Identification of all principals, partners, co-venturers, subtenants, or co-locators participating in the project, and the nature and share of each participant's ownership in and compensation from the project;
- Confirmation that no local, state, or federal taxes are due and outstanding for the proposer and for the proposed Tenant under the Lease if different from the proposer;
- Identification of any SOMWBA certified MBEs and WBEs that will have equity shares in the project, and any SOMWBA certified MBEs and WBEs the proposer intends to contract with to provide services or materials to the project; and
- A Disclosure Statement including complete information regarding any legal or administrative actions past, pending, or threatened that could relate to the conduct of the proposer's (or its principal's or its affiliate's) business, its compliance with laws and other governmental requirements, or its ability to execute the required legal documents.

H. References

- Proposers must provide a list (and brief descriptions) of similar projects that have been successfully undertaken by the proposer within the past five (5) years, and provide the name and telephone number of a reference for each.
- Proposers must provide banking references.
- The Commonwealth reserves the right to contact any references submitted and to request additional references. Please include the name and telephone number of the contact person for each reference.

I. Additional Information

The Commonwealth reserves the right to request additional materials and information from any or all proposers.

V. SELECTION PROCESS AND EVALUATION CRITERIA

Timely, properly submitted and complete proposals will be evaluated based upon the information provided in the proposal, any interviews, references, additional information requested by DCAM or the College, information from publicly available and verifiable sources, and any other information in the possession of DCAM.

The successful proposal(s) will be the one(s) that DCAM, in consultation with the College, determines best meets the evaluation criteria of this RFP as a whole and is in the best interest of the Commonwealth.

The Commonwealth is not obligated to select the proposal that offers the highest rent if another proposal(s) better satisfies the evaluation criteria as a whole.

DCAM, in consultation with the College, may choose to conduct interviews with one or more proposers.

DCAM, in consultation with the College, will evaluate proposals considering all of the following criteria:

- The location, method, and design of the proposed installation of Wireless Telecommunications Facilities on the Lease Site;
- The feasibility and appropriateness of the proposed installations, as well as their compatibility with existing uses on the Site;
- The qualifications and financial capacity of the Proposer to perform as proposed and to meet the obligations of Tenant under the Lease. The proposer's financial strength will be evaluated by, without limitation, the quality of banking references, documented availability of credit, and ability to meet operating and capital expenditures;
- The successfully installed and managed Wireless Telecommunications Facilities of the Proposer on other sites in Massachusetts;
- The proposal's compliance with the conditions and requirements of the RFP, including, without limitation, the site-specific comments and conditions of the College;

- The achievability of the proposed Tenant Rent Schedule according to market standards, including whether the schedule provides the best rental value based on net present value of the entire proposal; and
- The proposal's provision of a substantial financial benefit to the Commonwealth.

In addition, Letters of Intent or other commitments to co-locate from FCC-licensed Wireless Telecommunications Service Providers are strongly encouraged and may be considered in the Selection Process.

Upon completion of the evaluation process, DCAM, in consultation with the College, may provisionally select a proposal(s) for potential lease. The selected proposer(s) will be given a period of 15 days to conduct a due diligence evaluation of the Lease Site. If a selected proposer elects to proceed to the leasing phase, the Lease and related legal documents must be executed within 30 days of selection. If the required documents are not executed by the proposer in that timeframe, the provisional selection will automatically expire, unless extended in writing by DCAM in its sole discretion. Please see Section VI for an overview of the legal requirements for this transaction.

VI. LEGAL REQUIREMENTS

The documents listed in this Section will be required for the Lease transaction. This list is not intended to be exhaustive, and DCAM reserves the right, in its sole discretion, to require additional or alternative documentation as may be appropriate to the selected proposal and the Lease Site:

- Lease Agreement Wireless Telecommunications Facilities, including all Exhibits and Attachments (Appendix C to this RFP);
- MEPA Agreement;
- Tenant's Beneficial Interest Disclosure Statement; and
- Copy of FCC License if a Telecommunications Service Provider.

The Lease will require the Tenant to pay annual rent in full in advance for each year of the Lease term. In addition, the Tenant will be required to pay a \$5,000.00 security deposit at Lease commencement, which deposit may be applied by Landlord to any unpaid rent, loss, damage or destruction to the Lease Site or the Site, to the costs of removing Tenant's property upon termination or expiration of the Lease, or to such other costs and expenses as set forth in the Lease.

Given that the Site is part of an active educational campus, the Lease also will give Landlord special termination rights and the right to relocate or remove Tenant's Facilities from the Lease Site in certain situations. **Please review the Lease Agreement in its entirety.**

The provisions in the Lease relate to constitutional and statutory prohibitions and limitations that are unique to Massachusetts and cannot be modified without the prior written approval of the Office of the General Counsel of DCAM, such as the following:

- (a) The agencies of the Commonwealth are prohibited from indemnifying any third party as to any matter, from agreeing to "hold" any third party "blameless and harmless" as to any matter, and/or from agreeing to "defend" any third party as to any matter, unless the legislature has authorized a specific exception to the prohibition. If there is such an exception, the undertaking is limited to the specifics of the exception. Amendments Article 84 of the Constitution of the Commonwealth establishes this prohibition.
- (b) M.G.L. c. 29, §30, prohibits agencies of the Commonwealth from insuring the property of the Commonwealth. Also, the Commonwealth is self-insured as to property matters. The Commonwealth does not provide third-party insurance coverage for other parties.
- (c) M.G.L. c. 258 regulates tort claims (as opposed to contractual claims) against the Commonwealth. No leasing document may contain anything that is inconsistent with these statutory provisions. M.G.L. c. 258 provides for indemnification of public employees by public employers, and it allows public employers to maintain third-party insurance coverage for the indemnification of public employees, but these provisions have no impact on the prohibitions of items (a) and (b).
- (d) The agencies of the Commonwealth may agree to a standard of ordinary "reasonableness" or "reasonable," but agencies of the Commonwealth must not agree to be governed by a standard such as "commercial reasonableness" or "commercially reasonable," or by any standard other than ordinary "reasonableness" or "reasonable."
- (e) M.G.L. c. 29 §29C, regulates interest, "late charges," "penalties," and similar concepts that may be payable by the legislature or by an agency of the Commonwealth in connection with the acquisition of property or services from commercial vendors. However, no agency of the Commonwealth should agree to incur any such liability or obligation, or to make any such payment in connection with a lease of real estate.
- (f) No lease may provide for any waiver or any right, remedy, or defense by an agency of the Commonwealth. The Office of the Attorney General of the Commonwealth represents the agencies of the Commonwealth in litigation and makes all strategic decisions, in consultation with the represented agency and its secretariat. The standard lease forms of the Commonwealth provide that whenever Landlord has a duty to indemnify, save harmless, and defend Tenant from all liability, claim, or cost, or some similar duty, such duty must be fulfilled "under the direction of the Attorney General of the Commonwealth of

Massachusetts in accordance with M.G.L. c. 12, §3." Accordingly, no lease should contain any provision whereby an agency of the Commonwealth waives any right, remedy, or defense pertaining to litigation (e.g., the right to a civil trial-by-jury), or whereby an agency of the Commonwealth waives any other right.

- (g) Under no circumstances may a lease by an agency of the Commonwealth modify the requirement that the agency's payment obligations are subject to appropriation and allotment. See M.G.L. c. 29, §27.
- (h) Warranties and representations in standard leasing documents of the Commonwealth must not be modified. Because of the statutory existence and regulation of the agencies of the Commonwealth that are authorized to lease real estate, and the certifications by the Commonwealth's signatories that appear in the signature blocks of many such documents, any request for the inclusion of reciprocal or similar warranties and representations by the Commonwealth must be declined.

Other lease terms and conditions may be included in the final lease document at DCAM's sole discretion. The Commonwealth reserves the right to negotiate any and all aspects of the proposed lease terms and conditions if in the opinion of DCAM it is in the best interest of the Commonwealth to do so.

VII. RFP POSTING AMENDMENTS AND QUESTIONS

This RFP will be posted on the Commonwealth of Massachusetts' website COMPASS at: www.comm-pass.com and on the "**DCAM Website**" at:
<http://www.mass.gov/cam/whatsnew/WNTelecomRFP.html> .

Any RFP amendments, clarifications, changes or updates, and any DCAM responses to proposer's questions will be posted on the **DCAM website only**. It is the proposer's responsibility to check the DCAM website for this information.

All questions during the proposal period must be submitted in writing or sent by email ***before 12:00 noon at least seven (7) business days before*** the applicable Submission Deadline Date. Questions should be directed to:

Nicholas J. Tsapalis, Real Estate Transactions Manager
Division of Capital Asset Management and Maintenance
Office of Real Estate Management
One Ashburton Place, 15th Floor
Boston, MA 02108-1511
Email: Nicholas.Tsapalis@state.ma.us
Fax: (617) 727-6074

Only the Contact Person specified in Section VII of this RFP is authorized to respond to any question or inquiry in connection with this RFP. DCAM will endeavor to answer

appropriate questions, in its sole discretion, only by posting its answers on the DCAM website for the benefit of all proposers. If there is a conflict between this RFP and any interpretation, clarification, or other response given to prospective or actual proposers, the terms of this RFP shall control.

Proposers without access to web information or who otherwise have disabilities or hardships must make a written request for a reasonable accommodation, which may include the receipt of RFP information in an alternative format, to the Contact Person.

VIII. OTHER INFORMATION

Public Records

All proposals and information submitted in response to this RFP are subject to the Massachusetts Public Records Law, M.G.L. Chapter 66, Section 10, and Chapter 4, Section 7, paragraph 26.

Any statements reserving any confidentiality or privacy rights in submitted proposals or otherwise are inconsistent with these statutes shall be deemed void.

Time of the Essence

Time is of the essence with respect to the applicable Submission Deadline Date and all other dates, times, and other deadlines set forth in this RFP.

APPENDIX A

ASSET MANAGEMENT BOARD ACTION

DATED SEPTEMBER 30, 2002

ASSET MANAGEMENT BOARD

Board Action

on

September 30, 2002

regarding

Final Project Proposal

by the

Board of Higher Education

regarding

Telecommunications Leasing Project

WHEREAS, the members of the Asset Management Board (the "Board") have received and reviewed a Final Project Proposal from the Board of Higher Education (the "BHE"), entitled "Telecommunications Leasing Project, Commonwealth of Massachusetts Board of Higher Education" dated September 13, 2002 (the "Proposal").

WHEREAS, the Proposal seeks authorization to enter into long-term (up to 20 years including extension options), non-exclusive leases for designated structures/areas at the following active colleges:

- Bridgewater State College in Bridgewater
- Fitchburg State College in Fitchburg
- Framingham State College in Framingham
- Mass College of Art in Boston
- Mass College of Liberal Arts in North Adams
- Mass Maritime Academy in Bourne
- Salem State College in Salem
- Westfield State College in Westfield
- Worcester State College in Worcester
- Berkshire Community College in Pittsfield
- Bristol Community College in Fall River
- Bunker Hill Community College in Charlestown
- Cape Cod Community College in West Barnstable
- Greenfield Community College in Greenfield
- Holyoke Community College in Holyoke
- Massachusetts Bay Community College in Wellesley and Framingham
- Massasoit Community College in Brockton and Canton
- Middlesex Community College in Bedford, Billerica and Lowell

- Mount Wachusett Community College in Gardner
- North Shore Community College in Danvers and Lynn
- Northern Essex Community College in Haverhill and Lawrence
- Quinsigamond Community College in Worcester
- Roxbury Community College in Roxbury Crossing
- Springfield Technical Community College in Springfield

(collectively, the "Property") that would allow telecommunications companies to install equipment, antennae, and facilities at these 24 colleges which include 30 campuses (the "Proposed Project").

WHEREAS, the BHE advertised a Notice of Intent to Submit a Proposal with an invitation for public comment (collectively, the "Notices") in the Central Register and at least one newspaper of general circulation in the applicable communities (see attached schedule). The last newspaper publications appeared not less than seven days prior to the deadline for submitting written comments on the Proposed Project. With the Board's waiver of the public hearing requirement under 810 CMR 2.05(3), by unanimous vote in accordance with 810 CMR 2.05 (4), the Notices met all other requirements for such notices contained in the regulations of the Board, published at 810 CMR 2.05 and included:

1. A brief summary of the Proposed Project, including a description of the proposed leases and the general location of the real property to be involved in the Proposed Project, and an estimate of the value of the proposed leases;
2. The location or office at which the draft Proposal was available; and
3. An invitation for public comment and the procedures and deadlines for submitting written comments.

Copies of the Notices were sent to members of the Board, members of the General Court of legislative districts included in the Proposed Project, the city manager in cities under the "Plan E" form of government, the mayor and members of the city council in all other cities, the chairperson of the board of selectmen in towns, county commissioners for all affected counties for towns, and the directors of the relevant area planning agencies for towns.

WHEREAS, comment letters received in response to the invitation for public comment have been submitted to the Board.

WHEREAS, the Board finds that the Proposal contains all of the information that must be contained in a Final Project Proposal submitted to the Board pursuant to the requirements of M.G.L. c. 7B and 810 CMR 2.06, as well as all other information deemed pertinent by the proponents of the Proposal and all the information requested by the Board.

WHEREAS, based on the facts and information included in the Proposal, the Board finds that the Proposed Project meets all standards for approval set forth in M.G.L. c. 7B and 810 CMR 2.02, as more specifically set forth below:

- A. The Board finds that the disposition of the Property through long-term non-exclusive leases with telecommunication companies represents sound management of the assets of the Commonwealth.
 - B. Based upon its review of the analyses contained in the Proposal, including the feasibility report prepared by the DCAM office of Real Estate, referencing a 2002 feasibility analysis by Beals Associates, Inc., the Board finds that the Proposed Project is technically and financially viable.
 - C. The Board has reviewed the letter of support for the Proposed Project from the Chancellor of BHE and the memorandum of the Commissioner of DCAM on the property inventory prepared by BHE which were submitted as attachments to the Proposal, and finds that the Proposed Project will not interfere with the current or foreseeable legal obligations of the BHE.
 - D. Based upon the information provided to the Board by the BHE concerning the Proposal, including the identification in the Proposal of the individuals and entities who were involved in the preparation of the Proposal and who will be involved in the implementation of the Proposed Project, the Board finds that the Proposed Project does not appear to constitute a conflict of interest, although the Board does not represent that it has made any judgments relative to conflict of interest under M.G.L. c. 268A.
 - E. Provided that the Proposed Project proceeds in accordance with the implementation, performance and monitoring criteria set forth in the Proposal, the Board finds that the Proposed Project will not result in windfall profits to any individual or group of individuals.
 - F. The Board finds that the Proposed Project will serve an important public purpose by allowing the BHE to (i) provide significant rental income to the Commonwealth and, through the creation of Trust Funds, to pay operating expenses at the individual campuses and to cover the costs and expenses related to developing, implementing and monitoring the Proposed Project; (ii) enable telecommunications companies to cost-effectively utilize sites at underutilized state-owned properties; (iii) enhance the provision of mobile and modular telecommunications services within the Commonwealth to private citizens, commercial users, and public law enforcement and safety officials; and (iv) place portions of underutilized state properties in productive use without interfering with the existing use of these properties.
 - G. The Board has reviewed and considered the disposition process set forth in the Proposal and requires and finds that the Property will be disposed of through an open and competitive process that is consistent with the intended public benefit of generating revenues and enhancing mobile and modular telecommunications services by allowing telecommunications companies to use underutilized properties.
 - H. The Board finds that the BHE as represented by the officials and key personnel identified in the Proposal, appear to be qualified to adequately manage and execute the Proposed Project.
 - I. Based upon the Board's review of the analyses set forth in the Proposal and the letter of support from the Chancellor of BHE, the Board finds that the Proposed Project will not interfere with the missions and functions of the BHE and is in the best interests of the Commonwealth.
-

- J. The Board has reviewed the information set forth in the Proposal regarding the proposed Trust Funds and hereby authorizes the BHE to request that the State Treasurer establish the Trust Funds, which shall be administered in accordance with the purposes set forth in the Proposal and with the provisions of M.G.L. c. 7B and 810 CMR 2.09.

In accordance with the foregoing findings of the Board and the powers granted pursuant to M.G.L. c. 7B, §4(b) and 810 CMR 2.02, the Board is authorized to determine that certain property procurement and disposition laws and regulations otherwise applicable shall not apply to the Proposed Project. Accordingly, the Board hereby makes the following determinations:

Determination #1, Laws:

The Board hereby determines that the provisions of M.G.L. c. 7, §40F, §40F1/2, §40I, and §43I shall not apply to the Proposed Project.

The Proposed Project shall comply with all other property procurement and general and special laws applicable to the Proposed Project.

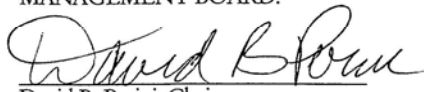
Determination # 2, Regulations:

The Board hereby determines that consistent with its authority under 810 CMR 2.05(4), the requirement for a public hearing under 810 CMR 2.05(3) shall not apply to the Proposed Project.

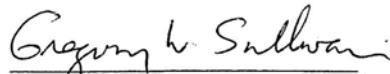
The Board further determines that consistent with its authority under 810 CMR 2.04(3)(c), the provisions of 810 CMR 2.06(2)(c) (second sentence only) and 810 CMR 2.06(2)(f) shall not apply to the Proposed Project.

NOW, THEREFORE, the members of the Board whose signatures appear below have made the foregoing findings and have voted to approve the Proposed Project and hereby authorize the BHE to implement the Proposed Project in accordance with its terms, subject to the requirement that the Request for Proposals for the Project (i) be reviewed by the Office of the Inspector General prior to issuance; and (ii) contain, in addition to other selection criteria, a standard for evaluating the financial benefit of the entire proposal determined by the highest price based on net present value of the entire proposal.

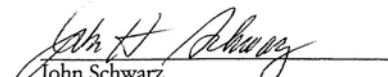
RESOLVED AND APPROVED BY THE FOLLOWING MEMBERS OF THE ASSET MANAGEMENT BOARD:


David B. Perini, Chairperson

12/18/02
Date


Gregory W. Sullivan, Inspector General

12/18/02
Date


John Schwarz

12/18/02
Date

David Lee

Leslie Greis

Date
12/18/02
Date

Asset Management Board
Board of Higher Education - Telecommunications Leasing Project
Final Project Proposal - September 13, 2002
Public Notice and Comment Schedule

Property	Local Newspaper	Ad Dates	Town Advertised
Middlesex Community College, Bedford	Bedford Minuteman	8/29, 9/5	Bedford
Bridgewater State College	Brockton Enterprise	8/30, 9/5	Bridgewater
Salem State College	Salem Evening News	8/30, 9/5	Salem
Holyoke Community College	Springfield Union	8/30, 9/6	Holyoke
Middlesex Community College, Billerica	Billerica Minuteman	8/2, 9/5	Billerica
Mass Maritime Academy	Upper Cape Codder	8/2, 9/5	Bourne
Massasoit Community College, Brockton	Brockton Enterprise	8/30, 9/5	Brockton
Massasoit Community College, Canton	Canton Journal	8/30, 9/6	Canton
North Shore Community College	Danvers Herald	8/29, 9/5	Danvers
Bristol Community College	Fall River Herald News	8/30, 9/6	Fall River
Framingham State College	Framingham Tab	8/29, 9/5	Framingham
Massachusetts Bay Community College, Fram	Framingham Tab	8/29, 9/5	Framingham
Mount Wachusett Community College	Gardner News	8/30, 9/5	Gardner
Greenfield Community College	Greenfield Town Crier	8/30, 9/6	Greenfield
Northern Essex Community College	The Eagle Tribune	8/30, 9/6	Haverhill, Lawrence
Middlesex Community College, Lowell	Lowell Sun	8/30, 9/6	Lowell
North Shore Community College	Lynn Daily Item	8/30, 9/6	Lynn
Mass College of Liberal Arts	North Adams Transcript	8/30, 9/6	North Adams
Berkshire Community College	Pittsfield Gazette	8/29, 9/5	Pittsfield
Springfield Technical Community College	Springfield Union	8/30, 9/6	Springfield, Holyoke
Massachusetts Bay Community College, Well	Wellesley Townsman	8/29, 9/5	Wellesley
Cape Cod Community College	West Barnstable Patriot	8/30, 9/6	West Barnstable
Westfield State College	Westfield Evening News	8/30, 9/6	Westfield
Fitchburg State College, Fitchburg	Worcester Telegram & Gazette	8/29, 9/5	Fitchburg
Worcester State College, Worcester	Worcester Telegram & Gazette	8/29, 9/5	Worcester
Quinsigamond Community College	Worcester Telegram & Gazette	8/29, 9/5	Worcester
Roxbury Community College	City Shopper, Boston	8/28, 9/4	Roxbury Crossing
Bunker Hill Community College	City Shopper, Boston	8/28, 9/4	Charlestown
Massachusetts College of Art	City Shopper, Boston	8/28, 9/4	Boston

Central Register Publication Dates:

August 28, 2002

September 4, 2002

APPENDIX B

PROPOSAL COVER SHEET

REQUEST FOR PROPOSALS

Wireless Telecommunications Leasing Project
Massachusetts Bay Community College
50 Oakland Street
Wellesley Hills, Massachusetts

Proposal Cover Sheet

Attached is a proposal to lease the following Lease Site defined in the above-referenced RFP:

The undersigned proposes to lease the Lease Site from the Commonwealth of Massachusetts upon the terms and conditions specified in this proposal.

I have read, understand, and agree to comply with the terms and conditions set forth in the RFP, including, without limitation, the obligation to execute the Lease and other legal documents referenced in Section VI of the RFP.

I agree that all expenses related to the preparation of this proposal, including, without limitation, any costs related to any brokerage or third party representation engaged by the proposer, are at the proposer's sole expense.

I have attached one original proposal, four complete sets of copies of same, a pdf. on a compact disc, and a check for the \$250.00 application fee.

(Signature)

(Date)

Print Name: _____

Organization: _____

Address: _____

Telephone: _____

APPENDIX C

FORM OF LEASE AGREEMENT

WIRELESS TELECOMMUNICATIONS FACILITIES

This Official Form Must Not Be Altered.
Any Modifications Must Be Made By Separate Rider.

**LEASE AGREEMENT
WIRELESS TELECOMMUNICATIONS FACILITIES**

DATED _____, 2010

by and between

**THE COMMONWEALTH OF MASSACHUSETTS
ACTING BY AND THROUGH ITS
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE**

AS LANDLORD

and

AS TENANT

**PREMISES: Portions of exterior of Main Campus Building
PROPERTY: Massachusetts Bay Community College, Wellesley Hills, MA**

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RIDER TO LEASE AGREEMENT

EXHIBITS TO THE LEASE

<i>Exhibit A-1</i>	PROPERTY AND APPROVED ACCESS ROUTE
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<i>Exhibit B-1</i>	TENANT RENT SCHEDULE
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<i>Exhibit C</i>	REQUIRED PERMITS AND DEVELOPMENT SCHEDULE
<i>Exhibit D</i>	INSURANCE REQUIREMENTS
<i>Exhibit E</i>	NOTICE OF LEASE
<i>Exhibit F</i>	WIRELESS TELECOMMUNICATIONS FACILITIES CO-LOCATOR CERTIFICATION

TENANT'S BENEFICIAL INTEREST DISCLOSURE STATEMENT
MEPA AGREEMENT
EXECUTIVE ORDER 504 CONTRACTOR CERTIFICATION FORM

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE
LEASE AGREEMENT
WIRELESS TELECOMMUNICATIONS FACILITIES**

The Commonwealth of Massachusetts, acting by and through its Division of Capital Asset Management and Maintenance ("**Landlord**"), having its offices at One Ashburton Place, 15th Floor, Boston, Massachusetts 02108-1511, and _____ ("**Tenant**"), with an address provided herein, enter into this Lease Agreement dated _____, 201____ ("**Lease**"). **Landlord** and **Tenant** are collectively referred to in this **Lease** as the ("**Parties**").

PREAMBLE

The Asset Management Board of the Commonwealth of Massachusetts ("**AMB**") has authorized the Division of Capital Asset Management and Maintenance ("**DCAM**") to lease certain underutilized land, buildings and structures on state property under the care, custody, and control of the Department of Higher Education ("**DHE**"), to wireless telecommunications service providers and facilities management companies for the purpose of installing, operating, and maintaining wireless telecommunications facilities. One such structure is the main campus building on the property known as the Massachusetts Bay Community College, 50 Oakland Street, Wellesley Hills, MA ("**Property**"). The **Property** is shown on Exhibit A-1 of this **Lease**. **Tenant** desires to **Lease** a portion of the exterior/rooftop of the main campus building for the installation of wireless telecommunications facilities and an area on the **Property** for associated equipment ("**Premises**") as further defined in § 2.1 and shown on Exhibit A-2 of this **Lease**.

In consideration of the mutual covenants and promises contained in this **Lease**, **Landlord** and **Tenant** agree as follows:

1. DEFINITIONS

The following terms-of-art, whenever capitalized and bolded in this **Lease**, have the following meanings:

"Antenna Facilities" means facilities necessary to operate **Wireless Telecommunications Facilities** (as hereinafter defined), including, without limitation, radio transmitting and receiving antenna, panel antenna, rooftop and building mounted equipment, microwave dishes, equipment shelters and/or cabinets, related cables and utility lines, and a location-based system, as such location-based system may be required by any county, state, or federal agency/department, including without limitation, additional antenna(s), coaxial cable, base units, and other associated equipment.

"Bond" means a financial guarantee acceptable to the **DHE** in an amount sufficient to cover the cost of demolishing and/or removing the **Wireless Telecommunications Facilities** if

they become functionally obsolete, have expired their effective life, or are deemed to have been abandoned or vacant for more than one year.

“Building” means an existing building on the **Premises** that has been identified by **Landlord** for the installation of **Antenna Facilities**.

“Business Day” means any day except a Saturday, a Sunday, and a day on which the main reception desk of **Landlord** on the 15th Floor of One Ashburton Place in Boston, Massachusetts (or wherever said reception desk may be relocated during the Term) is not open to the public because of an official holiday, any other reason, or no reason.

“Co-location” means locating two or more **Antenna Facilities** on the same **Building** or **Support Structure** (as hereinafter defined).

“Co-locator” means an individual, corporation, or entity such as a **Wireless Telecommunications Service Provider** (as hereinafter defined) leasing or licensing space on a **Building** or **Support Structure**.

“Expiration Date” has the meaning set forth in § 4.1.

“Event of Default” and **“Events of Default”** have the meanings set forth in §§ 14.1 and 14.5.

“Facilities Management Company” means a person or entity that constructs, manages, and/or operates a **Building** or **Support Structure** and has procured letters of intent from at least two **FCC**-licensed **Wireless Telecommunications Service Providers** with respect to the **Premises**.

“FCC” means the Federal Communications Commission, an agency of the government of the United States of America.

“FHWA” means the Federal Highway Administration, an agency of the government of the United States of America.

“Governmental Approvals” has the meaning set forth in § 7.1.

“Governmental Authority” or **“Governmental Authorities”** means the United States of America, the Commonwealth of Massachusetts, the municipality or municipalities and county, if any, where the **Property** is located and any political subdivision thereof, and any agency, department, commission, board, bureau, or instrumentality of any of them.

“Hazardous Materials” means those substances defined or classified as a “hazardous substance,” “toxic substance,” “hazardous material,” “hazardous waste,” “hazardous pollutant,” or “toxic pollutant,” or otherwise denominated as hazardous, toxic or a pollutant in: (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended (CERCLA); (b) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended (RCRA); (c) the Massachusetts Hazardous Waste Management Act,

Massachusetts General Laws Chapter 21C, as amended (Chapter 21C); (d) the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Massachusetts General Laws Chapter 21E, as amended (Chapter 21E); (e) any other federal, state or local law or ordinance addressing the protection of human health, safety, welfare or the environment, as amended (Other Environmental Laws); or (f) regulations promulgated pursuant to CERCLA, RCRA, Chapter 21C, Chapter 21E, or Other Environmental Laws, as amended.

"Lease Commencement Date" has the meaning set forth in § 4.1.

"Market Rent" means the rental income that a **Property** would most probably command in an open market.

"Percentage Rent" has the meaning set forth in § 5.4 and Exhibit B-2 of this **Lease**.

"Permitted Uses" has the meaning set forth in § 6.1.

"Premises" has the meaning set forth in the Preamble and in § 2.1.

"Property" has the meaning set forth in the Preamble.

"Renewal Term" has the meaning set forth in § 4.2.

"Rent" has the meaning set forth in § 5.

"Security Deposit" has the meaning set forth in § 5.2.1.

"Site Manager" has the meaning set forth in § 11.

"Sublease Agreement" means an agreement by which **Tenant** conveys the right of use and occupancy of **Tenant's Wireless Telecommunications Facility** or **Facilities** or portion thereof to another, the subtenant, whether in the form of a sublease, license or any other written agreement.

"Subtenant" means an individual, corporation or entity that enjoys the benefits, rights, and obligations of a **Sublease Agreement**. For the purposes of this **Lease**, **Subtenant** is synonymous with **Co-locator**.

"Support Structure" means a freestanding structure or framework that is self-supporting, fixed to the ground, and designed to support wireless telecommunications transmissions, receiving and/or relaying antennas, and/or equipment, and may include, without limitation, monopoles, lattice towers, guyed radio towers, water towers and smokestacks. **Support Structures** may include stealth technology, such as flagpoles, light poles, and Intelligent Transportation System (ITS) poles, designed to accommodate **Antenna Facilities**.

"Tenant Equipment" means the personal property of **Tenant** being brought onto the **Premises** to operate **Wireless Telecommunication Facilities** as scheduled in Exhibit A-3.

"Tenant Improvements" means a **Support Structure**, fixtures and/or any other structure or improvement constructed/installed on the **Premises** by **Tenant**, as more particularly described in Exhibit A-3.

"Tenant Improvements and Equipment" include **Antenna Facilities**, **Tenant Improvements**, **Tenant Equipment** and any other personal property and vehicles of **Tenant**, all as further described in Exhibit A-3.

"Term" has the meaning set forth in § 4.1.

"Wireless Telecommunications Facilities" or **"Facilities"** means all **Support Structures**, **Antenna Facilities** and **Tenant Improvements and Equipment** on the **Premises**, for the provision of wireless telecommunications services. The **Facilities** must comply with the FHWA Utility Accommodation Policy, as determined by both the **DHE** and the **FHWA**.

"Wireless Telecommunications Service Provider" or **"Service Provider"** means an individual or entity that provides wireless telecommunications service to customers, e.g., cellular and personal-communication service providers, radio common carriers, and paging companies.

2. LEASE OF PREMISES

2.1 **Landlord** leases the **Premises** to **Tenant**, consisting of a **Building** rooftop or side panels and an accessory area to install **Wireless Telecommunications Facilities**, all as shown in Exhibit A-2. Subject to the provisions of §§ 5.4 and 18, **Tenant** is permitted to sublease or to license space on **Tenant's Wireless Telecommunications Facilities** to **Service Providers** as **Co-locators**.

2.2 In addition to being subject to the other provisions of this **Lease**, the leasing of the **Premises** is subject to (a) any facts that an accurate survey or personal inspection of the **Premises** would show; (b) the condition and state of repair of the **Premises** as of the **Lease Commencement Date**; (c) easements, covenants, and restrictions of record affecting the **Premises**, if any; and (d) present and future laws, regulations, and orders of all **Governmental Authorities having jurisdiction over the Premises or the use or improvement of the Premises during the Term**.

2.3 **Tenant** must include in its development costs for the **Wireless Telecommunications Facilities** an amount not to exceed \$5,000.00 for the purchase of **Antenna Facilities** by **Tenant** for **DHE** (in accordance with specifications provided by **DHE**). Such **Antenna Facilities** shall be installed by **Tenant** on the **Wireless Telecommunications Facilities** (in accordance with specifications provided by **DHE**) for the exclusive use, control and ownership of **DHE**. **Landlord** reserves a right of access on behalf of **DHE** to the space occupied by such **Antenna Facilities**. The maintenance, repair and replacement of such **Antenna Facilities** shall be the responsibility of the **Tenant** during the **Term** of the **Lease**, unless necessitated or occasioned by an act or omission of **DHE**, in which case **DHE** shall be responsible for such expenses.

2.4 **Tenant** represents that **Tenant** has been given an opportunity to conduct an independent examination of the **Premises**, and to conduct such feasibility tests as **Tenant**, in its

sole discretion, deemed necessary or advisable, and has determined that the **Premises** are suitable for the **Permitted Uses** and operations under this **Lease**. **Landlord** makes no warranty or representation, express or implied, as to the condition of the Premises, or their suitability for the uses permitted under this Lease. Tenant understands and agrees that Tenant leases the Premises AS-IS.

3. ACCESS TO PREMISES

3.1 **Tenant** has vehicular, pedestrian, and utility access to the **Premises** 24 hours per day, seven (7) days per week, provided that (a) such access is only via the route(s) designated in Exhibit A-1; (b) **Tenant** complies with any specific site-access restrictions imposed by **DHE** or Massachusetts Bay Community College; and (c) **Tenant** complies with any security/access-notification requirements as **Landlord** or **DHE** or Massachusetts Bay Community College reasonably impose from time to time. **Tenant** has no right under this **Lease** to access any other portions of the **Property**.

3.2 **Landlord** and **Tenant** acknowledge that the **Premises** are located on an active college campus, and none of **Tenant's** activities may restrict access to the **Building** in any way at any time without prior notice and approval of the Massachusetts Bay Community College.

4. TERM

4.1 The duration of this **Lease** is ten years ("**Term**"), beginning at 12:01 AM on the date that appears immediately before the Preamble of this **Lease** ("**Lease Commencement Date**"), and ending at 11:59 PM on the date that immediately precedes the tenth anniversary of the **Lease Commencement Date** ("**Expiration Date**"), unless this **Lease** is terminated sooner as provided in §§ 14 and 15.

4.2 **Tenant** has the right to extend this **Lease** for two additional and successive five year terms (each a "**Renewal Term**") on the same terms and conditions as set forth herein. This **Lease** automatically renews for each successive **Renewal Term** unless **Tenant** notifies **Landlord**, in writing, of **Tenant's** intention not to renew this **Lease** at least 90 days before the expiration of the **Term** or any **Renewal Term**. An extension is not effective until **Tenant** complies with the provisions of M.G.L. c. 7, § 40J.

4.3 If **Tenant** remains in possession of the **Premises** at the expiration of the **Term** or the final **Renewal Term** without a written agreement, such tenancy is a month-to-month tenancy-at-will with a monthly rental equal to 125% of one-twelfth of the annual **Rent** most recently required by Exhibits B-1 and B-2 of this **Lease**.

4.4 Subject to § 18, **Tenant** has the right to enter into **Sublease Agreements** with **Service Providers** as **Co-locators** on **Tenant's Facilities**. No **Sublease Agreement** may have a **Term** or duration that exceeds or violates the provisions of this **Lease**. All **Subtenants** and **Co-locators** of **Tenant** shall be bound by all of the terms and conditions of this **Lease** whether or not set forth in their respective **Sublease Agreement** with **Tenant**.

5. RENT

5.1 **Tenant** shall pay **Rent** for the **Premises**, annually, in advance and in accordance with Exhibit B-1. **Rent** shall increase in accordance with (a) Exhibits B-1 and B-2; (b) § 5.4 and 18.1; (c) any other applicable provisions of this **Lease**; and (d) any modifications of this **Lease**. Until written notice to the contrary from **Landlord** to **Tenant**, **Tenant** must pay all **Rent** to the order of "The Commonwealth of Massachusetts" directly to DCAM at the following address:

Nicholas Tsaparlis, Real Estate Transaction Manager
Wireless Telecommunication Facilities Leases
Office of Real Estate Management
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, MA 02108-1518

5.2 Subject to the provisions of § 7.5, **Rent** for Lease-year 1 must be paid in full on the earlier of (a) six months after the **Lease Commencement Date**, (provided **Landlord** may grant up to two extension periods of six months each to secure the **Governmental Approvals** (as hereinafter defined) so long as **Tenant** pays a **Lease** retention fee of \$1,000.00 for each such extension); or (b) the date on which the **Governmental Approvals** are obtained by **Tenant** for the **Permitted Uses** and **Tenant Improvements and Equipment** to be constructed and installed on the **Premises** in accordance with §§ 6.1 and 6.2 of this **Lease**.

5.2.1 **Tenant** paid a nonrefundable \$250.00 application fee with **Tenant's** proposal for this **Lease**. Upon execution of this **Lease**, **Tenant** shall deposit with **Landlord** a security deposit in the total sum of \$5,000 ("**Security Deposit**"). The **Security Deposit** may be applied by **Landlord** to unpaid **Rent**; to any loss, damage, or destruction caused by **Tenant**, in whole or in part, of the **Premises**, the **Property**, or **Landlord's** other property; to the cost of removing or relocating **Tenant's** property from the **Premises** upon termination or expiration of this **Lease**; or to the costs of remediating any failure of **Tenant** to comply with any provision of this **Lease**. Any portion of the **Security Deposit** not so applied by **Landlord** must be returned to **Tenant** not more than 60 days after the **Expiration Date**. **Landlord** shall not be required to hold the **Security Deposit** in an interest bearing account. The provisions of this Section 5.2.1 shall survive the **Expiration Date** or earlier termination of this **Lease**.

5.2.2 **Rent** for each of years 2 through 10 of the **Term** is payable in full on or before each anniversary of the **Lease Commencement Date**.

5.3 **Tenant** must give written notice confirming the date on which **Governmental Approvals** are issued to **Tenant**, which notice must include a copy of the building permit and all other permits and approvals.

5.4 Subject to the provisions of § 18, **Tenant** is permitted to sublease space on **Tenant's Wireless Telecommunications Facilities** on the **Premises** to **Wireless Telecommunications Service Providers** as **Co-locators**. For each Lease-year or partial Lease-year under this **Lease** that each **Sublease Agreement** is in effect, the annual **Rent** set forth on Exhibit B-1 must be increased by the amount of **Percentage Rent** (as defined in Exhibit

B-2) for each such **Co-locator**, with the total **Rent** payment (annual plus percentage) subject to an annual increase of ____%. The first annual **Rent** increase being payable, in full, in accordance with § 18.1. After the first annual **Rent** increase, each annual **Rent** increase is payable, in full, on or before each anniversary of the **Lease Commencement Date**, concurrently with **Rent** that is payable in accordance with § 5.1 and 5.2. No such **Rent** increase is pro-rated for any year of the **Term**. If the rent or the license fees billed by **Tenant** to the **Co-locator** is below **Market Rent**, then **Landlord** has the right to receive from **Tenant** ____% of the **Market Rent** for said occupancy of the **Facilities** by each **Co-locator**. Such revenue is due annually for each **Co-locator**, with the first annual **Rent** increase being payable, in full, in accordance with § 18.1. After the first annual **Rent** increase, each **Rent** increase is payable, in full, on or before each anniversary of the **Lease Commencement Date**, concurrently with **Rent** that is payable in accordance with § 5.1 and 5.2.

5.5 If **Tenant** fails to pay, when due, any sum of money due to **Landlord** under this **Lease**, whether such sum be an installment of **Rent** or any other payment due **Landlord** under this **Lease**, a 5% late fee is payable in addition to the principal sum due.

6. PERMITTED USES; TENANT IMPROVEMENTS AND EQUIPMENT; HAZARDOUS MATERIALS

6.1 Subject to the requirements of all **Governmental Approvals**, applicable laws, and the other provisions of this **Lease**, the **Permitted Uses** shall include the right to use the **Premises**, all at **Tenant's** sole cost, expense and risk for the purposes of (a) installing, operating, and maintaining **Wireless Telecommunications Facilities** on the **Premises**, including related equipment, cables, and all other appurtenances necessary for the operation thereof, together with associated transmission lines and mounting apparatus; (b) placing, maintaining, and operating an equipment shelter or cabinets for the housing of communications equipment in conjunction with the telecommunications antennas and related equipment; and (c) obtaining a non-exclusive right of pedestrian and vehicular access over the **Property** to the **Premises** and access for utilities as shown on Exhibit A-1. The **Premises** are more particularly shown on Exhibit A-2. The specific **Tenant Improvements and Equipment** permitted to be installed/constructed on the **Premises** are more particularly shown and described in Exhibit A-3.

6.2 The construction, installation, operation, repair, and maintenance of the **Tenant Improvements and Equipment** must be performed by competent contractors possessing all necessary licenses and at **Tenant's** sole expense, all in accordance with the provisions of this **Lease**. Before **Tenant** begins to operate **Wireless Telecommunications Facilities** on the **Premises**, **Tenant**, at **Tenant's** sole risk and expense, must furnish **Landlord** with a certification from an independent licensed design engineer and an independent licensed structural engineer if required by **Landlord**, each confirming that the **Tenant Improvements and Equipment**, as installed, conform in all respects to Exhibits A-2 and A-3, that the installation is structurally sound, correct and appropriate, that adequate and sufficient conduits are available for **Tenant's** installations, and that the electrical capacity at the **Premises** and at the **Property** has not been compromised. Said independent licensed design engineer and/or licensed structural engineer may be subject to the prior written approval of **Landlord**, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that **Landlord** shall have no responsibility for the accuracy, completeness or content of any such certification.

6.3 Except for the replacement of like-kind equipment by **Tenant**, **Tenant** shall not at any time construct, move, modify, or install any improvements on the **Premises** that are materially different from or in addition to the **Tenant Improvements and Equipment** on the **Premises**, as shown and described in Exhibits A-2 and A-3, without the prior written approval of **Landlord**, which approval by **Landlord** must not be unreasonably withheld, delayed or conditioned. As a condition of such approval, **Landlord** has the right to require the payment of additional **Rent** by **Tenant** in an amount not less than the **Market Rent**. **Tenant** must not, without **Landlord's** prior written approval, alter, replace, expand and/or upgrade **Wireless Telecommunications Facilities** on the **Premises** at any time. **Landlord** also has the right to require **Tenant**, at **Tenant's** expense, and in addition to the information that accompanies **Tenant's** request for **Landlord's** approval, to provide **Landlord** with a certification by an independent registered professional engineer that confirms that **Tenant's** proposal is structurally sound, correct and appropriate, as to the **Premises** and **Permitted Uses**. Before **Tenant** begins to operate any such different, additional, moved, or modified improvements on the **Premises**, **Tenant**, at **Tenant's** sole expense, must furnish **Landlord** with a certification by an independent licensed design engineer and a separate certification from an independent registered professional engineer, each confirming that each of the different, additional, moved, or modified improvements and equipment, as installed, conforms in all respects to the original or to the updated and revised Exhibits A-2 and A-3. Said independent registered professional engineer may be subject to the prior approval of **Landlord**, which approval must not be unreasonably withheld, delayed, or conditioned. If **Tenant** is found by **Landlord** to have any non-permitted improvements and/or equipment on the **Premises**, or if any of **Tenant's Improvements and Equipment** are found not to be in conformity with the requirements of this **Lease**, then, upon written notice from **Landlord**, **Tenant** must immediately take action to terminate such non-permitted use and remove any and all associated improvements and/or equipment.

If **Tenant** fails to take appropriate action, **Landlord** may take such action as is reasonably necessary to eliminate the non-permitted use at **Tenant's** cost. The foregoing rights of **Landlord** are in addition to those set forth in §§ 14 and 15, and survive the **Expiration Date** or earlier termination of this **Lease**.

6.4 **Tenant** covenants and agrees, for **Tenant** and its **Co-locators**, employees, contractors, agents, and invitees, not to store, release, or dispose of any **Hazardous Materials** at, on, or under the **Premises**, or transport any **Hazardous Materials** to or from the **Premises**, provided, however, that **Tenant** may bring upon the **Premises** and use, in accordance with their safety labeling, all applicable laws, and the highest standards in the industry for the storage, use, and disposal of such **Hazardous Materials**, those **Hazardous Materials** that are reasonably necessary for **Tenant** to perform **Tenant's** obligations under this **Lease** and use the **Premises** for the purposes permitted by this **Lease**. **Tenant** must promptly notify **Landlord**, in writing, of all releases that are known to **Tenant** of **Hazardous Materials** on the **Premises** and/or on the **Property**, and of any orders or notices of any kind that are received by **Tenant** from any **Governmental Authority** relating to the presence or suspected presence of any **Hazardous Materials** on the **Premises** and/or on the **Property**. It is the responsibility of **Tenant**, at its sole expense, to ensure that any and all necessary action is taken to fully remediate any release of **Hazardous Materials** arising from the acts or omissions of **Tenant**, **Tenant's** employees, contractors, agents, **Co-locators**, and invitees, and to obtain compliance

with all orders and directives received from any **Governmental Authority** pertaining to the storage, use, transportation, or disposal of **Hazardous Materials** by such parties. If **Tenant** or any employee, contractor, agent, Co-locator or invitee of **Tenant** releases or disposes, or causes the release or the disposal of, any **Hazardous Materials** at, on, or under the **Premises** and the **Property**, and provided **Tenant** fails to cure same in accordance with the provisions of §§ 13 and 14, then such failure is an **Event of Default**. **Tenant** has no responsibility for the identification, investigation, monitoring, remediation, and cleanup of **Hazardous Materials** on the **Premises** as of the **Lease Commencement Date** unless the presence or release of the **Hazardous Materials** is caused by the activities of **Tenant** or of any employee, contractor, agent, **Co-locator**, or invitee of **Tenant**. The provisions of this § 6.4 shall survive the **Expiration Date** or earlier termination of this **Lease**.

6.5 At anytime during the **Term**, each **Renewal Term**, or any month-to-month period provided by § 4.3, **Landlord** has the right to require **Tenant** to provide (a) plans of improvements stamped by a registered professional engineer; (b) oversight of **Tenant's** installation and inspection of **Tenant's** conduits and equipment; and (c) consultation in the case of any building-related or energy-related questions with respect to **Tenant's** initial installation and any subsequent modification that is made pursuant to § 6.3 of this **Lease**.

7. APPROVALS CONTINGENCY

7.1 It is understood and agreed that **Tenant's** right to use the **Premises** for the **Permitted Uses** under this **Lease** is contingent upon **Tenant** obtaining, at its own expense, all of the certificates, permits and approvals ("**Governmental Approvals**") that may be required by any **Governmental Authorities** for **Tenant** to use the **Premises** for the **Permitted Uses**.

7.2 **Landlord** will cooperate with **Tenant**, at no expense or liability to **Landlord**, in **Tenant's** efforts to obtain such **Governmental Approvals**, and will take no action which would adversely affect the status of the **Premises** with respect to the **Permitted Uses** unless **Landlord** reasonably determines that such action is necessary to protect the **Premises** or the **Property** or **Landlord's** ability to sell, transfer, lease, license, develop or otherwise dispose of the **Property**.

7.3 **Tenant** must notify **Landlord** of receipt of all **Governmental Approvals** and provide both **Landlord** and **DHE** with a true copy of each within 10 **Business Days** after receipt.

7.4 Throughout the **Term**, each **Renewal Term**, or any month-to-month period provided by § 4.3, **Tenant** must provide both **Landlord** and **DHE** with copies of all licenses and permits issued by the **FCC** with respect to the **Permitted Uses** and **Tenant's Wireless Telecommunications Facilities** on the **Premises**.

7.5 Notwithstanding any other provision of this **Lease**, if **Tenant** is unable to obtain all necessary **Governmental Approvals** by the date that is 18 months after the **Lease Commencement Date**, **Tenant** or **Landlord** has the right to terminate this **Lease** immediately upon written notice to the other without further liability, including without limitation, any liability of **Landlord** for any costs incurred by **Tenant** with regard to **Tenant's** efforts to obtain all necessary **Governmental Approvals** by such date.

7.6 Before the issuance of a building permit for **Wireless Telecommunications Facilities** on the **Premises**, **Landlord** may, in its reasonable discretion, require **Tenant** to post and submit a **Bond** acceptable to **DHE** in an amount sufficient to cover the cost of demolishing and/or removing the **Facilities** if the **Facilities** become functionally obsolete, have expired their effective life, or are deemed to have been abandoned or vacant for more than one year. Said amount must be certified by an engineer, architect, or other qualified professional registered to practice in the Commonwealth of Massachusetts.

7.7 Any fees paid by **Tenant** prior to the resulting termination under this § 7 will be retained by **Landlord**. Subject to allocation and allotment of funding, any **Rent** paid in advance by **Tenant** for the period subsequent to the resulting termination under this § 7 will be refunded to **Tenant**.

7.8 Upon termination of this **Lease** under § 7, the provisions of § 15.5 shall control.

8. REMOVAL OF TENANT'S IMPROVEMENTS AND EQUIPMENT; RESTORATION OF PREMISES AND THE PROPERTY

8.1 All **Tenant Improvements and Equipment**, vehicles and any other personal property of **Tenant** (but excluding any **Landlord Building** and utility infrastructure), that are brought onto the **Premises** by **Tenant** remain **Tenant's Property** and shall be removed by **Tenant** no later than 30 days after the **Expiration Date** or after the date on which this **Lease** is otherwise terminated. If **Tenant** fails to remove all of the **Tenant Improvements and Equipment** or any other personal property from the **Premises** within such 30 day period, **Tenant** shall pay in advance a monthly rent equal to 125% of one-twelfth of the annual **Rent** most recently required by Exhibits B-1 and B-2 for every month until all of the **Tenant Improvements and Equipment** and any other personal property is removed. In the alternative, any property of **Tenant** that is not removed within such 30 day period becomes the property of **Landlord**, and **Landlord** (or **Landlord's** agents) may remove, store, dispose of, or permit others, including **DHE**, to use such property in **Landlord's** sole discretion, and neither **Landlord** nor **DHE** nor any party acting on their behalf has any liability whatsoever to **Tenant** for such removal, disposal, or use thereof. **Tenant** shall reimburse **Landlord** on demand for the reasonable costs of removing, storing and disposing of **Tenant's** property (and restoring the **Premises** and the **Property**), whether incurred by **Landlord**, **DHE**, or by others for the benefit of **Landlord** or **DHE**.

8.2 Nothing in the foregoing § 8.1 gives **Tenant** a right to hold over or to keep **Tenant's Improvements and Equipment** on the **Premises** after the **Expiration Date** or any other termination date. Without waiving or limiting any of **Landlord's** other rights or claims for damages under this **Lease**, **Tenant** remains liable to **Landlord** for the performance of all of **Tenant's** obligations under this **Lease**, including the payment of **Rent** and any fees, up to the date **Tenant** actually vacates the **Premises**. All prepaid annual **Rent** and any fees paid by **Tenant** are not subject to refund and will be retained by **Landlord**.

8.3 Upon the **Expiration Date** or earlier termination of this **Lease**, **Tenant**, in addition to removing all of the **Tenant Improvements and Equipment** and any other personal property of **Tenant**, must perform all work necessary to restore the **Premises** and the **Property**

to their condition as of the **Lease Commencement Date**, including, at **Landlord's** option, removal of utility lines, conduits, connections, and infrastructure installed by **Tenant**, reasonable wear and tear, and damage from the elements, casualty, and eminent domain excepted.

The provisions of this § 8 shall survive the **Expiration Date** or earlier termination of this **Lease**.

9. UTILITIES; TAXES

9.1 **Tenant** is responsible for all utilities allocable to the **Premises**, for taxes allocable to the **Premises** because of **Tenant's Wireless Telecommunications Facilities**, and for all taxes levied upon the **Tenant's Improvements and Equipment** used in connection therewith.

9.2 **Tenant**, at its sole expense, must arrange for **Tenant's** own separately metered utilities from the local utility companies, including the installation of all necessary utility lines, and must pay for all electric, telephone, and other utilities consumed by **Tenant**. **Tenant** agrees to install all utility lines underground, subject to the approval of the utility company. **Landlord** makes no representation or warranty as to the availability or sufficiency of any such utilities, and **Landlord** has no liability for any interruption or discontinuance of utility service. **Landlord** agrees to cooperate with **Tenant** in **Tenant's** efforts to obtain utilities from any location provided by **Landlord**, including the signing of any license reasonably requested by the utility company.

9.3 **Tenant** must pay any personal property tax, real property tax, or any other tax or fee that is directly attributable to the presence or installation of **Tenant's Wireless Telecommunications Facilities**, so long as this **Lease** remains in effect. If **Landlord** receives notice of any personal property tax assessment, real property tax assessment or any other tax or fee assessment that may affect **Tenant** and is directly attributable to the presence or installation of **Tenant's Wireless Telecommunications Facilities**, **Landlord** must provide timely notice of the assessment to **Tenant** sufficient to allow **Tenant** to consent to or challenge such assessment, whether in a Court, administrative proceeding, or other venue. All tax bills will be sent directly to **Tenant**, and **Tenant** must pay the same on or before the due date stated on the tax bill, forwarding confirmation of said payment to **Landlord**. It is **Tenant's** responsibility to ensure that all tax bills are sent directly to **Tenant**. Nothing in this provision limits or restricts **Tenant's** right to seek redress or file an appeal with the appropriate governmental agency relative to any tax levy, consistent with applicable regulatory provisions.

The provisions of this § 9 shall survive the **Expiration Date** or earlier termination of this **Lease**.

10. INSURANCE

10.1 During the **Term**, any **Renewal Term**, and any month-to-month tenancy, as described in § 4.3, **Tenant** must provide the insurance coverage required by Exhibit D to this **Lease**. The required insurance coverage must be applicable to the **Property**, as well as to the **Premises**.

11. OBLIGATIONS OF TENANT REGARDING OPERATIONS; SITE MANAGER

11.1 **Landlord**, in consultation with **DHE**, reserves the right to **Lease** or license other portions of the **Property** to **Facilities Management Companies** and/or **Service Providers** as **Co-locators** for the same general uses that are permitted by this **Lease**. **Landlord** will include a provision in each such lease or license prohibiting such **Co-locators** from interfering with the use of the **Premises** by **Tenant**. If **Landlord** exercises such right, **Tenant** is prohibited from interfering with the ability of **Landlord** to enter into such leases and licenses and, subject to the provisions of § 12, with the use and quiet enjoyment by each such **Facilities Management Company** and each such **Service Provider** and the rights granted under their respective leases or licenses with **Landlord**. Whether or not **Landlord** exercises such right, **Tenant** agrees to act as "Site Manager" of the **Premises** and to assume the following additional obligations for itself, **DHE**, an **Approved Governmental Authority** and any other **Co-locator** on the **Premises** in accordance with §§ 2.3, 11.3 and 11.4:

11.1.1 **Tenant**, at **Tenant's** sole cost and expense, must install all utility lines and other utility infrastructure required to operate the **Wireless Telecommunications Facilities**.

11.1.2 **Tenant** must keep the **Premises** accessible to vehicular and pedestrian traffic by plowing and, when necessary, sanding **Tenant's** access route shown in Exhibit A-1, and **Tenant** must coordinate and cooperate with each **Facilities Management Company** and **Service Provider** on the **Property** regarding the plowing and, when necessary, the sanding of access to leased or licensed portions of the **Property**. **Tenant** must be mindful in all instances that the **Premises** are part of a larger hospital under the jurisdiction of **DHE**.

11.1.3 **Tenant** must ensure that all **Wireless Telecommunications Facilities** located on the **Premises** and owned, rented, leased, licensed, or controlled by **Tenant** and any of its **Co-locators** are maintained so as to keep them in good condition and repair. The **Wireless Telecommunications Facilities** brought on to the **Premises** by **Tenant** and any of its **Co-locators** remain their exclusive property. Unless otherwise specifically agreed in writing by **Landlord**, **Tenant** shall remove the **Wireless Telecommunications Facilities** brought on to the **Premises** by **Tenant** and any of its **Co-locators** upon the **Expiration Date** or earlier termination of this **Lease**, consistent with the provisions of this **Lease**.

11.1.4 **Tenant** must promptly repair any damage to the **Premises**, to the **Property**, and to any equipment, improvements, and property on the **Premises** or on the **Property** that belong to any party if such damage is caused by the installation or operation of **Tenant's Wireless Telecommunications Facilities** or by any act or omission of **Tenant** or of **Tenant's Co-locators**, employees, contractors, agents, lessees, licenses or invitees. All **Subleases** with **Co-locators** shall contain this requirement.

11.1.5 Annually or upon written request of **Landlord** where time or changed conditions may have impacted the physical condition of the **Premises**, **Tenant** must

provide **Landlord** with a written report within 30 days on the condition of the **Premises**. Without limiting the foregoing, **Tenant** must notify **Landlord** immediately upon learning of any damage and other condition that materially impairs the structural integrity of the **Premises**, the **Property**, or both, or that threatens to interfere with the use of the **Premises** for the **Permitted Uses**.

11.1.6 **Tenant** shall notify **Landlord** and **DHE** regarding the placement of **Wireless Telecommunication Facilities** by **Co-locators** during the **Term**, any **Renewal Term**, and any month-to-month tenancy, and shall provide both **Landlord** and **DHE** with a copy of any **Sublease Agreement** affecting the **Premises**.

11.2 INTENTIONALLY DELETED

11.3 Nothing within this **Lease** shall limit or otherwise hinder in any way the right of **DHE** to install and/or license the installation of ITS, WiFi, or other such telecommunications technology, facilities, and equipment upon any portion of the **Premises** or **Tenant's Facilities**, for exclusive use by **DHE**. Neither **Landlord** nor **DHE** shall be required to pay rent or other compensation to **Tenant** for such right.

11.4 **Tenant** shall allow any **Governmental Authority** approved by **DCAM** and **DHE** to locate **Wireless Telecommunications Facilities** on any portion of the **Premises** or **Tenant's Facilities** when technically and structurally feasible. Neither **Landlord**, **DHE** nor any **Approved Governmental Authority** shall be required to pay rent or other compensation to **Tenant** for such right.

11.5 Notwithstanding anything to the contrary in §11, **Tenant** is not responsible or liable to **Landlord**, or to those claiming by, through, or under **Landlord**, and **Landlord** is not responsible or liable to **Tenant**, or to those claiming by, through, or under **Tenant**, for any loss or damage arising from any act, omission, or failure to act of any of **Landlord's Facilities Management Companies**, **Service Providers** and/or **Co-locators** leasing or licensing space on the **Property**. **Landlord** is also not responsible or liable to **Tenant**, or to those claiming by, through, or under **Tenant**, for any loss or damage arising from any act, omission or failure to act of any of **Tenant's Facilities Management Companies**, **Service Providers** and/or **Co-locator** leasing or licensing space on the **Premises** from **Tenant**.

11.6 Once during the Initial **Term** and once during each **Renewal Term**, unless otherwise requested by **DCAM** or **DHE** for good cause, at **Tenant's** expense and in compliance with Technology Bulletin 65 promulgated by the **FCC** Office of Engineering, **Tenant** must cause an independent, licensed consultant to perform a radio-frequency emissions test for the measurement of low-level ionized radiation on the **Premises** and the **Property**. **Tenant** must file the results of each test with **Landlord** within 30 days after the results become available to **Tenant**.

11.7 **Tenant** must notify **Landlord** within 5 **Business Days** after **Tenant** learns that any investigation, by the **FCC** or by any other **Governmental Authority**, pertaining to **Permitted Uses**, any **Tenant Improvements and Equipment**, or **Governmental Approvals**, is underway or is anticipated, regardless of whether such investigation may result in a reprimand,

a censure, or a warning, or a suspension or a revocation of any license or permit. In addition, **Tenant** must keep **Landlord** informed of all material developments in the investigation, as **Tenant** becomes aware of the same.

11.8 Annually, **Tenant** must submit a **Wireless Telecommunications Facilities Co-locator Certification** in the form of Exhibit F certified by **Tenant**.

12. NONINTERFERENCE; SPECIFIC INDEMNIFICATION

12.1 None of **Tenant's Improvements and Equipment** or **Tenant's** use of or activities on the **Premises** may obstruct or interfere with any current or future use and quiet enjoyment of the **Property** by **Landlord**, DHE, Massachusetts Bay Community College, any **Governmental Authorities** approved by **Landlord**, or by any other **Facilities Management Company**, **Service Provider** and/or **Co-locator** on the **Property**. **Tenant** further agrees that **Tenant** must not, during the **Term** or any **Renewal Term**, modify or seek to modify **Tenant's Improvements and Equipment** or its use of or activities on the **Premises** in anyway that obstructs or interferes with such use of the **Property** by others. Within 24-hours after receiving written notice, via facsimile transmission, from **Landlord** that **Tenant's** activities are causing any such obstruction or interference, **Tenant** must take appropriate action to eliminate the obstruction or interference. If **Tenant** fails to take appropriate action, **Landlord** may take such action as is reasonably necessary to eliminate the obstruction or interference, including the termination of any of **Tenant's** particular activities, at **Tenant's** cost. The foregoing rights of **Landlord** are in addition to those set forth in § 14.

12.2 **Tenant** represents and warrants to **Landlord** that no such obstruction or interference with transmitting or receiving results to any current **Facilities Management Company**, **Service Provider** or **Co-locator** with equipment on the **Property**. **Tenant** agrees to indemnify, hold harmless, and defend **Landlord** against any damages, including attorneys' fees, arising out of such obstruction or interference with respect to uses that are in effect as of the **Lease Commencement Date**, and against such damages arising out of **Tenant's** modification of **Tenant's** uses or activities with respect to uses in effect as of the date of modification, all under the direction of the Attorney General of the Commonwealth of Massachusetts, in accordance with M.G.L. c. 12, § 3. The provisions of this § 12.2 shall survive the **Expiration Date** or earlier termination of this **Lease**.

12.3 **Tenant** further agrees that if **Tenant's** activities, either singly or in combination with the activities of other existing **Facilities Management Companies**, **Service Providers** or **Co-locators**, violate any public health standard of any **Governmental Authority**, **Tenant** must immediately take appropriate action to remedy the violation, including, if other action fails to provide a remedy, shutting down **Tenant's** transmitting activities, except for intermittent testing. In the absence of immediate appropriate action by **Tenant**, **Landlord** may take appropriate action on **Landlord's** own and at **Tenant's** cost, including the halting of any of **Tenant's** activities (except for intermittent testing), in order to remedy the violation. If **Tenant's** activities are terminated for any reason under § 12.3, **Landlord** and **Tenant** each has the option, upon 5 **Business Days** prior written notice, to terminate this **Lease**, whereupon the provisions of § 5.5 shall control.

13. ASSUMPTION OF RISK; GENERAL INDEMNIFICATION; ENVIRONMENTAL INDEMNIFICATION

13.1 To the fullest extent permitted by law, **Tenant** agrees that it shall use the **Premises** at **Tenant's** sole risk, and **Landlord** is not liable to **Tenant** or anyone claiming by, through or under **Tenant**, for any loss or damage to **Tenant's Wireless Telecommunications Facilities**, vehicles, or other personal property or for any personal injury in connection with **Tenant's** right granted under this **Lease**.

13.2 **Tenant** accepts complete liability for the acts, omissions, and negligence of **Tenant** and **Tenant's** officers, agents, contractors, employees, **Co-locators**, and invitees while present upon the **Property**, or while exercising any of **Tenant's** rights and obligations under this **Lease**. **Tenant** shall indemnify, defend with counsel reasonably acceptable to **Landlord**, and under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L. c. 12, § 3, and keep and save **Landlord** harmless from and against all suits, claims, damages, losses, liabilities, and expenses, including, but not limited to, attorneys' fees, that are caused by, or arise out of, result from, or are incidental to, any act, failure to act, or negligence of **Tenant**, **Tenant's** officers, employees, agents, contractors, **Co-locators**, and invitees, to the fullest extent allowed by the laws of the Commonwealth of Massachusetts and not beyond any extent that would render these provisions void or unenforceable. **Tenant** must give prompt notice to **Landlord** in the event of any injury or damage to persons or property occurring on or about the **Premises** or the **Property**, and of any injury to persons or property, or claim made against **Tenant**, or suit brought against **Tenant** arising out of **Tenant's** exercise of **Tenant's** rights under this **Lease**, provided that the same is known to **Tenant**.

13.3 In any and all claims against **Landlord** by **Tenant**, **Tenant's** agents, employees, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, **Tenant's** indemnification obligation under § 13 is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for **Tenant** or any agent under worker's compensation acts, disability benefits acts, or other employee benefit acts.

13.4 **Tenant** must indemnify, defend with counsel reasonably acceptable to **Landlord** and under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L. c. 12, § 3, and keep and save **Landlord** harmless from and against all suits, claims, damages, losses, liabilities, and expenses, including but not limited to, attorneys' fees, arising out of the use, release, disposal, or transportation of **Hazardous Materials** on, to, or from the **Premises** or the **Property** by **Tenant**, **Tenant's** employees, agents, contractors, **Co-locators** and invitees. The indemnification provided by this paragraph covers, without limitation, all costs incurred in connection with any investigation of site conditions and any cleanup work, and any diminution in the value of the **Premises**, the **Property**, or both.

The provisions of this § 13 survive the **Expiration Date** or earlier termination of this **Lease**.

14. DEFAULTS AND REMEDIES

14.1 The following are “**Events of Default**” by **Tenant** under this **Lease**:

14.1.1 **Tenant** fails to pay, when due, any sum of money due to **Landlord** hereunder, whether such sum be an installment of **Rent** or any other payment due **Landlord** by the provisions of this **Lease**, and such failure continues for a period of 10 **Business Days** after written notice from **Landlord**.

14.1.2 **Tenant** fails to perform fully any other agreement or obligation of **Tenant** under this **Lease** and does not cure such failure within 30 days after written notice from **Landlord** reasonably specifying such failure, or for those failures which cannot be cured within such thirty 30 day period, if **Tenant** has failed to commence such cure within said 30 day period and thereafter to diligently and continuously prosecute such cure to completion.

14.1.3 **Tenant's FCC** license or any of the Governmental Approvals expires, are revoked, or are suspended.

14.2 Upon the occurrence of an **Event of Default** by **Tenant**, in addition to any other remedies available to **Landlord** at law or in equity, **Landlord** has the right to terminate this **Lease** upon not less than 5 **Business Days** notice to **Tenant**. Upon such termination, this **Lease** shall come to an end as fully and completely as if the termination date stated in such notice were the **Expiration Date**, and **Tenant** must quit and surrender the **Premises**, remove all of **Tenant's Improvements and Equipment**, and restore the **Premises** and the **Property**, all as provided in this **Lease**, and such termination does not relieve **Tenant** of any liability for damages arising out of such **Event of Default**. In addition, **Tenant** must pay to **Landlord** the **Rent** payable by **Tenant** up to the **Expiration Date** of such termination, and **Tenant** remains liable for any breach of **Tenant's** obligations under this **Lease** occurring before the date of termination. **Tenant** must also pay **Landlord**, as damages, the reasonable costs of terminating this **Lease** and recovering and restoring the **Premises**, as provided in the **Lease**. Any prepaid **Rent** or any fees paid by **Tenant** will not be subject to refund and will be retained by **Landlord**. The provisions of this § 14.2 shall survive the **Expiration Date** or earlier termination of this **Lease**.

14.3 The following is an “**Event of Default**” by **Landlord** under this **Lease**: **Landlord** fails to comply with any obligation or covenant of **Landlord** under this **Lease** and fails to cure such failure within 30 days after receiving written notice from **Tenant** specifying such failure, or for those failures that cannot be cured within such 30 day period, if **Landlord** fails to commence such cure within said 30 day period and thereafter to diligently pursue such cure to completion.

14.4 Upon the occurrence of an **Event of Default** by **Landlord**, and failure to cure as provided in § 14.3, **Tenant** may terminate this **Lease** upon 5 **Business Days** prior written notice to **Landlord**, whereupon the provisions of §15.5 shall apply, and this shall be **Tenant's** sole remedy at law or in equity.

15. SPECIAL TERMINATION RIGHTS OF LANDLORD AND TENANT; **RELOCATION OF PREMISES AND IMPROVEMENTS**

15.1 **Landlord** and **Tenant** acknowledge that the **Premises** are located on an active **DHE** college campus and, notwithstanding any other provision of this **Lease**, **Landlord** may terminate this **Lease** upon not less than 120 days prior written notice to **Tenant** if **Landlord** determines, in its sole and absolute discretion, that the continuation of this **Lease** interferes with **Landlord's** plans for the sale, lease, transfer, disposition, development or the redevelopment of the **Property** or of any part thereof. If this **Lease** is terminated pursuant to this § 15.1, and if **Tenant**, as of the giving of written notice of termination, has prepaid **Rent** for the Lease-year in which the effective date of termination occurs, then **Tenant** will receive, subject to allocation and allotment of funding, within 60 days after the effective date of termination, a pro-rated refund of prepaid **Rent** for the period that begins on the day immediately after the effective date of termination and ends on the last day of the Lease-year for which **Rent** has been prepaid. If this **Lease** is terminated pursuant to this § 15.1, and if **Tenant**, as of the giving of written notice of termination has not prepaid **Rent** for the Lease-year in which the effective date of termination occurs, then, on the **Rent** due date that immediately follows the giving of written notice of termination, **Tenant** must pay pro-rated **Rent** for the period that ends on the effective date of termination. **Landlord** agrees that it will endeavor to keep **Tenant** apprised of any of **Landlord's** plans, but no failure by **Landlord** to provide **Tenant** with any such information limits or otherwise affects in any way the special termination rights of **Landlord**.

15.2 **Landlord** and **Tenant** also acknowledge that **Landlord** is not obligated by this **Lease** to make any repairs or improvements whatsoever to, or to perform any maintenance whatsoever upon, the **Wireless Telecommunication Facilities**, any portion of the **Premises** or the **Property**. If any **Building** is destroyed or suffers material structural damage from a natural disaster or any other cause other than an act or omission of **Tenant**, or of **Tenant's** officers, agents, contractors, employees, **Co-locators** or invitees so that the **Building** is no longer suitable for the uses permitted by this **Lease**, then **Tenant** may, at **Tenant's** option (a) repair the damage at **Tenant's** sole expense, provided that any such repair work is subject to the prior written approval of **Landlord**, which approval may contain reasonable conditions for undertaking such work; or (b) terminate this **Lease** upon not less than 15 days prior written notice to **Landlord**, whereupon the provisions of § 15.5 shall control, provided that any claim by **Landlord** (or by any person or entity claiming under or through **Landlord**) for personal injury, death, property loss, or property damage survives such termination.

15.3 Notwithstanding anything in this **Lease** to the contrary, **Tenant** has the right to terminate this **Lease** upon 90 days prior written notice to **Landlord**, whereupon the provisions of § 15.5 shall control.

15.4 Rather than terminate this **Lease** pursuant to § 15.1, **Landlord** has the right, upon 120 days notice to **Tenant**, to change the **Premises** to another portion of the **Property** and to require **Tenant** to relocate all **Tenant Improvements and Equipment** to the relocated premises upon certification, within 30 days after such notice is given, by an independent registered professional engineer, engaged by and at the expense of **Tenant**, that the proposed relocation is adequate and appropriate for the **Permitted Uses**. Said independent registered

professional engineer is subject to the prior written approval of **Landlord**, which approval must not be unreasonably withheld, delayed, or conditioned.

If the independent registered professional engineer certifies that the proposed relocation is adequate and appropriate, **Tenant** shall be responsible for relocating the **Tenant Improvements and Equipment** to the relocated premises within 30 days. **Landlord** will agree to a reasonable credit against future **Rent** for **Tenant's** actual documented relocation expenses in an amount not to exceed the Rent payable by Tenant for Lease-year 1.

If the independent registered professional engineer certifies that the proposed relocation is inadequate and inappropriate, **Tenant** will not be required to relocate, and **Landlord** may proceed to terminate this **Lease** in accordance with § 15. **Tenant** further covenants, and agrees that the use of the **Premises** provides no relocation entitlements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as such may be amended.

15.5 Upon termination of this **Lease** by either **Landlord** or **Tenant**, pursuant to § 15, or as otherwise provided in this **Lease**, this **Lease** shall come to an end as fully and completely as if the termination date stated in the notice of termination were the **Expiration Date**, except for those provisions which survive termination of the **Lease**. **Tenant** shall quit and surrender the **Premises**; remove all of the **Tenant Improvements and Equipment**; restore the **Premises** and the **Property**; and pay to **Landlord** the **Rent** payable by **Tenant** up to the **Effective Date** of termination, all as provided by this **Lease**.

16. ASSIGNMENT

16.1 **Tenant** may, without **Landlord's** consent, assign **Tenant's** interest in this **Lease** or any part thereof, or any or all of **Tenant's** right, title and interest in and to any or all of the **Tenant Improvements and Equipment**, to any parent affiliate or subsidiary of **Tenant**, or to any party controlling, enabled by, or in common control with **Tenant**, or to any party acquiring substantially all of the assets of **Tenant**. **Tenant** must not otherwise assign, mortgage, pledge, encumber, or in any manner transfer this **Lease** or any part of this **Lease**, or the interest of **Tenant** in any **Sublease Agreement** or the rental or other revenue under any such **Sublease Agreement**, without the timely prior written notification of **Landlord** in each instance. If **Tenant** proposes to assign, mortgage, pledge, encumber, or in any manner transfer this **Lease** or any part of this **Lease**, or the interest of **Tenant** in any **Sublease Agreement**, or the rental or other revenue under any such **Sublease Agreement**, **Landlord** has 30 days following **Landlord's** receipt of such written notice to approve, conditionally or unconditionally, or to reject such proposed assignment, mortgage, pledge, encumbrance, or transfer. If **Landlord** grants approval of the assignment, mortgage, pledge, encumbrance, or transfer, **Tenant** nevertheless remains fully obligated and liable under every provision of this **Lease**. If **Landlord** does not respond to such written notice within 30 days of **Landlord's** receipt thereof, such approval is deemed to be denied.

16.2 Subject to § 16.1, **Tenant** acknowledges that **Landlord** retains the unrestricted right to refuse to consent to any assignment of rights or delegation of duties under this **Lease**, and that **Tenant's** rights are personal in nature.

16.3 Subject to § 16.1, it is specifically acknowledged and agreed by **Tenant** that **Landlord** may condition **Landlord's** consent to any assignment or delegation upon such standards, provisions, and conditions (including, without limitation, the payment by **Tenant** of a nonrefundable fee to **Landlord**) as **Landlord**, in its sole discretion, deems appropriate, whether or not the same may be considered customary, usual, or commercially reasonable. **Landlord**, in its sole discretion, may condition the approval of any assignment or delegation upon such amendments to this **Lease** as **Landlord** deems appropriate.

16.4 Any transaction, whether by pledge, sale, assignment, or otherwise, that results in a change-of-control in the ownership of **Tenant** or of **Tenant's** parent (e.g., a transfer of more than 50% of the equity of **Tenant** or of **Tenant's** parent) is an assignment for purposes of this **Lease** and is subject to this § 16.

16.5 If this **Lease** is assigned, whether or not in violation of the provisions of this **Lease**, **Landlord** is entitled to collect **Rent** from the assignee. In such event, **Landlord** may apply the net amount received by **Landlord** to the **Rent**, but no such collection is a waiver of the covenant against assignment, transfer, or mortgage of the **Premises**, or an acceptance of the assignee or **Subtenant** as a **Tenant** under this **Lease**, or a release of **Tenant** from further performance of the covenants on the part of **Tenant**.

16.6 Assignment of this **Lease** without the timely notification of **Landlord** and the making of any mortgage, pledge, encumbrance, or transfer, in part or in whole, never operates to relieve **Tenant** from its obligations under this **Lease** and, notwithstanding any such assignment, mortgage, pledge, encumbrance, or transfer, **Tenant** remains liable for the payment of all **Rent** and for the performance of all covenants and agreements of this **Lease** to the full end of the **Term**, of the final **Renewal Term**, and of any month-to-month tenancy, as described in § 4.3, whether or not there is any prior termination of this **Lease** by summary process or otherwise.

16.7 Any assignee, whether as assignee or successor-in-interest of any assignee of the party first named in this **Lease** as **Tenant**, or as assignee of the holder of any mortgage, or as successor-in-interest of any assignee, including any purchaser of this **Lease** under foreclosure of any permitted mortgage, immediately becomes and remains liable for the payment of the **Rent** and for the full performance of all covenants and agreements of this **Lease** on **Tenant's** part to be performed to the end of the **Term**, of the final **Renewal Term**, and of any month-to-month tenancy, as described in § 4.3. No transfer to such assignee or to such purchaser is binding upon **Landlord** unless such assignee or purchaser delivers to **Landlord** a recordable instrument that contains a covenant of assumption by said assignee or purchaser to such effect. Nothing in this **Lease** constitutes or acts as a waiver on the part of **Landlord** of any of **Landlord's** rights, including but not limited to the right to terminate this **Lease** in the event of a default on the part of **Tenant** beyond the applicable notice and cure periods, as provided under § 14.

16.8 Any consent by **Landlord** contained in this **Lease** or subsequently given to any act of assignment, mortgage, pledge, encumbrance, or transfer applies only to the specific action expressly approved by **Landlord**.

17. CO-LOCATION OF WIRELESS TELECOMMUNICATIONS FACILITIES

17.1 All new **Wireless Telecommunications Facilities** must be designed, to the maximum extent practicable and technologically feasible, for **Co-location** of **Antenna Facilities** and other necessary facilities for **Service Providers**.

18. SUBLEASES AND CO-LOCATION

18.1 **Tenant** may allow **Co-locators** under **Sublease Agreements** to co-locate on **Tenant's Wireless Telecommunications Facilities** for the same general uses as are permitted by this **Lease**, provided that (a) the **Rent** increases in accordance with § 5.4 and Exhibit B-2 with the addition of each **Co-locator**; (b) each **Sublease Agreement** is subject to the prior written approval of **Landlord**; (c) a counterpart of each such **Sublease Agreement** must be provided by **Tenant** to **Landlord** and **DHE** within 10 **Business Days** after the execution and delivery thereof; and (d) each such **Rent** increase must be paid simultaneously by **Tenant** to **Landlord** upon such provision of a counterpart.

18.2 Regarding each **Sublease Agreement**, **Tenant** agrees to act as **Site Manager** for the **Premises** and agrees that the obligations of **Site Manager** that are delineated in § 11.1 are applicable to § 18.1, provided that **Tenant** is responsible and liable to **Landlord**, and to those claiming by, through, and under **Landlord**, for any loss, damage, or both arising from each act, omission, and failure to act of each **Co-locator** on **Tenant's Facilities**.

19. NOTICES

Unless otherwise expressly permitted under this **Lease**, all notices given under this **Lease** must be (a) in writing; (b) signed by a duly authorized representative of the party giving notice, and (c) given by hand-delivery (including, without limitation, courier, Federal Express, or other overnight-delivery service), or mailed by United States certified mail, return receipt requested. All fees required for the delivery of any notice must be prepaid by the party giving such notice. Notices must be sent and addressed to **Landlord** and **Tenant** at the following respective addresses:

If to Landlord:

Office of the General Counsel
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, MA 02108-1518

If this **Lease** permits a notice to be given by facsimile transmission, such notice must be sent to 617-727-8082.

With a copy to:

Nicholas Tsaparlis
Real Estate Transaction Manager
Re: Wireless Telecommunication Facilities Leases
Office of Real Estate Management
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, MA 02108-1518

AND

Dr. Carole Berotte Joseph
President
Massachusetts Bay Community College
50 Oakland Street
Wellesley Hills, MA 02481-5307

If this **Lease** permits a notice to be given by facsimile transmission, such notice copy must be sent to 781-239-1047.

If to Tenant:

If this **Lease** permits a notice to be given by facsimile transmission, such notice must be sent to _____.

With a copy to:

19.1 **Landlord** and **Tenant** may, by notice given hereunder, at any time designate a different address and number for facsimile transmissions to which notices are sent. Notices sent as aforesaid are deemed given for all purposes (a) on the date shown on the receipt for delivery; or (b) on the date of refusal to accept delivery or on the date of failure to attain delivery; or (c) on the date and at the time of the sending of a confirmed facsimile transmission.

19.2 Whenever this **Lease** requires that a copy or a counterpart of any document be sent to **Landlord**, to **DHE**, or to both of them, such copy or counterpart must be sent to the respective addresses set forth in § 19 as modified pursuant to the first sentence of § 19.1.

20. MISCELLANY

20.1 Counterparts. This **Lease** may be executed in one or more counterparts, each of which is an original.

20.2 Authority of Signatories/Representations and Warranties:

20.2.1 **Landlord** warrants and represents to **Tenant** that the person(s) executing, on behalf of **Landlord** (a) this **Lease**; (b) any exhibit to this **Lease**; (c) any

modification of this **Lease**; and (d) any document that is ancillary to or required by this **Lease** is (are) authorized to act in such capacity and to fully bind **Landlord** by doing so.

20.2.2 **Tenant** warrants and represents to **Landlord** that:

- (a) **Tenant's** name appears in this **Lease** exactly as **Tenant's** name appears in **Tenant's** organizational documents, tax returns, and other documents filed from time to time by **Tenant** with Governmental organizations.
- (b) **Tenant** has full legal capacity and has been duly authorized to enter into this **Lease**.
- (c) If **Tenant** is not a natural person or natural persons, but **Tenant** is, rather, a so-called "creature of the law" (e.g., a corporation, a general or limited partnership, a trust, a limited liability company, etc.), **Tenant** is validly organized and existing, **Tenant** is in good standing in the state, commonwealth, province, territory, or jurisdiction of **Tenant's** organization, and **Tenant** is authorized and qualified to do business in the state, commonwealth, province, territory, or jurisdiction in which the **Premises** are located.
- (d) The person(s) executing, on behalf of **Tenant** (i) this **Lease**; (ii) any exhibit to this **Lease**; (iii) any modification of this **Lease**; and (iv) any document that is ancillary to or required by this **Lease** is (are) authorized to act in such capacity and to fully bind **Tenant** by doing so.
- (e) **Tenant** is not debarred or suspended from contracting with the Commonwealth of Massachusetts under any applicable debarment statute or regulation.
- (f) **Tenant** knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law-enforcement agency against or affecting **Tenant** or **Tenant's** properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this **Lease** or **Tenant's** ability to carry out **Tenant's** obligations.

20.3 Estoppel. At any time upon 30 days prior written notice from the other, **Landlord** and **Tenant** must execute, acknowledge, and deliver to the other a statement in writing (a) confirming that this **Lease** is unmodified and in full force and effect (or if modified, stating the nature of such modification); (b) stating the date to which **Rent** is paid; and (c) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party, or specifying such defaults if any are claimed.

20.4 Entire Agreement. This **Lease** contains all of the agreements, promises, and understandings between **Landlord** and **Tenant** with respect to the subject matter covered by this **Lease**, and there are no oral agreements, promises, or understandings, other than those set forth in this **Lease**. Any modification of the provisions of this **Lease** is void and ineffective unless made in writing and signed by the **Parties**.

20.5 Annexed Exhibits and Other Documents. Each exhibit or other document that is annexed to this **Lease** is an integral part of this **Lease**.

20.6 Governing Law. This **Lease** and the performance by **Landlord** and **Tenant** under this **Lease** are governed, interpreted, construed, and regulated by the laws of the Commonwealth of Massachusetts. **Landlord** and **Tenant** agree that all complaints or litigation in connection with this **Lease** must be brought only in a federal or state court of competent jurisdiction within the Commonwealth of Massachusetts.

20.7 Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply: (a) captions are for convenience only and in no way define or limit the construction of the provisions and conditions of this **Lease**; and (b) use of the "including" means "including but not limited to."

20.8 Successors. This **Lease** inures to the benefit of and binds the heirs, personal representatives, successors, and approved assigns of the **Parties**.

20.9 Time of the Essence. Time is of the essence to this **Lease**.

20.10 Recording. Neither party is to record this **Lease**. Upon the request of **Tenant**, **Landlord** agrees to execute a **Notice of Lease** substantially in the form of Exhibit E. Such **Notice of Lease** must be prepared at the sole cost and expense of **Tenant**, and **Tenant** may record such notice of **Lease** at **Tenant's** sole cost and expense.

20.11 Access to Records and Premises. As required by M.G.L. c. 7B, **Tenant** must afford access by **Landlord**, **DHE** and the **AMB**, their accountants, attorneys, and agents, during normal business hours of **Tenant**, to the **Premises**, and the **Wireless Telecommunications Facilities**, and to **Tenant's** books and records to inspect and make and take away copies of any and all of **Tenant's** records relative to the **Wireless Telecommunications Facilities**, and **Tenant** must promptly deliver to **Landlord**, **DHE**, and the **AMB** such certificates and documents as **Landlord**, **DHE**, and the **AMB** may reasonably request. In furtherance of the foregoing, and pursuant to 810 Code Mass. Regs. § 2.08, the failure of **Tenant** upon written request to reasonably provide **Landlord**, **DHE**, and the **AMB** under M.G.L. c. 7B with such access (and failure to cure the same within applicable cure periods) is a material breach of **Tenant's** obligations under this **Lease** and may constitute grounds for termination of this **Lease**. The provisions of this § 20.11 survive the **Expiration Date** or earlier termination of this **Lease**.

20.12 Nondiscrimination. **Tenant** must not discriminate against any qualified person or firm seeking to provide goods or services to **Tenant**, whether as an employee or a contractor, because of race, color, age, gender, ethnicity, sexual orientation, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background.

Tenant must comply with all applicable federal and state statutes, rules, and regulations prohibiting such discrimination. **Tenant** (a) is prohibited from engaging in discriminatory employment practices; (b) certifies that **Tenant** is in compliance with all applicable federal and state laws, rules and regulations governing fair labor and employment practices; and (c) commits to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. Any breach will be regarded as a material breach of this **Lease** that may subject **Tenant** to appropriate sanctions.

20.13 **Landlord** encourages, to the greatest extent possible, the active and meaningful equity participation of Minority-Owned Business Enterprises (MBEs) and Women-Owned Business Enterprises (WBEs), as certified by the State Office of Minority and Women Business Assistance (SOMWBA). **Landlord** also encourages **Tenant** to use, to the greatest extent possible, MBEs and WBEs to provide services and materials. **Tenant** agrees, to the greatest extent possible, to purchase supplies and services from certified MBEs and WBEs.

20.14 Compliance with Executive Order No. 481; Immigration Status. **Tenant** shall not knowingly use undocumented workers in connection with performance under this **Lease**, pursuant to federal requirements, agrees to verify the immigration status of all workers involved in the performance of **Tenant's** obligations hereunder without engaging in unlawful discrimination, and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker.

20.15 Compliance with Executive Order No. 504; Security of Information. With the execution of this **Lease**, **Tenant** shall execute and deliver the Executive Order 504 Contractor Certification Form attached hereto.

Landlord and **Tenant** have executed multiple counterparts of this **Lease**, under seal in accordance with the laws of the Commonwealth of Massachusetts, the Commonwealth of Massachusetts having done so by the Commissioner of the Division of Capital Asset Management and Maintenance, who incurs no personal liability as a result of such signature.

THE REMAINDER OF THIS PAGE IS INTENTINALLY LEFT BLANK.

**LANDLORD: COMMONWEALTH OF MASSACHUSETTS ACTING BY AND THROUGH ITS
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE**

By: _____
David B. Perini, Commissioner

TENANT: _____

By: _____

Name _____

Title: _____

Approved, as to matters of form:

_____, Deputy General Counsel
Division of Capital Asset Management and Maintenance

RIDER TO LEASE

DATE OF LEASE: _____, 201__

LANDLORD: The Commonwealth of Massachusetts acting by and through its
Division of Capital Asset Management and Maintenance

TENANT: _____

PREMISES: See Exhibit A-2 to this Lease: Portions of the exterior of the main campus
building at Massachusetts Bay Community College, 50 Oakland Street,
Wellesley Hills, MA.

MODIFY THIS LEASE AS FOLLOWS:

Note to Proposer: In accordance with the "Request for Proposals" ONLY, non-
material modifications or those required for the particular nature of the Wireless
Telecommunications Facilities on the Premises will be considered; no stylistic
changes please.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Landlord and **Tenant** have executed multiple counterparts of this Rider, under seal in accordance with the laws of the Commonwealth of Massachusetts, the Commonwealth of Massachusetts having done so by the Commissioner of the Division of Capital Asset Management and Maintenance, who incurs no personal liability as a result of such signature.

**LANDLORD: COMMONWEALTH OF MASSACHUSETTS ACTING BY AND THROUGH ITS
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE**

By: _____
David B. Perini, Commissioner

TENANT: _____

By: _____

Name and Title: _____

Approved, as to matters of form:

_____, Deputy General Counsel
Division of Capital Asset Management and Maintenance

Exhibit A-1

Property and Approved Access Route

Exhibit A-2

Premises Location and Development Plan

Exhibit A-3

Schedule of Tenant Improvements and Equipment

A complete (i) description of improvements to be constructed and/or installed by **Tenant** and (ii) itemization of equipment being brought onto the **Premises** by **Tenant** must be provided and inserted in this **Lease** immediately following this page, before commencement of construction/installation.

Exhibit B-1

Tenant Rent Schedule*

The **Rent** for Lease-year 1 payable by **Tenant** to **Landlord** on the **Rent Commencement Date** is \$_____. **Tenant's Rent** is subject to an annual increase of _____%. Accordingly, **Rent** for years 2 through 10, payable by **Tenant** to **Landlord** in advance, annually, on the anniversary of the **Lease Commencement Date**, is as follows:

RENT

Lease-year	2	\$	_____
Lease-year	3	\$	_____
Lease-year	4	\$	_____
Lease-year	5	\$	_____
Lease-year	6	\$	_____
Lease-year	7	\$	_____
Lease-year	8	\$	_____
Lease-year	9	\$	_____
Lease-year	10	\$	_____

*Pursuant to Sections 5.1 and 5.2 of this **Lease**.

Rent increases for each Sublease Agreement in accordance with §§ 5.4, 18.1 and as scheduled in Exhibit B-2 of this Lease.

Exhibit B-2

Co-locator Rent Schedule*

Co-locator rent is due to **Landlord** as determined by **Tenant's Sublease Agreement** with each **Co-locator**. **Co-locator** rent is calculated as a percentage of the rent ("**Percentage Rent**") due annually to **Tenant** as described in the **Co-locator's Sublease Agreement** with **Tenant**, and in accordance with the provisions of § 5.4 of this **Lease**. After Lease-year 1, **Percentage Rent** is payable by **Tenant** to **Landlord** with the rent payments due in advance, annually, on the anniversary of the **Lease Commencement Date**, as scheduled in Exhibit B-1.

After Lease-year 1, **Percentage Rent** for each **Co-locator** is subject to an annual increase of _____%.

Percentage Rent for each **Co-locator** due annually by **Tenant** to **Landlord** is as follows:

Co-Locator Rent	x	% of Co-locator Rent	=	Percentage Rent
Lease-year 1 \$ _____	x	_____	=	\$ _____
Lease-year 2 \$ _____	x	_____	=	\$ _____
Lease-year 3 \$ _____	x	_____	=	\$ _____
Lease-year 4 \$ _____	x	_____	=	\$ _____
Lease-year 5 \$ _____	x	_____	=	\$ _____
Lease-year 6 \$ _____	x	_____	=	\$ _____
Lease-year 7 \$ _____	x	_____	=	\$ _____
Lease-year 8 \$ _____	x	_____	=	\$ _____
Lease-year 9 \$ _____	x	_____	=	\$ _____
Lease-year 10 \$ _____	x	_____	=	\$ _____

*Pursuant to Sections 5.4 and 18.1 and Exhibit B-1 of this **Lease**.

ADD SEPARATE SCHEDULE FOR EACH CO-LOCATOR AS NECESSARY

Exhibit C

Required Permits and Development Schedule

Exhibit D

Insurance Requirements

Tenant must purchase and maintain such insurance as protects Tenant and Landlord from claims that may arise out of or result from Tenant's operations under this Lease, whether such operations be by Tenant or by any agent or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Tenant must purchase and maintain during the Term:

A. Insurance sufficient to discharge Tenant's obligations under all applicable workers' or workmen's compensation laws.

B. Employer liability insurance with a minimum limit per accident or disease of \$100,000.

C. Statutory disability and other employee benefit insurance.

D. Commercial general liability insurance including a comprehensive broad form endorsement covering the full scope of Tenant's activities under this Lease with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for personal injury and death, and \$2,000,000 per occurrence and in the aggregate for Property damage. Such insurance must include at least the following:

1. All products, Premises-operations, and completed operations liability, independent contractors' liability, additional interests of employees' liability, and incidental medical malpractice liability, including notice of occurrence and knowledge of occurrence endorsements satisfactory to Landlord.
2. Blanket contractual liability insurance covering all liabilities assumed under this Lease.
3. Personal injury coverage endorsement coverages A, B, and C with no exclusions for liability assumed contractually or injury sustained by employees of Tenant, invitees or agents of Tenant.
4. Broad form coverage for damage to Property of Landlord, as well as other third parties, while in the care, custody, or control of Tenant.
5. Before Tenant does any blasting on or for the Premises, Tenant or Tenant's agents must present evidence to Landlord that blasting damage is included in Tenant's insurance coverage.

E. Tenant and any agents must also purchase and maintain umbrella for excess liability insurance containing coverage no less restrictive than that required above. The umbrella policies must contain minimum total occurrence and aggregate coverage of \$3,000,000.

Insurance similar to that required of Tenant must be provided by or on behalf of all agents of Tenant to cover their operations performed under this Lease. Tenant is held responsible for compliance with and enforcement of the insurance requirements and for any modifications of

these insurance requirements as they apply to agents of Tenant. Tenant must not permit any agent to commence work until such agent has furnished evidence that insurance has been procured and certificates of insurance have been obtained by Tenant.

Insurance certificates acceptable to Landlord evidencing the above coverages are to be furnished to Landlord before or concurrent with the execution of this Lease. Such certificates and all insurance policies required by these Insurance requirements must contain provisions requiring at least 30 days prior written notice to Landlord of any cancellations of the policies or material changes in the requirements of this exhibit that result in noncompliance with such requirements (by way of example only and not limitation, an agreement to "endeavor" to provide such notice is not acceptable). Certificates must indicate effective dates and dates of expiration of the policies, and must refer to the corresponding subparagraphs listed above.

All insurance policies provided pursuant to the foregoing provisions of these insurance requirements must be in the form and written by companies reasonably satisfactory to Landlord, and Landlord must be named as an additional insured. All such policies must contain provisions or endorsements necessary to assure coverage of claims by one insured against another.

All required insurance policies are to be endorsed to state that Tenant's policies must be primary to all insurance available to Landlord for liability arising out of or resulting from Tenant's operations under this Lease, whether such operations be by Tenant or by an agent or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

The purchase of insurance to satisfy the above requirements, or the furnishing of certificates evidencing same, is not a satisfaction of Tenant's liability under this Lease or in any way modify Tenant's indemnification of Landlord.

Without limitation of any other provisions of this Lease, if (a) Tenant's agreement herein to insure or to name Landlord as an additional insured with respect to contractual liability assumed by Tenant under the provisions of this Lease, or (b) any contract of insurance between Tenant or any agent and Tenant's or their insurance company, is to any extent be or be determined to be void or unenforceable, it is the intention of the Parties that such circumstances must never otherwise affect the validity or enforceability of Tenant's agreements and obligations under this Lease nor the validity and enforceability of such contract of insurance, each of which are to be enforced to the fullest extent permitted by law.

In any emergency affecting the safety of persons or Property, Tenant must act to prevent threatened damage, injury, or loss, and must, as promptly as conditions permit, notify insurance carriers and Landlord or Landlord's representatives of the nature of the emergency and circumstances related thereto. Immediately thereafter, Tenant or Tenant's agent(s) must prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action.

The required insurance coverage must be applicable to the Property, as well as to the Premises.

Exhibit E

Notice of Lease

In accordance with M.G.L. c. 183, § 4, as amended, notice is hereby given of the following-described Lease:

Landlord: _____

Tenant: _____

Date of execution: _____

Description of the leased premises:

A portion of the Premises described in the real estate records in the Town/City of

_____, County of _____, at Book _____, Page _____.

Term of Lease: _____ years.

Extensions: _____ additional _____ year Term. An extension is not effective until Tenant complies with the provisions of M.G.L. c. 7, § 40J.

Date of Commencement: _____

Landlord: COMMONWEALTH OF MASSACHUSETTS acting by and through its
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE

By: _____
_____ Commissioner

Tenant: _____

By: _____

Name: _____

Its: _____

CERTIFICATES OF ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)(
COUNTY OF SUFFOLK)(ss.

On _____, 20____, before me, the undersigned notary public,
personally appeared _____, proved to me
through satisfactory evidence of identification to be the person whose name is signed on the
preceding or attached document, and acknowledged to me that said person voluntarily signed
said document for the purpose stated within said document.

COMMONWEALTH OR STATE OF _____)(
_____) (ss.
COUNTY OF _____)(

On _____, 20____, before me, the undersigned notary public,
personally appeared _____, proved to me
through satisfactory evidence of identification to be the person whose name is signed on the
preceding or attached document, and acknowledged to me that said person voluntarily signed
said document for the purpose stated within said document.

My Commission Expires:

Exhibit F

WIRELESS TELECOMMUNICATIONS FACILITIES CO-LOCATOR CERTIFICATION

Wireless Telecommunications Leasing Site: Portions of exterior of Main Campus Building at Massachusetts Bay Community College, Wellesley Hills, MA, as described in the **Lease**.

LEASE DATE: _____

TENANT: _____

List all Co-locators on your Wireless Telecommunications Facilities*

Co-locator (Commercial Name)	Equipment Description and Use	Contact Phone # (Emergency Number)

*DHE requires that this Wireless Telecommunications Facilities Co-locator Certification be updated on an annual basis. DHE requires immediate notification of all new Co-locators at or on the Tenant's Wireless Telecommunications Facilities.

I certify to the best of my knowledge the information provided above is true, correct and complete.

Signature: _____ Date: _____

Title: _____

TENANT'S BENEFICIAL INTEREST DISCLOSURE STATEMENT

Pursuant to M.G. L. c. 7, §40J¹, the undersigned _____, _____ of
(Name) _____
(Title) _____
certifies the following:

(Full name(s) of Tenant, as Tenant's name(s) appear(s) in this Lease)

(1) DESCRIPTION & ADDRESS OF LEASED PREMISES: _____

(2) TERM OF LEASE: From _____ To _____

(3) LANDLORD NAME: Commonwealth of Massachusetts acting by and through its Division of
Capital Asset Management and Maintenance.

(4) TENANT NAME AND ADDRESS: _____

(5) Name and address of **all** persons who have or will have a direct or indirect beneficial interest in
the leasehold interest (including prospective purchasers, assignees, etc.). **Please note: do not
write "none," "N/A," etc. Attach additional pages, if needed.**

NAME: _____

ADDRESS: _____

(6) **None** of the above natural persons disclosed in item 5 is an employee of the Division of
Capital Asset Management and Maintenance (DCAM) or an official elected to public office
in the Commonwealth of Massachusetts, **except** as listed below. **Please note: if none,
write "none"; do not leave blank.**

NAME: _____

DCAM OR PUBLIC-OFFICE TITLE: _____

(7) The undersigned further agrees that a new Disclosure Statement must be made in writing, under
penalty of perjury, during the term in case of any change of interest in such property, within thirty
days of such change.

Signed under the penalties of perjury on _____, 20____.

¹ "No agreement to Rent ... real Property from a public agency, and no renewal or extension to such agreement, shall be valid ... unless a statement, signed, under penalties of perjury, has been filed by the lessee, ... and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said Property with the commissioner of capital asset management and maintenance." (M.G.L. c. 7, §40J).

MEPA AGREEMENT

The undersigned in partial consideration and as a condition of the **Lease** of a portion of Commonwealth land and/or improvements ("Land") on the property known as the Massachusetts Bay Community College, 50 Oakland Street, Wellesley Hills, MA, under the care, custody and control of the Department of Higher Education (DHE), the location of which is more particularly described in Exhibits A-1 and A-2 ("**Premises**"), acknowledges and agrees that if there is any work or activities proposed on the **Premises** which meets or exceeds a review threshold under the Massachusetts Environmental Policy Act ("MEPA") regulations at 301 C.M.R. 11.00, *et. seq.* ("MEPA Regulations"), then before "Commencement of Construction" as defined under the MEPA Regulations, the undersigned must file or cause to be filed with the MEPA Office at the Executive Office of Environmental Affairs, all such documents as are required by the MEPA Regulations in connection with such work or activities and must complete the MEPA process. In any such filing, the fact that the Land was leased from the Commonwealth within 5 years of this **Lease** must be disclosed. The undersigned also acknowledges that the MEPA Regulations provide that the scope of review of a project undertaken on land leased from the Commonwealth extends to all aspects of the project undertaken on such Land that are likely, directly or indirectly, to cause Damage to the Environment, as more specifically provided in the MEPA Regulations. The undersigned also agrees to provide to the Division of Capital Asset Management and Maintenance evidence of satisfaction of these MEPA requirements with respect to any work or activity at the Land occurring within 5 years after the execution and delivery of the **Lease**.

This agreement survives the execution of the **Lease** and binds the undersigned and its successors and assigns.

Executed under seal.

By: _____

Name: _____

Title: _____

Date: _____

Received by the Commonwealth of Massachusetts
acting by and through its Division of Capital Asset
Management and Maintenance

By: _____

Name: _____

Title: _____

Date: _____

Executive Order 504 Contractor Certification Form

BIDDER/CONTRACTOR LEGAL NAME:

BIDDER/CONTRACTOR VENDOR/CUSTOMER CODE:

Executive Order 504: For all Contracts involving the Contractor's access to personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A, owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts [Executive Order 504](#) and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth of Massachusetts Information Technology Division's Security Policies available at www.mass.gov/ITD under Policies and Standards.

Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall:

(1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's Security Policies ("Security Policies") available at www.mass.gov/ITD under Policies and Standards;

(2) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors;

(3) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss;

(4) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract;

(5) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary

for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements.

Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the Commonwealth's Terms and Conditions, withholding of payments, contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to M.G.L. c. 93H and under M.G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

Bidder/Contractor Name: _____.

Bidder/Contractor Authorized Signature: _____.

Print Name and Title of Authorized Signatory: _____.

Date: _____.

This Certification may be signed once and photocopied to be attached to any Commonwealth Contract that does not already contain this Certification Language and shall be interpreted to be incorporated by reference into any applicable contract subject to Executive Order 504 for this Contractor.

APPENDIX D

(To be completed by the proposer)

PROPOSED PREMISES LOCATION PLAN AND ACCESS ROUTE

APPENDIX E

(To be completed by the proposer)

PROPOSED PREMISES DEVELOPMENT PLAN

APPENDIX F

(To be completed by the Proposer)

PROPOSED TENANT RENT SCHEDULE*

The proposed **Rent** for Lease-year 1 payable by **Tenant** to **Landlord** on the **Rent Commencement Date** is \$_____. **Tenant's** proposed **Rent** is subject to an annual increase of _____. Accordingly, proposed **Rent** for years 2 through 10, payable by **Tenant** to **Landlord** in advance, annually, on the anniversary of the **Lease Commencement Date**, is as follows:

RENT

Lease-year 2	\$ _____
Lease-year 3	\$ _____
Lease-year 4	\$ _____
Lease-year 5	\$ _____
Lease-year 6	\$ _____
Lease-year 7	\$ _____
Lease-year 8	\$ _____
Lease-year 9	\$ _____
Lease-year 10	\$ _____

*Pursuant to Sections 5.1 and 5.2 of the **Lease**.

Rent increases for each Sublease Agreement in accordance with §§ 5.4, 18.1 and as scheduled in Exhibit B-2 of this Lease.

APPENDIX G

(To be completed by the proposer)

PROPOSED CO-LOCATOR RENT SCHEDULE*

Co-locator Rent is due to **Landlord** as determined by **Tenant's Sublease Agreement** with each **Co-locator**. **Co-locator Rent** is calculated as a percentage of the rent ("**Percentage Rent**") due annually to **Tenant** as described in the **Co-locator's Sublease Agreement**, and in accordance with the provisions of § 5.4 of this **Lease**. After Lease-year 1, **Percentage Rent** is payable with the **Rent** payments scheduled in Appendix F.

After Lease-year 1, **Percentage Rent** for each **Co-locator** is subject to an annual increase of _____%.

Percentage Rent for each **Co-locator** due annually by **Tenant** to **Landlord** is proposed as follows:

Co-Locator Rent	<u>x</u>	% of Co-locator Rent	=	Percentage Rent
Lease-year 1 \$ _____	x	_____	=	\$ _____
Lease-year 2 \$ _____	x	_____	=	\$ _____
Lease-year 3 \$ _____	x	_____	=	\$ _____
Lease-year 4 \$ _____	x	_____	=	\$ _____
Lease-year 5 \$ _____	x	_____	=	\$ _____
Lease-year 6 \$ _____	x	_____	=	\$ _____
Lease-year 7 \$ _____	x	_____	=	\$ _____
Lease-year 8 \$ _____	x	_____	=	\$ _____
Lease-year 9 \$ _____	x	_____	=	\$ _____
Lease-year 10 \$ _____	x	_____	=	\$ _____

*Pursuant to Sections 5.4 and 18.1 and Exhibit B-1of the **Lease**.

Add Separate Schedule for each Co-Locator as Necessary

APPENDIX H

(To be completed by the proposer)

ASSUMPTION OF RISK AND INDEMNIFICATION AGREEMENT

Site Inspection

Massachusetts Bay Community College
50 Oakland Street, Wellesley Hills, MA

The undersigned, in consideration for being allowed to enter upon property of the Commonwealth of Massachusetts (the "Commonwealth"), assumes each and every risk for any and all personal injury, including death, and for any and all property damage, including loss that occurs during any examination, inspection, or other presence by the undersigned, or by any consultant or contractor of the undersigned. The undersigned further agrees to protect, defend, indemnify, and hold the Commonwealth and its employees, contractors, and agents blameless and harmless with respect to any and all such risks, and to repair, restore, or both, to the reasonable satisfaction of the Commonwealth, and to indemnify the Commonwealth with respect to any damage to and loss of any property of the Commonwealth with respect to such entry. Before entering the property of the Commonwealth the undersigned must execute, date, and deliver this agreement to the Division of Capital Asset Management and Maintenance with a certificate of the insurance coverage required by Attachment 1 to this Agreement.

(Signature)

(Date)

Print Name: _____

Organization: _____

ATTACHMENT 1 TO APPENDIX H

INSURANCE REQUIREMENTS

Tenant must purchase and maintain such insurance as protects **Tenant** and **Landlord** from claims that may arise out of or result from **Tenant's** operations under this **Lease**, whether such operations be by **Tenant** or by any agent or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

Tenant must purchase and maintain during the **Term**:

- A. Insurance sufficient to discharge **Tenant's** obligations under all applicable workers' or workmen's compensation laws.
- B. Employer liability insurance with a minimum limit per accident or disease of \$100,000.00.
- C. Statutory disability and other employee benefit insurance.
- D. Commercial general liability insurance including a comprehensive broad form endorsement covering the full scope of **Tenant's** activities under this **Lease** with limits not less than \$2,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for personal injury and death, and \$2,000,000.00 per occurrence and in the following:
 - 1. All products, **Premises**-operations, and completed operations liability, independent contractors' liability, additional interests of employees' liability, and incidental medical malpractice liability, including notice of occurrence and knowledge of occurrence endorsements satisfactory to **Landlord**.
 - 2. Blanket contractual liability insurance covering all liabilities assumed under this **Lease**.
 - 3. Personal injury coverage endorsement coverages A, B, and C with no exclusions for liability assumed contractually or injury sustained by employees of **Tenant**, invitees, or agents of **Tenant**.
 - 4. Broad form coverage for damage to property of Landlord, as well as other third parties, while in the care, custody, or control of Tenant.
- E. **Tenant** and any agents must also purchase and maintain umbrella policies for excess liability insurance containing coverage no less restrictive than that required above. The umbrella policies must contain minimum total occurrence and aggregate coverage of \$2,000,000.00.

Insurance similar to that required of **Tenant** must be provided by or on behalf of all agents of **Tenant** to cover their operations performed under this **Lease**. **Tenant** is held responsible for compliance with and enforcement of the insurance requirements and for any modifications of these insurance requirements as they apply to agents of **Tenant**.

Tenant must not permit any agent to commence work until such agent has furnished evidence that insurance has been procured and certificates of insurance have been obtained by **Tenant**.

Insurance certificates acceptable to **Landlord** evidencing the above coverages are to be furnished to Landlord before or concurrent with the execution of this Lease. Such certificates and all insurance policies required by these Insurance requirements must contain provisions requiring at least 30 days prior written notice to Landlord of any cancellations of the policies or material changes in the requirements of this exhibit that result in noncompliance with such requirements (an agreement to "endeavor" to provide such notice is not acceptable). Certificates must indicate effective dates and dates of expiration of the policies and must refer to the corresponding subparagraphs listed above.

All insurance policies provided pursuant to the foregoing provisions of these insurance requirements must be in the form and written by companies reasonably satisfactory to **Landlord** and **Landlord** must be named as an additional insured. All such policies must contain provisions or endorsements necessary to assure coverage of claims by one insured against another.

All required insurance policies are to be endorsed to state that **Tenant's** policies must be primary to all insurance available to **Landlord** for liability arising out of or resulting from **Tenant's** operations under this **Lease**, whether such operations be by **Tenant**, or by an agent, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

The purchase of insurance to satisfy the above requirements or the furnishing of certificates evidencing same does not affect **Tenant's** liability under this Lease and does not in any way modify **Tenant's** obligation to fully indemnify **Landlord**.

Without limitation of any other provisions of this **Lease**, if (a) **Tenant's** agreement to insure or name **Landlord** as an additional insured with respect to contractual liability assumed by **Tenant** under the provisions of this **Lease** or (b) any contract of insurance between **Tenant** or any agent and **Tenant's** or their insurance company is to any extent void or unenforceable or determined to be void or unenforceable, it is the intention of the **Parties** that such circumstances must never otherwise affect the validity or enforceability of **Tenant's** agreements and obligations under this **Lease** nor the validity and enforceability of such contract of insurance, each of which are to be enforced to the fullest extent permitted by law.

In any emergency affecting the safety of persons or property, **Tenant** must act to prevent threatened damage, injury, or loss, and must, as promptly as conditions permit, notify

insurance carriers and **Landlord** or **Landlord's** representatives of the nature of the emergency and circumstances related thereto. Immediately thereafter, **Tenant** or **Tenant's** agent(s) must prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action.