

LICENSE TRANSFER AGREEMENT

THIS LICENSE TRANSFER AGREEMENT (this "Agreement") is made as of this ____ day of _____, 2013, ("Effective Date") by and between **City Of New York, Department of Information Technology & Telecommunications** ("the City"), and **Township of West Orange, New Jersey** ("West Orange"). The City and West Orange may be referred to herein collectively as the "Parties".

RECITALS

- A. West Orange holds authorizations ("FCC Authorizations") issued by the Federal Communications Commission (the "FCC") to operate on certain frequencies ("Licensed Frequencies") under call sign WPCE346 (the "License" and together with the Licensed Frequencies, the "Collective FCC Authorization");
- B. West Orange filed an application with the FCC to add frequency pairs 809/854.3125 and 809/854.3375 MHz to the set of frequencies West Orange is authorized by the FCC to operate for WPCE346 (FCC File No. 003721208);
- C. The FCC granted the application by West Orange on February 23, 2009;
- D. The City filed an objection to such grant on March 6, 2009 (the "Objection");
- E. On April 11, 2013 the FCC proposed to delete the authorization for 809/854.3125 and 809/854.3375 MHz from the authorization for WPCE346, but did not issue an implementation order pending an opportunity for West Orange to object to such action;
- F. In order to effectuate a mutually acceptable resolution of these matters and in response to the FCC's order of April 11, 2013 regarding the frequency pairs 809/854.3125 and 809/854.3375, West Orange desires to transfer and assign to the City the FCC Authorization for 809/854.3125 MHz, and the City desires to reimburse West Orange for certain expenses related to transfer of the FCC Authorization for frequency pair 809/854.3125, subject to the conditions described herein.
- G. The City and West Orange desire to enter into this Agreement to effect the transfer of the FCC Authorization for 809/854.3125 MHz to the City, free and clear of all liens, claims, mortgages, pledges, security interests, encumbrances, adverse claims or restrictions whatsoever (collectively, "Liens").

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

AGREEMENTS

License Transfer: Upon the terms and subject to the conditions outlined in this Agreement, on the Closing Date (as defined below), West Orange will deliver to the City, and the City will acquire from West Orange, all of West Orange's right, title and interest in and to the FCC Authorization for 809/854.3125 MHz, free and clear of all Liens. The City and West Orange acknowledge and agree that the transfer of the FCC Authorization constitutes a partial transfer of West Orange's Collective FCC Authorization and that this Agreement specifically transfers and assigns the West Orange's FCC Authorization for 809/854.3125 MHz, and specifically excludes any sale or transfer of West Orange's FCC Authorizations for other frequencies, West Orange's cash, cash equivalents, account receivables, the equipment operating the frequencies under the FCC Authorizations and any and all other assets of West Orange.

Consideration: In consideration for the transfer and assignment of the licensed frequencies to the City, the City shall assume all rights and obligations regarding 809/854.3125, commencing as of the date of Final Order, and shall pay to West Orange twenty thousand dollars and no cents (\$20,000.00) in administrative expenses, constituting the full and aggregate consideration to be paid by the City to West Orange for the FCC Authorization for 809/854.3125 MHz. Upon the Final Order (as defined in Section 5(b) below), West Orange may submit to the City an invoice for \$20,000, in a format prescribed by the City, which the City shall promptly pay, pursuant to the City's prompt payment requirements.

3. **Assumption of Liabilities:** The City is not assuming and will not be responsible for any liabilities or obligations of West Orange whether arising out of or in connection with the Collective FCC Authorization or West Orange's operations pursuant to the Collective FCC Authorization except that the City shall assume obligations for frequency pair 809/854.3125 after Closing unless accrued prior to Closing.

4. **Payment of Expenses:** The City and West Orange will each bear their own legal, accounting and brokerage expenses in connection with this Agreement.

5. **FCC Application and Waiver Request:**

(a) **Preparation and Filing.** As soon as possible (but in no event later than thirty (30) calendar days after the Effective Date), West Orange shall file an application with the FCC to add a transmitter site at the Empire State Building (with technical parameters supplied by the City) for 809/854.3125 MHz. Within sixty (60) days after the Effective Date, West Orange and the City shall file an application on FCC Form 603 (together with the application referred to in the preceding sentence, the "FCC Applications") seeking the FCC's consent to the assignment of the FCC Authorization for 809/854.3125 MHz from West Orange to the City ("FCC Consent"). The Parties agree to act diligently in taking all steps necessary, proper and desirable to expedite the prosecution of the FCC Applications to a favorable conclusion. However, should the application to add the Empire State Building site be denied by the FCC, this transaction will proceed without regard to the inability to obtain authorization at the Empire State Building site.

(b) **Finality.** For purposes of this Agreement, "Final Order" shall mean that forty (40) days have elapsed from the date of the FCC's issuance of FCC Consent to the assignment of the FCC Authorization for 809/854.3125 MHz from West Orange to the City without any filing of any adverse request, petition or appeal by any third party or by the FCC on its own motion with respect to FCC Application or, if challenged, the FCC Consent shall have been reaffirmed or upheld and the applicable period for seeking further administrative or judicial review shall have expired without the filing of any action, petition or request for further review.

6. **Closing:**

(a) **Closing Date:** The closing ("Closing") for the transfer of the FCC Authorization for 809/854.3125 MHz will occur within twenty (20) business days after the Final Order and the satisfaction of all other conditions specified in this Agreement (the "Closing Date").

(b) **Cooperation:** At Closing, the Parties will exchange any documents, and other instruments called for by this Agreement or as the City or its counsel may reasonably request. The City and West Orange will cooperate in good faith and exercise their reasonable best efforts to obtain FCC and third-party consent and finalize and execute any and all other documents or agreements necessary to effect the transfer on or prior to the Closing Date.

7. **Closing Conditions:** The Closing will be subject to the satisfaction of all of the following conditions (except to the extent any such conditions are expressly waived by the City in writing): (i) Final Order of the assignment to the City of the FCC Authorization; (ii) receipt of any other required third party consents and approvals required for the transfer of the FCC Authorization for 809/854.3125 MHz; (iii) release of all liens, if any, on such FCC Authorization; (iv) the continued truth and accuracy of West Orange's representations and warranties provided herein; and (v) execution and delivery of appropriate instruments of transfer and assignment and other documents and instruments as the Parties or their counsel may reasonably request. The City will promptly provide notice to the FCC of completion of this transaction and will make best efforts to notify the FCC within thirty (30) days following the Closing Date.

8. **Representations and Warranties:**

(a) **West Orange's Representations and Warranties:** West Orange represents and warrants to the City as follows: (i) West Orange is the lawful, beneficial and exclusive owner of the FCC Authorization for 809/854.3125 MHz and West Orange has the unrestricted right to transfer the FCC Authorization for 809/854.3125 MHz to the City at Closing free and clear of Liens; (ii) West Orange is duly incorporated and in good standing under the laws of its state of incorporation and all other jurisdictions where it is qualified to transact business; (iii) this Agreement has been duly authorized and approved by all required action of West Orange; (iv) neither the execution nor the delivery

of this Agreement nor the consummation of the transaction contemplated herein will conflict with, or result in any violation or default under, any term of the organizational documents or by-laws of West Orange, or any agreement, mortgage, indenture, license, permit, lease or other instrument, judgment, decree, order, law or regulation by which West Orange is bound; (v) the FCC Authorization for 809/854.3125 MHz is valid and in good standing with the FCC and West Orange is in compliance with all statutes, rules and regulations concerning construction, and loading of the Collective FCC Authorization or the facilities associated with the Collective FCC Authorization, and all other federal statutes, rules, regulations and policies of the FCC applicable to the West Orange or the Collective FCC Authorization; (vi) there is no pending or, to the best of West Orange's knowledge, threatened action, petition, pleading or competing application by West Orange under the Collective FCC Authorization, by a third party, the FCC, or any other governmental agency to suspend, revoke, terminate or challenge any aspect of the Collective FCC Authorization other than the City's Objection, West Orange's qualifications as licensee, or otherwise investigate the operation on the FCC Authorizations; (vii) no person or entity holds or has been granted a right of first refusal or option to purchase or acquire all or part of the Collective FCC Authorization; (viii) the FCC Authorization for 809/854.3125 MHz is fully constructed and operational as required by FCC regulations; (ix) there are no pending applications or actions whatsoever seeking to modify any of the parameters under the Collective FCC Authorization; (x) West Orange has not made any agreement regarding the FCC Authorization for 809/854.3125 MHz subject to this Agreement; and (xi) all information provided by West Orange to the City concerning the Collective FCC Authorization is true and complete. Each of West Orange's representations and warranties will survive the Closing.

(b) **The City's Representations and Warranties:** The City represents and warrants to West Orange as follows: (i) The City is duly organized and validly existing under the laws of the state of its organization; (ii) this Agreement has been duly authorized and approved by all required action of the City; (iii) the City is financially and legally able to meet its obligations under this Agreement; and (iv) neither the execution nor the delivery of this Agreement nor the consummation of the transaction contemplated herein will conflict with, or result in, any material violation or default under any term of the articles of organization or operating agreement, if any, of the City, or any agreement, mortgage, indenture, license, permit, lease or other instrument, judgment, decree, order, law or regulation by which the City is bound.

9. West Orange's Covenants:

(a) From the date of this Agreement to the Closing Date, West Orange will: (i) take necessary steps to fully vacate 809/854.3125 ; (ii) not sell, transfer, dispose, encumber, geographically partition or permit the sale, transfer, disposal or encumbrance of any of the Collective FCC Authorization; (iii) take all necessary actions to maintain the continued validity of the Collective FCC Authorization; (iv) afford the City and its representatives reasonable access to the records relating to the Collective FCC Authorization during normal business hours; (v) not seek to modify or allow modification of any of the parameters under the Collective FCC Authorization other than that discussed herein; (vi) not take any action to effect a co-channeled license on the Licensed Frequencies other than that discussed herein; and (vii) cooperate with the City in all applications or filings with the FCC in connection with this transaction. From and after the Closing Date, West Orange will at any time and from time to time, upon the City's request and without further cost to the City, prepare, execute and deliver the instruments of conveyance and assignment and will take action as the City may reasonably request to more effectively transfer to and vest in the City, or its successors and assigns, and to put the City in possession of, any and all of the FCC Authorization for 809/854.3125 MHz, free and clear of any and all Liens.

(b) From the Effective Date to the Closing Date, the City shall (i) cooperate with West Orange with the filing of the FCC Applications, if applicable, for the FCC Consents and (ii) fully perform, observe and comply with all of the obligations the City is required to perform, observe and comply with pursuant to the terms of this Agreement.

10. **Conflicting Agreements:** (a) West Orange is not a party to, nor are any aspects of the Collective FCC Authorization subject to, any contract or arrangement that would preclude or would be violated by West Orange's performance of West Orange's obligations under this Agreement or by the consummation of the transactions contemplated by the Agreement; and (b) West Orange covenants that West Orange will not enter into, nor cause any aspect of the Collective FCC Authorization to be or become subject to, any contract or arrangement, and West Orange covenants that, if any person should allege that any contract or arrangement exists or otherwise seeks to challenge consummation of the transactions (or any portion of the transactions) contemplated by this Agreement

then West Orange will promptly use West Orange's reasonable best efforts to resolve the allegations or challenges so as to permit the transactions contemplated by this Agreement to be consummated as soon as is practicable, and West Orange acknowledges that, until all allegations and challenges have been finally and favorably so resolved, the City will not be obligated to close the transactions contemplated by this Agreement.

11. **No Shop; Confidentiality:** As of the Effective Date West Orange on behalf of itself and its offices and agents, agrees not to solicit, make or accept any offers from any third party to sell, purchase, transfer or assign the FCC Authorization for 809/854.3125 MHz or any part thereof. Subject to the applicable provisions of New York State law or any other applicable law, including but not limited to the Public Officers Law (New York Freedom of Information Law "FOIL") and New Jersey's Open Public Records Act ("OPRA"), the terms of this Agreement will be kept confidential by the Parties and their agents, which confidentiality will survive the Closing or termination of this Agreement for a period of three (3) years, except to the extent: (i) same is requested or required to be disclosed pursuant to FOIL or OPRA or applicable law or any governmental entity; and (ii) West Orange or the City is required to obtain authorization or approval to enter and execute this agreement from any agents or applicable oversight or authorization entities including West Orange's Township Council. provided, however, that the Parties will require all agents to honor the provisions of this section.

12.: **Responsibility for Liabilities:** Each Party will be responsible for its own acts or omissions arising from or related to: (i) any material breach of any covenant, agreement, representation or warranty Party contained in, or made pursuant to, this Agreement; or (ii) as for the City, any and all liabilities (including successor liabilities) or obligations relating to West Orange's use of the Licensed Frequencies prior to the Closing Date and, as for West Orange, any and all liabilities (including successor liabilities) or obligations relating to the City's use of 809/854.3125 after the Closing Date. Notwithstanding anything to the contrary herein, the City's obligation herein shall not be construed to waive any portion of its retained sovereign immunity in tort under New York law.

13. **Termination:** This Agreement may be terminated and the transactions contemplated by this Agreement abandoned: (i) by mutual consent of the Parties provided in writing; (ii) by either Party upon material breach of the other Party, following a thirty (30) day period for cure by the breaching Party following written notice of the breach; or (iii) if FCC declines to authorize the transfer of 809/854.3125 or (iv) if a third party successfully challenges the validity of this agreement before the Closing. In the event of termination, City will not pay any reimbursement fees contemplated in Section 2 of this Agreement.

15. **Waiver:** The City and West Orange, by written notice to the other, may (a) extend the time for performance of any of the obligations or other actions of the other under this Agreement, (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement, (c) waive compliance with any of the conditions or covenants of the other contained in this Agreement, or (d) waive or modify performance of any of the obligations of the other under this Agreement; provided that neither party may without the written consent of the other make or grant any extension of time, waiver of inaccuracies or compliance, or waiver or modification of performance, with respect to its own obligations, representations, warranties, conditions or covenants in this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement will be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.

17. **Notices:** All notices and other communications under this Agreement will be in writing and will be deemed given (i) the same day if delivered personally or sent by facsimile or electronic mail; (ii) the next business day if sent by overnight delivery via a reliable express delivery service; or (iii) after five (5) business days if sent by certified mail, return receipt requested, postage prepaid. All notices will be delivered to the Parties at the following addresses (or at any other address for a party as will be specified by the notice, provided that notice of change of address will be effective only upon receipt of the notice):

(a) If to West Orange, to:

Township of West Orange Clerk's Office
60 Main Street
West Orange, New Jersey 07052

With a copy to:

Township Attorney, Township of West Orange
c/o Township Clerk's Office
60 Main Street
West Orange, NJ 07052

With a copy to:

Shulman, Rogers, Gandal, Pordy & Ecker
12505 Park Potomac Ave
6th Floor
Potomac, MD 20854
Attn: Alan Tilles, Esq.
Phone: (301) 231-0930
Fax: (301) 230-2891

(b) If to the City, to:

Commissioner
New York City Department of Information Technology and Telecommunications
255 Greenwich Street, 9th Floor
New York, NY 10007

With a copy to:

Chief, Economic Development Division
New York City Law Department
100 Church Street
New York, NY 10007

With a copy to:

General Counsel
New York City Department of Information Technology and Telecommunications
255 Greenwich Street, 9th Floor
New York, NY 10007

18. **Assignment:** All covenants, agreements, representations, warranties and indemnities will be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns. This Agreement may not be assigned by either Party without the written consent of the other Party, which consent shall not be unreasonably withheld.

19. **Counterparts:** This Agreement may be executed in one or more counterparts which will be effective as original agreements of the Parties. Original signatures transmitted by facsimile or electronic transmission will be effective to create counterparts.

20. **Exhibits:** All references in this Agreement to "Exhibits" will mean the Exhibits identified in and listed at the end of this Agreement, which are incorporated by reference and will be deemed a part of this Agreement for all purposes. Failure to attach any referenced Exhibits will not affect the binding nature of this Agreement.

21. **Governing Law:** This Agreement will be governed by the laws of the state of New York, without giving effect to the conflict of law provisions of that State.

22. **Interpretation:** All headings used in this Agreement are for convenience of reference only and will not be deemed to have any substantive effect. Notwithstanding any law or rule of contract interpretation to the contrary, this Agreement will not be interpreted strictly for or against any Party. Each of the Parties certifies to the other that it has reviewed this Agreement with, and is relying solely upon the advice of, its counsel, as to the negotiation, preparation, execution and delivery of this Agreement and as to the legal implications under this Agreement. In the event that any covenant, condition or other provision contained in this Agreement is held to be invalid, void or unlawful by any administrative agency or court of competent jurisdiction, that provision will be deemed severable from the remainder of this Agreement and will in no way affect, impair or invalidate any other covenant, condition or other provision, and the Parties will use their reasonable best efforts to make the covenant, condition or other provision valid and lawful if possible so as to preserve the rights and obligations of the Parties.

23. **Amendment:** This Agreement, together with the attached Exhibits, constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, superseding all prior oral or written agreements or understandings. This Agreement may not be changed, modified or altered except by an agreement in writing executed by the Parties.

IN WITNESS WHEREOF, this Agreement will be effective as a binding agreement among the Parties upon being fully executed by the Parties indicated below and will remain in effect as an Agreement for the transfer of the FCC Authorization for 809/854.3125 MHz upon the terms and conditions provided in this Agreement.

WEST ORANGE:
Township of West Orange, New Jersey

By: _____
Robert D. Parisi, Mayor

The CITY:
**City of New York, Department of Information
Technology & Telecommunications**

By: _____
Name:
Title:

ATTEST:

By: _____
Karen J. Carnevale, Municipal Clerk

Approved as to form:

Acting Corporation Counsel