

## TOWER SPACE LICENSING AGREEMENT

Name of Site: KGI Tower #00577, Laredo, TX

**THIS TOWER SPACE LICENSING AGREEMENT** (the "Agreement") is made this 23<sup>rd</sup> day of January, 2006, by and between Time Warner Cable d/b/a Texas Cable Partners, a Corporation, ("Licensor") and City of Laredo, Texas, a Texas municipality, ("Licensee").

In consideration of the terms, conditions and covenants contained in this Agreement, the parties agree as follows:

### **1. GRANT OF LICENSE**

(A) Licensor has ownership or possessory interest in that certain tower located at Latitude: 27.32.37N, Longitude: 99.30.29W, on real property situated at 1313 West Calton Rd., Laredo, Texas 78041 (the "Tower"), said Tower and real property being more fully described in **Exhibit A** attached to and incorporated herein by this reference. The Tower, real property and all Licensor's other facilities, buildings, equipment and apparatus thereon are collectively referred to as "Licensor's Property".

(B) Licensor hereby grants to Licensee the non-exclusive license (the "License") to install, maintain, operate and repair the equipment described with specificity in **Exhibit B** attached to and incorporated herein by this reference (the "Equipment") on Licensor's Property at the location on the Tower and in any adjoining building as described on **Exhibit A** (the "Premises"), upon the terms and conditions set forth in this Agreement for the License Fee as set forth on **Exhibit C** attached hereto and by this reference incorporated herein (the "License Fee"). Licensee's transmitting frequency is see **EXHIBIT A1** its receiving frequency is see **EXHIBIT A!**. Licensee shall not change its transmitting or receiving frequency without the prior written consent of Licensor. Licensee shall not directly or indirectly provide or transmit video programming or entertainment services by means of any Site, or any Equipment located thereon.

(C) Licensor is the owner or has the right to license the Premises and is entitled to possession of the Premises.

(D) This License Agreement supersedes and replaces that Tower Usage Agreement executed 11/20/2002 between Licensor and the Laredo Police Department. This Agreement represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all previous oral or written agreements, correspondence, conversations or understandings of whatever nature between the parties with respect to the subject matter, including the Tower Space License executed by the parties for this Site on 11/20/2002. This Agreement may not be altered or amended except by an agreement in writing signed by both parties to the document proposed to be

altered or amended.

(E) Subject to the rights elsewhere granted to Licensee herein, Licenser shall have the right to use for itself or to license to others, other space available on the Tower and any other portion of Licenser's Property for any purpose, including, but not limited to, any kind of narrow band, broadband, or broadcasting communication equipment and system.

(F) Subject to the restrictions contained herein, Licensee shall have the right to peaceably hold and enjoy the Premises.

(G) Intentionally Omitted.

## **2. ACCESS**

(A) To the extent Licenser may lawfully grant such access, Licenser hereby grants to Licensee a non-exclusive right of ingress to and egress from the Tower and any access road to the Tower for the purposes of installing, maintaining, operating and repairing the Equipment. Notwithstanding, Licenser gives no guarantee to Licensee regarding Licensee's ability to enter or exit the Premises when weather conditions, road conditions, and any other element outside Licenser's control might affect Licensee's ability to enter the Premises. Upon the execution of this Agreement, Licenser shall deliver to Licensee all necessary keys and combinations to facilitate Licensee's ingress to and egress from the Premises. Licensee shall be entitled to have access to the Premises during normal business hours (Monday - Friday, 9 a.m. - 5 p.m.) for ordinary maintenance and repairs upon prior notice to Licenser. Licensee shall be entitled to have access to the Premises twenty-four hours a day, seven days a week to attend to any emergency on the Premises. Licensee shall notify Licenser within four (4) hours of any emergency occurring on the Premises. The rights of Licensee under this Section shall be limited to authorized employees, contractors or subcontractors of Licensee, Federal Communications Commission ("FCC") inspectors or persons under their direct supervision. Before Licensee allows any contractor or subcontractor access to the Premises, Licensee shall provide notice to Licenser as well as proof of appropriate types and amounts of insurance. Notwithstanding the foregoing, Licenser accepts no responsibility for any acts or omissions committed by Licensee's employees, contractors, or subcontractors.

(B) Notwithstanding the above, if Licensee has Equipment in a building located on Licenser's Property, then Licensee's access to the building will be subject to and limited by any reasonable security procedures instituted by Licenser for the protection of its building and its equipment; however, Licensee shall never be unreasonably denied access to any building housing its Equipment.

(C) Notwithstanding the above, neither Licensee nor any employee, contractor, subcontractor or agent of Licensee shall allow any person to enter upon or climb on the Tower without ensuring that such person is using appropriate preventive fall protection. In furtherance of and not in limitation of the foregoing, any employee, contractor, subcontractor or agent of Licensee ascending or descending the Tower shall be positively



attached to the Tower by means of an OSHA-approved device, which device may include, without limitation, (i) a fixed cable, (ii) a retractable device or (iii) a harness with two lanyards attached, and such employee, contractor or agent shall be trained in the proper use of such device. Licensor makes no representation or warranty to Licensee as to the fitness of any such device for any particular use or purpose.

(D) Licensor retains the right to inspect the property and Equipment of Licensee upon giving reasonable notice to Licensee during the term of this License and to enter the Premises for the purposes of inspection. In the event that Licensor, in its sole discretion, determines in good faith that Licensee has not maintained Licensee's property and Equipment in good order and repair according to industry standards or applicable building code requirements, Licensor shall so notify Licensee in writing, specifying the maintenance and repairs required to be performed by Licensee. In the event that within ten (10) days following such written notice, Licensee shall not have performed such maintenance and repairs, Licensor may, at its sole option, make such repairs as it deems reasonably necessary and any amount reasonably expended by Licensor therefor shall be reimbursed to Licensor by Licensee and shall be deemed an additional fee hereunder. Licensor shall not be liable for inconvenience, disturbance, loss of business or other damage to Licensee by reason of repairing the property and Equipment of Licensee which Licensee has failed to properly maintain.

(E) In an emergency, as determined by Licensor in its sole reasonable discretion, Licensor shall have the right to modify the Equipment for the purpose of eliminating or reducing, or attempting to eliminate or reduce the emergency. Upon execution of this Agreement, and at any time during the term of this Agreement as requested by Licensor, Licensee shall deliver to Licensor all keys, combinations, and/or cards necessary to allow Licensor access to the Equipment. Licensor and Licensee agree that interference issues are governed by Paragraphs 6 and 7 of this Agreement and are not subject to the provisions of this Paragraph 2(E).

### **3. LICENSE TERM**

(A) The term of this Agreement shall be for a period of ten (10) years commencing on the earlier of (i) the day which is sixty (60) days after Licensee obtains all necessary governmental approvals to install the Equipment on the Tower (ii) the date that Licensee begins construction or installation at the Premises or (iii) the date that is six (6) months after this Agreement is executed by the parties (the "Contingency Period") (the "Commencement Date") and terminating on the tenth (10th) anniversary of the Commencement Date (the "Initial Term"). Notwithstanding anything to the contrary contained herein, Licensee may terminate this Agreement during the Contingency Period without any further liability hereunder if (a) Licensee after diligent effort has not been able to obtain the necessary governmental approvals required hereunder or (b) if requested by Licensee within thirty (30) days of the date hereof, Licensee has not been provided with reasonably satisfactory proof of Licensor's title or right to possession of the Premises or (c) the results are negative from structural or stress analysis or other test conducted by Licensor or its engineer required to ensure the structural integrity of the Tower based upon Licensee's



proposed use and operation of the Equipment on the Tower or (d) Licensee, at its sole expense, elects to conduct environmental due diligence on Licensor's Property, and the results of said due diligence reveals Licensor's Property has an environmental condition(s) that render it, in Licensee's reasonable judgment, unsatisfactory for Licensee's intended operations. Licensee shall provide Licensor with a copy of the results of any environmental due diligence conducted pursuant to subsection 3(A)(d).

(B) Following the Initial Term, this Agreement shall automatically be renewed for up to two (2) separate and successive periods of five (5) years each (each a "Renewal Term"); provided that, either party may elect not to renew this Agreement by giving the other party not less than ninety (90) days advance written notice of such election prior to the end of the Initial Term or any Renewal Term.

(C) Notwithstanding the foregoing or any other provision of this Agreement, from and after the twelfth (12) anniversary of the Commencement Date, Licensor shall have the right to terminate this Agreement at any time for its sole convenience, upon one hundred eighty (180) days' prior written notice to Licensee without any liability therefor; except that, any previously paid, but unearned License Fee shall be refunded to Licensee.

(D) Notwithstanding the foregoing or any other provision of this Agreement, Licensee shall have the right to terminate this License at anytime after the expiration of the Initial Term, for its sole convenience upon thirty (30) days written notice to Licensor; provided that, Licensee shall pay to Licensor, in lieu of any other contractual or consequential damages hereunder, a termination fee in an amount equal to the lesser of (i) twice the annual License Fee in affect on the date the notice is provided to Licensor and (ii) the aggregate License Fees due under the remaining term of this Agreement.

(E) Intentionally Omitted..

#### **4. LICENSE FEE**

(A) Prior to, or on the day on which this Agreement is executed, Licensee shall pay to Licensor or Licensor's designee, a non-refundable fee in the amount of Twenty-five hundred Dollars (\$2,500.00) ("Reservation Fee") as compensation for Licensor reserving the Premises and holding it out of the market during the Contingency Period. In addition, Licensee shall pay a "Construction Oversight Fee" at the rate of seventy dollars (\$70) per hour as compensation for Licensor (i) evaluating and reviewing Licensee's plans and specifications for use of the Premises; (ii) engineering documentation; (iii) inspecting Licensee's installation or modification of Licensee's Equipment; and (iv) following up with Licensee on the installation or modification of Licensee's Equipment to ensure compliance with pre-approved plans and specifications. If Licensor, in its sole discretion, or its engineer deem it necessary to upgrade the Tower to accommodate Licensee's Equipment, including but not limited to, adding additional guyings, anchors, or lacing, all cost incurred to do so (including stress analysis cost) shall be borne by Licensee and shall be in addition to the Construction Oversight Fee. All equipment necessary to strengthen the Tower will be considered permanent installation and shall become the property of Licensor.



(B) Beginning on the Commencement Date, Licensee shall pay to Licensors, or to Licensors' authorized nominee, if any, ("Licensors' Nominee") as named in, and at the address set forth in **Exhibit C**, the annual License Fee set forth on **Exhibit C** subject to adjustments as set forth in this Agreement. The initial payment of the License Fee shall be made on the Commencement Date.

(C) During the term of this Agreement, the License Fee shall be due and payable in advance on each anniversary of the Commencement Date. If the annual License Fee is not paid when due, then the amount due and unpaid shall bear interest at the rate of ten percent (10%) per annum from the date due until paid in full. Nothing in this subsection shall affect Licensors' right to terminate this Agreement pursuant to Section 18 if the License Fee is not paid when due.

(D) During the term of this Agreement, the License Fee shall be increased by three percent (3%) on each anniversary of the Commencement Date; provided however, twelve (12) month's prior to the commencement of the second and each subsequent Renewal Term, Licensors and Licensee shall each have the right to request a review and renegotiation of the License Fee to be paid during the applicable Renewal Term. If the parties cannot agree on an appropriate License Fee for the applicable Renewal Term at least six (6) month's prior to the commencement of the Renewal Term, this Agreement shall terminate at the end of the then current term without action by either party.

## 5. EQUIPMENT

(A) The Equipment shall be installed by Licensee or its pre-approved contractor on the Tower in the exact location, and in accordance with the exact specifications, set forth in **Exhibit B**, along with **Exhibit B1 and B2**. Licensee agrees that the Equipment, and the installation, operation and maintenance thereof, will not damage the Tower or any facility on the Licensors' Property (including without limitation any tower or building) or interfere with the maintenance of any facility or lighting system. Licensee shall maintain the Equipment in a satisfactory condition as to safety and appearance. Except as otherwise provided in this Agreement, the Equipment is and shall remain the sole property of Licensee and may be removed from the Premises by Licensee, at Licensee's sole expense, at any time during the term of this Agreement. Licensee agrees to install isolators, cavities and filters on the Equipment and to maintain and operate the Equipment in accordance with the highest engineering standards prevailing in the communications/broadcast industry. Prior to the installation of the Equipment, Licensee shall provide to Licensors a copy of its FCC license, and any other required license, authorizing it to operate each piece of the Equipment.

(B) Licensee shall clearly and conspicuously mark each piece of the Equipment with Licensee's name and frequency number(s).

(C) Licensee shall not install any equipment other than that set forth on **Exhibit B and B1 and B2** on the Tower without Licensors' prior written consent. Licensee shall not install the Equipment in any location or manner other than as specifically described in **Exhibit B and B1 and B2** without Licensors' prior written consent. Notwithstanding the

provisions of Section 18 hereof or any other provision of this Agreement, Licensor shall have the right to terminate this Agreement upon any violation by Licensee of this subsection which is not cured by Licensee within ten (10) days of receipt of notice of violation.

(D) Licensee agrees that Licensor may mount casters on the Equipment for any reasonable purpose including without limitation cleaning of the Premises and maintenance work.

(E) Upon the termination of this Agreement for any reason, Licensee shall immediately (and in no event later than thirty (30) days after termination) remove from the Premises the Equipment and any other property placed on Licensor's Property by Licensee or any of Licensee's Agents (as that term is defined in Section 14 (A)). Such removal shall be performed in such a manner as to not interfere with the continuing use of the Tower by Licensor and others. Licensee shall, at Licensee's sole expense, repair any damage to the Tower, or any facilities or equipment on Licensor's Property, caused by such removal. Upon any failure of Licensee to remove the Equipment and any other possessions of Licensee pursuant to this Section, Licensor shall have the option, but not the obligation, to remove the Equipment from the Premises and store the Equipment, all at Licensee's expense. Any damage to the Equipment occasioned by such removal and storage are expressly waived by Licensee. Any Equipment so removed will be returned to Licensee upon payment in full of all removal and storage costs and any past due License Fees, plus an administrative charge equal to ten percent (10%) of the total of said removal, storage, and past due License Fee costs. Notwithstanding the foregoing, any Equipment not retrieved by Licensee within one hundred eighty (180) days after termination or expiration of this Agreement shall be deemed abandoned by Licensee, and shall become the property of Licensor without further action by either party. Such abandonment shall not relieve Licensee of liability for the costs of removal and storage of the Equipment.

## **6. FREQUENCY INTERFERENCE - LICENSEE'S OBLIGATIONS**

(A) Licensee represents and warrants that the Equipment will not cause interference to the equipment or operations of Licensor or any other lessee or other prior user of Licensor's Property or Tower as of the Commencement Date. Licensee agrees that it will not modify the Equipment or change the frequency or frequencies within which the Equipment is operated without the prior written approval of Licensor. Licensee shall be responsible for all costs associated with any tests deemed necessary to resolve any and all interference which Licensor determines or reasonably believes is being caused by Licensee's Equipment or operations on the Tower. Further, Licensee shall indemnify Licensor and hold Licensor harmless from all expenses, costs, damages, loss, claims or other expenses and liabilities arising from any such interference.

(B) If Licensee becomes aware that the Equipment is causing interference with the equipment or operations of Licensor or any other prior user of Licensor's Property or Tower as of the Commencement Date, Licensee immediately shall notify Licensor in writing of the problem and take all steps necessary to correct or eliminate such interference. If such interference is not immediately corrected, within two (2) days, Licensor, in its sole discretion, may require that Licensee cease operation of the Equipment until such



interference is corrected or eliminated. If the interference is not corrected by Licensee within ten (10) days, Licensors may immediately terminate this Agreement, notwithstanding the provisions of Section 18.

## **7. FREQUENCY INTERFERENCE - LICENSOR'S OBLIGATIONS**

(A) Licensors agree that subsequent to the Commencement Date of this Agreement it will not knowingly license or permit another person or entity to use the Tower if Licensee's then-in-use signal or frequency, or the physical location of the Equipment, would cause interference with such new licensee so as to cause such new licensee to be in breach of the terms of Section 6 (A) above.

(B) In the event Licensee has reason to believe that Licensors or a subsequent licensee is causing interference with Licensee's frequency or signal or with the Equipment, Licensee immediately shall notify Licensors in writing of such belief. Licensee shall in no way interfere with, tamper with or modify any equipment on the Tower belonging to Licensors or any other licensee or user of the Tower. Notwithstanding the provisions of Section 18 or any other provision of this Agreement, Licensors shall have the immediate right to terminate this Agreement upon any violation by Licensee of this subsection. Upon notice of interference, Licensors agree to take reasonable steps to eliminate, in a timely manner and without cost to Licensee, any interference with the Equipment caused by Licensors' or any licensee's subsequent installation of equipment or machinery on the Tower, which steps may include, without limitation, enforcing provisions in any license or other agreement between Licensors and the person or entity causing such interference. If Licensors are unable to eliminate such interference with the Equipment within thirty (30) days after receiving notice of the interference, Licensee shall have the immediate right to terminate the Agreement, and shall have no further recourse against Licensors; except that Licensee shall be entitled to the return of any paid but unearned License Fees.

## **8. ALTERATIONS**

Licensee shall obtain the prior written consent of Licensors before making any addition to or alteration of the Premises. Licensors shall respond in writing to Licensee's submission of plans to alter the Premises within ten (10) business days of receipt of the plans. If Licensors do not respond within the designated time frame, then Licensors shall be deemed to have rejected the plans. Licensors may respond by making suggestions to alter Licensee's plans. If Licensors respond in such a manner, then Licensee shall have ten (10) business days in which to accept or reject in writing Licensors' alternative plans. If Licensee does not respond within the designated time frame, then the alternative plan shall be deemed rejected and Licensee will be required to resubmit new plans to Licensors for approval. Any approved addition or alteration shall be made in a good and workmanlike manner at the sole expense of Licensee, free and clear of any mechanics' or other liens or encumbrances. In no event shall Licensors be liable for any labor, materials or supplies furnished to Licensee in connection with such addition or alteration. In the event any mechanics' or other lien is filed arising out of labor, materials or supplies furnished to or at the request of Licensee, Licensee shall immediately notify Licensors of such lien, and shall cause such lien to be discharged, by payment, bonding or otherwise, within thirty (30) days after the date of such filing. In the

event Licensor determines, in its sole discretion, that the installation of the additional Equipment on or about the Tower necessitates additional structural support for the Tower, or any portion thereof, Licensee shall reimburse Licensor, upon demand, for any expenses incurred by Licensor in constructing such additional support. Licensee understands and agrees that any additional structural support necessitated by Licensee's additions or alterations to the Tower made by Licensee shall become the sole property of Licensor. Upon termination of this Agreement, Licensee may be required by Licensor, at Licensor's sole discretion, to remove any alteration or addition and to restore the Premises to the same or as good condition as existed on the Commencement Date, reasonable wear and tear and damage caused by acts out of Licensee's control excepted.

#### **9. PERSONAL PROPERTY TAX**

Licensee shall be liable for and shall pay when due all taxes levied against the Equipment or any other personal property owned by it and located on or about the Premises, and shall not suffer or permit such taxes to become delinquent. Upon demand, Licensee shall furnish to Licensor reasonable evidence of Licensee's compliance with this Section. To the extent that any Equipment or personal property shall be assessed together with real or personal property of Licensor, Licensee shall reimburse Licensor for any taxes paid by Licensor attributable to such assessment upon demand by Licensor, which demand shall be accompanied by reasonable documentation of such assessment.

#### **10. MAINTENANCE OF PREMISES**

Licensee shall neither maintain nor permit any nuisances on the Premises, nor permit the Premises to be used for any purpose or use in violation of any of the laws, ordinances, rules or regulations of any public authority.

#### **11. COMPLIANCE WITH LAWS**

Licensee shall comply with all federal, state and local laws, rules and regulations applicable to the Equipment and Licensee's operations, including without limitation all applicable rules and regulations of the FCC, Federal Aviation Authority ("FAA"), and any other applicable electrical or other governmental laws, codes, rules or regulations, including complying in all respects with ANSI Standards as set forth in the OET Bulletin 65, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields" (August, 1997) and Supplement A (Edition 97-01) thereto. Licensor shall be responsible for all ongoing and necessary tower lighting and marking requirements of the FAA and FCC that are not related to the Equipment or Licensee's operations. Licensee shall have sole responsibility for ensuring that its use of the Premises complies in all respects with the Americans with Disabilities Act. Licensee represents that prior to installation and operation of Licensee's Equipment pursuant to this Agreement, Licensee has obtained all required permits and/or licenses pertaining to the installation, operation, maintenance and repair of the Equipment on the Premises, including but not limited to any required FCC licenses. Licensor shall have no responsibility for the licensing, installation, operation or maintenance of the Equipment. Licensee shall provide



Licensors with copies of all applications for construction permits and licenses filed with governmental authorities, and any and all amendments or renewals thereof, at the time of filing. Licensee shall not make any filings (or amendments to filings) with the FAA relating to the Tower without Licensors' prior written approval, which approval shall not be unreasonably withheld.

## **12. UTILITIES**

Licensee shall be responsible for its own utility services, including but not limited to, telephone and electrical power service. In order to facilitate Licensee's payment for its electrical power and telephone services, Licensee shall, at its sole expense, install a separate telephone line and electric submeter at the Premises and Licensee shall be responsible for the payment of all bills which are generated as a result of its utility use. Further, Licensee agrees to be responsible for any damage to the Premises sustained during installation of Licensee's utilities.

## **13. TERMINATION IN THE EVENT OF CASUALTY OR CONDEMNATION**

(A) Licensors shall not be responsible for any damage, loss, inconvenience or loss of use of the Premises, due to fire, weather conditions, theft, vandalism, or casualty loss of any kind, or any act or omission beyond its control, including any acts or omissions of any other licensee or Master Lessor, and Licensors shall not be required to rebuild or return to licensable condition the Premises or the Tower.

(B) In the event of any damage to, destruction of or condemnation of all or any part of Licensors' Property which renders the Premises unusable or inoperable, either party shall have the right, but not the obligation, to terminate this Agreement and all of its duties and obligations hereunder by giving written notice to the other party within thirty (30) days after such damage, destruction or condemnation.

(C) If neither party terminates this Agreement pursuant to subsection (B): (i) Licensors may make any necessary repairs to Licensors' Property caused by such damage or destruction and shall be entitled to use any and all insurance proceeds to pay for such repairs and (ii) until such repairs are completed, the License Fee shall be reduced or abated in proportion to the actual reduction or abatement of use by Licensee of the Premises. Licensee acknowledges that it has no property interest in the Premises and that Licensors alone shall be entitled to any condemnation proceeds paid as a result of any condemnation of the Premises.

## **14. INDEMNIFICATION/LIMITATION OF LIABILITY**

(A) Licensee understands and agrees that Licensors, its parents, subsidiaries, affiliates, members and partners, representatives and agents, and each of their shareholders, directors, officers, employees ("Licensors' Agents") make no representation or warranty of any kind with respect to the accuracy of any information or data relating to the Tower, the condition of the Premises or any facilities (including without limitation towers and buildings) located on Licensors' Property and that Licensee accepts the License granted pursuant to this Agreement solely on a **WHERE IS, AS IS** basis without warranty of any

kind or nature. It is the express intention of the parties that Licensor shall assume no additional risk, liability, obligation or exposure of any kind as a result of entering into this Agreement. In furtherance of and not in limitation of the foregoing, Licensee agrees to indemnify, defend and hold harmless Licensor, Licensor's Agents, from and against any and all liabilities, damages, losses, costs, expenses, suits, obligations, claims, demands or causes of action of any nature whatsoever (collectively, "Claims"), including without limitation attorneys' fees at trial and on appeal, arising out of or in connection with (i) the Equipment, (ii) Licensee's operations, (iii) the use, maintenance, repair or replacement of materials or facilities on Licensor's Property by Licensee, or its partners, members, directors, officers, employees, independent contractors, subcontractors, agents and representatives ("Licensee's Agents"), (iv) the use of or entrance upon Licensor's Property by Licensee or Licensee's Agents, (v) any work performed or required to be performed by Licensee or Licensee's Agents in connection with Licensee's use of the Premises, (vi) the negligence, acts or omissions of Licensee or any of Licensee's Agents, (vii) the accuracy of any information relating to the Tower not contained herein which may have been communicated to Licensee prior to or contemporaneous with the execution of this License by Licensor or Licensor's Agents or (viii) the breach by Licensee of any provision of this Agreement, including without limitation any representation or warranty contained in this Agreement. Likewise, Licensor agrees to indemnify, defend and hold Licensee harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from any breach by Licensor of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Licensee or Licensee's Agents. The provisions of this Section shall survive the termination of this Agreement.

(B) In furtherance of and not in limitation of subsection (A) above, Licensee acknowledges that Licensor, Licensor's Agents, shall have no liability to Licensee, any of Licensee's Agents or any other person or entity claiming under or through Licensee or any of Licensee's Agents for any injury, inconvenience, loss, cost, expense, liability or damage: (i) caused by the failure, interruption or malfunctioning of any equipment, facilities, utility or installation supplied by Licensor, Licensor's Agents, unless caused by an intentional act or omission of Licensor or (ii) resulting from any alteration, improvement or repair made to Licensor's Property or Licensor's equipment located on Licensor's Property; provided that, in the case of an alteration, improvement or repair, Licensor or Licensor's Agents have exercised reasonable care to avoid or minimize any such injury, inconvenience, loss or damage. In no event shall Licensor, Licensor's Agents, be liable to Licensee, any of Licensee's Agents, or any person or entity claiming under or through Licensee or any of Licensee's Agents for any consequential, incidental or indirect damages.

## 15. INSURANCE

(A) During the term of this Agreement, Licensee, at Licensee's sole cost and expense, shall obtain and keep in force, with an insurance company rated not less than A- by A.M. Best the following policies of insurance:

Insurance Coverage

Limits of Liability



- |        |   |  |
|--------|---|--|
| (i)    | <b>Comprehensive General Liability</b><br><br>(Including Products/Completed Operations,<br>Personal Injury, XCU and Contractual Liability)  | \$2,000,000 per occurrence,<br>combined single limit                                   |
| (ii)   | <b>Business Auto Liability</b><br><br>or<br><br><b>Personal Auto Liability</b> (if applicable)  | \$1,000,000 per accident,<br>combined single limit<br><br>\$300,000 per accident BI/PD |
| (iii)  | <b>Workers' Compensation</b><br>(in State of Tower location)  | Statutory coverage and limit   |
|        | <b>Employers' Liability Insurance</b>   | \$2,000,000 per accident   |
| (iv)   | <b>All Risk Property Coverage</b>   | 100% Replacement Cost of<br>Licensee's equipment                                       |
| (v)    | TWC, Licensor, Master Lessor and their employees and agents are included as <i>additional insured</i> by ISO Endorsement CG2010;  |  |
| (vi)   | irrespective of any insurance coverage carried by TWC, Licensor, Master Lessor and their employees and agents, Licensee's insurance policies shall provide primary, non-contributory protection for TWC, Licensor, Master Lessor and their employees and agents, for claims or losses resulting from Licensee's negligence; |  |
| (vii)  | Licensee's insurers waive any rights of subrogation it may have against TWC, Licensor, Master Lessor and their employees and agents; and,   |  |
| (viii) | policies shall provide coverage on an "occurrence" basis--"claims-made" policies are not acceptable.  |  |

(B) Upon execution of this Agreement, Licensee must deliver to Licensor a performance bond in the amount equal to the greater of the annual License Fee or \$50,000, to secure payment for any damage done to the property or equipment of Licensor, by Licensee or its contractors.

(C) Within five (5) business days after the execution of this Agreement and prior to the installation of any Equipment on the Premises, and as often thereafter as reasonably requested by Licensor, Licensee shall deliver to Licensor a standard ACCORD Certificate(s) of Insurance and ISO Endorsement CG2010, as proof of the maintenance of all insurance required by this Section. The Certificate(s) shall indicate that such insurance shall

not be canceled or modified, except upon delivery of thirty (30) days' prior written notice to Licensors. The Certificate(s) shall indicate coverage for the entire term of this Agreement, or Licensee shall provide (and shall continue to provide) subsequent Certificates of Insurance so as to confirm to Licensors continuous insurance coverage that satisfies the requirements of this Section throughout the term of the Agreement.

(D) Licensee shall reimburse Licensors upon demand for any increase in premiums for Licensors' property insurance covering the Tower, to the extent such increase is attributable to this Agreement.

(E) Licensors agree to maintain during the term of this Agreement, policies of insurance (including through self-insurance) with respect to Licensors' Property, in such amounts and with respect to such risks as are customary according to cable industry and/or tower ownership standards. Licensors shall provide current certificates of such insurance coverage upon request by Licensee.

## **16. WAIVER OF SUBROGATION**

Licensee hereby releases Licensors, and their parents, subsidiaries, affiliates, partners, members, shareholders, directors, officers, employees, representatives and agents from any claims for personal injury or property damage caused by or resulting from any risk insured against under any insurance policy carried by Licensee and in force at the time of any such personal injury or property damage. Licensee shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Licensors in connection with any personal injury or property damage covered by such policy.

## **17. HAZARDOUS SUBSTANCES**

Licensee agrees that it will not use, generate, store or dispose of any hazardous material on, under, about or within Licensors' Property without the prior written consent of Licensors. Licensors agree that it will not use, generate, store or dispose of any hazardous material on, under, about or within Licensors' Property in violation of applicable law. If, subsequent to the date of execution of a Site License, hazardous material is released on, under, about or within Licensors' Property that TWC determines, in its sole reasonable judgment, requires remediation under applicable federal, state or local law or regulation, then subject to the provisions of Section 13, TWC or the appropriate Licensors shall take such action as it deems appropriate to remediate the condition in accordance with such law or regulation. If the presence of such hazardous material is the result of the acts or omissions of Licensee or any other member of the Licensee Group, then Licensee shall indemnify, defend and hold harmless the Licensors Group from and against any and all Claims that may arise therefrom or in connection therewith as further provided in Section 14(A). As used in this section, "hazardous material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Tower is located to cause cancer and/or reproductive toxicity and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

## **18. DEFAULT**



(A) The following shall be deemed to be events of default under this Agreement:

1. Failure of Licensee to pay the License Fee when due or comply with any other monetary term of the Agreement, which failure is not cured within ten (10) days after written notice thereof to Licensee;

2. Failure of either party to comply with any non-monetary term, warranty, condition, representation, provision or covenant contained in the Agreement, which failure is not cured within thirty (30) days after written notice thereof from the other party or, if such default cannot reasonably be cured within such thirty (30) day period, the defaulting party has not commenced to cure such default within the thirty (30) day period with reasonable diligence and in good faith and does not cure such default within forty-five (45) days after the date of such notice;

3. The non-renewal or cancellation of any permit and/or license required for Licensee's operation on the Premises; and

4. Any filing of a petition under any bankruptcy act by or against either party (which petition shall not have been dismissed within thirty (30) calendar days thereafter), execution by either party of an assignment for the benefit of creditors, appointment of a receiver for the assets of either party, or action by either party to take advantage of any applicable insolvency or any other like statute.

(B) Upon any such default in addition to any other remedies available at law, the non-defaulting party shall have the option to immediately terminate this Agreement. In lieu of terminating the Agreement, Licensors (if Licensee is the defaulting party) may re-enter the Premises and dispossess Licensee, and may (but shall not be obligated to) re-license the Premises on Licensee's behalf upon such terms and conditions as Licensors deems appropriate in its sole discretion. No such re-entry or re-licensing by Licensors shall be construed as an election by Licensors to terminate this Agreement unless Licensors notifies Licensee of such termination.

## **19. LIENS**

(A) Licensee shall keep Licensors' Property free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Licensee.

(B) If any lien is filed against Licensors' Property as a result of the acts or omissions of Licensee, or Licensee's employees, agents, contractors or subcontractors, Licensee must discharge the lien or bond the lien off in a manner reasonably satisfactory to Licensors within thirty (30) days after Licensee receives written notice from any party that the lien has been filed.

(C) If Licensee fails to discharge or bond any lien within such period, then, in addition to any other right or remedy of Licensors, Licensors may, at Licensors' election, discharge the lien by either paying the amount claimed to be due or obtaining the discharge

by deposit with a court or a title company or by bonding, or by such other methods reasonably acceptable to Licensor and any of Licensor's mortgagees provided that such methods are specified in writing by Licensor to Licensee.

(D) Licensee must pay on demand any amount paid by Licensor for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of Licensor incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary disbursements in connection therewith.

## **20. ASSIGNMENT**

(A) Licensee shall not, voluntarily or by operation of law, assign, transfer, mortgage, hypothecate, sublet, or otherwise transfer or encumber all or any part of Licensee's interest in this Agreement or in the Premises, without the prior written consent of Licensor, provided however, Licensee may assign or otherwise transfer such interest to its parent company or any subsidiary or affiliate upon thirty (30) days written notice to Licensor. "Subsidiary" shall mean an entity wholly-owned by Licensee and an "Affiliate" shall mean an entity that is more than fifty (50) percent owned or controlled by Licensee. "Control" shall mean the power to direct or cause the direction of management of an entity. Notwithstanding any assignment of this Agreement, Licensee shall remain fully liable hereunder and shall not be released from performing any of the terms, covenants or conditions of this Agreement. Any assignment, transfer, mortgage, hypothecation, encumbering or subletting in violation of this provision shall be void and shall constitute a breach of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Licensee may assign mortgage, pledge, hypothecate or otherwise transfer its interest in this Agreement, upon prior written notice to Licensor, to any financing entity to whom Licensee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

(B) Licensor may assign, transfer or sell this Agreement on thirty (30) days prior notice to any party, in whole or in part, at any time and from time to time at its sole discretion and without any prior consent of Licensee or otherwise. Upon any transfer of Licensor's interest in this Agreement and the assumption by transferee of all of Licensor's obligations under this Agreement, Licensor shall be released from any further obligations hereunder.

(C) Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of the parties hereto, their successors and assigns.

## **21. NON-DISTURBANCE**

Licensor shall, at the request of Licensee, use diligent efforts to obtain within ninety (90) days from the date of this Agreement, a non-disturbance agreement, in form reasonably acceptable to Licensee, from each mortgagee of any interest in the Premises, other than for a mortgage of Licensee's interest in the Premises.

## **22. MEMORANDUM OF LICENSE**



Licensor agrees that, at the request of Licensee, Licensor shall execute a memorandum of license, in a form reasonably acceptable to Licensee, for the purpose of recording Licensee's interest herein.

### **23. NOTICES**

Any notices pursuant to this Agreement shall be validly given or served only if in writing and sent by courier, facsimile, or overnight delivery service, to the following addresses:

- |                     |   |
|---------------------|---|
| (A) If to Licensee: | City of Laredo<br>110 Houston St.<br>Laredo, Texas 78040<br><br>Attention: Larry Dovalina                             |
| (B) If to Licensor: | Time Warner Cable<br>Attn: Mike McDonald<br>300 Parker Square<br>Suite #210<br>Flower Mound, Texas 75028              |
| (D) With a copy to: | Time Warner Cable<br>d/b/a Texas Cable Partners<br>Attn: General Manager<br>1313 W. Calton Rd.<br>Laredo, Texas 78041 |

and with a copy to such other persons and addresses as either party may designate to the other in writing. Delivery of any notice shall be deemed to be effective on the date set forth on the receipt of delivery or facsimile transmission.

### **24. WAIVER**

The waiver by either party of a breach or violation of, or failure of either party to enforce, any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation or relinquishment of any rights hereunder.

### **25. INTEGRATION**

This writing represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all previous oral or written agreements, correspondence, conversations or understandings of whatever nature between the

parties with respect to the subject matter. This Agreement may not be altered or amended except by an agreement in writing signed by both parties.

## **26. GOVERNING LAW**

This Agreement has been made in and its validity, performance and effect shall be determined in accordance with the internal laws of the state in which the Tower is located.

## **27. PARTIAL INVALIDITY**

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect to the greatest extent permitted by law and shall in no other way be affected, impaired or invalidated.

## **28. ATTORNEY FEES**

In the event that either party brings a law suit to compel the performance of the other party hereunder, the prevailing party in such suit shall be entitled to reimbursement for all reasonable attorney's fees and cost.

## **29. CAPTIONS; EXHIBITS**

The captions or headings of sections of this Agreement are provided for convenience only, and shall not be of any force or effect in construing any provision of this Agreement. All exhibits referred to in this Agreement shall be incorporated in and constitute a part of this Agreement.

## **30. RELATIONSHIP OF THE PARTIES**

Licensor and Licensee shall not be deemed to be joint venturers or partners of one another, and neither party shall have any power to bind or obligate the other whatsoever.

## **31. COUNTERPARTS**

This Agreement may be executed and delivered in counterparts, all of which taken together shall constitute a single instrument.

## **32. SURVIVAL**

Licensor and Licensee hereby agree that termination or expiration of this Agreement, including any amendments to this Agreement, will not impair either party's then accrued rights, obligations or remedies or any rights, obligations or remedies of either party that expressly or by their nature are intended to survive the termination or expiration of this Agreement.



IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have caused their duly authorized officers to execute this Agreement as of the date first written above.

**LICENSOR**

**LICENSEE**

By: Time Warner Cable

By: City of Laredo, TX

d/b/a Texas Cable Partners

Name: MICHAEL D. McDONALD  
(Print or type)

Name: Larry Doualina  
(Print or type)

Title: VP OF ENGINEERING

Title: City Manager

Date: 1/23/06

Date: 1/12/06

Attested

By: Gustavo Guevara, Jr.  
City Secretary

EXHIBIT A

DESCRIPTION OF TOWER AND REAL PROPERTY

Description of Tower and Real Property on which Tower is located

The City of Laredo formerly Laredo Police department currently utilizes the following

Being 1.8185 acres of land out of Abstract 317, Section 1026, J.L. Fuentes Survey, Laredo, Webb County, Texas as more particularly described in the deed filed of record in Vol. 837, Page 7, Deed Records of Webb County, Texas.



## EXHIBIT A1

### Addendum to KGI Wireless Lease Application: Part 6

Motorola's equipment includes (10) Motorola STR3000 repeaters housed in (2) cabinets with (5) repeaters per cabinet. The (10) frequency pairs are as follows:

Channel 1 – Tx: 856.125	Rx: 811.125
Channel 2 – Tx: 856.225	Rx: 811.225
Channel 3 – Tx: 857.125	Rx: 812.125
Channel 4 – Tx: 857.225	Rx: 812.225
Channel 5 – Tx: 858.125	Rx: 813.125
Channel 6 – Tx: 858.225	Rx: 813.225
Channel 7 – Tx: 859.125	Rx: 814.125
Channel 8 – Tx: 859.225	Rx: 814.225
Channel 9 – Tx: 860.125	Rx: 815.125
Channel 10 – Tx: 860.225	Rx: 815.225

The proposed equipment includes (2) cabinets with (5) repeaters each. Each of the cabinets combines a set of (5) repeaters into a separate transmit antenna, for a total of (2) transmit antennas. The receivers of all (10) repeaters are multicoupled into a single (1) receive antenna.

## EXHIBIT B

### THE EQUIPMENT

LIST OF LICENSEE'S EQUIPMENT (include model and serial numbers):

**Existing Equipment:** (formerly Laredo Police Department)

In shelter:

The current system is a Data System.

The data system has 1 rack of equipment that contains 1 QUANTAR, 1 duplexer, 1 Circulator, and 1 modem.

There is a hardwired 800W UPS that backs up the entire rack.

On Tower:

(1) Celwave Bogner BMR12-H 12 dBd Gain Antenna mounted at 340ft.

**New Equipment to be Added to tower**

(3) RFS BMR 12 Penetrator Antennas mounted at 370' ft.

**EXACT SPECIFICATIONS OF HOW EQUIPMENT WILL BE INSTALLED AND WHERE EQUIPMENT WILL BE LOCATED ON THE PREMISES** (including, without limitation, the exact location of Equipment on any tower and any building and the frequencies in which Licensee shall operate)

The equipment to be installed in the shelter also includes the following:

- (2) 6 Channel Transmitter Combiners
- (4) Triple Circulators
- (2) Receive Multicouplers
- (5) Motorola ASTRO-TAC Comparators
- (2) Motorola MTC 9600 Controllers
- (1) Zhone Tensr 800 Channel Bank
- (2) TRAK 9100 GPS Frequency Standard Units
- (2) Motorola S6000 Ethernet Routers
- (2) Hewlett Packard 2626B Ethernet Switches
- (1) Motorola MOSCAD SDM Alarming Unit
- (5) LaMarche A86 Switchmode Rectifiers
- (1) LaMarche A31 DC-AC Inverter
- (1) LaMarch CDPD Combination Distribution Panel



All of the above equipment is contained in a total of (4) racks and (2) cabinets. The racks measure 24" x 24" x 90" and the cabinets measure 24" x 24" x 84". The attached Rack Diagram shows these racks and cabinets. It also shows an "Existing Data Rack," which is the City of Laredo Data System currently housed in the shelter. It will be moved next to the proposed racks. Motorola has also included a place holder for future expansion of the system, which consists of (

1) cabinet of the listed dimensions.

(1) Powerware 9170 5kW UPS

The floor space to be used by the equipment to be installed, the future expansion rack, and the UPS is approximately 33 ft<sup>2</sup>.

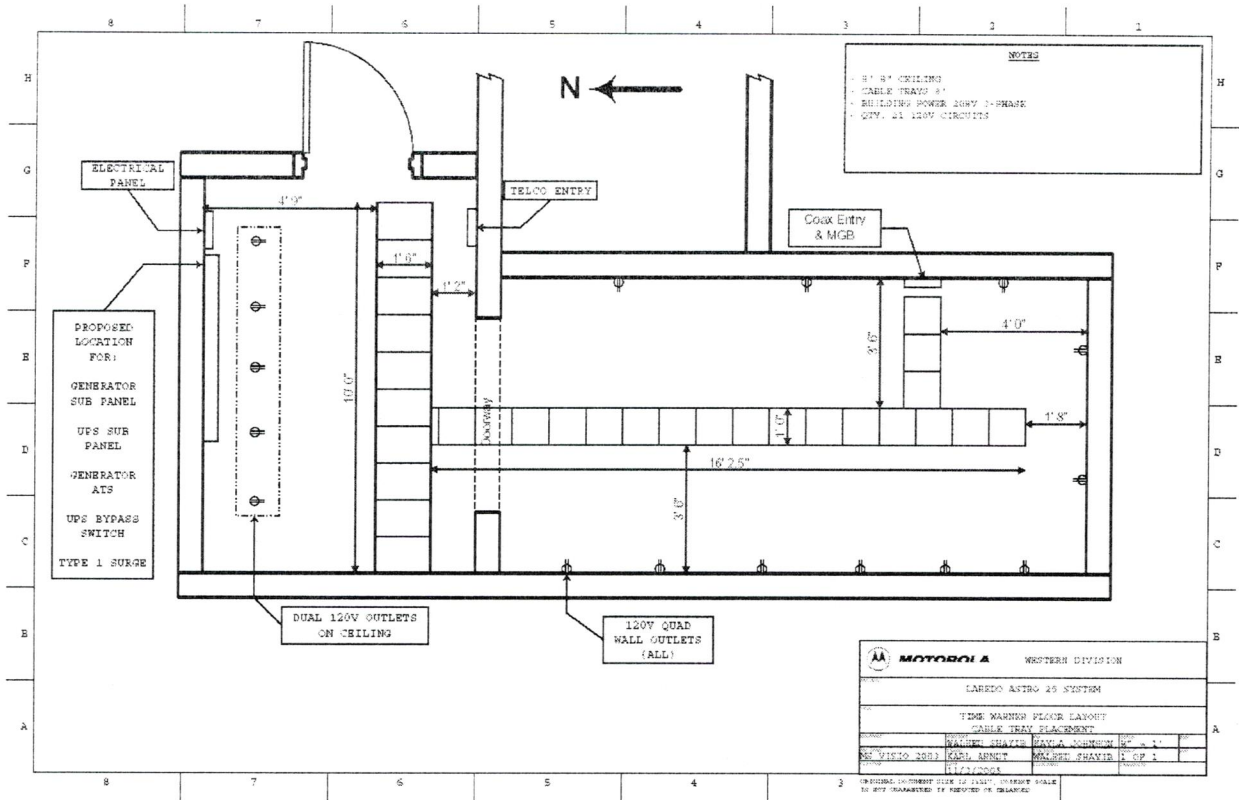
Motorola will install a new generator on the grounds, a Generac 35kW unit with LP fuel tank. The dimensions of the concrete pad needed for the generator is included in Part 5 of the application. The concrete pad for the LP fuel tank will be 4'x8'.

Motorola will also need to install (2) new Air Conditioning units in the shelter in order to meet the cooling needs of the new equipment.

Motorola will utilize the shelter's power service, which will be fed to an Automatic Transfer Switch and then to the building's main breaker panel, which will be upgraded. The generator will also be fed to this Automatic Transfer Switch. All equipment, lighting, outlets, etc. will be fed from this breaker panel.

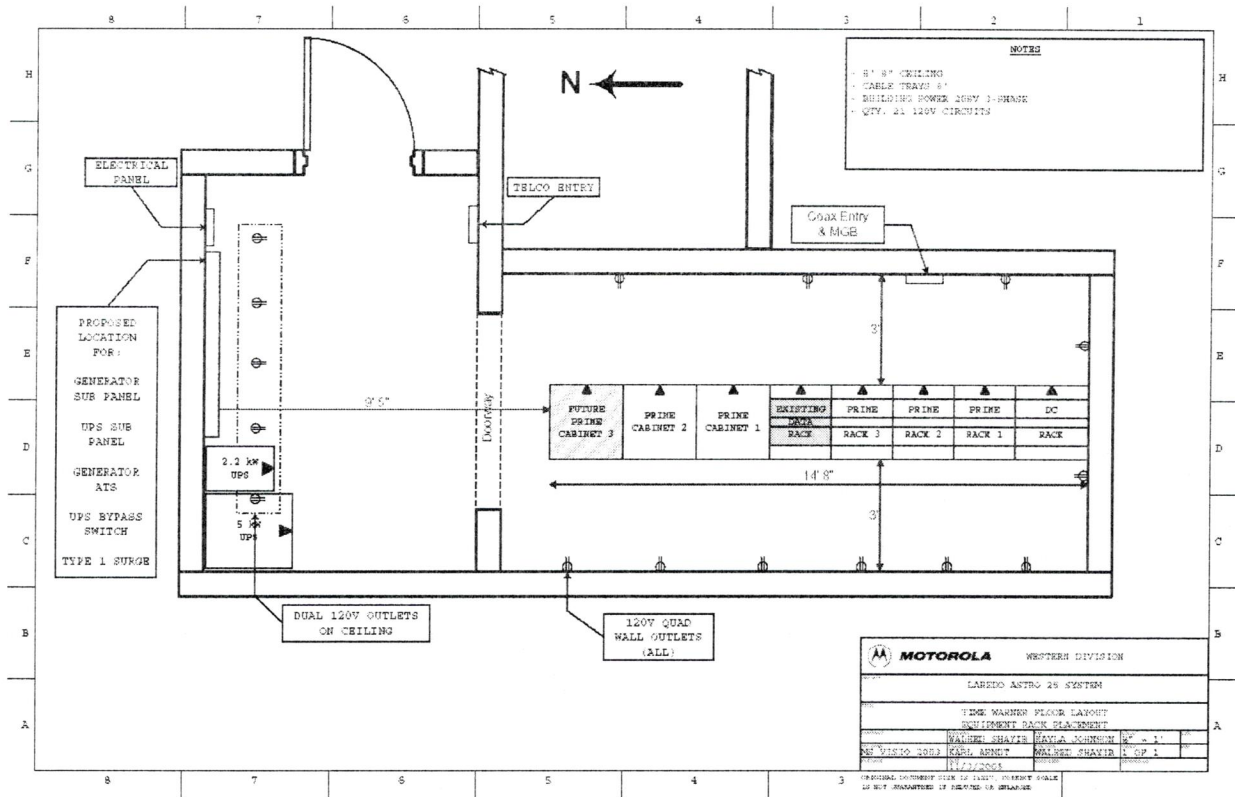
Motorola will also need to move the existing cable trays in the shelter. The only equipment currently in the shelter belongs to the City of Laredo, so this will not disturb any other customers. Floor and cable tray layouts of the proposed additions to the shelter are included.

# EXHIBIT B1 (Shelter Footprint)



# EXHIBIT B2





## **EXHIBIT C**

### **LICENSE FEE**

**LICENSE FEE DURING INITIAL TERM:** \$24,000/year for the 1<sup>st</sup> year.

Escalation factor of 3%/year.

### **LICENSE FEE DURING ANY RENEWAL TERMS:**

As per Section 4. LICENSE FEE.

### **NAME AND ADDRESS OF TWC PAYMENT SITE:**

The License Fee shall be payable to the following address shown below:

Time Warner Cable  
d/b/a Texas Cable Partners  
1313 W. Calton Rd.  
Laredo, Texas, 78041