

PARKING AGREEMENT

THIS AGREEMENT is made as of the 25th day of June 2013, by and between the following parties:

"City:" **CITY OF ROCHESTER**, a municipal corporation with offices at City Hall, 30 Church Street, Rochester, New York 14614 (hereinafter "the City" or "Seller");

"WINDSTREAM:" **WINDSTREAM COMMUNICATIONS, INC.**, with its principal place of business at 4001 Rodney Parham Road, Little Rock, Arkansas 72212 (hereinafter "WINDSTREAM").

RECITALS:

WHEREAS, WINDSTREAM is leasing office space at 245 E. Main Street, Rochester, New York 14614 with a Tax Identification No. 121.24-0001-028.002 (the "Property") and which is a portion of the City owned Midtown Site; and

WHEREAS, WINDSTREAM will be occupying two stories of the building on the Property (the "Premises"); and

WHEREAS, the City is the owner of an underground parking garage formerly known as the Midtown Parking Garage and now known as the Underground Parking Garage at the Midtown Site (the "UPG") located under the Midtown Site, Rochester, New York; and

WHEREAS, the City is the Owner of parking garages located at Mortimer Street known as the Mortimer Street Garage ("MSG") and at South Avenue known as the South Avenue Garage ("SAG"); and

WHEREAS, the City has agreed to provide parking to WINDSTREAM for its employees at the UPG, MSG, and SAG to service the Premises once it is developed;

WHEREAS, the City believes that WINDSTREAM's use of the UPG, MSG, and SAG as part of the Project, will enhance the economic well-being of the City of Rochester and the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions contained herein, the City and the WINDSTREAM agree as follows:

SECTION 1. DEFINITIONS

The following terms, as used in this Agreement, shall have the meanings ascribed to them herein:

SECTION 8. COVENANTS/REPRESENTATIONS AND WARRANTIES

A. By City

The City covenants, represents and warrants to WINDSTREAM as follows:

1. The City is a public corporation duly established and validly existing under the laws of the State of New York, and has full, right and lawful authority to enter into this Agreement and perform all its duties and obligations hereunder.

2. All necessary and appropriate actions have been taken, including without limitation adoption of all necessary resolutions of the City and any necessary approvals by the Rochester City Council and the Monroe County Legislature to allow the City to enter into, acquire and perform its obligations under this Agreement.

3. The City has all requisite power, right and legal authority to execute, deliver and perform its obligations under this Agreement and has taken all action necessary to authorize the execution and delivery of, and the performance and observance of its obligations under, this Agreement.

4. The Parking Garages shall be, at the time of commencement of this Agreement and throughout the term of this Agreement, maintained in good condition and repair and in usable condition pursuant to the terms of this Agreement and kept in compliance with all applicable laws including the Americans with Disabilities Act.

B. By WINDSTREAM:

WINDSTREAM covenants, represents and warrants to the City as follows:

1. WINDSTREAM is a corporation duly established and validly existing under the laws of the State of Delaware, and has full right and lawful authority to enter into this Agreement and perform all its duties and obligations hereunder.

2. There are no actions, suits or proceedings at law or in equity, or by or before any court, governmental instrumentality or other agency or regulatory authority, pending against WINDSTREAM, to the best of WINDSTREAM's knowledge, threatened in writing against (a) the Premises and/or the Project, (b) WINDSTREAM, or (c) any other person, entity or property with respect to the Premises and/or the Project which would have a material adverse effect on WINDSTREAM's development of the Premises for the Project, the use and

occupancy of the Premises or the Project or which questions the validity of this Agreement or the transactions contemplated hereby.

3. WINDSTREAM will cooperate with the City in implementing this Agreement, and shall promptly commence and diligently proceed to complete as quickly as possible all steps and take all affirmative actions necessary, or which may be necessary, and appropriate for the implementation of this Agreement.

4. To the best of its knowledge, the execution, delivery, performance or observance by WINDSTREAM of this Agreement will not violate or contravene any provisions of (a) any Federal, state or local law, (b) any order or decree of any court, governmental authority, bureau or agency, or (c) any mortgage, indenture, security agreement, contract, document undertaking or other agreement or instrument to which WINDSTREAM is a party or is binding upon it or any of its property or assets.

5. WINDSTREAM has all requisite power, right and legal authority to execute, deliver and perform its obligations under this Agreement and has taken all action necessary to authorize the execution and delivery of, and the performance and observance of its obligations under this Agreement. This Agreement, when executed and delivered, will constitute a legal, valid and binding obligation of WINDSTREAM enforceable against WINDSTREAM in accordance with its terms, without the joinder of any party.

SECTION 9. CONDEMNATION

In the event that either the Garages, or any part of thereof shall be taken in condemnation proceeding or by exercise of any right of eminent domain, the City shall be entitled to the full amount of any condemnation award regarding its fee interest in the Garages. WINDSTREAM shall not be entitled to any portion of any condemnation award for fee interest because of this Agreement. In no event shall this Agreement be termed, deemed or considered a leasehold interest.

SECTION 10. OPERATING AGREEMENT

The parties acknowledge that it is the normal practice of the City to retain an independent operator to manage and operate the Garages, pursuant to an operating agreement. The terms of any such operating agreement executed subsequent to the execution of this Agreement shall be consistent with the terms of this Agreement.

SECTION 11. INDEMNIFICATION

A. WINDSTREAM will defend, indemnify and hold the City harmless against any and all claims, suits, damages or causes of action for damages arising during the term of this Agreement, and against any orders or decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person and/or property or loss of life sustained in or about the Garages by any person or persons whatever, to the extent such damages or alleged damages directly results from or directly arises out of the activities of WINDSTREAM, its agents, employees, contractors, invitees, successors and/or assigns, unless the foregoing results from fraud, misconduct, or an intentional or negligent act or omission of the City or its operator pursuant to Section 10 hereof. The foregoing indemnities shall apply irrespective of the application of any rule of comparative or apportioned liability. These indemnities shall survive the expiration of the term of this Agreement.

B. The City shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Garages, or to any property belonging to WINDSTREAM or any other person which may arise from any other cause whatsoever, unless the foregoing results from the fraud, misconduct, or an intentional or negligent act or omission of the City.

SECTION 12. UNUSABLE FOR PARKING

A. The City may permanently close all or a substantial portion of any of the Garages prior to the termination of this Agreement for safety reasons, if licensed professional engineers certify the safety reasons exist and the City determines that it is economically or practically infeasible to restore the applicable garage, or portion thereof, to a safe condition, or if the City of Rochester in its governmental capacity orders such closure. Such closure shall also be deemed a determination that the applicable garage is "unusable for parking" as this phrase is used in this Agreement.

SECTION 13. DESTRUCTION

A. If, during the term of this Agreement, either of the Garages shall be destroyed or damaged in whole or in part by fire or other cause, the City shall give WINDSTREAM immediate notice thereof. If practically and economically feasible, based on the type and extent of damage, the estimated remaining useful life of the structure, and the availability of insurance proceeds, [this, however, is not a commitment by the City to have insurance or any particular amount of insurance], the City shall promptly, at its own cost and expense,

repair, rebuild, and replace the same, at least to the extent of the value and as nearly as possible to the character of the Garages and the equipment therein existing immediately prior to such occurrence. The City shall give WINDSTREAM written notice within one hundred twenty (120) days of such occurrence whether or not the damage will be repaired.

B. If the damage set forth in subsection A, above is not repaired, it shall be deemed a determination that the Garages are "unusable for parking" as this phrase is used in this Agreement.

SECTION 14. NOTICES

Any notice, demand or request required or agreed to be given under this Agreement by either party shall be sufficiently given or served if in writing and signed by the party giving it and either (a) personally delivered (including delivery by an overnight express delivery service if a receipt is obtained) or (b) mailed by certified mail, return receipt requested, addressed to the party to be notified as follows:

CITY: Director of Finance
City of Rochester
City Hall, Room 108A
30 Church Street
Rochester, New York 14614

WITH A COPY TO: Corporation Counsel
City of Rochester – Department of Law
City Hall, Room 400A
30 Church Street
Rochester, New York 14614

TO WINDSTREAM: Windstream Communications, Inc.
4001 Rodney Parham Road
Little Rock, Arkansas 72212
Attention: Corporate Real Estate Department

WITH A COPY TO: Windstream Communications, Inc.
4001 Rodney Parham Road
Little Rock, Arkansas 72212
Attention: Legal Department

or to such other address as the City and/or WINDSTREAM may from time to time designate by giving notice thereof in writing. Service shall be complete upon

such mailing except in case of a notice to change an address in which case service shall be complete when the notice is received by the addressee.

SECTION 15. INDEPENDENT CONTRACTORS

Nothing contained in this Agreement shall be construed to make Seller and WINDSTREAM partners or joint ventures or to render either of said parties liable for the debts or obligations of the other, except as in this Agreement expressly provided.

SECTION 16. WAIVERS

No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

SECTION 17. REMEDIES CUMULATIVE.

All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.

SECTION 18. MODIFICATIONS.

Any alteration, change or modification hereof, in order to become effective, shall be made by written instrument or endorsed hereon and, in each such instance, executed on behalf of each party.

SECTION 19. PARTIAL INVALIDITY.

If any provisions of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 20. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

SECTION 21. FURTHER ACTS.

Each party covenants and agrees that it will at any time and from time to time do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, documents and instruments as may reasonably be required by the other party in order to carry out fully and effectuate the transactions herein contemplated.

SECTION 22. SECTION HEADINGS, SCHEDULE OF DEFINITIONS AND EXHIBITS.

The section headings in this Agreement are for convenience and for reference only and in no way define or limit the scope or contents of this Agreement or in any way affect its provisions. Unless otherwise set forth, references in this Agreement to sections and subsections shall mean the sections and subsections of this Agreement. All exhibits attached hereto are hereby made a part of this Agreement.

SECTION 23. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

SECTION 24. ENTIRE CONTRACT

This Agreement embodies the entire agreement between the parties hereto and may be amended only by a document in writing signed by the parties hereto and properly acknowledged.

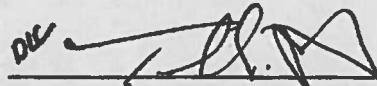
SECTION 25. APPLICABLE LAW

This agreement shall be governed by the laws of the State of New York. Any action or proceeding regarding this agreement shall be brought in the Supreme Court of New York State, in the Seventh Judicial District.

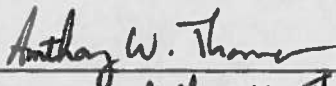
[Intentional End of Page – Signature Page Follow Immediately Hereafter]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF ROCHESTER

By: 
Name: Thomas S. Richards
Title: Mayor

WINDSTREAM COMMUNICATIONS, INC.

By: 
Name: Anthony W. Thomas
Title: C.F.O.

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

On the 8th day of July in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas S. Richards, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Angela Sorber
Notary Public

ANGELA SORBER
Notary Public, State of New York
Monroe County
Registration # 01SO4888920
Commission Expires April 6, 2015

STATE OF NEW YORK) Arkansas
COUNTY OF MONROE) ss:
Pulaski

On the 25th day of June in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared Anthony W. Thomas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lee E. Wiley
Notary Public

