

## **AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY**

**THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY** (the "Agreement") is entered by and between the City of Broken Arrow, Oklahoma (the "City"), and Valor Telecommunications of Oklahoma, an Oklahoma limited liability company (together with its successors and assigns, "Seller"). The effective date of this Contract is September 19, 2017 (the "Effective Date").

### **RECITALS**

**WHEREAS**, the City approached the Seller with a proposal to purchase an approximate 11.336 acres of real property and improvements owned by the Seller, located at 2300 South 1<sup>st</sup> Street, Broken Arrow, Oklahoma, legally described as a parcel of land situated in the NE ¼ SW1/4 of Section 23, Township 18 N, Range 14 East, Indian Meridian, Tulsa County, Oklahoma (the "Real Property") for purposes of constructing a multibuilding for warehouse and office space; and

**WHEREAS**, the property consists of (per appraisal) 11.336 acres with a single user office-warehouse fenced complex of three buildings totally 25,792 combined square feet with significant concrete and asphalt paving. (Assessor's Parcel Number is 98423-84-23-32510); and

**WHEREAS**, the Seller has agreed to sell the Real Property identified; and

**WHEREAS**, both the City and the Seller have determined that the \$1,080,000.00 purchase price is reasonable, and is supported by a fair market value appraisal of the Real Property obtained by the City; and

**WHEREAS**, upon the terms and conditions set forth herein, Seller desires to sell and the City agrees to purchase the Real Property; and

**WHEREAS**, the City deems it appropriate to approve the execution and delivery of this Agreement and determine such actions are in the best interests of the City and the health, safety and welfare of the City and residents within and near the City; and

**NOW, THEREFORE**, in consideration of the promises and the mutual terms, covenants and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Seller and the City hereby covenant and agree as follows:

### **AGREEMENT**

1. **Purchase and Sale:** Seller agrees to sell and convey by General Warranty Deed and the City Agrees to accept such Deed and purchase the Real Property on the terms and conditions contained in this Agreement.
2. **Purchase Price and Earnest Money:** The purchase price for the Real Property is \$1,080,000.00 (the "Purchase Price"). The City shall deposit partial payment of the Purchase Price in the amount of \$50,000.00 (the "Earnest Money") into the escrow account maintained by

Commercial Title & Escrow Services, Inc., 4739 E. 91<sup>st</sup> Street, Suite 200, Tulsa, Oklahoma 74137 (the "Closing Company") within three (3) days of the Effective Date of this Agreement. The balance of the Purchase Price will be paid at the closing of this Agreement (the "Closing"). The Deposit will be credited to the Purchase Price at closing. The Deposit shall be fully refundable in the event Purchaser terminates this Agreement prior to the expiration of the Due Diligence Period. If the Agreement is not cancelled (or Purchaser has waived all conditions to purchase), prior to the expiration of the Due Diligence Period, then the Deposit will become non-refundable in accordance with the terms thereof.

3. **Due Diligence/ Inspections in General:** The Seller shall grant the City and its agents and employees thirty (30) days from the date of the execution of the Agreement, the right to enter upon the Real Property for the purpose of making inspections as to title and any physical, environmental or governmental conditions necessary for the City's intent to use the property. All of such entries upon the Real Property shall be at reasonable times during normal business hours. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by the City relating to such inspections and their other due diligence shall be at its sole cost and expense. If any inspection or test disturbs the Real Property, the City will restore the real property to the same condition as existed before the inspection or test.

4. **Title/Survey Review:** Title and Survey Delivery, Review and Cure and Title Insurance shall be addressed as follows:

4.1 **Delivery of Title/Survey:** Seller shall deliver to the City no later than thirty (30) days after the Date of this Agreement, a current ALTA owner's title commitment from the Title Company and copies of all exceptions to title shown thereon ("Title Report") which shall include each easement or private road (if any) providing access to the Real Property. Seller shall obtain a current ALTA survey of the Real Property and any offsite easements (if any) providing access to the Real Property addressed to the City and as it directs ("Survey") and deliver same to the City no later than thirty (30) days after the Date of this Agreement. The City shall reimburse the Seller for the cost of the ALTA Survey.

4.2 **Title/Survey Review and Cure:** The City shall review title to the Real Property as disclosed by the Title Report and Survey upon receipt of same. The City shall notify Seller in writing of any title/survey objections no later than ten (10) business days after the City's receipt of the last of the Title Report and Survey. If the Title Company revises any Title Report to add or modify exceptions or requirements that affect title to the Real Property, the City may object to such matter by notice to Seller within ten (10) business days after such revised Title Report is delivered to the City. Seller shall cure all title objections by the Closing Date. If Seller cannot cure any of the title or Survey objections by the Closing Date, or fails to cure any such objection within fifteen (15) days following the City's notice of objections, it shall so notify the City in writing and then the City may either terminate this Agreement by written notice to Seller given on or before five (5) business days after receipt of such notice in which case the Earnest Money shall be refunded immediately to the City. The City may waive such objections, in which event the Closing shall occur as contemplated herein and the City shall accept the Real Property subject to such conditions as agreed by the parties.

- 4.3 **Title/Policy:** At Closing, as a condition to the City's obligation to close, the Title Company shall deliver to the City an Owner's Title Insurance Policy (or marked commitment therefore) (the "Title Policy"), issued by the Title Company dated the date and time of recording of the Deed in the amount of the Purchase Price, insuring the City as owner of fee simple title to the Real Property subject to only (a) the standard printed exceptions which shall be set forth in the Title Report; (b) the Permitted Exceptions, and (c) such exceptions to title which the City shall be willing to accept. As used herein, the term "Permitted Exceptions" shall mean easements, rights-of-way and building restrictions of record, if any, which do not adversely affect, impair or impede the City's development of the Real Property for its intended use.

5. **Closing:** Closing shall take within sixty (60) days of the Effective Date of this Agreement, unless extended in writing by Seller and the City (the "Closing Date"). At Closing, the City shall pay the balance of the Purchase Price as set forth in Section 2 of this Agreement and Seller shall convey the Real Property to the City by good and sufficient General Warranty Deed subject only to matters approved by the City pursuant to Section 4 of this Agreement. At the Closing, both parties shall duly execute and deliver all other documents reasonably necessary to consummate the transaction described in this Agreement, including a closing statement setting forth the changes, adjustments and credits to each party.

6. **Breach or Failure to Close:** If Seller has performed its obligations as set forth in this Agreement and the City fails to proceed to Closing in accordance with this Agreement, Seller may declare a breach and retain the Earnest Money as liquidated damages for the City's breach. If the Seller fails to proceed to Closing in accordance with this Agreement, the City may declare a breach and may terminate this Agreement and receive a return of the Earnest Money or may seek any other remedy at law or in equity, including the remedy of specific performance.

7. **The City's Representations and Warranties:** The City hereby represents and warrants to the Seller that:

- (i) **Organization Standing:** That the City is an Oklahoma corporation in good standing and has the requisite power to enter into this Agreement and consummate the transactions contemplated hereunder.
- (ii) **Authorization:** That the execution, delivery and performance of this Agreement and related documents, and the consummation by the City of the transactions contemplated hereby, have been duly and validly authorized by all necessary corporate action, and upon the closing of the transactions contemplated under this Agreement, it agrees to provide to the Seller appropriate evidence thereof.
- (iii) **Compliance with Laws.** That the City is in material compliance with all applicable laws, ordinances, statutes, rules, regulations and orders promulgated by any federal, state or local governmental body or agency having jurisdiction thereover and relating to its business.

- (iv) **Litigation.** There is no suit, action or any arbitration, administrative, legal or other proceeding of any kind or character, or any governmental investigation pending or threatened against it.

The above and foregoing representations and warranties shall also be deemed in full force and effect from the effective date of this Agreement through and including the Closing Date of the City's purchase of the Real Property. In addition, the Seller shall furnish to the City on its execution and delivery of this Agreement and on the Closing Date appropriate evidence of corporate good standing, due authorization of all actions then being taken and an opinion of its legal counsel (the form and substance of which shall be reasonably acceptable to the City), to the effects set forth in clauses (i) through (iv) next above and as to the validity, binding effect and enforceability of the action then being taken.

8. **Seller's Representations and Warranties:** Seller hereby represents and warrants to the City that:

- (i) **Organization Standing:** That Seller is an Oklahoma Limited Liability Company and has the requisite power to enter into this Agreement and consummate the transactions contemplated hereunder.
- (ii) **Authorization:** That the execution, delivery and performance of this Agreement and related documents, and the consummation by Seller of the transactions contemplated hereby, have been duly and validly authorized by all necessary action, and upon the closing of the transactions contemplated under this Agreement, it agrees to provide to the City appropriate evidence thereof.
- (iii) **Compliance with Laws.** That Seller is in material compliance with all applicable laws, ordinances, statutes, rules, regulations and orders promulgated by any federal, state or local governmental body or agency having jurisdiction thereover and relating to its business.
- (iv) **Litigation.** There is no suit, action or any arbitration, administrative, legal or other proceeding of any kind or character, or any governmental investigation pending or threatened against it.
- (v) **Taxes.** That the Seller has duly filed all tax returns required to be filed and has duly paid all taxes (including, but not limited to, *ad valorem*, franchise, income, property, sales, social security, use, value added and withholding taxes) relating to its business operations which are due or claimed to be due by federal, state, or local taxing authorities.

The above and foregoing representations and warranties shall also be deemed in full force and effect from the effective date of this Agreement through and including the Closing Date of the City's purchase of the Real Property.

9. **Waivers:** No act, delay or omission or course of dealing between the parties hereto will constitute a waiver of their respective rights or remedies under this Agreement. No waiver,

change, modification or discharge of any of the rights and duties of the parties under this Agreement shall be effective unless contained in a written instrument signed by the party sought to be bound.

10. **Title to Real Property and Appurtenances; Covenants to Maintain Status:** Seller has good and marketable title (as defined in the OBA Title Examination Standards which are hereby incorporated by reference) to the Real Property and all buildings, fixtures and appurtenances thereon; Seller covenants and agrees at all times after the execution of this Agreement to: (i) refrain from further alienating or encumbering the Real Property, buildings, fixtures and appurtenances; (ii) maintain and ensure that the Real Property and, if any, all buildings and fixtures thereon and appurtenances thereto are not subject to any mortgage, pledge, line, security interest, encumbrance, restriction, lease or adverse claim or any of the Seller's rights under this Agreement.

11. **Notices:** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by first class mail, postage prepaid; addressed: to the City:

City Manager  
City of Broken Arrow  
P. O. Box 610  
Broken Arrow, Oklahoma 74013

with copies to:

City Attorney  
City of Broken Arrow, Oklahoma  
P. O. Box 610  
Broken Arrow, Oklahoma 74013

and:

Sandra Mohrman  
Staff Manager – Corporate Real Estate  
Windstream  
330 Monroe Avenue  
Rochester, New York 14607

Written notices, given under this Agreement shall be deemed effective as of the earlier of the acknowledged receipt thereof or the 6<sup>th</sup> business day following their due deposit into the U.S. Mails as provided hereinabove.

12. **Assignment:** This Agreement shall be binding upon the parties hereto, their respective heirs, successors and assigns, but shall not be assigned by any party hereto without the written consent of the other party. The parties agree that written consent shall not be unreasonably withheld.

13. **Headings:** The headings contained in this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
14. **Choice of Law:** This Option shall be governed, construed and interpreted in accordance with the laws of the State of Oklahoma. Tulsa County shall serve as exclusive venue as it is the situs of The Real Property.
15. **Covenants and Conditions:** The obligations, duties, covenants, conditions, representations and warranties contained in this Agreement shall survive the execution hereof.
16. **Conflicts:** This Agreement is a final expression of the intent of the Parties and shall be modified only by and written instrument to duly executed by both parties hereto.
17. **Binding Effect and Special Conditions:** This Agreement and the terms, covenants and provisions hereof shall insure to the benefit of and be binding upon the successors and permitted assigns of both parties hereto.
18. **Counterparts:** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one instrument.
19. **Severability:** If any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal and unenforceable under applicable law, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The remaining provisions of this Agreement shall be given effect to the maximum extent then permitted by law.
20. **Forbearance and Waiver:** Failure to pursue any legal or equitable remedy or right available to a party hereto shall not constitute a waiver of such right, nor shall any such forbearance, failure or actual waiver imply or constitute waiver of subsequent default or breach. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such provisions.

APPROVED AS TO FORM:

CITY OF BROKEN ARROW

\_\_\_\_\_  
Kim Slinkard  
Assistant City Attorney

\_\_\_\_\_  
Craig Thurmond, Mayor  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

VALOR TELECOMMUNICATIONS, LLC

  
\_\_\_\_\_

Printed ROBERT E GUNDERMAN

Its CEO Date: 8-13-17