

File No. 170757

Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date July 20, 2017

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Linda Wong Date July 13, 2017
Completed by: Linda Wong Date _____

1 [Real Property Lease - American Towers LLC - Communications Services Facilities on San
2 Bruno Mountain in Daly City - \$22,800 Total Annual Initial Year Base Rent]

3 **Resolution authorizing the General Manager of the San Francisco Public Utilities**
4 **Commission to enter into a communications site lease with American Towers LLC, as**
5 **Landlord, for installation and maintenance of new microwave communications**
6 **antennas, radio communications, and other general telecommunications facilities**
7 **located at 300 Radio Road, in Daly City, San Mateo County, for an initial term of seven**
8 **years with three additional renewal periods of five years, each at an initial rent of**
9 **approximately \$22,800 with four percent annual rent increases.**

10
11 WHEREAS, American Towers LLC owns certain real property and facilities designated
12 as Tower 3, located at Tower Facility, 300 Radio Road, in Daly City, California ("Premises");
13 the Premises include a number of other communications facilities licensed to other parties by
14 American Towers LLC; and

15 WHEREAS, The San Francisco Public Utilities Commission ("SFPUC") wishes to
16 connect its in-City Microwave Network to facilities on the San Francisco Peninsula and to
17 complete a path for communications to Hetch Hetchy Water and Power facilities in Moccasin,
18 California, including critical facilities in between these locations; and

19 WHEREAS, The expanded Microwave Network will enhance the coverage and
20 reliability of the SFPUC's data and voice communications, including Supervisory Control and
21 Data Acquisition (SCADA) and security, and provide a redundant path to mission-critical
22 SFPUC water supply and power facilities; and

23 WHEREAS, The Premises, located on San Bruno Mountain in Daly City, are uniquely
24 situated as a Microwave Repeater site between the SFPUC's existing sites at 525 Golden
25 Gate Avenue in San Francisco and the Harry Tracy Water Treatment Plant in San Bruno; and

1 WHEREAS, The SFPUC desires to enter into a lease to install, maintain, and operate
2 SFPUC microwave communications antennas, radio communication, and other general
3 telecommunications equipment ("Permitted Use") on the Premises for a term of seven years
4 with three additional renewal periods of five years each, at an initial annual rent of \$22,800
5 with four percent annual increases ("Lease"); and

6 WHEREAS, American Towers LLC desires to enter into the Lease, allowing the
7 SFPUC to use the Premises for the Permitted Use; and

8 WHEREAS, Entering into this Lease does not constitute a project under the California
9 Environmental Quality Act ("CEQA") Guidelines Section 15378 because activities authorized
10 by the Lease will not result in a direct or indirect physical change in the environment; and

11 WHEREAS, On June 13, 2017, the SFPUC, by its Resolution No. 17-0144, authorized
12 the General Manager to execute the Lease, subject to approval by the Board of Supervisors,
13 and authorized the General Manager to submit the Lease for consideration by the Board of
14 Supervisors under Charter, Section 9.118; and

15 WHEREAS, Charter, Section 9.118(c) requires the Board of Supervisors approval of
16 leases having a term of 10 or more years or anticipated revenues of one million dollars or
17 more; now, therefore, be it

18 RESOLVED, That the Board of Supervisors hereby approves and authorizes the
19 General Manager of the SFPUC to execute the Lease, in substantially the form of such lease
20 on file with the Clerk of the Board of Supervisors in File No. 170757, which is hereby declared
21 to be a part of this Resolution as if set forth fully herein; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
23 Manager of the SFPUC to enter into any future amendments to add additional facilities or
24 expand the Premises to include additional SFPUC communications antennas and equipment,
25 provided that such amendments do not increase the rent under the Lease by more than 20%,

1 and that the General Manager, in consultation with the SFPUC and the City Attorney,
2 determines are in the best interests of the SFPUC and the City; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
4 Manager of the SFPUC to enter into any of the renewal terms, with such renewals at the then
5 current rental rate increased by 4%, then increased 4% each year thereafter, and that the
6 General Manager, in consultation with the SFPUC and the City Attorney, determines are in
7 the best interests of the SFPUC and the City; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
9 Manager of the SFPUC to enter into additional amendments or other modifications to the
10 Lease that do not materially decrease the benefits to the SFPUC or the City, do not materially
11 increase the obligations or liabilities of the SFPUC or the City, and do not authorize the
12 performance of any activities without pursuing all required regulatory and environmental
13 review and approvals, and are necessary or advisable to complete the transactions which the
14 Lease contemplates and effectuates the purpose and intent of this resolution, such
15 determination to be conclusively evidenced by the execution and delivery of any such
16 additions, amendments, or other modifications; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes and urges the
18 SFPUC General Manager and any other appropriate officers, agents or employees of the City
19 to take any and all steps (including, but not limited to, the execution and delivery of any and all
20 certificates, agreements, notices, consents and other instruments or documents), as they or
21 any of them deems necessary or appropriate, in consultation with the City Attorney, in order to
22 consummate the transaction under the Lease in accordance with this resolution, or to
23 otherwise effectuate the purpose and intent of this resolution, such determination to be
24 conclusively evidenced by the execution and delivery by any such person or persons of any
25 such documents; and, be it

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FURTHER RESOLVED, That the Board of Supervisors approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the City with respect to the Lease; and, be it

FURTHER RESOLVED, That within thirty (30) days of the contract being fully executed by all parties, the SFPUC shall provide the final contract to the Clerk of the Board for inclusion into the official file.

<p>Item 1 File 17-0757</p>	<p>Department: Public Utilities Commission (PUC)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolution would approve a communications site license between the San Francisco Public Utilities Commission (SFPUC), as tenant, and American Towers LLC (American Towers), as landlord, in which SFPUC will install and maintain new microwave communications antennas, radio communications, and other general telecommunications facilities located at 300 Radio Road in Daly City, San Mateo County. The proposed license is for a term of seven years from August 1, 2017 through July 31, 2024 with three five-year options to renew the term through July 31, 2039. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • SFPUC currently operates 11 microwave transmission facilities as part of their Microwave Network Backbone for an enhanced radio communications system. SFPUC intends to connect two Microwave Networks, the in-City Microwave Network and the Microwave Network that connects the Peninsula, East Bay, and Hetch Hetchy communications, in order to complete a path for communications between San Francisco facilities to Hetch Hetchy Water and Power facilities in Moccasin, California. • According to Mr. Anthony Bardo, SFPUC’s Assistant Real Estate Director, the property located on San Bruno Mountain at 300 Radio Road in Daly City, San Mateo County is optimally and uniquely geographically situated to locate a Microwave Repeater site to relay microwave signals between SFPUC’s existing microwave transmission sites at 525 Golden Gate Avenue and the Harry Tracy Water Treatment Plant in San Bruno. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • The proposed license provides for annual rent of \$22,800 or \$1,900 per month payable by SFPUC to American Towers, increasing by 4 percent each subsequent year of the license term and renewal options. Over the 22-year license term which includes the three five-year renewal options, SFPUC will pay American Towers total rent of \$780,854 for use of the site for SFPUC’s installation and maintenance of new microwave communications antennas, radio communications, and other general telecommunications facilities. • In addition, SFPUC will pay for electrical usage, estimated to cost approximately \$1,020 per year for use of up to 186 kWh per month. SFPUC will also pay up to \$1,900 per year for its share of any common area expenses incurred for installation, operation, maintenance and repair of the tower facility. 	
<p style="text-align: center;">Recommendations</p>	
<ul style="list-style-type: none"> • Amend the proposed resolution to revise any language using the incorrect term of “lease” to the correct term of “license”. • Approve the proposed resolution, as amended. 	

MANDATE STATEMENT

City Administrative Code 23.27 states that any lease with a term of one year or longer or with rent of \$5,000 or more and where the City is the tenant is subject to Board of Supervisors approval.

BACKGROUND

The San Francisco Public Utilities Commission (SFPUC) currently operates 11 microwave transmission facilities¹ as part of their Microwave Network Backbone² for an enhanced radio communications system. SFPUC intends to connect two Microwave Networks, the in-City Microwave Network and the Microwave Network that connects the Peninsula, East Bay, and Hetch Hetchy communications, in order to complete a path for communications between San Francisco facilities to Hetch Hetchy Water and Power facilities in Moccasin, California. The expanded Microwave Network will enhance the coverage and reliability of SFPUC's data and voice communications, including Supervisory Control and Data Acquisition (SCADA)³ and Security Network.

According to Mr. Anthony Bardo, SFPUC's Assistant Real Estate Director, the property located on San Bruno Mountain at 300 Radio Road in Daly City, San Mateo County is optimally and uniquely geographically situated to locate a Microwave Repeater⁴ site to relay microwave signals between SFPUC's existing microwave transmission sites at 525 Golden Gate Avenue and the Harry Tracy Water Treatment Plant in San Bruno. In addition, Mr. Bardo states that the establishment of a radio site on San Bruno Mountain is critical in order to provide an alternative wireless communications path to the existing land-based⁵ data communications network during a catastrophic event, such as an earthquake. This would ensure that communications between SFPUC's City headquarters at 525 Golden Gate Avenue and the regional water system are not disrupted.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a communications site license between the San Francisco Public Utilities Commission (SFPUC), as tenant, and American Towers LLC (American

¹ The 11 facilities include: 1) 525 Golden Gate Avenue in San Francisco, 2) Twin Peaks in San Francisco, 3) H. Tracy Water Treatment Plant in San Bruno in San Mateo County, 4) Mt. Allison site in Alameda County, 5) Livermore Hills site in Alameda County, 6) Pelican Crossover site in San Joaquin County, 7) San Joaquin Valve House site in San Joaquin County, 8) TriStar Modesto site in Stanislaus County, 9) Roselle Crossover site in Stanislaus County, 10) Warnerville Substation site in Stanislaus County, and 11) Moccasin Peak in Moccasin, Tuolumne County

² A Microwave Network Backbone is the wireless path that carries the highest amount of data traffic between the main sites of the Microwave Network that transmits information via microwave radio waves.

³ SCADA is a category of software application program for process control, the gathering of data in real time from remote locations in order to control equipment and conditions.

⁴ A Microwave Repeater is used to extend the range of radio transmissions. It receives a low strength signal and re-transmits and re-directs it at a higher power.

⁵ The SFPUC currently uses landlines for data communications between 525 Golden Gate Avenue and other in-City facilities, as well as facilities outside the City.

Towers), as landlord, in which SFPUC will install and maintain new microwave communications antennas, radio communications, and other general telecommunications facilities located at 300 Radio Road in Daly City, San Mateo County. The proposed license is for a term of seven years from August 1, 2017 through July 31, 2024 with three five-year options to renew the term through July 31, 2039.

Table 1 below summarizes the key license provisions.

Table 1: Summary of Key License Provisions

Premises	One 40 foot Emergency Telecommunications Tower with up to 16 total antenna and related equipment on approximately 859 square feet. Licensed area is not to exceed 2,500 square feet.
License Term	August 1, 2017 to July 31, 2024 (7 years)
Options to Extend	Three options to renew of five years each (15 years)
Annual License Fee Payable by SFPUC to American Towers	\$22,800 per year (\$1,900 per month)
Annual License Fee Increases	Annual increases of 4 percent
Tenant Improvement Allowance	None. No Tenant Improvements required.
Utilities and Services	SFPUC to pay for electrical usage at the rate of \$85 per month for use of up to 186 kWh \$1,020 per year
Common Area Expenses	SFPUC to pay up to \$1,900 per year on common area expenses incurred for installation, operation, maintenance and repair of the tower facility ⁶
Application Fee Payable by SFPUC to American Towers	One-time non-refundable fee of \$1,000

Amendment to Proposed Resolution

The proposed resolution should be amended to revise any language using the incorrect term of “lease” to the correct term of “license”. According to Ms. Rosanna Russell, SFPUC Real Estate Director, a lease is an agreement in which the landlord agrees to give the tenant the exclusive right to occupy real property, usually for a specific term and, in exchange, the tenant agrees to

⁶ This includes, but is not limited to, expenses related to the construction, maintenance and repair of a common septic system and field, insurance, common utilities and other costs of operating and maintaining the facility.

pay rent to the landlord. A lease typically transfers to the tenant an exclusive interest in the real property and, unless otherwise provided in the lease, a lease is transferable and irrevocable during the lease term. A revocable license, on the other hand, gives the permission of the owner to an individual or an entity to use real property for a specific purpose. Unlike a lease, it typically does not transfer an exclusive interest in the real property to the licensee, and the licensor may issue other licenses for the use of the same premises to other parties. It is typically personal to the licensee and often the license provides that any attempt by the licensee to transfer the license terminates it.

FISCAL IMPACT

The proposed license provides for annual rent of \$22,800 or \$1,900 per month payable by SFPUC to American Towers, increasing by 4 percent each subsequent year of the license term and renewal options. Over the 22-year license term which includes the three five-year renewal options, SFPUC will pay American Towers total rent of \$780,854 for use of the site for SFPUC's installation and maintenance of new microwave communications antennas, radio communications, and other general telecommunications facilities. In addition, SFPUC will pay for electrical usage, estimated to cost approximately \$1,020 per year for use of up to 186 kWh per month. SFPUC will also pay up to \$1,900 per year for its share of any common area expenses incurred for installation, operation, maintenance and repair of the tower facility.

Upon execution of the proposed license, SFPUC must pay a non-refundable, one-time application fee of \$1,000 to American Towers for preparation of the license and related documents.

According to Mr. Bardo, there are no similar communications facilities given the uniqueness of the San Bruno site; therefore there are no comparable estimates. However, Mr. Bardo stated that SFPUC determined that the monthly fee is fair in light of the fact that SFPUC, as landlord, charges its communications tenants located in the Peninsula Watershed and San Mateo County a minimum of \$4,500 per month for space on its communications towers. In addition, the annual license fee increase of 4 percent per year reflects the standard amount applied to all SFPUC real estate leases and licenses since 2011 to cover the risk of inflation during the license term.

The source of funds is Hetch Hetchy Water Enterprise.

RECOMMENDATIONS

1. Amend the proposed resolution to revise any language using the incorrect term of "lease" to the correct term of "license".
2. Approve the proposed resolution, as amended.

LICENSE AGREEMENT

ATC Contract No: _____

This LICENSE AGREEMENT ("**Agreement**") is entered into as of the ___ day of _____, 20___ ("**Effective Date**") by and between American Towers LLC, a Delaware limited liability company, with a place of business at 10 Presidential Way, Woburn, MA 01801 ("**Licensor**"), and the City and County of San Francisco, a municipal corporation ("**Licensee**"), acting by and through its Public Utilities Commission ("**SFPUC**"), with a place of business at 525 Golden Gate Avenue, 13th Floor, San Francisco, CA 94102, as more particularly described in Section 18.

I. TOWER FACILITY INFORMATION:

Site Name: SAN BRUNO MOUNTAIN (TOWER 3)

Site Number: 8244

Address and/or location of Tower Facility: 300 Radio Road, Daly City, CA, 94014-2867

Tower Facility Coordinates: Lat. 37-41-20.780016 N Long. 122-26-15.27 W

II. NOTICE & EMERGENCY CONTACTS:

- Licensee's local emergency contact (name and number): Tom Reid (925) 642-7294.
- Licensor's local emergency contact: Network Operations Communications Center (800) 830-3365.
- Notices to Licensee shall be sent to the addresses set forth in Section 18.
- Notices to Licensor shall be sent to the address set forth in Section 18.
- Licensor's Remittance Address: American Tower Corporation, Lockbox 7501, P.O. Box 7247, Philadelphia, PA 19170-7501; all payments shall include a reference to the Site Name and Site Number as identified above in Section I.

III. PERMITTED USE OF TOWER FACILITY BY LICENSEE:

Transmitting and Receiving frequencies: See Exhibit A for specific frequencies

Antenna mount height on tower: See Exhibit A for specific location

All other permitted uses of the Tower Facility including Licensee's Approved Equipment, and the Licensed Space are further described in section 4 of this Agreement and Exhibits A and B attached hereto.

IV. FEES & TERM

Monthly License Fee: One Thousand Nine Hundred and 00/100 Dollars (\$1,900.00), increased by the Annual Escalator on the first anniversary of the Commencement Date of this Agreement and each anniversary of the Commencement Date thereafter during the Term (as defined in Appendix I).

The Annual Escalator is four percent (4%).

Application Fee: \$1,000.00. The Parties hereby acknowledge that the Application Fee became due and payable upon submission of Licensee's Application, is nonrefundable and was earned in full by Licensor upon receipt of such Application (all references to "Application" made herein are to the then-current application form issued by Licensor).

Relocation Application Fee: \$0.00

Site Inspection Fee: N/A.

Initial Term: A period of seven (7) years beginning on the Commencement Date. The "Commencement Date" shall be the earlier of the date of Licensor's issuance of NTP or August 1, 2017.

Renewal Terms: Three additional periods of five years each, subject to the terms of Section 6 (b).

Connection Fee (as described in Section 5(b)): \$0.00

Electricity for operation of Approved Equipment is to be provided by (check one):

Licensor, with the cost of such electricity to be paid by Licensee at the initial rate of \$85.00 per month for use of up to 186 kWh ("Utility Fee") subject adjustment pursuant to Section 5(b), OR

Licensee, at its sole expense.

V. TERMS & CONDITIONS

The attached terms and conditions are incorporated herein by this reference.

VI. OTHER PROVISIONS:

Other provisions: (check one): None As listed below

- A. Parties agree that Licensee is a Government User pursuant to Section 11 (e) (iii) of the Agreement, entitled to five (5) business days' prior written notice from Licensor under Section 11(e)(i).
- B. Notwithstanding anything to the contrary in this Agreement, the offer expressed to Licensee in this Agreement shall automatically become null and void with no further obligation by either Party hereto if a structural analysis of the Tower Facility completed after the execution of this Agreement by Licensor but before the commencement of the installation of Licensee's Approved Equipment indicates that the Tower Facility is not suitable for Licensee's Approved Equipment unless Licensor and Licensee mutually agree that structural modifications or repairs shall be made to the Tower Facility on mutually agreeable terms.
- C. In no event shall Licensee's use of the Tower Facility, or operation of any of its equipment thereon, be conducted in a manner that interferes with Licensor's lighting system located on any of the towers, building systems, or, in the event that Licensee's equipment is installed on the rooftop of a building, with equipment of any kind used by building tenants who are not tenants of the Licensor. In the event that such interference does occur, Licensee shall be solely responsible to reimburse Licensor for any and all costs required to modify and/or upgrade Licensor's lighting system, to comply with all necessary FAA/FCC regulations, as a result of said interference.
- D. Notwithstanding anything to the contrary contained in Section 7, in no event shall the amount payable by Licensee on account of Common Expenses for any calendar year during the Term of this Agreement exceed an amount equal to one twelfth (1/12) of the total aggregate Monthly License Fee payable for the applicable calendar year (the "Common Expense Cap"), provided, however, if, pursuant to the provisions of this sentence, any portion of Licensee's pro-rata share of Common Expenses is excluded from the amount payable by Licensee for any calendar year, such amount shall accrue and shall be included in the amount payable by Licensee with respect to the next succeeding calendar year and each succeeding calendar year during the Term thereafter, subject to the Common Expense Cap for such calendar year. Such accrual shall continue until the date which is the earlier of (i) the date Licensee shall

have fully paid Licensee's pro-rata share of all Common Expenses for each calendar year of the Term, or (ii) the expiration of the term of this Agreement. Upon the expiration or early termination of this Agreement, any accrued amount of Licensee's pro-rata share of Common Expenses in excess of that calendar year's share shall not be due or made payable by Licensee.

- E. Licensor and Licensee agree and acknowledge that Licensee shall be responsible for painting the transmission lines as directed by Licensor in accordance with FAA/FCC regulations.

The attached Terms and Conditions, including the exhibits and appendices listed below, are incorporated into and made a part of this Agreement:

Exhibit A	List of Approved Equipment and Location of the Licensed Space
Exhibit B	Site Drawing Indicating the location of Ground Space for Licensee's equipment shelter or space in Licensor's building (as applicable)
Exhibit C	As-Built Drawings or Construction Drawings
Appendix I	Defined Terms
Appendix II	Insurance
Appendix III	Additional Terms

[Signatures appear on next page]

IN WITNESS WHEREOF, each Party in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, has caused this Agreement to be executed by its duly authorized representative as of the date and year written below; *provided, however,* that this Agreement shall not become effective as to either Party until executed by both Parties.

LICENSOR

American Towers LLC, a Delaware
limited liability company

By: _____

Print Name: _____

Its: _____

Date: _____

LICENSEE

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

Print Name: Harlan L. Kelly, Jr.
General Manager,
San Francisco Public Utilities Commission

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Carolyn Johnson Stein
Deputy City Attorney

TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms defined in the body of this Agreement are indexed by location on Appendix I attached hereto. Capitalized terms used in Agreement but not defined herein are defined in Appendix I.
2. **GRANT OF LICENSE.** Subject to the terms of this Agreement, Licensor hereby grants Licensee a non-exclusive license to install, maintain and operate the Approved Equipment at the Licensed Space. All Approved Equipment shall be and remain Licensee's personal property throughout the Term of this Agreement. Licensor shall maintain the Tower Facility in good order and repair, ordinary wear and tear damage by fire, the elements or other casualty excepted. In no event shall Licensee's license as granted herein include rights to use the air space above the Approved Equipment, and Licensor reserves the right to install, construct and/or operate additional improvements or equipment of Licensor or others above Licensee's Approved Equipment, including Licensee's shelter (commonly referred to as "stacking"), provided that such additional improvements or equipment do not materially and adversely interfere with the access to or operation of the Approved Equipment, including Licensee's shelter. Licensee is not required to utilize a stackable shelter, provided that, if Licensee opts to install a shelter that is not stackable and if Licensor receives an offer to license the air space above Licensee's non-stackable shelter by a proposed subsequent user, Licensor may, at its election, upon 30 days prior written notice require Licensee to replace such non-stackable shelter with a stackable shelter of a comparable size, provided that the proposed subsequent user agrees in writing to be wholly responsible for the cost of Licensee's shelter replacement. Subject to any limitations contained in the Ground Lease, Licensor grants Licensee a right of access to the Tower Facility 24 hours per day, 7 days per week during the Term. Licensor grants Licensee a designated location for the installation of Licensee's utilities over, under or across the Tower Facility (collectively, "**Easement**"). Licensee shall be responsible for any and all Damage or loss that results from the installation of any cables or utility wires by Licensee or any company or person retained by Licensee (including a public utility company), including, without limitation, any damage or loss that results from the accidental cutting of utility wires or cables of any other party operating at the Tower Facility. Licensor shall provide Licensee with one set of keys and/or codes to access the Tower Facility. Licensee shall be responsible for ensuring that Licensor has, at all times, a complete and accurate written list of all employees and agents of Licensee who have been provided the keys or access codes to the Tower Facility. Licensor shall have the right to continue to occupy the Tower Facility and to grant rights to others to the Tower Facility in its sole discretion. Licensee shall have no property rights or interest in the Tower Facility or the Easement by virtue of this Agreement. If Licensor's right to license space on the Tower Facility to Licensee is subject to a right of first refusal for the benefit of a third party, and if such third party exercises its right of first refusal prior to the Commencement Date, Licensor may terminate this Agreement upon written notice to Licensee.
3. **EXHIBITS.** Within 45 days following the commencement of the installation of the Approved Equipment, Licensee shall provide Licensor with as-built or construction drawings showing the Approved Equipment as installed [in both hard copy and electronic form] ("**Construction Drawings**"); such Construction Drawings shall include the location of any shelters, cabinets, grounding rings, cables, and utility lines associated with Licensee's use of the Tower Facility. Upon receipt, Licensor shall attach hereto the Construction Drawings as Exhibit C. In the event that Licensee fails to deliver the Construction Drawings as required by this section, Licensor may cause such Construction Drawings to be prepared on behalf of Licensee and Licensor shall assess a fee for such Construction Drawings in an amount equal to 100% of the actual cost of obtaining the Construction Drawings including in-house labor, which upon invoicing shall become immediately due and payable by Licensee within 30 days. In the event of inconsistency or

discrepancy between (a) Exhibit A and Exhibit B hereto, Exhibit A shall govern, and (b) between Exhibit A (with respect to Approved Equipment and antenna locations) together with Exhibit B (with respect to Ground Space installation locations) and Exhibit C hereto, Exhibits A and B shall govern, notwithstanding any approval or signature by Licensor or its Agents. Licensee hereby acknowledges and agrees that installation of the Approved Equipment must be in strict accordance with the approved Construction Drawings and Exhibit A and B. Notwithstanding the forgoing, Licensee shall not infer nor shall acceptance of the Construction Drawings by Licensor be deemed to be a representation by Licensor that (i) such Construction Drawings or the plans and specifications described therein are in compliance with federal, state or local laws, ordinances, rules or regulations, (ii) that such installation shall not cause impermissible or unlawful interference, or (iii) that such installation is consistent with Licensee's permitted installation as specifically set forth in Exhibits A and B hereto.

4. **USE.** Subject to the term of the Ground Lease Licensee shall be permitted the nonexclusive right to install, maintain, operate, service, modify and/or replace its Approved Equipment at the Licensed Space, which Approved Equipment shall be utilized for the transmission and reception of wireless voice and data communications signals (such transmission and reception to be solely within the Permitted Frequencies, and, if the Permitted Frequencies include licensed spectrum, within the spectrum licensed to Licensee by the FCC). If as of the Effective Date, Licensee's wireless business consists of a one-way network which requires only that signals be transmitted from the Tower Facility, then notwithstanding the foregoing sentence, Licensee's use of Tower Facility under this Agreement shall be limited to the transmission of wireless voice and data communications signals. Licensee's permitted use with respect to the Licensed Space shall be limited solely to that enumerated in this section, and no person or entity other than Licensee shall have the right to install, maintain or operate its equipment or transmit or receive communications at, or otherwise use, the Licensed Space during the term of this Agreement.

5. LICENSE FEES; TAXES; ASSESSMENTS.

- (a) **Monthly License Fee.** The Monthly License Fee as adjusted by the Annual Escalator, shall be payable monthly in advance on the first day of each calendar month throughout the Term, beginning upon the Commencement Date. If the Commencement Date is not the first day of a calendar month, or if this Agreement ends on a date other than the last day of a calendar month, the Monthly License Fee for any partial month shall be prorated on a daily basis.

(b) **Utilities.**

Licensee agrees to install a sub-meter and/or connect to Licensor's power on or before the Commencement Date. Licensee shall pay the cost of all utility service necessary, including the Utility Fee and Connection Fee, to install, maintain and operate the Approved Equipment. The Utility Fee shall be payable in advance on the first day of each calendar month during the Term beginning upon the Commencement Date. If Licensor determines, in its sole discretion, that Licensee's utility usage has increased over (i) the 186 kWh allowance specified in Section IV [Fees & Term] above, or (ii) any higher allowance set as of the date of the last Utility Fee increase resulting from Licensee's increased utility usage, Licensor may, but is not required, to modify the Utility Fee by an amount equal to Licensor's actual increased costs incurred due to Licensee's increased utility usage above the applicable allowance. If such a modification in the Utility Fee is imposed, Licensor shall notify Licensee in writing of such increase in the Utility Fee and the kWh allowance associated with such fee. Any such change in the Utility Fee resulting from an increase in Licensee's utility usage will take effect with the next payment of the Utility Fee coming due after Licensee's receipt of Licensor's notice. Licensee shall obtain and pay the cost of telephone connections, the installation of which shall be in

compliance with the procedures for installation and maintenance of Approved Equipment set forth herein. Licensee acknowledges that Licensor shall not provide backup power in the event of an interruption in utility service. In the event that (i) Licensee elects to cause its utility service to be separately metered from Licensor's utilities, or (ii) Licensee powers down the Approved Equipment (each, a "Utility Change Event"), and Licensee shall provide not less than thirty (30) days' prior written notice to Licensor of such Utility Change Event together with supporting documentation relating to such Utility Change Event, Licensee shall pay to Licensor the cost of all utility service drawn by Licensee's Approved Equipment from Licensor's meter until Licensee's use of such utilities at the Tower Facility are separately metered or Licensee terminates all use of Licensor's utilities at the Tower Facility. Licensee acknowledges that it shall remain responsible for any utility charges provided for herein prior to Licensor's receipt of a notice of a Utility Change Event, including those incurred following the expiration of this Agreement but prior to the removal of Licensee's Approved Equipment.

(c) **Taxes.**

(i) To the extent permitted by Applicable Law, Licensee shall be responsible for the reporting and payment when due of any tax, including, but not limited to, any property taxes Licensor may be obligated to pay under the Ground Lease, directly related to Licensee's ownership or operation of the Approved Equipment and such reporting and payment shall be made directly to the appropriate tax authorities. Licensee shall reimburse Licensor in full for any taxes assessed against Licensor but attributed to the Approved Equipment within sixty (60) days of Licensor's request for such reimbursement; provided that, upon written request by Licensee within ninety (90) days of receipt of a request for reimbursement, Licensor shall provide Licensee with written statements and/or other supporting documentation evidencing such taxes.

(ii) **Sales; Use and Other Taxes.** To the extent permitted by Applicable Law, Licensor shall be responsible for billing, collecting, reporting, and remitting sales, use and other taxes directly related to any License Fee or other payments received pursuant to this Agreement. To the extent permitted by Applicable Law, Licensee shall be responsible for reimbursing Licensor, within sixty (60) days of Licensor's request for such reimbursement, for all such sales, use and other taxes billed related to any payments received pursuant to this Agreement, but excluding Licensor's business license tax and income taxes; provided that, upon written request by Licensee within ninety (90) days of receipt of a request for reimbursement, Licensor shall provide Licensee with written statements and/or other supporting documentation evidencing such taxes. Licensor shall add to the License Fee or any other payment then due and payable any associated sales, use or other tax, which shall be paid by Licensee at the same time and in the same manner as License Fee or other payment due and payable under this Agreement.

(d) **Federal Use Fees & Assessments.** In the event that a particular Licensed Space is at a Tower Facility located on property which is owned by the Bureau of Land Management ("BLM") or the United States Forest Service ("USFS"), Licensee shall reimburse Licensor for any and all fees or assessments attributable to this Agreement or Licensee's use of the Licensed Space paid by Licensor to the BLM or USFS related to such Tower Facility within 30 days of Licensor's request for such reimbursement. Upon receipt of Licensee's Application, Licensor shall provide Licensee with an estimate of any fees or assessments that will be payable by Licensee pursuant to this paragraph.

(e) **Restrictions on Reimbursement.** Solely for the purposes of determining Licensee's portion of such taxes, fees, assessments or similar expenses as contemplated in this Section 5 or anywhere else in this Agreement, if any such amounts are determined in whole or in part on

the income or profits (aside from gross revenues) attributable to Licensee, Licensor shall provide written notice to Licensee. The Parties shall negotiate a commercially reasonable fixed rate or formula that does not exceed the anticipated amount that would have become due (the "Negotiated Payment"). The agreed to amount of the Negotiated Payment shall be set forth in an amendment to this Agreement and shall be treated as such tax, fee, assessment or similar expense in lieu of the actual amount.

- (f) **Payment Address.** All payments due under this Agreement shall be made to Licensor at Licensor's Remittance Address shown on page 1 of this Agreement or such other address as Licensor may notify Licensee of in writing.
- (g) **No Set-Off.** All payments due under this Agreement shall be due without set-off, notice, counterclaim or demand from Licensor to Licensee.
- (h) **Effect of Partial Payment.** No endorsement or statement on any check or letter accompanying a check for payment of any monies due and payable under the terms of this Agreement shall be deemed an accord and satisfaction, and Licensor may accept such check or payment without prejudice to its right to recover the balance of such monies or to pursue any other remedy provided by law or in this Agreement.

6. TERM.

- (a) **Initial Term.** The Initial Term of this Agreement shall be as specified on page 1.
- (b) **Renewal Term.** The Term of this Agreement may be extended for each of the Renewal Terms as specified on page 1 of this Agreement, provided that at the time of each such renewal, (i) the Ground Lease remains in effect and has not expired or been terminated, (ii) Licensee is not in default hereunder and no condition exists which if left uncured would with the passage of time or the giving of notice result in a default by Licensee hereunder and (iii) the original Licensee identified on page 1 of this Agreement has not assigned, sublicensed, subleased or otherwise transferred any of its rights hereunder. Provided that the foregoing conditions are satisfied, this Agreement shall automatically renew for each successive Renewal Term unless either Party notifies the other in writing of its intention not to renew this Agreement at least 180 days prior to the end of the then existing Term.
- (c) **Holdover Term.** If Licensee fails to remove the Approved Equipment at the expiration of the Term, such failure shall be deemed to extend the terms of this Agreement on a month-to-month basis under the same terms and conditions herein except that (i) unless the Parties agree on a revised Monthly License Fee in writing, a Monthly License Fee shall be due on or before the first day of every calendar month during such month-to-month term in an amount equal to (A) 110% of the Monthly License Fee in effect for the last month of the Term, for the first month of the month-to-month holdover, and (B) 125% of the Monthly License Fee in effect for the last month of the Term, for each month thereafter ("**Holdover Fee**"), such Holdover Fee to escalate annually thereafter on the anniversary of the Commencement Date by an amount equal to 4 4% of the Holdover Fee in effect for the month immediately prior to the month in which escalation takes place, and (ii) the month-to-month extension shall be terminable upon 15 days' prior written notice from either Licensor or Licensee to the other; provided, however, nothing contained herein shall grant Licensee the unilateral right to extend the Term of this Agreement after the expiration of the Term. In addition to the Monthly License Fee payable to Licensor in the event of an extension under this subsection 6(c), Licensee agrees to indemnify and hold Licensor harmless from any Damages arising out of or in connection with the extension, the operation of the Approved Equipment at the Tower Facility and Licensee's

failure to perform all of its obligations under this Agreement at the termination or earlier expiration of this Agreement;

7. LIMITED COMMON EXPENSES. Licensee shall reimburse Licensor for Licensee's pro-rata share of all common expenses (the "Common Expenses") incurred by Licensor in the installation, operation, maintenance and repair of the Tower Facility, including, but not limited to, the construction, maintenance and repair of a common septic system and field, insurance, common utilities and any and all other costs of operating and maintaining the Tower Facility; provided that, upon written request by Licensee within ninety (90) days of receipt of a request for reimbursement, Licensor shall provide Licensee with written statements and/or other reasonably available supporting documentation evidencing such costs. Notwithstanding the foregoing, the cost and expenses associated with any Damage which is directly attributable to the acts or omissions of Licensee or Licensee's contractors shall be borne solely by Licensee, subject to Section 27. Common Expenses shall not include, and Licensee shall not be required to pay any share of costs or expenses incurred to replace the Tower. In the event that Licensee also licenses space within a building or shelter owned by Licensor on the Tower Facility, Licensee shall also reimburse Licensor for its pro-rata share of all Common Expenses incurred for the operation, maintenance, repair and replacement associated with such building or shelter, including, without limitation, maintenance and repair of the physical structure of the building, HVAC system, and common utility expenses. In the event that Licensee is connected to a generator or back-up power supply owned by Licensor, Licensee shall also reimburse Licensor for its pro-rata share of all expenses incurred for the operation, maintenance, repair and replacement associated with such generator, including, without limitation, fuel expenses. For the purposes of this section, a "pro-rata share" of costs and expenses shall be determined based on the number of licensees using the Tower Facility (or with respect to a shared shelter or building, the number of licensees using Licensor's shelter or building) on the first day of the month in which an invoice is mailed to Licensee. Licensee shall reimburse Licensor for Common Expenses within 30 days following receipt of an invoice from Licensor

8. SITE INSPECTION. Concurrent with Licensee's delivery of a fully executed Agreement to Licensor, Licensee shall pay Licensor the Site Inspection Fee as defined on page 1 of this Agreement. Licensee acknowledges that any site inspection performed by Licensor of Licensee's installation is for the sole purpose and benefit of Licensor and its affiliates, and Licensee shall not infer from or rely on any inspection by Licensor as assuring Licensee's installation complies with any Applicable Laws, that the installation was performed in a good, workmanlike manner or that such installation will not cause impermissible or unlawful interference.

9. LABELING. Licensee shall identify its Approved Equipment, including its equipment cabinets and coaxial cable (at the top and bottom of the Tower) (unless such cabinet is located in a building or cabinet owned by Licensee) by labels with Licensee's name, contact phone number and date of installation. In the event that Licensee fails to comply with this provision and fails to cure such deficiency within 10 days of Licensor's written notice of such failure, Licensor may, but is not obligated to, in addition to any other rights it may have hereunder, label the Approved Equipment and assess against Licensee a fee of \$1,500 which shall be payable to Licensor within 30 days after receipt of an invoice therefor. Licensor shall not be responsible to Licensee for any expenses or Damages incurred by Licensee arising from the interruption of Licensee's service caused by Licensor, if Licensor is unable to identify the Approved Equipment as belonging to Licensee as a result of Licensee's failure to label such Approved Equipment.

10. IMPROVEMENTS BY LICENSEE.

- (a) **Installation and Approved Vendors.** Prior to the commencement of any Work on the Tower Facility, Licensee shall submit to Licensor for review and approval, which approval shall not be unreasonably withheld, detailed plans and specifications accurately describing all aspects of the proposed Work. Licensee shall provide notice to Licensor no less than 5 days prior to the date upon which Licensee intends to commence Work at the Tower Facility, together with a construction schedule, so Licensor has the opportunity to be present during any such Work. Licensee shall not commence Work on the Tower Facility until Licensor issues to Licensee a NTP. Licensor shall issue a NTP only upon request from Licensee and receipt of the following complete and accurate documentation: (1) evidence that any contingencies set forth in the approval of Licensee's Application have been satisfied; (2) evidence that Licensee has obtained all required governmental approvals including, but not limited to, zoning approvals, building permits, if applicable, and any applicable environmental approvals including copies of the same; (3) a copy of the plans and specifications that have been approved by Licensor for the proposed equipment installation; (4) evidence that any contractors, other than Licensor, that will be performing the Work are on Licensor's approved vendor list, with valid and current worker's compensation and general liability insurance certificates on file with Licensor naming Licensor as an additional insured and which otherwise satisfy the insurance coverage requirements set forth in section 15(d) of this Agreement; and (5) a construction schedule. In no event will a NTP be issued prior to the payment by Licensee of a Relocation Application Fee when required pursuant to section 10(c) of this Agreement. Notwithstanding anything to the contrary in this Agreement, Licensor reserves the right, in its sole discretion, to refuse to permit any person or company to climb the Tower.
- (b) **Structural Analysis/Interference Analysis.** Prior to the commencement of any Work on the Tower Facility by or for the benefit of Licensee, other than Licensee's initial installation of Approved Equipment, Licensor may, in its reasonable discretion, perform or cause to be performed a structural analysis or require a professional engineer's certified letter to determine the availability of capacity at the Tower Facility for the installation or modification of any Approved Equipment and/or additional equipment at the Licensed Space by Licensee. Licensee agrees to remit payment to Licensor for all reasonable costs and expenses incurred by Licensor for such structural analysis or professional engineer's certified letter ("**Structural Analysis Fee**"), within 30 days following receipt of an invoice from Licensor. The foregoing charge shall be at Licensor's prevailing rates for the performance of same or the amount Licensor's vendor is then charging Licensor, as applicable. In the event a structural analysis is performed after the execution of this Agreement but prior to the initial installation of the Approved Equipment, and such analysis indicates that the existing Tower cannot accommodate the proposed installation of Licensee's Approved Equipment thereon, Licensor shall notify Licensee that modification of the Tower is required and inform Licensee of the fee Licensor will charge Licensee to complete such modification (which fee shall be a reasonable estimate of Licensor's actual cost of making such modifications). Such modification shall become part of the Tower Facility and be Licensor's sole property. If Licensee elects not to pay such fee, and Licensee and Licensor do not otherwise reach an agreement regarding the costs of such modification, Licensee may terminate this Agreement upon written notice to Licensor. Prior to the commencement of any subsequent construction or installation on the Tower Facility by or for the benefit of Licensee (after Licensee's initial installation of Approved Equipment) and/or the modification of Licensee's Permitted Frequencies propagated from the Licensed Space, Licensor may elect to perform a shared site interference study ("**SSIS**") and Licensee shall pay Licensor a fee of \$1,600.00 per study ("**SSIS Fee**"), as adjusted annually on the anniversary of the Commencement Date by a percentage rate equal to the Annual Escalator. This fee shall be payable at the time Licensee pays the Relocation Application Fee where required pursuant to section 10(c) of this Agreement, or immediately upon receipt of notice from Licensor that Licensor has determined that a SSIS is required. In the event a

SSIS is performed after the execution of this Agreement by Licensor but prior to the installation of Licensee's Approved Equipment, and such SSIS indicates that the proposed installation of Licensee's Approved Equipment on the Tower is acceptable, such an indication in no way relieves Licensee of its obligations under section 11 herein.

- (c) **Equipment; Relocation, Modification, Removal.** Licensor hereby grants Licensee reasonable access to the Licensed Space for the purpose of installing and maintaining the Approved Equipment and its appurtenances. Except as otherwise provided, Licensee shall be responsible for all site Work to be done on the Licensed Space or the Easement pursuant to this Agreement. Licensee shall provide all materials and shall pay for all labor for the construction, installation, operation, maintenance and repair of the Approved Equipment. Licensee shall not construct, install or operate any equipment or improvements on the Tower Facility other than those which are described on Exhibit A, alter the Permitted Frequencies, or alter the operation of the Approved Equipment. Licensee shall submit an Application, utilizing Licensor's then current form, to request the right to replace or modify its Approved Equipment, alter the Permitted Frequencies or increase the Ground Space, which Application shall be accompanied by a Relocation Application Fee). Licensor shall evaluate for approval the feasibility of Licensee's request, which approval shall be in Licensor's reasonable discretion. Licensee acknowledges that any such relocation or modification of the Approved Equipment may result in an increase in the Monthly License Fee. An amendment to this Agreement shall be prepared to reflect each addition or modification to Licensee's Approved Equipment to which Licensor has given its written consent and the resulting increase in the Monthly License Fee, if any. Licensee shall have the right to remove all Approved Equipment at Licensee's sole expense on or before the expiration or earlier termination of the License provided Licensee repairs any damage to the Tower Facility or the Tower caused by such removal. Within 30 days of the expiration or termination of this Agreement for any reason, Licensee shall: (i) remove the Approved Equipment and any other property of Licensee at the Tower Facility at Licensee's sole risk, cost, and expense; (ii) deliver the Licensed Space in substantially the same and in as good a condition as received (ordinary wear and tear excepted); and (iii) repair any damage caused by the removal of the Approved Equipment within 10 days of the occurrence of such damage. If Licensee fails to timely pay the Holdover Fee or does not remove its Approved Equipment within 30 days after the expiration or termination of this Agreement, (i) the Approved Equipment shall be deemed conclusively and absolutely abandoned by Licensee and anyone claiming by, through, or under Licensee except for Hazardous Materials and waste and Approved Equipment containing Hazardous Materials and waste; and (ii) Licensor shall have the right to remove the Approved Equipment at Licensee's sole expense and dispose of such Approved Equipment in any manner Licensor so elects, and Licensee shall reimburse Licensor for its expenses within 30 days after receipt of Licensor's invoice, accompanied by reasonable back-up documentation.

11. RF INTERFERENCE/ USER PRIORITY.

- (a) **Definitions.** For purposes of this Section 11, the following capitalized terms shall have the meanings set forth herein:
- (i) **Interference** includes any performance degradation, misinterpretation, or loss of information to a radio communications system caused by unwanted energy emissions, radiations, or inductions, but shall not include permissible interference as defined by the FCC, and in addition, with regard to Unlicensed Frequencies, congestion.
 - (ii) **Licensed Frequencies** are those certain channels or frequencies of the radio frequency spectrum that are licensed by the FCC in the geographic area where the Tower Facility is located.

- (iii) A **Licensed User** is any user of the Tower Facility, including Licensee, which transmits and/or receives Licensed Frequencies at the Tower Facility, but only with respect to such Licensed Frequencies.
 - (iv) A **Priority User** is any Licensed User of the Tower Facility that holds a priority position in relationship to Licensee for protection from Interference, as determined in this Section 11, which status is subject to change as set forth herein.
 - (v) A **Subsequent User** is any user of the Tower Facility that holds a subordinate position in relationship to Licensee for protection from Interference, as determined in this Section 11, which status is subject to change as set forth herein.
 - (vi) **Unlicensed Frequencies** are those certain channels or frequencies of the radio frequency spectrum that are not licensed by the FCC and are available for use by the general public in the geographic area where the Tower Facility is located.
 - (vii) An **Unlicensed User** is any user of the Tower Facility, including Licensee, which transmits and/or receives Unlicensed Frequencies at the Tower Facility, but only with respect to such Unlicensed Frequencies.
- (b) **Information.** Licensee shall cooperate with Licensor and with other lessees, licensees or occupants of the Tower Facility for purposes of avoiding Interference and/or investigating claims of Interference. Upon request, Licensee, within 10 days of Licensor's request, shall provide Licensor with a list of Licensee's transmit and receive frequencies and Approved Equipment specifications necessary to resolve or investigate claims of Interference.
- (c) **Unlicensed Frequencies.** Notwithstanding any other provision contained herein, as among Licensor, Licensee and other users of the Tower or Tower Facility, (i) an Unlicensed User shall have no priority with respect to any other FCC Unlicensed Users with respect to Interference; and (ii) an Unlicensed User's rights and obligations with respect to such Interference shall be determined and governed by FCC Rules and Regulations and any other Applicable Law. Licensor expressly disclaims any and all warranties and accepts no responsibility for management, mediation, mitigation or resolution of Interference among FCC Unlicensed Users operating at the Tower Facility and shall have no liability therefor.
- (d) **Licensed Frequencies.** Subject to FCC Rules and Regulations and other Applicable Law, the Parties acknowledge and agree that the accepted industry standard for priority protection from Interference between multiple Licensed Users has been based on the priority of occupancy of each user to another user of the Tower or Tower Facility, which priority has been based on the order of submittal of its collocation Application by each user of the Tower or Tower Facility. Should Application of FCC Rules and Regulations and other Applicable Law not resolve any claims of Interference consistent with subsections 11(e), 11(f) and 11(g) below, as among Licensor, Licensee and other users of the Tower Facility, (i) each Licensed User's priority shall be maintained so long as the Licensed User does not change the equipment and/or frequency that it is entitled to use at the Tower Facility at the time of its initial occupancy; and (ii) Licensee acknowledges and agrees that if Licensee replaces its Approved Equipment, or alters the radio frequency of the Approved Equipment to a frequency range other than as described on page 1 of this Agreement, Licensee will lose its priority position for protection from Interference with regard to Approved Equipment operating at the new frequency in its relationship to other Licensed Users which are in place as of the date Licensee replaces its Approved Equipment or alters its radio frequency, consistent with this Section 11.

(e) **Correction.**

(i) Licensee. Licensee agrees not to cause Interference with the operations of any user of the Tower or Tower Facility and to comply with all other terms and provisions of this Section 11 imposed upon Licensee. If Licensor determines, in its reasonable discretion based on standard and accepted engineering practices, that Licensee's Approved Equipment is causing Interference to the installations of Licensor a Priority User, Licensee shall, within 5 business days (as a government user) of notification from Licensor (which notice shall describe the basis for Licensor's determination that Licensee's Approved Equipment is causing the Interference), commence such actions as are necessary to mitigate or eliminate the Interference, with the exception of ceasing Licensee's operations. If Licensee cannot mitigate or eliminate such Interference within the five (5) business-day period, Licensor may file a complaint with the FCC (currently the FCC's Enforcement Bureau, Spectrum Enforcement Division) or if such other user of the Tower Facility which is subject to Interference from Licensee's Approved Equipment is a Priority User, then upon the request of such Priority User consistent with Licensor's contractual obligations owed to the Priority User, Licensor may require that Licensee turn off or power down its interfering Approved Equipment and only power up or use such Approved Equipment during off-peak hours specified by Licensor in order to test whether such Interference continues or has been satisfactorily eliminated. If Licensee is unable to resolve or eliminate, to the satisfaction of Licensor, such Interference within 30 days from Licensee's initial notification thereof, Licensee will immediately remove or cease operations of the interfering Approved Equipment

(ii) Licensor. Upon the request of Licensee, Licensor hereby covenants to take prompt, commercially reasonable efforts to prohibit a Subsequent User from causing Interference with the operations of Licensee to the extent Licensee is a Priority User pursuant this Section 11. If Licensor determines, in its reasonable discretion based on standard and accepted engineering practices, that a Subsequent User's equipment is causing Interference to the installations of Licensee, upon Licensee's request, Licensor shall, within 48 hours of request, commence and diligently pursue such actions as are necessary to mitigate or eliminate the Interference, with the exception of ceasing Subsequent User's operations. In the event Licensor is unable to resolve the interference under this Section, and such event materially affects Licensee's ability to operate at this Tower Facility for more than 30 days, Licensee may terminate this Agreement by providing 30 days written notice to Licensor.

(iii) Government Users. Notwithstanding the foregoing, if another user of the Tower or Tower Facility that is causing the interference is a governmental entity, Licensor shall give such governmental entity written notice of the Interference within 5 Business Days of Licensor's determination that such action is reasonably necessary to mitigate or eliminate the Interference. Licensor shall have the right to give the governmental entity 5 Business Days, or more as specified in the governmental site or occupancy agreement or as required by Applicable Law, from the receipt of such notice prior to Licensor being required to take any actions required by this subsection 11 (e) to cure such Interference.

(f) **FCC Requirements Regarding Interference**. Nothing herein shall prejudice, limit or impair Licensee's rights under Applicable Law, including, but not limited to, FCC Rules and Regulations to redress any Interference independently of the terms of this Section 11. Notwithstanding anything herein to the contrary, the provisions set forth in this Section 11 shall be interpreted in a manner so as not to be inconsistent with Applicable Law, including, but not limited to, FCC Rules and Regulations and nothing herein relieves Licensee from complying with all Applicable Laws governing the propagation of radio frequencies and/or radio frequency interference. The Parties acknowledge that currently FCC Rules and Regulations govern the obligations of wireless telecommunication service providers with respect to the operation of

equipment and use of frequencies. Consequently, the provisions set forth in this Section 11 are expressly subject to CFR, Title 47, including but not limited to Part 15, et seq, governing Radio Frequency Devices; Part 20, et seq, governing commercial mobile radio services; Part 24, et seq, governing personal communications services; and Part 90, et seq, governing private land mobile radio services. In addition, in accordance with good engineering practice and standard industry protocols, licensees employ a wide range of techniques and practices, including those involving the use of proper types of equipment as well those related to the adjustment of operating parameters, in a mutually cooperative effort to identify and mitigate sources of Interference. The obligation of Part 20 licensees, including, but not limited to, private paging, specialized mobile radio services, cellular radiotelephone service and personal communications services, to avoid Interference is set forth in 47 CFR Part 90, Subpart N – Operating Requirements, §90.403(e). Claims of Interference are ultimately cognizable before the FCC's Enforcement Bureau, Spectrum Enforcement Division. Licensee shall observe good engineering practice and standard industry protocols, applying such commercially reasonable techniques as constitute best practices among licensees, in the deployment of their frequencies and the operation of the Approved Equipment. If Licensee deploys its frequencies or operates the Approved Equipment in a manner which prevents any other user of the Tower or Tower Facility from decoding signal imbedded in their licensed frequencies such that the Spectrum Enforcement Division makes a determination that Licensee is the cause of the Interference and Licensee fails or refuses to mitigate or eliminate the Interference within the time and manner proscribed by the Spectrum Enforcement Division, Licensee shall be default of this Agreement and the remedies set forth in section 22 shall apply.

- (g) **Public Safety Interference.** As of the Commencement Date, Licensor and Licensee are aware of the publication of FCC Final Rule, Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding, *Federal Register*, November 22, 2004 (Volume 69, Number 224), Rules and Regulations, Page 67823-67853 ("**Final Rule**"). Claims of Interference made by or against users which are public safety entities shall be in compliance with the Final Rule as and when effective, or otherwise in accordance with FCC Rules and Regulations.
- (h) **AM Detuning.** The Parties acknowledge that the FCC Rules and Regulations govern the obligations of Licensee with respect to the operation of the Approved Equipment. Consequently, the provisions set forth in this Agreement are expressly subject to the FCC Rules and Regulations, including, but not limited to 47 C.F.R. §§ 27.63, 22.371 and 73.1692. Licensee agrees, at Licensee's sole cost, to comply with the foregoing as well as any and all other FCC Rules, Regulations and public guidance relating to AM detuning as such provisions currently exist or are hereafter modified. Licensee shall be fully responsible for any pre and/or post installation testing for AM interference at the Tower Facility and for the installation of any new detuning apparatus or the adjustment of any existing detuning apparatus that may be necessary to prevent adverse effects on the radiation pattern of any AM station caused by the installation of the Approved Equipment. Licensee shall provide Licensor with written proof of such compliance. In the event that Licensee determines that pre or post-installation testing for AM interference is not required at the Tower Facility, such a determination shall be at Licensee's sole risk. If Licensee or Licensor receives a complaint of interference from an AM broadcast station after the Approved Equipment is added to a Tower or a Tower is modified to accommodate Licensee, Licensee shall eliminate such interference within 30 calendar days of the receipt of such complaint. Licensee's failure to eliminate such interference within such 30 day period shall constitute a default under this Agreement and Licensor shall have the right to eliminate such interference at Licensee's expense. Licensee further agrees to indemnify Licensor in the event that Licensee's failure to comply with the FCC Rules and Regulations prior to installation/modification of the Approved Equipment results in any administrative investigation, proceeding or adjudication with respect to Licensor.

12. SITE RULES AND REGULATIONS. Licensee agrees to comply with the reasonable rules and regulations established from time to time for the management, safety, and compliance of the Tower Facility at the Tower Facility by Licensor, which may be modified by Licensor from time to time upon receipt by Licensee of such revised rules and regulations. Licensee can learn more about the current rules and regulations for the Tower Facility by contacting Licensor's Network Operations Center, available twenty-four hours a day, by telephone at (800) 830-3365. Such rules and regulations will not unreasonably interfere with Licensee's use of the Licensed Space under this Agreement.

13. DESTRUCTION; CONDEMNATION.

- (a) **Destruction.** If the Tower or other portions of the improvements at the Tower Facility owned by Licensor are destroyed or so damaged as to materially interfere with Licensee's use and benefits from the Licensed Space, Licensor or Licensee shall be entitled to elect to cancel and terminate this Agreement on the date of such casualty and any unearned Monthly License Fee paid in advance of such date shall be refunded by Licensor to Licensee within 30 days of such termination date. Notwithstanding the foregoing, Licensor may elect, in its sole discretion, to restore the damaged improvements, in which case Licensee and Licensor shall remain bound to the terms of this Agreement but Licensee shall be entitled to an abatement of the Monthly License Fee during the loss of use. If the Tower is so damaged that reconstruction or repair cannot reasonably be undertaken without removing the Approved Equipment, then (i) Licensor may, upon giving written notice to Licensee, remove any of the Approved Equipment and interrupt the signal activity of Licensee, (ii) Licensee may, at Licensee's sole cost and expense, install temporary facilities pending such reconstruction or repair, provided such temporary facilities do not interfere with the construction, rebuilding or operation of the Tower, (iii) Licensor agrees to provide Licensee alternative space, if available, on the Tower or at the Tower Facility during such reconstruction/repair period and (iv) should Licensor not substantially restore or replace the Tower in a fashion sufficient to allow Licensee to resume operations thereon within 6 months of the date of casualty (provided that such 6 month period shall be automatically extended on a month-to-month basis for so long as Licensor has commenced and diligently continues to restore or replace such Tower) and Licensee's operation has been materially disrupted for 60 or more consecutive days, then Licensee, upon 30 days' prior written notice to Licensor, may terminate this Agreement.
- (b) **Condemnation.** If the whole or any substantial part of the Tower Facility shall be taken by any public authority under the power of eminent domain or deed or conveyance in lieu of condemnation so as to materially interfere with Licensee's use thereof and benefits from the Licensed Space, then this Agreement shall terminate on the part so taken on the date of possession by such authority of that part, and Licensor and Licensee shall each have the right to terminate this Agreement, and any unearned Monthly License Fee paid in advance of such termination shall be refunded by Licensor to Licensee within 30 days following such termination. Notwithstanding the foregoing, Licensor may elect to rebuild the Tower or other improvements affected by such condemnation at an alternate location or property owned, leased or managed by Licensor in which case Licensee and Licensor shall remain bound hereby. Upon such relocation of the Tower or improvements, the Licensed Space shall be modified to include the new Tower or improvements and the property on which the same are located and this Agreement shall be amended accordingly to clarify the rights of Licensor and Licensee with respect to the Licensed Space. Licensee agrees not to make a claim to the condemning authority for any condemnation award to the extent such claim shall diminish or affect the award made to Licensor with regard to such condemnation; provided Licensee may seek its own condemnation award separate and apart from any such condemnation award made to Licensor.

- (c) **License Fee Abatement.** The Monthly License Fee with respect to the affected Tower Facility shall be abated during any period that the Tower has not been restored following an event described in subsections (a) or (b) above so long as Licensee is unable to continue to operate from a temporary location at the property during any period of restoration.
- (d) **Termination.** Parties agree that should any of the events mentioned in (a) or (b) of Section 13 result in material interference to Licensee's operation of Approved Equipment for more than 30 days, Licensee shall have a right to terminate this Agreement by providing written notice to Licensor, notwithstanding any contrary provision of subparagraph (a) or (b) of this Section 13.

14. COMPLIANCE WITH LAWS. Licensor shall be responsible for compliance with any marking and lighting requirements of the FAA and the FCC applicable to the Tower Facility, provided that if the requirement for compliance results from the presence of the Approved Equipment on the Tower, Licensee shall pay the costs and expenses therefor (including any lighting automated alarm system so required), to the extent attributed to the presence of the Approved Equipment. Licensee has the responsibility of carrying out the terms of Licensee's FCC license with respect to tower light observation and notification to the FAA to the extent those requirements imposed on Licensee are in excess of those required of Licensor. Notwithstanding anything to the contrary in this Agreement, Licensee shall at all times comply with all Applicable Laws and ordinances and all rules and regulations of municipal, state and federal governmental authorities relating to the installation, maintenance, location, use, operation, and removal of the Approved Equipment and other alterations or improvements authorized pursuant to the provisions of this Agreement.

15. INDEMNIFICATION; INSURANCE.

- (a) **Licensee's Indemnity.** Licensee shall indemnify, defend and hold harmless Licensor and its Agents from any and all costs, demands, Damages, suits, expenses, or causes of action (including reasonable attorney's fees and court costs) incurred as a result of Licensee's use and/or occupancy of the Licensed Space. This indemnity does not apply to any Claims to the extent arising from the gross negligence or intentional misconduct of Licensor or its Agents. In any action or proceeding brought against Licensor or its Agents by reason of any Claim indemnified by Licensee hereunder, Licensee may, at its sole option, elect to defend such Claim by attorneys selected by Licensee. Licensee shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Licensor shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost.
- (b) **Licensor's Indemnity.** Licensor shall indemnify, defend and hold harmless Licensee and its Agents against any and all costs, demands, Damages, suits, expenses, or causes of action (including reasonable attorney's fees and court costs) incurred as a result of Licensor's use and occupancy of Licensed Space. This indemnity does not apply to any Claims to the extent arising from the gross negligence or willful misconduct of Licensee or its Agents. In any action or proceeding brought against Licensee or its Agents by reason of any Claim indemnified by Licensor hereunder, Licensor may, at its sole option, elect to defend such Claim by attorneys selected by Licensor. Licensor shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Licensee shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost.
- (c) **Limits on Indemnification.** Neither Party, as the indemnifying Party, shall be responsible or liable to other Party, as the indemnified Party, for any Damages arising from any claim to the extent attributable to any acts or omissions of other licensees or users occupying the Tower Facility or for any structural or power failures or destruction or damage to the Tower Facility

except to the extent caused by the sole, joint, or concurrent gross negligence or willful misconduct of such indemnifying Party or its Agents.

(d) **Survival.** The provisions of this Section 15 shall survive the expiration or earlier termination of this Agreement with respect to any events occurring on or before expiration or termination of same whether or not Claims relating thereto are asserted before or after such expiration or termination.

(e) **Insurance.** Licensor and Licensee shall keep in full force and effect, during the Term of this Agreement, insurance coverage in accordance with Appendix II attached hereto.

16. LIMITATION OF PARTIES' LIABILITY. NEITHER LICENSOR NOR LICENSEE SHALL BE RESPONSIBLE FOR, AND EACH HEREBY WAIVES, ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED RESULTING FROM (i) LICENSEE'S USE OR LICENSEE'S INABILITY TO USE THE TOWER FACILITY, OR (ii) DAMAGE TO THE OTHER'S EQUIPMENT. If Licensor shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Agreement or is charged with an indemnity obligation hereunder, and if Licensee shall, as a consequence thereof, recover a money judgment against Licensor (whether compensatory or punitive in nature), Licensee agrees that it shall look solely to Licensor's right, title and interest in and to the Tower Facility and the Tower, and the rents, license fees and proceeds therefrom, for the collection of such judgment, and Licensee further agrees that no other assets of Licensor shall be subject to levy, execution or other process for the satisfaction of Licensee's judgment, and that Licensor shall not be personally liable for any deficiency.

17. DISCLAIMER OF WARRANTY. LICENSOR HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ASSOCIATED WITH THE TOWER FACILITY OR THE TOWER. LICENSEE HEREBY ACCEPTS THE TOWER FACILITY "AS IS, WHERE IS, WITH ALL FAULTS"

18. NOTICES. All notices, demands, approvals, requests and other communications shall be in writing to such Party at the following address(es):

If to Licensor:

To: American Towers LLC
10 Presidential Way
Woburn, MA 01801

With a copy to: American Tower, Inc.
116 Huntington Avenue
Boston, MA 02116
Attention: General Counsel)

If to Licensee:

To: San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th floor
San Francisco, CA 94102
Attn: Real Estate Director

With a copy to:

San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 5th floor
San Francisco, CA 94102
Attn: Director of Information Technology

or at such other address as such Party shall designate by notice to the other Party hereto in accordance with this Section 18 (the "**Notice Address**") and may be personally delivered; mailed, via United States certified mail, return receipt requested; or transmitted by overnight courier for next Business Day delivery, and, if not delivered personally, shall be deemed to be duly given upon delivery to the designated address or refusal to accept delivery at such address, as confirmed by the USPS or courier service. Notices will be deemed to have been given upon either receipt or rejection. Notwithstanding the foregoing, (i) any notice that is given by a Party may be given by the attorneys for that Party and shall be deemed effective for all purposes herein, and (iii) only notices, letters, documents, or instruments threatening to declare or declaring such addressee or recipient in default under this Agreement shall be required to be sent to the attorneys representing such addressee or recipient, if the name and address of such attorney is provided for herein.

19. **ASSIGNMENT; SUBLEASING.** Licensee may not assign this Agreement as a whole, or any portion of Licensee's rights, title and interests hereunder without Licensor's prior written consent,; *provided, however,* that Licensor's consent will not be required for an assignment to (i) any person or entity which is directly or indirectly (through one or more subsidiaries) controlled by, controlling or under common control with Licensee, (ii) is the successor or surviving entity by a merger or consolidation of such entity pursuant to Applicable Law, or (iii) purchases substantially all the assets of Licensee (collectively, "**Permitted Affiliate**"). For the purpose of this Section 19, "control" means ownership, directly or indirectly, of 50% or more of the voting stock, equity or beneficial interest or a general partner of any partnership, and the ability to effectively control or direct the business of Licensee. In no event may Licensee sublet, sublease, or permit any use of the Tower Facility or Licensed Space by any other party. Any permitted assignee shall expressly assume, and become bound by, all of Licensee's obligations under this Agreement. Licensor may freely assign, transfer, or sublease this Agreement and, in such event, Licensor shall be relieved of all of its obligations under this Agreement from and after the date the assignee or transferee assumes in writing the obligations of Licensor under this Agreement. Licensee shall pay Licensor a fee of \$500.00 (which fee shall increase annually on each anniversary of the Commencement Date by a percentage rate increase equal to the Annual Escalator) in each instance in which Licensee requests Licensor to consent to an assignment of this Agreement or in which Licensee seeks an estoppel certificate, nondisturbance agreement, subordination agreement or other similar agreement to defray the administrative cost incurred by Licensor to process such requests, prepare and process any necessary documentation, and modify its database and other information systems to reflect any such agreement. Such fee is due upon submission of Licensor's request and is hereby deemed fully earned by Licensor upon receipt. Notwithstanding anything to the contrary, Licensor may condition its consent to any assignment, on among other things, (i) requiring that the assignee execute a new form of license agreement so long as the Monthly License Fee and Initial and Renewal Terms of such agreement are consistent with those set forth in this Agreement and (ii) requiring the assignee to demonstrate that it maintains at the time of such assignment, as evidenced by current financial statements provided to Licensor, a financial position reasonably demonstrating the ability of such assignee to meet and perform the obligations of Licensee hereunder through the unexpired balance of the then current Initial Term or Renewal Term. Any purported assignment by Licensee in violation of the terms of this Agreement shall be void. This Agreement shall be binding upon the successors and permitted assigns of both Parties.

- 20. SUBORDINATION TO GROUND LEASE.** The Parties acknowledge and agree that in the event Licensor's rights in the Licensed Space and/or any part of the Tower Facility is derived in whole or part pursuant to an underlying lease, sublease, permit, easement or other right of use agreement (a "**Ground Lease**"), all terms, conditions and covenants contained in this Agreement shall be specifically subject to and subordinate to the terms and conditions of the applicable Ground Lease. In the event that any of the provisions of the Ground Lease are in conflict with any of the provisions of this Agreement (other than those provisions relating to the length of term, termination rights or financial consideration), the terms of the Ground Lease shall control. Further, Licensee agrees to comply with the terms of such Ground Lease as applicable to the access to and occupancy of the Licensed Space. Notwithstanding anything contained in this Agreement to the contrary, if the Ground Lease expires or is terminated for any reason, this Agreement shall terminate on the effective date of such termination and Licensor shall have no liability to Licensee as a result of the termination of this Agreement. Licensor is under no obligation to extend the term of or renew the Ground Lease. Licensor shall give Licensee written notice of such termination or expiration of this Agreement as a result of the termination or expiration of the Ground Lease as soon as practicable. Unless prohibited by the terms of such Ground Lease, upon Licensee's written request, Licensor shall provide a copy of any applicable Ground Lease with the economic terms and other terms that Licensor deems reasonably confidential redacted
- 21. DEFAULT.** The occurrence of any of the following instances shall be considered to be a default or a breach of this Agreement by Licensee: (i) any failure of Licensee to pay the Monthly License Fee, or any other charge for which Licensee has the responsibility of payment under this Agreement, within 10 Business Days of the date following written notice to Licensee from Licensor, or its designee, of such delinquency; the Parties agree, however, that Licensor is obligated to provide such notice only two times in each calendar year, and the third instance of the failure to pay the Monthly License Fee or any other charge shall be an immediate default without notice to Licensee if not paid within 10 Business Days of the date when due; (ii) any failure of Licensee to perform or observe any term, covenant, provision or condition of this Agreement which failure is not corrected or cured by Licensee within 30 days of receipt by Licensee of written notice from Licensor, or its designee, of the existence of such a default, except that such 30-day cure period shall be extended as reasonably necessary to permit Licensee to complete a cure so long as Licensee commences the cure within such 30 day cure period and thereafter continuously and diligently pursues and completes such cure; (iii) failure of Licensee to abide by the Interference provisions as set forth in section 11; (iv) Licensee declares bankruptcy, becomes insolvent or files a voluntary petition in bankruptcy, has an involuntary petition in bankruptcy filed against Licensee which cannot be or is not dismissed by Licensee within 60 days of the date of the filing of the involuntary petition, files for reorganization or arranges for the appointment of a receiver or trustee in bankruptcy or reorganization of all or a substantial portion of Licensee's assets, or Licensee makes an assignment for such purposes for the benefit of creditors; (v) this Agreement or Licensee's interest herein or Licensee's interest in the Tower Facility are executed upon or attached by Licensee's creditors or anyone claiming through Licensee; (vi) Licensee commits or fails to perform an act, which results in a default under or nonconformance with the Ground Lease by Licensor and the same is not cured within 5 Business Days (or such shorter or longer time as permitted under the Ground Lease to cure) of the date following written notice to Licensee from Licensor, or its designee, of such default; or (vii) the imposition of any lien on the Approved Equipment except as may be expressly authorized by this License, or an attempt by Licensee or anyone claiming through Licensee to encumber Licensor's interest in the Tower Facility, if the same is not dismissed or otherwise removed within 10 Business Days of written notice from Licensor to Licensee, except such 10 Business Day cure period shall be extended as reasonably necessary to permit Licensee to complete removal of the lien so long as Licensee

commences the cure within such 10 Business Day period and thereafter continuously and diligently pursues and completes such cure.

22. REMEDIES.

- (a) In the event of a default or a breach of this Agreement by Licensee and after Licensee's failure to cure the same within the time allowed Licensee to cure such breach or default, if applicable, then Licensor may, in addition to all other rights or remedies Licensor may have hereunder at law or in equity: terminate this Agreement by giving written notice to Licensee, stating the date upon which such termination shall be effective.
- (b) In addition to the remedies provided in Section 22(a), above, if Licensee fails to cure within said 30-day period following notice or commence in good faith to effect such cure as provided in Section 21, Licensor may (i) accelerate as described below the Monthly License Fees and other charges or fees which would have otherwise been due Licensor through the balance of the Initial Term or the then current Renewal Term absent a default of the Agreement by Licensee; (ii) terminate electrical power to the Approved Equipment; and/or, (iii) remove the Approved Equipment without being deemed liable for trespass or conversion and store the same at Licensee's sole cost and expense for a period of 90 days after which the Approved Equipment, other than Hazardous Materials, will be deemed conclusively abandoned if not claimed by Licensee. Upon termination of this Agreement as provided in Section 22(a) above, Licensor may recover from Licensee (a) the amount by which all Monthly License Fees and other charges or fees that would have been payable by Licensee hereunder from the date of termination until the date of award of damages (but not beyond the date the Initial Term or Renewal Term would have expired had it not terminated early), exceeds the amount of such loss as Licensee proves could have been reasonably avoided, and (b) the amount by which all Monthly License Fees and other charges or fees that would have been payable by Licensee hereunder, as reasonably estimated by Licensor, for the remainder of such Initial Term or Renewal Term after the date of the award, exceeds the amount of such loss as Licensee proves could have been reasonably avoided, discounted at a discount rate of 5%. Licensee shall pay all reasonable attorney's fees and court costs as provided in Paragraph 6 of Appendix III, removal and storage fees (including any damage caused thereby), and other items of cost reasonably incurred by Licensor in recovering the Monthly License Fee or other fee or charge. Licensee shall not be permitted to claim the Approved Equipment until Licensor has been reimbursed for removal and storage fees. Past due amounts under this Agreement will bear interest from the date upon which the past due amount was due until the date paid at a rate equal to 10% per annum, or at a lower rate if required by law in the state in which this Agreement is to be performed.
- (c) The remedies described in Sections 22(a) and 22(b) are not exclusive and shall not deprive any Party of applicable remedies provided in law or equity.
- (d) It shall be considered to be a default of this Agreement by Licensor if Licensor shall fail to observe or perform any of the terms and conditions of this Agreement to be observed or performed by Licensor, and Licensor shall not remedy such failure within 30 days following written notice from Licensee, or if such failure is not reasonably susceptible to being remedied within such 30 day period, if Licensor shall not within such 30 day period commence to remedy such failure and thereafter exercise commercially reasonable efforts to prosecute such remedy to completion. Upon the occurrence of a Licensor default under this Agreement, Licensee shall be entitled to pursue any and all legal and equitable rights and remedies permitted by Applicable Law, subject to the terms hereof and limitations contained in this Agreement. Nothing in this paragraph shall diminish Licensee's right to terminate this Agreement as

provided in Section 11(e)(ii) in the event that Licensor fails to resolve interference by a Subsequent User within the time period specified in such Section.

23. GOVERNMENTAL APPROVALS; PERMITS.

- (a) In the event that any governmental permit, approval or authorization required for Licensor's use of, operation of, or right to license space to Licensee at the Tower Facility is terminated or withdrawn by any governmental authority or third party as part of any governmental, regulatory, or legal proceeding, Licensor may terminate this Agreement. Licensee hereby agrees that in the event of a governmental or legal order requiring the removal of the Approved Equipment from the Tower, the modification of the Tower, or the removal of the Tower, upon the earlier of receipt of notice from the government entity or the Licensor, Licensee shall remove the Approved Equipment promptly at Licensee's sole cost and expense, but in no event later than (i) the date required by such order.
- (b) Licensor shall cooperate with Licensee in Licensee's efforts to obtain any permits or other approvals that may be necessary for Licensee's installation and operation of the Approved Equipment, provided that Licensor shall not be required to expend any funds or undertake any liability or obligation in connection with such cooperation. Licensor may elect to obtain such required approvals or permits on Licensee's behalf, at Licensee's sole cost and expense, if Licensee consents in writing. In no event may Licensee encourage, suggest, participate in or permit the imposition of any restrictions or additional obligations whatsoever on the Tower Facility or Licensor's current or future use or ability to license space at the Tower Facility as part of or in exchange for obtaining any such approval or permit. In the event that Licensee's shelter or cabinets are installed above a third-party or Licensor-owned shelter or building, Licensee shall be solely responsible for obtaining any required approvals, or permits in connection with such shelter or cabinet installation, excepting the consent of other users at the Tower Facility and/or the ground landlord which shall remain the sole responsibility of Licensor where required.
- (c) In the event that any governmental permit, approval or authorization required for Licensee's use of, operation of, or right to install Authorized Equipment at the Tower Facility is rejected, denied, terminated or withdrawn by any governmental authority or third party as part of any governmental, regulatory, or legal proceeding, which shall include but is not limited to building permits and environmental approvals issued by San Mateo County and FCC approvals, this Agreement shall terminate upon 10 days' notice to Licensor.

24. REPLACEMENT OF TOWER/RELOCATION OF APPROVED EQUIPMENT.

- (a) **Replacement of Tower.** Licensor may, at its election, replace or rebuild the Tower or a portion thereof. Such replacement will (i) be at Licensor's sole cost and (ii) not result in an interruption of Licensee's communications services beyond that which is necessary to replace the new Tower. If Licensee, in Licensee's reasonable discretion, cannot operate the Approved Equipment from the existing Tower during such replacement or rebuild of the Tower, Licensee may establish, at Licensee's sole cost, a temporary facility on the Tower Facility to provide such services as Licensee deems necessary during any such construction by Licensor so long as adequate space is then available. The location of such temporary facilities shall be subject to Licensor's reasonable approval. The License Fee due hereunder shall be abated for any period during which Licensee is prevented from transmitting or receiving radio signals from the existing Tower due to such replacement or relocation. At the request of either Party, Licensor and Licensee shall enter into an amendment to this Agreement to clarify the rights of Licensor and Licensee to the new Tower Facility.

(b) **Intentionally Omitted.**

(c) **Tower Removal:** If during the term of this Agreement Licensor determines based on engineering structural standards generally applied to communications towers that the Tower is or has become structurally unsound such that pursuant to generally accepted industry safety standards the Tower or a portion thereof must be removed, then, upon 90 days prior written notice to Licensee, Licensor may, in its sole discretion either (i) remove the Tower and terminate this Agreement effective as of the date of such removal, or (ii) modify the Tower and relocate Licensee's Approved Equipment to an alternative location on the modified Tower. If Licensee and Licensor are not able to agree on an alternative location on the modified Tower for the installation of Licensee's Approved Equipment within the foregoing 90 day notice period, then Licensee or Licensor may elect to terminate the Agreement.

25. **EMISSIONS.** If antenna power output ("RF Emissions") is presently or hereafter becomes subject to any restrictions imposed by the FCC or other governmental agency for RF Emissions standards on Maximum Permissible Exposure ("MPE") limits, or if the Tower Facility otherwise becomes subject to federal, state or local rules, regulations, restrictions or ordinances, Licensee shall comply with Licensor's reasonable requests for modifications to the Approved Equipment which are reasonably necessary for Licensor to comply with such limits, rules, regulations, restrictions or ordinances and Licensor shall use commercially reasonable efforts to cause all other licensees of the Tower Facility to promptly comply. If Licensor requires an engineering evaluation or other power density study be performed to evaluate RF Emissions compliance with MPE limits, then all reasonable costs of such an evaluation or study shall be paid proportionately by Licensee and all other licensees of the Tower within 30 days of Licensor's request therefor, and said study or a study sponsored by any governmental agency indicates that RF Emissions at the Tower Facility do not comply with MPE limits, then Licensee and Licensor, each for itself, shall immediately take any and all steps necessary to ensure that it is individually in compliance with such limits, up to and including cessation of operation, until a maintenance program or other mitigating measures can be implemented to comply with MPE and in addition, Licensor shall use commercially reasonable efforts to cause all other licensees of the Tower to take similar steps necessary to ensure that they are individually in compliance with such limits.

26. **ENVIRONMENTAL.** Licensee covenants that it will not use, store, dispose, or release any Hazardous Substances on the Tower Facility in violation of Applicable Law. Licensee agrees to indemnify and save harmless Licensor against any and all Claims, liabilities, causes of action, Damages, orders, judgments, and clean-up costs arising from Licensee's breach of any the covenants contained in this Section 26. The obligations of Licensee to indemnify Licensor pursuant to this Section 26 shall survive the termination or expiration of this Agreement. Licensee shall have no liability for any hazardous materials present on the Site prior the Effective Date that the Licensee or its agents or licensees does not disturb or otherwise cause to be released.

27. **SUBROGATION.**

(a) **Waiver.** Licensor and Licensee, each as the waiving Party, waives all rights against the other Party and any of the other Party's consultants and contractors, agents and employees, for Damages caused by perils to the extent covered by the proceeds of the insurance such waiving Party is required to carry herein (or would be covered if such insurance were purchased except such rights as they may have to the insurance proceeds. All insurance policies required under this Agreement shall contain a waiver of subrogation provision under the terms of which the insurance carrier of a Party waives all of such carrier's rights to proceed against the other Party. Licensee's insurance policies shall provide such waivers of subrogation by endorsement. Licensee and Licensor shall each require by appropriate

agreements, written where legally required for validity, similar waivers from its contractors and subcontractors. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged.

(b) **Intentionally Omitted.**

28. **GOVERNING LAW.** This Agreement is made and shall be performed in California. This Agreement shall be governed by California law.. If any provision of this Agreement is found invalid or unenforceable under judicial decree or decision, the remaining provisions of this Agreement shall remain in full force and effect. Any approval, consent, decision, or election to be made or given by a Party may be made or given in such Party's sole judgment and discretion, unless a different standard (such as reasonableness or good faith) is provided for explicitly.
29. **FINANCING AGREEMENT.** Licensee may, upon written notice to Licensor, mortgage or grant a security interest in the Approved Equipment to any such mortgagees or holders of security interests including their successors and assigns. No such security interest shall extend to, affect or encumber in any way the interests or property of Licensor.
30. **MISCELLANEOUS.** Upon Licensor's written request, Licensee shall promptly furnish Licensor with complete and accurate information in response to any reasonable request by Licensor for information about any of the Approved Equipment or utilities utilized by Licensee at the Tower Facility or any of the channels and frequencies utilized by Licensee thereon. In the event that this Agreement is executed by Licensor or its Affiliates and such signatory does not hold the real Tower Facility or leasehold interest in the affected Tower Facility: (i) promptly upon determining such mistake, the entity that signed this Agreement as Licensor shall cause the True Licensor to assume in writing the Licensor's obligations under this Agreement. Upon the termination or expiration of this Agreement, Licensee shall immediately upon the request of Licensor deliver a release of any instruments of record evidencing such Agreement. Notwithstanding the expiration or earlier termination of this Agreement, sections 15, 16, 17, 26 and 30 shall survive the expiration or earlier termination of the Agreement. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision herein (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly agreed to in writing by the affected Party. This Agreement constitutes the entire agreement of the Parties hereto concerning the subject matter herein as to the License of the Site described herein by the City department identified on the first page of this Agreement, and this Agreement shall supersede all prior offers, negotiations and agreements, whether written or oral. No revision of the Agreement shall be valid unless made in writing and signed by authorized representatives of both Parties. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement shall be deemed an original and may be introduced or submitted in any action or proceeding as a competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this first be proven.
31. **INTELLECTUAL PROPERTY.** Neither Party shall use the other's name, service mark or trademark in any public announcement or advertisement without the prior written consent of the other Party, which may be withheld in such Party's sole and absolute discretion; provided, however, that nothing herein shall require Licensee to take any action or to refuse to release information where to do so would violate applicable law. The Parties acknowledge that the California Public Records Act (Govt. Code Section 6250 et seq.) is the California law governing

public access to the records of state and local agencies, and the San Francisco Sunshine Ordinance (Admin. Code Chapter 67) imposes additional requirements affecting the public's access to records.

The submission of this Agreement for examination and negotiation does not constitute an offer to license, or a reservation of, or option for, any portion of the Tower Facility, and Licensee shall have no right to use or occupy any portion of the Tower Facility or any appurtenant easement area hereunder until the execution and delivery of this Agreement by both Licensor and Licensee.

ATTACHED EXHIBITS AND APPENDICES:

Exhibit A: List of Approved Equipment and location of the Licensed Space

Exhibit B: Site Drawing indicating the location of Ground Space for Licensee's equipment shelter or space in Licensor's building (as applicable)

Exhibit C: As-Built Drawings or Construction Drawings to be attached within 45 days after Commencement Date in accordance with Section 3

Appendix I: Definitions

Appendix II: Insurance

Appendix III: Additional Terms

LICENSOR SITE NAME / NUMBER: SAN BRUNO MOUNTAIN (TOWER 3) / 8244
LICENSEE SITE NAME/NUMBER: 350 Radio Road Tower 3 / 350 Radio Road Tower 3

Exhibit A
List of Approved Equipment and location of the Licensed Space

Initials: _____ / _____

ECM#41028
Rev. 02.24.09

LICENSOR SITE NAME / NUMBER: SAN BRUNO MOUNTAIN (TOWER 3) / 8244
LICENSEE SITE NAME/NUMBER: 350 Radio Road Tower 3 / 350 Radio Road Tower 3

Exhibit B

Site Drawing indicating the location of Ground Space for Licensee's equipment shelter or space in Licensor's building (as applicable)

Licensee shall not commence installation until Licensor has approved in writing said drawing and attached it hereto.

Initials: _____ / _____

ECM#41028
Rev. 02.24.09

LICENSOR SITE NAME / NUMBER: SAN BRUNO MOUNTAIN (TOWER 3) / 8244
LICENSEE SITE NAME/NUMBER: 350 Radio Road Tower 3 / 350 Radio Road Tower 3

Exhibit C
As Built Drawings or Construction Drawings

To be attached hereto within 45 days after the Commencement Date.

[NOTE: If these are available now, attach them to each execution copy before signing.]

Appendix I Defined Terms

Affiliate(s): Any corporation, partnership, limited liability company or other entity that (i) is controlled directly or indirectly (through one or more subsidiaries) by Licensee, or (ii) is the successor or surviving entity by a merger or consolidation of Licensee pursuant to Applicable Law, (iii) purchases all or substantially all of the assets of Licensee. For purposes of this definition, "**control**" means the possession of the right through the ownership of 50% or more of the shares with voting rights to effectively direct the business decisions of the subject entity.

Agents: defined in paragraph 1 of Appendix III.

Agreement: defined in the introductory paragraph.

Annual Escalator: defined in section IV on page 1.

Applicable Law: All applicable statutes, ordinances, laws, regulations and directives of any federal, California or local governmental unit, authority or agency having jurisdiction over a Licensed Space or affecting the rights and obligations of Licensor or Licensee under this Agreement, including without limitation, the Communications Act of 1934, as amended from time to time, FCC Rules and Regulations, and the rules, regulations and written policies and decisions of the FAA.

Application: defined in section IV on page 1.

Application Fee: defined in section IV on page 1.

Approved Equipment: the communications system, including antennas, radio equipment, cabling and conduits, shelter and/or cabinets and other personal property owned or operated by Licensee at the Licensed Space, as defined in Exhibit A or B to this Agreement.

Business Day: a day other than a Saturday, Sunday or legal holiday under the laws of the United States or the State of California.

Claims: demands, claims, suits, actions, proceedings or investigations brought against a person by an unrelated or unaffiliated Person.

Commencement Date: defined in section IV on page 1.

Common Expenses: defined in section 7.

Connection Fee: defined in section IV on page 1.

Construction Drawings: defined in section 3.

Damages: debts, liabilities, obligations, losses, damages, excluding incidental, consequential or punitive damages, costs and expenses, interest (including, without limitation, prejudgment interest), penalties, reasonable legal fees, court costs, disbursements and costs of investigations, deficiencies, levies, duties and imposts.

Easement: defined in section 2.

Effective Date: defined in the introductory paragraph.

FAA: the United States Federal Aviation Administration or any successor federal agency established for the same or similar purpose.

FCC: the United States Federal Communications Commission or any successor federal agency established for the same or similar purpose.

FCC Rules and Regulations: All of the rules, regulations, public guidance, written policies and decisions governing telecommunications generally and wireless telecommunications specifically as promulgated and administered by the FCC, which on the Effective Date includes, but is not limited to, those administered by the Wireless Telecommunications Bureau of the FCC and more specifically referenced as the Code of Federal Regulations, title 47, parts 0 through 101, as amended.

Ground Lease: defined in section 20.

Ground Space: The portion of the Tower Facility licensed for use by Licensee to locate a portion of the Approved Equipment thereon, in the square footage amount depicted on exhibit B of this Agreement. In no event shall the Ground Space include the air space or rights above the Approved Equipment located in the Ground Space.

Hazardous Substances: Any hazardous material or substance which is or becomes defined as a hazardous substance, pollutant or contaminant subject to reporting, investigation or remediation pursuant to Applicable Law; any substance which is or becomes regulated by any federal, state or local governmental authority; and any oil, petroleum products and their by-products.

Holdover Fee: defined in subsection 6(c).

Indemnified Party: any person entitled to Indemnification under section 15 hereof.

Initial Term: defined in subsection 6(a).

Interference: defined in subsection 11(a)(i).

Labeling Fee: defined in section 9.

Licensed Frequencies: defined in subsection 11(a)(ii).

Licensed Space: Location of the Approved Equipment on the Tower and at the Ground Space as more specifically described in Exhibits A and B attached hereto.

Licensed User: defined in subsection 11(a)(iii).

Licensee: defined in the introductory paragraph.

Licensor: defined in the introductory paragraph.

Monthly License Fee: defined in subsection 5(a).

MPE: defined in section 25.

Notice Address: defined in section 18.

NTP (Notice to Proceed): Written notice from Licensor to Licensee acknowledging that all required documentation for the construction and installation of the Approved Equipment has been received and approved by Licensor and Licensee is authorized to commence its installation of the Approved Equipment at the Licensed Space, as more particularly set forth in section 10(a) of this Agreement.

Party(ies): Licensor or Licensee.

Permitted Affiliate: defined in section 19.

Permitted Frequencies: defined in section III on page 1.

Priority User: defined in subsection 11(a)(iv).

RAD: The radiation center of the Approved Equipment. The point on each piece of equipment that determines the mounting position on the Tower.

Relocation Application Fee: defined in section IV on page 1.

Remittance Address: defined in section II of page 1.

Renewal Term(s): defined in subsection 6(b).

RF Emissions: defined in section 25.

Site Inspection Fee: defined in section IV on page 1.

SSIS: defined in subsection 10(b).

SSIS Fee: defined in subsection 10(b).

Structural Analysis Fee: defined in subsection 10(b).

Subsequent User: defined in subsection 11 (a)(v).

Term: Initial Term (as specified in Section IV (Fees and Terms)) and each Renewal Term (as specified in Section IV) which is effected pursuant to section 6 of this Agreement.

Tower: A communications or broadcast tower owned and operated by Licensor and located at the Tower Facility.

Tower Facility: Certain real property owned, leased, subleased, licensed or managed by Licensor described on page 1 of this Agreement, on which the Tower described on page 1 of this Agreement, owned, leased, licensed or managed by Licensor, is located.

Unlicensed Frequencies: defined in subsection 11(a)(vi).

Unlicensed User: defined in subsection 11(a)(vii).

Utility Fee: defined in section IV on page 1.

Work: all work relating to the construction, installation, relocation and reconfiguration of Licensee's Approved Equipment on the Tower Facility, including without limitation, construction management, construction of an equipment pad, installation or modification of lines, antennas, shelters and equipment cabinets.

Appendix II Insurance

- A. LICENSOR shall maintain in full force during the Term of this Agreement the following insurance:
1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.
 2. Commercial General Liability Insurance (Bodily Injury and Tower Facility Damage), the limits of liability of which shall not be less than \$1,000,000.00 per occurrence.
 3. An umbrella policy of not less than Five Million Dollars (\$5,000,000.00).

The above insurance shall provide that LICENSEE will receive not less than 30 days written notice prior to any cancellation of, or material change in coverage. The insurance specified in this Item A. shall contain a waiver of subrogation against LICENSEE and the insurance specified in Items A.2 and A.3 shall name LICENSEE as an additional insured, and shall be primary over any insurance coverage in favor of LICENSEE but only with respect to and to the extent of the insured liabilities assumed by LICENSOR under this Agreement and shall contain a standard cross-liability endorsement.

- B. Unless it is permissibly self-insured, LICENSEE shall maintain in full force during the Term of this Agreement and shall cause all contractors or subcontractors performing Work on any Licensed Space prior to the commencement of any such Work on behalf of Licensee to maintain the following insurance:
1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.
 2. Commercial General Liability Insurance (Bodily Injury and Tower Facility Damage), the limits of liability of which shall not be less than \$1,000,000.00 per occurrence.
 3. An umbrella policy of not less than Five Million Dollars (\$5,000,000.00).

The above insurance shall provide that LICENSOR will receive not less than 30 days written notice prior to any cancellation of, or material change in coverage. All insurance policy shall contain a waiver of subrogation against LICENSOR, and the policy shall name LICENSOR as additional insured, and shall be primary over any insurance coverage in favor of LICENSOR but only with respect to and to the extent of the insured liabilities assumed by LICENSEE under this Agreement and shall contain a standard cross-liability endorsement.

- C. Notwithstanding the foregoing insurance requirements, (a) the insolvency, bankruptcy, or failure of any insurance company carrying insurance for either Party, or failure of any such insurance company to pay Claims accruing, shall not be held to waive any of the provisions of this

LICENSOR SITE NAME / NUMBER: SAN BRUNO MOUNTAIN (TOWER 3) / 8244
LICENSEE SITE NAME/NUMBER: 350 Radio Road Tower 3 / 350 Radio Road Tower 3

Agreement or relieve either Party from any obligations under this Agreement, and (b) Licensor acknowledges that Licensee maintains a program of self-insurance and agrees that Licensee may satisfy the foregoing insurance requirements through such program of self insurance, without obligation to carry any insurance from a third party insurance company with respect to this License. Licensee assumes the risk of damage to any of Licensee's personal property, except for damage caused by Licensor or its Agents.

Appendix III Additional Terms

1. Parties and Their Agents; Approvals

If applicable, the word "Licensor" as used in this License shall include the plural as well as the singular. As used in this License, the term "Agents" when used with respect to either Party shall include the agents, employees, officers and contractors of such Party, and the term "Invitees" when used with respect to Licensee shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Licensee. All approvals, consents or other determinations permitted or required by Licensee under this License, including but not limited to the exercise of any option granted to Licensee, shall be made by or through SFPUC's General Manager or his or her designee, unless otherwise provided in this License, subject to any applicable limitations in the Licensee's Charter.

2. Amendments

Neither this License nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this License, but each and every term, covenant and condition of this License shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this License requires or permits the giving by Licensee of its consent or approval, the General Manager of SFPUC, or Licensee's Director of Property, or the designee of either, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this License, including, without limitation, amendments to or modifications to the exhibits to this License, shall be subject to the mutual written agreement of Licensee and Licensor, and Licensee's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this License (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section III (on page 1) of this License, and (e) any other amendment or modification which materially increases Licensee's liabilities or financial obligations under this License shall additionally require the approval of SFPUC's Commission and Licensee's Board of Supervisors.

3. Interpretation of License

The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this License. This License has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this License. Except as otherwise specifically provided herein, wherever in this License Licensor or Licensee is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this License relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Licensee holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar

words shall not be construed to limit any general term, statement or other matter in this License, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

4. Successors and Assigns

Subject to the provisions of Section 19 relating to assignment and subletting, the terms, covenants and conditions contained in this License shall bind and inure to the benefit of Licensor and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-Party beneficiaries to this License.

5. Brokers

Neither Party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the License contemplated herein, except for the broker, if any, identified in the Basic License Information, whose commission, if any is due, shall be the sole responsibility of Licensor pursuant to a separate written agreement between Licensor and such broker, and Licensee shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the Party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall indemnify the other Party from any and all Claims incurred by the indemnified Party in defending against the same. The provisions of this paragraph shall survive any termination of this License.

6. Attorneys' Fees

In the event that either Licensor or Licensee fails to perform any of its obligations under this License or in the event a dispute arises concerning the meaning or interpretation of any provision of this License, the defaulting Party or the non-prevailing Party in such dispute, as the case may be, shall pay the prevailing Party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing Party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this License, reasonable attorneys' fees of the Licensee's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Licensee Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

7. Non-Liability of Licensee Officials, Employees and Agents

Notwithstanding anything to the contrary in this License, no elective or appointive board, commission, member, officer, employee or agent of Licensee shall be personally liable to Licensor, its successors and assigns, in the event of any default or breach by Licensee or for any amount which may become due to Licensor, its successors and assigns, or for any obligation of Licensee under this License.

8. MacBride Principles - Northern Ireland

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The Licensee and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Licensor acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

9. Controller's Certification of Funds

The terms of this License shall be governed by and subject to the budgetary and fiscal provisions of the Licensee's Charter. Notwithstanding anything to the contrary contained in this License, there shall be no obligation for the payment or expenditure of money by Licensee under this License unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of Licensee after the fiscal year in which the Term of this License commences, sufficient funds for the payment of the monthly License fee and any other payments required under this License are not appropriated, then Licensee may terminate this License. Licensee shall use its reasonable efforts to give Licensor reasonable advance notice of such termination.

10. Intentionally Omitted

11. Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this License, Licensor agrees not to discriminate against any employee of, any City employee working with Licensor, or applicant for employment with Licensor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Licensor Contracts

The requirements of this paragraph (b) shall not apply so long as this License does not require Licensor, and Licensor does not elect, to provide improvements or services to Licensee in the Licensed Space. Licensor shall include in any contracts relating to the Licensed Space during the Term a non discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Licensor shall incorporate by reference in any such contracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all contractors to comply with such provisions. Licensor's failure to comply with the obligations in this subsection shall constitute a material breach of this License.

(c) Non-Discrimination in Benefits

Licensor does not as of the date of this License and will not during the term of this License, in any of its operations in San Francisco, on real property owned by Licensee, or where the work is being performed for Licensee elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Licensor as Qualified Vendor

Licensor understands that under San Francisco municipal contracting requirements, Licensee may not enter into this Agreement if Licensor has not satisfied the requirements to be a qualified City vendor, including (i) compliance with Chapter 12B and (ii) either being current in payment of San Francisco business license taxes or, if Licensee does not conduct business within the City of San Francisco, filing a declaration of that fact with the San Francisco Tax Collector.

(e) Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease or license of property to Licensee are incorporated in this Section 11 by reference and made a part of this License as though fully set forth herein. Licensor shall comply fully with and be bound by any of the provisions that apply to this License under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Licensor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensor and/or deducted from any payments due Licensor.

12. Tropical Hardwood and Virgin Redwood Ban

The following provisions of this Section 12 shall not apply so long as this License does not require Licensor to provide, and Licensor does not elect to provide, improvements or wood products to Licensee:

(a) Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Licensor nor any of its contractors shall provide any items to Licensee in the performance of this License which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

13. Certification by Licensor

By executing this License, Licensor certifies that neither Licensor nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Licensor or any of its officers or members have been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall

immediately notify the Licensee of same and the reasons therefore together with any relevant facts or information requested by Licensee. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this License. Licensor acknowledges that this certification is a material term of this License.

14. Sunshine Ordinance

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, Licenses, agreements, responses to Requests for Proposals, and all other records of communications between Licensee and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, License, agreement or other benefit until and unless that person or organization is awarded the contract, License, agreement or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

15. Conflicts of Interest

Through its execution of this License, Licensor acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of San Francisco Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Licensor becomes aware of any such fact during the Term of this License, Licensor shall immediately notify Licensee.

16. Notification of Limitations on Contributions

Through its execution of this License, Licensor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Licensee for the selling or leasing of any land or building to or from the Licensee whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Licensor further acknowledges that the prohibition on contributions applies to each Licensor; each member of Licensor's board of directors, and Licensor's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensor. Additionally, Licensor acknowledges that Licensor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensor further agrees to provide to Licensee the name of each person, entity or committee described above.

17. Preservative-Treated Wood Containing Arsenic

This Section 17 shall not apply so long as this License does not require Licensor to provide improvements to the Licensed Space at Licensee's expense. As of July 1, 2003, Licensor may not purchase preservative-treated wood products containing arsenic in the performance of this License

unless an exemption from the requirements of Environment Code, Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

18. Cooperative Drafting

This License has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the License reviewed and revised by legal counsel. No Party shall be considered the drafter of this License, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this License.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 17-0144

WHEREAS, American Towers LLC owns certain real property consisting of Tower 3, located at Tower Facility: 300 Radio Road, in Daly City, California (Premises); and

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) wishes to connect its in-City Microwave Network to the Peninsula and complete the path to Moccasin and encompass critical facilities in between; and

WHEREAS, The expanded Microwave Network will enhance the coverage and reliability of SFPUC's data and voice communications, including Supervisory Control And Data Acquisition (SCADA) and Security, and provide a redundant path to mission critical SFPUC facilities; and

WHEREAS, The Premises, located on San Bruno Mountain in Daly City, are uniquely situated as a Microwave Repeater between SFPUC's existing sites at 525 Golden Gate Ave and Harry Tracy Water Treatment Plant; and

WHEREAS, The SFPUC desires to obtain a license to install, maintain, and operate SFPUC microwave communications antennas, radio communication, and other general telecommunications equipment on the Premises for a term of seven (7) years with three (3) additional renewal periods of five (5) years each, at an initial annual rent of \$22,800 with four percent annual increases; and

WHEREAS, American Towers LLC desires to enter into the License, allowing the SFPUC to use the Premises for the installation, maintenance, and operation of SFPUC microwave communications antennas, radio communication, and other general telecommunications equipment; and

WHEREAS, Entering into this License does not constitute a project under the California Environmental Quality Act (CEQA) Guidelines Section 15378; now, therefore, be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves and authorizes all actions heretofore taken by any City official in connection with this License; and be it

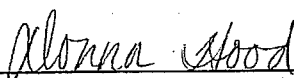
FURTHER RESOLVED, That this Commission hereby approves the terms and conditions of this License; and be it

FURTHER RESOLVED, That this Commission hereby authorizes and directs the SFPUC General Manager to execute the License following approval by resolution of the Board of Supervisors and the Mayor under Charter section 9.118(b); and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager of the San Francisco Public Utilities Commission to enter into future amendments to this License to expand the premises to include additional SFPUC communications antennas and equipment, as needed by SFPUC, provided that such amendments do not increase the rent under this License by more than twenty (20%) percent, and to seek similar authorization from the Board under Charter section 9.118(b) if required for such amendments.

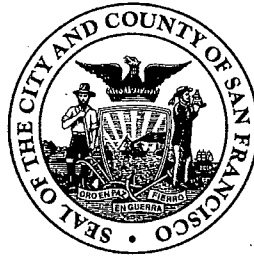
FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to enter into other amendments or modifications to this License, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the License or this resolution; and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 13, 2017.



Secretary, Public Utilities Commission

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

July 13, 2017

File No. 170757

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Gibson:

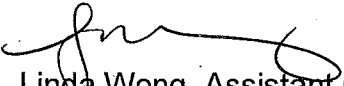
On June 27, 2017, the Public Utilities Commission introduced the following legislation:

File No. 170757

Resolution authorizing the General Manager of the San Francisco Public Utilities Commission to enter into a communications site lease with American Towers LLC, as Landlord, for installation and maintenance of new microwave communications antennas, radio communications, and other general telecommunications facilities located at 300 Radio Road, in Daly City, San Mateo County, for an initial term of seven years with three additional renewal periods of five years, each at an initial rent of approximately \$22,800 with four percent annual rent increases.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board


By: Linda Wong, Assistant Clerk

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning



San Francisco
Water Power Sewer

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

TO: Angela Calvillo, Clerk of the Board
FROM: John Scarpulla, Policy and Government Affairs
DATE: June 15, 2017
SUBJECT: Real Property Lease – American Towers LLC –
Communications Services Facilities on San Bruno
Mountain in Daly City - \$22,800 Total Annual Initial Year
Base Rent

Attached please find an original and one copy of a proposed resolution authorizing the General Manager of the San Francisco Public Utilities Commission to enter into a communications site lease with American Towers LLC as Landlord for installation and maintenance of new microwave communications antennas, radio communications, and other general telecommunications facilities located at 300 Radio Road, in Daly City, San Mateo County, for an initial term of seven (7) years with three (3) additional renewal periods of five (5) years each at an initial rent of approximately \$22,800 with four percent annual rent increases.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Resolution
2. SFPUC Resolution No. 17-0144
3. Draft Agreement
4. Form SFEC-126

Please contact John Scarpulla at (415) 934-5782 if you need additional information on these items.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2017 JUN 16 PM 12:32
AK

Edwin M. Lee
Mayor

Francesca Vieter
President

Anson Moran
Vice President

Ann Moller Caen
Commissioner

Vince Courtney
Commissioner

Ike Kwon
Commissioner

Harlan L. Kelly, Jr.
General Manager



**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: American Towers LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
1) Jim Taiclet, Raymond Dolan, Robert Hormats, Gustavo Lara Cantu, Grace Lieblein, 2) Jim Taiclet (CEO), Tom Bartlett (CFO) 3) N/A 4) N/A 5) N/A	
Contractor address: 10 Presidential Way, Woburn, MA 01801	
Date that contract was approved: pending	Amount of contract: \$22,800/Month
Describe the nature of the contract that was approved: Lease to collocate on ATC tower 8244 San Bruno Mountain	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed