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THE CITY OF SAN DIEGO



AMERICAN TOWER, L.P.

**at
MOUNT WOODSON**

Lease Agreement

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CITY OF SAN DIEGO LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY", and AMERICAN TOWER, L.P., a Delaware limited partnership, hereinafter called "LESSEE".

SECTION 1: USES

- 1.1 Premises. CITY leases to LESSEE and LESSEE leases from CITY all that City-owned real property situated in the City of San Diego, County of San Diego, State of California, known as a portion of "Mount Woodson" as described in Exhibit "A"- Legal Description, attached to this Lease and by this reference made part of this Lease ("Site"). LESSEE leases from CITY the 31,120 square foot portion of the Site, described in Exhibit "B"- American Tower Leasehold, attached to this Lease and by this reference made part of this Lease, which portion shall be called the "Premises." LESSEE, its agents, employees, contractors, guests and invitees may enter the Premises using the access point described in the attached Exhibit "A"- Legal Description on a 24-hour nonexclusive basis.
- 1.2 Uses. The Premises are leased to LESSEE, on a non-exclusive basis, solely and exclusively for the purposes of installing, constructing, modifying, maintaining, operating, and removing, at its expense, a communications facility on the Premises, including, without limitation, antenna equipment, cable wiring, utility lines, transmission lines, air conditioned equipment shelters, back-up power sources that may include, with proper permits obtained, back-up power generators with connected fuel storage tanks for emergency back-up power, related fixtures and, if applicable to the Premises, an antenna structure or structures ("Communications Equipment"). LESSEE may operate its Communications Equipment and use the Premises for other related or incidental activities as may be first approved in writing by the City Manager and for no other purpose. LESSEE shall have the right to replace or repair the Communications Equipment, or any portion, pursuant to Section 6.3 Maintenance and Section 6.4 Improvements/Alterations in this Lease.

The use of the Premises for any unauthorized, illegal or unpermitted purpose shall constitute a substantial default and subject this Lease to termination at the sole option of the CITY in accordance with Section 4.4. If LESSEE is reasonably in doubt as to the propriety of any particular use, LESSEE may request a written

determination from CITY that the use is permitted or not permitted. The determination will be at the sole discretion of the City Manager.

LESSEE covenants and agrees to use the Premises for the above-specified purposes throughout the Term (defined in Section 2.1). Failure to continuously use the Premises for the authorized purposes, or the use of the Premises for purposes not expressly authorized by this Lease, shall be grounds for termination by CITY.

- 1.3 Related Council Actions. By entering into this Lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required for the development and operation of the Premises.
- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements of this Lease, shall at all times during the Term peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE on the Commencement Date of this Lease (defined in Section 2.1), or if during the Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises. If LESSEE is prevented from having the quiet possession of all or a portion of the Premises for a period exceeding sixty (60) days, LESSEE may terminate this Lease pursuant to Section 2.3(b) upon delivering thirty (30) days written notice.
- 1.5 Easements and Reservations.
 - a. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares or access as it deems advisable, in its sole discretion, for the public good.
 - c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises resulting from CITY exercising the rights reserved in this section. The reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the Term, LESSEE shall provide competent management of the Premises for the intended uses to the satisfaction of the City Manager. For the purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a communication facility and related activities in a fiscally responsible manner in accordance with industry standards.
- 1.7 Co-location. Where Premises are a shared site LESSEE shall not access any CITY facility or City-owned communications equipment, including any towers, without the consent of the CITY.
- 1.8 Access Road. CITY grants to LESSEE, its authorized agents, employees, contractors, sublessees and licensees, a non-exclusive right to use during the Term of this Lease, that portion of the access road described in Exhibit "A" which serves Mount Woodson, subject to the following conditions:
 - a. LESSEE, its authorized agents, employees, contractors, sublessees and licensees shall exercise the right to use the access road only when it is necessary to access the Premises.
 - b. LESSEE, its authorized agents, employees, contractors, sublessees and licensees shall use the access road at their sole risk and avoid using the road to the extent possible during weather conditions that may result in excessive damage to the road surface.
 - c. LESSEE shall, at LESSEE'S expense, promptly repair any abnormal or excessive road damage caused by LESSEE, its authorized agents, employees, contractors, sublessees and licensees, including road surface protective features such as water drains, berms and culverts.
 - d. LESSEE shall provide locks for any gates crossing the road. Gate locks shall be placed in a manner that will not disturb the locks of others.

SECTION 2: TERM

- 2.1 Term. The Term of this Lease shall be five (5) years ("Term"). The Term of this Lease is effective following execution by the City Manager and approval by City Attorney ("Commencement Date"). If the Commencement Date is not the first day of a calendar month, then the Term shall include the partial calendar month from and including the Commencement Date through the last day of the full Term, so that the Term shall expire on the last day of a calendar month. "Lease Year" as used in this Lease shall mean the 12-month period commencing on the first day of the calendar month following execution of this Lease by City Manager and approval of the City Attorney.
- 2.2 Right to Extend. Provided that LESSEE is not in default of this Lease, LESSEE has the right to extend the Term of this Lease for two (2) additional term(s) of five (5) years each ("Renewal Term") subject to all original agreements, considerations, covenants, conditions, and the rent adjustment provisions of Section 3.2 of this Lease. This Lease shall automatically be renewed for each Renewal Term unless LESSEE notifies CITY in writing of its intention not to renew at least ninety (90) days prior to commencement of the Renewal Term.
- 2.3 Early Termination.
- a. LESSEE may terminate this Lease at any time by providing thirty (30) days prior written notice to CITY without further liability if LESSEE does not obtain all permits or other approvals (collectively, "Approval") required from any third party to operate the Communications Equipment, or if any Approval is canceled, expires or is withdrawn or terminated by any governmental authority or any third party, or if CITY fails to have proper ownership of the Site or authority to enter into this Lease.
 - b. LESSEE may terminate this Lease pursuant to the provisions of Section 1.4 Quiet Possession of this Lease.
 - c. LESSEE may terminate this Lease by providing sixty (60) days prior written notice to CITY if LESSEE, for any other reason, in its sole discretion, determines that it will be unable to use the Premises provided that LESSEE pays CITY a termination fee equal to twelve (12) months rent at the rental rate in effect at the time of the notice and the fee is paid prior to the termination of this Lease.
 - d. Upon termination, CITY will retain all prepaid rent, fees, and other payments.
- 2.4 Holdover. Any holding over by LESSEE after Lease expiration or Lease termination shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this Lease shall

constitute a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to an increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will with thirty (30) days prior written notice.

2.5 Quitclaim and Surrender of LESSEE'S Interest.

- a. Upon execution of this Lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. CITY may record the deed only on the expiration or earlier termination of this Lease. If CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand from CITY. If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice will be conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.
- b. At the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution of this Lease, and in a decent, safe, and sanitary condition. In the case of termination of this Lease by CITY prior to the end of the specified Term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: RENT

- 3.1 Time and Place of Payment. The Minimum Rent (defined in Section 3.2) is due monthly in advance on or before the first day of each calendar month. If the Commencement Date is not the first day of a calendar month, then the accrued rent for the partial month at the beginning of the Term shall be prorated on a per diem basis, and paid in conjunction with the rent for the first full month of the Term. All rents required by this Lease shall be made payable to the City Treasurer and mailed to:

Office of the City Treasurer
City of San Diego
P.O. Box 122289
San Diego, California 92112-4165

or hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue
First Floor
San Diego, California

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Minimum Rent. The annual minimum rent established for the first five (5) years following the Commencement Date is seventy two thousand dollars (\$72,000) ("Minimum Rent"), which is six thousand dollars (\$6,000) on a monthly installment basis.
- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the sixth Lease Year and at the beginning of each three-year period thereafter during the Term, the annual Minimum Rent shall be adjusted to eighty percent (80%) of the annual average of actual rents paid or accrued during the two (2) years preceding the adjustment date. The annual Minimum Rent shall then be divided by twelve (12) to establish the new monthly Minimum Rent. CITY will calculate adjustments upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated in this Lease. Until the calculations are completed, LESSEE shall continue paying monthly Minimum Rent at the prior rate. LESSEE shall pay to CITY any additional rents determined by the adjustment to be due for the months previously paid at the prior rate within thirty (30) days following written notice. In no event shall Any Minimum Rent adjustment result in a decrease in the Minimum Rent requirement in effect immediately prior to the adjustment date.

Beginning with the sixth Lease Year and continuing at the beginning of each Lease Year thereafter during any Lease Year where the Minimum Rent adjustment does not occur as provide above, the Minimum Rent shall be increased by three percent (3%) of the annual Minimum Rent for the preceding Lease Year.

- c. Percentage Rent. LESSEE shall pay CITY thirty five percent (35%) of its Gross Income (defined in Section 3.5 of this Lease) received during the previous Lease Year from the Premises ("Percentage Rent"), but in no event shall the Percentage Rent be less than the Minimum Rent.
- d. Percentage Rent Adjustment. At the beginning of the sixth Lease Year and the eleventh Lease Year, the rent for each ensuing five (5) year portion of the Term, subject to the adjustments described in Section 3.2b above, shall be determined by an appraisal of the Premises as of the adjustment date by a qualified, competent experienced professional real estate appraiser, who has demonstrated expertise in determining rent for telecommunication sites/properties ("Qualified Appraiser"). The Percentage Rent of the Premises shall be determined by an appraisal made by a Qualified Appraiser selected by mutual consent of the parties from the list of Qualified Appraisers approved by CITY. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed Qualified Appraiser.

In establishing the fair market rent of the Premises, the Qualified Appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this Lease at the commencement of the rental period under review, and that the authorized use is considered the highest and best use.

The date of value of the appraisal shall be the date of the established rental adjustment set forth in this Lease. If the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then-existing Lease rates, and the adjustment, when determined, will be retroactive to the effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. In no event shall the adjusted rent be less than the rent in existence immediately prior to the adjustment date. Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

- 3.3 Payment Procedure for Minimum Rent. If the Minimum Rent is greater than the Percentage Rent on a calendar month basis, then 1/12 of the annual Minimum Rent is required to be paid for that month. Minimum Rent is to be paid in monthly installments on or before the first day of the calendar month when Percentage Rent is due pursuant to Section 3.1 Time and Place of Payment of this Lease.

Provided, however, if the combined total Percentage Rent payments and monthly installments of the Minimum Rent during any Lease Year is equal to or exceeds the required annual Minimum Rent for that year, then for the balance of the year, LESSEE shall discontinue paying monthly installments of the Minimum Rent and shall continue paying only Percentage Rent until the beginning of the following Lease Year. Provided further, if in any Lease Year, Minimum Rent paid plus Percentage Rent paid exceeds the annual Minimum Rent and also exceeds the rent which would have been paid if the Percentage Rent had been paid on total Gross Income, the excess over the total rent owed shall be credited against the next payable rent as it becomes due. It is the intent of this provision that LESSEE shall pay monthly installments of the annual Minimum Rent as a guarantee against the Percentage Rent requirement and that the greater of the two requirements, Minimum Rent or Percentage Rent, whichever occurs throughout the Term, shall prevail on an annual basis.

3.4 Payment Procedure for Percentage Rent.

- a. On or before the last day of the calendar month following the calendar month in which the Gross Income subject to rents was earned, LESSEE shall provide to CITY a statement signed by LESSEE or its authorized agent attesting to its accuracy, which shall be legally binding upon LESSEE, and which will include the following:
 - (1) One-twelfth of the annual Minimum Rent until the full annual Minimum Rent is achieved in any Lease Year.
 - (2) Total Gross Income for the subject month.
 - (3) The Percentage Rent due CITY, computed and totaled.
 - (4) The accumulated total of all rents previously paid for the current Lease Year.
- b. Together with the statements, LESSEE shall provide payment in the greater of the two following amounts:
 - (1) one-twelfth of the annual Minimum Rent; or
 - (2) the total Percentage Rent due CITY computed as described in this section.
- c. Any rents due CITY from sublease activities or operations shall be calculated based upon the earliest of the following dates (whether or not

prior approval was given by CITY as required by this Lease and whether or not a separate percentage rent was established by CITY):

- (1) sublease commencement date; or
- (2) physical occupancy date; or
- (3) earliest activity date (i.e. - sale of goods, solicitation of business, construction or alterations, etc.).

3.5 Gross Income. "Gross Income" as used in this Lease, includes all income to LESSEE resulting from occupancy of the Premises from whatever source derived whether received or to become due. Gross Income does not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Income. The amount of the taxes shall be clearly shown on the books and records of LESSEE. Gross Income shall not include electrical charges, construction costs, or other nonrecurring fees or pass-through costs due LESSEE from sublessees or sublicensees. The percentage rent shall be calculated and paid by LESSEE on the basis of the Gross Income received by LESSEE.

3.6 Inspection of Records.

- a. Records. LESSEE shall, at all times during the Term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Premises. The records shall be supported by source documents such as contracts, invoices, or other documents as necessary to allow CITY to easily determine the total Gross Income.
- b. Financial Statements. Within sixty (60) days after the end of each Lease Year as previously established in this Lease, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year. The statement attesting to the accuracy of the Gross Income and rent shall be signed by LESSEE and shall be legally binding upon LESSEE.
- c. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described under Section 3.6a in this Lease, will be kept for at least five (5) years and made available to CITY. The

CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the Premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this Lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises. The data will include, if requested by CITY, a detailed breakdown of LESSEE'S receipts and expenses.

- d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE agrees to pay CITY'S cost of audit(s):
- (1) The audit(s) reveal an underpayment of more than five percent (5%) or more than five thousand dollars (\$5,000), whichever is less, between the rent due as reported and paid by LESSEE pursuant to this Lease and rent due as determined by the audit(s); or
 - (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section of this Lease.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on the amount as defined in Section 3.7 Delinquent Rent, of this Lease, within thirty (30) days of notice by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this Lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- e. Default. LESSEE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Lease, a breach of this Lease and cause for termination.

3.7 Delinquent Rent.

- a. Late Payment. If LESSEE fails to pay either the Minimum Rent or Percentage Rent when due, LESSEE shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent

(5%) [being a total of ten percent (10%)], which is mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payments of rent be less than twenty-five dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE'S default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

- b. Audit Deficiency. If a CITY audit(s), as applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which the rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described in this Lease. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay the unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of the unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to the nonpayment. LESSEE agrees to pay the amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

- 3.8 Unauthorized Use Charge. LESSEE shall pay CITY fifty percent (50%) of the gross receipts for any service or use that is not permitted by this Lease. This payment is subject to the due date provided in this Lease for rental payments and the provision for delinquent rent. The existence of the fifty percent (50%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Premises.

SECTION 4: ASSIGNMENT/DEFAULT

- 4.1 Provisions Binding on Successors. Except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

- 4.2 Assignment, Subletting and Licensing. LESSEE shall not assign this Lease or any interest in this Lease and shall not sublet nor license the Premises, or any part, or any right or appurtenant privilege, or permit any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part, without the prior written consent of the City Manager in each instance. Consent of the City Manager shall not be unreasonably withheld. A consent to assignment, subletting, licensing, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, licensing, occupation, or use by another person. Any assignment, subletting or licensing without consent shall be void and shall, at the option of CITY, if not terminated within fifteen (15) days of the receipt of written notice, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

“Assignment” for the purposes of this section shall include any transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or controlling stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment, sublease or license shall be conditioned upon the assignee, sublessee or licensee agreeing in writing that it will assume the rights and obligations assigned, subleased or licensed and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager may further require that this Lease or the requested sublease or license otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, which is incorporated into this Lease by reference, the City Manager must review and approve every person or entity which will have an interest in this Lease as an assignee, sublessee or licensee. The City Manager’s approval will not be unreasonably withheld provided all persons and entities are of good character and reputation in the community. LESSEE shall submit a list of all current licensees annually. Current subtenants listed in Exhibit “F”- Current Licensees are pre-approved as of the date of this Lease. Subsequent potential licensees shall execute the Consent to License Agreement included as Exhibit “G”- Consent to License Agreement for submission to the City for review and approval prior to entering into a licence agreement with LESSEE..

- 4.3 Encumbrance. Prior to causing any encumbrances to be placed on the Premises or on any permanent improvements on the Premises, LESSEE shall give written notice to the City Manager describing the nature and amount of the encumbrance and attaching all documentation needed to effect the encumbrance. LESSEE shall not cause any encumbrance to be placed on the Premises or any permanent

improvements on the Premises unless and until receiving approval in writing from the City Manager. Subsequent encumbrances shall also be for the exclusive purpose of development of the Premises.

- 4.4 Default and Remedies. On the occurrence of a default by LESSEE, CITY shall have the right to pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY in law or equity. These remedies are not exclusive but cumulative.

- a. Defaults. Each of the following shall constitute an event of default under this Lease:

- (1) LESSEE'S failure to make any payment required under this Lease when due if the failure continues for thirty (30) days following written notice of the failure by CITY; or
- (2) LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice from CITY; or if any default, other than those requiring payment to CITY, is not curable within thirty (30) days, and fails to commence to cure the default(s) within the thirty-day period and diligently pursue the cure to completion; or
- (3) LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law; or
- (4) LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed within ninety (90) days of filing; or
- (5) LESSEE is adjudicated a bankrupt; or
- (6) LESSEE makes a general assignment for the benefit of creditors; or
- (7) LESSEE uses the Premises for any unauthorized purpose and does not cease the unauthorized purpose within fifteen (15) days of the receipt of written notice.

- b. Remedies

- (1) For Default Based Upon Nonpayment. Upon default by LESSEE for nonpayment under Section 4.4a(1) above, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three-Day Notice to Pay or Quit or CITY may terminate the Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or to possession of the Premises and CITY may enter and take possession of the Premises and may recover the sum set forth below.
- (2) For Any Other Default. Upon default by LESSEE based upon Section 4.4a (2-7) above, CITY may, at its option, terminate this Lease and all right of LESSEE and of all persons claiming rights through LESSEE to the Premises or possession of the Premises, and CITY may enter and take possession of the Premises and may recover from LESSEE the sums set forth below. However, in the event that any default described in Sections 4.4a (2-7) is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.
- (3) Upon termination of the Lease due to default, City may recover the sum of:
 - (a) the worth at the time of award of any unpaid rent that had been due at the time of termination;
 - (b) the worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award minus (ii) the amount of rent lost, if any, and LESSEE affirmatively proves could have been reasonably avoided;
 - (c) the worth at the time of award of the amount by which (i) the unpaid rent for the balance of the Term after the time of the award minus (ii) the amount of rent lost, if any, as LESSEE affirmatively proves could be reasonably avoided;
 - (d) any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and

- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law. As used in clauses (a) and (b) of this section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c) of this section, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section the term "rent" shall include Minimum Rent, Percentage Rent and any other payments required by LESSEE.
- (4) If there is a deed of trust or mortgage on the leasehold interest, and LESSEE has provided CITY with an address where notice can be sent to the respective mortgagee or beneficiary, CITY will give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary will have thirty (30) days from the notice to cure the default(s) or, if any the default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue the cure to completion. The thirty (30) day period may be extended during the time as mortgagee or beneficiary pursues the cure with reasonable diligence.

If the mortgagee or beneficiary will be required to exercise its right to cure the default(s) through litigation or through foreclosure, then CITY will have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (a) CITY may correct the default(s) and charge the costs of the default(s) to the account of LESSEE, which charge will be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of the costs.
- (b) CITY may correct the default(s) and may recover the costs of the default(s) from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the cost of correction performed by or at the direction of CITY.

- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant will be the responsibility of the terminated LESSEE, and LESSEE agrees to reimburse CITY for any costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, will have the absolute right to substitute itself in place of LESSEE under this Lease and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to so substitute itself within the thirty (30) day period after receiving written notice by CITY of the default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary and LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary.

- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the Premises, this Lease will continue in effect so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.

LESSEE and CITY agree that any personal property left at the Premises thirty (30) days after termination of this Lease shall be considered abandoned and LESSEE forfeits all ownership to the abandoned personal property, and it is mutually agreed CITY may dispose of the abandoned personal property as it deems appropriate, without further liability to LESSEE or any person claiming an interest in the personal property.

CITY may, at its option, remove or dispose of the abandoned personal property at LESSEE'S expense. LESSEE shall hold CITY harmless and shall defend CITY against all claims asserted by third persons claiming an interest in the personal property.

- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when the defaults are discovered or when the City Council directs the City Manager to take action or require the cure of any default after the default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. If there is a partial taking of the Premises, and in the opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. If there is a partial taking of the Premises, and in the opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be

equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE'S operations are reduced or impaired.

- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then-remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its elected officials, officers, agents, representatives, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this Lease, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its elected officials, officers, agents, representatives, and employees.

- 5.2 Insurance to be Carried by LESSEE.

- a. Upon the Commencement Date, LESSEE shall take out and maintain at all times during the Term of the Lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE with respect to LESSEE'S Communications Equipment and in connection with the use or operation of the Premises.
 - (2) Other Insurance. Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE in pro-rata shares based upon the replacement costs of CITY'S and LESSEE'S affected properties. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3 Encumbrance of this Lease, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.
- b. LESSEE'S responsibility to maintain the insurance also includes the following:
- (1) Additional Insured. All insurance policies, by separate endorsement, shall name "The City of San Diego, its elected officials, officers, agents, representatives, and employees" as additional insureds, protect CITY against legal costs in defending claims, and shall not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the Commencement Date, except "use of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire Term. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Lease.

- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the extent of risk existing on the Premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California, but in no event for more than the prorata premium, plus interest, for the period of non-compliance. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. The reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this Lease or fails to provide the proof of insurance, CITY has the right to declare this Lease in default upon notice to LESSEE if LESSEE does not cure default, and CITY shall be entitled to exercise all legal remedies pursuant to this Lease in the event of a default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within ten (10) days of the fire or damage. LESSEE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises is damaged by any cause that puts the Premises into a condition that is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of the damage and to

restore the Premises to the condition that existed prior to the damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Premises all debris resulting from the damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation that existed prior to the damage, using for either purpose the insurance proceeds as set forth in Section 5.2 Insurance of this Lease.

LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within thirty (30) days, and shall complete the required repairs, restoration, or replacement of the Premises within a reasonable time. CITY may determine an equitable deduction in the rent requirement for the period or periods that the Premises are untenantable by reason of the damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on independent inspections, tests, investigations, and observations in entering into this Lease. LESSEE further acknowledges that the Premises are in the condition called for by this Lease, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. CITY must give at least twenty-four (24) hours notice and be escorted by LESSEE'S representative, if a representative is available at the time CITY wishes to inspect, when entering the Premises except in emergency situations. LESSEE shall make good faith efforts to have representatives available to escort CITY staff within twenty-four (24) hours notice from CITY. If entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, if LESSEE has not commenced the required work and be diligently pursuing it to completion, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE agrees to pay promptly any and all costs reasonably incurred by CITY in having the necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines the Premises are

not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition that is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

- 6.3 Maintenance. LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises throughout the Term. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. All applicable codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs and replacements on the Premises

6.4 Improvements/Alterations.

- a. LESSEE shall not construct any improvements, structures, or installations on the Premises, or make any alterations to the Premises (with the exceptions of equipment replacement or repair or the addition of new communications equipment from a sublessee or licensee of LESSEE as permitted by Section 4.2) without prior written approval by the City Manager. LESSEE shall not make major structural or architectural design alterations to approved improvements, structures, or installations on the Premises without prior written approval by the City Manager in his sole discretion. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations. LESSEE shall notify City Manager or his designee of improvements projects on the Premises and shall complete an ownership disclosure form when obtaining permits that informs the permitting authority that the Premises is City-owned property.
- b. Should changes in technology occur during the Term that would require the upgrading of the Communications Equipment, the LESSEE shall have the right to perform the upgrading, providing the upgrading does not damage or interfere with any adjacent improvements, the Premises, or the land, subject to Exhibit "D" - Interference Protection Requirements.

- 6.5 Reassignment of Space. CITY reserves the right to reassign LESSEE an equivalent amount of space in a different location when and if the CITY facility has been upgraded and reconfigured. LESSEE agrees to cooperate fully with CITY and its contractors during any renovation, repair, or other alteration of the facility. LESSEE acknowledges that its equipment may be relocated as a result of the renovation, repair, or other alteration of the facility. CITY warrants that every effort will be made to ensure continuous, uninterrupted broadcast/receiving capability during any conversion. The relocation shall take place at the CITY'S sole cost and expense. If any relocation is not satisfactory to LESSEE, then LESSEE may, in its sole and absolute discretion, terminate this Lease, upon thirty (30) days written notice to CITY, without further obligation.
- 6.6 Utilities. LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. CITY shall reasonably approve, when consistent with all local, state or federal law, at no cost to CITY, LESSEE'S permit applications for utilities and necessary utilities easements on the Premises.
- 6.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against claims, including reasonable attorneys' fees.
- If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY for the benefit of LESSEE, and a lien or notice of lien is filed, LESSEE shall within fifteen (15) days of filing either:
- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.8 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE, levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on the interest, and that LESSEE shall pay all possessory interest taxes. LESSEE further agrees that payment for taxes, fees and assessments will not reduce any rent due CITY.

6.9 Signs. LESSEE shall only post signs which are required by federal, state or local regulations. These include safety signs required by OSHA, FAA or FCC. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours notice by CITY, or CITY may remove the item at LESSEE'S cost. LESSEE shall post a clearly marked sign at the Premises indicating LESSEE'S name and emergency telephone number.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at Lease expiration or Lease termination be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall notify LESSEE thirty (30) days prior to Lease termination or one hundred eighty (180) days prior to Lease expiration, and LESSEE shall remove all the improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before Lease expiration or Lease termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE shall remove LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property by the date of the expiration or termination of this Lease. Any items which LESSEE fails to remove within thirty (30) days of expiration or termination will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove the items at LESSEE'S expense.
- d. If any removal of personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all damage.
- e. For any necessary removal by either CITY or LESSEE which takes place beyond the Lease expiration or Lease termination, LESSEE shall pay rent to CITY at the rate in effect immediately prior to Lease expiration or Lease termination.

- f. Notwithstanding any of the foregoing, if LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon Lease expiration or Lease termination, then CITY shall have the first right to acquire or purchase the personal property.

6.11 Hazardous/Toxic Waste.

- a. LESSEE shall not allow the release of hazardous substances in, on, under or from the Premises. For the purposes of this provision, a release in violation of any applicable law, shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of Hazardous Substances. "Hazardous Substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Lease.
- b. In the event of any release of a Hazardous Substance occurs in connection with LESSEE'S use of the Premises, LESSEE shall be responsible for all costs of remediation and removal of the substances in accordance with all applicable rules and regulations of governmental authorities.
- c. LESSEE shall defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- d. If LESSEE knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of the knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that the Hazardous Substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate the danger. LESSEE shall notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. LESSEE and LESSEE's sublessee's and sublicensee's shall be allowed to utilize Hazardous Substances on the Premises upon notice to CITY and in full compliance with all applicable

laws, statutes, ordinances, and regulations. However, LESSEE and LESSEE's sublessee's and sublicensee's shall not sell any Hazardous Substances from the Premises.

- e. At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, Hazardous Substances exist on, in, or under the Premises, and in what quantities, due to LESSEE'S use of the Premises. If any Hazardous Substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of the substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of the remediation or removal. LESSEE shall cause the remediation and/or removal of the substances recommended in the environmental assessment so that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.12 Radio-Frequency Radiation. LESSEE will maintain radio-frequency radiation within levels allowed by Federal Regulations stated in Section 1.1310 of CFR 47 and OET Bulletin 65. Any area casually accessible by the general public, or by any worker at ground level, shall be maintained below limits stated for General Population/Uncontrolled Exposure. Any areas discovered by LESSEE to exceed these Federally mandated limits, shall be reported to the CITY. LESSEE will not hold CITY responsible for radiation levels found to exceed these limits.

Hazardous RF radiation levels may be encountered when climbing on existing antenna structures. Refer to FCC OET Bulletin 65. Any equipment installed on the Site may at times require shutdown to allow maintenance on antenna structures. LESSEE agrees to allow shutdown periods when required for this maintenance.

Protection of LESSEE'S employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the General Population/Uncontrolled limits must be clearly identified as required by CAL-OSHA.

LESSEE shall provide the CITY with shutdown procedures, contact names, and telephone numbers. Should changes be made to the contact names and telephone numbers, the CITY shall be notified within seven (7) days.

- 6.13 Radio-frequency interference. By signing this Lease, LESSEE warrants that all Communications Equipment installations, modifications, and maintenance will not result in degraded performance or radio frequency interference to any existing authorized uses of the Site by fulfilling the requirements of Exhibit "D" - Interference Protection Requirements, which may be updated from time to time at the sole discretion of the City Manager.
- 6.14 Industry Standards. By signing this Lease, LESSEE warrants that all Communications Equipment installations, modifications, and maintenance will be performed in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© manual, or any succeeding regulations or standards.

In addition to the requirements of the Motorola R56© publication, installations on CITY property shall comply with the following supplemental requirements:

- a. All trash and debris shall be removed from the Site at the end of each workday and on completion of the project.
 - b. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements.
 - c. All transmitters shall have all necessary protection to eliminate any RF degradation of the receive signal to any other user on the site, such as cavity filtering and transmitter isolators.
 - d. LESSEE installing or modifying equipment at sites used by the CITY'S Information Technology & Communications Division ("ITC") must follow additional requirements as described in Exhibit "D" - Interference Protection Requirements. These standards may be updated from time to time at the sole discretion of the City Manager.
- 6.15 Best Management Practices and Stormwater Pollution Prevention Plan. CITY and LESSEE are committed to the implementation of programs to manage activities on the Premises in a manner which aids in the protection of San Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Management Plan ("SWMP") approved by CITY'S Stormwater Management Program. LESSEE shall submit for review and approval by City Manager or its designee, within ninety (90) days

of the execution of this Lease, BMP and SWMP that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The BMP and SWMP will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and SWMP for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SWMP as a result of any review by CITY to ensure compliance with any changes in laws or regulations. When the BMP and SWPPS have been developed and implemented by the LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE's responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP and SWMP.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to the parties as follows:

To LESSEE:

American Tower
10 Presidential Way
Woburn, MA 01801
Attention: Land Management

With a copy to:

American Tower
116 Huntington Avenue
Boston, MA 02116

To CITY:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

To CITY'S Information, Technology and Communications Department:

City of San Diego
Information, Technology and Communications Department

Attention: Communications Division
Central Operations
1220 Caminito Centro
San Diego, CA 92102

or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.
- c. Notice shall be effective on personal service or five (5) days after deposit in U.S. Mail.

- 7.2 Compliance with Law. LESSEE shall at all times, in the construction, maintenance, occupancy, and operation of the Premises, comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any law, statute, ordinance, or regulation, if compliance with notices is required by applicable law.
- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.4 Nondiscrimination. LESSEE shall not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, and the obtaining and holding of employment.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated in this Lease. LESSEE and all of its subcontractors, if any, are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, that sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease agreement so that the provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. If there is any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease, may not be consecutive and the lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.
- 7.10 Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agree that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever that is not contained in this Lease.

The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. This Lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the LESSEE employs an individual who, within the twelve months immediately preceding employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the LESSEE. These provisions do not apply to members of the City Council.
- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
 - c. LESSEE shall include in each new sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.
- 7.13 Disabled Access Compliance. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of

Regulations ("Building Code") as defined in Section 18910 of the California Health and Safety Code ("Title 24") and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

- 7.14 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.
- 7.15 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rent pursuant to this Lease. If LESSEE or CITY claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of any claimed delay.
- 7.16 Corporate Authority. Each individual executing this Lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the Commencement Date to qualify LESSEE to do business in the state where the Premises are situated.
- 7.17 Supersedure. It is mutually agreed that this Lease, upon execution, supersedes and annuls that certain lease fully executed on January 6, 1984, between CITY and Meridian Communications and approved by the City Council of the City of San Diego on December 12, 1983 by Council Resolution No. RR-259824, which is hereafter void and of no effect except as to any rentals and fees that may have accrued or any rights and remedies accrued or granted to CITY under the lease.
- 7.18 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this Lease.
- 7.19 Current Licensees. City acknowledges and confirms its approval of the current sublessees or licensees listed on Exhibit "F" and their uses on the Premises as of the date of this Lease.

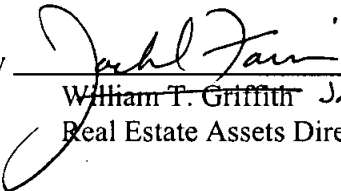
SECTION 8: SIGNATURES

8.1 Signature Page.

This Lease is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers, and, except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

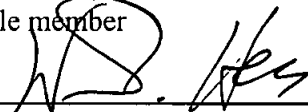
CITY OF SAN DIEGO

Date 1/11/06

By 
William T. Griffith Jack D. Parris
Real Estate Assets Director

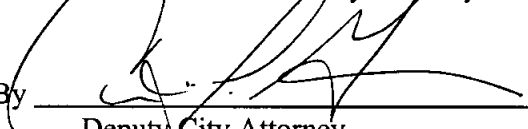
LESSEE: AMERICAN TOWER, L.P.
a Delaware limited partnership
By: ATC GP, Inc.
Its sole member

Date 8/8/05

By 
Title EVP, GENERAL COUNSEL

APPROVED as to form and legality this 22 day of January, 2006.

MICHAEL J. AGUIRRE, City Attorney

By 
Deputy City Attorney

SECTION 9: LEASE EXHIBITS

Exhibit "A" - Legal Description

Exhibit "B" - American Tower Leasehold

Exhibit "C" - Installation Standards

Exhibit "D" - Interference Protection Requirements - Information, Technology, and Communications Division Sites

Exhibit "E" - On the Air Test Forms

Exhibit "F" - Current Licensees

Exhibit "G" - Consent to License Agreement

Exhibit "A" - Legal Description

MOUNT WOODSON TELECOMMUNICATIONS CENTER

All that portion of Section 27, T13S, Range 1 West, San Bernardino Base and Meridian, according to the U.S. Government Survey, in the County of San Diego, State of California described as follows:

COMMENCING at the south quarter of said Section 27 from which the United States Coast and Geodetic Station "Woodson 1953" having the Lambert Zone 6, NAD83 coordinates of North 1,947,522.38 and East 6,340,730.94, bears North 23°43'31" W.406.11 feet; Thence South 89°19'37" West 177.51 feet along the South line of said Section 27; Thence North 19°48'36" West 376.84 feet, to a point having the Lambert Zone 6 NAD84 coordinates of North 1,947,532.05 and East 6,340,588.61, said point being the TRUE POINT OF BEGINNING; Thence South 89°11'09" West 410.94 feet; Thence North 20°08'21" West 83.00 feet; Thence South 89°11'09" West 250.00 feet; Thence South 20°08'21" East 100.00 feet; Thence South 89°11'09" West 450 feet; Thence North 20°08'21" West 200.00 feet; Thence North 89°11'09" East 250.00 feet; Thence North 20°08'21" West 50.00 feet; Thence North 89°11'09" East 450.00 feet; Thence North 20°08'21" West 53.22 feet; Thence North 89°11'09" East 210.94 feet; Thence South 20°08'21" East 64.55 feet; Thence North 89°11'09" East 201.37 feet; Thence South 19°48'36" East 221.22 feet to the TRUE POINT OF BEGINNING.

Above described exception parcel contains 5.2503 Acres.

TOGETHER WITH the right of ingress and egress thereto over and along an existing road, or its future relocation, running easterly from the Mt. Woodson/Palomar Telecommunications facility, through portions of Section 26, 34 and 35 to the existing location of the old Ramona-Poway Road. Said existing access road described in City of San Diego Field Survey notes by Lorne de Pron, January 26, 2000, L.C. Index 302-1733, W.O. 110013, on file in the Field Engineering office of the City of San Diego Land Surveyor.

Exhibit "B" - American Tower Leasehold

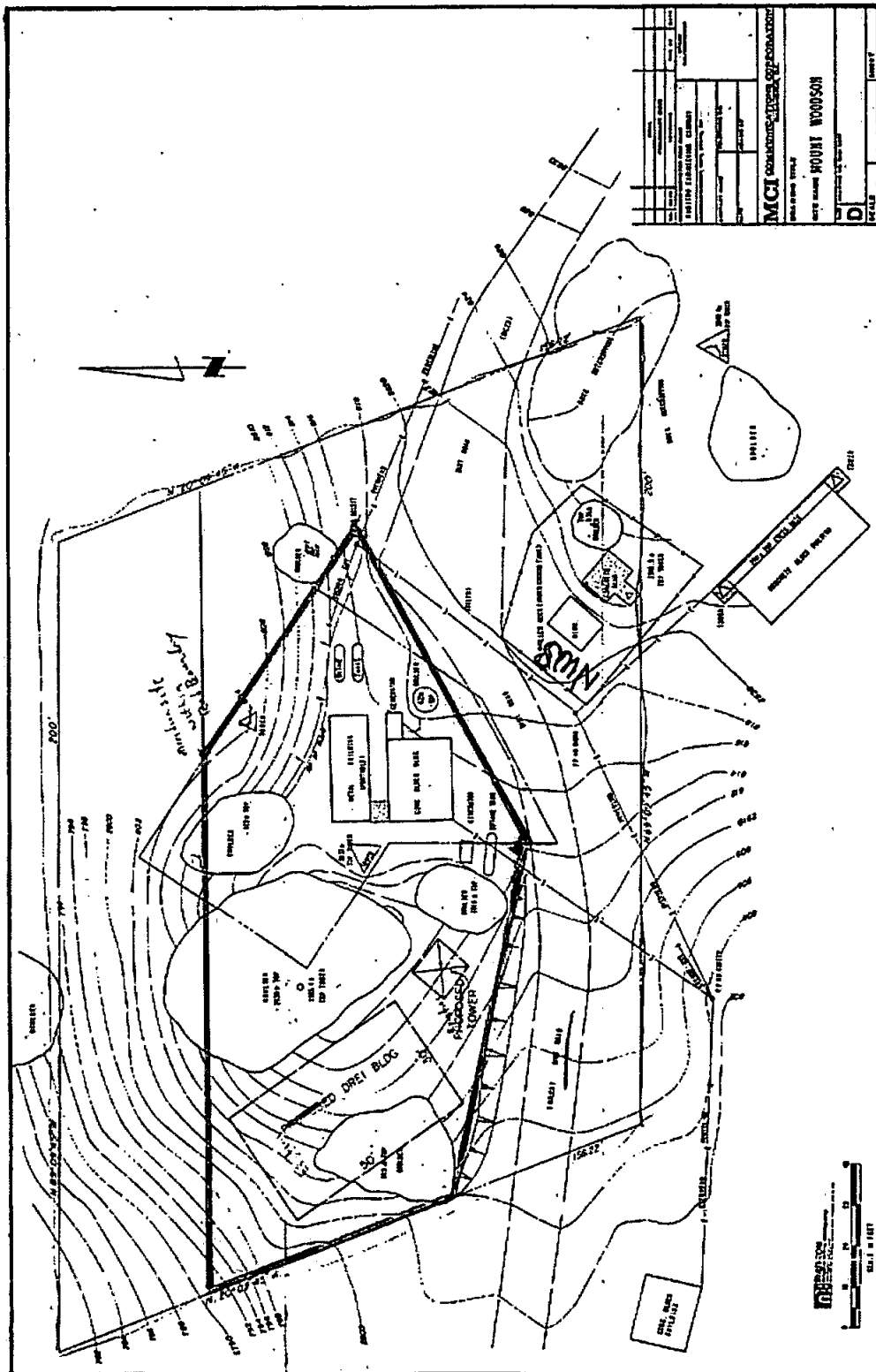


Exhibit "C" - Installation Standards

All waveguide and coax cable runs shall be installed and supported on the tower, cable ladder, and ice bridges, using Microflect waveguide cushions with the appropriate standoffs and hardware for property installation.

All waveguide and coax cable shall be installed in a neat manner with sweeping bends and straight runs on the tower cable ladder and ice bridges.

Three ground kits shall be installed as follows: Near the antenna, where the coax transitions to horizontal at the junction between the cable ladder and ice bridge, and where the coax enters the building. Grounds shall be installed to shunt any lightning directly to ground.

All antenna mounts installed on towers and structures shall be hot dip galvanized and of standard manufacture.

All hardware utilized on towers and structures shall be hot dip galvanized or stainless steel.

All drawings submitted shall clearly show the following items:

A plot plan of the Site to include the building and tower location with
EQUIPMENT

Exhibit "D" - Interference Protection Requirements - Information, Technology, and Communications Division Sites

- a. Interference. Prior to the Commencement Date or at anytime during the Term, LESSEE may be required to provide an intermodulation report ("Report") to CITY. This Report shall include the calculation parameters used to compile the Report, all intermodulation "hits," a brief description of the results of the intermodulation calculations; a list of possible interference situations that may result from the proposed equipment; transmission frequencies that are currently being operated on site, and similar or other relevant data from other lessees/users operating on-site.

The information required to compile this report, including intermodulation parameters and currently known on-site transmit frequencies may be obtained from the CITY Information Technology and Communications Division (IT&C). The CITY is not responsible for any omitted data provided for the purpose of creating this report.

The Report shall be provided to the IT&C Division, Senior Communications Engineer.

- b. City of San Diego Land Radio/Electronic Use "On The Air" Test Instructions and Procedures. For the purpose of confirming interference situations calculated by the intermodulation report and for the discovery of any other actual interference situations, on premises, pre-installation or pre-use tests may be required. The tests will determine whether or not radio frequency interference or degraded performance will result to any existing authorized radio/electronic type uses at the Site.

Pre-installation or pre-use Testing

- (1) It will be the responsibility of the LESSEE to notify all radio/electronic permittees/lessees at the Site of the tests and details of the tests, at least fourteen (14) days in advance of the test. A listing of all radio/electronic land use permittees/lessees operating at the facility will be obtained from CITY and used to compile a notification list.

- (a) The notification shall be in the form of letter to each listed permittee/lessee giving a technical data summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the permittees/lessees to have a qualified representative present for the test to observe for possible interference problems and with authority to sign

an interference or noninterference certification on behalf of the permittee/lessee. Technical Data Summary and Test Results Certification sheets are included below.

- (b) A copy of these instructions, "City of San Diego Radio/Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be so noted in the notification letter.
 - (c) Notification to permittees/lessees shall be sent via U.S. Mail, pre-paid First-Class postage, certified return receipt requested or hand delivered.
 - (d) The notification letter to the CITY'S Senior Communications Engineer shall include a list of all permittees/lessees notified.
- (2) It will be the permittee/LESSEE'S responsibility to submit to the CITY'S Senior Communications Engineer following the completion of the tests, a letter stating test results obtained from each permittee/lessee participating in the test and a list of those permittees/lessees who did not respond.
 - (3) If a notified permittee/lessee fails to send a qualified representative to observe and participate in the tests, it will be assumed by the CITY that the permittee/lessee has assured themselves that their operations will not be affected.
 - (4) It shall be the responsibility of LESSEE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

c. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the LESSEE under the following technical conditions:

- (1) The LESSEE'S transmitting and/or receiving equipment shall be of the type planned for final use at the Site.
 - (a) The transmitted RF power shall be the maximum to be used and authorized at the Site.

- (b) On-the-air transmitter tests shall include the use of full allowable modulation.
- (c) Antenna height(s), location(s) and type(s) shall be the same or comparable to the final installation plan.
- (2) Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the LESSEE'S electronic equipment.
- (3) All tests will include testing with all frequencies planned for use by the LESSEE at the Site.

d. Radio Frequency Interference to City Radio Equipment

The radio equipment use proposed by the applicant shall not directly or indirectly result in degraded technical performance of the CITY'S existing radio equipment installed at the Site or used in the general area. Resulting degraded technical performance in this instance will include, but is not limited to:

- (1) Detectable or measurable received intermodulation
- (2) Audio distortion or noise
- (3) Receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test

e. Modifications to Equipment

Notification shall be given to the CITY prior to modifications to transmitting equipment that will change Effective Radiated Power, Transmitter Frequency, Transmitter Modulation, or Transmitter Spurious and Harmonic Emissions. These modifications may require retest using this "On The Air" testing procedure and the newly proposed equipment.

f. Resulting Interference

Should an interference problem occur at the Site or in the nearby surrounding area as a result of newly installed equipment ("New Installation"), or a retuned or modified installation ("Changed Installation"), it shall be the responsibility of the LESSEE or user implementing the New or Changed installation to initiate mutually

agreeable actions among the affected parties to mitigate or resolve the interference problem.

CITY may recognize the right of prior authorized users and withhold approval or disallow use of a New or Changed installation or other modification pending settlement of the interference problems between the applicant/LESSEE and other authorized users. It is mutually agreed that the CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of termination of this Lease, and, further, that LESSEE expressly waives any claim for expense or loss which LESSEE might incur as a result of termination of this Lease.

Exhibit "E" - On the Air Test Forms

TECHNICAL DATA SUMMARY

One form to be completed per transmitter and supplied to all permittees operating at the facility

DATE _____

LOCATION _____ APPLICANT _____

CALL SIGN _____ CONTACT NAME _____ PHONE _____

TRANSMITTER

RECEIVER

Manufacturer _____ Manufacturer _____

Model _____ Model _____

Emission _____

Radiated ERP _____ Watts

<u>Transmit Frequency</u>	<u>Receiver Frequency</u>	<u>CTCSS or DCS</u>
---------------------------	---------------------------	---------------------

1. _____	1. _____	1. _____
----------	----------	----------

2. _____	2. _____	2. _____
----------	----------	----------

3. _____	3. _____	3. _____
----------	----------	----------

4. _____	4. _____	4. _____
----------	----------	----------

ANTENNA

TRANSMIT CAVITY FILTER

ISOLATOR

Make _____	Make _____	Make _____
------------	------------	------------

Model/Type _____

Gain _____ dBd

Azimuth _____

REMARKS:

TEST RESULTS CERTIFICATION

Top section to be completed and supplied to all permittees operating at the facility.
Bottom section to be completed by each existing site tenant after testing is complete.

SUBJECT: "On the air" interference testing

SITE LOCATION _____

FREQUENCY _____

DATE OF TEST _____

TIME OF TEST _____

PROPOSED TRANSMITTER OWNED BY _____

TEST PERFORMED BY _____

Ladies and Gentlemen:

"On-the-air" interference testing has been completed at the above stated site location. A qualified representative was present for the test to observe for possible interference problems.

With regard to the above test, this is to certify that objectionable radio frequency interference
Did ☐ Did not ☐ result during this test.

Details of interference: (if applicable)

Proposed technical resolution: (if applicable)

(Tenant)

(Tenant's Representative)

(Date)

Exhibit "F" - Current Licensees

Customer Name	Cust. Number	Parent Company	Lease Number	Tower Number	Tower Name
ALARMS UNLIMITED INC	24121	ALARMS UNLIMITED INC	WE800901	00008009	WOODSON, MT #1 T1
METROCALL	3265	METROCALL	50715	00008009	WOODSON, MT #1 T1
ARCH	5623	ARCH	53800	00008009	WOODSON, MT #1 T1
WEBLINK WIRELESS INC	23644	WEBLINK WIRELESS	51420	00008009	WOODSON, MT #1 T1
RICOCHET NETWORKS INC	25577	RICOCHET NETWORKS INC	48824	00008009	WOODSON, MT #1 T1
ARCH	5623	ARCH	53801	00008009	WOODSON, MT #1 T1
CACTUS RADIO CLUB	21524	CACTUS	WE800903	00008009	WOODSON, MT #1 T1
CINGULAR INTERACTIVE LP	21756	VELOCITA WIRELESS	WE8009R0	00008009	WOODSON, MT #1 T1
COX COMMUNICATIONS	21970	COX COMMUNICATIONS	WE800910	00008009	WOODSON, MT #1 T1
GTE MOBILENET OF CA LP	22189	VERIZON	WE8009A2	00008009	WOODSON, MT #1 T1
KGTV MCGRAW HILL BROADCASTING	22458	MCGRAW HILL COMPANIES	WE800918	00008009	WOODSON, MT #1 T1
WESTOWER COMMUNICATIONS	23556	SPECTRASITE COMMUNICATION	WE800904	00008009	WOODSON, MT #1 T1
MCKINNON BROADCASTING KUSI	22707	KUSI	WE800924	00008009	WOODSON, MT #1 T1
NBC 739 KNSD TV	22648	NBC	WE800920	00008009	WOODSON, MT #1 T1
RADIO LAB	24646	RADIO LAB	WE800908	00008009	WOODSON, MT #1 T1
RADIO CALL ACQUISITIONS LLC	23817	RADIO CALL	WE800909	00008009	WOODSON, MT #1 T1
TELETRAC INC	23510	TELETRAC	92421	00008009	WOODSON, MT #1 T1
MCKINNON BROADCASTING KUSI	22707	KUSI	WE813700	00008137	WOODSON, MT #1 T3
SKY RIVER COMMUNICATIONS INC	23183	SKY RIVER COMMUNICATIONS	56075	00008138	WOODSON, MT #1 T4
Westower Subtenants/sublicensees					
County of San Diego	19408		8414	CA0015	
Telespectra LLC	35125		15374	CA0015	
KSCI, Inc.	82789		28808	CA0015	
Mintz Broadcasting	83504		29051	CA0015	
Trango Systems	97619		32743	CA0015	
San Diego Assoc. of Gov/SANDAG	98410		32744	CA0015	
US Dept. of Navy	99625		33406	CA0015	

Exhibit "G" – Consent to License Agreement

CONSENT TO LICENSE AGREEMENT

The City of San Diego, a municipal corporation ("CITY"), as LESSOR under that certain Lease Agreement entered into with American Tower, L.P., a Delaware limited partnership ("Lessee") and filed in the Office of the City Clerk as Document _____ (the "Master Lease"), consents to that certain License Agreement between the above LESSEE and ("LICENSEE") to be executed subsequent to the execution of this Consent to License Agreement (the "License Agreement"). The License Agreement shall be subordinate to the Master Lease in all respects. The CITY is merely approving the LICENSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the License Agreement. The CITY is not bound by any term or condition in the License Agreement which in any way conflicts with or is additional to the provisions of the Master Lease.

This consent is subject to the following conditions:

ASSIGNMENT AND SUBLICENSING: LICENSEE shall not assign the License Agreement or sublicense the premises or any part thereof without the prior written consent of LESSEE and the City of San Diego. An assignment by operation of law shall automatically terminate the Sublicense.

HOLD HARMLESS: LICENSEE shall assume the defense of, indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the licensed premises, the condition of the premises or from any act or omission of LICENSEE, his agents and invitees; provided, however, LICENSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

INSURANCE: LICENSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the licensed premises. Minimum coverage shall be _____ million dollars (\$ _____,000,000) COMBINED SINGLE LIMIT LIABILITY. An insurance certificate evidencing such policy of insurance shall be filed with CITY and shall name the City of San Diego, its elected officials, officers, representatives, agents, and employees as additional insureds by separate endorsement. The policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney fees.

SUBORDINATION: The License Agreement is in effect a sublease of a portion of the premises covered by the Master Lease. The License Agreement is subject to and subordinate to the covenants and conditions of the Master Lease.

CITY:
THE CITY OF SAN DIEGO

Dated _____

By _____
Deputy Director
for the City Manager

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Dated _____

By _____
Deputy City Attorney

Dated _____

LESSEE:
AMERICAN TOWER, L.P.,
A Delaware limited partnership
By: ATC GP, Inc.
Its sole member

By: _____
Its: _____

Dated _____

LICENSSEE:

By: _____
Its: _____

RESOLUTION NUMBER R- 301101

ADOPTED ON DEC 05 2005

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY MANAGER TO EXECUTE A FIVE YEAR LEASE AGREEMENT WITH TWO FIVE-YEAR OPTIONS TO EXTEND WITH AMERICAN TOWER, L.P. FOR A COMMUNICATIONS FACILITY ON CITY-OWNED PROPERTY KNOWN AS MOUNT WOODSON IN THE COUNTY OF SAN DIEGO.

WHEREAS, the City owns property located in the County of San Diego known as Mount Woodson; and

WHEREAS, the City has leased approximately 10,890 square feet of Mount Woodson to American Tower, L.P. since 1997; and

WHEREAS, American Tower uses the property to license rack space in the equipment shelter and antenna tower to small scale users of private radio systems and to communications carriers; and

WHEREAS, the lease has expired and American Tower has requested a lease renewal; and

WHEREAS, the proposed lease for the construction, operation and maintenance of a communications facility is for a term of five years with two five-year options to extend at the greater of an annual minimum rent of \$72,000 or 35% of the gross rent received; and

WHEREAS, an independent fee appraisal dated July 28, 2005 concluded that the negotiated rent equals or exceeds current market rent values; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a 5-year lease agreement with

two five-year options to extend with American Tower, L.P. for City-owned property located on Mount Woodson for the construction, operation and maintenance of a communications facility, at the greater of an annual minimum rent of \$72,000 or 35% of the gross rent received, on the terms and conditions set forth in the Lease Agreement on file in the office of the City Clerk as Document No. RR- 301101 .

1. That the Council waives Council Policy 700-41 regarding the use of the RFP process for the lease of City-owned land.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Elisa A. Cusato
Deputy City Attorney

EAC:nda
11/08/05
Or.Dept:READ
R-2006-474
MMS#1227

Passed and adopted by the Council of San Diego on December 5, 2005 by the following vote:

YEAS: **PETERS, ATKINS, YOUNG, MAIENSCHIN, FRYE, MADAFFER, MAYOR SANDERS.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

VACANT: **DISTRICT 2, DISTRICT 8.**

AUTHENTICATED BY:

MAYOR JERRY SANDERS
Mayor of The City of San Diego, California

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California

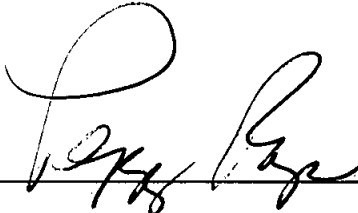
(SEAL)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-301101 passed and adopted by the Council of The City of San Diego,
California on December 5, 2005.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy