

**WIRELESS COMMUNICATIONS FACILITY LEASE AGREEMENT
BETWEEN CITY OF HESPERIA
AND**

This WIRELESS COMMUNICATIONS FACILITY LEASE AGREEMENT (“**Lease Agreement**” or “**Agreement**”) entered into as of this ____ day of _____, 20____ is between CITY OF HESPERIA/OR HESPERIA WATER DISTRICT, a California municipal corporation (“**Lessor**”), and _____ (“**Lessee**”) (collectively, “**Parties**”).

RECITALS

WHEREAS, Lessor is the owner of that certain real property located in the County of San Bernardino, as described in **Exhibit A**, attached hereto and by this reference incorporated herein (“**Lessor’s Property**”); and

WHEREAS, Lessee desires to lease a portion of Lessor's Property, as described in **Exhibit B**, in connection with its federally licensed communications business together with a right of ingress and egress and a right to install its wireless communications facilities, including wireless antenna or antenna array (collectively, “**Communications Facility**,” “**Equipment**” or “**Facility**”) on Lessor’s Property; and

WHEREAS, subject to the following terms and conditions, Lessee and Lessor desire to enter into this Lease Agreement, which shall supersede all other agreements, whether oral or written, between Lessee and Lessor concerning the herein subject Lessor’s Property, Premises, and Communication Facility, and

WHEREAS, Lessee and Lessor hereby enter into this Lease Agreement on the terms and conditions set forth herein, and the Parties expressly agree that this is not an easement.

NOW, THEREFORE, in consideration of the promises and of the mutual obligations and agreements in this Lease Agreement, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. LESSOR’S PROPERTY

Lessor is the record owner of that certain parcel of real property located in the State of California, County of San Bernardino, City of Hesperia, commonly known as _____, also known as Assessor’s Parcel No. _____, (the “**Lessor’s Property**”). The legal description of the Lessor’s Property is contained in **Exhibit A**, attached to and incorporated in this Lease.

2. THE PREMISES

2.1 Description

Lessor hereby leases to Lessee and Lessee leases from Lessor that portion of the Lessor’s Property generally described as follows: approximately _____ square feet of ground space in which Lessee, upon obtaining all necessary permits, shall install its **Communications Facility**. The

location of the Premises, the legal description of ingress and egress pathways to the Premises, and other portions of the Premises shall be as shown in **Exhibit B** and the map that is contained in **Exhibit B**, attached hereto and by this reference incorporated herein. The Premises include and permit the following:

- (a) An equipment building of approximately ____ square feet in size as described in **Exhibit B** (“**Equipment Building**”).
- (b) A new _____ tower (the “**Tower**”).
- (c) A ____ foot wide nonexclusive strip of land area for the purpose of installing and maintaining all necessary underground cables and utilities from the Equipment Building to the **Tower** (“**Sub-Grade Cable Run Area**”).

2.2 Plans Specifications

Exhibit C shall provide full plans and specifications of the equipment, tower, photo simulations, and landscaping plans (the “**Site Plan**”). Specifications shall include the location of the end-of-path site and azimuth. Specifications of any rooftop equipment shall include roof weight loading and how cables will be attached to ground-level facilities. The tower, antennas, and site installations shall be built exactly per such plans unless Lessor agrees to changes before they are implemented. Lessor shall have final design approval.

Prior to construction, Lessee shall deliver to Lessor true and complete sets of submissions and correspondence to and from the local zoning authority and other government entities, including the California Public Utilities Commission, the Federal Communications Commission, and the Federal Aviation Authority.

2.3 Communications Facility Property; Equipment

All portions of the Communications Facility brought onto the Premises by Lessee will be and shall remain Lessee’s personal property with the exception of Lessee-installed property for the benefit of Lessor, such as Lessee-installed light poles or other structures used for antenna mounting that replace Lessor’s original poles or structures. Such exceptions are and shall be the property of the Lessor and shall not be removed without the approval of the Lessor. Following completion of the Equipment Building and written approval and acceptance thereof by Lessor, which shall not be unreasonably withheld, ownership of the Lessor’s portion of the Equipment Building as indicated on **Exhibit B** shall automatically transfer to Lessor. Each party shall be responsible for the cost of maintenance and repairs to their respective portions of the Equipment Building.

Prior to installing or allowing any Equipment to be installed in or on the Premises, Lessee shall submit detailed engineering plans and specifications of the planned installation to Lessor for Lessor’s written approval, which approval shall not be unreasonably delayed. Lessor’s review of Lessee’s plan shall include a review of the appearance of the Equipment. The Equipment to be installed must be in compliance with all federal, state, and local laws, including but not limited to local zoning and design requirements, and must adhere to all technical standards set forth in this Lease Agreement. Lessor’s approval of any installation is not a representation that such installation of the Equipment is in compliance with all applicable governmental laws, ordinances, rules and

regulations or that such Equipment will not cause interference with other systems, if any, then in operation on the Premises. Lessee hereby confirms and agrees that its Equipment shall be installed and operated solely within the Premises.

Lessee understands and acknowledges that it shall at no time install or modify any wireless Communications Facilities or wireless antennas unless it first obtains the necessary approvals and permits in accordance with the Lessor's local laws or any other applicable state and federal ordinances and regulations. Lessee further acknowledges that all facilities to be maintained within the Premises, whether currently included in the exhibits attached hereto or to be modified or built in the future, require all necessary approvals and permits mentioned herein.

2.4 Access.

Access to the site is subject to the notice requirements in **Section 15**.

2.5 Setbacks.

Any setback of the Premises from the Lessor's Property boundaries and the width of any access road shall be the width required by the applicable governmental authorities, including police and fire departments.

2.6 Parking

No parking is permitted in the lease area except as specified herein: Lessee and its employees, representatives, and contractors may park their vehicles on Lessor's Property only when necessary to carry personnel, Equipment, or supplies, or for the purpose of necessary construction, repairs, operation or maintenance on the Premises as allowed under this Lease Agreement.

3. LEASE AND IRREVOCABLE NON-EXCLUSIVE INGRESS AND EGRESS

Lessor hereby leases the Premises to Lessee to access, install, operate, maintain, and remove Lessee's Communications Facility in and on the Premises and grants to Lessee an irrevocable, non-exclusive area during the term of this Lease Agreement for reasonable ingress and egress from a public right of way immediately abutting Lessor's Property to and from the Premises, (collectively, "Ingress and Egress Area") seven (7) days a week, twenty-four (24) hours per day for the sole purpose of installing, operating and maintaining the Communications Facility including conduits and pipes over, under and along the Ingress and Egress Area as more fully described in **Exhibit B** and **Exhibit C**. Lessee shall conduct no activities other than those set forth in this Lease Agreement without the prior written consent of Lessor.

4. TERM, RENT, AND SECURITY DEPOSIT

4.1 Term

This Lease Agreement shall not be valid unless and until signed by the City Manager ("Effective Date"). No right in or to the Premises shall vest in Lessee until the occurrence of the Effective Date.

This Lease Agreement shall be for an initial term of five (5) years (“**Initial Term**”), commence upon full execution of this agreement (“**Commencement Date**”). The Lease Agreement shall be terminated in accordance with the provisions governing termination as set forth in **Section 8** herein.

Lessee shall have the option to renew for an additional two (2) terms of five (5) years each (each a “**Renewal Term**”), for a total term of twenty-five (25) years if all Renewal Terms are granted. Renewal shall be automatic unless Lessor or Lessee terminates lease in accordance with the provisions governing termination as set forth in **Section 8** herein. No renewal shall be permitted if Lessee is in default of this Lease Agreement on the last day preceding such Initial or Renewal Term.

Provided all Renewal Terms to this Lease Agreement are exercised by the Parties, and unless the Parties terminate this Lease Agreement prior to the Termination Date as set forth in **Section 8**, this Lease Agreement shall terminate on _____ (“**Termination Date**”) without any further notice to Lessee. Lessee shall vacate the Premises, in accordance with the terms of this Lease Agreement no later than sixty (60) days from the Termination Date.

At the end of the lease term, with the express consent of the Lessor, the Parties may continue the lease of the Leased Property on a temporary month-to-month basis (“**Temporary Holdover Period**”) on the same conditions and terms of this License Agreement except that the Monthly Rent shall be in the amount of 150% of the Monthly Rent in effect at the expiration of this Lease Agreement. Said Temporary Holdover Period shall not exceed 180 days from the date of the end of the lease term. Lessee shall notify Lessor in writing of its request to continue the lease on a month-to-month basis one hundred eighty (180) days in advance of the Termination Date. Nothing contained herein shall grant Lessee the right to holdover after the term of this Lease Agreement has expired.

4.2 Rent

This Lease Agreement shall commence on the aforementioned Commencement Date at the initial rental rate of _____ (“**Monthly Rent**”). The Monthly Rent shall be payable to Lessor on the first day of each month, in advance without offset or deduction, and shall be non-refundable. The first month of rent shall be pro-rated from the Commencement Date to the end of the month at a rate of _____ per day.

Lessee's failure to pay Monthly Rent by the fifteenth (15th) day of each month shall subject Lessee to a late charge in an amount equal to twenty percent (20%) per annum of the overdue amount or the maximum allowable by law, whichever is greater until all amounts owing to Lessor are paid in full. Said late charge shall be automatically imposed without notice. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder or by law.

The Monthly Rate shall increase annually during the Initial Term and any Renewal Term, effective as of each anniversary of the Commencement Date, by an amount equal to five (5%), per annum above the amount of the Monthly Rate in effect immediately prior to such increase.

All Monthly Rent payments shall be sent to the Lessor's address in **Section 15**.

4.3 Surety Bond

Upon execution of this Lease, the Lessee shall deposit with the Lessor a security deposit in the amount of One Hundred Thousand Dollars (\$100,000) in the form of a corporate surety bond ("**Surety Bond**") acceptable to the Lessor to secure the Lessee's faithful performance of all terms, covenants, and conditions of this Lease. Lessee agrees that Lessor may (but shall not be required to) apply the Surety Bond in whole or in part to remedy any damage to the Premises caused by Lessee, its Agents or Invitees, or any failure of Lessee to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of Rent or other sums due hereunder either before or after a default), without waiving any of Lessor's other rights and remedies hereunder or at law or in equity and without any obligation. Lessee waives the provisions of Section 1950.7 of the California Civil Code or any similar law, statute, or ordinance now or hereafter in effect and agrees that Lessor may retain any portion of Security Deposit reasonably necessary to compensate Lessor for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Lessee, its Agents or Invitees.

5. PERMITTED USE OF THE PREMISES

The Premises may be used only for (i) the transmission and reception of communication signals within or utilizing the frequency bands duly licensed by the Federal Communications Commission; (ii) the construction, maintenance, repair, and replacement of its Equipment including antennas, cables and facilities, and improvements related thereto; and (iii) activities related to the foregoing, provided that none of the activities described (i), (ii), or (iii) require any physical expansion or relocation of any portion of the Premises or violate Lessee's duties of non-interference set forth herein (collectively, "Lessee's Permitted Use") as described in the project plans and specifications in **Exhibit C** attached hereto and by this reference incorporated herein.

5.1 Colocation

Lessee may divide, sublease, sublicense, apportion or otherwise piggyback or colocate additional wireless telecommunication operators on the Facility (each such event individually constituting a "**Colocation**"), provided, however, that prior to any colocation, Lessee shall obtain the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed, and Lessee shall obtain any approvals or permits required by the City of Hesperia. Additionally, Lessee shall deliver to Lessor within 30 days of each colocation, a fully executed copy of the agreement evidencing such colocation.

5.2 Additional Rent for Colocation

Lessee shall pay to Lessor, as Additional Rent, 50% of the monthly rent Lessee receives from each such wireless telecommunications operator for a Colocation.

5.3 Access

At all times throughout the term of this Lease Agreement, and at no additional charge to Lessee, Lessee and its employees, agents, and subcontractors will have twenty-four (24) hour per day,

seven (7) days per week right of access to and over Lessor's Property, along Lessor's specified access routes, for the installation, maintenance and operation of the Communications Facility and any utilities serving the Premises, subject to the following requirements:

- Lessee shall provide notice to Lessor as required by **Section 15**.
- Lessee shall provide a minimum of two (2) weeks written notice to Lessor prior to the planned initial installation of equipment.
- Lessee shall provide forty-eight (48) hours advance notice to Lessor prior to bringing any vehicles or equipment onsite. Vehicular access shall be denied if the vehicle or Equipment: (1) has a gross vehicle weight in excess of 10,000 pounds; (2) has skid steering, including track-driven vehicles or Equipment; (3) possesses outriggers or stabilizers; (4) needs to be transported by trailer; or (5) is not recognized by the Department of Motor Vehicles to be legally driven or operated across/over public roads or highways.
- Lessee shall provide twenty-four hours (24) advance telephone notice to Lessor prior to any routine, non-emergency, maintenance of the equipment to be undertaken by Lessee, its employees, agents, servants, contractors or subcontractors, or any of their employees, agents or servants.
- In the case of an emergency, Lessee shall be required to provide as much notice as is reasonably practicable in the situation.

6. MAINTENANCE AND REPAIR

Lessee will: (i) keep, maintain and repair the Premises in good condition, reasonable wear and tear excepted, and (ii) repair any damage caused by Lessee to Lessor's Property including but not limited to accessways to the Premises. Lessee's maintenance obligation in the preceding sentence shall include, but not be limited to, the replacement of any lights that may be mounted upon the Facility.

Lessee shall repair any damage the Premises or the Lessor's Property caused by Lessee during construction, maintenance and operations, or any time said damage is caused by Lessee. Lessee shall repair the Premises or Lessor's Property to substantially the same condition in which they existed upon the start of construction within five (5) business days from the date of Lessee's receipt of Lessor's written notice to repair such damage. Lessee shall reimburse Lessor for all of Lessor's direct and indirect costs associated with such repair, including labor and material costs (the "**Total Repair Costs**") incurred by the Lessor to repair such damage if necessitated by Lessee's failure to make such repair. Should damages be deemed severe in Lessor's sole determination, Lessor reserves the right to require more immediate timeliness of Lessee's response or to repair without Lessee's consent and at Lessee's expense.

A late fee of twenty percent (20%) of the Total Repair Costs shall be assessed for each business day the repair is not completed according to mutually agreed upon deadlines.

7. COMPLIANCE WITH ALL LAWS, RADIO FREQUENCY EMISSIONS

Lessee's use of the Premises and its Communications Facility on the Premises shall comply with all applicable Governmental Requirements of federal, state and local laws, rules and regulations, including but not limited to the non-interference and radio frequency emissions rules of the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA). "**Governmental Requirements**" shall mean all applicable requirements under any federal, state or local statutes, rules, regulations, ordinances, or other requirements of any duly constituted public authority having jurisdiction over the Premises. Lessee shall indemnify Lessor and hold it harmless from all expenses, costs, damages, losses, claims or other expenses and liabilities arising from Lessee's failure to comply with Government Requirements, except to the extent such expenses, costs, damages, losses, claims or other expenses and liabilities arise from the gross negligence or willful misconduct of Lessor. Lessee shall monitor and certify such compliance in accordance with requirements as may be established by Lessor.

Lessee's ability to use the Premises shall be dependent upon Lessee obtaining currently valid certificates, permits, and other approvals, which may be required from any federal, state, or local authorities. Lessor shall reasonably cooperate with Lessee, but at no expense to Lessor, in obtaining such approvals.

Lessee shall be accountable for RF safety by submitting annual test results to confirm compliance with the FCC's RF emission guidelines. Such testing should be sufficiently detailed to ensure that employees in the vicinity of the wireless antenna will not be harmed. Lessee shall also provide warning signs on the antenna and an automatic shutdown if workers are near the antenna.

Lessee is responsible for compliance with all tower marking and lighting requirements of the FAA and the FCC. Lessee shall indemnify and hold harmless Lessor from any fines or other liabilities caused by Lessee's failure to comply with such requirements.

8. TERMINATION

Either Lessor or Lessee shall have the right to terminate this Lease Agreement after the Initial Term of Five (5) years for any cause by providing the other party with sixty (60) days written notice.

Lessee shall at its own cost and expense remove its personal property and fixtures, foundations and underground conduits and utilities, from the Premises and shall restore the Premises to good order and condition, reasonable wear and tear excepted on or before the 60th day after the receipt of the notice of termination by Lessor or the issuance of the notice of termination by Lessee and/or sixty (60) days prior to the Termination Date, whichever occurs first, at which time Lessee shall peacefully quit and surrender the Premises and accessways. If Lessee fails to remove such Equipment within sixty (60) days after expiration or earlier termination of this Lease Agreement, Lessee at Lessee's sole option may: (i) remove and dispose of the Equipment and Lessee shall reimburse Lessor for the reasonable costs actually incurred of such removal and restoration of the Premises; or (ii) Lessor may deem the Equipment abandoned, whereupon the Equipment shall become Lessor's property, and Lessor shall have all rights to the Equipment, including without limitation the right to use, reuse, sell, lease, or dispose of same.

In the event that Lessee abandons the Premises for a continuous period of sixty (60) days or more, Lessor may, at its sole discretion, proceed to remove Lessee's Equipment and bill Lessee for same, and this Lease Agreement shall automatically terminate after Lessor gives thirty (30) days' written notice to Lessee. In such case, Lessor shall impose and Lessee shall pay such back Monthly Rental and incurred costs as required by this Lease Agreement.

This Lease Agreement may further be terminated by Lessor or Lessee if either party remains in default under **Section 14** of this Lease Agreement after the applicable cure period has lapsed.

9. PERSONAL PROPERTY TAXES

Lessee shall pay all taxes and rental fees levied, assessed, or imposed by reason of Lessee's use of the Premises, including but not limited to possessory interest tax pursuant to California Revenue and Taxation Code Section 107.6, regardless of to whom taxes and/or fees are addressed. Lessee agrees to pay, before delinquency, all such taxes levied. Lessee shall be liable for failure to pay any possessory property taxes. Lessee shall also pay before delinquency, all taxes assessed against personal property of Lessee which may be located in or upon the Premises.

10. LIENS

During the term hereof, Lessee shall keep the Premises free from all liens, including but not limited to mechanic's liens and further encumbrances by reason of the use of the Premises by Lessee. Failure of Lessee to remove any potential or recorded lien against the Premises within thirty (30) days of receipt of notice of recordation shall be considered an Event of Default of this Lease Agreement and cause for termination under **Section 14** herein.

11. UTILITIES

Lessee shall be directly responsible to pay all charges for all utilities required by Lessee's use of the Premises including but not limited to gas, electricity, water and telephone. Lessee shall make all arrangements with utility providers and government authorities for all utilities and other like services to the Premises during the term of this Lease Agreement.

12. INDEMNIFICATION

12.1 Indemnification; Definitions

To the maximum extent permitted by law, including but not limited to California Civil Code Section 2778, Lessee shall indemnify, defend, and hold harmless Lessor, its officers, agents, representatives, and employees (individually and collectively "**Lessor Indemnitee**") from and against a "Liability" [as defined in Subparagraph (a) below] or an "Expense" [as defined in Subparagraph (b) below], or both that arise out of, pertain to, or relate to an act, error, or omission of Lessee, its employees, agents, contractors, and persons whom Lessee employs or hires (individually and collectively "**Lessee Indemnitor**"):

- (a) **“Liability”** means claims, suits, actions, causes of action, proceedings, judgments, decrees, awards, settlements, liens, losses, damages, injuries, or liability of any kind, whether the liability is:
 - (1) Actual or alleged;
 - (2) In contract or in tort; or
 - (3) For bodily injury (including accidental death), personal injury, advertising injury, or property damage.
- (b) **“Expense”** means fees, costs, sums, penalties, fines, charges, or expenses of any kind, including, but not limited to:
 - (1) Attorney’s fees;
 - (2) Costs of an investigation, litigation, arbitration, mediation, administrative or regulatory proceeding, or appeal;
 - (3) Fees of an accountant, expert witness, consultant, or other professional; or
 - (4) Pre or post-judgment interest or settlement interest.

12.2 Obligations

Under this **Section 12**, Lessee Indemnitor’s defense and indemnification obligations:

- (a) Apply to a Liability, or an Expense, or both, that arise out of, pertain to, or relate to the actual or alleged passive negligence of a Lessor Indemnitee; but
- (b) Do not apply to a Liability, or an Expense, or both, that arise out of, pertain to, or relate to the sole active negligence or willful misconduct of a Lessor Indemnitee.

12.3 Defense

To the extent that Lessee Indemnitor’s insurance policy provides an upfront defense to Lessor Indemnitee, Lessee Indemnitor’s obligation to defend a Lessor Indemnitee under this **Section 12**:

- (a) Means that Lessee shall provide and pay for legal counsel satisfactory to Lessor Indemnitee;
- (b) Arises when a claim, suit, complaint, pleading, or action against a Lessor Indemnitee arises out of, pertains to, relates to, or asserts an act, error, or omission of Lessee Indemnitor; and
- (c) Arises regardless of whether a claim, suit, complaint, pleading, or action specifically names or identifies Lessee Indemnitor.

Section 12.3 does not limit or extinguish Lessee Indemnitor's obligation to reimburse a Lessor Indemnatee for the costs of defending the Lessor Indemnatee against a Liability, or an Expense, or both. Lessor Indemnatee's right to recover defense costs and attorney's fees under this **Section 12** does not require, and is not contingent upon, Lessor Indemnatee's first:

- (a) Requesting that Lessee Indemnitor provide a defense to the Lessor Indemnatee; or
- (b) Obtaining Lessee Indemnitor's consent to the Lessor Indemnatee's tender of defense.

If Lessee Indemnitor contracts all or any portion of its work under this Lease Agreement, Lessee Indemnitor shall require that each contractor indemnify, defend and hold harmless Lessor Indemnatee under the terms in this Section 12.

Lessee Indemnitor's obligation to indemnify, defend, and hold harmless Lessor Indemnatee will remain in effect and will be binding upon Lessee Indemnitor whether the Liability, or the Expense, or both, accrues— or is discovered— before or after this Lease Agreement's expiration, cancellation, or termination.

12.4 Application of Section

Except for **Section 12.3**, this Article's indemnification and defense provisions are separate and independent from the insurance provisions in **Section 13**. In addition, the indemnification and defense provisions in this Article:

- (a) Are neither limited to nor capped at the coverage amounts specified under the insurance provisions in **Section 13**; and
- (b) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in **Section 13**.

13. INSURANCE

In order to accomplish the indemnification of Lessee provided for in this Lease Agreement, but without limiting the indemnification, Lessee shall secure and maintain through the term of this Lease Agreement the following types of insurance with limits as shown in this Lease Agreement.

Lessee shall obtain, pay for, and maintain during the life of this Lease Agreement a Commercial General Liability policy, including Contractual Liability, and an Automobile Liability policy which shall protect it and Lessor from claims for injuries and damages. The Commercial General Liability and Automobile Liability policies shall include the Lessor, its officers, agents, and employees as additional insureds under the policy in the following amounts:

- Commercial general liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) general aggregate and Four Million Dollars (\$4,000,000) completed operations aggregate; and
- Automobile liability insurance covering all owned, non-owned, and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) per accident

for personal injuries, including accidental death, to any one person and for property damage.

- The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as, in combination, the limits equal or exceed those stated and that all excess policies shall cover Lessor, its officers, agents, and employees as additional insureds and said policies are primary coverage.
- Workers' Compensation insurance with statutory limits and Employers Liability insurance with limits of \$1,000,000 per accident for bodily injury and disease.
- Property Insurance against all risks of loss to any Lessee improvements or betterments, at full replacement cost with no coinsurance penalty provision.

Said policies shall contain a "Severability of Interest" clause and a "Primary Coverage" clause for any loss arising from or caused by Lessee's exercise of this Lease. Said policies shall contain a statement of obligation on the carrier's part to notify the Lessor by U.S. Mail at least thirty (30) days in advance of any policy cancellation. Lessee shall provide Lessor with at least thirty (30) days advance notice in the event of any policy termination or reduction in the amount of coverage. Lessee shall require the carriers of the above-required coverages to waive all rights of subrogation against Lessor, its officers, agents, and employees. Said policies shall be issued by companies authorized to do business in California and having not less than Best's A-VII rating or approved by Lessor in its business judgment, and shall be issued in the name of Lessee.

Before execution of this Lease Agreement, Lessee shall furnish Lessor with a "Certificate of Insurance" and an "Additional Insured Endorsement and Waiver of Subrogation Endorsement and Workers Compensation." Said documents shall include policy language evidencing the additional insured status of Lessor, its officers, agents, and employees. Said documents shall be countersigned by the insurance carrier or its authorized representative on forms satisfactory to the Lessor's City Attorney, which set forth the above provisions. The countersigned certificate, along with the additional insured endorsement, shall include the Lessor, its officers, agents, and employees as additional insureds under the Commercial General Liability policy, Subrogation Endorsement, and Worker's Compensation. Said insurance shall be primary and non-contributing to the coverage of the Lessor, and neither the Lessor nor any of its insurers shall be required to contribute to any loss. This policy contains a severability of interest clause."

Lessee shall maintain all required insurance in force at all times during the Term of this Agreement. Failure to maintain said insurance due to expiration, cancellation, or reduction in coverage shall be cause for the Lessor to give notice to immediately terminate this Lease Agreement. Failure to reinstate said insurance within ten (10) days of said notice shall constitute a material breach and shall be cause for the immediate termination and forfeiture of this Lease Agreement.

Notwithstanding the foregoing, Lessee shall have the right to self-insure with respect to the insurance coverage with the approval of the City. The required proof of such self-insurance shall be in a form satisfactory by the Lessor's City Attorney.

No less than ten (10) days prior to the annual anniversary date of said insurance policy coverage,

Lessee shall deliver to Lessor a renewal certificate of insurance and renewal additional insured endorsement Commercial General Liability policy, Subrogation Endorsement, and Workers Compensation in a form satisfactory to the City Attorney and in conformance with the requirements set forth herein.

Lessor reserves the right to modify its insurance requirements pursuant to this Lease Agreement on a tri-annual basis unless circumstances arise that require earlier consideration of said insurance requirements.

14. DEFAULT AND RIGHT TO CURE

The occurrence of any one or more of the following events shall constitute an "**Event of Default**" hereunder in whole or part by Lessee.

- The failure by Lessee to make the payment of Monthly Rent or any other payment required to be made by Lessee hereunder when due, where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Lessee from Lessor.
- Lessee's failure to maintain insurance coverage as required in **Section 13**.
- The failure by Lessee to observe or perform any other provision contained in this Lease Agreement, where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Lessee from Lessor; provided, however, that it shall not be deemed an Event of Default by Lessee if Lessee shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

Upon an Event of Default caused in whole or part by Lessee which is not cured or commenced to be cured by Lessee, Lessor in addition to any and all other remedies available to Lessor at law or in equity shall be entitled to one or more of the following remedies: (i) terminate this Lease Agreement; (ii) obtain immediate restraint by injunction; or (iii) prior to a determination and authorization by a court of competent jurisdiction, to re-enter the Premises and remove persons and personal property therefrom.

15. NOTICES

All notices hereunder must be in writing and given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier U.S. Postal mailbox or any U.S. Post Office, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Should the Lessor or Lessee have a change of address or a change in the designated individual with knowledge of this Lease Agreement, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands, or requests from Lessee to Lessor shall be given to Lessor addressed as follows:

Lessor: City of Hesperia
 9700 Seventh Ave.
 Hesperia, CA 92345

Attn: Economic Development
Email: econdev@cityofhesperia.us
Phone: 760-947-1909

With copy to: Pam K. Lee, City Attorney
1 Park Plaza, Suite 1000
Irvine, CA 9214
plee@awattorneys.com
949-223-1170

Lessee: NAME
Address
Attn:
Email:
Phone:

With copy to: NAME
Address
Attn:
Email:
Phone:

16. HAZARDOUS SUBSTANCES

Lessee agrees that it will not use, generate, store, or dispose of any Hazardous Material on, under, about, or within the Premises in violation of any federal, state, or local law or regulation. Lessor represents, warrants and agrees that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within Premises in violation of any law or regulation. Lessee shall defend, indemnify and hold harmless Lessor against any and all losses, liabilities, claims, and costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph.

"Hazardous Material" shall mean any hazardous or radioactive material, polychlorinated biphenyls, friable asbestos or other hazardous or medical waste substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended or by any other federal, state or local law, statute, rule, regulation or order concerning environmental matters, or any matter which would trigger any employee or community "right-to-know; requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of a material safety data sheet. This paragraph shall survive the termination of this Lease Agreement.

17. QUIET ENJOYMENT

Lessor warrants and agrees that Lessee, upon paying the Monthly Rent and performing the covenants herein provided, shall peaceably and quietly have and enjoy the Premises. Lessor shall not cause or permit any use of the Premises which interferes with or impairs the quality of the

communications services being rendered by Lessee from the Leased Premises.

Subject to the terms of this Lease Agreement, Lessor reserves for itself, its successors and assigns the right to use the Premises, or any portion thereof for any purposes that Lessor may find necessary. Lessor acknowledges that Lessee's use of the Premises includes proprietary trade secrets. Accordingly, Lessor, except in cases of emergency, shall have no right to enter the Lessee Portion of the Equipment Building without Lessee's prior consent and accompaniment which shall not be unreasonably withheld.

18. NON-INTERFERENCE

Lessee shall operate its communications and related existing ground Equipment as described in **Exhibit C** on the Premises in a manner that will not cause harmful interference with the use or enjoyment of the Premises by Lessor and other Lessees or licensees ("Existing Lessees") in and/or on the Premises. Lessee shall be responsible for all costs associated with any tests deemed necessary to resolve any and all interference.

Lessee's activities on the Premises shall not interfere with Lessor's radio communication operations including but not limited to interference with Lessor's radio frequencies, effective radiated power and physical location. Such interference shall be deemed a material breach by Lessee subject to **Section 14** herein, and Lessee shall have the responsibility to promptly terminate said interference. If interference caused by Lessee's failure to comply with FCC or FAA rules and regulations has not been corrected within the required period specified by the FCC or FAA after Lessee receives notice thereof, Lessor may require Lessee to remove from its facilities the specific items causing such interference.

Lessor shall not interfere nor shall Lessor allow any use of the Premises conferred after the Effective Date to interfere in any way with the communications operations of Lessee as described in this Lease Agreement. Such interference with Lessee's communications operations shall be deemed a material breach by Lessor, and Lessor shall have the responsibility to promptly terminate said interference.

Lessor shall not alter its existing or contemplated use of the Premises, nor shall Lessor permit any Lessees, licensees, employees, invitees or agents obtaining rights to the Premises from and after the Commencement Date to use any portion of the Premises in any way which unreasonably interferes with the operations of Lessee. Without limiting the generality of the foregoing, Lessor hereby acknowledges that in the event of any unreasonable interference with Lessee's Permitted Use as a result of the transmission or reception (or both) of radio, microwave or other telecommunications signals by a future Lessee, licensee, or occupant of the Premises, Lessee's rights hereunder to conduct Lessee's Permitted Use shall be and remain superior to the rights of any such future Lessee, licensee or occupant, subject, however, to the provisions of **Section 18** herein.

Lessor reserves the right to license or lease other portions of the Premises to other parties during the Term of this Lease Agreement and any month-to-month tenancy thereafter. Accordingly, Lessor agrees that any other person or entity who may install Equipment subsequent to the Commencement in and/or on the Premises, including, without litigation, existing Lessees or

licensees, will be permitted to install only such communications Equipment that is of a type and frequency that does not cause harmful interference to Lessee or any persons or entities collocated on Lessee's facilities. In the event any such person or entity's Equipment causes such interference, Lessor will cause the interfering party to take all steps necessary to correct and eliminate the interference or such interfering party will be required to cease operations until such interference is removed. To the extent that Lessee's operations are not within the parameters of its FCC license, this protection from collocated interference will not be applicable, but it shall be applicable with respect to those operations, or portions thereof, falling within the FCC license parameters. Notwithstanding the foregoing, Lessee's right to be free from interference and Lessor's duties concerning the prevention and/or correction of interference shall be subject to **Section 18** herein.

In the event that Lessee commences to use the Premises in a manner as to which Lessee is not presently licensed by the FCC but, Lessee's right to conduct such particular use shall be subordinate to the use of the Premises by Lessor and other Lessees or licensees thereof existing on or before the date on which the Lessee subsequently obtains the necessary FCC licensure. Lessor shall be under no obligation to exercise the duties concerning interference described in **Section 18** with respect to a future use of the Premises by Lessee as described in this **Section 18**.

19. SECURITY

Lessee acknowledges that while Lessor makes every effort to protect and secure all property within the park, it does not guarantee the security of the Premises. Lessee shall be responsible to maintain its own security measures as it pertains to Lessee's use of the Premises.

20. CONDEMNATION

In the event Lessor or any other public or private entity that has condemnation authority under state law initiates condemnation proceedings affecting the Premises, Lessor or other said entity will provide at least forty-eight (48) hours' notice of the proceeding to Lessee. If Lessor or other said entity takes all of the Premises, or a portion sufficient, in Lessee's sole determination, to render the Premises unsuitable for Lessee, this Lease Agreement will terminate as of the date the title vests in the Lessor or other said authority. Lessee will be entitled to reimbursement for any prepaid Monthly Rent on a prorated basis and no severance fee shall apply.

21. MISCELLANEOUS PROVISIONS

21.1 Waiver

Lessor's failure to exercise any of its rights resulting from a default or breach of covenant on the part of Lessee shall not be construed as a waiver thereof, nor shall any custom or practice which may grow up between the Parties in the course of administering this Lease Agreement be construed to waive or to lessen the right of Lessor to insist upon the performance by Lessee of any term, covenant or condition hereof, or to exercise any right given it resulting from any such default. A waiver of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default.

21.2 Time Essence

Time is of the essence of this Lease Agreement and of each provision.

21.3 No Partnership

This Lease Agreement shall not be construed to continue any form of partnership or joint venture between Lessor and Lessee.

21.4 Construction

Section titles or captions contained in this Lease Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Lease Agreement or any provision hereof.

Unless defined otherwise, the words used in this Lease Agreement shall be construed according to their plain meaning in the English language. The language used in this Lease Agreement shall not be interpreted strictly for or against either party.

If any provision of this Lease Agreement is capable of two constructions, one of which would render the provision valid and the other of which would render the provision invalid, then the provision shall have the meaning that renders it valid.

The singular includes the plural and vice-versa and the masculine includes the feminine and neuter, whenever the context so requires.

21.5 Warranty

Lessor warrants and agrees that Lessor is seized of good and sufficient title to and interest in the Premises, and has full authority to enter into and execute this Lease Agreement, and that there are no undisclosed liens, judgments or impediments of title of record or not of record on the Premises that would affect this Lease Agreement. Lessor makes no representation or warranty whatsoever concerning the suitability of the Premises for the purposes intended by Lessee. Except as otherwise expressly set forth in this Lease Agreement, Lessee further acknowledges that neither Lessor, nor any of Lessor's officers, agents, and employees have made nor is Lessee entering into this Lease Agreement in reliance upon any such representations.

21.6 Governing Law

This Lease Agreement and the performance hereon shall be governed, interpreted, construed, and regulated by the laws of the State of California.

21.7 Entire Lease Agreement

This Lease Agreement constitutes the entire Lease Agreement between the Parties hereto pertaining to the subject matter hereof, fully supersedes any and all prior understandings, representations, warranties and agreements between the Parties hereto, or any of them pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the Parties hereto.

21.8 Binding Power

Each person executing this Lease Agreement warrants and represents that he or she is duly authorized to execute this Lease Agreement on behalf of Lessor or Lessee.

21.9 Assignment & Subleases

Lessee shall not assign this Lease Agreement or otherwise transfer all or any part of its interest in this Lease Agreement without the prior written consent of Lessor, which consent shall not be unreasonably denied, withheld, or delayed. Lessee may assign all or any of its interests in this Lease Agreement without such consent to Lessee's Affiliate or to any entity that acquires all or substantially all of the Lessee's assets in the market defined by the Federal Communications Commission in which the Premises is located by reason of a merger, acquisition, or other business reorganization. Upon notification to Lessor of such assignment, transfer, or sale, Lessee will be relieved of all future performance, liabilities, and obligations under this Agreement. All insurance policies and other documents bearing Lessee's name that must be provided by Lessee to Lessor must be reissued and filed anew with Lessor not later than thirty (30) days before any such transfer is final and completed.

Lessee may not otherwise assign or sublease this Lease Agreement without Lessor's consent, which consent may be delayed in Lessor's sole discretion, except in connection with an assignment as collateral to secure a loan from a bona fide third-party lender obtaining such assignment as a part of a larger collateral pool. Any assignment consented to by Lessor in its sole discretion shall not operate to release the assigning Lessee from its liabilities or obligations arising hereunder. The City shall retain 50% of all sublease revenue.

21.10 Severability

If any portion of this Lease Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in such court's option to render such portion enforceable and, so modified, such portion and the balance of this Lease Agreement shall continue in full force and effect.

21.11 Attorneys' Fees

In case suit shall be brought because of the breach or alleged breach of any covenant herein contained on the part of any party to be kept or performed, or for declaratory relief, the prevailing party or Parties shall recover from the non-prevailing party or Parties all costs and expenses incurred therein, including reasonable attorneys' fees and expenses incurred in enforcing any judgment.

21.12 Section 7901

Notwithstanding this Lease Agreement or any provision contained herein, the Parties agree and acknowledge that Lessee preserves all rights and benefits under Section 7901 of the California Public Utilities Code, and nothing herein shall be deemed to have waived such rights.

21.13 Force Majeure

For the purposes of this Lease Agreement, “**Force Majeure**” means an unforeseen event or condition deemed by Lessor as calling for immediate action to avoid the threat of loss or injury of property and/or danger to public safety—including, but not limited to, an act of God, labor dispute, civil unrest, epidemic, and/or natural disaster.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease Agreement as of the date and year first written above.

LESSOR
City of Hesperia, a municipal corporation

Rachel Molina, City Manager

ATTEST

Melinda Sayre, City Clerk

APPROVED AS TO FORM
Aleshire & Wynder, LLP

Pam K. Lee, City Attorney

LESSEE
Name

Name:
Title:

Name:
Title:

SCHEDULE OF EXHIBITS

Exhibit A (the Lessor's Property)
Exhibit B (the Premises)
Exhibit C (the Site Plan)

LESSOR ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____, the undersigned, a Notary Public in and for said State, personally appeared

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Name _____
(typed or printed)

(Seal)

LESSEE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____, the undersigned, a Notary Public in and for said State, personally appeared

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Name _____
(typed or printed)

(Seal)

EXHIBT A

Lessor's Property

Number of pages: _____ ()

EXHIBIT B

Premises

Number of pages: _____ (___)

EXHIBIT C

Site Plan

Number of pages:_____ (_____)