



## **East Bay Regional Communications System Authority**



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Berkeley, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakland, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Livermore Amador Valley Transit Authority, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, California Department of Transportation, Ohlone Community College District, Contra Costa Community College District, Dublin-San Ramon Services District and University of California, Berkeley

### **BOARD OF DIRECTORS MEETING**

#### **NOTICE OF REGULAR MEETING**

**DATE: December 6, 2019**

**TIME: 10:00 a.m.**

**PLACE: Alameda County Sheriff's Office of Emergency Services and Homeland Security  
4985 Broder Blvd.  
Dublin, CA 94568**

### **AGENDA**

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1. **Closed Session:** (None) **Time:** N/A
  2. **Call to Order/Roll Call:** (Regular Session) **Time:** 10:00 a.m.
  3. **Report on Closed Session:** None
  4. **Public Comments (Meeting Open to the Public):**  
At this time, the public is permitted to address the Board on items within the Board's subject matter jurisdiction that do not appear on the agenda. Please step to the podium and clearly state your name for the record. In accordance with State Law, no action or discussion may take place on any item not appearing on the posted agenda. If the item requires action, it will be referred to staff and/or placed on the next agenda. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of three (3) minutes. If you wish to comment on an item that is on the agenda, please wait until the item is read for consideration, and then make your way to the podium. Please limit comments to a maximum of three (3) minutes.
  5. **Presentations:** None
  6. **Approval of Minutes**
    - 6.1 Approval of Minutes from the Board Meeting of September 27, 2019
  7. **Written Communications:** None
  8. **Public Hearings:** None
  9. **Action Items:**
    - 9.1 Adopt 2020 EBRCSA Calendar Committees and Board Meetings

9.2 Annual Election of Board Chair and Vice Chair as Required by the JPA Agreement and Bylaws

9.3 Request by AT&T to lease space on the Paterson Pass Tower

10. **Committee Updates:**

10.1 Receive Informational Report on Recent Finance Committee Activities

10.2 Receive Informational Report on Recent Operations Committee Activities

11. **Reports:**

11.1 Receive an Update on the Time Division Multiple Access (TDMA) Upgrade

11.2 Receive an Update on Public Safety Power Shutdowns

11.3 Receive information on East Bay Municipal District request to join EBRCSA

11.4 Receive information on Inter Sub System Interface (ISSI) with BART

12. **Board Comments:**

13. **Next Action Steps:**

14. **Adjournment**

This AGENDA is posted in accordance with Government Code Section 54954.2(a) *If requested, pursuant to Government Code Section 54953.2, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation, please contact the EBRCSA at (925) 803-7802 at least 72 hours in advance of the meeting.*

I hereby certify that the attached agenda was posted 72 hours before the noted meeting.



Tom McCarthy  
Executive Director

Dated: November 30, 2019



**East Bay Regional  
Communications  
System Authority**



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**AGENDA ITEM NO. 6.1**

**AGENDA STATEMENT  
BOARD OF DIRECTORS MEETING  
MEETING DATE: December 6, 2019**

**TO:** Board of Directors  
East Bay Regional Communications System Authority (EBRCSA)

**FROM:** Thomas McCarthy, Executive Director  
East Bay Regional Communications System Authority

**SUBJECT:** Approval of Minutes of the September 27, 2019 Board of Directors Meeting

**RECOMMENDATIONS:**

Approve the minutes of the September 27, 2019 Board of Directors Meeting.

**SUMMARY/DISCUSSION:**

The Board of Directors will consider approval of the minutes of the September 27, 2019 Board of Directors Meeting.

**RECOMMENDED ACTION:**

It is recommended that the Board of Directors approve the minutes of the September 27, 2019 Board of Directors Meeting.



# East Bay Regional Communications System Authority



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## BOARD OF DIRECTORS MEETING

### REGULAR MEETING

DATE: September 27, 2019

TIME: 10:00 a.m.

PLACE: Alameda County Sheriff's Office of Emergency Services and Homeland Security  
4985 Broder Blvd.  
Dublin, CA 94568

### MINUTES

- 
- 1. **Closed Session:** (None) **Time:** N/A
  - 2. **Call to Order/Roll Call:** (Regular Session) **Time:** 10:03 a.m.

Chair Ahern, Bms. Andersen, M. Casten\*, A. Ciaburro, J. Diaz, R. McBain, P. Mulligan, S. Muranishi, M. Roberts, M. Rodriguez, M. Shorr\*, K. Stepper, L. Smith, J. Tudor, D. White  
\*Voting Alternate;

Staff: T. McCarthy (Executive Director), C. Boyer, L. McKinney, C. Soto

Public: G. Poole, Motorola

- 3. **Report on Closed Session:** None.
- 4. **Public Comments:** None.
- 5. **Presentations:** None.
- 6. **Approval of Minutes**

#### 6.1 Approval of Minutes from Board of Directors Meeting May 10, 2019

On motion of Bm. Roberts, seconded by Bm. Stepper and by unanimous vote, the Board of Directors approved the minutes of the May 10, 2019 Regular Board meeting.

- 7. **Written Communications:** None.
- 8. **Public Hearings:** None.

## 9. Action Items:

### 9.1 **Renewal of Agreement with Contra Costa County Department of Information Technology for Two Years**

Director McCarthy presented the Staff Report and advised this amendment to the agreement with the Contra Costa County IT Department was to extend the term of the agreement and increase the not-to-exceed amount from \$200,000/yr to \$230,000/yr for Fiscal Years 2019/20 and 2020/21.

Bm. S. Muranishi and C. Andersen arrived at 10:07 a.m.

On motion of Bm. Rodriguez, seconded by Bm. Stepper and by unanimous vote, the Board of Director adopted **Resolution No. 19-05** Authorizing the Chair to Execute and the Executive Director to Implement an Amendment to the Interagency Agreement with the Contra Costa County Department of Information Technology, to Increase the Contract Amount by \$460,000; and adopted **Resolution No. 19-06** Adopting and Implementing An Adjustment to Administrative Budget for Fiscal Year 2019/2020.

### 9.2 **Contract with CSI for Engineering Consulting Services for Three Years**

Executive Director McCarthy presented the Staff Report and advised that this contract was with CSI Engineering Consulting Service for technological services, engineering services, and assistance with FCC Licensing. The contract would be for three years, with a not-to-exceed amount of \$200,000 per fiscal year, beginning July 1, 2019. This contract had expired and had not been renewed due to the death of one of the owners of CSI. The per-hour amount for FY 2019/20 would remain the same at \$215; there would be an increase to \$220 an-hour rate for Fiscal Year 2020/21, and an increase to \$225 an hour for Fiscal Year 2021/22. The increase in the not-to-exceed amount from past years is due to increased projects.

On motion of Bm. Rodriguez, seconded by Bm. Stepper and by unanimous vote, the Board of Director adopted **Resolution No. 19-07** Authorizing the EBRCSA Chair to Execute, and the Executive Director to Implement, an Agreement with CSI Telecommunications, Inc. for Radio Frequency Engineering and Project Consulting.

## 10. Committee Updates:

### 10.1 **Receive Informational Report on Recent Finance Committee Activities**

Director McCarthy advised the Finance Committee discussed the upgrade of the microwave system. They were still gathering information and quotes; it will be costly. It would be brought to the full Board at a later date. Two proposals were received for the 10-Year Capital Replacement Plan. He would meet with one of the vendors, CSI, to work further on the Plan. The other submittal was three times the cost of CSI's proposal but did not hit the mark on the information requested.

## **10.2 Receive Informational Report on Recent Operations Committee Activities**

Chair Ahern stated there was not a quorum but the Committee had discussed TDMA and how it worked; they had discussed BART and its ability to communicate with fire agencies, and accessibility to the System; and discussed an evaluation process for the Executive Director.

## **11. Reports:**

### **11.1 Receive an Update on City of Antioch, Walton Lane Radio Coverage**

Director McCarthy advised the City of Antioch was looking to improve coverage at Walton Lane where there is a bit of a valley area. He had been to the site to determine if upgrading the site would work. The shelter was too small and there was not enough electrical power. He had consulted with CSI, Contra Costa radio shop and one of the original engineers of the System. They are looking for an alternate site. He has found two shelters, but one had a cost of \$50,000 a month. He found another that belonged to Sacramento Water District but the microwave would cause interference with other radio frequencies. He will meet with the City of Antioch to discuss cost sharing of a new site. He will meet with member agencies to discuss San Ramon's ordinance that requires developers to pay for any costs associated with any issues their building causes with System reception. There were three potential sites he needed to discuss with the City of Antioch. He would keep the Board informed of any developments.

Bm. Roberts asked that the alternatives for the City of Antioch be memorialized to know the path taken in resolving this issue, in case this issue comes up again.

### **11.2 Receive Information concerning Potential Interference with 5G LTE Service**

Director McCarthy advised that 5G LTE Service will interfere with the System. The FCC is aware of this issue but is not doing anything about it. He worked with CSI to produce a report regarding the interference. 5G requires antennas in close proximity of each other. 5G will cause interference with the System. It is now being discussed and reviewed throughout agencies and jurisdictions. As an example, the City of Dublin will require labeling of power poles with 5G antennas, and must include a turn off switch to allow for individuals to turn off power to the 5G antennas when working on them to protect against radiation.

Bm. Rodriguez, City Manager of San Pablo, asked for technical assistance from EBRCSA for a 5G project the City of San Pablo is currently working on. He would like to add language to an RFP for the project to protect the coverage of the System within the City of San Pablo.

The Director McCarthy stated he would like to have a report produced, with the review of the Authority's attorney, and approval of the Boardmembers, discussing 5G interference. The report would have limited distribution to member agencies only.

### **11.3 Receive Update on Transition to TDMA**

Director McCarthy advised that the Transition to TDMA was going well. Radio shops with meet the June 30, 2020 timeline.

12. **Board Comments:** None.

13. **Next Action Steps:** Director to speak to J. Calabrigo about speaking to the City Manager's Associations.

14. **Adjournment:**

With no further business coming before the Board, the meeting was adjourned at 10:56 a.m.

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**AGENDA ITEM NO. 9.1**

**AGENDA STATEMENT  
BOARD OF DIRECTORS MEETING  
MEETING DATE: December 6, 2019**

**TO:** Board of Directors  
East Bay Regional Communications System Authority (EBRCSA)

**FROM:** Sheriff G. Ahern, Board Chair  
East Bay Regional Communications System Authority

**SUBJECT:** Approval of 2020 Meeting Schedule

**RECOMMENDATIONS:**

Approve the 2020 Meeting Schedule.

**SUMMARY/DISCUSSION:**

The Board of Directors will review the 2020 meeting schedule for the Board of Directors, Finance Committee, Operations Committee, and Technical Advisory Committee Meetings.

**RECOMMENDED ACTION:**

It is recommended that the Board of Directors approve the 2020 Meeting Schedule.

Attachment "A" – Draft 2020 Calendar





# **East Bay Regional Communications System Authority**



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## **2020 EBRCSA Board and Committee Meeting Schedule**

### **Board of Directors**

March 6	10:00-12:00	Assembly Room, Alameda County OES
May 1	10:00-12:00	Assembly Room, Alameda County OES
September 25	10:00-12:00	Assembly Room, Alameda County OES
December 4	10:00-12:00	Assembly Room, Alameda County OES

### **Committees:**

February 21		
Operations Committee	9:30-10:30	Room 1013
Finance Committee	11:00-12:00	Room 1013
April 3		
Operations Committee	9:30-10:30	Room 1013
Finance Committee	11:00-12:00	Room 1013
September 4		
Operations Committee	9:30-10:30	Room 1013
Finance Committee	11:00-12:00	Room 1013
November 6		
Operations Committee	9:30-10:30	Room 1013
Finance Committee	11:00-12:00	Room 1013

TAC Meetings: First Thursday of the Month 9:30-11:30 in Room 1013 (if available) or 40% side

January 2

February 6

March 5

April 2

May 7

June 4

July 2

August 6

September 3

October 1

November 5

December 3

Revised: 11/12/2019

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**AGENDA ITEM NO. 9.2**

**AGENDA STATEMENT  
BOARD OF DIRECTORS MEETING  
MEETING DATE: December 6, 2019**

**TO:** Board of Directors  
East Bay Regional Communications System Authority (EBRCSA)

**FROM:** Sheriff G. Ahern, Board Chair  
East Bay Regional Communications System Authority

**SUBJECT:** Annual Election of a Board Chair and Vice Chair as Required by the JPA Agreement and Bylaws

**RECOMMENDATIONS:**

Elect a Board Chair and Vice Chair, as required by the JPA Agreement and Bylaws.

**SUMMARY/DISCUSSION:**

The JPA Agreement and Bylaws for the Authority state that the Board Presiding officers shall be a Chair and Vice-Chair, elected annually from among its membership, to preside at meetings. In the absence of the Chair, the Board shall be presided over by the Vice-Chair. The positions of Chair and Vice-Chair will be filled by a representative from each County. If the Chair is from Alameda County, the Vice-Chair will be from Contra Costa County. If the Chair is from Contra Costa County, the Vice-Chair will be from Alameda County.

The Board of Directors will receive nominations from sitting members of the Board to fill the positions of Chair and Vice-Chair. The Board will vote on the nominations for Chair and Vice-Chair following Roberts's Rules of Order. The newly elected Chair and Vice Chair will assume their positions at the conclusion of the meeting, and will continue in the positions for one year.

**RECOMMENDED ACTION:**

It is recommended that the Board of Directors elect a Board Chair and Vice Chair as required by the JPA Agreement and Bylaws, to serve a term of one year.



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**AGENDA ITEM NO. 9.3**

**AGENDA STATEMENT  
BOARD OF DIRECTORS MEETING  
MEETING DATE: December 6, 2019**

**TO:** Board of Directors  
East Bay Regional Communications System Authority (EBRCSA)

**FROM:** Sheriff G. Ahern, Board Chair  
East Bay Regional Communications System Authority

**SUBJECT:** Request by Epic Wireless, on behalf of AT&T, to Lease Space on the East Bay Regional Communications System Authority (EBRCSA) Patterson Pass Tower for Cellular 4G Broadcast and Receive Equipment

**RECOMMENDATIONS:**

Provide direction to the Board Chair concerning East Bay Regional Communications System Authority leasing space on the Patterson Pass Tower and ground space for a shelter.

**SUMMARY/DISCUSSION:**

EBRCSA leases land from Alameda County Stop Waste at Patterson Pass for a Tower, Shelter, and Generator at 13000 Patterson Pass Road, Livermore. Epic Wireless, on behalf of AT&T, contacted Alameda County Stop Waste and made a formal request to review the site and tower to determine if the site and tower are suitable for AT&T to install nine "N" antennas co-located on an "E" communication tower with equipment installed on the ground level within the "E" lease area compound.

Epic Wireless, Alameda County Stop Waste, and Executive Director McCarthy had a conference call on October 31, 2019, and Eric Lentz, Epic Wireless, asked to proceed with the request to lease space on tower and ground. Mr. Lentz had performed all the site walks necessary to determine if the site would be suitable for lease by AT&T and determined it to be a suitable site. Mr. Lentz also provided drawings to EBRCSA as to how the site would be configured so that a shelter could be added, a larger generator installed that would be shared by AT&T and EBRCSA, and how AT&T would connect to the EBRCSA tower.

On November 11, 2019, the Executive Director met with engineers from CSI, EBRCSA's contracted Engineering Firm, and spoke with them about the AT&T equipment that would be added to the tower. They reviewed the drawings and recommended that a tower analysis be performed on what space is available on the tower and what equipment AT&T is requesting to install on the tower. The Patterson Pass Tower is designed for winds up to 85 mph with the current tower load. Calculations would be need to completed with the additional equipment because the equipment will create movement in the tower which could impact the reliability of the Microwave transmission from the tower thus impacting EBRCSA. A second analysis would need to be done to determine if there is enough apace between the EBRCSA equipment and AT&T equipment so that there is no interference caused by the AT&T equipment. The second analysis might require that the height of the tower be increased to provide enough space so that there is enough separation between EBRCSA and AT&T equipment. The Executive Director also asked CSI if the addition of the AT&T equipment would maximize the load of the tower preventing EBRCSA from adding equipment to the tower in the future. On November 27, 2019, the Executive Director directed CSI to not begin any analysis until the Board of Directors make their recommendation.

There is concern that EBRCSA may not have adequate room on the tower for future growth or the AT&T equipment may prohibit any additional equipment in the future. EBRCSA does not lease any space on their towers. EBRCSA equipment is co-located on towers owned by Alameda and Contra Costa County and the towers are engineered and designed to support the equipment.

#### **FINANCIAL IMPACT:**

Neither Epic Wireless nor AT&T have provided any information concerning what they will pay for the lease to EBRCSA. The language in the proposed contract is vague as to who will be paid - whether it will be Alameda StopWaste or EBRCSA. Mr. Lentz explained that will be negotiated once approval to build is provided by parties involved. EBRCSA pays Alameda StopWaste \$2,987.24 a year for the lease of the land. It is unknown if Alameda StopWaste will increase the cost of the lease if AT&T equipment is added to the tower.

The Financial Impact is unknown without the analysis necessary to determine if we can add AT&T. The impact will need to be calculated after the reports from CSI are completed. The initial Fiscal Impact will be the tower analysis which should be done by EBRCSA to ensure the report protects EBRCSA's interests and EBRCSA members who rely on the tower.

#### **COMMITTEE RECOMMENDATION:**

The Operations Committee discussed the Patterson Pass site at their November 8<sup>th</sup> meeting and recommended the Board Chair take this to the Board of Directors with their support for the project. The Finance Committee discussed it at their November 8<sup>th</sup> meeting and recommended it be taken to the Board of Directors and they **did not** recommend moving forward with the addition of AT&T equipment to the Board of Directors.

#### **RECOMMENDED ACTION:**

It is recommended that the Board of Directors make a recommendation to the Board Chair concerning Epic Wireless's request on the behalf of AT&T to enter into a lease between EBRCSA and AT&T for the equipment to be added to the Patterson Pass Tower and site.

Attachment:

"A" – Site Drawing

"B" – Zoning Verification

"C" – Standard Application

"D" – Option and Tower Structure Lease Agreement

Market: Northern California  
Cell Site Number: CVL05428  
Cell Site Name: Patterson Pass Livermore  
Search Ring Name: Patterson Pass Livermore  
Fixed Asset Number: 14638065

## OPTION AND TOWER STRUCTURE LEASE AGREEMENT

THIS OPTION AND TOWER STRUCTURE LEASE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by \_\_\_\_\_, a \_\_\_\_\_, having a mailing address of \_\_\_\_\_ (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (“**Tenant**”).

### BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a tower structure (the “**Tower**”), together with all rights and privileges arising in connection therewith, located at \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_ (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

#### 1. OPTION TO LEASE.

(a) Landlord hereby grants to Tenant an option (the “**Option**”) to lease a portion of the Property consisting of:

(i) Approximately \_\_\_\_\_ square feet of ground space, as described on attached **Exhibit 1**, for the placement of Tenant’s equipment (the “**Ground Space**”).

(ii) The portion of the Tower selected by Tenant and dedicated for Tenant’s exclusive use, and consisting of an envelope of twelve (12) contiguous vertical feet of space within which any portion of Tenant’s communication equipment and improvements might be located, operated or maintained (the “**Primary RAD Space**”). The Primary RAD Space includes any area on a horizontal plane, extending in all directions from the Tower, that is perpendicular to such 12-foot vertical envelope and any portion of vertical space on the Tower on which Tenant’s communication equipment is located. The location of the Primary RAD Space is identified in **Exhibit 1**. At any time during the Term of this Agreement, Tenant may use portions of the Tower outside of, but adjacent to, the Primary RAD Space to accommodate Tenant’s improvements and equipment that extend outside the Primary RAD Space (the “**Extended Primary RAD Space**”), subject to Tenant’s confirmation that the space is available and that sufficient structural loading capacity is available or can be made available through structural modifications of the Tower. The Primary RAD Space, as it might be expanded by the Extended Primary RAD Space at any time during the Term of this Agreement, shall continue to be referred to as the Primary RAD Space;

(iii) Those certain areas where Tenant’s conduits, wires, cables, cable trays and other necessary connections (and the cables, wires, and other necessary connections and improvements of such third parties related to Tenant, such as Tenant’s utility providers) are located between the Ground Space or Incremental Ground Space, and the Primary RAD Space or any Additional RAD Space and the electric power, telephone, fiber, and fuel sources for the Property (hereinafter collectively referred to as the “**Connection Space**”). Landlord agrees that Tenant shall have the right to install connections between Tenant’s equipment in the Ground Space and Primary RAD Space; and between Tenant’s equipment in the Ground Space and the electric power, telephone, and fuel sources for the Property, and any other improvements. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. The Ground Space, Primary RAD Space, and Connection Space, are hereinafter collectively referred to as the “**Premises**.”



(b) During the Option period and any extension thereof, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Initial Option Term (as defined below), reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of One Thousand and No/100 Dollars (\$1,000.00) within thirty (30) business days of the Effective Date. The Option will be for an initial term of one (1) year commencing on the Effective Date (the "**Initial Option Term**") and may be renewed by Tenant for an additional one (1) year upon written notification to Landlord and the payment of an additional One Thousand and No/100 Dollars (\$1,000.00) no later than ten (10) days prior to the expiration date of the Initial Option Term.

(d) The Option may be sold, assigned or transferred at any time by Tenant to Tenant's parent company or member if Tenant is a limited liability company or any affiliate or subsidiary of, or partner in, Tenant or its parent company or member, or to any third party agreeing to be subject to the terms hereof. Otherwise, the Option may not be sold, assigned or transferred without the written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. From and after the date the Option has been sold, assigned or transferred by Tenant to a third party agreeing to be subject to the terms hereof, Tenant shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action.

(e) During the Initial Option Term and any extension thereof, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option then Landlord leases the Premises to the Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, this Agreement will terminate and the parties will have no further liability to each other.

(f) If during the Initial Option Term or any extension thereof, or during the term of this Agreement if the Option is exercised, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises or Property or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Any sale of the Property shall be subject to Tenant's rights under this Agreement. Landlord agrees that during the Initial Option Term or any extension thereof, or during the Term of this Agreement if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises or Property or impose or consent to any other restriction that would prevent or limit Tenant from using the Premises for the uses intended by Tenant as hereinafter set forth in this Agreement.

## **2. PERMITTED USE.**

(a) Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the "**Communication Facility**" or "**Communication Facilities**"), as well as the right to test, survey and review title on the Property; Tenant

further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the “**Permitted Use**”). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant’s Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord’s execution of this Agreement will signify Landlord’s approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of the Property as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property’s main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant’s Permitted Use, including the right to construct a fence around the Premises or equipment, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant’s safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant’s expense. Tenant has the right to install, modify, supplement, replace, upgrade, expand the Communication Facility (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term and at no additional cost to Tenant, other than the Rent owed under Section 4 of this Agreement. Tenant will be allowed to make such alterations to the Property in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations.

(b) Landlord agrees that Tenant may use and occupy additional space on the Tower at any additional RAD center(s) (each, an “**Additional RAD**,” and the additional space that Tenant uses or occupies, the “**Additional RAD Space**”) upon the same terms and conditions set forth herein, provided that such space is available or becomes available and subject to Tenant’s confirmation that sufficient structural loading capacity is available or can be made available through structural modification of the Tower. Additional RAD Space includes any area on a horizontal plane, extending in all directions from the Tower, that is perpendicular to any portion of vertical space on the Tower on which the incremental equipment is located, operated, or maintained. Tenant may also use additional ground space at the Property in increments of one square foot outside of the Ground Space, provided that such space is available or might be made available (the “**Incremental Ground Space**”). Upon Tenant’s use of any Additional RAD, Additional RAD Space, or Incremental Ground Space, such RAD or space shall be deemed part of the Premises.

### **3. TERM.**

(a) The initial lease term will be five (5) years (the “**Initial Term**”), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) anniversary of the Effective Date.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each additional five (5) year term shall be defined as an “**Extension Term**”), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (“**Annual Term**”) until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly Rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the “**Holdover Term**”), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the “**Term.**”

#### **4. RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the “**Rent Commencement Date**”), Tenant will pay Landlord on or before the fifth (5<sup>th</sup>) day of each calendar month in advance, Two Thousand and No/100 Dollars (\$2,000.00) (the “**Rent**”), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) In the event that Tenant uses or occupies an Additional RAD, Rent shall be increased by Two Hundred Fifty and No/100 Dollars (\$250.00) per month per each Additional RAD (the “**Additional RAD Rent**”). The initial amount of Additional RAD Rent shall be subject to adjustment as provided in Section 4(e) of this Agreement.

(c) In the event that Tenant uses or occupies Incremental Ground Space, Rent shall be increased by Three and No/100 Dollars (\$3.00) per month per square foot of space (the “**Incremental Ground Space Rent**”). The initial amount of Incremental Ground Space Rent shall be subject to adjustment as provided in Section 4(e) of this Agreement.

(d) In the event that Tenant uses or occupies any Additional RAD Space and (i) Tenant has used all of the Allowed Wind Load Surface Area, (ii) structural modifications are required because Tenant’s use or occupancy of the Additional RAD Space causes the Tower to exceed the maximum allowable combined stress ratio under the structural standards generally accepted within the telecommunications industry (the “**Structural Standards**”), and (iii) Tenant elects under Section 14(b) to have Landlord pay for those structural modifications, Rent shall be increased by the amount of \$0.08 per square inch of Wind Load Surface Area that exceeds the Allowed Wind Load Surface Area (the “**Incremental Use Rent**”). Otherwise, no Incremental Use Rent or other additional fees or charges shall be due and owing. The initial amount of Incremental Use Rent shall be subject to adjustment as provided in Section 4(e) of this Agreement.

(e) Upon the commencement of each Extension Term, the monthly Rent will increase by five percent (5%) over the applicable Rent in effect during the previous five (5) year term.

(f) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

#### **5. APPROVALS.**

(a) Landlord agrees that Tenant’s ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant’s ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant’s sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant’s use of the Premises will be compatible with Tenant’s engineering specifications, system, design, operations or Government Approvals.

**6. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty.

7. **INSURANCE.** During the Term, Tenant will purchase and maintain in full force and effect such general liability policy as Tenant may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00). Notwithstanding the foregoing, Tenant shall have the right to self-insure such general liability coverage.

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

9. **INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to

the extent attributable to the negligent or intentional act or omission of Landlord, its employees, invitees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees, invitees, agents or independent contractors, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

#### **10. WARRANTIES.**

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Tower; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit 10(b)**.

#### **11. ENVIRONMENTAL.**

(a) Landlord represents and warrants, except as may be identified in **Exhibit 11** attached to this Agreement, (i) the Property, as of the Effective Date, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 11(a). Landlord agrees to hold

harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnification provisions contained in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

**12. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System ("UAS") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement. In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$500.00 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of Access are difficult, if not impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages.

**13. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned

and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

#### 14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted.

(b) Landlord will maintain and repair the Property and access thereto, the Tower, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property, including any landscaping installed by Tenant as a condition of this Agreement or any required permit. Landlord shall maintain the Tower's structural integrity at all times (which shall mean that at no time will Landlord allow the Tower's condition to become, or remain, overstressed under the applicable structural standards set forth in the then-current version of the ANSI TIA-222). Landlord shall at all times during the Term of this Agreement reserve and have ready for Tenant's immediate use sufficient structural loading capacity on the Tower to support Tenant's installation of up to thirty-five thousand square inches (35,000 sq. in.) of Wind Load Surface Area, in the aggregate, of Communication Facilities anywhere on the Tower (the "**Allowed Wind Load Surface Area**"). "Wind Load Surface Area" means the Flat Plate Equivalent Area, as defined in ANSI TIA standards, of any appurtenance (excluding all mounts, platforms, cables and other non-operating equipment) at ninety degrees (90°) perpendicular to wind direction, possessing the characteristics of flat material, with associated drag factors. Landlord shall be responsible for the costs of all structural modifications to the Tower, including the costs of related Government Approvals or other approvals, to support the Allowed Wind Load Surface Area. In the event that Tenant has used the Allowed Wind Load Surface Area and an installation of Communication Facilities within the Primary RAD Space will require structural modifications to comply with the Structural Standards, Tenant will pay Landlord for the portion of the structural modifications that is necessary to support Tenant's loading in excess of the Allowed Wind Load Surface Area. In the event that Tenant has used the Allowed Wind Load Surface Area and an installation of Communication Facilities within the Additional RAD Space will require structural modifications to comply with the Structural Standards, Tenant may, in its sole discretion, pay Landlord either (i) the portion of the structural modifications that is necessary to support Tenant's loading in excess of the Allowed Wind Load Surface Area; or (ii) an incremental increase in Rent in accordance with Section 4(d) of this Agreement. In no event shall Tenant be responsible for Tower modification costs to support the installations of other tenants or for the Tower to comply with applicable law so long as Tenant's installation is within the Allowed Wind Load Surface Area.

(c) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within sixty (60) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant's reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(d) As noted in Section 4(f) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant sub-meters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended

period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(e) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

#### **15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 of this Agreement within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

**16. ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.



17. **NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant:                   New Cingular Wireless PCS, LLC  
  Attn: Network Real Estate Administration  
  Re: Cell Site #: CCL05428;  
  Cell Site Name: Patterson Pass Livermore (CA)  
  Fixed Asset #: 14638065  
  1025 Lenox Park Boulevard NE, 3<sup>rd</sup> Floor  
  Atlanta, Georgia 30319

With a copy to:                New Cingular Wireless PCS, LLC  
  Attn.: Legal Dept – Network Operations  
  Re: Cell Site #: CCL05428;  
  Cell Site Name: Patterson Pass Livermore (CA)  
  Fixed Asset #: 14638065  
  208 S. Akard Street  
  Dallas, TX 75202-4206

If to Landlord:                Contact needed for Landlord  
  \_\_\_\_\_  
  \_\_\_\_\_

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

19. **CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm.

If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

**20. WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

**21. TAXES.**

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (y) any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies

Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b) of this Agreement, provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17 of this Agreement.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

## **22. SALE OF PROPERTY.**

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed Tenant Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Landlord or Landlord's prospective purchaser shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property for purposes of any installation, operation or maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

**23. RIGHT OF FIRST REFUSAL.** Notwithstanding the provisions contained in Section 22 above, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party

seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement with respect to the Premises (“Offer”), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 23, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 23. Tenant’s failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 23 with respect to any future proposed conveyances as described herein.

#### **24. MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days’ prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations (“Laws”) applicable to Tenant’s use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord’s ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean

“including but not limited to”; (iii) whenever a party’s consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to “Tenant” shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. “Affiliate” means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. “Control” of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord’s name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys’ Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys’ fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **Incidental Fees.** Unless specified in this Agreement, no unilateral fees or additional costs or expenses are to be applied by either party to the other party, including review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

**[SIGNATURES APPEAR ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be effective as of the Effective Date.

**“LANDLORD”**

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**“TENANT”**

New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]**

**TENANT ACKNOWLEDGMENTS**

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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 \_\_\_\_\_ (Seal)

**LANDLORD ACKNOWLEDGMENT**

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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 \_\_\_\_\_ (Seal)



## EXHIBIT 1

### DESCRIPTION OF PROPERTY AND PREMISES

Page \_\_\_ of \_\_\_

to the Option and Tower Structure Lease Agreement dated \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

The Premises are described and/or depicted as follows:

**Notes:**

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

## **EXHIBIT 11**

### **ENVIRONMENTAL DISCLOSURE**

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

**EXHIBIT 12**  
**STANDARD ACCESS LETTER**  
[FOLLOWS ON NEXT PAGE]

{This Letter Goes On Landlord's Letterhead}

[Insert Date]

Building Staff / Security Staff  
[Landlord, Lessee, Licensee]  
[Street Address]  
[City, State, Zip]

Re: Authorized Access granted to [ ]

Dear Building and Security Staff,

Please be advised that we have signed a lease with [ ] permitting [ ] to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant [ ] and its representatives, employees, agents and subcontractors (“representatives”) 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, [ ] representatives may be seeking access to the property outside of normal business hours. [ ] representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

\_\_\_\_\_  
Landlord Signature

**EXHIBIT 24(b)**

**MEMORANDUM OF LEASE**

[FOLLOWS ON NEXT PAGE]

**MEMORANDUM  
OF  
LEASE**

This Memorandum of Lease is entered into on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ having its principal office/residing at \_\_\_\_\_ (hereinafter called "**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 ("**Tenant**").

1. Landlord and Tenant entered into a certain Option and Tower Structure Lease Agreement ("**Agreement**") on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date, with five (5) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. The Agreement gives Tenant a right of first refusal in the event Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises.
5. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Lease as of the day and year first above written.

**LANDLORD:**

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**TENANT:**

New Cingular Wireless PCS, LLC  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Print Name: [\_\_\_\_\_] ]  
Its: \_\_\_\_\_ [Insert Title]  
Date: \_\_\_\_\_ [Insert Date]

**[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE**

**TENANT ACKNOWLEDGMENT**

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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 \_\_\_\_\_ (Seal)

**LANDLORD ACKNOWLEDGMENT**

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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  
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is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT 1**

**DESCRIPTION OF PROPERTY AND PREMISES**

Page \_\_\_\_ of \_\_\_\_

to the Memorandum of Lease dated \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

The Premises are described and/or depicted as follows:



**W-9 FORM**

[FOLLOWS ON NEXT PAGE]

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
2 Business name/disregarded entity name, if different from above	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.
4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):	Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <small>(Applies to accounts maintained outside the U.S.)</small>
5 Address (number, street, and apt. or suite no.) See instructions.	Requestor's name and address (optional)
6 City, state, and ZIP code	7 List account number(s) here (optional)

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

<b>Social security number</b>				
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or				
<b>Employer identification number</b>				
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> </tr> </table>				

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What Is Backup Withholding, later.*