

BOROUGH OF BERGENFIELD

REQUEST FOR BIDS

FOR

GROUND SPACE FOR WIRELESS EQUIPMENT

DUE DATE: June 2, 2015 at 10:00 a.m.

**BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY**

NOTICE TO BIDDERS

PUBLIC NOTICE

Invitations are extended to bidders to bid for the following project:

GROUND SPACE FOR WIRELESS EQUIPMENT

THE BOROUGH OF BERGENFIELD ("BOROUGH") will accept bids by mail, recognized overnight carrier or in person for "Ground Space for Wireless Equipment" for the lease of a portion of the property located in the Borough of Bergenfield, New Jersey, and shown as Lot 2 in Block 12, more commonly known as 198 N. Washington Avenue on the Borough of Bergenfield Tax Map ("Premises"), until 10:00 a.m. on June 2, 2015, at which time all bids will be publicly opened and read aloud. The Borough of Bergenfield shall not be responsible for any bid mailed which is lost in transit or delivered late by the postal service or recognized overnight carrier. Bids should be submitted in SEALED ENVELOPES, addressed to Corey Gallo, Borough Administrator, Borough of Bergenfield, 198 N. Washington Avenue, Bergenfield, New Jersey 07621 and clearly marked on the outside "Ground Space for Wireless Equipment".

Copies of the Documents, including Specifications and any Addenda may be obtained at the office of the Clerk of the Borough of Bergenfield, 198 N. Washington Avenue, Bergenfield, New Jersey 07621 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

After receipt of bids, no bids may be withdrawn within sixty (60) days after the date of the bid opening except as provided for herein. The bid of any bidder who consents to an extension may be held for consideration for a longer period as may be agreed upon between bidder and the Borough of Bergenfield.

Bidders must use and fully complete proposal forms within the specifications and comply with all requirements attached thereto.

The Borough of Bergenfield reserves the right to reject any or all bids, to waive immaterial informalities, or to accept any bid which, in the opinion of the Borough of Bergenfield, will be in its best interest, all in accordance with the New Jersey Local Lands and Buildings Law, N.J.S.A. 40A:12-1,

et seq. In the event of an equal or tie bid, the Borough of Bergenfield shall award the bid to the bidder which, in the Borough's sole discretion, best serves its interest.

The selected bidder or bidders will, within seven (7) days of award of the bid, enter into a Communications Agreement with the Borough of Bergenfield.

The highest bidder will locate its equipment in accord with the Equipment Layout attached as Exhibit A.

The Borough of Bergenfield requires a minimum rental bid of \$1,500.00 per month.

Bidders are required to comply with the requirements of P.L. 1975, c. 127 and the Americans with Disabilities Act.

BY ORDER OF THE BOROUGH OF BERGENFIELD OF THE COUNTY OF BERGEN,
STATE OF NEW JERSEY.

Anne Dodd, Borough Clerk

BOROUGH OF BERGENFIELD

1. SUBMISSION AND OPENING OF BIDS

Bids shall be submitted at the time and place indicated in the Notice to Bidders enclosed in a sealed envelope, bearing the name and address of the Bidder, addressed to the Borough of Bergenfield, ATTN.: Corey Gallo, Borough Administrator, and endorsed "Ground Space for Wireless Equipment". Bids shall be accompanied by the documents required by the Bid Documents. On the date and at the time specified in the Notice to Bidders, the Bids will be publicly opened and, unless obviously non-responsive, read aloud. **NO BIDS WILL BE RECEIVED AFTER THE DATE AND TIME SPECIFIED.**

2. BID DOCUMENTS

Bid Documents may be obtained from the office of the Borough Clerk, Bergenfield Municipal Building 198 N. Washington Ave., Bergenfield, New Jersey, between the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday.

A complete set of Bid Documents, including Addendum (if any), must be used in preparing bids. The **BOROUGH** assumes no responsibility for errors or misinterpretations resulting from incomplete sets of Bid Documents.

3. DEFINITIONS

The terms "Bid Documents" and "Contract Documents" may, as applicable, be used interchangeably. The term "**Borough**" refers to the Borough of Bergenfield, Bergen County, New Jersey. The definitions of other terms used throughout the Bid Documents are provided in other Sections of this Request for Bids, including the Contract and Specifications, and include, in general, capitalized terms in the Bid Documents.

4. EXAMINATION OF CONTRACT DOCUMENTS

The intent of the Contract Documents is to obtain a complete project in a first-class workmanlike manner and it shall be understood that the Bidder has satisfied itself as to the complete requirements of the Contract Documents and has predicated its Bid upon such understanding.

It is the responsibility of each Bidder before submitting a Bid to:

- a. examine the Contract Documents thoroughly;

- b. visit the site which is the subject of this Contract;
- c. consider federal, state and local laws and regulations;
- d. study and carefully correlate Bidder's observations with the Contract Documents; and
- e. notify the **BOROUGH** of all ambiguities, conflicts, errors, omissions, conflicting statements or discrepancies in the Contract Documents.

Before submitting a Bid, each Bidder shall, at Bidder's own expense, make or obtain any additional examinations, investigations, tests and studies and obtain any additional information and data which Bidder deems necessary to determine its Bid in accordance with the time, price and other terms and conditions of the Contract Documents. The failure or omission of Bidder to receive and examine any form, instrument or document, or make required inquiries and inspections, shall not relieve Bidder from any obligation contained in the Contract Documents.

The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with the requirements of this paragraph, that without exception the Bid is premised upon performing as required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey an understanding of all terms and conditions for performance.

5. ADDENDA AND INTERPRETATIONS

No interpretations of the meaning of the Contract Documents will be made to any Bidder orally. Any and all revisions, interpretations or clarifications will be in the form of written Addenda to the Contract Documents which, if issued, will be provided no later than seven (7) days (Saturday, Sunday or holidays excepted) prior to the date for acceptance of bids to any person who has submitted a Bid or who has received a bid package in writing by certified mail, or by certified facsimile transmission or by a delivery service that provides certification of delivery to the sender. All Addenda so issued shall become part of the Contract Documents.

Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Each Bidder shall ascertain, prior to submitting its Bid, that it has received all Addenda, if any, issued and shall acknowledge receipt of all such Addenda on the Acknowledgment of Receipt of Addenda Form provided by the **BOROUGH** or like form.

6. RIGHTS OF THE BOROUGH

Subject to the requirements of the New Jersey Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq., the **BOROUGH** reserves, holds, and may exercise, at its sole discretion, the following rights with respect to this Request for Bids:

To reject any and all Bids.

To waive any and all informalities.

To supplement, amend or otherwise modify this Request For Bids or cancel this Request For Bids with or without substitution of another Request For Bids.

To issue additional or subsequent solicitations for Bids.

To conduct investigations of the Bidders to clarify the information provided pursuant to this Request For Bids.

To choose not to enter into the Contract or not to proceed with the Request For Bids.

To reject all Bids and re-advertise and award the Contract in the regular manner if, in its judgment, the best interest of the **BOROUGH** will be served.

To reject all non-conforming, non-responsive or conditional Bids.

To reject the Bid of any Bidder if, in the **Borough's** judgment, it would not be in the best interest of the **BOROUGH** to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the **Borough**.

To accept the Bid which, in the **Borough's** judgment, best serves the interests of the **BOROUGH** .

In the event of an equal or tie Bid, to award the Contract to the Bidder which, in the **Borough's** judgment, best serves the interest of the **BOROUGH** .

7. **PREPARATION OF BID**

Bids shall be submitted on the forms provided in this Request for Bids.

Each Bid must be signed in ink by a person authorized to do so.

All blanks on the Bid Forms, unless otherwise noted, shall be completed in ink or by typewriter. No change shall be made in the phraseology on the Bid Forms or the Items included on the Proposal Form. All erasures, interpolations or other physical changes on the Bid Forms shall be signed or initialed by the Bidder. Bids containing any conditions, omissions or irregularities of any kind may be rejected by the **BOROUGH** as incomplete.

The prices indicated in the Proposal Form shall be printed in ink or by typewriter in both words and figures. Any Bid which fails to name a price in both words and figures may be held to be informal and may be rejected by the **BOROUGH**.

In the event that there is a discrepancy between prices written in words and prices written in figures, prices written in words shall govern. In the event of a discrepancy between unit prices and computed totals, the unit price shall prevail. In the event of an error in the summation of the computed totals, the correct summation of the computed totals shall govern.

(a) **Bids by a corporation shall:**

1. Be executed in the corporate name by the president (or other corporate officer accompanied by evidence of authority to sign);
2. Contain the corporate seal;
3. Be attested by the secretary or an assistant secretary; and

4. Include (a) the corporate address, and (b) the state of incorporation.

(b) Bids by a partnership shall:

1. Be executed in the partnership name;
2. Be signed by a partner, whose name and title shall be shown under the signature; and
3. Include the official address of the

partnership.

(c) Bids by a limited liability company shall:

1. Be executed in the limited liability company name;
2. Be signed by the managing member; and
3. Include the official address of the limited liability company.

(d) Bids by a sole proprietorship or an individual shall:

1. Be executed in the name of the sole proprietorship or business;
2. Be signed by the owner or individual whose name shall be shown under the signature; and
3. Include the address of the sole proprietorship or individual.

8. INDEMNITY - Intentionally omitted.

9. CONSENT OF SURETY; PERFORMANCE BOND-Intentionally Omitted
(existing site)

10. INSURANCE

Contract award and execution is contingent upon the Successful Bidder furnishing, prior to contract execution, Certificate (s) of Insurance and copies of required insurance policies with all required endorsements, and in a form satisfactory to the **BOROUGH**, evidencing that all insurance required by the Contract is in effect.

11. **ACCESS TO SITE FOR INSPECTION.** All bidders shall have the right to perform a visual inspection of the site pursuant to the attached Access Site Agreement attached as Exhibit A.

12. **SUBCONTRACTORS**-Intentionally Omitted (existing site)

13. MATERIALS

All items, materials, supplies and/or equipment used to fulfill the requirements of the Contract shall comply in all respects to the standards and regulations established by federal and state laws, municipal ordinances, rules and regulations. All materials, supplies, or equipment furnished must be in accordance with the Specifications.

14. NON-COLLUSION AFFIDAVIT

Each bid must be accompanied by a completed Non-Collusion Affidavit on the form provided by the **BOROUGH** or like form.

15. OWNERSHIP DISCLOSURE STATEMENT

Each bid must be accompanied by a completed Ownership Disclosure Statement on the form provided by the **BOROUGH** or like form.

16. NEW JERSEY STATE WAGE RATES

If applicable, the Successful Bidder and all subcontractors hired by the Successful Bidder shall fully comply with the Prevailing Wage Act, PL. 1963, c. 150. By submission of a Bid, the Bidder warrants that neither he/she nor any subcontractor employed hereunder is on record with the New Jersey Department of Labor as having previously failed to pay prevailing wages in accordance with said Act.

All Bids shall contain a statement to the effect that

the Bidder and all subcontractors hired by the Bidder will, if applicable, pay any and all workers employed no less than the prevailing wage rate as determined pursuant to N.J.S.A. 34:11-56.25 et. seq., by the Commissioner of Labor and Industry or duly authorized deputy or representative on the form provided by the **BOROUGH** or like form.

17. NON-DISCRIMINATION

The Successful Bidder shall comply with all applicable requirements of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq., as well as all federal laws and Executive Orders prohibiting discrimination in the workplace. Bidders are also required to comply with the requirements of 1975, Chapter 127. NO BIDDER SHALL BE AWARDED THE CONTRACT, NOR SHALL ANY MONIES BE PAID THEREUNDER TO ANY CONTRACTOR, SUBCONTRACTOR OR BUSINESS FIRM WHICH HAS NOT AGREED AND GUARANTEED TO AFFORD EQUAL OPPORTUNITY IN THE PERFORMANCE OF THE CONTRACT IN ACCORDANCE WITH AN AFFIRMATIVE ACTION PLAN APPROVED UNDER THE TERMS ESTABLISHED IN N.J.A.C. 17:27-1, ET.

All Bidders and all Contractors who are negotiating for a contract, as a precondition to entering into a valid and binding contract with the public agency, are required to submit to the public agency, prior to or at the time the contract is submitted for signing by the public agency (in accordance with N.J.A.C. 17:27-4.3 promulgated by the Treasurer pursuant to P.L. 1975, c. 127) one of the following three documents:

- (a) Appropriate evidence that the Contractor is operating under an existing federally approved or sanctioned affirmative action program; or
- (b) A certificate of Employee Information Report Approval issued in accordance with N.J.A.C. 17:27-4; or
- (c) An initial Employee Information Report consisting of forms provided by the Affirmative Action Office and completed by the Contractor in accordance with N.J.A.C. 17:27-4; provided, however, that a Contractor shall not be eligible to submit an initial Employee Information Report unless the Contractor certifies and agrees as follows: "The Contractor, or subcontractor, where appropriate, certifies that he or she has never before applied for a certificate of employee information report in accordance with the rules promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and

supplemented from time to time; and agrees to submit immediately to the Affirmative Action Office a copy of the initial employee information report." The Contractor shall also submit a letter stating the form was completed and appropriate copies sent to the Affirmative Action Office for processing on the Contractor's letterhead.

The Successful Bidder is required to submit one of the above within three (3) days of award the contract and prior to Contract execution.

No later than three (3) days after the signing of a contract the Contractor is required to submit to the public agency compliance officer and the affirmative action office an initial project manning table consisting of forms provided by the affirmative action office and completed by the Contractor in accordance with N.J.A.C. 17:27-7.

18. COMPLIANCE WITH LAW

The Successful Bidder shall comply with all federal, state, county and local regulations, laws and statutes which apply to this solicitation for bids, including those governing safety and health in particular.

19. PUBLIC INFORMATION

Any and all information submitted with or subsequent to the Bids will be considered public information and as such may be open to full review and scrutiny by the general public. Submission of a Bid will constitute a full waiver by Bidder of any right to confidentiality with regard to information that is submitted with the Bid or subsequently provided to the **BOROUGH** pursuant to the requirements of the Contract Documents.

20. BID EVALUATION

Bids will be evaluated in conformance with the New Jersey Local Lands and Buildings Law.

The **BOROUGH** reserves the discretion to make an award, if any.

All Bidders must demonstrate that they have the financial resources, experience, expertise, personnel, equipment, permits and physical capability to perform through the submission of information required with the

Bid as described in the Contract Documents. In evaluating Bids, the **BOROUGH** will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such prices and other data, as may be requested in the Contract Documents. The **BOROUGH** reserves the right to reject any Bid if the evidence submitted by, or investigation of, a Bidder fails to satisfy the **BOROUGH** that such Bidder is properly qualified to carry out the obligations of the Contract Documents and to provide the services contemplated therein.

21. **CONTRACT AWARD; WITHDRAWAL OF BIDS**

In addition to the rights described elsewhere in this Section B, the **BOROUGH** reserves the right to reject any or all Bids, to waive immaterial informalities, and/or to accept any Bid, which, in the opinion of the **BOROUGH**, will be in the best interest of the **BOROUGH**. The **BOROUGH** will evaluate all Bids.

No Bid shall be withdrawn for sixty (60) days following the opening of Bids except as provided herein.

22. **CONTRACT EXECUTION**

The terms and conditions of each section of this Request for Bids, including, without limitation, the Contract, the Specifications, and the Bidders Information, are expressly incorporated herein by reference and shall be deemed an integral part of the Contract Documents. Within seven (7) days of award of the Bid, the Successful Bidder shall enter into a contract with the **BOROUGH** substantially in the form and content as the Contract included in this Request for Bids.

23. **HEADINGS**

The headings used throughout the Contract Documents are intended for convenience of reference only and shall not be considered as having any bearing on their interpretation.

24. **BUSINESS REGISTRATION CERTIFICATE**

Each Bid must include a copy of the "Business Registration Certificate" for the Bidder.

BOROUGH OF BERGENFIELD,
BERGEN COUNTY, NEW JERSEY

GROUND SPACE FOR WIRELESS EQUIPMENT

STRUCTURE LEASE AGREEMENT

THIS 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 _____ ("**Tenant**").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a structure (the "**Structure**"), together with all rights and privileges arising in connection therewith, located at 198 N. Washington Avenue, Block 12, Lot 2 in the Borough of Bergenfield, County of Bergen and State of New Jersey (collectively, the "**Property**"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. 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. LEASE OF PREMISES. Landlord hereby leases to Tenant:

- (i) approximately _____ square feet including the air space above such ground space, as described on attached **Exhibit 1** for the placement of Tenant's Communication Facility;
- (ii) space for any structural steel or other improvements to support Tenant's equipment (collectively, the space referenced in (i) and (ii) is the "**Equipment Space**");
- (iii) that certain space on the Structure, as generally depicted on attached **Exhibit 1**, where Tenant shall have the right to install its equipment (collectively, the "**Equipment Space**"); and
- (iv) those certain areas where Tenant's conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the electric power, telephone, 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 Equipment 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 nearest public right-of-way to the Premises. Notwithstanding the foregoing, Tenant, to the extent feasible, shall locate all lines, wires, conduits and cables on existing poles extending from the roadway into Landlord's Property. The Equipment Space and Connection Space are hereinafter collectively referred to as the "**Premises.**"

2. PERMITTED USE. Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, I beams, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), 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 Landlord's contiguous, adjoining or surrounding property (the "**Surrounding Property**" which includes without limitation, the remainder of the Structure) 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, 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 and undertake any other appropriate means to secure the Premises at Tenant's expense. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, or relocate the Communication Facility at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Property in order to ensure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. TERM.

(a) The initial lease term will be five (5) years ("**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 four (4) additional five (5) year term(s) (each five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions 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 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, then upon 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 (each an "**Annual Term**") until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rental 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 ("**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 (5th) day of each calendar month in advance _____ and No/100 Dollars (\$_____.00) (the "**Rent**"), at the address set forth above. In any partial month occurring after the Rent Commencement Date, 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 year one (1) of each Extension Term, the monthly Rent will increase by seven and one-half percent (7½ %) over the Rent paid during the previous five (5) year term.

(c) 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 Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinance, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Landlord authorizes Tenant

to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(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 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: 5 Approvals, 6(a) Termination, 6(b) Termination, 6(c) Termination, 6(d) Termination, 8 Interference, 11(d) Environmental, 18 Condemnation and 19 Casualty.

7. INSURANCE.

(a) During the Term, Tenant will carry, at its own cost and expense, the following insurance: (i) workers' compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford protection of up to Three Million Dollars (\$3,000,000) per occurrence and Six Million Dollars (\$6,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. Tenant's CGL insurance shall contain a provision including Landlord as an additional insured. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and

(iii) shall not exceed Tenant's indemnification obligation under this Agreement, if any.

(b) Notwithstanding the foregoing, Tenant shall have the right to self-insure the coverages required in subsection (a). In the event Tenant elects to self-insure its obligation to include Landlord as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)):

(i) Landlord shall promptly and no later than thirty (30) days after notice thereof provide Tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) Landlord shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Tenant; and

(iii) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit, or the like.

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 date of this Agreement, a lease, license or any other right to any third party, if 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 or Surrounding 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 (or any claims in respect of the foregoing), costs or expenses (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, 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 (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees or agents, 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 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) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that it owns the Property. As long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises without hindrance or ejection by any persons lawfully claiming under Landlord; (i) 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.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants, except as may be identified in **Exhibit 2** attached to this Agreement, (i) the Property, as of the date of this Agreement, 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 of this Agreement or from such contamination caused by the acts or omissions of the 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 indemnifications of 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 third party, 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 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. Landlord will maintain and repair the Property and access thereto, the Structure, 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.

(b) 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 submeter from Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. 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 forty-five (45) days of receipt of the usage data and required forms. As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters 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.

(c) Landlord hereby grants to any company providing utility or similar services, including electrical 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 companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or the 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, 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 of this Agreement 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 of 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 as follows:

If to Tenant: _____

With a copy to: _____

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to 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 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 forty-eight (48) 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 prorata basis.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. If any part of the Communication Facility or 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 prorata 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, 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 timely payment of all taxes and assessments levied upon the lands, improvements and other property of Landlord, including any such taxes that may be calculated by the taxing authority using any method, including the income method. Tenant shall be responsible for 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. 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 within such time period, 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 Tenant may deem appropriate. 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) 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), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(e) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17 and, in addition, a copy of any such notices shall be sent to the following address. Promptly after the Effective Date of this Agreement, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(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. 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 or Short Form of Lease substantially in the form attached as **Exhibit 3**. Either party may record this Memorandum or Short Form of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term of this Agreement, 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 or Short Form 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 _____ 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 without limitation, 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.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

"LANDLORD"

By: _____

Print Name: _____

Its: _____

Date: _____

Borough Clerk

"TENANT"

By: _____

Print Name: _____

Its: _____

Date: _____

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

TENANT ACKNOWLEDGMENT

State of _____)

County of _____)

On this _____ day of _____ 20__, before me appeared _____, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the _____ of _____ Corporation, and that said instrument was signed on behalf of _____ company, by consent of its members, and said _____ acknowledged said instrument to be the free act and deed of said _____ company.

Notary Public

Print Name: _____

My commission expires: _____

DESCRIPTION OF PREMISES

Page ___ of ___

to the Structure Lease Agreement dated _____, 20____, by and between
_____, a _____, as Landlord, and
_____ as Tenant.

The Property is legally described as follows: 198 North Washington Avenue, Block 12, Lot 2 in
the Borough of Bergenfield, County of Bergen and State of New Jersey

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 GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL 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 1

(LEASE EXHIBIT)

EXHIBIT 2

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the date of this Agreement, is free of hazardous substances except as follows:

1. NONE. _____

EXHIBIT 3

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

MEMORANDUM OF LEASE

Return to:

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this ____ day of _____, 20____, by and between _____, a _____, having a mailing address of _____ (hereinafter referred to as _____ as “**Landlord**”) and _____, having a mailing address of _____ (hereinafter referred to as “**Tenant**”).

1. Landlord and Tenant entered into a certain Structure Lease Agreement (“**Agreement**”) on the ____ day of _____, 20____, for the purpose of installing, operating and maintaining a ground space for wireless equipment 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 of the Agreement, with four (4) successive 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. 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: _____

Borough Clerk

"TENANT"

By: _____

Print Name: _____

Its: _____

Date: _____

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

TENANT ACKNOWLEDGMENT

State of _____)

County of _____)

On this _____ day of _____ 20__, before me appeared _____, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the _____ of _____ company, and that said instrument was signed on behalf of _____ company, by consent of its members, and said _____ acknowledged said instrument to be the free act and deed of _____ company.

Notary Public

Print Name: _____

My commission expires: _____

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.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
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 the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number										
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		-								
Employer identification number										
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		-								

Part II Certification

Under penalties of perjury, I certify that:

- 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
- 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
- I am a U.S. citizen or other U.S. person (defined below).

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 on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

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

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

SCHEDULE OF EXHIBITS

Exhibit A - Equipment Layout

BOROUGH OF BERGENFIELD
Bergen COUNTY, NEW JERSEY

GROUND SPACE FOR WIRELESS EQUIPMENT

CHECKLIST

Forms Provided:

Non-collusion Affidavit

Affirmative Action Acknowledgment

Ownership Disclosure Statement

Acknowledgment of Receipt of Addenda

Prevailing Wage Statement

Proposal Form

BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY
GROUND SPACE FOR WIRELESS EQUIPMENT
FORMS

NON-COLLUSION AFFIDAVIT

**BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY**

GROUND SPACE FOR WIRELESS EQUIPMENT

STATE OF

SS

COUNTY OF

I _____, of the City of _____ in the
County of _____ and the State of _____ of
full age, being duly sworn according to law on my oath depose
and say that:

I am _____ of the firm of _____
the Bidder making the Proposal for a Contract with the Borough
of Bergenfield ("Borough") to provide the Equipment described
in the Contract Documents for the Ground Space for Wireless
Equipment and that executed the applicable Proposal with full
authority to do so; that Bidder has not, directly or
indirectly, entered into any agreement, participated in any
collusion, or otherwise taken any action in restraint of free,
competitive bidding in connection with the above-named
Contract; and that all statements contained in the Proposal and
in this Affidavit are true and correct, and made with full
knowledge that the Borough relies upon the truth of the
statements contained in the Proposal and in the statements
contained in this Affidavit in awarding the Contract.

I further warrant that no person or selling agency has been
employed or retained to solicit or secure such Contract upon an
agreement or understanding for a commission, percentage, brokerage
or contingent fee, except bona fide employees or bona fide
established commercial or selling agencies maintained by the
Contractor for the purpose of securing business.

(Name of Contractor)

By: (Signature of Duly
Authorized Representative

Subscribed and sworn to
before me this _____ day
Of _____ 2015.

(Name)

(Title)

Notary Public of

My Commission Expires: _____

AFFIRMATIVE ACTION ACKNOWLEDGMENT

**BOROUGH OF BERGENFIELD
BERGEN, NEW JERSEY**

GROUND SPACE FOR WIRELESS EQUIPMENT

Contractor acknowledges that his firm is an Affirmative
Action Employer and certifies compliance with all requirements:

(Name of Firm)

(Signature)

(Title)

(Address of Firm)

(Date)

OWNERSHIP DISCLOSURE STATEMENT

**BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY**

GROUND SPACE FOR WIRELESS EQUIPMENT

Pursuant to N.J.S.A. 52:25-24.2, corporate, limited liability company and partnership Bidders must submit a statement setting forth the names and addresses of all stockholders in the corporation or partnerships who own ten percent (10%) or more of its stock of any class, or of all individual members or partners in the partnership or company who own a ten percent (10%) or greater interest therein, as the case may be.

If one or more such stockholder or partner is itself a corporation or partnership, the names and addresses of stockholders holding ten percent (10%) or more of that corporation's stock, or the individual partners owning ten percent (10%) or greater interest in that partnership, as the case may be, shall also be listed.

The disclosure shall continue until the names and addresses of every non-corporate stockholder and individual partner exceeding the ten percent (10%) ownership criteria has been listed.

If the Bidder is neither a corporation nor a partnership, and/or if no stockholder or partnership falls within the criteria set forth above, Bidder shall so attest in the space provided below:

NAME:

ADDRESS:

OWNERSHIP DISCLOSURE STATEMENT

**BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY**

GROUND SPACE FOR WIRELESS EQUIPMENT

CERTIFICATION

[Please check appropriate box(es)]

_____ I certify that the list above contains the names and addresses of all stockholders or members owning ten percent (10%) or more of the stock of any class of the undersigned corporation or limited liability company.

_____ I certify that the list above contains the names and addresses of all individual partners in the partnership who own a ten percent (10%) or greater interest therein.

_____ I certify that such stockholder or partner within the ownership percentages above is itself a corporation or partnership and the list above contains the names and addresses of the stockholders holding a ten percent (10%) or greater interest of that corporation's stock or of individual partners owning ten percent (10%) or greater interest in that partnership, as the case may be.

_____ I certify that no stockholder or partnership falls within the criteria set forth above.

(Name of Partnership or Corporation)

(Signature of President or duly
authorized Officer, Date)

(Address)

Print Name and Title and Affix
Corporate Seal)

ATTEST:

(Signature of Secretary or Assistant
Secretary)

(Print Name and Title)

NOTE: Submit Similar Statement for Each Member of a Limited Liability Company or Joint Venture.

If the Bidder on this Contract is neither a Corporation, Partnership nor Limited Liability Company, please sign below.

(Signature of Owner, Date)

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

BOROUGH OF BERGENFIELD
BERGEN COUNTY
NEW JERSEY

GROUND SPACE FOR WIRELESS EQUIPMENT

The undersigned Bidder hereby acknowledges receipt of the following Addenda:

<u>Addendum Number</u>	Dated
_____	_____
_____	_____
_____	_____
_____	_____

Acknowledged For: _____
(Name of Bidder)

By: _____
(Signature of Authorized Representative)

Name: _____

Title: _____

PREVAILING WAGE STATEMENT

**BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY**

GROUND SPACE FOR WIRELESS EQUIPMENT

If applicable, _____, as Successful Bidder and all subcontractors hired by _____ does hereby agree to pay any and all workers employed no less than the prevailing wage rate as determined pursuant to N.J.S.A. 34:11-56.25 et seq. by the Commissioner of Labor and Industry or duly authorized deputy or representative.

Acknowledge For:

(Name of Bidder)

By:

(Signature of Authorized Representative)

Name:

Title:

**BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY**

GROUND SPACE FOR WIRELESS EQUIPMENT

BID PROPOSAL

The undersigned, having carefully inspected the Borough, either personally or through its duly authorized representatives, and also having carefully read and examined the Notice to Bidders, Bidders Information, Communications Site Lease Agreement, Specifications and Bid Proposal, either personally or thorough a duly authorized representative which documents are understood and accepted as sufficient for the purpose herein expressed, hereby proposes to comply with the requirements and to furnish all labor, equipment, services and facilities in accordance with the Request for Proposals. The consideration which the undersigned required and proposed for performance is a follows:

Annual Rental to be paid to the Borough _____

During the Initial 5 year term of the Lease
(Minimum initial annual rental must be at least
\$ _____ plus _____ - percent annual increases)
(payable at the rate of \$ _____ per month)

Date: _____

Bidder: _____

By: _____

Title: _____

Address: _____