

PUBLIC NOTICE

Notice is Hereby Given that the Tooele City Council and the Tooele City Redevelopment Agency will meet in a Work Meeting, on Wednesday, March 16, 2022, at 5:30 p.m. The Meeting will be Held in the Tooele City Hall Council Chambers, Located at 90 North Main Street, Tooele, Utah.

We encourage you to join the City Council meeting electronically by logging on to the Tooele City Facebook page at <https://www.facebook.com/tooelecity>.

1. **Open City Council Meeting**
2. **Roll Call**
3. **Mayor's Report**
4. **Council Members' Report**
5. **Discussion Items**
 - a. **Utah Well-Being Project Survey**
Presented by Courtney Flint, USU - Utah Well-Being Project
 - b. **Utah Housing Authority Harris Project**
Presented by DeAnn Christiansen, Tooele County Housing Authority Executive Director
 - c. **Impact Fee Waiver for the Murdock Subdivision and Harris Project**
Presented by Roger Baker, City Attorney
 - d. **Elton Park Cell Tower Lease Renewal**
Presented by Roger Baker, City Attorney
 - e. **Nonresidential Zoning District Setbacks**
Presented by Jim Bolser, Community Development Director
 - f. **Budget Updates for Roads, Water, and Sewer**
Presented by Jamie Grandpre, Public Works Director
 - g. **Resolution 2022-19 A Resolution of the Tooele City Council Approving an Agreement with Whitaker Construction for the Installation of Disc Filters at the Tooele City Water Reclamation Facility**
Presented by Jamie Grandpre, Public Works Director
 - h. **Salary Schedule**
6. **Closed Meeting**
~Litigation, Property Acquisition, and/or Personnel
7. **Adjourn**

Michelle Y. Pitt, Tooele City Recorder

Pursuant to The Americans With Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, At 435-843-2111 Or Michellep@Tooelecity.Org, Prior To The Meeting.



TOOELE COUNTY HOUSING AUTHORITY

66 West Vine, Tooele, Utah 84074
(435) 882-7875 • Fax (435) 882-7894

March 4, 2022

Tooele City Corporation
Attn: City Attorney Roger Baker
90 North Main
Tooele, Utah 84074

Dear Roger,

This letter is regarding impact fee waivers for Harris Community Villages, which consists of a Community Resource Center and 66 affordable permanent supportive housing units. We would like to formally request the City Council waive the impact fees for the future apartments and Community Resource Center remodel of the old Harris Elementary School.

As per the city ordinance this project is Eligible Affordable Housing Units/Public Facility, as per the ordinance definition, Title 4, Chapter 15 which is:

- Offered in partnership with Tooele County Housing Authority.
- Financed by Rural Development or other government program. Deed Restricted.
- 66 units of affordable permanent supportive housing units. Consisting of 42 one bedroom units, 6 one bedroom units and 18 two bedroom units. All of the units are for people who make at or below 35% AMI with 10 units designated for folks at or below 30% AMI.
- Remodel of the School into a Community Resource Center consisting of a nutrition kitchen, Food Pantry, 24/7 daycare, 40 emergency shelter beds and full time around the clock case managers and security.

Please let me know if you need anything further from us and what the next steps are. Thank you!

Sincerely,

DeAnn Christiansen
Tooele County Housing Authority
Executive/Development Director





TOOELE COUNTY HOUSING AUTHORITY

66 West Vine, Tooele, Utah 84074
(435) 882-7875 • Fax (435) 882-7894

March 4, 2022

Tooele City Corporation
Attn: Roger Baker Tooele City Attorney
90 North Main
Tooele, Utah 84074

Dear Roger,

This letter is regarding impact fee waivers for Murdock subdivision phase I and II. We would like to formally request the City Council waive the impact fees for these homes.

As per the city ordinance these future homes are Eligible Affordable Housing Units, as per the ordinance definition, Title 4, Chapter 15 which are:

- Offered in partnership with Tooele County Housing Authority.
- Deed restricted.
- Phase II will consist of 8 CROWN Rent-to-own homes serving households at less than 60% of the Tooele County area median income. These homes are financed through Low Income Tax Credits and are rented for 15 years after which, the tenant will be given opportunity to purchase.
- Phase I consists of 15 lots to be developed with the Mutual Self Help Program, funded by USDA Rural Development program, wherein households are targeted that earn at or below 60% of the AMI. These homes will be financed by USDA Rural Development.

Please let me know if you need anything further from us and what the next steps are. Thank you!

Sincerely,

DeAnn Christiansen
Tooele County Housing Authority
Executive/Development Director



(Above 3" Space for Recorder's Use Only)

**This Document Prepared By and
After Recording, Return To:**

Eco-Site, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487
Attn: Daniel Marinberg

Cross Reference:

Instrument No. 541131
Recorder's Office
Tooele County, Utah

Commitment Number: 01-21034826

**FIRST AMENDMENT TO LEASE AGREEMENT
AND FIRST AMENDMENT TO MEMORANDUM OF LEASE**

This First Amendment to Lease Agreement and First Amendment to Memorandum of Lease (this "**Amendment**") is entered into and made effective as of February 13, 2022 and is by and between **Tooele City Corporation**, a municipal corporation ("**Landlord**"), and **Eco-Site, LLC**, a Delaware limited liability company, successor by merger to Eco-Site II, LLC ("**Tenant**"). Landlord and Tenant may be referred to herein as "**Party**" or jointly as "**Parties**."

WITNESSETH:

A. Landlord and Tenant entered into that certain Lease Agreement dated February 14, 2020 (the "**Lease**") and Memorandum of Lease dated February 14, 2020 (the "**Memorandum**") recorded in Tooele County, Utah, on April 12, 2021 at Instrument No. 541131 (collectively, the Lease and the Memorandum shall be referred to herein as the "**Agreement**").

B. Landlord and Tenant desire to amend the Agreement, as set forth below, to extend the Testing Period Renewal Term set forth in Section 2 of the Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Landlord and Tenant agree as follows:

1. **Recitals, Definitions.** The recitals set forth above are accurate and hereby incorporated into the Agreement and Memorandum by reference thereto. All capitalized terms not defined herein shall have the same meaning set forth in the Agreement or Memorandum, as applicable.

Site ID: US-UT-5040
Site Name: North 5th Street

2. **Amendment.**

(a) Previously, the Parties by agreement or otherwise extended the Testing Period through to and including February 13, 2022. The Agreement and Memorandum are now hereby amended by extending the Testing Period for the period beginning on February 14, 2022 through to and including February 13, 2023.

(b) Tenant's notice information and address set forth in Section 1.1 of the Agreement is hereby deleted and replaced with the following:

Eco-Site, LLC
750 Park of Commerce Drive
Suite 200
Boca Raton, Florida 33487
Attn: General Counsel
Site No./Name: US-UT-5040 / North 5th Street

3. **Ratification.** Except as amended herein, all of the terms and conditions of the Agreement are hereby ratified and confirmed in all respects and shall remain unchanged and continue in full force and effect.

4. **Conflict.** In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall govern and supersede those set forth in the Agreement.

5. **Successors and Assigns.** This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

6. **Binding Effect.** This Amendment shall be binding upon the heirs, legal representatives, successors and assigns of the parties. The parties shall execute and deliver such further and additional instruments, agreements and other documents as may be necessary to evidence or carry out the provisions of this Amendment.

7. **Representations and Warranties.** To the extent applicable, each party hereby represents and warrants to the other party that such party has full right and authority to execute and enter into this Amendment and to perform the obligations imposed upon such party without the consent of any other party or person. Further, each of the persons executing this Amendment on behalf of such party hereby represents and warrants that such person is authorized to do so.

8. **Entire Agreement.** This and any attachments, which are hereby incorporated into and made a part of this Amendment, set forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

9. **Authority to Sign.** Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

10. **Counterparts.** This Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

[signatures on the following pages]

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the day and year first above-written.

WITNESSES:

LANDLORD:

Tooele City Corporation,
a municipal corporation

Name: _____

By: _____

Name: _____

Name: _____

Title: _____

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____ as _____ of Tooele City Corporation, a municipal corporation.

Signature of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

[Tenant's Signature Page]

WITNESSES:

TENANT:

Eco-Site, LLC
a Delaware limited liability company

Name: _____

By: _____

Name: _____

Name: _____

Title: _____

Date: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____ as _____ of Eco-Site, LLC, a Delaware limited liability company.

Signature of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____



VIA UPS GROUND

February 18, 2020

Tooele City Corporation
Attn: Mayor
90 North Main Street
Tooele, UT 84074

Tooele City Corporation
Attn: City Attorney
90 North Main Street
Tooele, UT 84074

Re: UT-0014 North 5th Street; Lease Agreement ("Agreement") by and between Tooele City Corporation, a municipal corporation and Eco-Site II, LLC, a Delaware limited liability company

Dear Mayor Winn:

I hope you are doing well. Enclosed please find the following documents regarding the referenced matter:

1. One (1) original, fully executed Agreement; and
2. One (1) copy of the fully executed Memorandum of Lease.

We look forward to working with you. If you have any questions or concerns, please contact Ashley Cox, Property Manager, at 919-334-6663.

Best regards,

A handwritten signature in blue ink, appearing to read "Rachel A. Paone".

Rachel A. Paone, NCCP
Paralegal
rpaone@eco-site.com
919-364-4703

Enc.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("*Lease*") is made as of the Effective Date by and between Landlord (as identified in Section 1.2) and Eco-Site II, LLC, a Delaware limited liability company ("*Tenant*").

WHEREAS, Landlord owns certain real property located in the County of Tooele, in the State of Utah, that is more particularly described or depicted in the attached **Exhibit 1** (the "*Property*"); and

WHEREAS, Tenant desires to obtain the right to lease from Landlord (i) a certain portion of the Property of approximately 1,600 square feet (the "*Tower Compound*") for wireless communications and related purposes and (ii) an appurtenant, non-exclusive leasehold easement (the "*Access and Utility Easement*") over certain portions of the Property to access the Tower Compound (the Tower Compound and the Access and Utility Easement being more particularly described on **Exhibit 2**, depicted on the survey attached as **Exhibit 3**, and collectively referred to hereinafter as the "*Premises*").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree:

1. BUSINESS TERMS AND INFORMATION. For purposes of this Lease, in addition to the defined terms elsewhere in this Lease, including the recitals above, the following capitalized terms or information have the meanings set forth in this Section 1:

1.1 *Tenant's Notice Address:* Eco-Site II, LLC
Attn: Asset Management
Eco-Site Site Number UT-0014
1010 Sync Street
Suite 575
Morrisville, NC 27560

with a copy to: Eco-Site II, LLC
Attn: General Counsel
1010 Sync Street
Suite 575
Morrisville, NC 27560

1.2 *Landlord:* Tooele City Corporation, a municipal corporation.

1.3 *Landlord's Notice Address:* Tooele City Corporation
Attn: Mayor
90 North Main Street
Tooele, UT 84074

with a copy to: Tooele City Corporation
Attn: City Attorney
90 North Main Street
Tooele, UT 84074

1.4 *Communications Facility:* The radio and communications towers, transmitting and receiving equipment, antennas, dishes, mounting structures, buildings, optional backup generators and any other ancillary equipment related thereto.

1.5 **Testing Period:** That certain period of time, consisting of the Initial Testing Period and any effective Testing Period Renewal Term, that occurs immediately prior to the commencement of the leasehold and during which Tenant may investigate the feasibility of constructing and operating a wireless telecommunications facility on the Premises as further provided in Section 2.

1.6 **Initial Testing Period:** A period of one year, commencing on the Effective Date.

1.7 **Testing Period Renewal Term:** A period of one year, commencing on the day after the expiration of the Initial Testing Period (as further provided in Section 2.3).

1.8 **Testing Period Consideration:** N/A.

1.9 **Term:** The term of the leasehold granted by Landlord to Tenant pursuant to this Lease, which consists of the Initial Term and any effective Renewal Term.

1.10 **Commencement Date:** The first day of the possessory leasehold under this Lease, which is the date that Tenant begins visible construction at the Premises (inclusive of site preparation) consistent with the terms of this Lease.

1.11 **Initial Term:** The term commencing on the Commencement Date and continuing through the last day of the 120th full calendar month after the Rent Accrual Commencement Date.

1.12 **Renewal Term:** As provided in Section 3, each of the 4 successive periods of 5 years each, with the first Renewal Term commencing upon the expiration of the Initial Term and each subsequent Renewal Term commencing upon the expiration of the immediately preceding Renewal Term.

1.13 **Rent Accrual Commencement Date:** Provided the Commencement Date occurs between the 1st and the 15th day of a calendar month, then the Rent Accrual Commencement Date is retroactive to the first day of the calendar month in which the Commencement Date occurs; and otherwise, the Rent Accrual Commencement Date is the first day of the calendar month immediately following the Commencement Date.

1.14 **Rent:** The annual amount of \$15,000.00, payable in equal monthly payments of \$1250.00. 1% annual escalation beginning on the 1st anniversary of the Rent Accrual Commencement Date of this Lease.

2. RIGHT TO LEASE / TESTING PERIOD.

2.1 Landlord grants to Tenant the right to lease the Tower Compound and the Access and Utility Easement, which easement is to install and maintain utility services to and serving the Tower Compound and vehicular and pedestrian access from a public right-of-way serving the Property to the Tower Compound.

2.2 During the Testing Period and in exchange for Tenant's payment to Landlord of the Testing Period Consideration within 30 days of the Effective Date, Tenant and its agents, employees, engineers, surveyors and other representatives have the right to enter upon the Property: (i) to inspect and examine the Premises; (ii) to conduct and perform soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Premises and the Property (collectively, the "**Tests**"), subject to Utah blue stakes laws; (iii) to apply for and obtain licenses, permits, approvals, or other relief required or deemed necessary or appropriate for Tenant's use of the Premises including, applications for

zoning variances, zoning ordinances, amendments, conditional use permits, and building permits (collectively, the "**Government Approvals**"); (iv) to initiate, order and/or schedule utilities; and (v) otherwise to do those things on or off the Premises that, in the discretion, opinion or judgment of Tenant, are necessary or desirable to determine the physical condition of the Premises, the environmental history of the Premises, Landlord's title to the Property and the feasibility or suitability of the Premises for Tenant's use of the Premises for a Communications Facility, all at Tenant's sole 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, regardless of whether such defect or condition is disclosed by Tenant's inspection. A pre-existing defect or condition is one that exists both (1) prior to the Effective Date, and (2) independent of Tenant's activities on the Property. At the conclusion of the Testing Period, to the extent Tenant may alter or damage the Property as a result of its activities on the Property during the Testing Period, Tenant will restore the Property to its condition as it existed at the Effective Date, reasonable

wear and tear and casualty not caused by Tenant excepted. Subject to the foregoing, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of or as a result of Tenant conducting the Tests and its entry onto the Property during the Testing Period.

2.3 Tenant may extend the Testing Period for the Testing Period Renewal Term upon written notification to Landlord given prior to the expiration of the Initial Testing Period.

2.4 During the Testing Period, Tenant may commence the Initial Term by obtaining a building permit for and commencing visible construction of the Communications Facility at the Premises. Tenant shall notify Landlord in writing of the commencement of the Initial Term within 15 days of the Commencement Date. Immediately upon Tenant commencing visible construction as aforesaid, without further act or deed, the Testing Period will terminate, the Initial Term commences and Landlord leases the Premises to Tenant subject to the terms and conditions of this Lease. If Tenant does not obtain a building permit and commence visible construction of the Communications Facility at the Premises prior to the expiration of the Testing Period, this Lease will terminate and the parties will have no further liability to each other except for the indemnity and restoration obligations imposed by Tenant under Section 2.1.

2.5 During the Testing Period, Tenant reserves the right (i) to revise the legal description of the Tower Compound and the Access and Utility Easement to conform the same to a survey of the Premises to be procured by Tenant from a licensed surveyor and attach such revised legal description as Exhibit 2 to this Lease and (ii) to procure a survey of the Premises by a licensed surveyor if a survey or depiction of the Premises is not, at the execution of this Lease, attached as Exhibit 3. Upon completion of such survey and revision of the aforesaid legal descriptions based thereupon, (i) the revised legal descriptions of the Tower Compound and the Access and Utility Easement will be attached to this Lease as Exhibit 2 and made a part hereof (superseding any prior Exhibit 2), the survey will be attached to this Lease as Exhibit 3 and made a part hereof (superseding any prior Exhibit 3), and Tenant shall promptly provide to Landlord notice of and copies of the revised legal descriptions of the Tower Compound and the Access and Utility Easement and of the survey.

3. **TERM.** The term of the leasehold granted by Landlord to Tenant hereunder commences on the Commencement Date, which Tenant shall confirm in writing to Landlord as provided in Section 2.4, and continues through the Term. Tenant shall have the option to extend the term of this Lease for each of the Renewal Terms. Each Renewal Term will commence automatically,

without further act or deed, unless Tenant delivers written notice to Landlord of Tenant's intent not to renew the Term for the next available Renewal Term, such notice to be delivered not less than 30 days prior to the end of the then-current term (*i.e.*, the Initial Term or the then-effective Renewal Term).

4. **RENT.** Tenant shall pay Rent to Landlord accruing and beginning as of the Rent Commencement Date. The Rent is payable in advance, on or before the 5th day of each calendar month. Payments will be made via electronic funds transfer directly to Landlord's bank account unless otherwise directed by Landlord. Rent will be equitably prorated for any partial calendar month. Notwithstanding the foregoing, Tenant will tender to Landlord the initial Rent payment within 30 days after the Commencement Date.

5. TAXES AND CHARGES.

5.1 Tenant shall pay any personal property taxes assessed on, or any portion of such taxes directly attributable to, the Communications Facility. Landlord shall pay prior to delinquency all real property taxes and all other fees and assessments attributable to the Property and Premises. Tenant shall reimburse Landlord for any increase in real property taxes levied against the Premises which are directly attributable to the presence or operation of the Communications Facility on the Premises (but not, however, taxes attributable to periods prior to the Commencement Date such as roll-back or greenbelt assessments) if and only if Landlord furnishes proof of such increase to Tenant within 2 months of Landlord's first notice of such increase. If Landlord fails to pay prior to delinquency any taxes which are a lien against the Premises, Tenant shall have the right, but not the obligation, to pay such taxes and deduct the full amount of the taxes and any interest and penalties thereof paid by Tenant on Landlord's behalf from future installments of Rent.

5.2 Landlord shall pay promptly, when due, any other amounts or sums due and owing with respect to its ownership and operation of the Property, including, judgments, liens, mortgage payments and other similar encumbrances. If Landlord fails to make any payment required of it under this Lease required to assure that Tenant is not disturbed in its possession of the Tower Compound, such as the payment of real estate taxes and assessments, or breaches any other obligation or covenant under this Lease, Tenant may (without obligation), after providing 10 days' prior written notice to Landlord, make such payment or perform such obligation on behalf of Landlord. Landlord shall pay or reimburse Tenant for the full amount of any costs or expenses so incurred by Tenant (including any attorneys' fees incurred in connection with Tenant performing such obligation) with interest at the statutory rate thereon, or at Tenant's election, may be offset against the Rent.

6. USE.

6.1 During the Term, Tenant may use the Premises for the erection, operation and maintenance of a Communications Facility (the "*Permitted Use*"). Tenant may make improvements, alterations and modifications to the Premises as are deemed appropriate by Tenant consistent with the Permitted Use, including the right to clear the Premises of any vegetation, undergrowth or other obstructions which, in Tenant's sole opinion, interferes with the Permitted Use. Tenant shall have the exclusive right to install upon the Tower Compound communications towers, buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary or desirable in Tenant's sole judgment, but subject to compliance with all applicable laws, statutes, rules and regulations of any jurisdictions.

6.2 During the Term, Landlord further grants Tenant (i) the right on the Property to clear undergrowth or other obstructions and to trim, cut and keep trimmed and cut all tree limbs, which in either case may interfere with or fall upon the Communications Facility or the Premises; (ii) a non-exclusive easement in, over, across and through the Property and other adjoining real property owned by Landlord as reasonably required for the construction, installation, maintenance, and operation of the Communications Facility and the access thereto.

6.3 Landlord acknowledges that Tenant is in the business of subleasing all or portions of the Tower Compound and the Communications Facility to its tenants, licensees or customers pursuant to separately negotiated subleases or licenses entered into between Tenant and such tenant, licensee or customer. Tenant may enter into any sublease or license without the consent of Landlord, provided that, notwithstanding the terms of that certain sublease or license, Tenant shall remain liable for all of the terms and conditions of this Lease and Tenant shall fulfill each covenant contained herein. Tenant shall remain liable for and hereby indemnifies and shall protect and defend Landlord from and against all costs, damages or liability (including reasonable attorneys' fees) resulting from any act or omission of such subtenant or licensee to the extent such act or omission is permitted by Tenant but is contrary to or inconsistent with the terms of this Lease.

6.4 Tenant and its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns shall have access to the Premises 7 days a week, 24 hours a day. Tenant shall have the exclusive right to sublease or grant licenses to use the Communications Facility or portions thereof, but no such sublease or license shall relieve or release Tenant from its obligations under this Lease. If at any time during the term of this Lease, the Federal Aviation Administration, Federal Communications Commission or other governmental agency changes, amends or modifies its regulations and

requirements, issues new regulations or requirements, or otherwise takes any action, the result of which reasonably inhibits Tenant's use of the Premises or any portion of the Communications Facility for the Permitted Use, or if technological changes render the Permitted Use of the Premises obsolete or impractical, or if Tenant otherwise determines, in its sole and absolute discretion, with or without cause, that the Premises is no longer suitable or desirable for the Permitted Use, Tenant shall have the right to terminate this Lease upon written notice to Landlord and effective on the earlier of the date set forth in the notice of termination or 30 days after the date of deemed receipt of such notice by Landlord.

6.5 Landlord hereby authorizes Tenant and its employees, representatives, agents and consultants to prepare, execute, submit, file and present on behalf of Landlord building, permitting, zoning or land-use applications with the appropriate local, state and/or federal agencies necessary to obtain land use changes, zoning variances, conditional use permits, administrative permits, operation permits and/or building permits consistent with the Permitted Use. At no additional cost to Tenant, Landlord shall cooperate with Tenant in any effort by Tenant to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities and agrees to execute any necessary applications, consents or other documents as may be reasonably necessary for Tenant to apply for and obtain the proper zoning approvals and other permits required to use and maintain the Premises and the Communications Facility. Landlord shall not do or permit anything that will interfere with or negate any conditional use permit or approval pertaining to the Premises or cause any portion of the Communications Facility located on the Premises to be in nonconformance with applicable local, state, or federal laws.

6.6 It is intended that the legal description of the Premises accurately reflect an "as-built" survey of the location of the Tower Compound, the communications tower located thereon, and the Access and Utility Easement. Accordingly the parties agree that, if any part of such tower, buildings, roadways, utilities, guy wires or anchors related to the Communications Facility located on the Premises is located beyond the legal description of the Premises, the Lease is hereby amended to provide that the Premises includes the existing location of any such improvements as part of the Premises demised in the Lease to the extent that such improvements are located on real property owned by Landlord, and Exhibit 2 and Exhibit 3 to this Lease shall be modified to reflect the "as-built" locations of the Tower Compound and the Access and Utility Easement. Tenant shall seek Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed, prior to causing any portions of the Communications Facility or Tower Compound to leave the defined Premises.

7. ACCESS AND UTILITIES. During the Term, Landlord for itself, its successors and assigns, hereby leases to Tenant, its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns, as an appurtenance to the Tower Compound, the Access and Utility Easement for ingress and egress for the benefit of and access to the Tower Compound as well as for the construction, installation, operation and maintenance of overhead and underground electric, gas and other utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change, remove and replace such facilities, over, across and through the Access and Utility Easement for the benefit of and access to the Tower Compound, subject to the terms and conditions herein set forth. The rights granted to Tenant herein include the right to partially assign its rights hereunder to any public or private utility company or authority to facilitate the uses contemplated herein, and all other rights and privileges reasonably necessary for Tenant's safe and efficient use and enjoyment of the Access and Utility Easement for the Permitted Use.

8. EQUIPMENT, FIXTURES AND SIGNS.

8.1 All improvements, equipment or other property attached to or otherwise brought onto the Premises shall at all times be the personal property of Tenant and/or its customers, tenants and licensees. Tenant and its customers, tenants and licensees shall have the right to erect, install, maintain, and operate on the Premises such equipment, structures, fixtures, signs, and personal property as Tenant may deem necessary or appropriate, but subject to compliance with all applicable laws, statutes, rules and regulations of any jurisdictions, and such property shall not be deemed to be part of the Premises, but shall remain the property of Tenant or its customers, tenants and licensees. At any time during the Term and within a reasonable time after the expiration or earlier termination of the Term, Tenant and its customers, tenants and licensees shall remove their equipment, structures, fixtures, signs, and personal property from the Premises as set forth below subject to compliance with all applicable laws, statutes, rules and regulations of any jurisdictions,.

8.2 Removal; Abandonment. Within one hundred twenty (120) days of the expiration or earlier termination of this Lease for any reason, Tenant, at its sole cost and expense, shall remove from the Premises all of the improvements constituting the Communications Facility, including, without limitation to the generality of the foregoing, all equipment, personal property, antennas and other improvements (provided that Tenant shall not be required to remove any equipment platforms, slabs, concrete pads, foundations, below-grade improvements, underground utilities, or related infrastructure or replace any trees, shrubs or other vegetation) and shall repair any damage to the Premises caused by the removal of the

Communications Facility, equipment, personal property, antenna facilities and ground facilities, normal wear and tear excepted. Any such personal property not removed from the Premises within one hundred and twenty (120) days after the expiration or earlier termination hereof shall be conclusively deemed to have been abandoned, and Landlord may remove and dispose of such personal property as Landlord deems fit without incurring any liability whatsoever therefor to Tenant, and Tenant shall reimburse Landlord for all such actual and reasonable third-party expenses and costs, as additional Rent hereunder, that Landlord incurs on account of such removal and disposal within thirty (30) days of receipt of an itemized invoice from Landlord therefor. If Tenant fails to remove those portions of the Communications Facility required to be removed pursuant to this Section 8, within one hundred twenty (120) days after the expiration or earlier termination of this Lease, Landlord may send to the Tenant a notice requesting such removal. If Tenant fails to comply with such notice within thirty (30) days of receipt thereof, all structures, buildings, facilities and equipment remaining at the Premises shall be conclusively deemed to have been abandoned and Landlord may dispose of or remove from the Premises such structures, buildings, and equipment as Landlord deems fit without incurring any liability whatsoever therefor to Tenant, and Tenant shall reimburse Landlord for all such actual third party expenses and costs, as additional Rent hereunder that Landlord incurs on account of such removal and disposal within thirty (30) days of receipt of an itemized invoice from Landlord therefor, along with reasonable documentation of the cost incurred by Landlord.

9. ASSIGNMENT. Tenant may assign this Lease to any person or entity at any time without the prior written consent of Landlord. After delivery by Tenant to Landlord of an instrument of assumption by an assignee that assumes all of the obligations of Tenant under this Lease, Tenant will be relieved of all liability hereunder thereafter accruing. Landlord may assign this Lease, in whole or in part, to any person or entity (i) who or which acquires fee title to the Premises, and/or (ii) who or which agrees to be subject to and bound by all provisions of this Lease. Except for the foregoing, assignment of this Lease by Landlord must be approved by Tenant, in Tenant's sole discretion.

10. COVENANTS, WARRANTIES AND REPRESENTATIONS. Landlord covenants, warrants and represents the following:

10.1 Landlord is the owner in fee simple of the Premises, free and clear of all liens and encumbrances except as to those which may have been disclosed to Tenant in writing prior to the execution of this Lease; that it alone has full right to let the Premises for the Term set out herein; and that Tenant, on paying the Rent and performing its obligations hereunder, shall peaceably and quietly hold and enjoy the Premises for the Term.

10.2 Landlord has complied with, and will continue to comply with, all environmental, health, and safety laws with respect to the Premises other than those which arise out of Tenant's use of the Tower Compound for a Communications Facility (which compliance obligation is to be borne by Tenant), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against Landlord or regarding the Premises alleging any failure to so comply. Without limiting the generality of the preceding sentence, at the commencement of the Term, Landlord and the Premises are in compliance with all environmental, health, and safety laws; no asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Premises by Landlord or, to the knowledge of Landlord, by any prior owner or user of the Premises; and to the knowledge of Landlord, there has been no release of or contamination by hazardous materials on the Premises.

10.3 All utilities in place upon the commencement of the Term and serving the Property enter through adjoining public streets or, if they pass through an adjoining private tract, do so in accordance with valid public easements. All utilities are installed and operating and all installation and connection charges have been paid in full.

10.4 Landlord has no knowledge of any fact or condition that could result in the termination or reduction of the current access from the Premises to existing highways and roads or to utility services serving the Premises.

10.5 The Premises abuts on and has direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting the Property, and access to the Property is provided by paved public right-of-way.

10.6 With respect to the Premises, except as disclosed by Landlord in writing to Tenant prior to the execution hereof, (i) there currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the of Tower Compound; (ii) there are no outstanding options or rights of first refusal to purchase the Premises or any portion thereof or interest therein; and (iii) there are no parties (other than Landlord) in possession of the Premises.

11. HOLD OVER TENANCY. Should Tenant or any assignee, sublessee or licensee of Tenant hold over the Premises or any part thereof after the expiration of the Term, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

12. INDEMNITIES. Each of Landlord and Tenant agree to indemnify, defend and hold harmless the other party, its parent company or other affiliates, successors, assigns, officers, directors, shareholders, agents and employees (each, an "*Indemnified Persons*"), from and against all claims and liabilities (including reasonable attorneys' and fees court costs) asserted by a third party against an Indemnified Person caused by or arising out of (i) such indemnifying party's breach of any of its obligations, covenants, or warranties contained herein, or (ii) such indemnifying party's negligent or willful acts or omissions with regard to the Lease. However, in the event of an Indemnified Person's contributory negligence or other fault, the Indemnified Person shall not be indemnified hereunder to the extent that the Indemnified Person's negligence or other fault caused such claim or liability.

13. WAIVERS.

13.1 Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communications Facility or any portion thereof or any equipment located upon the Premises, regardless of whether such Communications Facility or equipment is deemed real or personal property under applicable laws. Landlord will not assert any claim whatsoever against Tenant for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by Landlord as a result of the construction, maintenance, operation or use of the Premises by Tenant.

13.2 EACH OF LANDLORD AND TENANT WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES AND WHICH IS SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS OF A PARTY UNDER THIS LEASE.

14. INSURANCE.

14.1 Tenant shall insure against property damage and bodily injury arising by reason of occurrences on or about the Premises in the amount of not less than \$2,000,000. The insurance coverage provided for herein may be maintained pursuant to master policies of insurance covering other Communications Facility locations of Tenant and its affiliates. Tenant shall maintain all insurance policies required of it to be maintained hereunder with responsible insurance companies, authorized to do business in the state where the Premises are located if required by law, and which policies will include a provision for cancellation only upon 30 days' prior written notice to Landlord. Tenant shall evidence such insurance

coverage by delivering to Landlord a copy of all such policies or, at Tenant's option, certificates in lieu thereof issued by the insurance companies underwriting such risks.

14.2 Landlord shall carry, at no cost to Tenant, general liability insurance and property casualty insurance appropriate for Landlord's improvements on the Property and in such amounts to cause the replacement / restoration of the Property (excluding Tenant's improvements and personal property) in the event of casualty.

14.3 Landlord and Tenant release each other and their respective officers, directors and employees and agents from any claims for any injury to any person or any property damage caused by, or that result from, risks insured against under any property or casualty insurance policies carried by such insured party and in force at the time of any such injury or damage to the extent that such release and waiver does not invalidate any insurance policy held by such insured party. Landlord and Tenant shall exercise commercially reasonable efforts to cause each insurance policy it obtains to provide that the insurance carrier waives all right of recovery by way of subrogation against the other in connection with any injury or damage covered by any such property or casualty insurance policy.

15. INTERFERENCE. During the Term, Landlord, its successors and assigns will not grant any ground lease, license, easement or other rights with respect to the Property or any land adjacent to the Premises for the Permitted Use if such lease, license, easement or other right would detrimentally impact Tenant's Communications Facility or Tenant's use thereof.

16. LIMITED RIGHT OF FIRST REFUSAL. Notwithstanding anything to the contrary contained herein, this section shall not apply to any fee simple sale of the Property by Landlord to any prospective purchaser that is not a Third Party Competitor (as herein defined). If Landlord receives an offer or desires to accept an offer to (i) sell or convey any interest (including leaseholds or easements) in any real property of which the Tower Compound is a part to any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure or lands on which such wireless telecommunications infrastructure is located (any such person or entity, a "*Third Party Competitor*") or (ii) assign all or any portion of Landlord's interest in this Lease to a Third Party Competitor (any such offer, the "*Offer*"), Landlord shall serve a written notice upon Tenant stating that Landlord desires to accept such Offer and the exact terms of the Offer (including the nature of title being conveyed to the Third Party Competitor), and provide with such notice a copy of such Offer (the "*Transfer Notice*"). Tenant shall have the right, exercisable in Tenant's sole and absolute discretion, of first refusal to purchase the real property or other interest being offered by Landlord in

connection with the Offer on the same terms and conditions. If Tenant elects, in its sole and absolute discretion, to exercise its right of first refusal as provided herein, Tenant shall provide Landlord with written notice of its election not later than 30 days after Tenant receives the Transfer Notice. The closing of the purchase and sale or conveyance of the Premises pursuant to the Offer shall occur at the time set forth in the Offer provided that Tenant shall not be required to close before the 15th day following the date of Tenant's acceptance of the Offer. If Tenant elects not to exercise Tenant's right of first refusal with respect to an Offer as provided herein, Landlord may complete the transaction contemplated in the Offer with the Third Party Competitor on the stated terms and price but with the express condition that such sale is made subject to the terms of the Lease. Tenant's failure to give a timely acceptance or its rejection of the Offer is deemed a waiver of its right to exercise its right of first refusal to accept the Offer, but will not constitute or be deemed a waiver of its right of first refusal with respect to any modification to the Offer or any future Offer that Landlord may receive. Landlord hereby acknowledges and agrees that this limited right of first refusal runs with and is appurtenant to the Property and that any sale or conveyance by Landlord in violation of this Section 16 is null and void and of no force and effect. To the extent that a statutory or common law rule against perpetuities applies to limit the term or period of duration of this limited right of first refusal, then the period or term of this limited right of first refusal commences upon the Effective Date and expires on earlier of (i) the expiration or earlier termination of this Lease and (ii) the day immediately before the day that but for this sentence, such limited right of first refusal would be rendered void or unenforceable due to a violation of a statutory or common law rules against perpetuities. To the extent that the Term is extended such that the limited right of first refusal described in this Section 16 would otherwise expire prior to the expiration or earlier termination of the Term as a result of the application of the immediately prior sentence, Tenant shall have the right to renew successively this limited right of first refusal upon the payment by Tenant to Landlord of the sum of \$10.00, at which time, this limited right of first refusal is renewed for an additional term commencing from the date of such payment to Landlord until the earlier of (i) the expiration or earlier termination of this Lease and (ii) the day immediately before the day that but for this sentence, such extended limited right of first refusal would be rendered void or unenforceable due to a violation of a statutory or common law rules against perpetuities.

17. SECURITY. The parties recognize and agree that Tenant shall have the right to safeguard and protect its Communications Facility located upon or within the Premises. Consequently, Tenant may elect, at its expense, to construct such enclosures and/or fences as Tenant reasonably determines to be necessary to secure the Communications Facility, including the tower(s),

building(s), guy anchors, and related improvements situated upon the Premises. Tenant may also undertake any other appropriate means to restrict access to its Communications Facility.

18. FORCE MAJEURE. The time for performance by Landlord or Tenant of any term, provision, or covenant of this Lease is to be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the control of Landlord or Tenant, as the case may be.

19. CONDEMNATION. Notwithstanding any provision of the Lease to the contrary, in the event of condemnation of the Premises or any portion thereof, Landlord and Tenant shall be entitled to separate awards with respect to the Premises, in the amount determined by the court conducting such condemnation proceedings based upon Landlord's and Tenant's respective interests in the Premises. If a separate condemnation award is not determined by such court, Landlord shall permit Tenant to participate in the allocation and distribution of the award. In no event shall the condemnation award to Landlord exceed the unimproved value of the Premises, without taking into account the improvements located thereon, and in no event shall the Lease be terminated or modified (other than an equitable abatement or adjustment of Rent) due to a condemnation without the prior written consent of Tenant.

20. DEFAULT. Should Landlord or Tenant fail to perform any of its respective covenants or obligations imposed upon it or breach any of its respective representations or warranties under this Lease (a "*Non-Performing Party*"), then the other party shall give the Non-Performing Party written notice of such breach or failure, at which time the Non-Performing Party shall be in default under this Lease; provided, however, to the extent such default is susceptible of being cured or remedied, the Non-Performing Party shall have the Cure Period to remedy such breach or failure prior to the Non-Performing Party being in default under this Lease. For purposes hereof, the "*Cure Period*" is a period 30 days, measured from the date of the Non-Performing Party's receipt of such notice of breach or failure; provided, if such breach or failure cannot reasonably be cured within such 30-day period and the Non-Performing Party proceeds promptly after the receipt of such notice of such breach or failure to commence to remedy same and pursue curing such breach or failure with due diligence, Cure Period is extended for such period of time as may be necessary to complete such curing, not to exceed 60 days from the Non-Performing Party's receipt of such written notice of such breach or failure or such longer period of time as agreed by the other party. Upon a default by the Non-Performing Party that is not susceptible of being cured or if it is susceptible of being cured, that is not cured within the Cure Period will give rise

to the other party being able to assert against the Non-Performing Party any remedies available at law or in equity, including the right to terminate this Lease, subject to Section 13.2. Notwithstanding the foregoing, should a Non-Performing Party fail to perform any of its obligations imposed upon it under this Lease and irreparable and immediate harm may befall the other party as a result of such failure, the other party may pursue injunctive relief immediately without the passage of the Cure Period.

21. ATTORNEY'S FEES. If any legal proceeding between Landlord and Tenant arise from, out of or based on this Lease, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and be taxed to the unsuccessful party as a part of such judgment.

22. SUBORDINATION AND TENANT'S LENDER.

22.1 This Lease is subordinate to all deeds of trust, mortgages and ground leases now or hereafter encumbering the Premises or Landlord's interest therein (collectively, "*Encumbrances*" and each, an "*Encumbrance*") provided Landlord, its lenders and other tenants (i) are bound by the terms of the Lease; (ii) agree not to disturb or disrespect Tenant's use or possession of the Premises or Tenant's other rights granted under this Lease in the event of a foreclosure of such Encumbrance so long as Tenant is not in default hereunder beyond any applicable cure period; and (iii) agree not to join Tenant as party defendant in any such foreclosure proceeding taken by it unless otherwise required by applicable law. With regard to any Encumbrance, Landlord covenants and agrees that, upon the request of Tenant, it shall use its best efforts to cause the beneficial holder of such Encumbrance to execute a customary subordination, non-disturbance and attornment agreement with regard to this Lease. In addition, each of Landlord and Tenant will, within 10 days after the request of the other party, execute and deliver to the other party, an estoppel letter as to such factual matters relating to the Lease as are reasonably requested by such other party, its lender or prospective successor-in-interest.

22.2 Landlord consents to the granting by Tenant of a lien and security interest in Tenant's interest in the Lease and all of Tenant's personal property and fixtures attached to the Premises, and furthermore consents to the exercise by Tenant's lender ("*Tenant's Lender*") of its rights of foreclosure with respect to its lien and security interest in Tenant's interest therein. Landlord agrees to recognize Tenant's Lender as the tenant under this Lease upon any such exercise by Tenant's Lender of its rights of foreclosure. Landlord hereby (i) agrees that any lien or

security interest in favor of Landlord which arises by law or pursuant to the Lease is subordinate to the lien and security interest of Tenant's Lender in the collateral securing all indebtedness at any time owed by Tenant to Tenant's Lender (the "*Collateral*"), and (ii) furthermore agrees that upon an event of default under the loan documents between Tenant and Tenant's Lender or the Lease, Tenant's Lender shall be fully entitled to exercise its rights against the Collateral prior to the exercise by Landlord of any rights which it may have therein, including entry upon the Premises and removal of the Collateral free and clear of Landlord's lien and security interest.

22.3 To the extent that Tenant or Tenant's Lender has given notice to Landlord of Tenant's Lender's security interest in the Lease and other Collateral and an address to which Landlord is to provide notices to Tenant's Lender, (i) Landlord agrees to give Tenant's Lender written notice of any breach, failure or default of the terms of the Lease within 15 days after the occurrence thereof, at such address as is specified to Landlord by Tenant's Lender; (ii) Landlord agrees that no default under the Lease is deemed to have occurred unless notice of such breach, failure or default is also given to Tenant's Lender and any applicable cure period has passed; and (iii) in the event of any such breach, failure or default under the terms of the Lease, Tenant's Lender shall have the right, to the same extent, for the same period and with the same effect, as Tenant, plus an additional 90 days after any applicable cure period to cure or correct any such breach, failure or default (whether the same shall consist of the failure to pay rent or the failure to perform), and Landlord agrees to accept such payment or performance on the part of Tenant's Lender as though the same had been made or performed by Tenant. Landlord agrees that it shall not exercise its right to terminate the Lease or any of its other rights under the Lease upon breach or default of the terms of the Lease without so affording Tenant's Lender the foregoing notice and periods to cure any default or breach under the Lease. In the case of termination of this Lease for any reason or if this Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, (i) Landlord shall give prompt notice thereof to Tenant's Lender consistent with this Section 22.3; and (ii) on written request of Tenant's Lender made any time within 30 days after the giving of such notice by Landlord, Landlord shall promptly execute and deliver a new lease of the Premises to Tenant's Lender or its designee or nominee for the remainder of the Term (as if this Lease were not terminated, rejected or disaffirmed) upon all the covenants, conditions, limitations and agreements contained herein (including options to extend the Term) except for such provisions which must be modified to reflect such termination, rejection or disaffirmance and the passage of time, provided that Tenant's Lender (A) shall pay to Landlord, simultaneously with the delivery of such new lease, all unpaid rent due under this Lease up to and including the date of the commencement of the term of

such new lease and all reasonable expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by Landlord in connection with the default by Tenant, the termination of this Lease and the preparation of the new lease, and (B) shall cure all defaults existing under this Lease which are susceptible to being cured by Tenant's Lender promptly and with due diligence after the delivery of such new lease. Notwithstanding anything to the contrary contained herein, provided Tenant's Lender shall have otherwise complied with the provisions of this Section 22.3, Tenant's Lender shall have no obligation to cure any defaults which are not susceptible to being cured by such Lender (for example, the bankruptcy of Tenant). For so long as Tenant's Lender shall have the right to enter into a new lease with Landlord pursuant to this Section 22.3, Landlord shall not enter into a new lease of the Premises with any person or entity other than Tenant's Lender without the prior written consent of Tenant's Lender.

22.4 The provisions of Section 22.3 shall survive the termination, rejection or disaffirmance of this Lease and will continue in full force and effect thereafter to the same extent as if Section 22.3 was a separate and independent contract made among Landlord, Tenant and Tenant's Lender and, from the effective date of such termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new lease, Tenant's Lender may use and enjoy the leasehold estate created by this Lease without hindrance by Landlord. The aforesaid agreement of Landlord to enter into a new lease with Tenant's Lender is deemed a separate agreement between Landlord and Tenant's Lender, separate and apart from this Lease as well as a part of this Lease and is unaffected by the rejection of this Lease in any bankruptcy proceeding by any party.

22.5 Upon the execution and delivery of a new lease under Section 22.3, all subleases which theretofore have been assigned to, or made by, Landlord with respect to the Communications Facility shall be assigned and transferred, without recourse, by Landlord to the tenant named in such new lease or a third-party manager capable of administering such subleases. Between the date of termination of this Lease and the date of execution of the new lease, if a Tenant Lender shall have requested a new lease as provided in Section 22.3, Landlord shall not cancel any subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the consent of Tenant's Lender.

22.6 If Landlord has been given notice of Tenant's Lender as provided in Section 22.3, (i) this Lease shall not be modified or amended by the parties hereto, or terminated or surrendered by Tenant, nor shall Landlord accept any such termination or surrender of this Lease by Tenant, without the prior written consent of Tenant's

Lender and (ii) Landlord shall not have the right to terminate this Lease in the event of a casualty or condemnation without the prior written consent of Tenant's Lender.

22.7 The provisions of this Section 22 are for the benefit of Tenant's Lender and may be relied upon and shall be enforceable by Tenant's Lender as if Tenant's Lender were a party to this Lease. Notwithstanding the foregoing, Landlord acknowledges that nothing contained herein is deemed or to be construed to obligate Tenant's Lender to take any action hereunder or to perform or discharge any obligation, duty or liability of Tenant under this Lease.

23. NOTICES. All notices under this Lease shall be in writing either personally delivered (with receipt for delivery); mailed via United States certified mail, return receipt requested; or transmitted by overnight courier for next business day delivery to the notice addresses of Landlord and Tenant set forth in Section 1. Notices will be deemed to have been given upon either receipt or rejection. The parties each reserve the right to modify or change their notice addresses set forth in Section 1 by providing notice to the other party as otherwise provided in this section, with such new notice address being effective 15 days after receipt by the other party.

24. MISCELLANEOUS.

24.1 Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Lease.

24.2 If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

24.3 All attached exhibits are hereby incorporated by this reference as if fully set forth herein.

24.4 Failure of party to insist on strict performance of any of the conditions or provisions of this Lease or failure to exercise any of a party's rights hereunder, shall not waive such rights.

24.5 This Lease is to be governed by and construed in accordance with the laws of the state in which the Premises are located.

24.6 This Lease constitutes the entire Lease and understanding of the parties and supersedes all offers,

negotiations and other lease agreements with regard to the Premises or the subject matter hereof. There are no representations or understandings of any kind not set forth herein. Any amendment to this Lease must be in writing and executed by both parties.

24.7 This Lease is an appurtenance of and runs with the land and is binding upon and inures to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

24.8 A short-form memorandum of this Lease substantially in the form as depicted in Exhibit 4 attached hereto may be recorded at Landlord or Tenant's option and at the expense of the requesting party.

24.9 This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Any counterpart delivered by facsimile, pdf, commercially available electronic e-signature software or other electronic means shall have the same import and effect as original or manually signed counterparts and shall be valid, enforceable and binding for the purposes of this Lease

24.10 The pronouns of any gender shall include the other gender, and either the singular or the plural shall include the other, as the context requires. "Include" and "including" and their derivatives are to be construed as illustrative but not limiting. References in this Lease to sections refer to those sections of this Lease unless the context expressly requires otherwise. Headings of sections are for convenience only and are not to be considered in construing the meaning of the contents of such sections.

24.11 WAIVER OF TRIAL BY JURY. It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage, or for the enforcement of any remedy under any statute, law, rule, regulation or otherwise.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK,
SIGNATURES BEGIN ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date last signed by a party hereto.

LANDLORD:

Tooele City Corporation, a municipal corporation

By: Debra E. Winn
Name: Debra E. Winn
Title: Mayor
Date: 12 Dec 2019

TENANT:

Eco-Site II, LLC, a Delaware limited liability company

By: [Signature]
Name: Robert Johnson
Title: President + COO
Date: 2/14/2020

Approved as to Form:

[Signature]
Tooele City Attorney

EXHIBIT 1

Description of Parent Tract

SITUATED IN THE COUNTY OF TOOELE, STATE OF UTAH

BEGINNING AT A POINT WHICH IS 74.98 FEET NORTH AND 157.35 FEET WEST OF THE QUARTER CORNER COMMON TO SECTION 22 AND 27, T. 3 S., R. 4 W., S.L. B. & M., SAID QUARTER CORNER BEING ALSO THE S.E. CORNER OF THE S.W. QUARTER OF SAID SECTION 22, AND SAID PLACE OF BEGINNING BEING ON THE NORTH BOUNDARY LINE OF BIRCH STREET AT A POINT WHERE SAID LINE INTERSECTS THE PROJECTED EAST BOUNDARY LINE OF SIXTH STREET IN PLAT "C" OF TOOELE CITY. RUNNING THENCE NORTH 506 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF PLAT "C"; THENCE WEST 1038 FEET ALONG SAID NORTH LINE OF PLAT "C" TO THE EAST BOUNDARY LINE OF BROADWAY AVENUE;

THENCE SOUTH 506 FEET ALONG SAID EAST LINE OF BROADWAY AVENUE TO THE NORTH BOUNDARY LINE OF BIRCH STREET;

THENCE EAST 1038 FEET ALONG SAID NORTH LINE OF BIRCH STREET TO THE PLACE OF BEGINNING, CONTAINING 12.058 ACRES.

AND ALSO

BEGINNING AT A POINT WHICH IS 74.98 FEET NORTH AND 27.35 FEET WEST OF THE QUARTER CORNER COMMON TO SECTIONS 22 AND 27, T. 3 S., R. 4 W., S.L.B. END M., SAT QUARTER CORNER BEING ALSO THE S.E. CORNER OF THE S.W. QUARTER OF SAID SECTION 22, AND SAID PLACE OF BEGINNING BEING LOCATED ON THE EAST BOUNDARY LINE OF PLAT "C" AT THE POINT OF INTERSECTION OF SUCH BOUNDARY WITH THE NORTH LINE OF BIRCH STREET;

PUNNING THENCE ALONG SAID EAST BOUNDARY LINE OF FLAT "C" NORTH, 506 FEET TO THE N.E. CORNER OF SAID PLOT "C";

THENCE WEST 130 FEET ALONG THE NORTH BOUNDARY LINE OF PLAT "C" TO THE N.E. CORNER OF BLOCK 8, OF THE I.B.A. SUBDIVISION;

THENCE SOUTH 506 FEET ALONG THE EAST BOUNDARY OF SAID BLOCK 8 TO THE NORTH BOUNDARY TINE OF BIRCH STREET;

THENCE EAST 130 FEET ALONG SAID NORTH BOUNDARY LINE OF BIRCH STREET TO THE PLACE OF BEGINNING, CONTAINING 1.51 ACRES, MORE OR LESS.

Tax ID: 09-006-0-0103

BEING THE SAME PROPERTY CONVEYED TO TOOELE CITY, GRANTEE, FROM INTERNATIONAL BUILDING ASSOCIATION, GRANTOR, BY DEED RECORDED 04/09/1941, IN BOOK 3Z, PAGE 78 OF THE COUNTY RECORDS.

EXHIBIT 2

The Premises is described as follows, subject to replacement by a surveyed legal description when available:

LEASE AREA LEGAL DESCRIPTION

A PORTION OF PROPERTY CONVEYED TO TOOELE CITY, GRANTEE BY DEED RECORDED 04/09/1941, IN BOOK 3Z, PAGE 78 OF THE COUNTY RECORDS, LOCATED IN SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NOTE: COORDINATES SHOWN HEREON ARE BASED UPON U.S. STATE PLANE NAD83 COORDINATE SYSTEM UTAH STATE PLANE COORDINATE ZONE CENTRAL, DETERMINED BY GPS OBSERVATIONS.

BEGINNING AT THE SOUTHEAST CORNER OF SAID LEASE AREA, FROM WHICH A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION, STAMPED "TOOELE CO. SURVEYOR" WITH A NORTHING OF 7365213.94 AND AN EASTING OF 1422630.00 BEARS SOUTH 59°15'23" EAST, 284.74 FEET, AND FROM WHICH A REBAR AT THE APPARENT INTERSECTION OF THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE WESTERLY RIGHT OF WAY OF 7TH STREET, HAVING A NORTHING OF 7365287.83 AND AN EASTING OF 1422603.97 BEARS SOUTH 71°51'16" EAST, 230.14 FEET; THENCE FROM SAID POINT OF BEGINNING NORTH 90°00'00" WEST, 40.00 FEET; THENCE NORTH 00°00'00" EAST, 40.00 FEET; THENCE NORTH 90°00'00" EAST, 40.00 FEET; THENCE SOUTH 00°00'00" EAST, 40.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1600 SQUARE FEET (0.04 ACRES) OF LAND, MORE OR LESS.

II. Access and Utility Easement Legal Description:

ACCESS & UTILITY EASEMENT LEGAL DESCRIPTION

A PORTION OF PROPERTY CONVEYED TO TOOELE CITY, GRANTEE BY DEED RECORDED 04/09/1941, IN BOOK 3Z, PAGE 78 OF THE COUNTY RECORDS, LOCATED IN SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN BEING A STRIP OF LAND 20.00 FEET WIDE, 10.00 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

NOTE: COORDINATES SHOWN HEREON ARE BASED UPON U.S. STATE PLANE NAD83 COORDINATE SYSTEM UTAH STATE PLANE COORDINATE ZONE CENTRAL, DETERMINED BY GPS OBSERVATIONS.

COMMENCING AT THE SOUTHEAST CORNER OF A CELLULAR LEASE AREA, FROM WHICH A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION, STAMPED "TOOELE CO. SURVEYOR" WITH A NORTHING OF 7365213.94 AND AN EASTING OF 1422630.00 BEARS SOUTH 59°15'23" EAST, 284.74 FEET, AND FROM WHICH A REBAR AT THE APPARENT INTERSECTION OF THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE WESTERLY RIGHT OF WAY OF 7TH STREET, HAVING A NORTHING OF 7365287.83 AND AN EASTING OF 1422603.97 BEARS SOUTH 71°51'16" EAST, 230.14 FEET; THENCE FROM SAID POINT OF COMMENCEMENT NORTH 90°00'00" WEST ALONG THE SOUTHERLY LINE OF SAID LEASE AREA, 19.60 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°00'00" EAST, 23.23 FEET; THENCE SOUTH 47°50'49" WEST, 52.22 FEET; THENCE SOUTH 00°00'00" EAST, 13.39 FEET MORE OR LESS TO A POINT ON THE NORTHERLY RIGHT OF WAY BIRCH STREET AND THE POINT OF TERMINUS.

SIDE LINES OF SAID EASEMENT ARE TO BE LENGTHENED OR SHORTENED LEAVING NO GAPS OR CORES TERMINATING AT THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE SOUTHERLY LINE OF SAID LEASE AREA.

EXHIBIT 3

Survey (depicting Tower Compound and Access and Utility Easement(s))

Eco-Site[®]

Kimley»Horn

WORK ORDER NUMBER DRAWN BY
XXXXXX XXXXX RAG

NO.	DATE	ISSUE
0	10/14/19	PRELIMINARY (RAG)
1	10/27/19	DESIGN (CK)
2	10/29/19	COMMENTS (MF)

UNAUTHORIZED ALTERATION OR
REPRODUCTION OF THIS SURVEY
BY ANY PERSON WITHOUT THE
SEAL OF A LICENSED ENGINEER OR
LAND SURVEYOR IS A VIOLATION OF
THE STATES LICENSING REGULATIONS

COPIES OF THIS DOCUMENT WITHOUT
A FACSIMILE OF THE SIGNATURE AND
ORIGINAL STAMP IN BLUE OR RED
INK OF THE PROFESSIONAL ENGINEER
OR LAND SURVEYOR SHALL NOT BE
CONSIDERED VALID COPIES.



ambit consulting
410 E. SOUTHERN AVE. TEMPE, AZ 85282
PH: (480) 899-4072

SITE INFORMATION

NORTH 5TH STREET
UT-0014
400 N. BROADWAY AVE.
TOOELE, UT 84074
TOOELE COUNTY



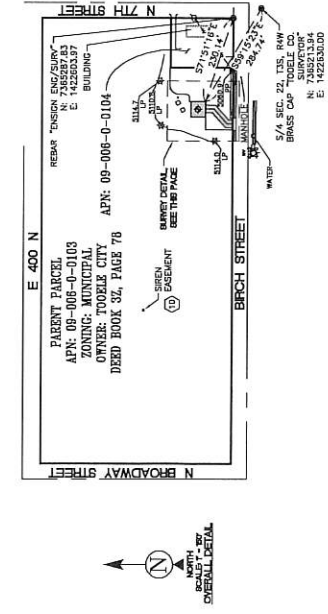
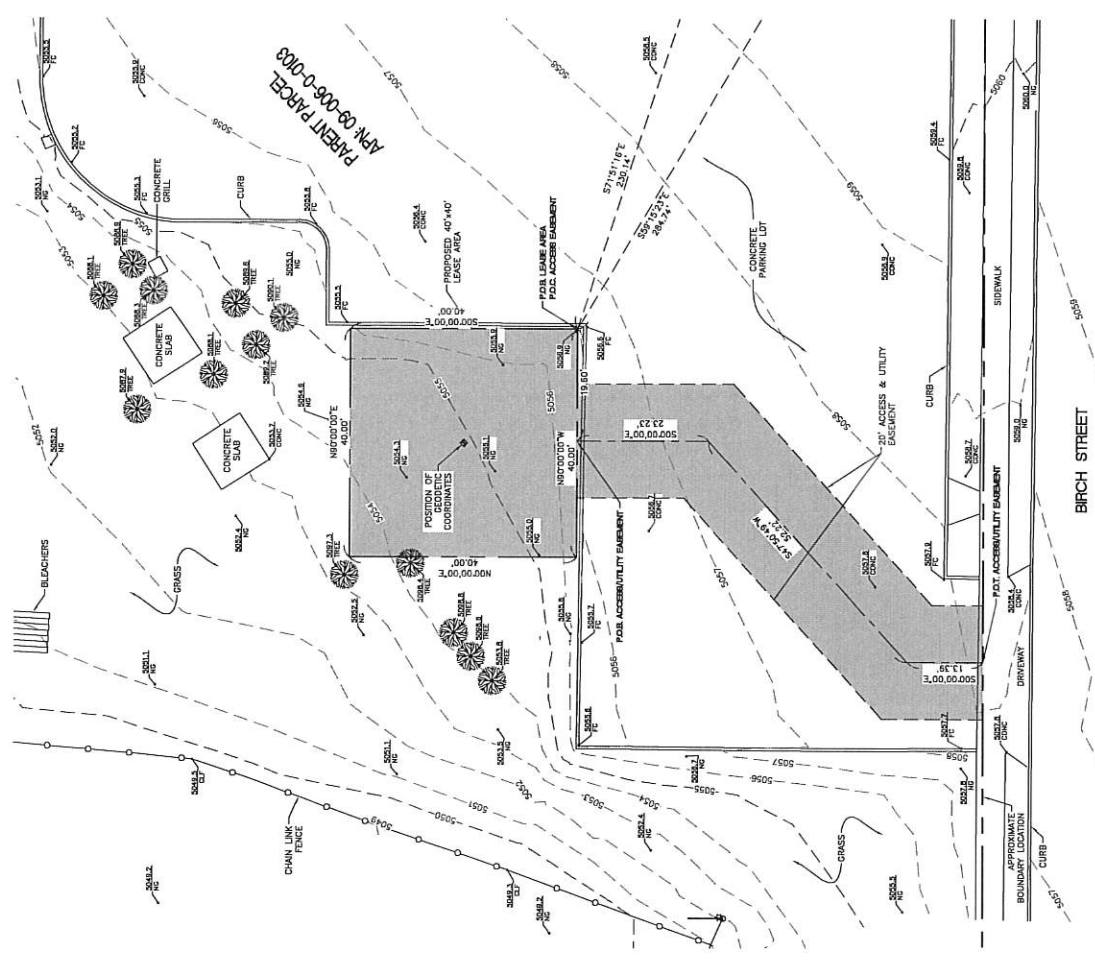
SITE SURVEY

SHEET NUMBER

LS-1

SURVEYOR'S CERTIFICATION
TO ECO-SITE AND OLD REPUBLICABLE INSURANCE COMPANY:
I CERTIFY THAT A SURVEY WAS MADE BY ME OR UNDER MY DIRECT
SUPERVISION, ON THE GROUND AND ALL PARTS OF THIS SURVEY AND
RECORDS COMPLETED IN ACCORDANCE WITH THE CURRENT
REGULATIONS OF THE BOARD OF LAND SURVEYORS AND ENGINEERS OF
THE STATE OF UTAH.
JASON D LEVANEK P.L.S. 9272123 DATE 07/24/2019

POSITION OF GEODETIC COORDINATES
LATITUDE 40° 37' 14.01" (40.620556) NORTH (NAD83)
LONGITUDE 111° 52' 19.00" (111.872222) WEST (NAD83)
GROUND ELEVATION @ 5050.0 (MUSGUS)



SURVEY DATE
08/20/2019

PARENT PARCEL LEGAL DESCRIPTION (AS PROVIDED)
SITUATED IN THE COUNTY OF TOOELE STATE OF UTAH
BEGINNING AT A POINT WHICH IS 74.88 FEET NORTH AND 127.25
FEET WEST OF THE QUARTER CORNER COMMON TO SECTIONS 22
AND 27, T. 1 S., R. 4 W., S. 1/4, 1/4, 5th QUARTER CORNER
BEING ALSO THE S.E. CORNER OF THE S.W. QUARTER OF SAID
SECTION 22, AND SAID PLACE OF BEGINNING BEING LOCATED ON
THE NORTH BOUNDARY LINE OF BIRCH STREET AT A POINT WHERE
SAID LINE INTERSECTS THE PROJECTED EAST BOUNDARY LINE OF
SAID PARCEL, THENCE SOUTH 506 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF
PLAT "C", TO THE EAST BOUNDARY LINE OF BROADWAY AVE.
THENCE SOUTH 506 FEET ALONG SAID EAST LINE OF BROADWAY
THENCE EAST 120 FEET ALONG SAID NORTH LINE OF BIRCH
CONTAINING TO SAID ACRES.

AND ALSO
BEING ALSO A POINT WHICH IS 74.88 FEET NORTH AND 127.25
FEET WEST OF THE QUARTER CORNER COMMON TO SECTIONS 22
AND 27, T. 1 S., R. 4 W., S. 1/4, 1/4, 5th QUARTER CORNER
BEING ALSO THE S.E. CORNER OF THE S.W. QUARTER OF SAID
SECTION 22, AND SAID PLACE OF BEGINNING BEING LOCATED ON
THE NORTH BOUNDARY LINE OF BIRCH STREET AT A POINT WHERE
SAID LINE INTERSECTS THE PROJECTED EAST BOUNDARY LINE OF
SAID PARCEL, THENCE SOUTH 506 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF
PLAT "C", TO THE EAST BOUNDARY LINE OF BROADWAY AVE.
THENCE SOUTH 506 FEET ALONG SAID EAST LINE OF BROADWAY
THENCE EAST 120 FEET ALONG SAID NORTH LINE OF BIRCH
CONTAINING TO SAID ACRES.

AND ALSO
BEING THE SAME PROPERTY CONVEYED TO TOOELE CITY,
GRANTED FROM INTERNATIONAL BUILDING ASSOCIATION, GRANTOR,
RECORDED 04/09/1941, IN BOOK 32, PAGE 78 OF THE
TOOELE COUNTY RECORDS.

SCHEDULE "B" NOTICE
THIS REPORT WAS PREPARED BY AMBIT CONSULTING, AN
INSURANCE COMPANY, DATED 11/29/2018. ALL EASEMENTS
WHATEVER AREA SURROUNDING THE LEASE HAVE BEEN
IDENTIFIED.

ITEMIZED NOTES:
1. ITEMS NO. 1-4 ARE NOT A SURVEY MATTER AND ARE NOT
TO BE CONSIDERED PART OF THIS SURVEY.
2. PROPOSED LEASE AREA, ACCESS EASEMENT, OR UTILITY EASEMENT
IS SHOWN IN RED.
3. EASEMENT, RESTRICTIONS, EASEMENT AND RIGHTS OF WAY
ARE SHOWN IN BLUE.
4. THE PROPOSED LEASE AREA, ACCESS EASEMENT, OR UTILITY EASEMENT
IS SHOWN IN RED.
5. EASEMENT FOR SHOWN SITES IN FAVOR OF TOOELE
COUNTY, RECORDED 10/13/1993, AS BOOK 360, PAGE 813 OF
THE TOOELE COUNTY RECORDS DOES NOT AFFECT PROPOSED LEASE AREA, OR
ACCESS EASEMENT.

LEGEND

- CHAIN LINK FENCE
- CONCRETE SLAB
- FACE OF CURB
- FACE OF UTILITY
- POSITION OF LIGHT POLE
- POST OF CHAIN LINK FENCE
- POINT OF COMMENCEMENT
- POINT OF BEGINNING
- POINT OF TERMINATION
- MINOR CONTOUR INTERVAL
- MAJOR CONTOUR INTERVAL
- EXISTING BUILDING
- EXISTING CURBLINE
- EXISTING UTILITY
- LEASE AREA LIMITS
- MAJOR CONTOUR INTERVAL
- MINOR CONTOUR INTERVAL



EXHIBIT 4

MEMORANDUM OF LEASE

[TO BE CONFORMED TO PROVISIONS OF LEASE WHEN FULLY NEGOTIATED]
[FORM ONLY – DO NOT EXECUTE]

Prepared by and return to:

Eco-Site II, LLC
1010 Sync Street
Suite 575
Morrisville, NC 27560

Eco-Site Site Name: North 5th Street
Eco-Site Site Number: UT-0014

MEMORANDUM OF LEASE

This Memorandum of Lease evidences a Lease ("**Lease**") dated as of _____ between Tooele City Corporation, a municipal corporation ("**Landlord**"), whose address is 90 North Main Street Tooele, UT 84074 and **Eco-Site II, LLC**, a Delaware limited liability company, whose mailing address is 1010 Sync Street, Suite 575, Morrisville, NC 27560 ("**Tenant**"), with regard to that certain real property (the "**Premises**") as described on Exhibit 1 attached hereto, which Premises are located upon a tract of real property owned by Landlord and more particularly described on Exhibit 2 attached hereto (the "**Property**"). The leasehold of the Premises commences on the date Tenant begins visible construction at the Premises (the "**Commencement Date**"), which Commencement Date is to be confirmed in writing from Tenant to Landlord, but shall occur no later than 2 years after the date of the Lease.

Landlord ratifies, restates and confirms the Lease and hereby leases to Tenant (i) that certain portion of the Property (the "**Tower Compound**") for communications and related purposes as more particularly described in the Lease and (ii) an appurtenant, non-exclusive leasehold easement (the "**Access and Utility Easement**") over certain portions of the Property to access the Tower Compound (the Tower Compound and the Access and Utility Easement being more particularly described on Exhibit 1.

The Lease provides for the lease by Landlord to Tenant of the Premises for [an initial] term of 10 years, commencing on the Commencement Date, with 4 renewal options of an additional 5 years each, for a maximum term (including renewal terms) of 30 years. The Lease further provides for the following:

1. Landlord will attorn to any lender of Tenant and will subordinate any Landlord's lien upon the Premises or property located thereon, to the liens of Tenant's lender.
2. The Lease restricts Landlord's ability to utilize or allow the utilization of its adjacent property for the construction, operation and/or maintenance of communications towers and related facilities.

3. The Access and Utility Easement is a non-exclusive grant of an easement from Landlord to Tenant between a public right of way abutting the Property, for the purpose of ingress and egress for the benefit of, and access to, the Tower Compound, as well as for the construction, installation, operation and maintenance of overhead and underground electric, gas and other utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change, remove and replace such facilities.

4. The Tower Compound may be used by Tenant for all legal purposes, including erecting, installing, operating and maintaining radio and communications towers, buildings, and related equipment, and accessing the same from a public right-of-way.

5. Tenant is entitled, without the consent of Landlord, to sublease and/or sublicense the Premises, or portions thereof, including any communications tower located thereon.

6. Under certain circumstances, Tenant has a right of first refusal to acquire the Premises from Landlord.

7. This Memorandum of Lease does not restate the Lease, and in the event of any conflict between the terms of this Memorandum of Lease and the Lease, the terms of the Lease shall govern.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK,
SIGNATURES BEGIN ON NEXT PAGE]*

IN WITNESS WHEREOF, the parties hereto have executed this MEMORANDUM OF LEASE as of the date last signed by a party hereto.

LANDLORD:

Tooele City Corporation, a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public for _____ County, _____, do hereby certify that _____ personally appeared before me this day and acknowledged he (or she), as _____ of _____, a _____, and that he (or she) as _____, being authorized to do so, executed the foregoing instrument on behalf of Tooele City Corporation, a municipal corporation.

Witness my hand and official seal, this the ____ day of _____, 201_.

(Signature of Notary)

Notary Public

My commission expires: _____

EXHIBIT 1 TO MEMORANDUM OF LEASE

Description of the Premises

The Premises is described or depicted as follows and shall be replaced with a surveyed legal description when available:

Tower Compound Legal Description:

LEASE AREA LEGAL DESCRIPTION

A PORTION OF PROPERTY CONVEYED TO TOOELE CITY, GRANTEE BY DEED RECORDED 04/09/1941, IN BOOK 3Z, PAGE 78 OF THE COUNTY RECORDS, LOCATED IN SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NOTE: COORDINATES SHOWN HEREON ARE BASED UPON U.S. STATE PLANE NAD83 COORDINATE SYSTEM UTAH STATE PLANE COORDINATE ZONE CENTRAL, DETERMINED BY GPS OBSERVATIONS.

BEGINNING AT THE SOUTHEAST CORNER OF SAID LEASE AREA, FROM WHICH A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION, STAMPED "TOOELE CO. SURVEYOR" WITH A NORTHING OF 7365213.94 AND AN EASTING OF 1422630.00 BEARS SOUTH 59°15'23" EAST, 284.74 FEET, AND FROM WHICH A REBAR AT THE APPARENT INTERSECTION OF THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE WESTERLY RIGHT OF WAY OF 7TH STREET, HAVING A NORTHING OF 7365287.83 AND AN EASTING OF 1422603.97 BEARS SOUTH 71°51'16" EAST, 230.14 FEET; THENCE FROM SAID POINT OF BEGINNING NORTH 90°00'00" WEST, 40.00 FEET; THENCE NORTH 00°00'00" EAST, 40.00 FEET; THENCE NORTH 90°00'00" EAST, 40.00 FEET; THENCE SOUTH 00°00'00" EAST, 40.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1600 SQUARE FEET (0.04 ACRES) OF LAND, MORE OR LESS.

Access and Utility Easement Legal Description:

ACCESS & UTILITY EASEMENT LEGAL DESCRIPTION

A PORTION OF PROPERTY CONVEYED TO TOOELE CITY, GRANTEE BY DEED RECORDED 04/09/1941, IN BOOK 3Z, PAGE 78 OF THE COUNTY RECORDS, LOCATED IN SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN BEING A STRIP OF LAND 20.00 FEET WIDE, 10.00 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

NOTE: COORDINATES SHOWN HEREON ARE BASED UPON U.S. STATE PLANE NAD83 COORDINATE SYSTEM UTAH STATE PLANE COORDINATE ZONE CENTRAL, DETERMINED BY GPS OBSERVATIONS.

COMMENCING AT THE SOUTHEAST CORNER OF A CELLULAR LEASE AREA, FROM WHICH A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION, STAMPED "TOOELE CO. SURVEYOR" WITH A NORTHING OF 7365213.94 AND AN EASTING OF 1422630.00 BEARS SOUTH 59°15'23" EAST, 284.74 FEET, AND FROM WHICH A REBAR AT THE APPARENT INTERSECTION OF THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE WESTERLY RIGHT OF WAY OF 7TH STREET, HAVING A NORTHING OF 7365287.83 AND AN EASTING OF 1422603.97 BEARS SOUTH 71°51'16" EAST, 230.14 FEET; THENCE FROM SAID POINT OF COMMENCEMENT NORTH 90°00'00" WEST ALONG THE SOUTHERLY LINE OF SAID LEASE AREA, 19.60 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°00'00" EAST, 23.23 FEET; THENCE SOUTH 47°50'49" WEST, 52.22 FEET; THENCE SOUTH 00°00'00" EAST, 13.39 FEET MORE OR LESS TO A POINT ON THE NORTHERLY RIGHT OF WAY BIRCH STREET AND THE POINT OF TERMINUS.

SIDE LINES OF SAID EASEMENT ARE TO BE LENGTHENED OR SHORTENED LEAVING NO GAPS OR CORES TERMINATING AT THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE SOUTHERLY LINE OF SAID LEASE AREA.

EXHIBIT 2 TO MEMORANDUM OF LEASE

Description of the Property

LEASE AREA LEGAL DESCRIPTION

A PORTION OF PROPERTY CONVEYED TO TOOELE CITY, GRANTEE BY DEED RECORDED 04/09/1941, IN BOOK 3Z, PAGE 78 OF THE COUNTY RECORDS, LOCATED IN SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NOTE: COORDINATES SHOWN HEREON ARE BASED UPON U.S. STATE PLANE NAD83 COORDINATE SYSTEM UTAH STATE PLANE COORDINATE ZONE CENTRAL, DETERMINED BY GPS OBSERVATIONS.

BEGINNING AT THE SOUTHEAST CORNER OF SAID LEASE AREA, FROM WHICH A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION, STAMPED "TOOELE CO. SURVEYOR" WITH A NORTHING OF 7365213.94 AND AN EASTING OF 1422630.00 BEARS SOUTH 59°15'23" EAST, 284.74 FEET, AND FROM WHICH A REBAR AT THE APPARENT INTERSECTION OF THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE WESTERLY RIGHT OF WAY OF 7TH STREET, HAVING A NORTHING OF 7365287.83 AND AN EASTING OF 1422603.97 BEARS SOUTH 71°51'16" EAST, 230.14 FEET; THENCE FROM SAID POINT OF BEGINNING NORTH 90°00'00" WEST, 40.00 FEET; THENCE NORTH 00°00'00" EAST, 40.00 FEET; THENCE NORTH 90°00'00" EAST, 40.00 FEET; THENCE SOUTH 00°00'00" EAST, 40.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1600 SQUARE FEET (0.04 ACRES) OF LAND, MORE OR LESS.

MEMORANDUM OF LEASE

Prepared by and return to:

Eco-Site II, LLC
1010 Sync Street
Suite 575
Morrisville, NC 27560

Eco-Site Site Name: North 5th Street
Eco-Site Site Number: UT-0014

MEMORANDUM OF LEASE

This Memorandum of Lease evidences a Lease ("**Lease**") dated as of Feb. 14, 2020 between Tooele City Corporation, a municipal corporation ("**Landlord**"), whose address is 90 North Main Street Tooele, UT 84074 and **Eco-Site II, LLC**, a Delaware limited liability company, whose mailing address is 1010 Sync Street, Suite 575, Morrisville, NC 27560 ("**Tenant**"), with regard to that certain real property (the "**Premises**") as described on Exhibit 1 attached hereto, which Premises are located upon a tract of real property owned by Landlord and more particularly described on Exhibit 2 attached hereto (the "**Property**"). The leasehold of the Premises commences on the date Tenant begins visible construction at the Premises (the "**Commencement Date**"), which Commencement Date is to be confirmed in writing from Tenant to Landlord, but shall occur no later than 2 years after the date of the Lease.

Landlord ratifies, restates and confirms the Lease and hereby leases to Tenant (i) that certain portion of the Property (the "**Tower Compound**") for communications and related purposes as more particularly described in the Lease and (ii) an appurtenant, non-exclusive leasehold easement (the "**Access and Utility Easement**") over certain portions of the Property to access the Tower Compound (the Tower Compound and the Access and Utility Easement being more particularly described on Exhibit 1.

The Lease provides for the lease by Landlord to Tenant of the Premises for [an initial] term of 10 years, commencing on the Commencement Date, with 4 renewal options of an additional 5 years each, for a maximum term (including renewal terms) of 30 years. The Lease further provides for the following:

1. Landlord will attorn to any lender of Tenant and will subordinate any Landlord's lien upon the Premises or property located thereon, to the liens of Tenant's lender.
2. The Lease restricts Landlord's ability to utilize or allow the utilization of its adjacent property for the construction, operation and/or maintenance of communications towers and related facilities.

3. The Access and Utility Easement is a non-exclusive grant of an easement from Landlord to Tenant between a public right of way abutting the Property, for the purpose of ingress and egress for the benefit of, and access to, the Tower Compound, as well as for the construction, installation, operation and maintenance of overhead and underground electric, gas and other utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change, remove and replace such facilities.

4. The Tower Compound may be used by Tenant for all legal purposes, including erecting, installing, operating and maintaining radio and communications towers, buildings, and related equipment, and accessing the same from a public right-of-way.

5. Tenant is entitled, without the consent of Landlord, to sublease and/or sublicense the Premises, or portions thereof, including any communications tower located thereon.

6. Under certain circumstances, Tenant has a right of first refusal to acquire the Premises from Landlord.

7. This Memorandum of Lease does not restate the Lease, and in the event of any conflict between the terms of this Memorandum of Lease and the Lease, the terms of the Lease shall govern.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK,
SIGNATURES BEGIN ON NEXT PAGE]*

IN WITNESS WHEREOF, the parties hereto have executed this MEMORANDUM OF LEASE as of the date last signed by a party hereto.

LANDLORD:

Tooele City Corporation, a municipal corporation

By: Debra E. Winn
Name: Debra E. Winn
Title: Mayor
Date: 12 Dec 2019

STATE OF Utah

COUNTY OF Tooele

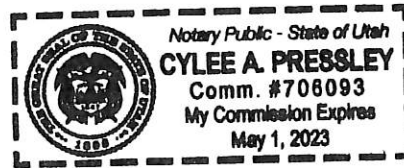
I, Cylee A. Pressley, a Notary Public for Tooele County, Utah, do hereby certify that Debra E. Winn personally appeared before me this day and acknowledged he (or she), as Mayor of Tooele City, a Municipality, and that he (or she) as Mayor, being authorized to do so, executed the foregoing instrument on behalf of Tooele City Corporation, a municipal corporation.

Witness my hand and official seal, this the 12 day of December, 2019.

Cylee A. Pressley
(Signature of Notary)

Notary Public

My commission expires: May 1, 2023



Approved as to Form:

[Signature]
Tooele City Attorney

IN WITNESS WHEREOF, the parties hereto have executed this MEMORANDUM OF LEASE as of the date last signed by a party hereto.

LANDLORD:

Tooele City Corporation, a municipal corporation

By: Debra E. Winn
Name: Debra E. Winn
Title: Mayor
Date: 12 Dec 2019

STATE OF Utah
COUNTY OF Tooele

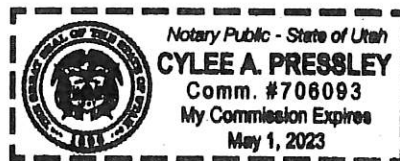
I, Cylee A. Pressley, a Notary Public for Tooele County, Utah, do hereby certify that Debbie Winn personally appeared before me this day and acknowledged he (or she) as Mayor of Tooele City, a municipality, and that he (or she) as Mayor, being authorized to do so, executed the foregoing instrument on behalf of Tooele City Corporation, a municipal corporation.

Witness my hand and official seal, this the 12 day of December, 2019.

Cylee A. Pressley
(Signature of Notary)

Notary Public

My commission expires: May 1, 2023



Approved as to Form:

Roger E. Blum
Tooele City Attorney

TENANT:

Eco-Site II, LLC,
a Delaware limited liability company

By: _____
Name: Robert Glasson
Title: President + COO
Date: 2/14/2020

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Rachel Paone, a Notary Public for Cumberland County, North Carolina, do hereby certify that Robert Glasson personally appeared before me this day and acknowledged he (or she), as President + COO of Eco-Site II, LLC, a Delaware limited liability company, and that he (or she) as President + COO, being authorized to do so, executed the foregoing instrument on behalf of the corporation limited liability company

Witness my hand and official seal, this the 14th day of February, 2020

Rachel Paone
(Signature of Notary)

Notary Public

My commission expires: 1/6/2024



EXHIBIT 1 TO MEMORANDUM OF LEASE

Description of the Premises

The Premises is described or depicted as follows and shall be replaced with a surveyed legal description when available:

Tower Compound Legal Description:

LEASE AREA LEGAL DESCRIPTION

A PORTION OF PROPERTY CONVEYED TO TOOELE CITY, GRANTEE BY DEED RECORDED 04/09/1941, IN BOOK 3Z, PAGE 78 OF THE COUNTY RECORDS, LOCATED IN SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NOTE: COORDINATES SHOWN HEREON ARE BASED UPON U.S. STATE PLANE NAD83 COORDINATE SYSTEM UTAH STATE PLANE COORDINATE ZONE CENTRAL, DETERMINED BY GPS OBSERVATIONS.

BEGINNING AT THE SOUTHEAST CORNER OF SAID LEASE AREA, FROM WHICH A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION, STAMPED "TOOELE CO. SURVEYOR" WITH A NORTHING OF 7365213.94 AND AN EASTING OF 1422630.00 BEARS SOUTH 59°15'23" EAST, 284.74 FEET, AND FROM WHICH A REBAR AT THE APPARENT INTERSECTION OF THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE WESTERLY RIGHT OF WAY OF 7TH STREET, HAVING A NORTHING OF 7365287.83 AND AN EASTING OF 1422603.97 BEARS SOUTH 71°51'16" EAST, 230.14 FEET; THENCE FROM SAID POINT OF BEGINNING NORTH 90°00'00" WEST, 40.00 FEET; THENCE NORTH 00°00'00" EAST, 40.00 FEET; THENCE NORTH 90°00'00" EAST, 40.00 FEET; THENCE SOUTH 00°00'00" EAST, 40.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1600 SQUARE FEET (0.04 ACRES) OF LAND, MORE OR LESS.

Access and Utility Easement Legal Description:

ACCESS & UTILITY EASEMENT LEGAL DESCRIPTION

A PORTION OF PROPERTY CONVEYED TO TOOELE CITY, GRANTEE BY DEED RECORDED 04/09/1941, IN BOOK 3Z, PAGE 78 OF THE COUNTY RECORDS, LOCATED IN SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN BEING A STRIP OF LAND 20.00 FEET WIDE, 10.00 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

NOTE: COORDINATES SHOWN HEREON ARE BASED UPON U.S. STATE PLANE NAD83 COORDINATE SYSTEM UTAH STATE PLANE COORDINATE ZONE CENTRAL, DETERMINED BY GPS OBSERVATIONS.

COMMENCING AT THE SOUTHEAST CORNER OF A CELLULAR LEASE AREA, FROM WHICH A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION, STAMPED "TOOELE CO. SURVEYOR" WITH A NORTHING OF 7365213.94 AND AN EASTING OF 1422630.00 BEARS SOUTH 59°15'23" EAST, 284.74 FEET, AND FROM WHICH A REBAR AT THE APPARENT INTERSECTION OF THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE WESTERLY RIGHT OF WAY OF 7TH STREET, HAVING A NORTHING OF 7365287.83 AND AN EASTING OF 1422603.97 BEARS SOUTH 71°51'16" EAST, 230.14 FEET; THENCE FROM SAID POINT OF COMMENCEMENT NORTH 90°00'00" WEST ALONG THE SOUTHERLY LINE OF SAID LEASE AREA, 19.60 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°00'00" EAST, 23.23 FEET; THENCE SOUTH 47°50'49" WEST, 52.22 FEET; THENCE SOUTH 00°00'00" EAST, 13.39 FEET MORE OR LESS TO A POINT ON THE NORTHERLY RIGHT OF WAY BIRCH STREET AND THE POINT OF TERMINUS.

SIDE LINES OF SAID EASEMENT ARE TO BE LENGTHENED OR SHORTENED LEAVING NO GAPS OR GORES TERMINATING AT THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE SOUTHERLY LINE OF SAID LEASE AREA.

EXHIBIT 2 TO MEMORANDUM OF LEASE

Description of the Property

LEASE AREA LEGAL DESCRIPTION

A PORTION OF PROPERTY CONVEYED TO TOOELE CITY, GRANTEE BY DEED RECORDED 04/09/1941, IN BOOK 3Z, PAGE 78 OF THE COUNTY RECORDS, LOCATED IN SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NOTE: COORDINATES SHOWN HEREON ARE BASED UPON U.S. STATE PLANE NAD83 COORDINATE SYSTEM UTAH STATE PLANE COORDINATE ZONE CENTRAL, DETERMINED BY GPS OBSERVATIONS.

BEGINNING AT THE SOUTHEAST CORNER OF SAID LEASE AREA, FROM WHICH A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION, STAMPED "TOOELE CO. SURVEYOR" WITH A NORTHING OF 7365213.94 AND AN EASTING OF 1422630.00 BEARS SOUTH 59°15'23" EAST, 284.74 FEET, AND FROM WHICH A REBAR AT THE APPARENT INTERSECTION OF THE NORTHERLY RIGHT OF WAY OF BIRCH STREET AND THE WESTERLY RIGHT OF WAY OF 7TH STREET, HAVING A NORTHING OF 7365287.83 AND AN EASTING OF 1422603.97 BEARS SOUTH 71°51'16" EAST, 230.14 FEET; THENCE FROM SAID POINT OF BEGINNING NORTH 90°00'00" WEST, 40.00 FEET; THENCE NORTH 00°00'00" EAST, 40.00 FEET; THENCE NORTH 90°00'00" EAST, 40.00 FEET; THENCE SOUTH 00°00'00" EAST, 40.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1600 SQUARE FEET (0.04 ACRES) OF LAND, MORE OR LESS.

**TABLE 2
DEVELOPMENT STANDARDS**

DEVELOPMENT REQUIREMENT	DISTRICT									
	Mixed Use (MU-G) (MU-B)	Neighborhood Commercial (NC)	General Commercial (GC)	Regional Commercial (RC)	Light Industrial (LI)	Industrial Service (IS)	Industrial (I)	Research & Development (RD)	Downtown Overlay (DO)	Gateway Overlay (GO)
Minimum Side Yard Setback	Note B when adjoining a Residential Zone. Otherwise See Note A <u>1</u>	Note B when adjoining a Residential Zone. Otherwise See Note A <u>1</u>	Note B when adjoining a Residential Zone. Otherwise See Note A <u>1</u>	30 Feet	As Allowed by Building Code but not less than 15 15 feet <u>with Note A2</u> . Note B when adjoining a Residential Zone Otherwise See Note-A	As Allowed by Building Code but not less than 15 15 feet <u>with Note A2</u> . Note B when adjoining a Residential Zone Otherwise See Note-A	As Allowed by Building Code but not less than 15 feet.	As Allowed by Building Code but not less than 15 15 feet <u>with Note A2</u> . Note B when adjoining a Residential Zone Otherwise See Note-A	<u>Note-A Per Underlying Zoning District</u>	<u>Note-B when adjoining a Residential Zone</u> Otherwise See <u>Note-A Per Underlying Zoning District</u>
Minimum Rear Yard Setback	Note B when adjoining a Residential Zone. Otherwise See Note A <u>1</u>	Note B when adjoining a Residential Zone. Otherwise See Note A <u>1</u>	Note B when adjoining a Residential Zone. Otherwise See Note A <u>1</u>	30 Feet	As Allowed by Building Code but not less than 20 10 10 feet <u>with Note A2</u> . Note B when adjoining a Residential Zone Otherwise See Note-A	As Allowed by Building Code but not less than 20 10 10 feet <u>with Note A2</u> . Note B when adjoining a Residential Zone Otherwise See Note-A	As Allowed by Building Code but not less than 20 feet.	As Allowed by Building Code but not less than 20 10 10 feet <u>with Note A2</u> . Note B when adjoining a Residential Zone Otherwise See Note-A	<u>See Note-A Per Underlying Zoning District</u>	<u>Note-B when adjoining a Residential Zone</u> Otherwise See <u>Note-A Per Underlying Zoning District</u>

Minimum Rear Yard Setback (Corner Lot)	Note B when adjoining a Residential Zone. Otherwise See Note A1	Note B when adjoining a Residential Zone. Otherwise See Note A1	Note B when adjoining a Residential Zone. Otherwise See Note A1	30 Feet	As Allowed by Building Code but not less than 20 10 feet <u>with Note A2</u> . Note B when adjoining a Residential Zone Otherwise See Note A	As Allowed by Building Code but not less than 20 10 feet <u>with Note A2</u> . Note B when adjoining a Residential Zone Otherwise See Note A	As Allowed by Building Code but not less than 20 feet.	As Allowed by Building Code but not less than 20 10 feet <u>with Note A2</u> . Note B when adjoining a Residential Zone Otherwise See Note A	See Note A Per Underlying Zoning District	Note B when adjoining a Residential Zone. Otherwise See Note A Per Underlying Zoning District
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NOTES:

A.

1. As allowed by the International Building Code and any required or existing easements. Side yard setbacks measured from a street right-of-way for corner lots in the MU-B zoning district may be reduced to 0 feet upon approval of the Planning Commission as a part of design review in compliance with Title 7 Chapter 11 of the Tooele City Code. Structures shall not be allowed to be constructed within an existing or proposed easement or right-of-way.
2. Developments on adjoining lots or parcels that are designed, approved, and constructed as one application or project may have the setback reduced to 0 feet to facilitate a cohesive conjoined development across both properties. Structures shall not be allowed to be constructed within an existing or proposed easement or right-of-way.

- B. The minimum setback requirements of the adjoining Residential Zoning District shall apply for all ~~adjoining lots~~, buildings, parking areas, mechanical equipment, solid waste containers, and all other structures. Side yard setbacks measured from a street right-of-way for corner lots in the MU-B zoning district may be reduced to 0 feet upon approval of the Planning Commission as a part of design review in compliance with Title 7 Chapter 11 of the Tooele City Code. Structures shall not be allowed to be constructed within an existing or proposed easement or right-of-way.

TOOELE CITY CORPORATION

RESOLUTION 2022-19

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN AGREEMENT WITH WHITAKER CONSTRUCTION FOR THE INSTALLATION OF DISC FILTERS AT THE TOOELE CITY WATER RECLAMATION FACILITY.

WHEREAS, Tooele City owns and operates a water reclamation facility (“Facility”) for treatment of sewage and the production of reusable solids and irrigation water; and,

WHEREAS, the Facility has been in operation since about 2000 and is in need of repairs and upgrades, including installation of new disc filters (“Project”); and,

WHEREAS, on January 6, 2021, the City Council approved Resolution 2021-04, retaining Aqua Engineering for Facility repair and upgrade engineering design services; and,

WHEREAS, Aqua, on behalf of the City, solicited public bids for the Project in accordance with the City’s procurement policies and procedures, as well as the procedures and requirements of UCA §11-39-101 *et seq.*; and,

WHEREAS, Whitaker Construction was the lowest responsible responsive bidder, with a total cost proposal of \$490,137.00 (see the Bid Tabulation attached as Exhibit A), and, based on Aqua’s experience with Whitaker and knowledge of Whitaker’s capabilities, Aqua recommends that Whitaker be awarded the contract for the Project; and,

WHEREAS, the City Administration requests an additional 10% as contingency for change orders for changed conditions which may arise during the project, as reviewed and approved by the Mayor:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL the City Council hereby approves an agreement (attached as Exhibit B) with Whitaker Construction, in the amount of \$490,137.00 for installation of disc filters at the Facility, and an additional 10% contingency is hereby approved which may be used for changed conditions as reviewed and approved by the Mayor.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this _____ day of _____, 2022.

TOOELE CITY COUNCIL

(For)

(Against)

ABSTAINING: _____

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, Tooele City Attorney

Exhibit A

Bid Tabulation

Item #	Nelson Bros	Van Con	Whitaker	Corrio
1	70,094.00	90,000.00	41,700.00	34,798.00
2	524,684.00	495,000.00	408,000.00	747,623.00
3	27,937.00	27,937.00	27,937.00	27,937.00
4	7,960.00	9,000.00	12,500.00	9,280.00
Total	630,675.00	621,937.00	490,137.00	819,638.00

Exhibit B

Agreement: Whitaker Construction

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between Tooele City (“Owner”) and
Whitaker Construction Company (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Installation of new natural gas radiant heaters and new natural gas piping (including upgrade to existing site gas service); modifications to existing wet sludge conveyor, including new trough, auger, slide gate, actuator, supports and motor.

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by *Aqua Engineering*.

3.02 The Owner has retained *Aqua Engineering* (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

A. The Work can be completed within **365** days after the date when the Contract is signed, however, the Work shall be substantially completed within **180** days after the date when the NTP is signed by both the Contractor and the Owner, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **200** days after the date.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any

extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner five hundred dollars (\$500.00) for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner five hundred dollars (\$500.00) for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during

performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 2. All amounts thus retained shall be placed in a separate interest-bearing account by the Owner and paid to the Contractor upon final completion, as required by Utah Code 13-8-5.
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of eight percent (8%) per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has carefully studied all design drawings, technical specifications, and information provided regarding existing and proposed facilities and improvements.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 7, inclusive).
 - 2. Bid Form (Section 00410)
 - 3. Bidder's Qualification Statement (Section 00451).
 - 4. Performance bond (pages 1 to 3, inclusive).
 - 5. Payment bond (pages 1 to 3, inclusive).
 - 6. General Conditions (pages 1 to , inclusive).
 - 7. Supplementary Conditions (pages 1 to , inclusive).
 - 8. Specifications (aka Volume 2 of the bid package) as listed in the table of contents of the Project Manual.
 - 9. Design Drawings (aka Volume 3 of the bid package) not attached but incorporated by reference) as listed in the design drawing index provided with the bid package and as modified via addenda.
 - 10. Addenda (numbers 1 to , inclusive).

11. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages █ to █, inclusive).
 12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)