

***Invitation for Bids***

***Lease of a Portion of Land at  
104 Creeper Hill Road***



***Grafton, Massachusetts***

**By: Timothy P. McInerney  
Town Administrator**

**For: Board of Selectmen**

**REQUEST FOR INVITATIONS TO BID  
Lease of Land**

## Invitation for Bids

### Lease of Land located at 104 Creeper Hill Road, Grafton, MA

**All invitations to bid (IFB) are subject to the terms, conditions, and specifications as set forth herein.**

1. Scope: The Town of Grafton is soliciting invitations to bid on a lease for a portion of land more fully described hereafter at 104 Creeper Hill, Grafton, MA.

**Invitations to bid are due at the office of the Town Administrator 30 Providence Road, Grafton, Massachusetts 01519 no later than 12:00 PM on September 4, 2015, at which time bids will be opened.**

Any prospective Bidder interested in viewing the land at 104 Creeper Hill Road, prior to the submission of an invitation to bid can do so by making arrangements through the Office of the Town Administrator via the information below:

Please contact the office of the Town Administrator at [willardsond@grafton-ma.gov](mailto:willardsond@grafton-ma.gov) or by phone at 508-839-5335 ext. 1180.

Town reserves right to reject any and all Bids. Contract subject to approval of Board of Selectmen and lease of land by Annual Town Meeting on October 19, 2015.

Any inquiries must be submitted in writing to:

Doug Willardson  
Town of Grafton Municipal Offices  
30 Providence Rd.  
Grafton, MA 01519  
[willardsond@grafton-ma.gov](mailto:willardsond@grafton-ma.gov)

2. Nothing herein is intended to exclude any responsible Bidder or in any way restrain competition.
3. The following meanings are attached to the defined words when used in the IFB.
  - a. The word "Town" means the Town of Grafton, Massachusetts.
  - b. The word "Bidder" means the person, firm, or corporation submitting a invitation to bid in response to these specifications.
  - c. "Minimum and Mandatory Evaluation Criteria" means the criteria for determining responsiveness and responsibility considered to be essential for the satisfactory operational control and viability of business model at the site.

4. All invitations to bid and other documents relating to this IFB are subject to the public records provisions of Massachusetts General Laws (M.G.L.), Chapter 30B (c.30B), and shall remain confidential until the time specified in c.30B section 6(d).
5. All materials submitted by the Bidder become the property of the Town of Grafton. The Town is under no obligations to return any of the material submitted by a Bidder in response to this IFB.
6. Each Bidder's invitation to bid must remain in effect for 90 days from the deadline for its submission. The Town will decide upon acceptance within 90 days of submission.
7. The Town reserves the right to accept or reject any or all of the invitations to bid submitted and waive informalities and technicalities.
8. The Town will review and analyze each invitation to bid and reserve the right to interview selected Bidders. The Town shall select the Bidder that has made the invitation to bid best suited to the needs and goals of the Town and its operations and deemed to be in compliance with the terms of this IFB.
9. The successful Bidder shall comply with all applicable federal, state, and local laws, ordinances, and regulations. The lease of land shall be governed under the laws of the Commonwealth of Massachusetts.

#### **DECLARATION OF RESTRICTIONS AND CONDITIONS**

1. The property located at 104 Creeper Hill Road is currently zoned for Office/Light Industrial. For the Town's source of title for this property see deed recorded May 26, 1883 with the Worcester Registry of Deeds in Book 1145, Page 441.
2. The land being offered for lease is a portion of the property, located at 104 Creeper Hill Road, Massachusetts, and being described as cellular services tower with a 100' by 100' parcel containing 10,000 square feet together with the "Rights of Way" for ingress and egress, seven (7) days a week twenty-four hours a day, over a twenty (20') foot wide right-of-way extending from Creeper Hill Road, to the area. The installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along the rights of way will also be included.
3. The premises will be used for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar construction may be placed around the perimeter of the premises at the discretion of Bidder (not including the access easement).
4. All improvements, equipment, antennas and conduits shall be at Bidder's expense and their installation shall be at the discretion and option of Bidder. Bidder may

have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates during the Term. It is understood and agreed that the successful Bidder's ability to use the premises is contingent upon its obtaining after the execution date of an Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit the Bidders use of the Premises as set forth above.

5. The property is subject to an access easement for the property located at 1 Sargents Island in the Town of Shrewsbury.
6. The successful Bidder(s) shall indemnify and hold harmless the Town of Grafton, its officers, agents and employees from, against, for and in respect of any liability arising out of the state of the land after the date that the Successful Bidder(s) takes possession resulting from any act or omission by the Successful Bidder(s) which results in a hazard, including without limitation the possession or storage of any oil, hazardous materials, hazardous substances, hazardous wastes, or petroleum products, as such terms are or hereafter may be defined pursuant to any environmental laws of the United States or the Commonwealth of Massachusetts.
7. Attached as Exhibit E is the sample Lease Agreement. If Bidder is opposed to any of the conditions in the proposed Lease Agreement, Bidder shall make those known in the Bidder's bid submission.

### **SUBMISSION OF INVITATIONS TO BID**

Invitation to bid must be submitted in one package according to the instructions below.

A sealed package containing the original copy of the bid **must** be labeled as follows:

#### **Lease of Land at 104 Creeper Hill Road**

Doug Willardson  
Town of Grafton Municipal Offices  
30 Providence Rd.  
Grafton, MA 01519

### **BID INSTRUCTIONS**

Please provide the following documents as part of your bid proposal.

- A **Cover-Letter** from the Bidder addressed to:

Timothy P. McInerney  
Town of Grafton Municipal Offices  
30 Providence Rd.

Grafton, MA 01519

The cover-letter should include all of the following:

- a clear statement of the Bidder's interest in the lease of the property
- A narrative that describes the Bidder's business and the Bidder's role in its field.
- a clear statement of the Bidder's experience in its field
- a clear and concise statement describing the proposed use of the land, product/ services to be provided from the site, and the proposed business operations
- A **List of References**, to be provided by the Bidder identifying references familiar with previous lease and business history of the Bidder's including their names, addresses, telephone numbers.
- A **Financial Statement** from a lender or other source of financing, by the Bidder that provides information relative to the Bidder's ability to obtain sufficient financing to successfully complete the terms of the sale set forth.
- A **Certificate of Non-Collusion**, by the Bidder per M.G.L. Chapter 43, Section 27, that this invitation to bid is made in good faith without fraud or collusion or connection with any other person submitting a invitation to bid signed and dated by the Bidder(s). (**See Appendix A – Certificate of Non-Collusion**).
- A **Certificate of Tax Compliance**, by the Bidder per M.G.L. c. 62C. S.49A. certifying that the Bidder has complied with all laws of the Commonwealth of Massachusetts relating to taxes signed and dated by the Bidder(s). (**see Appendix B – Certificate of Tax Compliance**)
- A **Real Property Disclosure Statement**, by the Bidder per M.G.L. c. 7 s.40J, stating the purpose for disclosure of a transaction relating to real property (**see Appendix C - Real Property Disclosure Statement**) signed and dated by the Bidder(s).
- The **Bid Summary Sheet** attached hereto as Appendix D.

**The Town of Grafton reserves the right to reject any or all invitations to bid for any reason or no reason.**

Appendix A – Certificate of Non-Collusion

The following Certification must be provided:

“The undersigned certifies under the penalties of perjury that this invitation to bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in any of these sections the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.”

(Please Print)

\_\_\_\_\_  
Name of person signing invitation to bid

\_\_\_\_\_  
Signature of person signing invitation to bid

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address & Zip Code

\_\_\_\_\_  
Date

(Note: This Form must be included in the invitation to bid submission)

Appendix B – Certificate of Tax Compliance

STATE LAW NOW MANDATES THAT TO DO BUSINESS WITH THE TOWN OF GRAFTON the Massachusetts Revenue Enforcement and Protection Program of 1983 requires that the following be supplied with your bid:

Date: \_\_\_\_\_

Pursuant to M.G.L. Ch. 62C, Section 49A, I certify under the Penalties of Perjury That I, To My Best Knowledge and Belief, Have Filed All Mass. State Tax Return and Paid ALL Mass. State and City/Town Taxes Required under Law.

Company Name

\_\_\_\_\_

Street and No.

\_\_\_\_\_

City or Town

\_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_

Tel. No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Social Security No.

or

Federal Identification No.

\_\_\_\_\_

Failure to complete this form may result in rejection of bid and/or removal from Town Bid Lists.

\_\_\_\_\_  
Authorized Signature

(Note: This Form must be included in the invitation to bid submission)

Appendix C – Real Property Disclosure Statement

The undersigned does hereby state, for the purpose of disclosure pursuant to Massachusetts General Laws, Chapter 7, Section 40J, of a transaction relating to real property as follows:

- (1) REAL PROPERTY:
- (2) TERM:
- (3) LESSOR:
- (4) BIDDER:
- (5) Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the property as Bidder.

NAME

RESIDENCE

- (6) None of the above-mentioned persons is an official elected to public office in the Commonwealth of Massachusetts, except as listed below:

NAME

RESIDENCE

Signed under the penalties of perjury.

\_\_\_\_\_ Date: \_\_\_\_\_

(Note: This Form must be included in the invitation to bid submission)

Appendix D – Proposal Summary Sheet

<b>Time Period</b>	<b>Annual Payment (to be made in monthly installments)</b>
Years 1-5	
Years 6-10	
Years 11-15	
Years 16-20	
Years 21-25	

If any space on the tower is to be sub-leased, any rental paid by any SubBidder(s) shall be divided between the Town and the Bidder in the following manner:

\_\_\_\_\_ % to TOWN and \_\_\_\_\_% to BIDDER.

## Appendix E – Proposed Land Lease Agreement

### LAND LEASE AGREEMENT

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, 2015 between the Town of Grafton with its principal offices located at 30 Providence Road, Grafton, Massachusetts, hereinafter designated LESSOR and \_\_\_\_\_, with its principal office located at \_\_\_\_\_, hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the “Parties” or individually as the “Party”.

1. PREMISES. LESSOR hereby leases to LESSEE a portion of that certain parcel of property (the entirety of LESSOR’s property is referred to hereinafter as the Property), located at 104 Creeper Hill Road, Grafton, Massachusetts, and being described as a 100' by 100' parcel containing 10,000 square feet (the “Land Space”), together with the non-exclusive right (the “Rights of Way”) for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along a twenty (20') foot wide right-of-way extending from the nearest public right-of-way, Creeper Hill Road, to the Land Space, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along one or more rights of way from the Land Space, said Land Space and Rights of Way (hereinafter collectively referred to as the “Premises”) being substantially as described herein in Exhibit "A" attached hereto and made a part hereof. The Property is also shown on the Tax Map of the City of \_\_\_\_\_ as Map \_\_\_\_\_, Lot \_\_\_\_\_ and is further described in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_ as recorded in the \_\_\_\_\_ County Registry of Deeds.

In the event any public utility is unable to use the Rights of Way, the LESSOR hereby agrees to grant an additional right-of-way either to the LESSEE or to the public utility at no cost to the LESSEE.

2. SURVEY. LESSOR also hereby grants to LESSEE the right to survey the Property and the Premises, and said survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by the LESSEE.

3. TERM; RENTAL. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 23 below. The Agreement shall commence based upon the date LESSEE commences installation of the equipment on the Premises. In the event the date of commencing installation of equipment falls between the 1<sup>st</sup> and 15<sup>th</sup> of the month, the Agreement shall commence on the 1<sup>st</sup> of that month and if such date falls between the 16<sup>th</sup> and 31<sup>st</sup> of the month, then the Agreement shall commence on the 1<sup>st</sup> day of the following month (the "Commencement Date"). LESSOR

and LESSEE agree that they shall acknowledge in writing the Commencement Date in the event the Commencement Date. LESSOR and LESSEE acknowledge and agree that initial rental payment(s) shall not actually be sent by LESSEE until the later of thirty (30) days after the Commencement Date or thirty (30) days after a written acknowledgement confirming the Commencement Date. By way of illustration of the preceding sentence, if the Commencement Date is January 1 and a required written acknowledgement confirming the Commencement Date is dated January 14, LESSEE shall send to the LESSOR the rental payments for January 1 and February 1 by February 13.

Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

b. LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") evidencing LESSOR's interest in, and right to receive payments under, this Agreement, including without limitation: (i) documentation, acceptable to LESSEE in LESSEE's reasonable discretion, evidencing LESSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to LESSEE, for any party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation requested by LESSEE in LESSEE's reasonable discretion. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. The Rental Documentation shall be provided to LESSEE in accordance with the provisions of and at the address given in Paragraph 23. Delivery of Rental Documentation to LESSEE shall be a prerequisite for the payment of any rent by LESSEE and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LESSEE as provided herein.

Within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall provide to LESSEE Rental Documentation in the manner set forth in the preceding paragraph. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, any assignee(s) or transferee(s) of LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. Delivery of Rental Documentation to LESSEE by any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall be a prerequisite for the payment of any rent by LESSEE to such party and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments to any assignee(s), transferee(s) or other successor(s) in interest of LESSOR until Rental Documentation has been supplied to LESSEE as provided herein.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

5. EXTENSION RENTALS. The annual rental for the first (1st) five (5) year extension term shall be increased to \_\_\_\_\_ Dollars (\$\_\_\_\_\_); the annual rental for the second (2nd) five (5) year extension term shall be increased to \_\_\_\_\_ Dollars (\$\_\_\_\_\_); the annual rental for the third (3rd) five (5) year extension term shall be increased to \_\_\_\_\_ Dollars (\$\_\_\_\_\_); and the annual rental for the fourth (4th) five (5) year extension term shall be increased to \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

6. ADDITIONAL EXTENSIONS. If at the end of the fourth (4th) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. Annual rental for each such additional five (5) year term shall be equal to the annual rental payable with respect to the immediately preceding five (5) year term. The initial term and all extensions shall be collectively referred to herein as the "Term".

7. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSOR and LESSEE shall each be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSOR or LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Nothing in this Paragraph shall be construed as making LESSEE liable for any portion of LESSOR's income taxes in connection with any Property or otherwise. Except as set forth in this Paragraph, LESSOR shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

8. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of LESSEE (not including the access easement). All improvements, equipment, antennas and conduits shall be at LESSEE's expense and their installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit LESSEE use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests are unsatisfactory; (v) LESSEE determines that the Premises is no longer technically compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

9. INDEMNIFICATION. Subject to Paragraph 10 below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

#### INSURANCE.

- a. Notwithstanding the indemnity in section 10, the Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These

waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

- b. LESSEE will maintain at its own cost;
  - i. Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) for bodily injury (including death) and damage or destruction to property each occurrence;
  - ii. Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a minimum combined single limit of not less than One Million Dollars (\$1,000,000) per accident; and
  - iii. Workers Compensation insurance providing the statutory benefits and not less than One Million Dollars (\$1,000,000), each accident/disease/policy limit, of Employers Liability coverage.

LESSEE will include the LESSOR as an additional insured on the Commercial General Liability and Auto Liability policies as its interests may appear.

- c. LESSOR will maintain at its own cost commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) for bodily injury (including death) and damage or destruction to property each occurrence. LESSOR will include the LESSEE as an additional insured as its interests may appear.

11. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 9 and 29, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

12. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LESSOR.

13. INTERFERENCE. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's

option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

14. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna structure(s) (except footings), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws (as defined in Paragraph 33 below). If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

15. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 14 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of Paragraph 14 and this Paragraph 15, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 14 shall equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

16. RIGHT OF FIRST REFUSAL FOR WIRELESS COMMUNICATION PURPOSES. If LESSOR elects, during the Term to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer. For purposes of this Paragraph, any transfer, bequest or devise of LESSOR's interest in the Property as a result of the death of LESSOR, whether by will or intestate succession, or any conveyance to LESSOR's family members by

direct conveyance or by conveyance to a trust for the benefit of family members shall not be considered a sale of the Property for which LESSEE has any right of first refusal.

17. RIGHTS UPON SALE. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of this Agreement.

18. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

19. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

20. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

21. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located.



LESSOR:

LESSEE:

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

24. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

25. SUBORDINATION AND NON-DISTURBANCE. LESSOR shall obtain not later than fifteen (15) days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property or right-of-way; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE (the "Non-Disturbance Agreement"), and shall recognize LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods.

26. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

27. DEFAULT.

- a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

- b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business on the Property; provided, however, that if the nature of LESSOR's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

28. REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, LESSOR shall use reasonable efforts to mitigate its damages in connection with a default by LESSEE. If LESSEE so performs any of LESSOR's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by LESSEE shall immediately be owing by LESSOR to LESSEE, and LESSOR shall pay to LESSEE upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if LESSOR does not pay LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from LESSOR, LESSEE may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to LESSOR until the full undisputed amount, including all accrued interest, is fully reimbursed to LESSEE.

29. ENVIRONMENTAL.

- a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing

standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the specific activities of LESSEE in the Premises.

- b. LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are caused by LESSEE.

30. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

31. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Property, LESSEE, in LESSEE's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, LESSEE may, at LESSEE's option, to be exercised in writing within fifteen (15) days after LESSOR shall have given LESSEE written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the

equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If LESSEE does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, LESSOR shall promptly repair any damage to the Premises caused by such condemning authority.

32. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

33. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

34. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

35. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**LESSOR:**

\_\_\_\_\_

WITNESS

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSEE:**

\_\_\_\_\_

WITNESS

By: \_\_\_\_\_

Its: \_\_\_\_\_