

City of Piedmont
COUNCIL AGENDA REPORT

DATE: April 15, 2024

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Introduction and 1st Reading of Ordinance 773 N.S. – First Amendment to Property Lease with Gulf South Towers at 898 Red Rock Rd., including Authorization of the City Administrator to Execute Related Documentation

RECOMMENDATION

Introduce by title only an Ordinance (Attachment 1) approving an amendment to the lease agreement for City-owned land at 898 Red Rock Road, adding to Exhibit B of the Agreement a legal description of the Premises, Access Road and Utility Trench and authorizing the City Administrator to execute related documentation.

EXECUTIVE SUMMARY

In May 2021, the City Council approved an Ordinance for a lease agreement negotiated between City staff and Gulf South Towers/GST Capital Partners, LLC (“GST”), allowing GST to lease space in the City’s corporation yard in order to construct and operate a 95-foot-tall telecommunications tower and associated site improvements. The design and operation of the GST tower, base station, and associated improvements were unanimously approved by the City Council on April 19, 2021. The approved facility includes space for up to four wireless service providers. GST requests City Council approval of amendments to the lease agreement to reflect as-built conditions, including an expansion of the lease area to include a retaining wall and fence enclosing the base station.

BACKGROUND AND ANALYSIS

On April 19, 2021, the City Council unanimously approved a WCF permit for a replacement telecommunications tower in the Public Works Department corporation yard at 898 Red Rock Road, land owned by the City of Piedmont. The approved tower replaces an existing 31-foot-tall tower (T-Mobile) in generally the same location.

The approved facility includes space for up to four wireless service providers. The project includes an approximately 6-foot-tall retaining wall along the north edge of the installation, 8-foot-tall

fencing surrounding the base station equipment, and an 8-foot-tall ice bridge conduit to conceal cabling running from the base station enclosures to the proposed tower.

Pursuant to Section 17.46.040 of the Piedmont City Code, GST obtained a site agreement allowing for the use of the site in the City corporation yard. A lease agreement negotiated by staff with representatives of GST Capital Partners was approved by Ordinance 760 N.S. by the City Council on May 17, 2021. Article 3 of the lease agreement establishes a 5-year term and the process for renewal by the Tenant for up to five successive terms. A building permit for construction of the tower was issued on January 25, 2022, and the project construction is nearing completion. The amendments to the lease agreement proposed by GST are subject to City Council review and approval.

The original 2021-approved lease agreement (Ordinance 760 N.S., Attachment 2) includes terms and conditions that benefit the City of Piedmont. Article 3 of the license agreement establishes a 5-year term and provides for GST's renewal for up to five additional successive five-year terms. The maximum term of the lease agreement is 30 years unless amended. Rents collected by GST Capital Partners LLC will be shared with the City of Piedmont according to the formulas in the lease agreement, and any funds received under the lease agreement will be deposited into the General Fund. GST Capital Partners will be responsible for administering the subleases of space on the facility in compliance with the conditions of approval. The lease includes a minimum monthly rent of \$1,500 per month, which is subject to a yearly 3% escalation. The lease also addresses insurance requirements for construction and operation of the facility, includes maintenance covenants, and the lease addresses removal of the facility upon expiration or termination of the lease.

GST requests City Council approval of the amendment to the plans in the lease to reflect as-built conditions and a slight increase in the area leased by GST. The proposed amendments to the lease agreement (Attachment 1) include the following changes to the site plan only:

1. The lease area is amended to show that the lease area follows the outer edge of the fence enclosure and retaining wall resulting in a total lease area of 1,459 s.f. of land within the corporation yard.
2. The approved lease area access route and utility trench are now described by a metes and bounds description prepared by the project surveyor and reviewed by the City Engineer. The survey provides additional site information for the project.
3. The site plan shows the new transformer to be installed by PG&E to serve the GST tower in an area adjacent to the utility trench to the east of the lease area.

If the lease amendment is approved by the City Council, GST will file a new Wireless Communications Facility (WCF) permit application (Telecommunications Act Section 6409 permit application) to amend the approved site plan to reflect the project changes.

CONFORMANCE TO GENERAL PLAN

The Piedmont General Plan includes policies and actions intended to preserve the residential character of the community. The General Plan includes goals and policies related to wireless communication facilities. The proposed amendments to the lease agreement are consistent with the General Plan in that the project satisfies the following Piedmont General Plan policies:

- Piedmont General Plan Policy 35.8, “Telecommunication Services: Collaborate with telecommunication service providers to foster access to emerging communication and information technology for Piedmont residents,” and
- Policy 37.4, “Siting and Design of Infrastructure: Ensure that the siting and design of infrastructure facilities, including water tanks and telecommunication towers, mitigate the potential for adverse visual impacts and are consistent with policies in the Design and Preservation Element.”

CEQA COMPLIANCE

Based upon the application, plans, and documentation submitted in connection with the project application, as well as public testimony and visits to the site, on April 19, 2021, the City Council determined the project to be categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15303 of the CEQA Guidelines (construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures). Approval of this proposed lease amendment is therefore also categorically exempt for the same reasons.

CITY ATTORNEY REVIEW

The attached Amendment to a lease agreement was reviewed and approved as to form.

FINANCIAL IMPACT

The proposed Amendment does not change the terms of the City’s compensation for the use of the corporation yard. The fence enclosure was previously approved and does not change under the proposed Amendment. The City is not obligated to maintain PG&E’s transformer or utility trench.

By: Kevin Jackson, Planning & Building Director
Pierce Macdonald, Senior Planner

ATTACHMENTS

<u>Number</u>	<u>Pages</u>	<u>Document</u>
1	5-15	Draft Ordinance 773 N.S. Approving 1 st Amendment to GST Lease Agreement
2	16-48	Ordinance 760 N.S. Approving Lease Agreement with GST Capital Partners LLC (Exhibit B to the lease agreement consists of the legal description and project

plans posted to the City of Piedmont website at
<https://piedmont.ca.gov/cms/One.aspx?portalId=13659823&pageId=15671209>)

DRAFT ORDINANCE NO. 773 N.S.

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO A GROUND LEASE
AND WIRELESS TELECOMMUNICATIONS AGREEMENT WITH
GST CAPITAL PARTNERS, LLC FOR USE OF A PORTION OF CORPORATION YARD
AT 898 RED ROCK ROAD

WHEREAS, the City Council approved Ordinance 760 N.S. on May 3, 2021, approving a lease agreement with GST Capital Partners, LLC (GST), allowing GST to lease space in the City's corporation yard in order to construct and operate a 95-foot-tall telecommunications tower and associated site improvements; and

WHEREAS, GST requests City approval of the first lease amendment (Exhibit A) to expand the lease area to include all of the fence enclosure and retaining wall constructed by GST as part of the telecommunications tower site improvements and adding a legal description of the Premises, Access Road and Utility Trench (Attachment A); and

WHEREAS, the Piedmont City Council considered the proposed lease amendment at a public meeting held on April 15, 2024; and

WHEREAS, the proposed lease amendment to approve the lease area expansion makes clear that the improvements constructed by GST are within the lease area and sites a PG&E transformer adjacent to the lease area.

NOW, THEREFORE, the City Council of the City of Piedmont hereby ordains as follows:

SECTION 1.

The amended Ground Lease and Wireless Telecommunications Agreement (Exhibits A and Attachment A) between the City of Piedmont as landlord and GST Capital Partners, LLC as tenant, for use of a portion of the City Corporation Yard at 898 Red Rock Road, Piedmont, California 94611, a copy of which is attached hereto and incorporated herein by reference, is hereby approved.

SECTION 2.

This ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after such second reading and approval by the City Council.

SECTION 3.

Adoption of this Ordinance is not subject to review under the California Environmental Quality

Act (CEQA) pursuant to CEQA Guidelines section 15303 (construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures), because the proposed wireless communication facility to be constructed under the Ground Lease and Wireless Telecommunications Agreement is a single small utility structure located in a developed setting which replaces an existing telecommunications tower. No exceptions to the above exemption has been identified that would make the proposal ineligible for use of a categorical exemption because the project setting is not in a location that is particularly sensitive, the surrounding area is developed and urbanized, existing utilities are located at or near the proposed installation, there are no unusual circumstances relating to the proposed installation, and no scenic highways, hazardous waste sites, or historical resources could be affected by the project.

[END OF ORDINANCE]

Exhibit A to Staff Report Attachment 1

**FIRST AMENDMENT TO
GROUND LEASE
AND
WIRELESS TELECOMMUNICATIONS AGREEMENT**

This First Amendment to Ground Lease and Wireless Telecommunications Agreement (the “First Amendment”) is made and entered into on this the ____ day of _____, 2024 (the “First Amendment Effective Date”), by and between the City of Piedmont, a California municipal corporation (“Landlord”), and GST Capital Partners, LLC, a Delaware limited liability company (“Tenant”). Landlord and Tenant are sometimes collectively referred to herein as the “Parties” and individually as a “Party.”

Recitals

WHEREAS, Parties entered into the Ground Lease and Wireless Telecommunications Agreement on June 17, 2021 (the “Lease”), whereby Tenant leases certain real property from the Landlord for the purpose of building and operating a wireless telecommunications Tower; and

WHEREAS, the Tenant has completed the Work and had the Premises surveyed and the Parties desire to amend the Agreement to insert the Premises, Access Road and Utility Trench Legal Descriptions and As Built Survey to Exhibit B to the Agreement which contains, among other things, a legal description for the Premises and the Access Road and Utility Trench.

NOW, THEREFORE, premises considered and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties do hereby agree as follows:

1. Exhibit B to the Lease is hereby amended by appending thereto the Premises, Access Road and Utility Trench Legal Descriptions and As Built Survey attached hereto as Attachment A.
2. Capitalized terms utilized in this First Amendment which are not defined shall have the meanings set forth in the Agreement.
3. This Agreement may be executed in counterparts and such counterparts, when combined, shall constitute one instrument binding upon the Parties.
4. Except as expressly amended by this First Amendment the remainder of the Agreement remains in full force and effect.
5. Either Party may record this First Amendment in the land records of Alameda County, CA.

[Signature page follows]

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this First Amendment effective as of the First Amendment Effective Date.

TENANT:

GST Capital Partners, LLC,
a Delaware limited liability company

John C. Bean, President

Dated: _____, 2024

LANDLORD:

City of Piedmont,
a California municipal corporation

Rosanna Bayon Moore, City Administrator

Dated: _____, 2024

Attest: _____
Anna Brown, City Clerk

Approved as to form:

Michelle Marchetta Kenyon, City Attorney
Deepa Sharma, Assistant City Attorney

LANDLORD ACKNOWLEDGMENT

**CALIFORNIA NOTARY ACKNOWLEDGEMENT
(INDIVIDUAL)**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

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

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

WITNESS my hand and official seal.

Signature _____ . (Seal)

TENANT ACKNOWLEDGMENT

STATE OF ALABAMA,
COUNTY OF BALDWIN,

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

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

WITNESS my hand and official seal.

Signature _____. (Seal)

ATTACHMENT A
PREMISES, ACCESS ROUTE AND UTILITY TRENCH
LEGAL DESCRIPTIONS
AND
AS BUILT SURVEY

PREMISES

(As-Surveyed)

A PORTION OF THAT PARCEL PER THAT CERTAIN CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT AS DESCRIBED IN EXHIBIT "B-1" RECORDED NOVEMBER 13, 1992 AS INSTRUMENT NO. 1992-370707 OF THE ALAMEDA COUNTY RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND DISK IN WELL, WITH A NORTHING OF 2,129,915.08, AN EASTING OF 6,062,674.97, THENCE NORTH 78° 33' 10" WEST, A DISTANCE OF 461.14 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 57° 03' 55" WEST, A DISTANCE OF 58.80 FEET TO A POINT;
THENCE SOUTH 32° 56' 05" WEST, A DISTANCE OF 9.40 FEET TO A POINT;
THENCE NORTH 57° 03' 55" WEST, A DISTANCE OF 7.50 FEET TO A POINT;
THENCE SOUTH 80° 22' 00" WEST, A DISTANCE OF 18.33 FEET TO A POINT;
THENCE SOUTH 57° 03' 55" EAST, A DISTANCE OF 79.80 FEET TO A POINT;
THENCE NORTH 32° 56' 05" EAST, A DISTANCE OF 21.80 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 1,459 SQUARE FEET OR 0.0335 ACRES OF LAND MORE OR LESS.

ACCESS ROUTE & UTILITY TRENCH

(As-Surveyed)

A PORTION OF THAT PARCEL PER THAT CERTAIN CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT AS DESCRIBED IN EXHIBIT "B-1" RECORDED NOVEMBER 13, 1992 AS INSTRUMENT NO. 1992-370707 & A PORTION OF THAT PARCEL AS DESCRIBED IN RESOLUTION RECORDED 08/05/1942, AS BOOK 4250, PAGE 255 OF THE ALAMEDA COUNTY RECORDS, LYING 7.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT A FOUND DISK IN WELL, WITH A NORTHING OF 2,129,915.08, AN EASTING OF 6,062,674.97, THENCE NORTH 78° 33' 10" WEST, A DISTANCE OF 461.14 FEET TO A POINT;
THENCE NORTH 57° 03' 55" WEST, A DISTANCE OF 58.80 FEET TO A POINT;
THENCE SOUTH 32° 56' 05" WEST, A DISTANCE OF 9.40 FEET TO A POINT;
THENCE NORTH 57° 03' 55" WEST, A DISTANCE OF 7.50 FEET TO A POINT;
THENCE SOUTH 80° 22' 00" WEST, A DISTANCE OF 18.33 FEET TO A POINT;
THENCE SOUTH 32° 56' 05" WEST, A DISTANCE OF 7.50 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 57° 03' 55" EAST, A DISTANCE OF 83.90 FEET TO A POINT HEREINAFTER KNOWN AS POINT 'A';
THENCE CONTINUING SOUTH 57° 03' 55" EAST, A DISTANCE OF 46.56 FEET TO A POINT;
THENCE NORTH 32° 56' 05" EAST, A DISTANCE OF 9.98 FEET TO A POINT;

THENCE NORTH 87° 04' 35" EAST, A DISTANCE OF 176.77 FEET TO A POINT;
THENCE SOUTH 66° 31' 24" EAST, A DISTANCE OF 26.97 FEET TO A POINT;
THENCE SOUTH 24° 14' 05" EAST, A DISTANCE OF 21.14 FEET TO A POINT;
THENCE SOUTH 08° 51' 47" EAST, A DISTANCE OF 26.03 FEET TO A POINT;
THENCE SOUTH 03° 32' 14" WEST, A DISTANCE OF 37.98 FEET TO A POINT;
THENCE SOUTH 17° 10' 36" WEST, A DISTANCE OF 88.27 FEET TO A POINT HEREINAFTER KNOWN AS POINT 'B';
THENCE SOUTH 47° 42' 25" WEST, A DISTANCE OF 72.80 FEET TO A POINT;
THENCE SOUTH 01° 21' 23" EAST, A DISTANCE OF 136.56 FEET TO THE POINT OF TERMINUS ON THE NORTHERLY PUBLIC RIGHT OF WAY OF MORGAN AVENUE;

THENCE FROM SAID POINT 'A', LYING 4.60 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE, NORTH 32° 56' 05" EAST, A DISTANCE OF 21.50 FEET TO THE POINT OF TERMINUS;

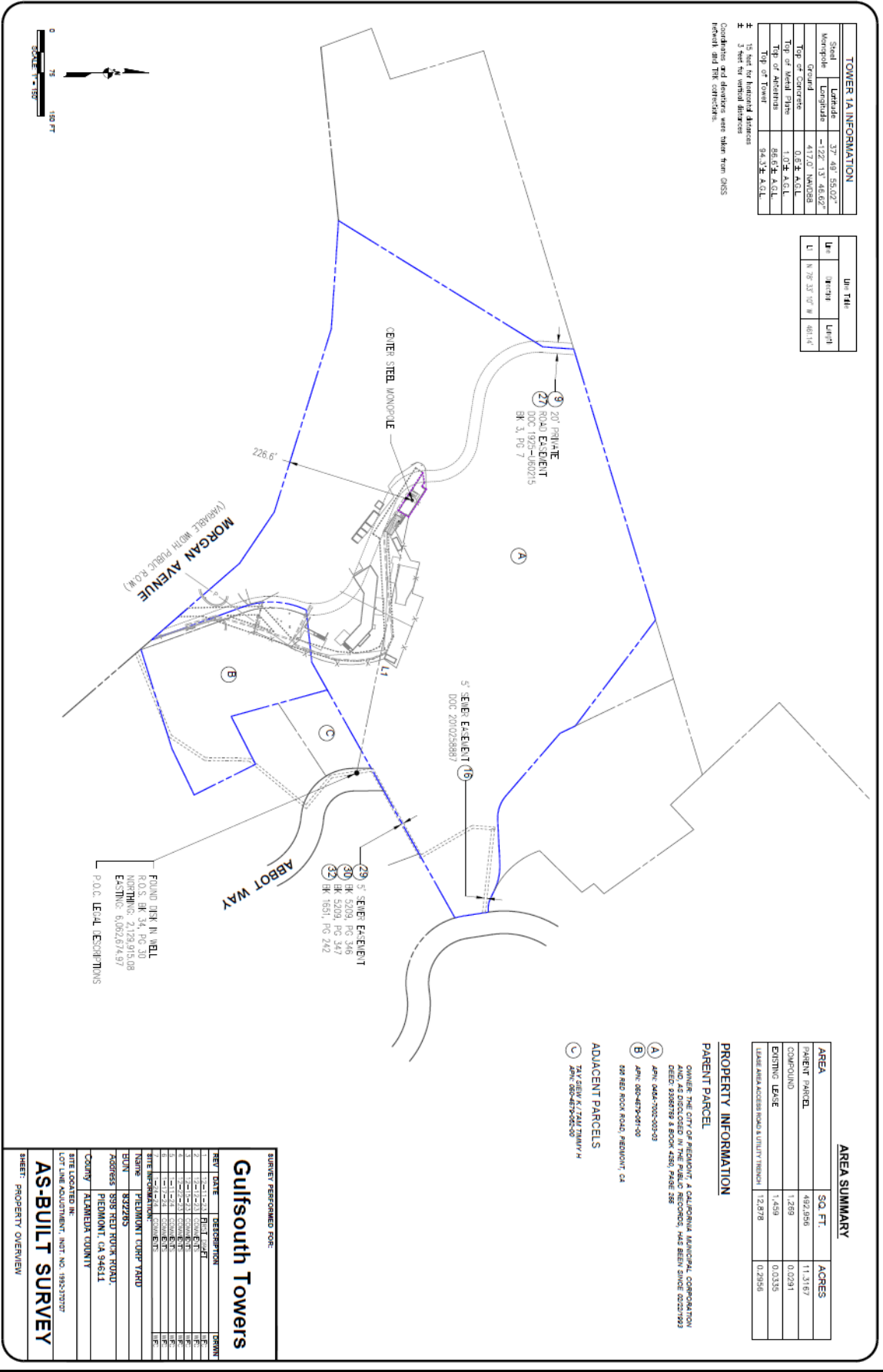
THENCE FROM SAID POINT 'B', LYING 7.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE, SOUTH 18° 54' 34" WEST, A DISTANCE OF 158.76 FEET TO THE POINT OF TERMINUS;

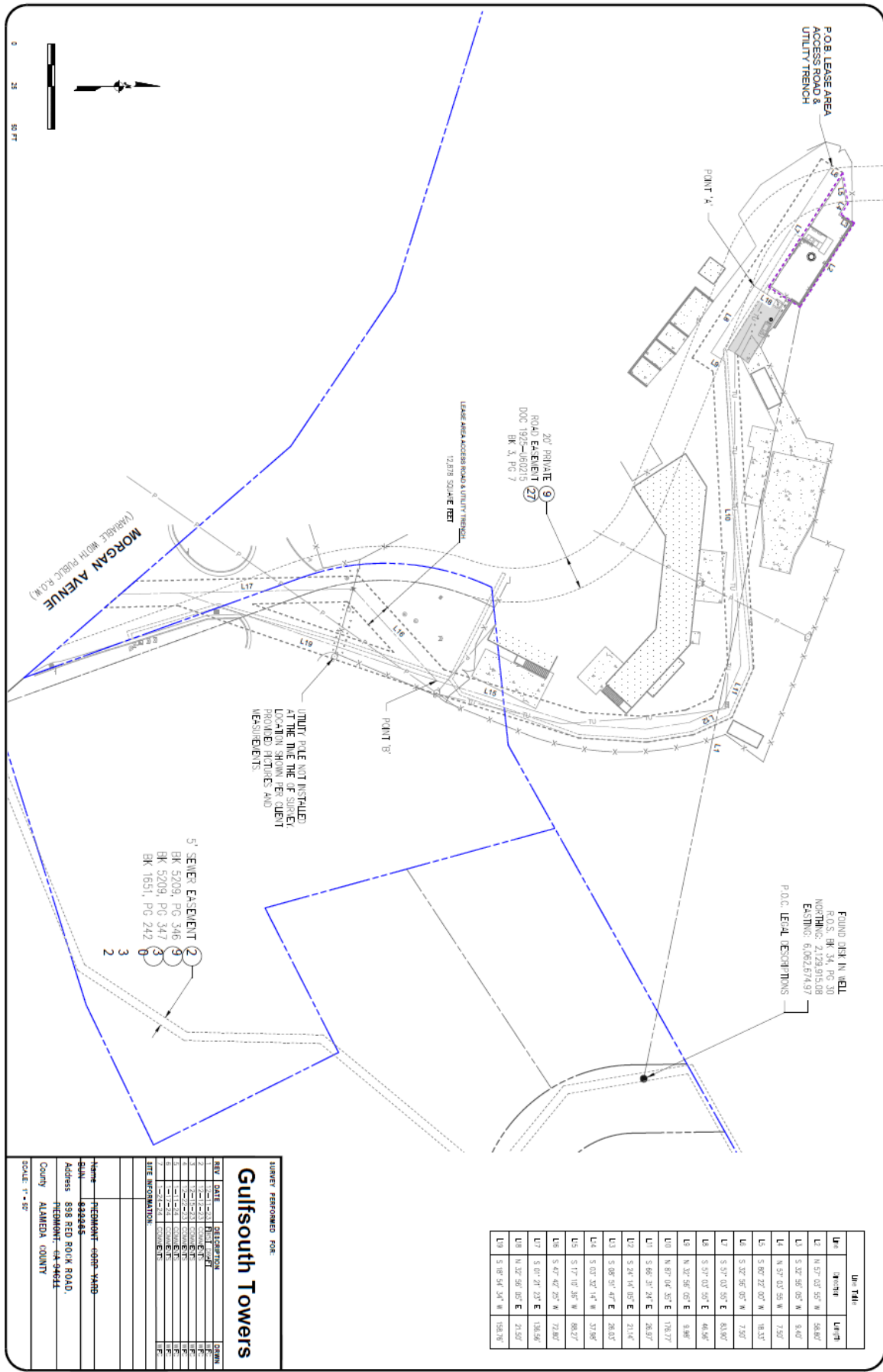
SAID PARCEL CONTAINS 12,878 SQUARE FEET OR 0.2956 ACRES OF LAND MORE OR LESS.

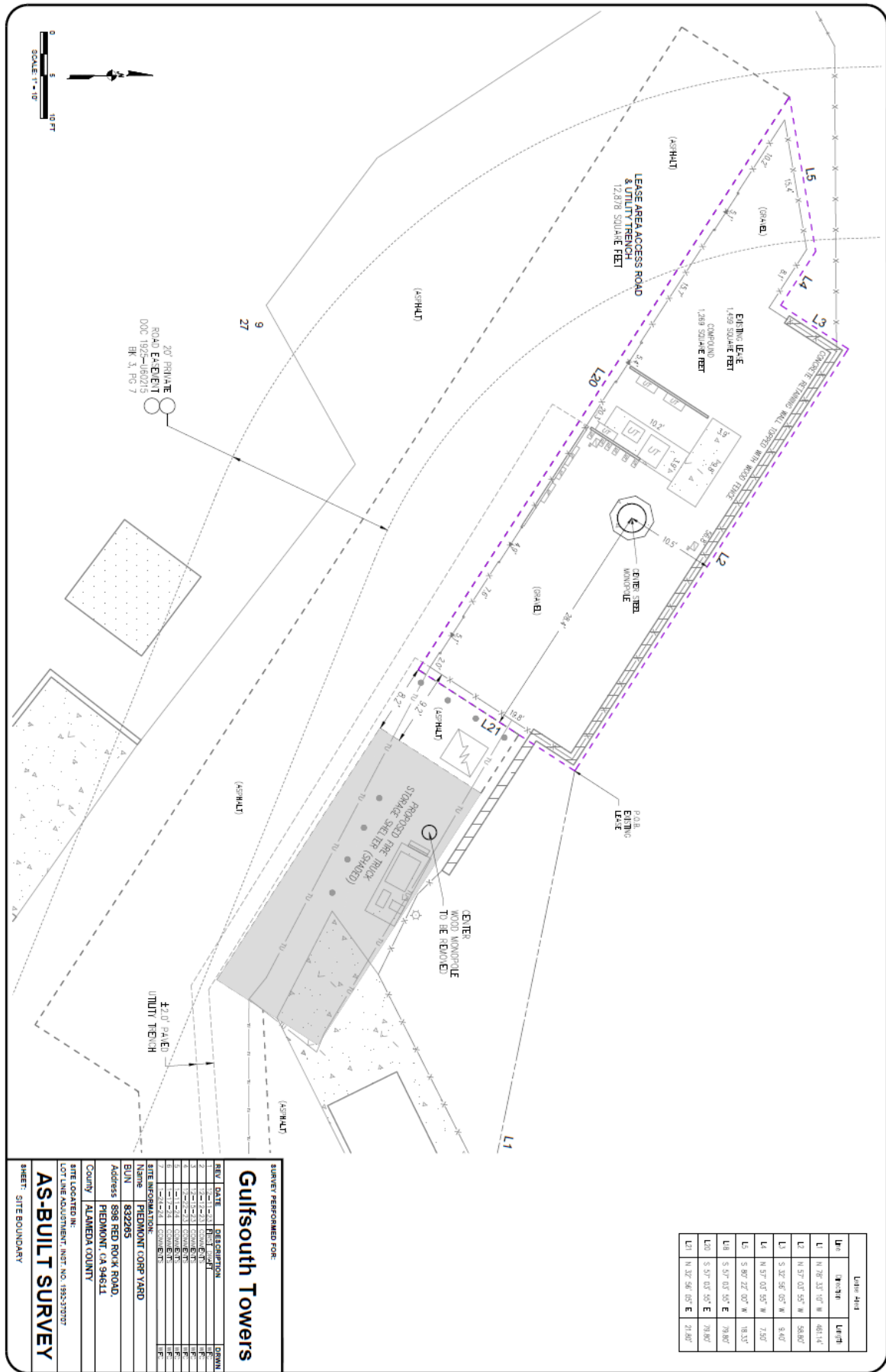
PROPERTY INFORMATION

OWNER: THE CITY OF PIEDMONT, A CALIFORNIA MUNICIPAL CORPORATION
AND, AS DISCLOSED IN THE PUBLIC RECORDS, HAS BEEN SINCE 02/22/1993
DEED: 93058759 & BOOK 4250, PAGE 255
APN: 048A-7002-003-03 & 050-4579-061-00
898 RED ROCK ROAD, PIEDMONT, CA

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ORDINANCE NO. 760 N.S.

AN ORDINANCE APPROVING A GROUND LEASE AND WIRELESS
TELECOMMUNICATIONS AGREEMENT WITH GST CAPITAL PARTNERS, LLC
FOR USE OF PORTION OF CORPORATION YARD AT 898 RED ROCK ROAD

The City Council of the City of Piedmont hereby ordains as follows:

SECTION 1.

The Ground Lease and Wireless Telecommunications Agreement between the City of Piedmont as landlord and GST Capital Partners, LLC as tenant, for use of a portion of the City Corporation Yard at 898 Red Rock Road, Piedmont, California 94611, a copy of which is attached hereto and incorporated herein by reference, is hereby approved.

SECTION 2.

This ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after such second reading and approval by the City Council.

SECTION 3.

Adoption of this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15303 (construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures), because the proposed wireless communication facility to be constructed under the Ground Lease and Wireless Telecommunications Agreement is a single small utility structure located in a developed setting which replaces an existing telecommunications tower. No exceptions to the above exemption has been identified that would make the proposal ineligible for use of a categorical exemption because the project setting is not in a location that is particularly sensitive, the surrounding area is developed and urbanized, existing utilities are located at or near the proposed installation, there are no unusual circumstances relating to the proposed installation, and no scenic highways, hazardous waste sites, or historical resources could be affected by the project.



I certify that the foregoing ordinance was passed and adopted as a part of the consent calendar by Resolution 33-2021 at the regular meeting of the City Council of the City of Piedmont on May 17, 2021, by the following vote:

Ayes:	Andersen, Cavanaugh, McCarthy, Rood
Noes:	None
Absent:	King

Attest: _____
John O. Tulloch, City Clerk

**GROUND LEASE
AND
WIRELESS TELECOMMUNICATIONS AGREEMENT**

Between the

City of Piedmont

And

GST Capital Partners, LLC

Approved by the City of Piedmont May 17, 2021

City Staff: _____

_____:

**GROUND LEASE
AND
WIRELESS TELECOMMUNICATIONS AGREEMENT**

This Ground Lease and Wireless Telecommunications Agreement (collectively, this "**Lease**") is made and entered into this 17th day of June, 2021 (the "**Effective Date**"), by and between the City of Piedmont, a California municipal corporation ("**Landlord**"), and GST Capital Partners, LLC, a Delaware limited liability company ("**Tenant**"), who agree as follows:

ARTICLE 1. PROPERTY AND BACKGROUND.

1.01 The Property. Landlord is the owner of that certain property located at 898 Red Rock Road, Piedmont, California 94611 (the "**Property**") as more particularly described in Exhibit A attached hereto. The Property is generally described as follows: an approximately 11.6 acre parcel of real property being utilized as Landlord's municipal yard.

1.02 Wireless Telecommunications Facility. Tenant wishes to lease from Landlord, and Landlord wishes to lease to Tenant, a portion of the Property for the sole purpose of installing, constructing, maintaining, repairing, replacing, operating, and removing ("**Work**") a wireless telecommunications facility, including, without limitation, one tower/monopole of 95 feet in height along with related antenna equipment and fixtures and including the equipment buildings and structures, backup power systems, and related improvements and fixtures of Tenant's sublessees and licensees (the "**Facility**") that will be fenced within an area consisting of approximately one thousand three hundred and fourteen (1,314) square feet (the "**Premises**"), as described in the attached site plan within Exhibit B attached hereto. The "**Tower**" shall mean the 95 foot tower and other improvements to the Premises constructed by Tenant, inclusive of the improvements to be installed by Tenant's sublessees and licensees, if any, including concrete pads supporting equipment shelters and outdoor cabinets. Tenant may apply to modify the Tower described in the attached site plan and, as may be necessary, the approved Wireless Communications Facilities Permit to allow modifications of the approved Tower and associated antennas and equipment only with Landlord's consent to file such application for land use entitlements and/or permits and with prior approval of a modification to the Lease, which Lease approval may be withheld at Landlord's sole discretion. If approved, such Lease modification and such modified Wireless Communications Facilities Permit shall become the Facility subject to this Lease and replace Exhibit B. The construction of any additional tower or similar structure or any modifications to the Tower shall require prior approval by Landlord, which may be withheld or conditioned in Landlord's sole discretion.

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City of Piedmont and GST Capital Partners, LLC Lease

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ARTICLE 2. GRANT OF LEASE.

2.01 Grant of Lease. Landlord leases to Tenant and Tenant leases from Landlord the Premises, for the use, as provided for herein, by Tenant and the sublessees and licensees of Tenant. By taking possession of the Premises, Tenant accepts the Premises in its "as-is, where-is condition" as of the Commencement Date of this Lease. The parties hereto agree that said letting and hiring is upon and subject to the terms, covenants, and conditions herein set forth and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants, and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance. Tenant acknowledges and agrees that this Lease shall be subject and subordinate to the terms and conditions of any and all prior covenants, conditions or restrictions affecting the land.

2.02 Access Road. Tenant shall have the nonexclusive right to use in common with Landlord and other tenants on the Property, and subject to any rules and regulations promulgated by Landlord pertaining to the use of such Property, the access road shown on Exhibit A (the "**Access Road**"). Such Access Road may be relocated by Landlord at any time so long as Tenant has access to its Premises at all times from the public road. Landlord reserves the right from time to time without unreasonable interference with Tenant's use to install, use, maintain, repair and replace pipes, ditches, conduits, and appurtenant equipment for service to other parts of the Property along the Access Road. Tenant agrees to reasonably cooperate with any such relocation, repairs, maintenance or installation. Landlord shall maintain the Access Road at its sole cost.

ARTICLE 3. TERM.

The initial term of this Lease (the "**Initial Term**") shall be five (5) years commencing on the date Landlord has approved and executed this Lease and approved any and all Approvals (as hereinafter defined) to construct the Facility (the "**Commencement Date**"). The Parties shall amend this Lease or otherwise agree in writing on what the actual Commencement Date is. Tenant shall have the right to renew this Lease for five (5) additional terms (each a "**Renewal Term**") and along with the Initial Term collectively referred to herein as the "**Term**") of five (5) years each. Provided that Tenant is not then in material default under this Lease beyond any applicable notice, grace or cure periods provided therefor, the Term will be automatically renewed for a Renewal Term, unless Tenant provides Landlord with written notice of Tenant's election not to renew this Lease at least ninety (90) days before the expiration of the Initial Term or the then-applicable Renewal Term, or all Renewal Terms have expired. Each twelve (12) month anniversary of the first day of the first full calendar month following the Commencement Date during the Term shall be referred to as a "**Lease Year**".

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City of Piedmont and GST Capital Partners, LLC Lease

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ARTICLE 4. RENT.

4.01 Rent. Beginning on the Commencement Date and afterwards throughout the Term, Tenant shall pay to Landlord, in advance on the first day of each and every calendar month and without demand, deduction, offset or abatement, a monthly rent ("**Rent**") as specified in this Lease. The initial Rent shall be 30% of the Sublease Rent collected by Tenant for the first Broadband Colocation on the Facility (as defined in this Lease). Rent under this Agreement shall be determined as the initial Rent plus all applicable Colocation Charges under Section 6.07.

Notwithstanding the foregoing, the Rent under this Lease shall not be less than \$1,500 per month (the "**Minimum Rent**"), and the Minimum Rent shall be adjusted annually as provided in Section 4.05 hereof. The Rent for any partial calendar month shall be prorated appropriately, and for a partial calendar month at the beginning of the Term, the partial month's Rent shall be paid to Landlord within five (5) days of the Commencement Date.

4.02 Net Lease. This Lease is a net lease and Rent and other payments due and payable hereunder to or on behalf of Landlord shall be paid without notice or demand and without offset, counterclaim, abatement, suspension, deferment, deduction or defense.

4.03 Lease Fee. Concurrent with the execution of this Lease, Tenant shall pay to Landlord a one-time, nonrefundable fee of \$5,000 (the "**Lease Fee**") as consideration to Landlord on the terms and conditions set forth herein. Tenant acknowledges that the Lease Fee is not a security deposit and is not applicable against Rent or any other charge or fee under this Lease.

4.04 Additional Rent. Any charge, fee, or expense (but specifically excluding the Lease Fee) under this Lease, other than Rent, shall be deemed "**Additional Rent**." Any Additional Rent, excepting any Colocation Charge (as defined herein), shall be paid to Landlord within thirty (30) days of Tenant's receipt of an invoice specifying such Additional Rent. Any Colocation Charge shall be paid to Landlord in advance on the first day of each and every calendar month along with the payment of Rent.

4.05 Minimum Rent Adjustment. After the first Lease Year, the Minimum Rent shall be increased annually throughout the Term as of the beginning of every Lease Year by an amount equal to three percent (3%) of the preceding Lease Year's Minimum Rent.

4.06 Late Charge. If Tenant fails to deliver to Landlord the Lease Fee, Rent or Additional Rent within ten (10) days after such are due, Tenant shall pay Landlord a late payment charge equal to 5% of the overdue payment as liquidated damages, in lieu of actual damages. The parties agree that this late charge represents a fair and reasonable estimate of the costs landlord will incur by reason of Tenant's late payment. Landlord's acceptance of a late charge shall in no event constitute a waiver by Landlord of Tenant's default for the overdue

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City of Piedmont and GST Capital Partners, LLC Lease

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payment, or prevent Landlord from exercising any of the other rights or remedies granted Landlord under this Lease, at law or in equity.

4.07 Interest. If the Lease Fee or any Rent or Additional Rent due under this Lease are not paid to Landlord within the timeframes set forth in Section 4.01 through Section 4.04 hereof, they shall commence to bear interest from thirty (30) days after the date due until fully paid at the lesser rate of (a) 8% per annum or (b) the maximum rate permitted by law. Neither the accrual nor Tenant's payment of interest to Landlord shall be deemed to cure any other default by Tenant under this Lease.

4.08. Sublease Documents and Access to Tenant Records Relating to Rent. Upon request of Landlord, Tenant shall also provide to Landlord such documentation as may be requested by Landlord to evidence actual Sublease Rent received. In response to any Landlord request for complete subleases, Tenant may provide certification of Sublease Rent received under the penalty of perjury along with other substitute evidence of payments received as may be deemed acceptable to Landlord, or may provide the complete subleases to a mutually agreed third party such as an auditor for review and verification and subsequent return to Tenant, with any costs of such third party review and verification to be borne solely by Tenant. Subleases of the Tenant shall be deemed confidential records solely belonging to the Tenant and shall not be deemed property of the Landlord.

ARTICLE 5. CONSTRUCTION OF THE FACILITY

5.01 Wireless Communications Facilities Permit and Government Approvals. Tenant shall obtain, at Tenant's sole cost and expense, all land use entitlements or approvals required by applicable law (including the Piedmont City Code) (collectively, the "**Approvals**") for the Tower from the Landlord. Tenant shall pay to Landlord all of Landlord's costs incurred in the course of processing the regulatory approvals issued by Landlord, including without limitation the costs of conducting studies or preparation of any environmental review documents as may be required under the California Environmental Quality Act, and any related costs of consultants, attorneys, staff, or administrative costs. Tenant further agrees to pay Landlord the actual cost of inspection, administration, and testing services furnished by Landlord in connection with the Work, if any, including those performed by consultants under contract with Landlord. Landlord shall not double charge Tenant (through the imposition of both a processing fee and a consultant charge for the same work performed) for any cost of processing regulatory permits or for any individual monitoring, inspection, testing, or evaluation service, nor shall landlord charge Tenant in excess of the actual costs incurred.

Upon approval a copy of the Approval(s) shall be attached as **Exhibit B**, with the right to perform the Work on the Tower and all improvements related thereto on the Premises including, but not limited to, wireless telecommunications transmitting and receiving equipment,

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generators, utility lines, transmission lines, wireless telecommunications transmitting and receiving antennas, and supporting structures and improvements of Tenant and Tenant's sublessees and licensees. Tenant may construct the Facility subject to the terms and conditions required by the Approvals. Tenant will have the right to do all the Work necessary to prepare, maintain, and alter the Premises for Tenant's communications operations. Tenant shall install and maintain a chain link security fence or comparable construction around the perimeter of the Premises and shall be responsible for keeping its Facility secure at its sole expense. All improvements and the Facility shall be at the expense of Tenant and Tenant's sublessees and licensees, and the installation of all improvements shall be at the discretion and option of such parties, provided that such improvements, and all Work related thereto, is consistent with the Approvals. Tenant shall maintain the Premises and the Facility in good condition and repair.

5.02 Construction and Work.

(a) Specifications detailing the type, location, and size of the Facility and specifically describing any proposed construction and Work ("**Scope of Work**") are set forth as described in **Exhibit B** attached hereto. Landlord hereby approves the Scope of Work. Any change to the Scope of Work shall be subject to Landlord's approval as set forth in this Lease.

(b) Tenant shall complete the construction of the Tower no later than twelve (12) months after the Commencement Date (the "**Construction Period**"). Tenant's failure to do so shall be deemed a material default under this Lease and Landlord may terminate this Lease due to an event of default as provided in Section 11.02 hereof.

(c) Tenant's sublessees and licensees shall not install nor construct any equipment, additions, alterations or improvements to, upon, or within the Facility or the Premises without Landlord's prior written consent. If the installation or construction is consistent with **Exhibit B**, Landlord's consent shall not be unreasonably conditioned, withheld or delayed; provided however, that all such installations and construction, and all equipment and improvements associated therewith, shall be at the sole expense of Tenant's sublessees and licensees and consistent with the Approvals, and any additional requirements specifically provided therefor herein, including, but not limited to, Section 5.03 (the "**Sub-Tenant Work**"). Any proposal that is not included in or consistent with the improvements and Facility described in **Exhibit B** shall require an amendment to this Lease, which amendment may be denied at Landlord's discretion. Tenant shall submit to Landlord, in writing, the specifications for all Sub-Tenant Work including a site plan and construction drawings. Landlord shall have thirty (30) days from its receipt of such submission, and all resubmissions, (each a "**Review Period**") to review the specifications for the proposed Sub-Tenant Work to reasonably determine its compliance with the terms of this Section 5.02. If, within any effective Review Period, Landlord reasonably determines that the Sub-Tenant Work fails to comply with the terms of this Section 5.02, Landlord shall, within such Review Period, provide Tenant with written notice of

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the material deficiencies supporting Landlord's determination, and Tenant shall arrange for its affected sublessee or licensee to, if it so elects, perform any work necessary to correct the deficiencies described therein and provide to Tenant a revision of the specifications for the Sub-Tenant Work for Tenant's resubmission to Landlord. If, within any effective Review Period, Landlord reasonably determines that the Sub-Tenant Work is in compliance with the terms of this Section 5.02, Landlord shall, within such Review Period, give Tenant written approval and acceptance of the Sub-Tenant Work. Any Sub-Tenant Work commenced that is not consistent with the Approvals shall be a material breach of this Lease. Consistent with Section 14.01 of this Lease, the approval process pursuant to this Section 5.02 is separate from the regulatory approvals of the City.

(d) Tenant shall, and shall require its sublessees and licensees to: (i) perform all Work in substantial compliance with the Scope of Work or approved Sub-Tenant Work, as applicable, and in a neat, safe and workmanlike manner consistent with generally accepted construction standards and in compliance with all applicable building codes; (ii) notify Landlord of any construction Work and coordinate such Work in such a way as to minimize, to the extent reasonably practical, any interference with Landlord's operations on the Property; (iii) obtain, prior to the commencement of any Work, all necessary federal, state and municipal permits, licenses and approvals, including but not limited to a building permit for the installation of the improvements for the Facility, furnish copies thereof to Landlord prior to commencement of any Work; and perform all Work in compliance with the same and with all applicable laws, statutes, codes, ordinances, orders, rules, regulations and standards ("**Laws**"); (iv) obtain, and cause any and all contractors and subcontractors to obtain, prior to commencement of any Work, the insurance required under Section 9.02 hereof, including specific requirements to name Landlord as additional insured under such policies, with appropriate endorsements making such policies primary and non-contributory to any insurance maintained by Landlord, and requiring such contractors and subcontractors to provide waivers of subrogation in favor of Landlord; (v) if determined by Landlord in its sole discretion that construction may involve environmental hazards, obtain and cause all contractors and subcontractors to obtain, prior to commencement of any Work, Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions insurance (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate (and for avoidance of doubt, such insurance shall be in addition to, and not in lieu of, the insurance required under Section 9.02 hereof); (vi) not permit any mechanics' or materialmen's liens to be attached to the Property; and (vii) cooperate and comply with the existing easements for access, utilities, maintenance, installation and repair on the Property.

(e) In no event shall Landlord's approval of the plans and specifications attached as Exhibits to this Lease, the Sub-Tenant Work, or of any other plans or specifications, if any, be deemed a representation that the Facility will not cause interference with other equipment or systems on the Property or that the plans or specifications of Tenant and its

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sublessees or licensees comply with applicable Laws; responsibility for such compliance will remain with Tenant and its sublessees and licensees.

(f) Tenant shall, at its sole cost and expense, repair, including any surface of, the Premises or the Property that are damaged by or during the installation, operation, maintenance, repair or replacement of the Facility, ordinary wear and tear excepted. If Tenant fails to repair or refinish any such damage after receipt of thirty (30) days written notice from Landlord, then Landlord may, in its reasonable discretion, repair or refinish such damage and Tenant shall reimburse Landlord for all reasonable costs and expenses incurred in such repair or refinishing within thirty (30) days of receipt of an invoice thereof.

(g) Tenant and its sublessees and licensees shall make no alterations, additions or improvements in or to the Premises except as shown on **Exhibit B**, any Approval, or any Sub-Tenant Work duly approved hereunder (collectively, "**Alterations**"), without Landlord's prior written consent.

(h) Tenant, and Tenant's sublessees and licensees, shall have the right, during the Term, at their expense, to install utilities (including, but not limited to, the installation of emergency back-up power) on the Property at locations set forth on **Exhibit B** or reasonably approved by Landlord, and to improve on the present utilities on the Property. Third party utility providers shall be entitled to install electric utilities and broadband facilities to service the Facility in the locations set forth in **Exhibit B** or as otherwise approved by Landlord.

(i) Tenant, and Tenant's sublessees and licensees shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of the Facility.

ARTICLE 6. USE, OPERATION AND MAINTENANCE OF THE FACILITY.

6.01 Use. Tenant and Tenant's sublessees and licensees shall only use the Premises for installing, constructing, maintaining, repairing, replacing, operating and removing the Facility, at their sole cost and expense, for receiving and transmitting wireless telecommunications signals including, but not limited to, cellular and PCS, and for such activities as may be related thereto. Tenant and Tenant's sublessees and licensees shall have access to the Facility for such purposes throughout the Term at all times, on foot or motor vehicle, including trucks, subject to the access provisions in Section 6.06 hereof. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Property, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises and shall keep the Premises in first class repair and appearance. Tenant acknowledges that the Property is operated as a municipal public works and corporation yard, but that such use may be altered over the Term of the Lease, with such future

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use being more public in nature, such as park, sports facility, or other public facility which may increase traffic and public visits significantly; provided, however, that no future use shall interfere with Tenant's right to use the Premises as provided herein.

6.02 Use Obligations. There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, age, handicaps, sex, marital status, sexual orientation, ancestry, or national origin in the use, occupancy, tenure, or enjoyment of the Premises or the improvements thereon, or any part thereof, and Tenant itself, or any person claiming under or through it, shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants or vendees of the Premises or the improvements thereon, or any part thereof.

6.03 Use Prohibitions. Tenant agrees that in connection with the use and operation of the Premises and the Facility it will not:

(a) Sublease all or any portion of the Premises, except as contemplated by and provided for under this Agreement (i.e. it may enter into leases with collocators on the Tower) and in the Approvals, without the express written consent of Landlord which may be withheld at Landlord's sole and absolute discretion; or

(b) Except as authorized or contemplated herein, cause or permit substantial and obnoxious odors to emanate or be dispelled from the improvements; or

(c) Permit undue accumulations of garbage, trash, rubbish, or any other refuse; or

(d) Create, cause, maintain, or permit any nuisance (as defined under applicable Law) in, on, or about the Premises; or

(e) Commit or suffer to be committed any waste (as defined under applicable Law) in, on, or about the Premises; or

(f) Knowingly use or allow the Premises to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument which affects the Premises and which is senior in priority to this Lease; or

(g) Violate any Law applicable to the Premises and the improvements thereon.

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6.04 Interference with Operation.

(a) Landlord, its employees, agents, tenants or occupants of the Property and contractors shall not adversely interfere with the operation of the Facility, including (without limitation) the frequency and "line of sight" requirements of the Facility. In such case, Landlord shall, upon receipt of written notice thereof from Tenant, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. Any such material and adverse interference to Tenant's operations shall be deemed a material default under this Lease and if such interference cannot be corrected by Landlord to the reasonable satisfaction of Tenant within the cure period set forth for such herein, Tenant may terminate this Lease due to an event of default as provided in Section 11.01 hereof and/or pursue any other remedies available to it under this Agreement or at law or in equity.

(b) Tenant's operation of the Facility shall not adversely interfere with the use or enjoyment of the Property by Landlord or tenants or licensees of Landlord or other tenants or occupants of the Property. If such interference shall occur, Tenant shall, upon receipt of written notice thereof from Landlord, immediately commence commercially reasonable, diligent efforts to correct or eliminate such interference. Any such material and adverse interference to Landlord's operations at the Property shall be deemed a material default under this Lease and if such interference cannot be corrected by Tenant to the reasonable satisfaction of Landlord within the cure period set forth for such herein, Landlord may terminate this Lease due to an event of default as provided in Section 11.02(c) hereof.

6.05 Maintenance. Tenant hereby covenants and agrees, at its sole cost and expense: (a) to keep and maintain the Facility in good and safe order and repair and proper operating condition at all times throughout the Term, and to promptly repair all damage to the Premises and the Property caused by Tenant, its agents, representatives, employees, contractors, subcontractors or invitees to Landlord's reasonable satisfaction, ordinary wear and tear excepted; and (b) to comply with any and all federal, state and municipal Laws and the Approvals applicable to the Facility.

6.06 Access. Landlord hereby covenants and agrees to provide Tenant and Tenant's sublessees and licensees reasonable access to the Property, generally upon 72 hours advance notice. Emergency work may be performed 24 hours a day, 7 days a week, 365 days a year without notice. Access for all non-emergency Work on the Facility shall be subject to any reasonable rules, regulations and standards, and any modifications thereof, that are necessary for the effective and efficient operations of Landlord's operations on the Property.

6.07 Subsequent Wireless Telecommunication Operators.

(a) Colocation. Landlord acknowledges the Facility can accommodate multiple wireless broadband or broadband-equivalent telecommunication operators (more

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particularly defined in Section 6.07(b) below), and that Tenant plans to divide, sublease, sublicense, apportion or otherwise piggyback or collocate multiple wireless telecommunication operators on the Facility or other parts of the Premises (each such event individually constituting a "**Broadband Colocation**") and shall have the right to do so without the consent of Landlord; provided however, that each Broadband Colocation is consistent with the Approvals and Tenant has obtained any approvals or permits required by the City of Piedmont. This Section 6.07 shall apply to each Broadband Colocation on the Facility. Tenant shall have no right to sublease any portion of its interest under this Lease except for a Broadband Colocation, as defined in this section, for which for which Rent for Colocation is paid to Landlord.

(b) Rent for Colocation. Commencing with the second Broadband Colocation and for each such colocation thereafter, on the Facility, Tenant shall pay to Landlord, as Rent for such colocation, a percentage (the "**Colocation Charge Percentage Rate**" defined in the schedule below) of the Sublease Rent (the "**Colocation Charge**"), in addition to the initial Rent set forth in Section 4.01:

<u>Order</u>	<u>Colocation Type</u>	<u>Colocation Charge Percentage Rate</u>
2 nd	Broadband Colocation	35%
3 rd & thereafter	Broadband Colocation	40%

"**Sublease Rent**" shall mean the amount of monthly rent Tenant receives from each such wireless telecommunications operator for a Broadband Colocation, excepting all fees and charges for reimbursement to Tenant of any costs of utilities or as otherwise provided in the sublease.

ARTICLE 7. OWNERSHIP OF FACILITY.

7.01 The Facility. The Facility, and all improvements and equipment associated therewith, shall remain the exclusive property of Tenant and Tenant shall have the right to replace or remove all or any portion of the Facility, and all improvements and equipment associated therewith. Landlord shall not be liable for damage, theft, misappropriation or loss of any of the Facility, except to the extent such is the result of any negligent act or omission of Landlord or its employees or agents.

7.02 Equipment, Chattel, Trade Fixtures. All articles of personal property, including all chattel and business and trade fixtures, machinery, equipment and movable partitions owned by Tenant or its subtenants, and which were installed by Tenant or its subtenants at their expense on the Premises, shall remain the property of Tenant or its subtenants, respectively, and may be replaced or removed by Tenant or its subtenants at any time during the Term, and upon the expiration or sooner termination, of this Lease. Tenant shall be responsible for the repair of any

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damage caused by such removal, except to the extent such is the result of any negligent act or omission of Landlord, its employees, tenants or occupants of the Property, and contractors, or their respective agents.

7.03 Tenant's Duty to Remove. At the expiration or sooner termination of the Term, Tenant shall remove from the Premises all fixtures and improvements, including without limitation the Facility, constructed or placed on the Premises by Tenant and shall return the Premises to the condition it was in prior to any construction pursuant to this Lease, reasonable wear and tear excepted. The cost of such removal shall be paid by Tenant. The duty imposed by this provision is limited to restoring the Premises, and those portions of the Property used in connection with the operation of the Facility by Tenant, to the same condition existing on the Commencement Date, reasonable wear and tear and casualty caused by Landlord excepted, including, but not limited to, the duty to demolish and remove all foundations to a depth of one foot below the ground level existing on the Commencement Date, fill all excavations, return the surface to grade and leave the Premises safe and free from debris and hazards; provided that, compliance with a demand for removal of less than all fixtures and improvements shall require Tenant to remedy only its willful and negligent injuries to the Premises, Property and remaining improvements or fixtures resulting from Tenant's satisfaction of said duty. The duty imposed by this Section 7.03 shall include an obligation to remove underground utilities, access roads, and landscaping, if any, unless Landlord consents in writing to leave such improvements in place. The duty(ies) imposed by this Section 7.03 shall survive the expiration or termination of this Lease and shall continue until the duty imposed by this Section 7.03 has been performed to the reasonable satisfaction of Landlord.

7.04 Performance and Removal Bond. Tenant shall provide a performance and removal bond in the amount of \$50,000, which is the reasonable estimated costs of removal of the Tower and related facilities, to guarantee Tenant's removal of the facilities at the end of the Term or upon an event of casualty. This amount shall be adjusted at each renewal of this Lease to a current reasonable estimated cost of removal of the Tower and related facilities at the time of renewal.

ARTICLE 8. TAXES AND ASSESSMENTS.

8.01 Personal Property Taxes. Tenant shall pay before delinquency all taxes, assessments, license fees, and other charges that are levied and assessed against Tenant's personal property installed or located in or on the Premises which become payable during the Term. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

8.02 Revenue & Taxation Code Section 107.6 Statement. Possessory Interest Tax. Tenant acknowledges that the interest under this Lease may be determined to create a property

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interest subject to taxation pursuant to Revenue & Taxation Code Section 107. If this Lease creates a possessory interest subject to property taxes under California law that is applicable to Tenant, then Tenant shall be responsible for the payment of such taxes.

8.03 Tenant's Tax Liability Prorated. Tenant's liability to pay any taxes shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the Term at its inception and expiration or earlier termination in accordance with this Lease.

8.04 Tax Contest. Tenant, at its cost, shall have the right at any time to seek a reduction in the assessed valuation of the Premises and the Property or to contest any taxes that are assessed against Tenant. If Tenant seeks a reduction or contests any taxes, the failure on Tenant's part to pay the taxes shall not constitute a default so long as Tenant complies with the provisions of this Section. Landlord shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of any law require that the proceeding or contest be brought by or in the name of Landlord or any owner of the Property. In that case Landlord shall join in the proceeding or contest or permit it to be brought in Landlord's name so long as Landlord is not required to bear any cost. Tenant, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered, together with all reasonable costs, charges, interest, and penalties incidental to the decision or judgment.

ARTICLE 9. INSURANCE AND INDEMNITY.

9.01 (a) Indemnity by Tenant. Tenant shall, during the Term hereof, indemnify, defend, protect and hold harmless Landlord against and from any and all claims arising from (i) Tenant's use of the Premises or the conduct of its business or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises, (ii) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or (iii) any act, neglect, fault or omission of Tenant, or of its agents or employees, or any party under Tenant's control, and Tenant shall further indemnify, defend, protect and hold harmless Landlord from and against all costs, attorneys' fees, consultants' fees, expenses and liabilities incurred in or about any such claims or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense. Tenant, as a material part of the consideration to Landlord, hereby voluntarily assumes all risk of damage to property or injury or death to persons in, upon or about the Premises from any cause whatsoever except that which is caused by Landlord's willful misconduct or negligent acts or omissions or failure to observe any of the terms and conditions of this Lease and such failure has persisted for an unreasonable period of time after written notice of such failure, and Tenant hereby waives all its claims in respect thereof against Landlord. The provisions of this Section 9.01 shall survive the termination of this Lease with respect to any damage, injury or death occurring prior to such termination.

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(b) Damage to Tenant's Property. Notwithstanding the provisions of Section 9.01(a) to the contrary, Landlord or its agents shall not be liable for any damage to property entrusted to employees of the City, nor for loss of or damage to any property by theft or otherwise, nor for any injury or damage to persons or property resulting from fire, explosion, falling metal, steam, contaminated air, gas, electricity, water or rain which may leak from or flow into any part of the Premises or from the breakage, leakage, obstruction or other defects in any pipes, appliances, sprinklers, wires, or plumbing works whether the damage or injury results from conditions arising upon the Premises or upon other portions of the Property or from other sources. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant or occupant of the Property, or of any employee, agent, contractor, licensee or invitee of any such tenant or occupant. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Premises or at the Property.

9.02 Insurance.

(a) General. Without limiting Tenant's indemnification of Landlord, Tenant shall provide and maintain at its own expense during the Term the programs of insurance described below, covering its operations hereunder.

(b) Specific Insurance Required.

(i) Tenant shall maintain property and casualty insurance in the amount of 100% of the replacement cost of Tenant's equipment and the Facility, as well as liability insurance, with a minimum limit of \$2,000,000 per occurrence. Such liability insurance shall be written on an occurrence, and not a claims made, basis. Tenant shall also provide and maintain in force worker's compensation insurance and employer's liability insurance with minimum limits of \$1,000,000 per occurrence. Tenant shall also provide Automobile Liability with a combined single limit of \$1,000,000 per accident. Evidence of insurance reasonably satisfactory to Landlord shall be provided to Landlord within ten (10) days after the mutual execution of this Lease. All insurance to be carried by Tenant shall be primary to, and not contributory with, any similar insurance carried by Landlord. Landlord's insurance shall be considered excess insurance only.

(ii) Any policy or policies of worker's compensation, fire, extended coverage or similar casualty insurance, which either party obtains in connection with the Premises, the Property or the Facility shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Each party hereto waives on behalf of itself and its insurers any claim it may have against the other party on account of property damage to its own property (even if caused by the negligent or intentional conduct of such party) if the damage is covered by any policy of insurance required to be provided hereunder.

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9.03 Review. The liability insurance requirements may be reviewed by Landlord and Tenant every five (5) years for the purpose of assessing the adequacy of (in consultation with their respective insurance advisors) the minimum limits of such insurance. Such minimum limits shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards. If the parties are unable to mutually agree upon such new limits within thirty (30) days of a written demand by one party upon the other, the determination of an independent insurance advisor selected by the parties' insurance advisors shall be binding upon the parties.

9.04 Proof of Coverage. All policies required hereunder shall be with companies having a Best's rating of not less than A:VII (and if Best's no longer exists, an equivalent rating). Executed copies of all policies of insurance or certificates thereof shall be delivered to Landlord. All insurance policies required by this Article 9 shall name Landlord as an additional insured. As often as any such policies shall expire or terminate, renewal or additional policies shall be procured and maintained in like manner and to like extent. All policies of insurance must contain a provision that the company writing such policy will give all parties thirty (30) days' advance written notice of any cancellation or lapse of the effective date or any reduction in the amounts of insurance. Nothing in this Article 9 shall prevent Tenant from carrying insurance of the kind required of Tenant under a blanket insurance policy or policies which cover other properties owned or operated by Tenant. Tenant shall provide Landlord with certificates of insurance naming Landlord as an additional insured and setting forth the required coverage.

9.05 Environmental Indemnity.

(a) Indemnity by Tenant. Tenant agrees, from and after the Commencement Date, to defend, indemnify, protect, and hold harmless Landlord and its officers, beneficiaries, employees, agents, attorneys, public officials, representatives, legal successors, volunteers, and assigns ("**Landlord Indemnitees**") from, regarding, and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein), and reasonable costs of any kind or nature whatsoever, together with reasonable fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration, and/or release of Hazardous Materials (as defined herein) by Tenant, its employees, contractors, agents, or affiliates, or by Tenant's sublessees, licensees, invitees or permittees, or their employees, contractors, agents or affiliates ("**Tenant Related Parties**") on or about the Property during the Term (sometimes herein collectively referred to as "**Contamination**"). Tenant's defense, indemnification, protection, and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim, or demand regarding the Contamination, at Tenant's sole cost.

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(b) Indemnity by Landlord. Landlord agrees, from and after the Commencement Date, to defend, indemnify, protect, and hold harmless Tenant and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors, and assigns ("**Tenant Indemnitees**") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions, claims, losses, damages, fines, penalties, member expenses, Environmental Response Costs, and reasonable costs of any kind or nature whatsoever, together with reasonable fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials, on or about the Property during Landlord's ownership of the Premises prior to the Commencement Date or caused by Landlord or its agents, contractors, or employees during the Term (sometimes herein collectively referred to as "**Other Contamination**"). Landlord's defense, indemnification, protection, and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim, or demand regarding the Other Contamination, at Landlord's sole cost.

(c) Definitions.

(i) As used in this Lease, the term "**Environmental Response Actions**" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state, or federal governmental or private party claims, including any claims by Tenant.

(ii) As used in this Lease, the term "**Environmental Response Costs**" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

(iii) As used in this Lease, the term "**Hazardous Materials**" means any substance, material, or waste which is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum or petroleum products; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. section 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq. (42 U.S.C. § 6903) or its implementing regulations; (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. § 9601);

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or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

(d) Materiality. The parties acknowledge and agree that the defense, indemnification, protection, and hold harmless obligations of each for the benefit of the other set forth in this Lease are a material element of the consideration to each party for the performance of their obligations under this Lease, and that the parties would not have entered into this Lease unless each party's obligations were as provided for herein.

(e) Survival. The provisions of this Section 9.05 shall survive the termination of this Lease.

ARTICLE 10. TRANSFERS.

10.01 Assignment by Tenant. Except for the collocation rights contained in Section 6.07 and the Permitted Transfers under Section 10.02 below, Tenant shall not in any way assign this Lease without the prior written consent of Landlord, which consent shall not be unreasonably conditioned, withheld or delayed. For purposes of this Section 10.01, the terms "assign" and "assignment" shall be deemed to include changes in control of Tenant. If Landlord consents to any assignment, that consent shall not constitute a waiver of any of the restrictions of this Section 10.01 and the same shall apply to each successive proposed assignment related to this Lease. Tenant shall promptly provide Landlord with all reasonably requested information regarding the assignment, including background and financial information on the proposed assignee. In no event shall Landlord's consent to an assignment affect the continuing duties and obligations of the Tenant under this Lease. Any assignment in violation of the terms of this Section 10.01, whether voluntary or involuntary, by operation of law, under legal process or proceedings, shall, at Landlord's option in its sole and absolute discretion, be voidable and shall be deemed to constitute an incurable default under this Lease. If Landlord shall consent to assignment, that assignment shall not be effective until the assignee shall execute, acknowledge and deliver to Landlord an agreement, in form and substance reasonably satisfactory to Landlord, whereby the assignee shall assume all of the obligations of Tenant under this Lease and the assignee shall agree that the provisions contained in this Lease. The assignment shall be duly executed, and a fully executed copy thereof shall be delivered to Landlord.

10.02 Permitted Transfers. Notwithstanding the provisions of Section 10.01 hereof, Tenant shall have the right, without Landlord's consent, to assign this Lease to any person that is:

- (a) Tenant's parent entity;
- (b) A wholly-owned subsidiary of Tenant;
- (c) The surviving entity of any merger or consolidation of Tenant;

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(d) The purchaser in one transaction of all or substantially all of Tenant's assets and/or outstanding ownership interest; provided, however, that Tenant shall promptly notify Landlord of any such transaction; and/or

(e) The purchaser of the Tower/Facility.

10.03 Transfer by Landlord. Landlord shall have the right to freely assign, encumber, sell, lease or otherwise enter into transactions involving the Property, or any portion thereof, and to assign Landlord's rights and obligations under this Lease; provided that any such transfer or assignment shall fully respect Tenant's rights under this Lease. Upon any conveyance of the Property (or any portion thereof) or an assignment by Landlord of this Lease, Landlord shall be entirely released from all liability under any and all of its covenants and obligations contained in or derived from this Lease, excepting any and all liabilities, duties and obligations of Landlord that arose prior to such conveyance or assignment. Tenant agrees to attorn to any transferee individual or entity purchasing or otherwise acquiring Landlord's interest in the Premises, and to recognize such party as the landlord under this Lease, under the terms and conditions set forth herein; provided that any assignment or transfer shall preserve Tenant's rights under the terms of this Lease. Landlord shall provide Tenant with written notice of any such assignment.

ARTICLE 11. TERMINATION RIGHTS, DEFAULTS AND REMEDIES.

11.01 Tenant's Right to Terminate.

(a) On Landlord's Default. Tenant has the option to (i) suspend the payment of Rent, or (ii) terminate this Lease upon written notice to Landlord if Landlord fails to observe or perform any of the express covenants or provisions of this Lease to be observed or performed by Landlord, which default shall not have been cured within thirty (30) days after Landlord receives written notice specifying such default from Tenant; provided, however, that if such default cannot be reasonably cured within such thirty (30) day period, Landlord shall have such additional period of time as is reasonably necessary to cure such default so long as Landlord has commenced and diligently pursues cure of such default. No such termination of this Lease shall prohibit Tenant from pursuing any remedies it may have against Landlord at law or in equity, nor shall Tenant be required to terminate this Lease prior to pursuing any legal or equitable remedies it may have against Landlord. Notwithstanding anything to the contrary in the foregoing, Tenant shall not have the option to suspend the payment of Rent, and shall be liable for Rent for all periods of time where Tenant remains in possession of the Premises, unless Landlord's default prevents Tenant from having possession or access to the Premises, or Tenant or its sublessees cannot use the Premises to operate a wireless telecommunications facility.

(b) In Other Circumstances. Without limiting Tenant's other rights or remedies under this Lease or applicable Law, provided Tenant is not in breach or default under this Lease, Tenant shall have the right to terminate this Lease and/or pursue any remedies

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available to Tenant at law or in equity upon not less than thirty (30) days' prior written notice to Landlord if any of the following events occur: (i) if Tenant reasonably and in good faith determines that the physical condition of the Premises is not appropriate for its operations for economic, technological or environmental reasons; (ii) the Facility, including operations thereof, become subject to material and adverse interference which cannot be corrected within a reasonable time following written notice to Landlord and the party whose operations or equipment is causing the interference; or (iii) any consent, permit, license or variance required for the operations of Tenant on the Property is not obtained, expires, or is revoked, unless any of the foregoing events is due to any fault on the part of Tenant. Notwithstanding the foregoing, Tenant shall use good faith efforts to obtain and maintain in full force and effect any and all such required consents, permits, licenses and variances.

11.02 Tenant's Defaults. The occurrence of any one or more of the following events shall constitute a default under this Lease by Tenant:

(a) The failure by Tenant to make any payment of Rent, or any other payment required to be made by Tenant hereunder, within ten (10) days after Tenant's receipt of written notice from Landlord that any such payment is overdue.

(b) Tenant assigns (whether or not such assignment is deemed to be effective) this Lease, or sells, transfers conveys, assigns or leases the whole or any part of the Premises or any improvement constructed thereon in violation of this Lease.

(c) Tenant's failure to complete construction of the Tower prior to the expiration of the Construction Period, subject to events of force majeure pursuant to Section 14.14.

(d) The failure by Tenant to observe or perform any of the express covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 11.02(a), (b) or (c) hereof, where such failure shall continue for a period of thirty (30) days after Tenant's receipt of written notice thereof from Landlord to Tenant, unless the failure cannot be reasonably cured within such thirty (30) day period, and Tenant shall have commenced the cure of such failure within such thirty (30) day period and is pursuing such cure with reasonable diligence. Notwithstanding the foregoing, if Landlord notifies Tenant in writing that a particular failure endangers persons or property, Tenant shall be in default unless Tenant promptly cures the failure.

(e) (i) The making by Tenant of any general assignment for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets

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located at the Property or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days.

11.03 Landlord's Right to Terminate. If any such default by Tenant is not cured within the applicable cure periods set forth herein, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. No such termination of this Lease shall prohibit Landlord from pursuing any remedies it may have against Tenant at law or in equity.

11.04 Remedies Cumulative. All rights, options and remedies of the parties contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and each party shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. No waiver of any default hereunder shall be implied from any acceptance of any payment due hereunder or any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated. Any such waiver must be in writing, and such express waiver shall not affect defaults other than as specified in the waiver. The consent or approval to or of any act requiring the non-defaulting party's consent or approval shall not be deemed to waive or render unnecessary such party's consent or approval to or of any subsequent similar acts by the defaulting party.

ARTICLE 12. MORTGAGEE PROTECTION.

12.01 Subordination. At the election of Landlord or any first mortgagee with a lien on the Property, Tenant agrees that this Lease shall be subject and subordinate at all times to such lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Property, or Landlord's interest or estate in the Property is specified as security; provided, however, every mortgage or security interest or otherwise shall, if any foreclosure or any conveyance under any security device or in lieu of foreclosure, recognize, in writing, the validity of this Lease and Tenant's rights to remain in occupancy and use of and have access to the Premises created thereunder, and shall not disturb Tenant's possession of the Property nor increase Tenant's obligations under this Lease nor diminish Tenant's rights thereunder, so long as Tenant is not in material default of this Lease beyond any applicable cure periods provided therefor. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such liens to this Lease in exchange for a valid non-disturbance agreement, recordable and in a commercially reasonable form. If any mortgage, deed of trust or other security device is foreclosed or any conveyance in lieu of foreclosure under any security device is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the tenant of the successor-in-interest to Landlord, and recognize such

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party as the landlord under this Lease, under the terms and conditions set forth herein. Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in a commercially reasonable form, any additional documents evidencing the priority or subordination of this Lease with respect to any such mortgage or deed of trust. If the Property is, upon the Effective Date or becomes at any time thereafter during the Term, covered by a mortgage or other security interest, Landlord shall immediately after this Lease is executed, and upon such subsequent dates of encumbrance thereafter, obtain and furnish to Tenant, a non-disturbance agreement for each such mortgage or security interest, recordable and in a commercially reasonable form.

12.02 Waiver of Landlord's Lien. Landlord acknowledges that Tenant has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of Tenant's interest in the Premises, including the Facility (the "**Collateral**"), with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Landlord: (a) waives any lien rights it may have concerning the Collateral; and (b) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment or distress for any payments due or to become due to Landlord from Tenant under this Lease.

12.03 Estoppel Certificates. The responding party shall, within fifteen (15) days following its receipt of written request by the requesting party, execute and deliver to the requesting party an estoppel certificate, in a commercially reasonable form submitted to it by the requesting party, certifying that this Lease is unmodified and in full force and effect or, if this Lease has been modified, attaching a copy of the modification and certifying that this Lease, as so modified, is in full force and effect and the date to which Rent and other payments due under this Lease are paid in advance, if any; acknowledging that there are not, to the best of the responding party's knowledge, any uncured defaults on the part of the requesting party or stating the nature of any uncured defaults; certifying the current Rent; and certifying to such other information as the requesting party may reasonably request.

ARTICLE 13. TERMINATION IN THE EVENT OF CASUALTY OR CONDEMNATION.

13.01 Casualty. If any damage to or destruction of the Premises or of the Facility located thereon and any improvements associated therewith, which, in Tenant's reasonable opinion, renders the Facility or the Premises unusable or inoperable or renders Tenant's continued use thereof impracticable, Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice to Landlord within thirty (30) days after such damage or destruction. If Tenant elects to terminate this Lease, Tenant shall, within a reasonable period after such termination, remove the damaged Facility thereon and any improvements associated therewith and restore the Property to its pre-Lease condition, less reasonable wear and tear. If Tenant elects to not so terminate this Lease, Tenant shall, within a reasonable period,

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make suitable repairs to the Facility, the Premises and any improvements serving the Premises necessitated by any such damage or destruction to the extent and only upon the receipt of any associated insurance proceeds and shall be entitled to use any and all such insurance proceeds to pay for such repairs. In no event shall Tenant be obligated to repair any casualty or other damage or destruction to the Facility and/or the Premises, whether or not covered by Tenant's casualty insurance, if any.

13.02 Condemnation. If a condemning authority takes all or a portion of the Premises which in Tenant's reasonable opinion is sufficient to render the Premises unsuitable for Tenant's intended purpose under this Lease, then this Lease shall terminate as of the date when possession is delivered to the condemning authority. All condemnation proceeds attributable to Tenant's leasehold interest, the Premises, the Facility and any improvements serving the Premises, shall belong solely to Tenant. Provided that Landlord's award for the Property and the Premises is not decreased by such action, Tenant may separately claim against the condemning authority for just compensation for the value of Tenant's moving expenses, prepaid Rent, business dislocation expenses and other losses or expenses as may be incurred. Sale of all or part of the Property by Landlord to a purchaser with the power of eminent domain, in the face of the exercise of its power of eminent domain, shall be treated as a taking by a condemning authority.

ARTICLE 14. MISCELLANEOUS.

14.01 City as Landlord. The City of Piedmont will exercise its regulatory and other municipal powers without regard to the fact that the City is the landlord under this Lease. Accordingly, the execution of this Lease and approval of any matters by Landlord shall not be deemed approval by the City in its municipal capacity, including issuance of building permits and other matters.

14.02 Holding Over. Tenant may only hold over after the expiration or earlier termination of the Term hereof with the express prior written consent of Landlord. Acceptance of Rent is not Landlord's consent to holdover. Without Landlord's express consent Tenant shall become a tenant at sufferance only at a rental rate equal to one hundred fifty percent (150%) of the Rent in effect upon the date of such expiration (prorated on a daily basis) together with one-twelfth of the other monetary sums (such as taxes, insurance, etc.) which are Tenant's obligations to pay under this Lease. Acceptance by Landlord of Rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. The foregoing provisions of this Paragraph 14.02 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease, Tenant shall indemnify, protect, defend and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender. Such indemnity shall survive the expiration of this Lease.

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14.03 Attorneys' Fees. If any action or arbitration is brought by either party hereto as against the other party hereto for the enforcement or declaration of any rights or remedies in or under this Lease or for the breach of any covenant or condition of this Lease, then and in that event the prevailing party shall be entitled to recover, and the other party agrees to pay, all reasonable fees and costs to be fixed by the court or arbitrator therein including, but not limited to, reasonable attorneys' fees.

14.04 Quiet Possession. Landlord agrees that Tenant, so long as Tenant is not in default after notice and time to cure under this Lease and is paying Rent and performing the covenants and conditions of this Lease, shall quietly have, hold and enjoy the Premises throughout the Term without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord; and Landlord warrants to Tenant that as of the Commencement Date, there were no existing tenancies on the Premises.

14.05 Notices.

(a) **"Notice"** means any notice, demand, request, or other communication or document to be provided under this Lease to a party to this Lease.

(b) The Notice shall be in writing and shall be given to the party at its address or telecopy number set forth below or such other address or telecopy number as the party may later specify for that purpose by Notice to the other party. Each Notice shall, for all purposes, be deemed given and received:

(i) If given by telecopy, when the telecopy is transmitted to the party's telecopy number specified below and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next business day if not confirmed during normal business hours;

(ii) If hand-delivered to a party against receipted copy, when the copy of Notice is receipted;

(iii) If given by a nationally-recognized and reputable overnight delivery service, the day on which the Notice is actually received by the party; or

(iv) If given by certified mail, return receipt requested, postage prepaid, the day on which the Notice is actually received by the party.

To Landlord: City of Piedmont
120 Vista Avenue
Piedmont, California 94611
Attention: City Administrator

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Facsimile: _____

With a Copy: Burke, Williams and Sorensen, LLP
1901 Harrison Street, Ste. 900
Oakland, CA 94612
Attention: Michelle Marchetta Kenyon,
Piedmont City Attorney
Facsimile: 510-839-9104

To Tenant: GST Capital Partners, LLC
330 Marshall Street, Suite 300
Shreveport, LA 71101
Telephone: (318) 614-3369
Facsimile: (866) 612-3369

With a copy: Brunini, Grantham, Grower & Hewes, PLLC
190 E. Capitol Street, Suite 100
Jackson, MS 39201
Attention: Ken Rogers
Telephone: (601) 960-6876
Facsimile: (601) 960-6902

(c) If any Notice is sent by telecopy, the transmitting party as a courtesy may send a duplicate copy of the Notice to the other party by regular mail. In all events, however, any Notice sent by telecopy transmission shall govern all matters dealing with delivery of the Notice, including the date on which the Notice is deemed to have been received by the other party.

(d) The provisions above governing the date on which a Notice is deemed to have been received by a party to this Lease shall mean and refer to the date on which a party to this Lease, and not its counsel or other recipient to which a copy of the Notice may be sent, is deemed to have received the Notice.

(e) If Notice is tendered under the provisions of this Lease and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date provided in this Lease. Notwithstanding the foregoing, any Notice given to either party in a manner other than that provided in this Lease that is actually received by the noticed party, shall be effective with respect to such party on receipt of the Notice.

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Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one above specified. Notices shall be effective when received.

14.06 Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions, or conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions, and conditions hereof.

14.07 Surrender. Upon the expiration or sooner termination of the Term of this Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord the Premises, and, subject to the provisions of Sections 7.03 and 7.04, and Article 13 hereof, the improvements then situated thereon.

14.08 Binding. Subject to the restrictions set forth herein regarding assignment of the leasehold estate, each of the terms, covenants, and conditions of this Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors, and assigns. Whenever in this Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors, and assigns of such parties, the same as if in every case expressed.

14.09 Landlord's Right to Enter the Premises. Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times, after giving Tenant one business day prior written notice, for any of the following purposes: (a) to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease; and (b) to do any necessary maintenance and to make any restoration to the Premises that Landlord has the right or obligation to perform and to do any act or thing necessary for the safety or preservation of the Premises if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street. Notwithstanding the foregoing, in the event of an emergency, Landlord may enter the Premises for the foregoing purposes without giving Tenant prior written notice.

Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises as provided in this Section other than those caused by Landlord's or its agents or contractors negligence or willful misconduct.

Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this Section; provided however, that Landlord's exercising of such rights does not materially affect Tenant's rights under this Lease.

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14.10 Disclaimer of Partnership. The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise.

14.11 Memorandum of Lease; Quitclaim. For purposes of providing constructive notice hereof, Landlord and Tenant hereby agree to execute a Memorandum of Lease Agreement delivered by Tenant to Landlord in form and substance reasonably satisfactory to Landlord, and Tenant shall, at its sole expense, have the same recorded in the Official Records of the County and State in which the Premises is located. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge, and deliver to Landlord within thirty (30) days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

14.12 Interpretation. The titles to the Sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

14.13 Covenants and Conditions. Each term and each provision, including, without limitation, the obligation for the payment of Rent, to be performed by Tenant or Landlord, as the case may be, shall be construed to be both a covenant and a condition of this Lease.

14.14 Force Majeure. If performance by a party of any portion of this Lease is made impossible by any prevention, delay, or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor, or materials or reasonable substitutes for those items; government actions; civil commotions; fire or other casualty; or other causes beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of that prevention, delay, or stoppage is excused.

14.15 Integration. This Lease and the exhibits and documents incorporated by reference, constitutes the entire agreement between the parties and there are no conditions, representations, or agreements regarding the matters covered by this Lease which are not expressed herein.

14.16 Modification. This Lease shall not be varied or modified in any way, except by an instrument in writing, executed by the parties hereto.

14.17 Mutual Consent. Wherever in this Lease the consent or approval of Landlord and/or Tenant is required, it is agreed that such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless otherwise specified herein.

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14.18 Governing Law. This Lease shall be governed by and construed according to the laws of the State of California applicable to agreements made and entirely performed therein. Venue in any action on this Agreement shall be in the courts of Alameda County, California.

14.19 Executing Authority. The parties hereto have full power and authority to enter into this Lease and complete their respective responsibilities and duties contemplated by this Lease.

14.20 Time. Time is of the essence with respect to each and every term and condition of this Agreement.

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TENANT:

GST Capital Partners, LLC, a Delaware limited liability company

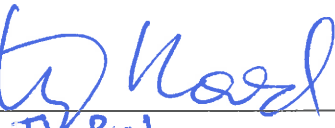
Dated: April 21, 2021

By: 
Name: John C. Bean
Title: President

LANDLORD:

City of Piedmont,
a California municipal corporation

Dated: June 16, 2021

By: 
Name: Tim Rood
Title: Vice Mayor

Attest: 
City Clerk

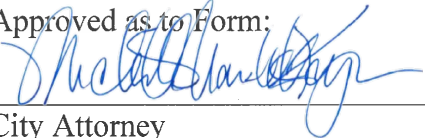
Approved as to Form: 
City Attorney

EXHIBIT A
PROPERTY DESCRIPTION

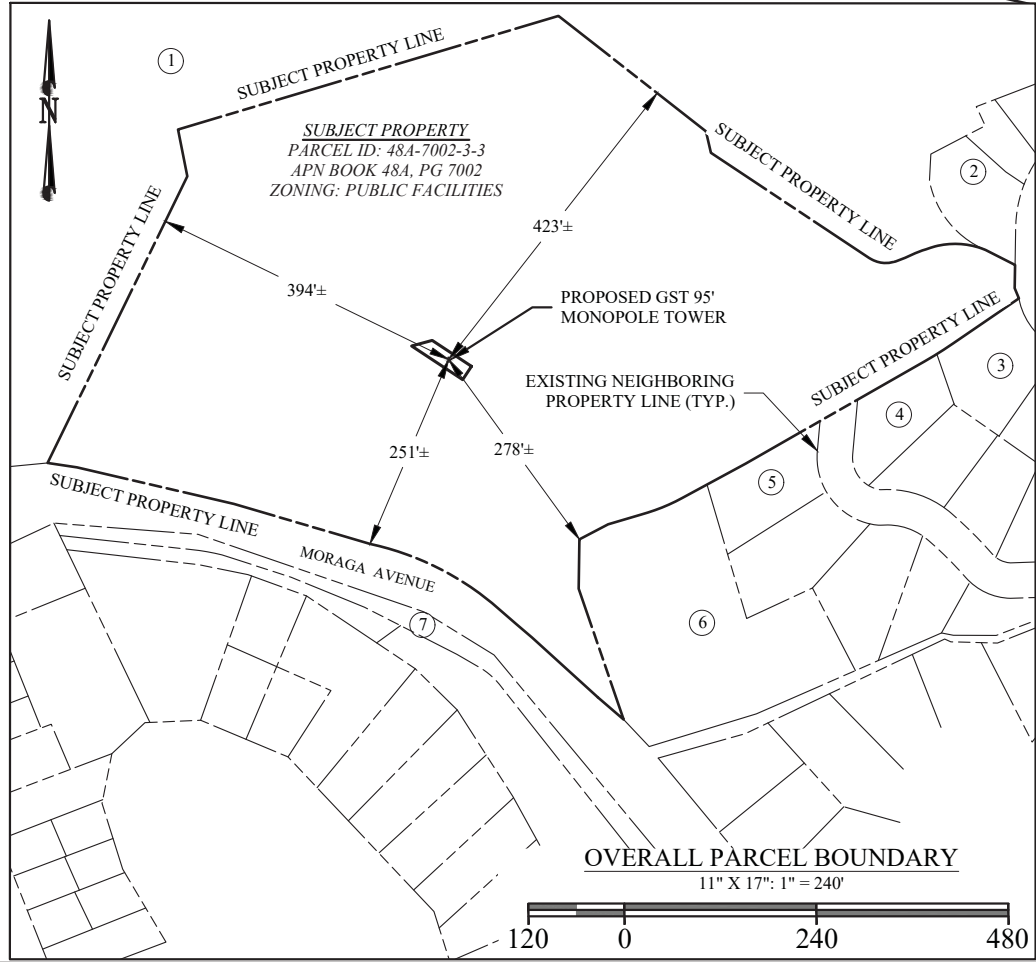
The land described herein is situated in the State of California, County of Alameda, City of Piedmont, and is described as follows:

An approximately 11.6 acre parcel of land located at 898 Red Rock Road, Piedmont, CA 94611 and operated as the City of Piedmont's Corporate Yard, all as shown on Exhibit B.

AERIAL IMAGE



SITE DATA TABLE	
PROJECT AREA:	0.030 ACRES (1,314 SF)
DISTURBED AREA:	0.020 ACRES (900 SF)
PARCEL AREA:	11.6 ACRES
ZONING:	PUBLIC FACILITIES (PF)
PROPOSED USE:	95-FT MONOPOLE TELECOMMUNICATIONS FACILITY
BUILDING FOOTPRINT:	N/A
PARKING REQUIRED:	N/A

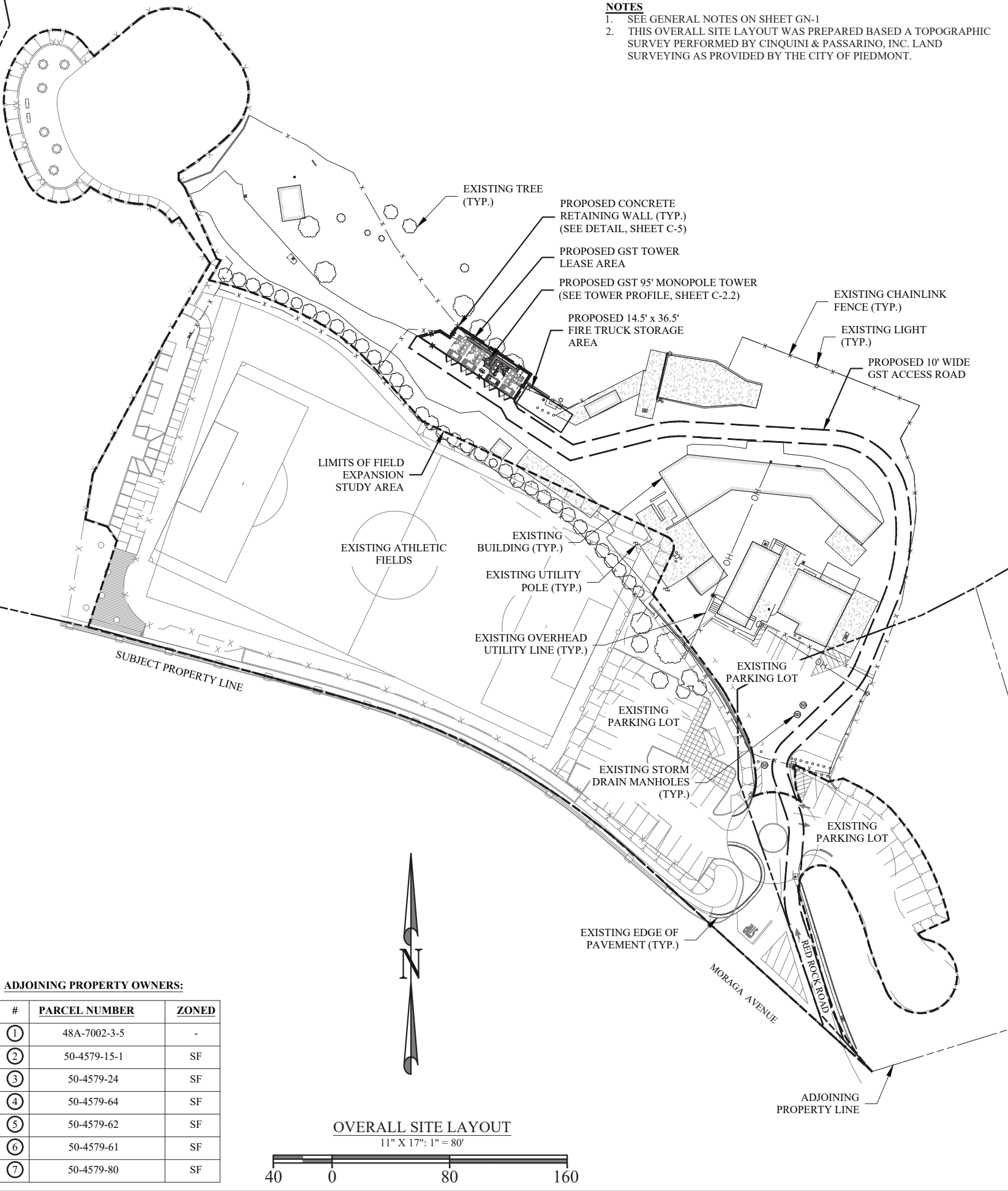


ADJOINING PROPERTY OWNERS:

#	PARCEL NUMBER	ZONED
①	48A-7002-3-5	-
②	50-4579-15-1	SF
③	50-4579-24	SF
④	50-4579-64	SF
⑤	50-4579-62	SF
⑥	50-4579-61	SF
⑦	50-4579-80	SF

NOTES

1. SEE GENERAL NOTES ON SHEET GN-1
2. THIS OVERALL SITE LAYOUT WAS PREPARED BASED A TOPOGRAPHIC SURVEY PERFORMED BY CINQUINI & PASSARINO, INC. LAND SURVEYING AS PROVIDED BY THE CITY OF PIEDMONT.



PREPARED FOR:



GST CAPITAL PARTNERS, LLC
330 MARSHALL STREET, STE 300
SHREVEPORT, LA 71101
PHONE: (318) 614-3369

PREPARED BY:



DELTA OAKS GROUP
4904 PROFESSIONAL COURT, 2ND FLOOR
RALEIGH, NC 27609
PHONE: (919) 342-8247

PRELIMINARY FOR
REVIEW ONLY

01/27/21

MICHAEL L. LASSITER, P.E.
CALIFORNIA LICENSE NO. C63329

DRAWN BY:	CH
CHECKED BY:	BJW
APP'VD:	WRB
PROJECT NO:	19-02396

SUBMITTALS

DATE	DESCRIPTION	REV	ISSUED BY
03/17/20	PRELIMINARY	0	BJW
06/26/20	PRELIMINARY	1	BJW
10/23/20	PRELIMINARY	2	BJW
11/02/20	PRELIMINARY	3	BJW
12/03/20	PRELIMINARY	4	BJW
01/07/21	PRELIMINARY	5	BJW
01/19/21	PRELIMINARY	6	BJW
01/26/21	PRELIMINARY	7	BJW
01/27/21	PRELIMINARY	8	BJW

THE INFORMATION CONTAINED IN THIS SET OF DOCUMENTS IS PROPRIETARY BY NATURE. REPRODUCTION OR CAUSING TO BE REPRODUCED THE WHOLE OR ANY PART OF THESE DRAWINGS WITHOUT THE PERMISSION OF THE DELTA OAKS GROUP, PLLC IS PROHIBITED.

SITE NAME:

CA-2016003 PIEDMONT
CORPORATE YARD

SITE ADDRESS:

898 RED ROCK ROAD
PIEDMONT, CA 94611

T-MOBILE SITE ID:

SF92372A

SHEET TITLE

OVERALL SITE LAYOUT

SHEET NUMBER

C-1.1

EXHIBIT B

PROJECT APPLICATION, SPECIFICATION AND LAND USE APPROVALS

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