Burney Water District

20222 HUDSON STREET, BURNEY, CA 96013 (530) 335-3582

RESOLUTION 2026-08

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BURNEY WATER DISTRICT DECLARING CERTAIN PROPERTY TO BE "EXEMPT SURPLUS LAND" PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 54221(f)(1)(N) FOR PURPOSES OF A WIRELESS FACILITY

WHEREAS, the Surplus Land Act ("SLA") (Gov. Code, §§ 54220 et seq.) and California Department of Housing and Community Development ("HCD") SLA Guidelines ("Guidelines") require that local agencies declare property as either "surplus land" or "exempt surplus land" prior to sale or lease ("Disposition") of the property owned by the local agency; and

WHEREAS, pursuant to California Government Code section 54221, subdivision (f)(1)(N) of the SLA, "exempt surplus land" includes real property that is used by a district for an agency's use expressly authorized in subdivision (c); and

WHEREAS, pursuant to California Government Code section 54221, subdivision (c) of the SLA, "agency use" includes land that is being used or is planned to be used by the Burney Water District (the "District") for agency work or operations, including but not limited to sites for broadband equipment or wireless facilities; and

WHEREAS, the District is the owner of approximately one (1) acre of land located in the County of Shasta, State of California, that is more particularly described as Assessor's Parcel Number 028-320-029 ("Property") and is identified by its legal description in **Exhibit A**, attached hereto and incorporated herein by this reference; and

WHEREAS, pursuant to Government Code section 54221(f)(2), the Property is not (i) within a coastal zone; (ii) adjacent to a historical unit of the State Park System, (iii) listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places; or (iv) within the Lake Tahoe region as defined in Government Code section 66905.5; and

WHEREAS, the District desires to enter into an Option and Lease Agreement with The Towers, LLC, once the form has been finally negotiated and approved by the Board, for purposes of providing the company an option to construct a wireless communications facility on an approximately 50' by 50' (totaling approximately 2,500 square feet) portion of the Property, which shall hereafter be referred to as the "Premises." The presently negotiated form of the Option and Lease Agreement is included at **Exhibit B,** attached hereto and incorporated herein by this reference; and

WHEREAS, the Option and Lease Agreement reserves for the District the right to utilize capacity within the wireless communications facility to directly support the District's operational communications, telemetry, Supervisory Control and Data Acquisition ("SCADA") broadband, and emergency response functions. Specifically, the wireless communications facility is planned to be used to (i) provide a more robust telemetry for the District's SCADA water and sewer systems, (ii) facilitate more reliable cellular and wireless service connections for District personnel while in the field, when responding to emergencies, and for communicating with the District office, and (iii) improve the ability of District personnel to control and remotely operate computer systems and equipment while in the field through wireless access; and

WHEREAS, the District reserves its right in the Option and Lease Agreement to utilize capacity within the wireless communications facility for District communications and/or broadband equipment, to support the District's SCADA operations, and future operational needs; and

WHEREAS, the Disposition of the Premises will directly further the express purpose of the District's work or operations by improving the District's wireless communications and operations and will provide an incidental benefit of generating revenue to support the District's ability to meet its ratepayers' needs; and

WHEREAS, this declaration of "exempt surplus land" does not obligate the Burney Water District to subsequently dispose of the Premises, and the District may in the future determine that it will not move forward with any Disposition of any specific property; and

WHEREAS, pursuant to the SLA and Guidelines, the District has sought guidance from HCD regarding the proposed Disposition of the Premises to The Towers, LLC under the Option and Lease Agreement, and as part of such guidance, on July 30, 2026, the District provided a draft of this Resolution to HCD for review. HCD by email transmittal dated August 31, 2026, stated that the District's draft resolution has the necessary information to be adopted and proceed with HCD's exemption review.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Directors of the Burney Water District as follows:

Section 1. The Board hereby finds and determines that all the above recitals are true and correct and are a substantive part of this Resolution.

Section 2. Based on the above recitals and its independent review, pursuant to California Government Code section 54221(c)(1), section 54221(c)(2)(B), and section

54221(f)(1)(N), the Board determines and declares that the Premises constitutes “exempt surplus land” and the Option and Lease Agreement furthers the District’s work and operations for the following reasons:

a) The lease and operation of a wireless communications facility is planned to upgrade and improve the District’s communications, operations, and ability to serve the community, and

b) The Option and Lease Agreement reserves rights that enable the District to utilize the wireless communications facility for District operations, and

c) An incidental benefit of the Disposition is generation of long-term needed revenue to fund essential programs and services for District ratepayers and the community, and

d) Use of the Premises for the proposed wireless communications facility is necessary and appropriate to improve District communications infrastructure and operational reliability, and

e) The Premises will remain devoted to public purposes through the District’s operational use of the communications infrastructure to support water and sewer system operations, SCADA, emergency response, telemetry, and future broadband needs.

Section 3. The Board finds that the Option and Lease Agreement secures legally enforceable rights allowing the District to use the communications facility for governmental operations throughout the term of the lease, subject only to customary engineering and operational requirements.

Section 4. The Board finds that the District retains ownership of the Property and grants only a limited leasehold interest in the Premises while continuing to use the Property for governmental purposes.

Section 5. The Board hereby authorizes the lease of the Premises to The Towers, LLC, pursuant to the final Option and Lease Agreement approved by the Board, and subject to HCD’s final exemption review and findings.

Section 6. Delegation. The Board further authorizes and directs the District General Manager or his designee, to execute the Option and Lease Agreement upon HCD’s final exemption review findings, and to do all things that are necessary to give effect to and comply with the terms and intent of this Resolution.

Section 7. Effect. This Resolution shall take effect immediately upon its passage.

Duly adopted by the Board of Directors of the Burney Water District on the 17th day of September, 2026 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

ATTEST: ________________________ ________________________________
Board Secretary Board President

EXHIBIT A

APN 028-320-029

A portion of the Northeast quarter of the Southwest quarter of Section 20, Township 35 North, Range 3 East, M.D.M., more particularly described as follows:

Beginning at a 6" x 6" concrete monument set at the center of Section 20, Township 35 North, Range 3 East, M.D.M, which is also the Southeast corner of Lot 7, Block 9 of Mt. Burney Subdivision Unit #2 and running on and along the East line of the Southwest quarter of said Section 20, South 0°41'05" East, 160.00 feet to a point marked by an iron pin; thence South 89°00'52'' West, 200.00 feet to a point marked by an iron pin; thence North 0'41'05" West, 80.00 feet to a point marked by an iron pin; thence South 89°00'52" West, 100.00 feet to a point marked by an iron pin; thence North 0°41'05" West, 80.00 feet to a point marked by an iron pin set on the North line of the Southwest quarter of said Section 20, which is also the Southwest, corner of Lot 14, Block 9 of Mt. Burney Subdivision Unit #2; thence running on and along said North line, North 89°00'52" East, 300.00 feet to the point of beginning and containing 0.918 acres, more or less.

All monuments referred to are marked R.E. 5438.

And

The following described Real Property in the State of California, County of Shasta

A portion of the Northeast one quarter of the Southwest one quarter of Section 20, T. 35N., R. 3E. M. D. M.

Commencing at a 6" x 6" concrete monument set at the center of section 20, T. 35 N. R3 E., M.D.M. which is also the Southeast corner of Lot 7 of Block 9, Mt. Burney Subdivision, Unit #2 and running thence on and along the East line of the Southwest one quarter of said section 20, S. 00 degrees 41' 05" E., 160 feet; thence running parallel to the North line of said Southwest one quarter S. 89 degrees 00' 52" W. 200 feet to the true point of beginning of this description, said point of beginning marked by an iron pin; thence continuing from said point of beginning, S. 89 degrees 00' 52" W. 100 feet to a point marked with an iron pin; thence. N. 00 degrees 41' 05" W. 80 feet to a point marked with an iron pin, thence N. 89 degrees 00' 52" E. 100 feet to a point marked with an iron pin; thence S. 00 Degrees 41' 05" E., 80 feet to the point of beginning, Containing 0.184 acres more or less.

All monuments refered to are marked R.E. 5438.

EXHIBIT B

[Option and Lease Agreement]

Lessor: Burney Water District ATTN: Stephanie McQuade 20222 Hudson Street Burney, CA 96013	**Lessee:** The Towers, LLC 22 W Atlantic Ave, Suite 310 Delray Beach, Florida 33444 Site #: US-CA-6126 Site Name: Burney & HWY 299

OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT (this "**Agreement**") is made this ____________ day of ___________________________, 2026 (the "**Effective Date**") by and between **Burney Water District**, a California special district ("**Lessor**"), whose address is 20222 Hudson Street Burney, CA 96013, and **The Towers, LLC**, a Delaware limited liability company, known in California as The Towers of California, LLC ("**Lessee**"), whose address is 22 W Atlantic Ave, Suite 310, Delray Beach, Florida 33444.

WHEREAS, Lessor owns certain real property located in the County of Shasta, in the State of California, that is more particularly described and/or depicted in **Exhibit 1** attached hereto (the "**Property**"); and,

WHEREAS, pursuant to Government Code § 54221, et seq. and California Water Code § 35604, a water district may for a valuable consideration lease, sell, or contract for the sale of any property of the water district whenever it may be necessary, advisable, or for the best interests of the district; and

WHEREAS, on [__________________], Lessor's Board of Directors adopted a Resolution declaring it is in the best interest of the Lessor to lease the Premises, as defined below, for purposes of constructing a cell phone tower on the Premises ("Resolution") and declaring the Premises as exempt surplus property under the California Surplus Land Act; and

WHEREAS, Lessee desires to lease from Lessor a certain portion of the Property measuring approximately 50' x 50' (approximately 2,500 square feet) and to obtain easements for a landscape buffer, utilities, and access, as applicable (collectively, the "**Premises**"), which Premises is more particularly described and/or depicted in **Exhibit 2** attached hereto, for the placement of Communications Facilities (defined below).

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

1. OPTION TO LEASE.

(a) As of the Effective Date, Lessor grants to Lessee the exclusive option to lease the Premises (the "**Option**") during the Option Period (defined below). At any time during the Option Period and Term (defined below), Lessee and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Lessee's sole discretion for its use of the Premises including, without limitation, applications for zoning variances, zoning ordinances, amendments, conditional or special use permits, construction permits and any other permits and approvals deemed necessary by Lessee or by any government agency for Lessee's

Communications Facilities or uses relating thereto during the Option Period (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, obtain a title report with respect to the Property, and otherwise to do those things on or off the Property that, in the opinion of Lessee, are necessary in Lessee's sole discretion to determine the physical condition of the Property, the environmental history of the Property, and the feasibility or suitability of the Property for Lessee's permitted use under this Agreement, all at Lessee's expense, and subject to Lessor's ongoing operations on the Property which shall not be unreasonably impaired. It is Lessee's obligation to apply for and obtain all of the Government Approvals that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests, environmental studies or any other due diligence Lessee chooses that will permit Lessee to utilize the Premises as Lessee intends to use it and Lessor agrees to reasonably cooperate with such applications, however Lessee expressly agrees to reimburse Lessor for any of its related costs that require Lessee's cooperation such as environmental studies and compliance under the California Environmental Quality Act. Lessee's ability to use and continue to use the Premises is contingent on Lessee's maintaining or obtaining all of the Government Approvals required. Lessee will not be liable to Lessor or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Lessee's Tests. Lessee will restore the Property to its condition as it existed prior to conducting any Tests, reasonable wear and tear and casualty not caused by Lessee excepted. In addition, Lessee shall indemnify, defend and hold Lessor and its Board of Directors, officers, employees, and agents harmless from and against any and all injury, loss, damage, costs, expenses, liens, stop payment notices or claims arising out of Lessee's Tests or Lessee's or its agents', engineers', surveyors', and other representatives' presences on the Property, including any actions challenging Lessor's approval or validity of this Lease, and/or the construction of the Communication Facilities hereunder. The provisions of this Section will survive the termination or expiration of this Agreement.

(b) In consideration of Lessor granting Lessee the Option, Lessee agrees to pay Lessor the sum of Seven Thousand Dollars ($7,000.00) within thirty (30) days of the full execution of this Agreement. The Option Period will be for an initial term of three (3) years from the Effective Date (the "**Option Period**").

(c) Lessee may exercise the Option at any time during the Option Period by delivery of written notice to Lessor (the "**Notice of Exercise of Option**"). The Notice of Exercise of Option shall set forth Lessee's preferred commencement date (the "**Commencement Date**") of the Initial Term (defined below). Lessor shall have the discretion to approve, which shall not be unreasonably withheld, the Commencement Date. If Lessor does not notify Lessee of its approval or rejection of the proposed Commencement Date within thirty (30) days of receipt, Lessee may consider the proposed Commencement Date approved. If the Lessor does not approve the Lessee's preferred commencement date, the Parties will act in good faith to determine a Commencement Date that is agreeable for both parties. The parties agree the Commencement Date will begin no later than the last day of the Option Period. If Lessee does not provide a Notice of Exercise of Option during the Option Period, this Agreement will terminate.

(d) During the Option Period or the Term, Lessor shall not take any action to change the zoning status or land use of the Property which would diminish, impair, or adversely affect the use of the Premises by Lessee for its permitted uses hereunder. Lessee acknowledges that Lessor has the right to develop the Property in its sole discretion, subject to Lessee's rights of access and use of the Communications Facilities as defined below.

2. TERM.

(a) Effective as of the Commencement Date, Lessor leases the Premises to Lessee subject to the terms and conditions of this Agreement for an initial term of five (5) years (the "**Initial Term**").

(b) Lessee shall have the option to extend the Initial Term for five (5) successive terms of five (5) years each and one (1) final term of four (4) years and eleven (11) months (each a "**Renewal Term**"), subject to the conditions herein. The first five (5) Renewal Terms shall commence automatically, unless Lessee delivers notice to Lessor, not less than thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, as applicable, of Lessee's intent not to renew. The remaining one (1) Renewal Term shall commence automatically, unless either party delivers notice to the other party, not less than thirty (30) days prior to the end of the then-current Renewal Term of the notifying Party's intent not to renew. For purposes of this Agreement, "**Term**" shall mean the Initial Term and any applicable Renewal Term(s).

3. RENT.

(a) Beginning on the Commencement Date ("**Rent Commencement Date**"), Lessee shall pay to Lessor a monthly rent payment of <u>One Thousand Five Hundred</u> Dollars ($<u>1,500.00</u>) ("**Rent**") at the address set forth in <u>Section 29</u> below, with the first month's rent to be prorated based on the applicable Commencement Date. Lessee will pay Lessor Rent on or before the fifth (5th) day of each calendar month in advance. The initial two payments of Rent will be forwarded by Lessee to Lessor within sixty (60) days after the Rent Commencement Date. Lessee will pay Lessor the Rent by check or by electronic funds transfer, as directed by the Lessor. Lessee acknowledges that late payment by Lessee to Lessor of the Rent due hereunder will cause Lessor to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Lessor does not receive any installment of Rent due from Lessee by 4:00 p.m. within ten (10) calendar days after that amount is due, Lessee shall pay to Lessor, as additional Rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount nor prevent Lessor from exercising any of its other rights and remedies granted hereunder or by law.

(b) Rent to increase (i) two and one-half percent (2.5%) per year on the first anniversary of the Rent Commencement Date, and on each annual anniversary of the Commencement Date throughout the Term of this Agreement.

(c) Lessor may install equipment on Lessee's Communication Facilities, as defined below, for Lessor's public agency, not for profit, purposes to provide public service and Lessor shall not be required to pay Lessee rent for Lessor's use of Lessee's Communication Facilities as provided herein; provided, however, the following are conditions for such installation by Lessor: (i) space on the communications towers structure must be available at the time of such installation, at a level on the tower structure not occupied by Lessee or another user and which will allow for installation and operation of Lessor's equipment without interference as further described herein; (ii) Lessor must submit plans and specifications in advance to Lessee for review and approval to determine any impact on the tower structure and Lessee's equipment, antennas or other improvements; (iii) Lessor's equipment, antennas, or other improvements will not cause interference with Lessee's equipment, antennas or other improvements or prevent Lessee's use of its facilities as permitted hereunder; and (iv) Lessor shall pay the costs for any modifications required to Lessee's tower structure to allow Lessor's installation of its equipment, antennas or other improvements on the antenna structure.

(d) Starting with the second (2^{nd}) Broadband Carrier, and each additional Broadband Carrier thereafter, Lessee's monthly Rent due hereunder shall increase by Two Hundred Dollars ($200.00) per month for each such additional Broadband Carrier (each a "**Revenue Share Fee**"), subject to the following terms and conditions. The applicable Revenue Share Fee shall commence on the first day of the month following the date that the second (2^{nd}) Broadband Carrier (and each additional Broadband Carrier thereafter) commences rental payments to Lessee under its respective sublease. The Revenue Share Fee shall only be due and payable in the event there are two (2) or more Broadband Carriers. If at any time subsequent to the addition of a second (2^{nd}) Broadband Carrier the number of Broadband Carriers is reduced to one (1) Broadband Carrier, then no Revenue Share Fee shall be due and payable. Notwithstanding anything to the contrary contained herein, the Revenue Share Fee shall only be due and payable by Lessee to Lessor hereunder during the term of such Broadband Carrier's sublease agreement and for so long as such Broadband Carrier is actually paying to Lessee the requisite rental set forth therein. For purposes herein, the term "**Broadband Carrier**" shall mean Verizon, AT&T, Dish, and T-Mobile and such similar national broadband carriers.

(e) Lessee acknowledges and agrees that the services provided under this Agreement may be subject to the prevailing wage requirements set forth in California Labor Code Sections 1720 et seq., 1770 et seq., and Title 8 of the California Code of Regulations. Lessee shall be solely responsible for determining the applicability of such laws and for full compliance therewith, including but not limited to the payment of prevailing wages, maintenance of certified payroll records, and registration with the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1725.5. Lessee shall defend, indemnify, and hold harmless Lessor from and against any and all claims, liabilities, penalties, interest, costs, and expenses (including attorneys' fees) arising out of or related to (i) Lessee's or its contractors' failure to comply with applicable prevailing wage laws; (ii) any determination by a governmental agency, or reviewing court or arbitrator, that the work performed constitutes a "public work" under California law; and (iii) any enforcement action or audit initiated by the DIR or other governmental authority.

4. TAXES. Lessee shall pay any personal property taxes or other taxes and charges assessed on, or attributable to the Communications Facilities, or any personal property of Lessees or its agents, contractors, guests, customers, lessees, sublessees, or assigns located on the Premises. shall pay when due all real property taxes and all other fees and assessments attributable to the Property and the Premises, if any. Lessee shall pay as additional rent any increase in real property taxes levied against the Premises, which are directly attributable to Lessee's use of the Premises if Lessor furnishes proof of such increase to Lessee (such increase, the "**Lessor Tax Reimbursement**"). In the event that Lessor fails to pay when due any taxes affecting the Premises, Lessee shall have the right, but not the obligation, to pay such taxes and any applicable interest, penalties or similar charges, and deduct the full amount of the taxes and such charges paid by Lessee on Lessor's behalf from future installments of Rent. Lessee will indemnify, defend, and hold Lessor harmless from any tax consequences related to Lessee's tax obligations set forth in this Agreement. Notwithstanding the foregoing, Lessee shall not have the obligation to pay any tax, assessment, or charge that Lessee is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed, provided that no lien attaches to the Property. In addition, Lessee shall not have the obligation to pay or reimburse Lessor for the Lessor Tax Reimbursement if Lessor has not provided proof of such amount and demand therefor within two (2) years of the date such amount is due and payable by Lessor.

5. USE AND CONSTRUCTION.

(a) **Use.** The Premises are being leased for the purpose of erecting, installing, operating, maintaining, repairing and replacing radio or communications towers, transmitting and receiving equipment, antennas, dishes, satellite dishes, mounting structures, equipment shelters and buildings, solar energy conversion and electrical power generation system, fencing and other supporting structures and related equipment (collectively, the "**Communications Facilities**"), and to alter, supplement and/or modify same. Lessee shall not use the Premises for any other purposes without the prior written consent of the Lessor.

(b) **Construction of Communication Facilities**. Except as set forth in this Agreement, or as otherwise agreed to by the parties, on and after the Commencement Date Lessee may, subject to the foregoing, make any improvements, alterations or modifications to the Premises as are deemed appropriate by Lessee solely for the permitted use herein. Lessee shall have the right to clear the Premises of any trees, vegetation, or undergrowth which interferes with the use of the Premises for the intended purposes by Lessee and/or its sublessees and licensees, as applicable. Lessee shall have the exclusive right to install and construct, and operate, the Communications Facilities upon the Premises. Lessee agrees it is solely responsible for all costs, expenses, and liabilities related to the design, construction, installation, improvements, maintenance, or alterations of the Communication Facilities, including, but not limited to, costs related to construction of the radio or communications tower, other structures or shelters, utilities and utility facilities, connections, fencing, permits, fees, inspectors and inspections, approvals, and all other related items and costs. Lessee will not begin or perform construction, installations, improvements, modifications or alternations on the Premises without Lessor's prior written approval of Lessee's proposed construction documents, design, and anticipated schedule, which shall not be unreasonably withheld, conditioned, or delayed. If the Communication Facilities are constructed with concealment elements, additions to and modifications of the Communication Facilities may not materially defeat the concealment elements without the express written consent of Lessor, which consent shall not be unreasonable withheld, conditioned, or delayed. Lessee shall, at its own expenses, obtain all necessary environmental and other governmental approvals and permits, including all Government Approvals prior to commencing construction. Lessee acknowledges and agrees that it must comply and shall ensure its contractors comply with all applicable laws, statutes, and regulations related to construction on a public agency's property, including, but not limited to, complying with all contractor licensing laws, applicable California prompt pay requirements, California public works requirements applicable to the District as a local public agency, and applicable prevailing wage and Department of Industrial Relations registration requirements. Lessee will not permit any liens or stop payment notices to be put against the Lessor's Property or the Project, will immediately seek the discharge of those encumbrances, and will indemnify, defend, and hold the Lessor harmless from any liens, stop payment notices, or other claims, demands, and liabilities arising from construction, regulatory approval, or maintenance of Lessee's improvements. Lessee is solely responsible for maintaining in good condition the Premises and the Communication Facilities installed thereon during the Term of this Agreement and for compliance with all applicable laws, ordinances, rules and regulations. The provisions of this Section will survive the termination or expiration of this Agreement.

(c) **Performance and Payment Bonds.** Lessee shall not commence construction of the Communication Facilities until it furnishes the Lessor, at Lessee's sole expense, the following bonds issued by a California admitted surety for the construction of the Communication Facilities:

(i) Performance Bond: A bond in an amount at least equal one hundred percent (100%) of the cost of construction of the Communication Facilities as security for the faithful performance of this construction and this Agreement, in a form acceptable to Landlord.

(ii) Payment Bond: A bond in an amount at least equal one hundred percent (100%) of the cost of construction of the Communication Facilities as security for payment of persons or entities performing labor or furnishing materials in connection with the construction of the Communication Facilities and this Agreement, in a form acceptable to Lessor.

(d) **Builder's Risk Insurance; Builder's Risk "All-Risk" Insurance**. Lessee shall procure and maintain, during all times of construction of the Communication Facilities, Builder's Risk (Course of Construction), or similar first party property coverage acceptable to the Lessor, issued on a replacement cost value basis. The minimum coverage limit shall be the full insurable value of the Communication Facilities with seismic coverage. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, seismic damage, collapse, wind, fire, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the architect's and engineering services and expenses required as a result of any insured loss upon the Communication Facilities. Lessee and any contractor or subcontractor working on construction of the Communication Facilities must obtain this policy and all certificates and insurance policies of Lessee and its contractors and subcontractors must contain endorsements stating Burney Water District and its directors, officers, employees, consultants and volunteers are named Additional Insureds under the policy and endorsements to the policy must waive subrogation rights against the Additional Insureds.

6. ACCESS AND UTILITIES.

(a) During the Term, and except as set forth in this Agreement, Lessee and its sublessees, licensees and assigns shall have the exclusive right to use, and shall have free and unfettered access to, the Premises seven (7) days a week, twenty-four (24) hours a day. Lessor for itself, its successors and assigns, agrees to grant and convey unto Lessee, its customers, employees, agents, invitees, sublessees, licensees, successors and assigns a non-exclusive access easement on or before the Commencement Date, to apply throughout the Term to a public right of way, in substantially the same form as described and depicted in Exhibit B (a) for ingress and egress, and (b) subject to the terms and conditions of Section 5(b) of this Agreement, for the construction, installation, operation, maintenance, repair and replacement of overhead and underground electric and other utility facilities (including fiber, backhaul, wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement for the benefit of the Premises, subject to the terms and conditions herein set forth. At Lessee's sole cost and expense, Lessee shall obtain any and all utility services necessary to serve the Communication Facilities. Additionally, at Lessee's sole cost and expense, Lessee shall obtain from the applicable utility provider a separate meter for the Communication Facilities and Lessee shall solely be responsible for payment of all utility service bills related to that meter and the Communication Facilities. If there are utilities already existing on the Premises which serve the Premises, Lessee may utilize such utilities and services, subject to its agreement to pay all utility service bills related to the Communication Facilities. The rights granted to Lessee herein shall also include the right to partially assign its rights hereunder to any public or private utility company or authority to facilitate the uses contemplated herein, and all other rights and privileges reasonably necessary for Lessee's safe and efficient use and enjoyment of the easements for the purposes described above and only for the Term, after receiving the Lessor's prior written consent, which will not be unreasonably withheld. Upon Lessee's request, Lessor's staff agrees to take recommendations to the Board for its approval to execute and deliver to Lessee requisite recordable documents evidencing the easements contemplated hereunder within a reasonable time of Lessee's request, and Lessor shall obtain the consent and joinder of Lessor's mortgagee to any such grant, if applicable. Lessor shall not be obligated to execute and deliver to Lessee any recordable documents that are inconsistent with its obligations as a public agency under state or federal law. Lessor grants to Lessee the right to receive utility services including, but not limited to electric facilities, appurtenances and associated equipment, and the right for the utility service supplier to excavate for, construct, reconstruct, replace (of initial or any other size), remove, maintain, inspect and use said utility facilities to serve Communication Facilities, together with the right for the utility service supplier to ingress and egress from said utility facilities across the Premises. Lessor grants the right for the utility service supplier to trim or cut down any trees or brush within five (5) feet for U/G and sixteen (16) feet for O/H on each side of the centerline of said utility facilities. In addition, Lessor shall not erect or construct any building or other structure, or drill or operate any well within five (5) feet for U/G and sixteen (16) feet for O/H of each side of the centerline of said utility facilities.

(b) Upon at least forty-eight (48) hours' prior written notice, including electronic mail, to Lessee, Lessor shall have the right to enter the Premises at reasonable times for the purpose of determining whether Lessee or any sublessees are complying with the terms of this Agreement, but shall not access or interfere with any sublessee equipment, and to access, maintain, repair, or add to any of Lessor's equipment and related appurtenances contained therein pursuant to the terms of this Agreement. All communication regarding access to the Premises will be directed to Lessee and not to any sublessee.

7. EQUIPMENT, FIXTURES AND REMOVAL. The Communications Facilities shall at all times be the personal property of Lessee and/or its sublessees and licensees, as applicable. The Communication Facilities shall not be deemed to be part of the Premises, but shall remain the property of Lessee or its customers, sublessees or licensees. Unless otherwise agreed to in writing by the Lessor, within ninety (90) days after the expiration or earlier termination of this Agreement (the "**Removal Period**"), Lessee, customers, sublessees or licensees shall remove its improvements and personal property and restore the Premises to grade and perform all obligations under this Agreement during the Removal Period, including, without limitation, the payment of Rent at the rate in effect upon the expiration or termination of this Agreement. If Lessee fails to remove its improvements and personal property within the Removal Period, Lessee shall pay Lessor all expenses incurred by Lessor in removing, storing, or disposing of such improvements and property. Lessor may retain, use, or destroy such improvements and property still on the Premises after the Removal Period.

8. ASSIGNMENT AND SUBLEASE. Lessee may transfer or assign this Agreement to Lessee's lender, principal, affiliates, subsidiaries, subsidiaries of its principal or to any entity which acquires all of or substantially all of Lessee's assets or ownership interests ("Permitted Assignee") by reasons of merger, acquisition or other business reorganization without Lessor's consent (a "**Permitted Assignment**") upon providing written notice to the Lessor and so long as such Permitted Assignee agrees to become subject to all obligations and terms of this Agreement. As to transfers or assignments which do not constitute a Permitted Assignment, Lessee is required to obtain Lessor's written consent prior to effecting such transfer or assignment, which consent shall not be unreasonably withheld, conditioned or delayed. Upon such assignment, including a Permitted Assignment, Lessee will be relieved and released of all obligations and liabilities hereunder so long as it provides written evidence to Lessor of Permitted Assignees' written acceptance of the assignment and to be bound by the obligations and terms imposed herein. Lessee shall have the exclusive right to sublease or grant licenses without Lessor's consent to use all or part of the Premises and/or the Communications Facilities, but no such sublease or license shall relieve or release Lessee from its obligations under this Agreement. Lessee agrees it will, upon Lessor's request, send the Lessor copies of any and all sublease or license or use agreement permitting others to use the Premises (excluding any confidential master lease agreements). Lessor may assign this Agreement only in its entirety and only to any person or entity who or which acquires fee title to the Property, unless otherwise agreed by Lessee. Landlord may subdivide the Property without Lessee's prior written consent provided the resulting parcels from such subdivision are required to afford Lessee the protections set forth in Section 14 hereof.

9. COVENANTS, WARRANTIES AND REPRESENTATIONS.

(a) Lessor warrants and represents that it is the owner of the Property and that it alone has full right to lease the Premises for the Term.

(b) [Reserved]

(c) Lessee agrees to comply with all applicable local, state, and federal laws, ordinances, rules, regulations, and requirements related to the construction, installation, maintenance, and operation of the Communication Facilities, including meeting or exceeding all safety requirements for cell site towers and the Communication Facilities as set forth by the Federal Communications Commission, Occupational Safety and Health Administration, and other government agencies. Lessee shall indemnify, defend and hold Lessor and its Board of Directors, officers, employees, and agents harmless from and against any and all injury, loss, liability, damage, costs, expenses, or claims, including any health, safety, or medical related claim, arising out of or related to the construction or operation of the Communication Facilities. The provisions of this Section will survive the termination or expiration of this Agreement.

(d) Lessor shall not knowingly do or knowingly permit anything that will interfere with or negate any permit or approval pertaining to the Premises or knowingly cause Lessee's use of the Premises to be in nonconformance with applicable local, state, or federal laws. Lessor shall reasonably cooperate with Lessee in any effort by Lessee to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. Lessor agrees to execute any necessary applications, consents or other documents as may be reasonably necessary for Lessee to apply for and obtain the Government Approvals required to use and maintain the Premises and the Communications Facilities.

(e) Lessee represents, warrants, and agrees that it will not use, generate, store, or dispose of any Hazardous Materials, as defined herein, on, under, about, or within the Premises or Property in violation of any law or regulation or allow any agent or third party to do so. "Hazardous Materials" means asbestos, any substance known to the state of California to cause cancer or reproductive toxicity, or any substance, chemical, or waste that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. Lessee will indemnify, defend, and hold Lessor harmless against any and all losses, liabilities, claims, or costs, including reasonable attorneys' fees and costs, arising from any breach of any representation, warranty, or agreement contained in this Section. The provisions of this Section will survive the termination or expiration of this Agreement.

(f) To the best of Lessor's knowledge, Lessor has complied and shall comply with all laws with respect to the Premises. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Premises by Lessor or, to the knowledge of Lessor, by any prior owner or user of the Premises. There has been no release of or contamination by hazardous materials on the Premises by Lessor, or to the knowledge of Lessor, any prior owner or user of the Premises.

(g) Lessee shall have access to all utilities required for the operation of Lessee's improvements on the Premises that are existing on the Property. In the event the Lessor's utilities increase by more than ten percent (10%) during the operation of Lessee's improvements, Lessor reserves the right to bill the Lessee for any increase in its utilities. Lessee shall issue payment to the Lessor within thirty (30) days of receipt of such invoice.

(h) Lessor warrants and represents that there currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Premises; there are no outstanding options or rights of first refusal to purchase the Premises or any portion thereof or interest therein, or any equity or interest in Lessor if Lessor is an entity; and there are no parties (other than Lessor) in possession of the Premises except as to those that may have been disclosed to Lessee in writing prior to the execution hereof.

10. HOLD OVER TENANCY. Lessee has no right to retain possession in the Premises after the expiration or termination of this Agreement. Should Lessee or any assignee, sublessee or licensee of Lessee hold over the Premises or any part thereof after the expiration of this Agreement, Lessor may agree at that time that such holdover shall constitute and be construed as a tenancy from month-to-month only, and Lessee or its assignee, sublessee, or licensee shall pay one hundred and fifty percent (150%) the amount of Rent at the time of the hold over, but otherwise upon the same terms and conditions.

11. INDEMNITIES. Each party and/or any successor and/or assignees thereof, agrees to indemnify, defend and hold harmless the other party, its parent company or other affiliates, successors, assigns, officers, directors, shareholders, managers, members, agents and employees (collectively, "**Indemnified Persons**") from and against all claims, actions, judgments, damages, liabilities, losses, expenses and costs (including, without limitation, reasonable attorneys' fees and court costs) (collectively, "**Losses**") to the extent caused by or arising out of (a) such party's breach of any of its obligations, covenants, representations or warranties contained herein, or (b) such party's acts or omissions with regard to this Agreement; provided, however, in no event shall a party indemnify the other party for any such Losses to the extent arising from the negligence or willful misconduct of the party seeking indemnification. Lessee agrees that such indemnification extends to its obligation to indemnify Lessor from actions and omissions relating to Lessee's subleases, subcontracts, guests and invitees. However, in the event of an Indemnified Person's contributory negligence or other fault, the Indemnified Person shall not be indemnified hereunder to the extent that the Indemnified Person's negligence or other fault caused such Losses. Should any lien or charge attach to the Property, Lessee shall promptly procure the release of any such lien or charge. Lessee will indemnify Lessor from and against any stop payment notices or liens of contractors and subcontractors engaged by or through Lessee. The provisions of this Section will survive the termination or expiration of this Agreement.

12. WAIVERS.

(a) EXCEPT FOR INDEMNIFICATION AND INSURANCE OBLIGATIONS, EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

13. INSURANCE. At all times during the Option Period and the Term of this Agreement Lessee will have and maintain in force and effect insurance with the minimum indicated limits, as follows:

(a) Commercial General Liability Insurance: Lessee shall maintain Commercial General Liability Insurance that shall protect Lessee and Lessor from all claims of bodily injury, property damage, personal injury, death, discrimination, harassment, products liability, liability for slander, false arrest, invasion of privacy, medical payments, and other injury arising from any portion of Lessee's or its agents, contractors, guests, customers, lessees, sublessees, or assigns use of the Property, with a single combined limit of one million dollars ($1,000,000.00) per occurrence and aggregate of two million dollars ($2,000,000.00).

(b) Automobile Liability Insurance: Automobile Liability Insurance that provides not less than one million dollars ($1,000,000.00) per occurrence applicable to all owned, non-owned, and hired vehicles.

(c) Workers' Compensation and Employers' Liability Insurance. In accordance with provisions of Section 3700 of the California Labor Code, Lessee shall be required to secure workers' compensation coverage for its employees in the amount required by law. Lessee shall maintain required Employers' Liability Insurance with limits of not less than one million dollars ($1,000,000.00) per occurrence (accident) and one million dollars ($1,000,000.00) per employee (disease).

(d) Commercial Umbrella Liability Coverage: Lessee must provide commercial umbrella liability coverage with limits not less than two million dollars ($2,000,000) in excess of Lessee's primary Commercial General Liability, Automobile Liability, and Employer's Liability Insurance.

(e) Professional Liability Insurance. Lessee must provide professional liability insurance specific to the construction of the Communication Facilities with limits not less than one million dollars ($1,000,000) for each claim and two million dollars ($2,000,000) aggregate, and also generally wit with limits not less than two million dollars ($2,000,000) for each claim and two million dollars ($2,000,000) aggregate

(f) Lessee shall not access the Premises or commence any work under this Agreement, during the Option Period and the Term, until all required insurance has been obtained and copies of policies and endorsements indicating the required coverages have been delivered in duplicate to the Lessor and approved by the Lessor. Certificates and insurance policies shall not be cancelled or reduced without thirty (30) days' notice to the Lessor and must contain endorsements stating Burney Water District and its trustees, directors, officers, employees, consultants and volunteers are named Additional Insureds under all policies except Workers' Compensation, Employer's Liability Insurance, and Professional Liability Insurance. Endorsements to the policies must waive subrogation rights against the Additional Insureds. Lessee agrees that its insurance policies will be primary to any insurance or self-insurance maintained by the Lessor. Lessee is solely responsible for the payment of or costs associated with any premiums, deductibles or self-insurance retentions. Coverage must be "occurrence-based," not "claims made." Lessee's insurance coverage shall not limit Lessee's potential liabilities for obligations arising under or related to this Agreement. Lessee will ensure insurance is placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Lessor. Lessee shall require that any assignee, sublessee or licensee of Lessee obtain the minimum insurance coverages required of this Section Coverage shall apply not only to the Premises, but also shall cover ingress and egress over the Property and claims caused by Lessee on Property while leasing Premises.

14. INTERFERENCE.

(a) During the Option Period and the Term, Lessor, its successors and assigns, will not grant any ground lease, license, or easement with respect to the Premises (other than as set forth in this Agreement): (a) for any of the uses contemplated in Section 5(a) herein; or (b) if such lease, license, or easement would detrimentally impact the Communications Facilities, or the use thereof. Lessor shall not cause or permit the construction of communications or broadcast towers or structures, fiber optic backhaul facilities, or satellite facilities on the property of Lessor adjacent or contiguous to or in the immediate vicinity of the Property, except for the Communications Facilities constructed by Lessee. Lessor and Lessee intend by this Agreement for Lessee (and persons deriving rights by, through, or under Lessee) to be the sole parties to market, use, or sublease any portion of the Premises for communications facilities during the Option Period and the Term. Lessor agrees that this restriction on the use of the Premises is commercially reasonable, not an undue burden on Lessor, not injurious to the public interest, and shall be specifically enforceable by Lessee (and persons deriving rights by, through or under Lessee) in a court of competent jurisdiction, unless these restrictions are invalid as a matter of law. The foregoing restriction shall run with the land until the termination or expiration of this Agreement and be binding on the successors and assigns of Lessor.

(b) Lessee agrees to install Communication Facilities of the type and frequency which will not cause harmful electrical interference which is measurable in accordance with then existing industry standards for any equipment operating within manufacture's specifications and used by Lessee. In the event any of Lessee's Communication Facilities causes such interference, and after Lessor has notified Lessee in writing of such interference, Lessee will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Lessee's option, powering down such Communication Facilities and later powering up such Communication Facilities for intermittent testing. Lessee agrees that Lessee and of all of its successors, assignees, sublessees or licensees will be permitted to install and use only such equipment and Communication Facilities that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards for the then existing equipment or Communication Facilities of Lessee.

15. RESERVED

16. SECURITY. The parties recognize and agree that Lessee shall have the obligation to safeguard and protect its improvements located upon or within the Premises. Consequently, Lessee may elect, at its expense, and subject to the terms and conditions of Section 5(b) of this Agreement, to construct such enclosures or fences as Lessee reasonably determines to be necessary to secure the Communications Facilities. Lessee may also undertake any other appropriate means to restrict access to the Communications Facilities including, without limitation, if applicable, installing security systems, locks and posting signs for security purposes and as may otherwise be required by law.

17. FORCE MAJEURE. The time for performance by Lessor or Lessee of any term, provision, or covenant of this Agreement, except by payment of Rent or Share Fee by Lessee, shall be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, pandemics, material or labor restrictions by governmental authority, government shutdowns, quarantines, and/or other disease control measures and any other cause not within the control of Lessor or Lessee, as the case may be.

18. CONDEMNATION; CASUALTY.

(a) In the event Lessor receives any notice of any condemnation proceedings, or other proceedings in the nature of eminent domain related to the Property or the Premises, it will forthwith send a copy of such notice to Lessee. If all or any part of the Premises is taken by eminent domain, Lessee may, upon written notice to Lessor, elect to terminate this Agreement, whereupon neither party shall have any further liability or obligation hereunder. Notwithstanding any provision of this Agreement to the contrary, in the event of condemnation of all or any part of the Premises, Lessor and Lessee shall be entitled to separate awards with respect to the Premises, in the amount determined by the court conducting such condemnation proceedings based upon Lessor's and Lessee's respective interests in the Premises. If a separate condemnation award is not determined by such court, Lessor shall permit Lessee to participate in the allocation and distribution of the award.

(b) In case of damage to the Premises or the Communications Facilities by fire or other casualty due to the Lessor's sole negligence or intentional misconduct, Lessor shall, at its expense, cause any damage to the Property to be repaired to a condition as nearly as practicable to that existing prior to the damage, with reasonable speed and diligence, subject to delays which may arise by reason of adjustment of loss under insurance policies, governmental regulations, and for delays beyond the control of Lessor, including a force majeure. Lessor shall coordinate with Lessee as to the completion of Lessor's work to restore the Property so as not to adversely impact Lessee's use of the Premises and the Communications Facilities. Lessor shall not be liable for any inconvenience or annoyance to Lessee, or injury to Lessee's business or for any consequential damages resulting in any way from such damage or the repair thereof, except to the extent and for the time that the Communications Facilities or the Premises are thereby rendered unusable for Lessee's intended purpose the Rent shall proportionately abate.

(c) In case of damage to the Premises or the Communications Facilities due to any other cause or casualty, Lessee shall be responsible for the repairs. In the event the damage shall be so extensive that Lessee shall decide, in its sole discretion, not to repair or rebuild the Communications Facilities, or if the casualty shall not be of a type insured against under standard fire policies with extended type coverage, or if the holder of any mortgage, deed of trust or similar security interest covering the Communications Facilities shall not permit the application of adequate insurance proceeds for repair or restoration, Lessee shall complete debris removal and removal of all materials relating to the Communications Facilities from the Premises. Thereafter, either party may terminate this Agreement by providing thirty (30) days written notice to the other party. Lessor shall not be liable for any inconvenience or annoyance to Lessee, or injury to Lessee's business or for any consequential damages resulting in any way from such damage or the repair thereof, except that Rent may proportionately abate if the damage was directly caused by the gross negligence or intentional misconduct of Lessor. Lessee waives any rights it may have under Cal. Civil Code section 1942 and instead, the parties agree that the terms of this section shall govern.

19. DEFAULT. The failure of Lessee or Lessor to perform any of the covenants of this Agreement shall constitute a default. The non-defaulting party shall give the other written notice of such default, and the defaulting party shall cure such default within thirty (30) days after receipt of such notice. In the event any such default cannot reasonably be cured within such thirty (30) day period, if the defaulting party shall proceed promptly after the receipt of such notice to cure such default, and shall pursue curing such default with due diligence, the time for curing shall be extended for such period of time as may be necessary to complete such curing, however, in no event shall this extension of time be in excess of sixty (60) days, unless agreed upon by the non-defaulting party.

20. REMEDIES. Should the defaulting party fail to cure a default under this Agreement, the other party shall have all remedies available either at law or in equity, and the right to terminate this Agreement. In the event Lessor elects to terminate this Agreement due to a default by Lessee, and provided each sublessee or licensee of Lessee installed at the Premises fully attorns to Lessor and agrees to be bound by the terms of this Lease, then Lessor shall continue to honor all sublease and sublicense commitments made by Lessee through the expiration of the term of any such commitment, it being intended hereby that each such commitment shall survive the early termination of this Agreement. In the event Lessor elects to terminate this Agreement pursuant to the prior sentence, Lessee will provide to Lessor copies of all subleases or licenses (except that master lease agreements such as Verizon, AT&T, Dish, and T-Mobile or other national broadband carriers may be redacted to conceal confidential information, trade secrets or information subject to a non-disclosure agreement so long as the terms of such agreement applicable to the subleasing or licensing of space at the Premises, including amounts payable, are not redacted) for each sublessee or licensee that is then located on, and operating, at the Premises.

21. MEDIATION AND BINDING ARBITRATION. The parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration. Either party may demand the commencement of mediation. Mediator or related fees, if any, shall be divided equally among the parties. If a controversy or claim remains unresolved after mediation, Lessor and Lessee agree that all disputes between the parties shall be resolved through binding arbitration in Shasta County, California, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules then in existence, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The provisions of this Section shall survive the termination or expiration of this Agreement.

22. ATTORNEYS' FEES. If there is any legal proceeding between Lessor and Lessee arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment.

23. ADDITIONAL TERMINATION RIGHT. If at any time during the Term, Lessee determines, in Lessee's sole and absolute discretion, with or without cause, that the Premises is no longer suitable or desirable for Lessee's intended use and/or purposes, Lessee shall have the right to terminate this Agreement upon sixty (60) days prior written notice to Lessor.

24. PRIOR AGREEMENTS. The parties hereby covenant, recognize and agree that the terms and provisions of this Agreement and the attached Exhibits shall constitute the sole embodiment of the arrangement between the parties with regard to the Premises, and that all other written or unwritten agreements, contracts, or leases by and between the parties with regard to the Premises are hereby terminated, superseded and replaced by the terms hereof.

25. Intentionally Deleted.

26. LENDER'S RIGHTS.

(a) Subject to Section 20, Lessor shall recognize the subleases and licenses granted by Lessee, provided that (i) each such sublessee or licensee has entered into a written agreement with Lessee approved in advance in writing by Lessor, and (ii) such sublessee or licensee is not then in default under its respective sublease or license. Nothing in this Agreement shall obligate Lessor to recognize any sublessee or licensee or permit continued occupancy in the event of a Lessee default.

(b) Lessor consents to the granting by Lessee of a lien and security interest in Lessee's interest in this Agreement and/or leasehold estate of the Premises and all of Lessee's personal property and fixtures attached to the real property described herein, and furthermore consents to the exercise by Lender of its rights of foreclosure with respect to its lien and security interest. Lessor agrees to recognize Lender as Lessee hereunder upon any such exercise by Lender of its rights of foreclosure.

(c) Lessor hereby agrees to give Lender written notice of any breach or default of Lessee of the terms of this Agreement at the same time as notice is provided to Lessee at the address set forth in Section 30. Lender shall have the right, to the same extent, for the same period and with the same effect, as Lessee to cure or correct any such default.

(d) Lessee shall have the right from time to time to mortgage or otherwise encumber Lessee's interest in this Agreement and/or leasehold estate in the Premises; provided, however, in no event shall there be more than one such mortgage or encumbrance outstanding at any one time. If Lessee shall so mortgage (each a "**Lessee Mortgage**") Lessee's interest in this Agreement and/or leasehold interest in the Premises to Lender, Lessee or Lender shall give Lessor prompt notice of such intent for a Lessee Mortgage and furnish Lessor with a complete and correct copy of the proposed Lessee Mortgage, certified as such by Lessee or Lender, together with the name and address of Lender if it is different from the information set forth in Section 30 hereof. The term "**Lender**" as used in this Agreement shall mean the lender identified in Section 30 hereof and its successors, assigns, designees or nominees.

27. RIGHT TO ASSIGNMENT OF LEASE.

(a) In the case of termination of this Agreement by Lessor for any reason, or in the event this Agreement is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, Lessor shall give notice of this termination to Lender at the address set forth in Section 30 or as may be provided to Lessor by Lessee following the Commencement Date. Lender has thirty (30) days from the date of Lessor's written notice to Lender to send the Lessor a written request to have Lessee assign the Agreement to Lender. If Lessor receives' Lender's timely request, Lessor shall permit Lessee to assign this Agreement to Lender within thirty (30) days of Lessor's receipt of Lender's written request, subject to the provisions of Section 26. This assignment must be for the remainder of the Term and upon all the covenants, conditions, limitations and agreements contained herein (including, without limitation, options to extend the Term) except for such provisions which Lessor agrees must be modified to reflect such termination, and the passage of time Lessor will only permit the assignment, however, if Lender (i) shall pay to Lessor, simultaneously with the delivery of such assignment, all unpaid Rent due under this Agreement up to and including the date of the commencement of the term of such assignment and all reasonable expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by Lessor in connection with the default by Lessee, the termination of this Agreement and the preparation of the assignment, as determined by the Lessor and (ii) shall cure all defaults existing under this Agreement which are susceptible to being cured by Lender within thirty (30) days of the assignment. Notwithstanding anything to the contrary contained herein, provided Lender shall have otherwise complied with the provisions of this Section, Lender shall have no obligation to cure any defaults which are not susceptible to being cured by Lender as solely determined by the Lessor (for example, the bankruptcy of Lessee). If Lender fails to timely send its written request for an assignment, fails to make all Rent and payment of other expenses, or fails to timely cure Lessee's defaults that can be cured, as set forth in this Section, Lessor may immediately terminate this Agreement.

28. ADDITIONAL PROVISIONS.

(a) The parties hereto agree that upon the Commencement Date, Lessee is in possession of the Premises notwithstanding the fact that Lessee has subleased or licensed, or may in the future sublease or license, certain of the improvements thereon or portions of the Premises to third parties, as long as Lessee complies with its obligations under this Agreement and (ii) the requirements of Section 365(h) of Title 11 of the United States Code (the Bankruptcy Code) with respect to Lessee's possession of the leasehold under this Agreement are satisfied. Accordingly, the right of Lessee to remain in possession of the Premises under this Agreement shall continue notwithstanding any rejection of this Agreement in any bankruptcy proceeding involving bankruptcy of the Lessor, or any other actions by any party in such a proceeding.

(b) The provisions of Sections 26 and 27 hereof shall survive the termination, of this Agreement and shall continue in full force and effect thereafter from the effective date of such termination of this Agreement by Lessor to the date of execution and delivery of such assignment , or expiration of Lender's time to complete such assignment, as set forth in Section 27.

(c) Lessor shall, within thirty (30) days of the request of Lessee or any Lender or prospective Lender, provide an estoppel certificate as to any matters reasonably requested by Lessee or Lender.

(d) The right to extend or renew this Agreement may be exercisable by the holder of a Lessee Mortgage as long at Lessee, or its successors or assigns, remains responsible for all of Lessee's obligations and liabilities related to the Communication Facilities and as otherwise set forth in this Agreement.

(e) Lessor and Lessee agree that in the event Lessee files for bankruptcy that Lessor shall not be responsible to assume any risk with respect to Lessee's obligations and duties required hereunder.

29. QUIET ENJOYMENT. So long as Lessee is not in default under this Agreement beyond the applicable notice and cure period, Lessor covenants and agrees that Lessee shall peaceably and quietly hold and enjoy the Premises throughout the Term, without any hindrance, molestation or ejection by Lessor, its successors or assigns or by those claiming by, through or under them.

30. NOTICES. All notices, requests, claims, demands, and other communications hereunder shall be in writing and may be hand delivered (provided the deliverer provides proof of delivery) or sent by nationally established overnight courier that provides proof of delivery, or certified or registered mail (postage prepaid, return receipt requested). Notice shall be deemed received on the date of delivery as demonstrated by the receipt of delivery. Notices shall be delivered to a party at the party's respective address below, or to such other address that a party below may provide from time to time:

If to Lessor:
Burney Water District
ATTN: Stephanie
McQuade
PO Box 251020222
Hudson Street
Burney, CA 96013

If to Lessee:
The Towers, LLC
22 W Atlantic Ave, Suite 310Delray
Beach, Florida 33444
Attn: VP Asset Management

With a copy to: General Counsel

If to Lender:
Toronto Dominion (Texas) LLC
31 West 52nd Street
New York, NY 10019
Attn: Admin Agent
Fax No. 416-982-5535

31. MISCELLANEOUS.

(a) Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

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

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

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

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of California in which the Premises are located.

(f) This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, other leases and/or agreements with regard to the Premises. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by both parties.

(g) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(h) A short-form Memorandum of Option to Lease (and a short-form Memorandum of Lease in the event Lessee exercises its Option to lease the Premises) may be recorded at Lessor's or Lessee's option in the form as depicted in **Exhibit 3** and **Exhibit 4**, respectively, attached hereto. In addition, Lessee's sublessees and licensees shall have the right to record a memorandum of its sublease or license with Lessee.

(i) The parties agree the Recitals are true and are incorporated into this Agreement by this reference as though fully set forth.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date (date last signed by a party hereto).

LESSOR:

BURNEY WATER DISTRICT

By:______________________________________
Name:____________________________________
Title:_____________________________________
Date:_____________________________________

STATE OF ______________________

COUNTY OF ____________________

The foregoing instrument was acknowledged before me this ____ day of ______________, 20____, by __________________________________ (name), ____ (title) of ________________________________, a _______________________________, on behalf of the______ ____________________, who is personally known to me.

____
Notary Public

Printed Name:____________________________

My Commission Expires:
____

[Lessee signature page to Option and Lease Agreement]

LESSEE:

The Towers, LLC
a Delaware limited liability company

By:______________________________________
Name:____________________________________
Title:_____________________________________
Date:_____________________________________

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of ______________, 20____, by __________________________________ (name), ____ (title) of The Towers, LLC, a Delaware limited liability company, on behalf of the company, who is personally known to me.

____
Notary Public

Printed Name:____________________________

My Commission Expires:

____

EXHIBIT 1

Legal Description of the Property (Parent Parcel)
(may be updated by Lessee upon receipt of final legal description from title)

A portion of the Northeast quarter of the Southwest quarter of Section 20, Township 35 North, Range 3 East, M.D.M., more particularly described as follows:

Beginning at a 6" x 6" concrete monument set at the center of Section 20, Township 35 North, Range 3 East, M.D.M, which is also the Southeast corner of Lot 7, Block 9 of Mt. Burney Subdivision Unit #2 and running on and along the East line of the Southwest quarter of said Section 20, South 0°41’05" East, 160.00 feet to a point marked by an iron pin; thence South 89°00'52’’ West, 200.00 feet to a point marked by an iron pin; thence North 0'41'05" West, 80.00 feet to a point marked by an iron pin; thence South 89°00'52" West, 100.00 feet to a point marked by an iron pin; thence North 0°41’05” West, 80.00 feet to a point marked by an iron pin set on the North line of the Southwest quarter of said Section 20, which is also the Southwest, corner of Lot 14, Block 9 of Mt. Burney Subdivision Unit #2; thence running on and along said North line, North 89°00'52" East, 300.00 feet to the point of beginning and containing 0.918 acres, more or less.

All monuments referred to are marked R.E. 5438.

And

A portion of the Northeast one quarter of the Southwest one quarter of Section 20, T. 35N., R. 3E. M. D. M.

Commencing at a 6" x 6" concrete monument set at the center of section 20, T. 35 N. R3 E., M.D.M. which is also the Southeast corner of Lot 7 of Block 9, Mt. Burney Subdivision, Unit #2 and running thence on and along the East line of the Southwest one quarter of said section 20, S. 00 degrees 41' 05" E., 160 feet; thence running parallel to the North line of said Southwest one quarter S. 89 degrees 00' 52" W. 200 feet to the true point of beginning of this description, said point of beginning marked by an iron pin; thence continuing from said point of beginning, S. 89 degrees 00' 52" W. 100 feet to a point marked with an iron pin; thence. N. 00 degrees 41' 05" W. 80 feet to a point marked with an iron pin, thence N. 89 degrees 00' 52" E. 100 feet to a point marked with an iron pin; thence S. 00 Degrees 41' 05" E., 80 feet to the point of beginning, Containing 0.184 acres more or less.

All monuments refered to are marked R.E. 5438.

EXHIBIT 2

Premises
(below may be replaced with a final survey and legal description of the Premises)

EXHIBIT 3

Memorandum of Option to Lease

(Attached)

(Above 3” Space for Recorder’s Use Only)

Upon Recording Return to:
The Towers, LLC
22 W Atlantic Ave, Suite 310
Delray Beach, Florida 33444
Attn: General Counsel

Vertical Bridge Internal Site Name: Burney & HWY 299
Vertical Bridge Internal Site Number: US-CA-6126

MEMORANDUM OF OPTION TO LEASE

This Memorandum of Option to Lease (“**Memorandum**”) evidences an Option and Lease Agreement (the “**Agreement**”) between **Burney Water District, a California corporation (“Lessor”), whose address is 20222 Hudson Street Burney, CA 96013**, and The Towers, LLC, a Delaware limited liability company, , known in California as The Towers of California, LLC, whose mailing address is 22 W Atlantic Ave, Suite 310, Delray Beach, Florida 33444 (“**Lessee**”), dated ___________________ _______, 20__________ (the “**Effective Date**”), for a portion (the “**Premises**”) of the real property (the “**Property**”) described in **Exhibit A** attached hereto.

Pursuant to the Agreement, Lessor has granted Lessee an exclusive option to lease the Premises (the “**Option**”), subject to the District’s option to install equipment on Lessee’s Communication Facilities. The Option commenced as of the Effective Date and shall continue in effect for a period of three (3) years from the Effective Date.

Lessor ratifies, restates and confirms the Agreement and, upon exercise of the Option, shall lease to Lessee the Premises, subject to the terms and conditions of the Agreement. The Agreement provides for the lease by Lessor to Lessee of the Premises for an initial term of five (5) years with five (5) renewal option(s) of an additional five (5) years each and a final additional renewal term of four (4) years and eleven (11) months, and further provides:

(i) Lessor may assign the Agreement only in its entirety and only to a purchaser of the fee interest of the Property, unless otherwise agreed by Lessee;

(ii) The Agreement restricts Lessor's ability to utilize, or allow the utilization of the Property or real property owned by Lessor which is adjacent or contiguous to the Premises for the construction of communications or broadcast towers or structures, fiber optic backhaul facilities, or satellite facilities, other than as set forth in the Lease.

This Memorandum is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement. In the event of a conflict between the provisions of this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of Lessor and Lessee and shall inure to the benefit of their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

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

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

LESSOR:

____

By:_______________________________________
Name:____________________________________
Title:_____________________________________
Date:_____________________________________

STATE OF ______________________

COUNTY OF ____________________

The foregoing instrument was acknowledged before me this ____ day of ______________, 20____, by __________________________________ (name), ____ (title) of _______________________________, a _______________________________, on behalf of the______ ____________________, who is personally known to me.

____
Notary Public

Printed Name:____________________________

My Commission Expires:
____

[Lessee's Signature Page to Memorandum of Option to Lease]

LESSEE:

The Towers, LLC
a Delaware limited liability company

By:______________________________________
Name:____________________________________
Title:_____________________________________
Date:_____________________________________

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of ______________, 20____, by __________________________________ (name), ____ (title) of The Towers, LLC, a Delaware limited liability company, on behalf of the company, who is personally known to me.

____
Notary Public

Printed Name:_____________________________

My Commission Expires:

____

EXHIBIT A
(TO MEMORANDUM OF OPTION TO LEASE)

The Property
(may be updated by Lessee upon receipt of final legal description from title)

A portion of the Northeast quarter of the Southwest quarter of Section 20, Township 35 North, Range 3 East, M.D.M., more particularly described as follows:

Beginning at a 6" x 6" concrete monument set at the center of Section 20, Township 35 North, Range 3 East, M.D.M, which is also the Southeast corner of Lot 7, Block 9 of Mt. Burney Subdivision Unit #2 and running on and along the East line of the Southwest quarter of said Section 20, South 0°41'05" East, 160.00 feet to a point marked by an iron pin; thence South 89°00'52'' West, 200.00 feet to a point marked by an iron pin; thence North 0'41'05" West, 80.00 feet to a point marked by an iron pin; thence South 89°00'52" West, 100.00 feet to a point marked by an iron pin; thence North 0°41'05" West, 80.00 feet to a point marked by an iron pin set on the North line of the Southwest quarter of said Section 20, which is also the Southwest, corner of Lot 14, Block 9 of Mt. Burney Subdivision Unit #2; thence running on and along said North line, North 89°00'52" East, 300.00 feet to the point of beginning and containing 0.918 acres, more or less.

All monuments referred to are marked R.E. 5438.

And

A portion of the Northeast one quarter of the Southwest one quarter of Section 20, T. 35N., R. 3E. M. D. M.

Commencing at a 6" x 6" concrete monument set at the center of section 20, T. 35 N. R3 E., M.D.M. which is also the Southeast corner of Lot 7 of Block 9, Mt. Burney Subdivision, Unit #2 and running thence on and along the East line of the Southwest one quarter of said section 20, S. 00 degrees 41' 05" E., 160 feet; thence running parallel to the North line of said Southwest one quarter S. 89 degrees 00' 52" W. 200 feet to the true point of beginning of this description, said point of beginning marked by an iron pin; thence continuing from said point of beginning, S. 89 degrees 00' 52" W. 100 feet to a point marked with an iron pin; thence. N. 00 degrees 41' 05" W. 80 feet to a point marked with an iron pin, thence N. 89 degrees 00' 52" E. 100 feet to a point marked with an iron pin; thence S. 00 Degrees 41' 05" E., 80 feet to the point of beginning, Containing 0.184 acres more or less.

All monuments refered to are marked R.E. 5438.

Access and utilities serving the Premises (as defined in the Agreement) that portion of the Property designated by Lessor for Lessee (and Lessee's customers, sublessees, employees, agents, invitees, licensees, successors and assigns) ingress, egress, and utility purposes to and from a public right-of-way.

EXHIBIT 4

Memorandum of Lease

(Attached)

(Above 3” Space for Recorder’s Use Only)

Upon Recording Return to:
The Towers, LLC
22 W Atlantic Ave, Suite 310
Delray Beach, Florida 33444
Attn: General Counsel

Vertical Bridge Internal Site Name: Burney & HWY 299
Vertical Bridge Internal Site Number: US-CA-6126

MEMORANDUM OF LEASE

This Memorandum of Lease (this “**Memorandum**”) evidences a Lease Agreement (the “**Lease**”) between **Burney Water District, a California corporation (“Lessor”), whose address is 20222 Hudson Street Burney, CA 96013**, and The Towers, LLC, a Delaware limited liability company, known in California as The Towers of California, LLC, whose mailing address is 22 W Atlantic Ave, Suite 310, Delray Beach, Florida 33444 (“**Lessee**”), dated ____________________________, 20__________ (the “**Effective Date**”), for a portion (the “**Premises**”) of the real property (the “**Property**”) described in Exhibit A attached hereto.

Lessor hereby ratifies, restates and confirms the Lease and leases to Lessee the Premises, subject to the terms and conditions of the Lease. The Commencement Date of the Lease is ____________________. The Lease provides for the lease by Lessor to Lessee of the Premises for an initial term of five (5) years with five (5) renewal option(s) of an additional five (5) years each and a final additional renewal term of four (4) years and eleven (11) months, and further provides:

(i) The Lease restricts Lessor’s ability to utilize, or allow the utilization of the Property or real property owned by Lessor which is adjacent or contiguous to the Premises for the construction of communications or broadcast towers or structures, fiber optic backhaul facilities, or satellite facilities, other than as set forth in the Lease;

(ii) Lessee (and persons deriving rights by, through, or under Lessee) are the sole parties to market, use, or sublease any portion of the Premises for Communications Facilities during the term of the Lease (such restriction shall run with the land until the termination or expiration of the Lease and be binding on the successors and assigns of Lessor);

(iii) Except as set forth in the Lease, the Premises may be used exclusively by Lessee for the legal purposes set forth in the Lease, which are to erect, install, operate and maintain Communications Facilities;

(iv) Lessee is entitled to sublease and/or license the Premises, including any Communications Facilities located with approval of the Lessor;

(v) Lessor may assign the Lease only in its entirety and only to a purchaser of the fee interest of the Property, unless otherwise agreed by Lessee;.

(vi) Lessor may install equipment on Lessee's Communication Facilities for Lessor's public agency not for profit purposes and shall not be required to pay Lessee rent for such use.

This Memorandum is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease. In the event of a conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of Lessor and Lessee and shall inure to the benefit of their respective heirs, successors, and assigns, subject to the provisions of the Lease.

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

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

LESSOR:

____

By:____________________________________
Name:__________________________________
Title:__________________________________
Date:__________________________________

STATE OF ______________________

COUNTY OF ____________________

The foregoing instrument was acknowledged before me this ____ day of ______________, 20____, by _________________________________ (name), _______________________________________ (title) of _______________________________, a ______________________________, on behalf of the______ ____________________, who is personally known to me.

____
Notary Public

Printed Name:____________________________

My Commission Expires:
____

[Lessee's Signature Page to Memorandum of Lease]

LESSEE:

The Towers, LLC
a Delaware limited liability company

By:_______________________________________
Name:_____________________________________
Title:______________________________________
Date:______________________________________

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of ______________, 20____, by __________________________________ (name), ____ (title) of The Towers, LLC, a Delaware limited liability company, on behalf of the company, who is personally known to me.

____
Notary Public

Printed Name:_____________________________

My Commission Expires:

____

EXHIBIT A
(TO MEMORANDUM OF LEASE)

The Property
(may be updated by Lessee upon receipt of final legal description from title)

A portion of the Northeast quarter of the Southwest quarter of Section 20, Township 35 North, Range 3 East, M.D.M., more particularly described as follows:

Beginning at a 6" x 6" concrete monument set at the center of Section 20, Township 35 North, Range 3 East, M.D.M, which is also the Southeast corner of Lot 7, Block 9 of Mt. Burney Subdivision Unit #2 and running on and along the East line of the Southwest quarter of said Section 20, South 0°41’05" East, 160.00 feet to a point marked by an iron pin; thence South 89°00'52’’ West, 200.00 feet to a point marked by an iron pin; thence North 0'41'05" West, 80.00 feet to a point marked by an iron pin; thence South 89°00'52" West, 100.00 feet to a point marked by an iron pin; thence North 0°41’05” West, 80.00 feet to a point marked by an iron pin set on the North line of the Southwest quarter of said Section 20, which is also the Southwest, corner of Lot 14, Block 9 of Mt. Burney Subdivision Unit #2; thence running on and along said North line, North 89°00'52" East, 300.00 feet to the point of beginning and containing 0.918 acres, more or less.

All monuments referred to are marked R.E. 5438.

Access and utilities serving the Premises (as defined in the Lease) includes that portion of the Property designated by Lessor for Lessee (and Lessee’s guests, customers, employees, agents, invitees, sublessees, licensees, successors and assigns) ingress, egress, and utility purposes to and from a public right-of-way.