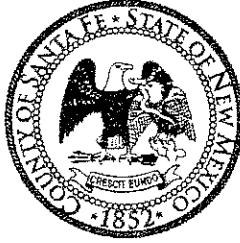


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *October 10, 2018*

TO: *Board of County Commissioners*

VIA: *Katherine Miller, County Manager*

FROM: *Michael K. Kelley, Public Works Department - Director MK 10/10/18*

ITEM AND ISSUE: *BCC Meeting October 30, 2018*

Approval of Lease Agreement No. 2019-0036-PW/FD/SO Between Santa Fe County and XCell Towers II, LLC for the Lease of Cabinet and Antenna Tower Space on Tesuque Peak for Use By Public Safety for Certain Electronic Communications Equipment; (Public Works/Terry Lease)

SUMMARY:

The Public Works Department is requesting approval of a lease agreement, Lease Agreement No. 2019-0036-PW/FD/SO ("Lease"), between Santa Fe County XCell Towers II, LLC ("XCell") for the lease of cabinet and antenna tower space on Tesuque Peak for use by Public Safety for certain electronic communications equipment.

BACKGROUND:

Tesuque Radio Company, Inc. ("Tesuque Radio") leased space from the United States Department of Agriculture, United States Forest Service, to operate and rent space for certain electronic transmission equipment at Tesuque Peak and for many years the County has leased closet and tower space from Tesuque Radio. On December 20, 2017 Tesuque Radio assigned its tower space licenses to XCell prompting the necessity to enter into this new agreement. XCell prefers to leave their base lease agreements uniform in content and structure and any variance or modifications from that base lease are expressed in Exhibit "A."

ACTION REQUESTED:

Approval of Lease Agreement No. 2019-0036-PW/FD/SO.

ELECTRONIC SITE LEASE AGREEMENT

This Lease Agreement is entered into as of the date set forth for "Date of Lease" in Exhibit A, by and between **XCell Towers II, LLC.**, a Delaware limited liability company, 13010 Morris Road, Alpharetta, Georgia 30004 ("Lessor"), and the entity who is identified as Lessee in Exhibit A ("Lessee").

RECITALS

A. Lessor is the lessee under that certain Communication Use Lease under which Lessor is granted a leasehold by the United States Department of Agriculture, United States Forest Service, to construct, maintain and operate a facility to house certain electronic equipment and rent space in that facility for the operation of certain electronic transmission equipment at Tesuque Peak, Santa Fe County, New Mexico, at a site more specifically described as follows:

A building and antenna tower site on Tesuque Peak, Santa Fe National Forest, situated in the northwest quarter NW¼, NW¼, SE¼, Section 16 T.18N., R.11E., NMPM, 35 degrees, 47' 09" north latitude, by 105 degrees 46' 54" west longitude, as shown on the Tesuque Peak Electronic Site Plan.

B. Lessee seeks a lease of space to maintain and operate certain electronic equipment at the Electronic Site, subject to the terms and conditions of this Lease Agreement.

AGREEMENT

1. Definitions. For the purposes of this Lease Agreement, certain terms will be defined as follows.

(a) "Electronic Site" means the building and antenna tower site and the improvements maintained thereon from time to time by Lessor on Tesuque Peak, Santa Fe County, New Mexico.

(b) "Cabinet" means the cabinet, closet or other space which will be furnished for Lessee's use in installing its equipment in the Electronic Site.

(c) "Commencement Date" is the first day for which a rent is due from Lessee to Lessor.

(d) "Equipment" means the electronic equipment, cabinets, wiring, antennae and other fixtures and installation which Lessee installs at the Electronic Site in accordance with its Equipment Layout Plan.

(e) "Equipment Layout Plan" means the set of documents describing the Equipment which Lessee seeks to install at the Electronic Site, together with installation and wiring diagrams, frequency and power usage specifications, and such other information respecting Lessee's Equipment and installation as Lessor may require.

(f) "Objectionable Interference" means both intra-site and inter-site signal interference, of whatsoever cause or source, and is more specifically described in Section 11.

(g) "Term" or "Lease Term" means the term of this Lease Agreement, beginning on the Commencement Date and continuing until termination hereof, including all extensions or renewals.

(h) "Termination Date" means the last date of the Lease Term, as specified in Exhibit A, but subject to provisions of this Agreement under which this Agreement may be extended or earlier terminated.

2. Grant of Lease. In consideration of the Lessee's payment of the rents as provided in this Agreement, and in further consideration of Lessee's representations, warranties and covenants hereinafter set

forth, Lessor hereby grants to Lessee during the term hereof the right to occupy the Cabinet in the manner hereinafter described, and further confers upon Lessee a non-exclusive lease to maintain and operate its equipment in the Electronic Site located at the Tower Site, subject, however, to all of the terms and conditions of this Agreement.

3. Rents. Lessee agrees to pay to Lessor, and Lessor agrees to accept from Lessee, as partial consideration for the lease herein granted, the amounts described in this Section 3.

(a) Rent. The Lessee will pay to the Lessor the rent described in Exhibit A which is attached hereto and made a part hereof, as hereinafter adjusted. Subject to Lessor's rights upon any default by Lessee under this Agreement, Lessee will pay to Lessor without abatement, offset, notice or demand, in advance, commencing on the Commencement Date and continuing on the first day of each and every calendar month thereafter during the term of this Agreement, the monthly installment of the rent shown in Exhibit A, as increased in accordance with the following sentence. The rent shall increase by 5% each year during the Lease Term, beginning on the first anniversary of the Commencement Date, and increasing by the same percentage on each anniversary date thereafter.

(b) Electricity Charge. Lessee will pay to Lessor an electricity charge computed in accordance with this Paragraph. Lessor will compute each year an annual electricity charge for Lessee based upon current or expected utility charges, and will bill the annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the electricity charge.

(c) Fuel Charge. The Electronic Site currently is equipped with backup electricity generating equipment, and may be equipped with other generating or heating equipment in the future. Lessor will compute an estimated annual fuel charge for Lessee, and will bill the estimated annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the fuel charge. At the end of each calendar year, Lessor will determine the actual fuel charges for the Electronic Site and the actual charge to Lessee. If Lessee has underpaid for the year, Lessee will pay the balance of the actual charge owed on or before the fifth day of the calendar month next following the month in which Lessee is billed for the balance. If Lessee has overpaid for the year, Lessor will return the overage to Lessee within 60 days after the end of the year.

(d) Gross Receipts Tax. Lessee acknowledges that the amounts described in the preceding Paragraphs of this Section are subject to New Mexico State gross receipts tax and may become subject to other federal or state taxes or exactions. Accordingly, Lessee will pay all amounts payable under this Section, together with such amounts, New Mexico State gross receipts tax or other taxes at the rate of taxation then specified for Santa Fe County, upon notice from Lessor.

(e) Late Payment Fee. In addition to (and not in substitution for) any remedy, damages or rights Lessor may have under this Lease or under applicable law, Lessee shall pay to Lessor upon notice from Lessor, for each month or portion thereof during which Lessee does not timely pay any installment of rent or other charge required by this Lease, a late payment fee of 1-1/2% of the amount of the rent or other charge.

(f) Additional Charges. From time to time and in accordance with Section 5(a), 6(b), 6(c) and 22(o) of this Agreement Lessee may be required to pay amounts to Lessor for specific items described in those Sections. Lessee will pay each such amount to Lessor, together with any gross receipts tax or other taxes thereon, within the calendar month commencing after the month in which the Lessee is invoiced for the amount.

4. Term. The Term of this Agreement will commence at the Commencement Date set forth in Exhibit A attached hereto and incorporated herein by this reference. The Term of the Lease will continue

from the Commencement Date until the Termination Date described in the same Exhibit, unless earlier terminated in accordance with the terms and conditions hereinafter set forth. This Agreement will automatically renew for successive terms, each of the same length as the initial term, unless and until Lessee notifies Lessor no more than ninety (90) and no less than thirty (30) days before the Termination Date that Lessee will not require a renewal of this Agreement. At any time after the initial Term of this Agreement, Lessor may terminate this Agreement by giving written notice to Lessee no less than 120 days before the Termination Date selected by Lessor in its notice to Lessee; provided, however, that Lessor will not affect any such termination if the termination would violate Lessor's Communications Use Lease or Lessee's special use permit to use the Electronic Site.

5. Lessee's Installation of Equipment

(a) Lessee will submit to Lessor at Lessor's request, before installing any equipment at the Electronic Site, an Equipment Layout Plan respecting all equipment which Lessee proposes to install at the Electronic Site. The Equipment Layout Plan will be subject to Lessor's reasonable approval. Lessor will have Lessee's Equipment Layout Plan, proposed installation and operating frequencies reviewed by a licensed electrical engineer selected by Lessor. Lessee will pay the engineer's reasonable fee for this review, together with a small fee charged by Lessor for arranging the review and inspection. Approval of the Equipment Layout Plan and proposed installation will be granted giving due consideration to good engineering practices dictated by the unique nature of, and mixed uses contemplated for the Electronic Site, compatibility with other lessees, efficient use of mechanical and utility infrastructure and appurtenances, and to construction economics. Lessee hereby represents that it recognizes that the solution to any potential conflict in design and layout alternatives may be less than ideal. Lessor may require reasonable revisions to the Equipment Layout Plan in accordance with applicable regulations and standards of the Federal Communications Commission, United States Forest Service, or recognized professional engineering organizations as a condition for its approval. Upon Lessor's approval of a final Equipment Layout Plan, the parties will initial the final Equipment Layout Plan, and Lessee shall install its equipment at the Electronic Site in strict accordance with the final Equipment Layout Plan.

(b) Lessee will install its equipment at the Electronic Site in accordance with the final Equipment Layout Plan, and in accordance with all applicable federal, state and local laws, regulations and ordinances. Any change or alteration to the installation or to the equipment specified in the final Equipment Layout Plan will be pursuant to written change order only, approved by both Lessor and Lessee. Changes required by physical site characteristics or governmental regulations or construction economics or exigencies, and which do not materially affect the Electronic Site or the use of the Electronic Site by Lessor or other lessees, will not be unreasonably withheld by Lessor. Lessor may require Lessee, upon reasonable notice, to move its Equipment to another Cabinet or other location in the shelter at the Electronic Site, and to move its antennas to another location or locations on the towers or shelter at the Electronic Site. Lessor's engineers and representatives will have the right at all reasonable times during the course of installation to inspect the work in progress.

(c) Lessee acknowledges that Lessor's approvals of Lessee's Equipment and Equipment Layout Plan do not constitute any representation or warranty that the Equipment or Equipment Layout Plan are safe, meet any engineering standard or guideline, or comply with any industry standard or governmental law, regulation or rule and, further, that any inspection or approval does not constitute any waiver or reduction of any right Lessor has under this Agreement to indemnify or other relief from Lessee under this Agreement.

6. Utilities

(a) Electric Power Lessor will arrange for the supply of 30 amp, 240 volt alternating current electrical power to the Electronic Site by the electric utility company having the franchise and responsibility for supply of electricity thereto, and will supply a main disconnect and distribution panel to which the supply of electricity is connected. Lessor may, but is not required, to supply standby power. Lessee may connect to the main

disconnect and distribution panel at its own cost and expense, and will obtain all its power requirements therefrom. Lessee will effect such connection in a manner specified in its final Equipment Layout Plan, and will cause the work to be performed by a licensed electrical contractor reasonably satisfactory to Lessor. Lessee will pay for power consumed in accordance with Paragraph 3(c), above.

(b) Telephone. Lessor will not provide any telephone service to the Electronic Site. If in the future Lessor obtains any form of telephone service, access which is generally available to lessees, Lessee will have the right to equal access thereto upon appropriate subscription and payment for services therefor independent of this Agreement.

(c) Sewer, Water and Natural Gas. Lessor will not have any obligation to supply sewer, water or natural gas to the Electronic Site. If Lessor in the future supplies propane, liquefied natural gas or a similar energy source to lessees generally, Lessor will make the same available to Lessee in an equitable manner upon appropriate subscription and payment for services therefor independent of this Agreement.

(d) Trash Removal. Lessee will be responsible for the prompt removal from the Electronic Site of any surplus material or trash created in connection with the installation, operation, maintenance, alteration, modification or removal of Lessee's equipment, whether or not flammable or of a dangerous character. In all events, Lessee will not introduce or permit the introduction of any material to the Electronic Site which may by the provisions of any law, rule or regulation be in the nature of, or subject to regulation as, an explosive, poisonous or hazardous material or substance.

(e) Grounding System. Lessor has provided a grounding system at the Electronic Site. Lessee will connect all Equipment to the grounding system in accordance with its Equipment Layout Plan, and will maintain the integrity of these connections throughout the term of this Lease Agreement. All costs and expenses of grounding Lessee's equipment will be paid by Lessee.

(f) Air Conditioning. Lessor will have no duty to supply heating or air conditioning to the Electronic Site.

(g) Security. Lessor has a locked gate at the access road and locking devices at entry doors to the Electronic Site. All interior door locks, including the entry doors to the Cabinets and the Electronic Site, may be keyed to a master key which Lessor may keep in controlled custody. Lessor may install and remove other security and monitoring devices from time to time, and Lessee shall cooperate in their installation and use. Notwithstanding the foregoing, Lessor will have no liability for any act of any lessee or other person for any act (whether or not negligent or willful) which causes damage to the Electronic Site or any equipment or person therein, irrespective of the failure of any security system or absence of any security system.

7. Use of Electronic Site by Lessee.

(a) Lessee's use of the Electronic Site is limited to the operation of its unmanned radio transmitting and receiving equipment, on the frequencies, and with the powers, and limited to the scope, set forth on Exhibit A.

(b) Lessee will not use the Electronic Site for storage, shop space, office, or any other purpose aside from the specific purposes described in the preceding Paragraph (a), it being specifically understood that the Electronic Site is constructed and operated as an unmanned radio transmission site. Lessee will not install or attempt to use additional equipment or devices of any character whatsoever in the Electronic Site unless and until it shall have obtained the prior written approval of Lessor to an amended Equipment Layout Plan.

8. Access to Electronic Site

(a) Lessee will have the right, through its engineers, technicians and employees, to obtain access to the Electronic Site and its Cabinet at all reasonable times for the purpose of normal, recurring maintenance duties, for extraordinary repair and emergency purposes, and for the installation and removal of

equipment in accordance with this Lease Agreement. Lessor will provide Lessee with a key to its Cabinet (if applicable), and keys to the Electronic Site and any gates on the access road. Lessee represents and warrants that personnel acting for Lessee or on its behalf will have skills, knowledge and training commensurate with those prevailing in the industry, including knowledge of the possible effects of radio frequency radiation and energy and the hazards of lightning and high voltage electricity. Lessee further represents and warrants that all such personnel for whom it obtains access to the Electronic Site are covered by both worker compensation and other insurance sufficient to cover any hazard, risk or injury which may be attendant to, or occur by reason of or as a proximate cause of, those personnel being at or upon the Electronic Site.

(b) Lessee will perform its repair, maintenance and other work at the Electronic Site in a manner so as to prevent any damage or injury to equipment maintained by Lessor or Lessee or other persons in or about the Electronic Site or to any persons in the Electronic Site or areas nearby. Lessee further agrees to cooperate with Lessor and all other Lessees by removing its carrier from the air when it is necessary for antenna workers to be in a field of radiation which exceeds the prescribed maximum range specified by any industry standard or governmental regulatory authority, in order to work on antennas or other portions of the Electronic Site. Lessee will restrict repair work to periods of time least disruptive to other Lessees and users.

(c) Lessee will not place locking devices or otherwise prevent access by Lessor to Lessee's Cabinet, without the previous written consent of Lessor; and in that event Lessee will furnish the keys or other means to permit Lessor to enter the Cabinet. However, Lessor will not, except in emergency situations which could result in immediate danger or harm to life or property, or which by the terms of any insurance carried by Lessor or order of any governmental authority would require immediate action on the part of Lessor, enter into the Cabinet in which Lessee maintains its equipment without first notifying Lessee of its intent to enter, and affording Lessee the opportunity to accompany Lessor's representatives. Lessor agrees to make reasonable attempts to advise Lessee by telephone or comparable means of any such emergency situation or immediate action so that Lessee's representative can be present if possible.

9. Governmental Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal, state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect); and Lessee shall indemnify and hold harmless Lessor from any and all penalties, fines, costs, expenses or damages, including attorney fees and costs, resulting from the failure of Lessee or its employees or contractors to comply with any of these laws, rules or regulations applicable to Lessee's use of the Electronic Site.

10. Repair and Maintenance of Lessee's Equipment. Lessee will keep all of its Equipment in good working order, condition and repair, in a safe and operative condition, at Lessee's sole cost and expense, all in accordance with good engineering practices, taking into consideration and implementing all reasonable precautions to avoid interference or hindrance to and with the operations of all other lessees or other uses of the Electronic Site and the Lessor, and in a manner so as to avoid and preclude any (i) objectionable interference, (ii) hazardous radiation, (iii) any emission or contamination by any hazardous substance or any other dangerous chemical or substance in or about the Electronic Site, (iv) the creation of any hazard of fire, electrical shock, dangerous emissions or contamination, or other similar hazard or calamity, or (v) the creation of any other hazardous condition or risk which could result in material damage to any person or property in or about the Electronic Site.

11. Prevention of Objectionable Interference.

(a) "Objectionable Interference" means any interference produced by a Electronic Site user which originates at or by reason of the use of the Electronic Site by the user, and which (i) is determined by an authorized representative of the Federal Communications Commission to be objectionable interference,

(ii) is objectionable interference within the meaning of the rules and regulations of the Federal Communications Commission as in effect from time to time, or (iii) otherwise causes a material impairment of the signals transmitted or received by a user of the Electronic Site within the Facility's service area as such area is or may be defined by the Federal Communications Commission. Lessee will install and operate its Equipment so as not to cause any Objectionable Interference to any other current lessee of the Electronic Site, Lessor or any other person. Lessee will cooperate fully with all other lessees and users in preventing interference among equipment employed by any of those persons at the Electronic Site. Lessee will install at Lessee's sole cost and expense suitable interference protection devices before equipment operation begins or as may become necessary thereafter because of Lessee's operations.

(b) In all events, the determination of Objectionable Interference, the resolution of disputes and other matters relating to interference will be determined in accordance with and subject to rules, regulations and decisions of the Federal Communications Commission then applicable, as well as Lessor's United States Forest Service Communications Use Lease and applicable United States Forest Service rules and regulations.

(c) In addition to and notwithstanding the foregoing, Lessor may require Lessee at any time or from time to time, upon reasonable notice to Lessee, to install suitable interference protection devices after the installation of Lessee's equipment at the Electronic Site to prevent interference with the operations of other users, and further, may require changes to Lessee's equipment (in addition to any required interference protection devices) necessary to accommodate the needs of a tenant locating on the Electronic Site after Lessee (or a current tenant adding equipment at the site) if (i) that tenant cannot otherwise reasonably locate at the site, and (ii) that tenant (or Lessor) undertakes to reimburse Lessee for all reasonable costs required for the modification or replacement.

12. Lessee's Risk of Loss or Injury.

(a) Lessee assumes all risk of damage or loss to its property or equipment at the Electronic Site and that risk will be and remain exclusively Lessee's responsibility and not that of Lessor. Lessee hereby indemnifies and saves harmless Lessor, its stockholders, directors, officers, agents, employees and affiliates from any liability or expense, including attorney fees and costs, that shall or may arise because of any claims asserted by Lessee or any other person on account of the destruction of or damage to Lessee's property or Equipment.

(b) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorneys' fees and costs) arising from or occasioned in any respect by (i) any alleged act, omission, fault or negligence of Lessee, or (ii) injury (including death) or damage to Lessee's employees or employees of Lessee's contractors and subcontractors arising from or occasioned by or allegedly occasioned by any act or omission, or by reason of the use and occupancy of the Electronic Site or the access road or any part thereof by Lessee or any other person.

(c) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorney fees and costs) arising from or occasioned in any respect by (i) any failure of any warranty or representation by Lessee, (ii) Lessee's failure to perform any obligation by it to be performed hereunder, or (iii) any act or omission of Lessee or its employees or contractors which results in any prejudice to Lessor's rights under its Communications Use Lease with the United States Forest Service.

(d) Lessor will not be liable to Lessee or anyone claiming under or through Lessee for any loss or damage caused by the acts or omissions of any other lessee or any other person or the malfunctioning or interruption of any service, utility, facility or installation.

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(e) Lessor undertakes only to exercise reasonable care in the management of the Electronic Site and Lessor will not be liable on this account to Lessee for any event except for any act or omission caused by the negligence, gross negligence or willful misconduct of Lessor. Lessor further agrees to observe its obligations under and will be liable to Lessee for damages provided by law for any material breach of these obligations. Notwithstanding anything else in this Agreement to the contrary, in no event will Lessor be liable to any of the persons described in the preceding sentence for consequential damages, special damages or punitive damages under any circumstances, and Lessee, for itself and for all other persons for whom it may make such a waiver, hereby expressly waives all such claims.

(f) Lessee represents and warrants that it or its representatives and contractors are knowledgeable in matters of electrical engineering and related fields, and have evaluated fully the suitability of the Electronic Site for Lessee's purposes. Lessee acknowledges that its determination to enter into this Agreement is based solely upon its own investigation and inspection of the Electronic Site and not in reliance upon any representation of Lessor as to any feature, specification or aspect of the Electronic Site, except as specifically described in this Agreement.

13. Insurance. Lessee will obtain, pay all premiums for and maintain in full force and effect during the Term of this Agreement comprehensive public liability insurance, whether by primary or excess loss or blanket coverage covering all of Lessee's operations and activities on or about the Electronic Site and the access road, including but not limited to the operations of contractors and the operation of vehicles and equipment, with aggregate limitations at least equivalent to those prevailing in the industry, but in no event less than \$1 million for injury to, or death of, any one or more persons, and \$1 million for property damage, or such lesser amounts as Lessor may prescribe from time to time. Each of the foregoing limitations will be for each occurrence and shall not be an aggregate limit in the policy or policies. Lessee further agrees to obtain such additional insurance coverage or to increase the foregoing limits as Lessor may from time to time reasonably require by notice applicable to all lessees in similar circumstances. Lessee shall cause all of its contractors installing its equipment and making repairs or changes to the equipment to procure public liability and property damage insurance complying with this Section; and Lessee further shall require of its contractors that they maintain worker compensation insurance. Lessee will give Lessor such evidence of insurance coverage as Lessor may require from time to time. All insurance policies will be issued by insurers having a Best's AAA or better rating, and will provide for not less than 30 days' written notice of cancellation or change, commencing with the receipt thereof, to be given to Lessor before any cancellation or change in the policy will be effective. Such insurance further shall include coverage for the liability assumed by Lessee under this Agreement, and will contain a waiver of subrogation against Lessor. If Lessee fails to procure or maintain the required insurance policies, or fails to cause its contractors to procure the required policies, Lessor may, but will not be required to, procure or maintain such policies at the expense of Lessee. Any amounts so paid by Lessor will be additional amounts due from Lessee under Section 3.

14. Radio Frequency Radiation Considerations. Lessee recognizes and acknowledges that radio frequency radiation ("RF Hazards") as they may affect humans and all other forms of life are of concern and are specifically regulated by the Federal Communications Commission and may be subject from time to time to other rules and regulations ("RF Standards"). Lessee further acknowledges that RF Hazards will be measured and considered under RF Standards in the aggregate of the combined radio frequency densities of all users of the Electronic Site, and that this combined aggregate power density must be considered for assessment of compliance with applicable RF Standards. Accordingly, in order to assure that the Electronic Site complies with applicable RF Standards after consideration of Lessee's and all other transmissions of radio frequency energy from or to the Electronic Site, Lessee hereby agrees:

(a) To design, install and operate its Equipment in such a manner that Lessee's use of the Electronic Site, in concert with all other users of the Electronic Site, will at all times comply with all applicable RF Standards;

(b) To design, install and operate its Equipment so as to minimize downward radio frequency radiation affecting the Electronic Site and surrounding lands;

(c) To provide Lessor with a complete copy of Lessee's FCC filings, permits, and any other documents from any source addressing potential biological or botanical exposure to RF Hazards which could be caused by Lessee's operations or Equipment at the Electronic Site;

(d) That measurements of radio frequency power densities present on the site or surrounding land may be required by Lessor, or in order to assure compliance with RF Standards by government agencies, including but not limited to the Federal Communications Commission and the Environmental Protection Agency and the Environment Department of the State of New Mexico; and

(e) Should such measurements be required by Lessor or under any law, rule or regulation, the measurements will be carefully conducted and results certified by a registered professional engineer (electrical, State of New Mexico) or any other qualified person authorized by Lessor, the cost of the measurement to be paid by Lessee.

15. Use of Road. Lessee will have the nonexclusive right to use the access road for access, ingress and egress to the Electronic Site.

16. Certain Obligations of Lessor. Lessor will keep the foundations, exterior walls, roofs, tower structures and foundations, and the structural portions of the Electronic Site in a good state of repair in accordance with rules and regulations of the United States Forest Service during the term of this Agreement, at Lessor's expense except as to damage or injury thereto caused by any lessee. The access road will be maintained (except during inclement weather or during times when snow is accumulated) in a condition sufficient for four-wheel drive vehicular travel. In this regard, Lessor reserves the right, without liability to Lessee, to interrupt the electrical or other services at the Electronic Site at such time as may be necessary and for so long as may be reasonably required for the making of necessary repairs, alterations or improvements thereto. Except for emergencies, these interruptions will to the extent possible be confined to non-working hours (or in cases of 24 hour transmitting or receiving at such hours as will cause the least practicable interruption to Lessee's activities) and will be commenced only after Lessor's having given at least one week's notice to the lessees affected. Lessor will not be liable to Lessee for any damages of any kind, or by reason of inconvenience, annoyance, or injury to the Electronic Site, or activities conducted by Lessee from the Electronic Site, arising from the necessary repairing or maintenance of any portion thereof, whether due to casualty, fire, normal maintenance requirements or otherwise, or from the making of any alteration or improvements in or to any portion of the Electronic Site or its equipment.

17. Termination of Communications Use Lease. If Lessor's Communications Use Lease is terminated for any reason whatsoever, this Agreement will terminate at Lessor's election as of the date of the Communications Use Lease's termination, and from and after the date of such termination, the rent payments under this Agreement shall be abated. If Lessee's United States Forest Service special use permit respecting Lessee's use of the Electronic Site is terminated through no action or fault of Lessee, this Agreement will terminate at Lessee's election as of the date of the permit's termination, and from and after the date of such termination, the Rent payments under this Agreement shall be abated. Any amounts remaining unpaid with respect to periods before the termination will be immediately due and payable from Lessee to Lessor. Lessee will immediately remove its Equipment and otherwise act in accordance with the provisions of this Agreement ordinarily applicable to termination of this Agreement. Lessor will have no further liability or obligation under this Agreement from and after the date of such termination.

18. Destruction of Electronic Site. If the Electronic Site, or any part thereof, shall at any time during the term of this Agreement be destroyed by fire, wind or other casualty, Lessor will with all reasonable speed, but subject to the receipt of insurance proceeds and other limitations set forth in this Agreement, cause the Electronic Site to be restored to the same condition as existed immediately prior to the damage. However, if substantial damage occurs within one year before the end of the term of this Agreement (exclusive of any option or ability to renew by either party), then Lessor, at its sole option, will have the right to terminate this Agreement by giving notice to Lessee. If reconstruction or repair of the Electronic Site cannot be made

without dismantling or removing Lessee's Equipment, then Lessee will cooperate fully with Lessor and its contractors, and Lessor may remove Lessee's Equipment or any portion thereof and interrupt its broadcasting activity during the making of the repairs or during reconstruction. Lessee will be entitled to a *pro rata* abatement of its monthly Rent for such time as it is unable to conduct its normal broadcasting activities as a result of the damage or destruction to the Electronic Site or during the making of repairs or reconstruction of the Electronic Site. Lessee will bear the expense of replacing its equipment, fixtures and appurtenances, or any part thereof, arising as a result of or caused by virtue of the damage, destruction, repairing or reconstruction of the Electronic Site, and in all event shall carry sufficient insurance on its own property to cover the expense of any new installation required.

19. Certain Duties of Lessee Upon Termination of This Agreement. At the end of the Term of this Agreement, or upon the earlier termination of this Agreement, or upon the termination of any extensions or renewals of this Agreement, and provided that Lessee is not in default under the provisions of this Agreement, Lessee will within a reasonable time remove from the Electronic Site any and all Equipment and other property placed in or about the Electronic Site by Lessee. To the extent that this removal causes any damage or change to the Electronic Site, the Lessee will repair the damage and correct any change at its sole cost and expense. If the Lessee continues to maintain its Equipment in the Electronic Site or otherwise conducts any activity in or from the Electronic Site, this will in no event be construed to be a renewal of this Lease Agreement. However, to the extent and for the time Lessee maintains such Equipment or continues such activity, it will pay a daily fee to Lessor in an amount equal to double the sum it had paid on a daily basis rate of rent payable in the last month of the Term of this Agreement.

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20. Default. Any of the following events will be events of default by Lessee ("Event of Default") under this Agreement at the election of Lessor:

(a) Lessee fails to pay any installment of the rent or any other sum due to Lessor from Lessee on the date that the same is due (or if there is no specific due date, Lessor's demand for payment), and that failure continues for a period often (10) days thereafter;

(b) Lessee fails to comply with any term, condition or covenant of this Lease, other than the payment of money, and does not cure that failure within thirty (30) days after written notice thereof to Lessee, or there is a material failure of any of Lessee's warranties or representations;

(c) A receiver or trustee is appointed for all or substantially all of the assets of the Lessee; or

(d) Lessee attempts to assign its rights or otherwise attempts to allow the use of any of its interest or right under this Lease, except as expressly provided herein or permitted by a previous written instrument from Lessor, which will not be unreasonably withheld.

(e) Remedies Upon Lessee's Default. This Agreement is hereby made subject to the limitation that if and whenever any Event of Default shall occur, Lessor may, at its option, in addition to all other rights and remedies given hereunder or by law or equity, do any one or more of the following:

(i) Terminate this Agreement, in which event, Lessee shall immediately surrender possession of the Cabinet to Lessor or be deemed guilty of forcible detainer of the Cabinet and shall be subject to eviction proceedings.

(ii) Enter upon and take possession of the Cabinet and expel or remove Lessee and any other occupant therefrom through an action for forcible entry and unlawful detainer or by altering the locks and other security devices at the cabinet and Electronic Site, with or without having terminated the Agreement.

Exercise by Lessor of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Cabinet and Electronic Site by Lessee, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written stipulation to that effect by Lessor.

If Lessee shall fail to make any payment or cure any default hereunder within the time herein permitted, Lessor, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Lessee (and enter the leased premises for such purpose), and thereupon Lessee shall be obligated to, and hereby agrees to pay Lessor, upon demand, all costs, expenses and disbursements incurred by Lessor in taking such remedial action.

In the event of termination of this Agreement or of Lessee's right to possession of the Cabinet or repossession of the Cabinet for an Event of Default, Lessor shall have the option to re-let or attempt and in the event of reletting Lessor may relet the whole or any portion of the Cabinet for any period, to any lessee, and for any use and purpose.

In the event Lessor elects to terminate this Agreement by reason of an Event of Default, Lessee shall be liable for all rent and other indebtedness accrued to the date of such termination, plus Lessee shall be liable to Lessor, as liquidated damages, for an amount equal to such rent and other indebtedness as would otherwise have been required to be paid by Lessee to Lessor during the period following termination of the Lease Term measured from the date of such termination by Lessor until the date which would have been the date of expiration of the Term as stated in Section 4 (had Lessor not elected to terminate this Agreement on account of such Event of Default) diminished by any net sums thereunder received by Lessor through reletting the Cabinet during said period (after deducting expense incurred by Lessor to re-let the Cabinet). Actions to collect amounts due by Lessee provided for in this paragraph may be brought from time to time by Lessor during the aforesaid period, on one or more occasions, without the necessity of Lessor's waiting until expiration of such period and in no event shall Lessee be entitled to any excess of rent (or rent plus other sums) obtained by reletting over and above the rent herein reserved.

In the event Lessor elects to terminate Lessee's right to possession of the Cabinet without terminating this Agreement, by reason of an Event of Default, Lessee shall be liable for all rent and other indebtedness accrued to the date of such termination, plus Lessee shall be liable to Lessor for such rent and other indebtedness as would otherwise have been required to be paid by Lessee to Lessor during the period following termination of Lessee's right to possession of the Cabinet measured from the date of such termination by Lessor until the date which would have been the date of expiration of the Term as stated in Section 4 (had Lessor not elected to terminate Lessee's right to possession on account of such Event of Default) diminished by any net sums thereafter received by Lessor through reletting the Cabinet during said period (after deducting expense incurred by Lessor to relet the Cabinet). Actions to collect amounts due by Lessee provided for in this paragraph may be brought from time to time by Lessor during the aforesaid period, on one or more occasions, without the necessity of Lessor's waiting until expiration of such period and in no event shall Lessee be entitled to any excess of rent (or rent plus other sums) obtained by reletting over and above the rent herein reserved.

21. Miscellaneous Provisions.

(a) Failure of Lessor to declare an Event of Default immediately upon its occurrence, or delay in taking any action in connection with an event of default, or any delay by Lessor in enforcing any right of Lessor hereunder, shall not constitute a waiver of the default or right, but Lessor will have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement at any time. Pursuit of any one or more of the remedies set forth in Section 20 above will not preclude pursuit of any one or more of the other remedies provided elsewhere in this Agreement or provided by law, nor will pursuit of any remedy provided constitute forfeiture or waiver of any amount or damages accruing to Lessor

by reason of the violation of any of the terms, provisions or covenants of this Agreement. The receipt of any amount by Lessor with knowledge of any breach of this Agreement by Lessee or of any default on the part of Lessee in the observance or performance of any of the terms, covenants or conditions of this Agreement, will not be deemed to be a waiver of any provision of this Agreement. No receipt of any amount by Lessor from Lessee after the termination hereof will reinstate the Term of this Agreement, or affect any notice theretofore given to Lessee or operate as a waiver of the right of Lessor to enforce the payment of any other amount required to be paid by Lessee by law or under the terms of this Agreement.

(b) Neither party will be required to perform any covenant or obligation in this Agreement not involving the payment of money to the other party, or be liable in damages to the other, so long as the performance or non-performance of the covenant or obligation is delayed, caused by or prevented by an act of God or *force majeure*. An "act of God" or "*force majeure*" is defined for purposes of this Agreement as negligent or intentional destruction of property by another party, strikes, lockouts, sitdowns, power shortages or blackouts, adverse weather, material or labor restrictions by any governmental authority, any governmental action, unusual transportation delays, military or criminal action, floods, washouts, explosions, earthquakes, fire, acts of the public enemy, insurrections, and any other cause not reasonably within the control of the party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.

(c) If Lessee fails in the performance of any of the terms, covenants, agreements or conditions contained in this Agreement and by it to be performed, and Lessor places in the hands of an attorney the enforcement of all or any part of this Agreement, Lessee agrees to pay Lessor without any further notice or demand Lessor's reasonable attorney fees and costs, whether suit is actually filed or not; provided, however, that Lessee will not be required to pay such fees and costs if Lessee cures its failure of performance within ten (10) days of the commencement of the failure.

(d) If Lessee continues to occupy or otherwise use the Electronic Site after the expiration or termination of this Agreement, all of the terms and provisions of this Agreement will be applicable during the period, except that Lessee will pay the increased rent described in Section 19 of this Agreement. No holding over by Lessee, whether with or without the consent of Lessor, will operate to extend this Agreement except as otherwise expressly provided.

(e) Lessee agrees to furnish promptly, from time to time, upon Lessor's request, a statement certifying that this Agreement is in full force and effect and that there is no prepayment of the Rent, and that there is no existing default by reason of any act or omission by Lessor, and such other matters as may be reasonably required by Lessor.

(f) This Agreement will be binding upon and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors and assigns. The parties agree that Lessor may assign this Agreement, and upon such assignment Lessor shall have no further responsibility hereunder.

(g) The captions appearing in this Agreement are employed only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any paragraph or section.

(h) If any provision of this Agreement is ever held to be invalid or unenforceable, that invalidity or unenforceability will not affect any other provision of this Agreement, and the other provisions will continue in full force and effect.

(i) All payments required to be made by Lessee will be payable to Lessor at Lessor's address set forth below. Any notice or document required or permitted to be delivered under the terms of this Agreement will be deemed to be delivered when personally delivered or (whether or not actually received) when deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below.

If to Lessor:

Xcell Towers II

Attention:

13010 MORRIS RD. STE 600
ALPHARETTA, GA 30004

If to Lessee: See Exhibit A

Any party may change its address by giving notice in the prescribed fashion to all of the other parties hereto.

(j) Lessee and Lessor will execute, acknowledge as appropriate and deliver to the other any document or instrument reasonably necessary to effectuate or carry out the provisions of this Agreement promptly upon request therefor.

(k) Nothing contained in this Agreement will be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties, and it is understood and agreed that neither the method of computation of rent nor any other provision contained in this Agreement nor any acts of the parties, will be deemed to create any relationship other than the relationship of lessor and lessee.

(l) This Lease Agreement will be interpreted according to the substantive laws of the State of New Mexico. If a dispute arises under the terms of this Agreement or, with respect to the subject matter hereof, suit shall be brought, if at all, in the courts of general jurisdiction, federal or state, for Santa Fe, New Mexico.

(m) If Lessee is a corporation or partnership, then Lessor may require guaranties of Lessee's obligations hereunder by Lessee's shareholders, officers, or partners; and any such persons, by their execution of any counterpart of this Agreement, do hereby guarantee the timely and complete performance by Lessee of all of its undertakings and covenants herein contained, including the payment of money, and do further guarantee the payment of any sum of money or the performance of any act which it is later determined that Lessee is required to pay or do as a result of any breach of this Agreement by Lessee. This shall be a continuing guaranty given as a further inducement to Lessor to enter into this Agreement, and may not be terminated in any respect by any guarantor. Lessor may extend any obligation of Lessee or any guarantor and may renew, exchange, surrender or otherwise deal with any collateral offered or given by Lessee or any person. Each of the guarantors hereby waives presentment, demand for payment by any person, protest and notice of nonpayment, dishonor or protest and all other notices and demands.

(n) Lessor may require that Lessee make a deposit with Lessor against Lessee's obligations hereunder (i) in an amount of three months' rent and then applicable electricity and utilities charges and taxes, if Lessee shall have been late in making two or more payments of rent or any other charge in any six month period and Lessor has elected not to treat the late payments or any of them as events of default under this Agreement, or (ii) at the inception of this Agreement, as specified in Exhibit A. The deposit shall be held by Lessor as security for Lessee's full, faithful and timely performance of Lessee's obligations under this Agreement. The deposit is not an advance payment of rent or a measure of Lessor's damages. If at any time during the Term of this Agreement Lessee is late in making any payment of rent or amount hereunder to Lessor or to any other person, Lessor may (but is not required to) apply any part or all of the deposit as Lessor determines, without waiving any right to elect an event of default or any other right. If Lessor applies any part or all of the deposit as specified in the preceding sentence, Lessee shall pay to Lessor the amount applied, immediately on demand, so that the deposit with Lessor is fully replenished. Upon the termination of this

Agreement, and Lessee shall have fully and faithfully performed all of its agreements hereunder, Lessor shall return the deposit, without interest, to Lessee.

(o) Lessee shall pay to Lessor as additional rent upon invoice by Lessor any additional charge, fee or rent imposed upon Lessor by the United States Forest Service or other U.S. government agency

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under Lessor's Communications Use Lease. Lessor shall allocate any such additional charge, fee or rent among its lessees (including Lessee) in accordance with a reasonable method of proration based upon the lessees' respective base rents or other factors.

(p) IT IS EXPRESSLY AGREED BY LESSEE, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT, THAT THIS LEASE AGREEMENT, WITH ANY SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS AGREEMENT OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS ATTACHED TO OR INCORPORATED IN THIS AGREEMENT. THIS AGREEMENT SUPERSEDES ALL PRIOR NEGOTIATIONS AND AGREEMENTS, WRITTEN OR ORAL, PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT. THERE WILL BE NO MODIFICATION OF THIS AGREEMENT EXCEPT BY A SUBSEQUENT WRITTEN INSTRUMENT EXECUTED BY THE PARTIES HERETO. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES BY LESSOR OF MERCHANTABILITY, USE, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS AGREEMENT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE WHICH MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF this Agreement is executed as of the date stated in Exhibit A attached hereto and made a part hereof.

LESSOR:

XCell Towers II, LLC a
Delaware corporation

By: 

LESSEE:

SANTA FE COUNTY,
a political subdivision of the
State of New Mexico

By: _____

Anna Hansen, Chair
Santa Fe Board of County Commissioners

ATTESTATION:

By: _____

Geraldine Salazar
Santa Fe County Clerk

Date: _____

Approved as to form:

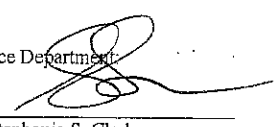
By: 

R. Bruce Frederick
County Attorney

Date: 10/1/18

Finance Department:

By:


Stephanie S. Clarke
Finance Director

Date:

10/2/18

EXHIBIT A
TO
ELECTRONIC SITE LEASE AGREEMENT

<u>Lessee:</u>	Santa Fe County	Date of original Lease: July 1, 2018
	102 Grant Avenue	Santa Fe County Agreement No.
	Santa Fe, New Mexico 87504	2019-0036-FD/SO
	Telephone: (505) 986-6200	

Commencement Date: July 1, 2018

Termination Dates: June 30, 2021, subject to automatic renewal under Section 4 of the Lease Agreement.

Description of Equipment:

Two (2) ICOM model IC-FR 3000 repeaters,
Two (2) Sinclair Model Q 2220E duplexers,
Two (2) Decibel Products (Andrew) model DB 222-A omnidirectional exposed
dipole antennas

Operating Frequencies: Transmit	Receive
155.430 MHz	158.790 MHz
156.180 MHz	159.015 MHz

One (1) ICOM model IC-FR 3000 repeater
One (1) Sinclair Model 2220E duplexer
One (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed
dipole antenna

Operating Frequencies: Transmit	Receive
154.415 MHz	158.970 MHz
154.010 MHz	159.450.MHz
154.235 MHz	150.775 MHz

Monthly Base Rent and Charges for Lessee from July 1, 2018 through June 30, 2019 (Base Rent and other charges are subject to adjustment in accordance with the Lease Agreement).

Base Rent	\$1,189.38 X 12 months =	\$ 14,272.56
NM grt @ 7.125%	\$84.74 X 12 months =	\$ 1,016.92
	Subtotal	\$ 15,289.48

Electric 7/1/18 to 12/31/19	\$41.50 X 6 months =	\$ 249.00
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Electric 1/1/19 to 6/30/19	\$49.80 X 6 months =	\$ 298.80
Fuel (propane) 7/1/18 to 12/31/19	\$24.62 X 6 months =	\$ 147.72
Fuel (propane) 1/1/19 to 6/30/19	\$28.32 X 6 months =	\$ 169.92
	Subtotal	\$ 16,154.92
Back charges (Forest Service fee, electricity)		\$ 970.00
	Total:	\$17,124.92

\$17,124.92 ÷ 2 (between SFC Fire Department and SFC Sheriff's Office) = \$8,562.46 each

Lessor will submit an annual invoice to the Lessee by sending separate invoices to the Santa Fe County Fire Department and the Santa Fe County Sheriff's Office. The Santa Fe County Fire Department and Santa Fe County Sheriff will equally share the payment of the Lessor's total annual invoice.

Deposit: None

Other Terms:

This Lease and Exhibit A replaces all prior leases between Tesuque Radio Company and Santa Fe County. The following provisions modify and supersede the provisions of the Electronic Site Lease Agreement to which this Exhibit A is attached. In the event of any conflict between this Exhibit A and the Agreement, the provisions of this Exhibit A shall control.

1. Section 3(a) of the Lease Agreement (Rent). The second sentence ends after the words "Exhibit A" and the remainder of the second sentence and the entirety of the third sentence are deleted. Any increase in the Rent shall be effective on July 1 and notice of any increase shall be provided to the Lessee in no less than 120 days prior to July 1. The Rent will be subject to adjustment (increase or decrease) in accordance with Section 2 below (CPI Calculation).

2. CPI Calculation- The procedure for adjusting the Rent shall be as follows. The Consumer Price Index - All Urban Consumers - U. S. Cities hereinafter (Index) as published by the United States Department of Labor's Bureau of Labor Statistics ("Bureau") will be the basis for adjustment of the Rent. The first January after the effective date of this Agreement shall be used as the Base Month Index. Lessor shall review the January Index annually and compare it with the Base Month Index. If there has been an increase in the Index, the Rent for the next calendar year commencing July 1 may be increased by an amount equal to the Initial Term Rent multiplied by the percentage of the increase over the Base Month Index, or 3%, whichever is higher. Any increase in the Rent shall be rounded to the nearest whole dollar. In no event shall the Rent be adjusted downward to an amount less than the previous year's rent. Should the Bureau discontinue the publication of the Index, or publish the Index less frequently, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

3. Section 3(b) of the Lease Agreement (Electricity Charge) is modified to insert the following at the end of 3(b):

At the end of each calendar year, Lessor will determine the actual electricity charges for the Electronic Site and the actual charge to Lessee. If the Lessee underpaid for the year, Lessee will pay the balance of the actual charge owed on July 1 of each year. If the Lessee has overpaid for the year, Lessor will credit the amount of the overpayment to the next year's estimated charge for electricity.

4. Section 3(c) of the Lease Agreement (Fuel Charge) is modified by deleting the 4th, 5th and 6th sentences and replace them with the following:

At the end of each calendar year, Lessor will determine the actual fuel charges for the Electronic Site and the actual charge to Lessee. If the Lessee underpaid for the year, Lessee will pay the balance of the actual charge owed on July 1 of each year. If Lessee overpaid for the year, Lessor will credit the overpayment to the next year's estimated charge for fuel.

5. Section 3(d) of the Lease Agreement (Gross Receipts Tax) is modified to insert the following at the end of 3(d):

If the annual settlement of the New Mexico State gross receipts tax or other tax shows that Lessee underpaid, Lessee will pay the balance of the actual New Mexico gross receipts tax or other tax owed on July 1 of each year. If the annual settlement of the New Mexico State gross receipts tax or other taxes shows that Lessee overpaid for New Mexico State gross receipts tax or other taxes for the year, Lessor will credit any overpayment to the next year's estimated charge for New Mexico State gross receipts tax or other taxes.

6. Section 3(f) of the Lease Agreement (Additional Charges) is modified to insert the following at the end of 3(f):

Any additional charges will be due on July 1 of each year and notice of any additional charges shall be provided to the Lessee in not less than 120 days prior to July 1.

7. Section 6 (c) (Sewer, Water and Natural Gas), the second sentence is modified to insert the phrase "unless otherwise agreed to by the Lessor and Lessee" at the end of the second sentence so the second sentence reads: If Lessor in the future supplies propane, liquefied natural gas or a similar energy source to lessees generally, Lessor will make the same available to Lessee in an equitable manner upon appropriate subscription and payment for services therefor independent of this Agreement, unless otherwise agreed to by the Lessor and Lessee.

8. Section 9 (Governmental Regulations) of the Lease Agreement is modified to insert the phrase "to the extent permitted by New Mexico law" between the words "and" and "Lessee", so Section 9 should read as follows:

9. Government Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including, specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect); and, to the extent permitted by New Mexico law, Lessee shall indemnify and hold harmless Lessor from any and all penalties, fines, costs, expenses or damages, including attorney fees and costs, resulting from the failure of Lessee or its employees or contractors to comply with any of these laws, rules or regulations applicable to Lessee's Use of the Electronic Site. .

9. Section 12(a) (Lessee's Risk of Loss or Injury) of the Lease Agreement is modified to insert the phrase "To the extent permitted by New Mexico law," at the beginning of the second sentence.

10. Sections 12(b) and 12(c) (Lessee's Risk of Loss or Injury), is modified to insert the phrase "To the extent permitted by New Mexico law," at the beginning of the first sentence of 12(b) and 12(c), respectively.

11. Section 13 (Insurance) is modified to insert the following sentence at the end of Section 13.

Lessee's obligation to obtain insurance coverage may be satisfied by Lessee's participation in the insurance pool of the New Mexico Association of Counties, provided that such insurance coverage otherwise meets all of the requirements of this Section 13.

12. Section 20 (Default), subsection (e), the first full paragraph on page 11 of the Lease Agreement is modified to end the first sentence after the words "such termination" and the remainder of this sentence after the word "plus" is deleted in its entirety.

13. Section 21 (Miscellaneous Provisions), subsection (n) is deleted in its entirety.

14. The following provision is inserted into Section 21 (Miscellaneous) as subsection (q).

(q) Limitations on Lessee's Liability; No Waiver of Sovereign Immunity; Appropriations. As a political subdivision of the state of New Mexico, any liability on the part of Lessee Santa Fe County is limited by state law,

including the Bateman Act, NMSA 1978, § 6-6-11; Art. IX, Sec. 10 (County indebtedness), and the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq. Nothing in this Lease Agreement shall be interpreted as a waiver of Lessee's sovereign immunity under the Tort Claims Act. Nothing in this Lease Agreement shall require the Lessee to become indebted or contract any indebtedness of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as provided above, shall be void. Any obligation on the part of the Lessee to expend funds under this Agreement shall be subject to the availability of sufficient appropriations from the Santa Fe County Board of County Commissioners.

15. Section 21(i), notice to Lessee is as follows:

Santa Fe County
Attn: Santa Fe County Manager
P.O. Box 276
102 Grant Avenue
Santa Fe, NM 87504-0276

and,

Santa Fe County
Attn: Real Property Specialist
P.O. Box 276
102 Grant Avenue
Santa Fe, NM 87504-0276



Tesuque Peak Site
35-47-09 N. Lt.
105-46-54 W. Long.

Xcell Towers II, LLC

NM Tax ID: 03-397080-00-7

Federal Tax ID:

46-1105964

Address

PO Box 307

City, ST ZIP Code

White, GA 30184

Phone:

(312) 953-7111

E-mail:

TesuquePeak@xcelltowers.com

INVOICE

Invoice #:

184407B

Date:

7/1/2018

Tenant ID:

44B

Bill To:

Tenant Name:

Santa Fe County Fire Department

C/O:

Steve Moya

Street Address

35 Camino Justicia

City, ST ZIP Code

Santa Fe, NM 87507

Email

smoya@santafecountynm.gov

DATE	Description	INVOICE #	AMOUNT	PAYMENT	BALANCE
7/1/2018	Rent for period 7/1/2018- 6/30/2019 @ \$594.69/month	184407B		\$7,136.28	\$7,136.28
	Electricity from 7/1/2018- 12/31/2018 @ \$20.75/month	184407B		\$124.50	\$124.50
	Electricity from 1/1/2019- 6/30/2019 @ \$24.90/month	184407B		\$149.40	\$149.40
	Propane from 7/1/2018- 12/31/2018 @ \$12.31/month	184407B		\$73.86	\$73.86
	Propane from 1/1/2019- 6/30/2019 @ \$14.16/month	184407B		\$84.96	\$84.96
	Tax @ 7.125%	184407B		\$508.46	\$508.46
				MONTHLY TOTAL	\$8,077.46
				BALANCE	
				AS OF 6/30/2018	\$485.00
				TOTAL	\$8,562.46

Reminder: Please include the statement number on your check.

Terms: Balance due July 1, 2018.

Make all checks payable to Xcell Towers II.

ACH REMITTANCE:

(preferred method of payment)

Remit To:

Xcell Towers II, LLC

Bank:

JP Morgan Chase Bank

Statement #

184407B

Routing:

601092387

Account:

130661630

Amount Due:

\$8,562.46



Tesuque Peak Site
35-47-09 N. Lt.
105-46-54 W. Long.

Xcell Towers II, LLC

NM Tax ID: 03-397080-00-7

Federal Tax ID:

46-1105954

Address

PO Box 307

City, ST ZIP Code

White, GA 30184

Phone:

(312) 953-7111

E-mail:

TesuquePeak@xcelltowers.com

INVOICE

Invoice #:

184407A

Date:

7/1/2018

Customer ID:

44A

Bill To:

Tenant Name:

Santa Fe County Sheriff's Department

C/O:

Diana M. Lovato

Street Address

102 Grant Avenue

City, ST ZIP Code

Santa Fe, NM 87504

Email

dmlovato@santafecountynm.gov

DATE	Description	INVOICE #	AMOUNT	PAYMENT	BALANCE
7/1/2018	Rent for period 7/1/2018-6/30/2019 @ \$594.69/month	184407A			
	Electricity from 7/1/2018-12/31/2018 @ \$20.75/month	184407A		\$7,136.28	\$7,136.28
	Electricity from 1/1/2019-6/30/2019 @ \$24.90/month	184407A		\$124.50	\$124.50
	Propane from 7/1/2018-12/31/2018 @ \$12.31/month	184407A		\$149.40	\$149.40
	Propane from 1/1/2019-6/30/2019 @ \$14.16/month	184407A		\$73.86	\$73.86
	Tax @ 7.125%	184407A		\$84.96	\$84.96
				\$508.46	\$508.46
				MONTHLY TOTAL	\$8,077.46
				BALANCE AS OF 6/30/2018	\$485.00
				TOTAL	\$8,562.46

Reminder: Please include the statement number on your check.

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Make all checks payable to Xcell Towers II.

ACH REMITTANCE:

(preferred method of payment)

Remit To:

Xcell Towers II, LLC

Bank:

JP Morgan Chase Bank

Statement #

184407A

Routing:

601092387

Account:

130661630

Amount Due:

\$8,562.46

X2 =

17,124.72

ELECTRONIC SITE LEASE AGREEMENT

This Lease Agreement is entered into as of the date set forth for "Date of Lease" in Exhibit A, by and between **XCell Towers II, LLC**, a Delaware limited liability company, 13010 Morris Road, Alpharetta, Georgia 30004 ("Lessor"), and the entity who is identified as Lessee in Exhibit A ("Lessee").

RECITALS

A. Lessor is the lessee under that certain Communication Use Lease under which Lessor is granted a leasehold by the United States Department of Agriculture, United States Forest Service, to construct, maintain and operate a facility to house certain electronic equipment and rent space in that facility for the operation of certain electronic transmission equipment at Tesuque Peak, Santa Fe County, New Mexico, at a site more specifically described as follows:

A building and antenna tower site on Tesuque Peak, Santa Fe National Forest, situated in the northwest quarter NW¼, NW¼, SE¼, Section 16 T.18N., R.11E., NMPM, 35 degrees, 47' 09" north latitude, by 105 degrees 46' 54" west longitude, as shown on the Tesuque Peak Electronic Site Plan.

B. Lessee seeks a lease of space to maintain and operate certain electronic equipment at the Electronic Site, subject to the terms and conditions of this Lease Agreement.

AGREEMENT

1. Definitions. For the purposes of this Lease Agreement, certain terms will be defined as follows.

(a) "Electronic Site" means the building and antenna tower site and the improvements maintained thereon from time to time by Lessor on Tesuque Peak, Santa Fe County, New Mexico.

(b) "Cabinet" means the cabinet, closet or other space which will be furnished for Lessee's use in installing its equipment in the Electronic Site.

(c) "Commencement Date" is the first day for which a rent is due from Lessee to Lessor.

(d) "Equipment" means the electronic equipment, cabinets, wiring, antennae and other fixtures and installation which Lessee installs at the Electronic Site in accordance with its Equipment Layout Plan.

(e) "Equipment Layout Plan" means the set of documents describing the Equipment which Lessee seeks to install at the Electronic Site, together with installation and wiring diagrams, frequency and power usage specifications, and such other information respecting Lessee's Equipment and installation as Lessor may require.

(f) "Objectionable Interference" means both intra-site and inter-site signal interference, of whatsoever cause or source, and is more specifically described in Section 11.

(g) "Term" or "Lease Term" means the term of this Lease Agreement, beginning on the Commencement Date and continuing until termination hereof, including all extensions or renewals.

(h) "Termination Date" means the last date of the Lease Term, as specified in Exhibit A, but subject to provisions of this Agreement under which this Agreement may be extended or earlier terminated.

2. Grant of Lease. In consideration of the Lessee's payment of the rents as provided in this Agreement, and in further consideration of Lessee's representations, warranties and covenants hereinafter set

forth, Lessor hereby grants to Lessee during the term hereof the right to occupy the Cabinet in the manner hereinafter described, and further confers upon Lessee a non-exclusive lease to maintain and operate its equipment in the Electronic Site located at the Tower Site, subject, however, to all of the terms and conditions of this Agreement.

3. Rents. Lessee agrees to pay to Lessor, and Lessor agrees to accept from Lessee, as partial consideration for the lease herein granted, the amounts described in this Section 3.

(a) Rent. The Lessee will pay to the Lessor the rent described in Exhibit A which is attached hereto and made a part hereof, as hereinafter adjusted. Subject to Lessor's rights upon any default by Lessee under this Agreement, Lessee will pay to Lessor without abatement, offset, notice or demand, in advance, commencing on the Commencement Date and continuing on the first day of each and every calendar month thereafter during the term of this Agreement, the monthly installment of the rent shown in Exhibit A, as increased in accordance with the following sentence. The rent shall increase by 5% each year during the Lease Term, beginning on the first anniversary of the Commencement Date, and increasing by the same percentage on each anniversary date thereafter.

(b) Electricity Charge. Lessee will pay to Lessor an electricity charge computed in accordance with this Paragraph. Lessor will compute each year an annual electricity charge for Lessee based upon current or expected utility charges, and will bill the annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the electricity charge.

(c) Fuel Charge. The Electronic Site currently is equipped with backup electricity generating equipment, and may be equipped with other generating or heating equipment in the future. Lessor will compute an estimated annual fuel charge for Lessee, and will bill the estimated annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the fuel charge. At the end of each calendar year, Lessor will determine the actual fuel charges for the Electronic Site and the actual charge to Lessee. If Lessee has underpaid for the year, Lessee will pay the balance of the actual charge owed on or before the fifth day of the calendar month next following the month in which Lessee is billed for the balance. If Lessee has overpaid for the year, Lessor will return the overage to Lessee within 60 days after the end of the year.

(d) Gross Receipts Tax. Lessee acknowledges that the amounts described in the preceding Paragraphs of this Section are subject to New Mexico State gross receipts tax and may become subject to other federal or state taxes or exactions. Accordingly, Lessee will pay all amounts payable under this Section, together with such amounts, New Mexico State gross receipts tax or other taxes at the rate of taxation then specified for Santa Fe County, upon notice from Lessor.

(e) Late Payment Fee. In addition to (and not in substitution for) any remedy, damages or rights Lessor may have under this Lease or under applicable law, Lessee shall pay to Lessor upon notice from Lessor, for each month or portion thereof during which Lessee does not timely pay any installment of rent or other charge required by this Lease, a late payment fee of 1-1/4% of the amount of the rent or other charge.

(f) Additional Charges. From time to time and in accordance with Section 5(a), 6(b), 6(c) and 22(o) of this Agreement Lessee may be required to pay amounts to Lessor for specific items described in those Sections. Lessee will pay each such amount to Lessor, together with any gross receipts tax or other taxes thereon, within the calendar month commencing after the month in which the Lessee is invoiced for the amount.

4. Term. The Term of this Agreement will commence at the Commencement Date set forth in Exhibit A attached hereto and incorporated herein by this reference. The Term of the Lease will continue

from the Commencement Date until the Termination Date described in the same Exhibit, unless earlier terminated in accordance with the terms and conditions hereinafter set forth. This Agreement will automatically renew for successive terms, each of the same length as the initial term, unless and until Lessee notifies Lessor no more than ninety (90) and no less than thirty (30) days before the Termination Date that Lessee will not require a renewal of this Agreement. At any time after the initial Term of this Agreement, Lessor may terminate this Agreement by giving written notice to Lessee no less than 120 days before the Termination Date selected by Lessor in its notice to Lessee; provided, however, that Lessor will not affect any such termination if the termination would violate Lessor's Communications Use Lease or Lessee's special use permit to use the Electronic Site.

5. Lessee's Installation of Equipment

(a) Lessee will submit to Lessor at Lessor's request, before installing any equipment at the Electronic Site, an Equipment Layout Plan respecting all equipment which Lessee proposes to install at the Electronic Site. The Equipment Layout Plan will be subject to Lessor's reasonable approval. Lessor will have Lessee's Equipment Layout Plan, proposed installation and operating frequencies reviewed by a licensed electrical engineer selected by Lessor. Lessee will pay the engineer's reasonable fee for this review, together with a small fee charged by Lessor for arranging the review and inspection. Approval of the Equipment Layout Plan and proposed installation will be granted giving due consideration to good engineering practices dictated by the unique nature of, and mixed uses contemplated for the Electronic Site, compatibility with other Lessees, efficient use of mechanical and utility infrastructure and appurtenances, and to construction economics. Lessee hereby represents that it recognizes that the solution to any potential conflict in design and layout alternatives may be less than ideal. Lessor may require reasonable revisions to the Equipment Layout Plan in accordance with applicable regulations and standards of the Federal Communications Commission, United States Forest Service, or recognized professional engineering organizations as a condition for its approval. Upon Lessor's approval of a final Equipment Layout Plan, the parties will initial the final Equipment Layout Plan, and Lessee shall install its equipment at the Electronic Site in strict accordance with the final Equipment Layout Plan.

(b) Lessee will install its equipment at the Electronic Site in accordance with the final Equipment Layout Plan, and in accordance with all applicable federal, state and local laws, regulations and ordinances. Any change or alteration to the installation or to the equipment specified in the final Equipment Layout Plan will be pursuant to written change order only, approved by both Lessor and Lessee. Changes required by physical site characteristics or governmental regulations or construction economics or exigencies, and which do not materially affect the Electronic Site or the use of the Electronic Site by Lessor or other lessees, will not be unreasonably withheld by Lessor. Lessor may require Lessee, upon reasonable notice, to move its Equipment to another Cabinet or other location in the shelter at the Electronic Site, and to move its antennas to another location or locations on the towers or shelter at the Electronic Site. Lessor's engineers and representatives will have the right at all reasonable times during the course of installation to inspect the work in progress.

(c) Lessee acknowledges that Lessor's approvals of Lessee's Equipment and Equipment Layout Plan do not constitute any representation or warranty that the Equipment or Equipment Layout Plan are safe, meet any engineering standard or guideline, or comply with any industry standard or governmental law, regulation or rule and, further, that any inspection or approval does not constitute any waiver or reduction of any right Lessor has under this Agreement to indemnify or other relief from Lessee under this Agreement.

6. Utilities

(a) Electric Power Lessor will arrange for the supply of 30 amp, 240 volt alternating current electrical power to the Electronic Site by the electric utility company having the franchise and responsibility for supply of electricity thereto, and will supply a main disconnect and distribution panel to which the supply of electricity is connected. Lessor may, but is not required, to supply standby power. Lessee may connect to the main

disconnect and distribution panel at its own cost and expense, and will obtain all its power requirements therefrom. Lessee will effect such connection in a manner specified in its final Equipment Layout Plan, and will cause the work to be performed by a licensed electrical contractor reasonably satisfactory to Lessor. Lessee will pay for power consumed in accordance with Paragraph 3(c), above.

(b) Telephone. Lessor will not provide any telephone service to the Electronic Site. If in the future Lessor obtains any form of telephone service, access which is generally available to lessees, Lessee will have the right to equal access thereto upon appropriate subscription and payment for services therefor independent of this Agreement.

(c) Sewer, Water and Natural Gas. Lessor will not have any obligation to supply sewer, water or natural gas to the Electronic Site. If Lessor in the future supplies propane, liquefied natural gas or a similar energy source to lessees generally, Lessor will make the same available to Lessee in an equitable manner upon appropriate subscription and payment for services therefor independent of this Agreement.

(d) Trash Removal. Lessee will be responsible for the prompt removal from the Electronic Site of any surplus material or trash created in connection with the installation, operation, maintenance, alteration, modification or removal of Lessee's equipment, whether or not flammable or of a dangerous character. In all events, Lessee will not introduce or permit the introduction of any material to the Electronic Site which may by the provisions of any law, rule or regulation be in the nature of, or subject to regulation as, an explosive, poisonous or hazardous material or substance.

(e) Grounding System. Lessor has provided a grounding system at the Electronic Site. Lessee will connect all Equipment to the grounding system in accordance with its Equipment Layout Plan, and will maintain the integrity of these connections throughout the term of this Lease Agreement. All costs and expenses of grounding Lessee's equipment will be paid by Lessee.

(f) Air Conditioning. Lessor will have no duty to supply heating or air conditioning to the Electronic Site.

(g) Security. Lessor has a locked gate at the access road and locking devices at entry doors to the Electronic Site. All interior door locks, including the entry doors to the Cabinets and the Electronic Site, may be keyed to a master key which Lessor may keep in controlled custody. Lessor may install and remove other security and monitoring devices from time to time, and Lessee shall cooperate in their installation and use. Notwithstanding the foregoing, Lessor will have no liability for any act of any lessee or other person for any act (whether or not negligent or willful) which causes damage to the Electronic Site or any equipment or person therein, irrespective of the failure of any security system or absence of any security system.

7. Use of Electronic Site by Lessee.

(a) Lessee's use of the Electronic Site is limited to the operation of its unmanned radio transmitting and receiving equipment, on the frequencies, and with the powers, and limited to the scope, set forth on Exhibit A.

(b) Lessee will not use the Electronic Site for storage, shop space, office, or any other purpose aside from the specific purposes described in the preceding Paragraph (a), it being specifically understood that the Electronic Site is constructed and operated as an unmanned radio transmission site. Lessee will not install or attempt to use additional equipment or devices of any character whatsoever in the Electronic Site unless and until it shall have obtained the prior written approval of Lessor to an amended Equipment Layout Plan.

8. Access to Electronic Site.

(a) Lessee will have the right, through its engineers, technicians and employees, to obtain access to the Electronic Site and its Cabinet at all reasonable times for the purpose of normal, recurring maintenance duties, for extraordinary repair and emergency purposes, and for the installation and removal of

equipment in accordance with this Lease Agreement. Lessor will provide Lessee with a key to its Cabinet (if applicable), and keys to the Electronic Site and any gates on the access road. Lessee represents and warrants that personnel acting for Lessee or on its behalf will have skills, knowledge and training commensurate with those prevailing in the industry, including knowledge of the possible effects of radio frequency radiation and energy and the hazards of lightning and high voltage electricity. Lessee further represents and warrants that all such personnel for whom it obtains access to the Electronic Site are covered by both worker compensation and other insurance sufficient to cover any hazard, risk or injury which may be attendant to, or occur by reason of or as a proximate cause of, those personnel being at or upon the Electronic Site.

(b) Lessee will perform its repair, maintenance and other work at the Electronic Site in a manner so as to prevent any damage or injury to equipment maintained by Lessor or Lessee or other persons in or about the Electronic Site or to any persons in the Electronic Site or areas nearby. Lessee further agrees to cooperate with Lessor and all other Lessees by removing its carrier from the air when it is necessary for antenna workers to be in a field of radiation which exceeds the prescribed maximum range specified by any industry standard or governmental regulatory authority, in order to work on antennas or other portions of the Electronic Site. Lessee will restrict repair work to periods of time least disruptive to other lessees and users.

(c) Lessee will not place locking devices or otherwise prevent access by Lessor to Lessee's Cabinet, without the previous written consent of Lessor; and in that event Lessee will furnish the keys or other means to permit Lessor to enter the Cabinet. However, Lessor will not, except in emergency situations which could result in immediate danger or harm to life or property, or which by the terms of any insurance carried by Lessor or order of any governmental authority would require immediate action on the part of Lessor, enter into the Cabinet in which Lessee maintains its equipment without first notifying Lessee of its intent to enter, and affording Lessee the opportunity to accompany Lessor's representatives. Lessor agrees to make reasonable attempts to advise Lessee by telephone or comparable means of any such emergency situation or immediate action so that Lessee's representative can be present if possible.

9. Governmental Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal, state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect); and Lessee shall indemnify and hold harmless Lessor from any and all penalties, fines, costs, expenses or damages, including attorney fees and costs, resulting from the failure of Lessee or its employees or contractors to comply with any of these laws, rules or regulations applicable to Lessee's use of the Electronic Site.

10. Repair and Maintenance of Lessee's Equipment. Lessee will keep all of its Equipment in good working order, condition and repair, in a safe and operative condition, at Lessee's sole cost and expense, all in accordance with good engineering practices, taking into consideration and implementing all reasonable precautions to avoid interference or hindrance to and with the operations of all other lessees or other uses of the Electronic Site and the Lessor, and in a manner so as to avoid and preclude any (i) objectionable interference, (ii) hazardous radiation, (iii) any emission or contamination by any hazardous substance or any other dangerous chemical or substance in or about the Electronic Site, (iv) the creation of any hazard of fire, electrical shock, dangerous emissions or contamination, or other similar hazard or calamity, or (v) the creation of any other hazardous condition or risk which could result in material damage to any person or property in or about the Electronic Site.

11. Prevention of Objectionable Interference.

(a) "Objectionable Interference" means any interference produced by a Electronic Site user which originates at or by reason of the use of the Electronic Site by the user, and which (i) is determined by an authorized representative of the Federal Communications Commission to be objectionable interference,

(ii) is objectionable interference within the meaning of the rules and regulations of the Federal Communications Commission as in effect from time to time, or (iii) otherwise causes a material impairment of the signals transmitted or received by a user of the Electronic Site within the Facility's service area as such area is or may be defined by the Federal Communications Commission. Lessee will install and operate its Equipment so as not to cause any Objectionable Interference to any other current lessee of the Electronic Site, Lessor or any other person. Lessee will cooperate fully with all other lessees and users in preventing interference among equipment employed by any of those persons at the Electronic Site. Lessee will install at Lessee's sole cost and expense suitable interference protection devices before equipment operation begins or as may become necessary thereafter because of Lessee's operations.

(b) In all events, the determination of Objectionable Interference, the resolution of disputes and other matters relating to interference will be determined in accordance with and subject to rules, regulations and decisions of the Federal Communications Commission then applicable, as well as Lessor's United States Forest Service Communications Use Lease and applicable United States Forest Service rules and regulations.

(c) In addition to and notwithstanding the foregoing, Lessor may require Lessee at any time or from time to time, upon reasonable notice to Lessee, to install suitable interference protection devices after the installation of Lessee's equipment at the Electronic Site to prevent interference with the operations of other users, and further, may require changes to Lessee's equipment (in addition to any required interference protection devices) necessary to accommodate the needs of a tenant locating on the Electronic Site after Lessee (or a current tenant adding equipment at the site) if (i) that tenant cannot otherwise reasonably locate at the site, and (ii) that tenant (or Lessor) undertakes to reimburse Lessee for all reasonable costs required for the modification or replacement.

12. Lessee's Risk of Loss or Injury.

(a) Lessee assumes all risk of damage or loss to its property or equipment at the Electronic Site and that risk will be and remain exclusively Lessee's responsibility and not that of Lessor. Lessee hereby indemnifies and saves harmless Lessor, its stockholders, directors, officers, agents, employees and affiliates from any liability or expense, including attorney fees and costs, that shall or may arise because of any claims asserted by Lessee or any other person on account of the destruction of or damage to Lessee's property or Equipment.

(b) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorneys' fees and costs) arising from or occasioned in any respect by (i) any alleged act, omission, fault or negligence of Lessee, or (ii) injury (including death) or damage to Lessee's employees or employees of Lessee's contractors and subcontractors arising from or occasioned by or allegedly occasioned by any act or omission, or by reason of the use and occupancy of the Electronic Site or the access road or any part thereof by Lessee or any other person.

(c) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorney fees and costs) arising from or occasioned in any respect by (i) any failure of any warranty or representation by Lessee, (ii) Lessee's failure to perform any obligation by it to be performed hereunder, or (iii) any act or omission of Lessee or its employees or contractors which results in any prejudice to Lessor's rights under its Communications Use Lease with the United States Forest Service.

(d) Lessor will not be liable to Lessee or anyone claiming under or through Lessee for any loss or damage caused by the acts or omissions of any other lessee or any other person or the malfunctioning or interruption of any service, utility, facility or installation.

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(e) Lessor undertakes only to exercise reasonable care in the management of the Electronic Site and Lessor will not be liable on this account to Lessee for any event except for any act or omission caused by the negligence, gross negligence or willful misconduct of Lessor. Lessor further agrees to observe its obligations under and will be liable to Lessee for damages provided by law for any material breach of these obligations. Notwithstanding anything else in this Agreement to the contrary, in no event will Lessor be liable to any of the persons described in the preceding sentence for consequential damages, special damages or punitive damages under any circumstances, and Lessee, for itself and for all other persons for whom it may make such a waiver, hereby expressly waives all such claims.

(f) Lessee represents and warrants that it or its representatives and contractors are knowledgeable in matters of electrical engineering and related fields, and have evaluated fully the suitability of the Electronic Site for Lessee's purposes. Lessee acknowledges that its determination to enter into this Agreement is based solely upon its own investigation and inspection of the Electronic Site and not in reliance upon any representation of Lessor as to any feature, specification or aspect of the Electronic Site, except as specifically described in this Agreement.

13. Insurance. Lessee will obtain, pay all premiums for and maintain in full force and effect during the Term of this Agreement comprehensive public liability insurance, whether by primary or excess loss or blanket coverage covering all of Lessee's operations and activities on or about the Electronic Site and the access road, including but not limited to the operations of contractors and the operation of vehicles and equipment, with aggregate limitations at least equivalent to those prevailing in the industry, but in no event less than \$1 million for injury to, or death of, any one or more persons, and \$1 million for property damage, or such lesser amounts as Lessor may prescribe from time to time. Each of the foregoing limitations will be for each occurrence and shall not be an aggregate limit in the policy or policies. Lessee further agrees to obtain such additional insurance coverage or to increase the foregoing limits as Lessor may from time to time reasonably require by notice applicable to all lessees in similar circumstances. Lessee shall cause all of its contractors installing its equipment and making repairs or changes to the equipment to procure public liability and property damage insurance complying with this Section; and Lessee further shall require of its contractors that they maintain worker compensation insurance. Lessee will give Lessor such evidence of insurance coverage as Lessor may require from time to time. All insurance policies will be issued by insurers having a Best's AAA or better rating, and will provide for not less than 30 days' written notice of cancellation or change, commencing with the receipt thereof, to be given to Lessor before any cancellation or change in the policy will be effective. Such insurance further shall include coverage for the liability assumed by Lessee under this Agreement, and will contain a waiver of subrogation against Lessor. If Lessee fails to procure or maintain the required insurance policies, or fails to cause its contractors to procure the required policies, Lessor may, but will not be required to, procure or maintain such policies at the expense of Lessee. Any amounts so paid by Lessor will be additional amounts due from Lessee under Section 3.

14. Radio Frequency Radiation Considerations. Lessee recognizes and acknowledges that radio frequency radiation ("RF Hazards") as they may affect humans and all other forms of life are of concern and are specifically regulated by the Federal Communications Commission and may be subject from time to time to other rules and regulations ("RF Standards"). Lessee further acknowledges that RF Hazards will be measured and considered under RF Standards in the aggregate of the combined radio frequency densities of all users of the Electronic Site, and that this combined aggregate power density must be considered for assessment of compliance with applicable RF Standards. Accordingly, in order to assure that the Electronic Site complies with applicable RF Standards after consideration of Lessee's and all other transmissions of radio frequency energy from or to the Electronic Site, Lessee hereby agrees:

(a) To design, install and operate its Equipment in such a manner that Lessee's use of the Electronic Site, in concert with all other users of the Electronic Site, will at all times comply with all applicable RF Standards;

(b) To design, install and operate its Equipment so as to minimize downward radio frequency radiation affecting the Electronic Site and surrounding lands;

(c) To provide Lessor with a complete copy of Lessee's FCC filings, permits, and any other documents from any source addressing potential biological or botanical exposure to RF Hazards which could be caused by Lessee's operations or Equipment at the Electronic Site;

(d) That measurements of radio frequency power densities present on the site or surrounding land may be required by Lessor, or in order to assure compliance with RF Standards by government agencies, including but not limited to the Federal Communications Commission and the Environmental Protection Agency and the Environment Department of the State of New Mexico; and

(e) Should such measurements be required by Lessor or under any law, rule or regulation, the measurements will be carefully conducted and results certified by a registered professional engineer (electrical, State of New Mexico) or any other qualified person authorized by Lessor, the cost of the measurement to be paid by Lessee.

15. Use of Road. Lessee will have the nonexclusive right to use the access road for access, ingress and egress to the Electronic Site.

16. Certain Obligations of Lessor. Lessor will keep the foundations, exterior walls, roofs, tower structures and foundations, and the structural portions of the Electronic Site in a good state of repair in accordance with rules and regulations of the United States Forest Service during the term of this Agreement, at Lessor's expense except as to damage or injury thereto caused by any lessee. The access road will be maintained (except during inclement weather or during times when snow is accumulated) in a condition sufficient for four-wheel drive vehicular travel. In this regard, Lessor reserves the right, without liability to Lessee, to interrupt the electrical or other services at the Electronic Site at such time as may be necessary and for so long as may be reasonably required for the making of necessary repairs, alterations or improvements thereto. Except for emergencies, these interruptions will to the extent possible be confined to non-working hours (or in cases of 24 hour transmitting or receiving at such hours as will cause the least practicable interruption to Lessee's activities) and will be commenced only after Lessor's having given at least one week's notice to the lessees affected. Lessor will not be liable to Lessee for any damages of any kind, or by reason of inconvenience, annoyance, or injury to the Electronic Site, or activities conducted by Lessee from the Electronic Site, arising from the necessary repairing or maintenance of any portion thereof, whether due to casualty, fire, normal maintenance requirements or otherwise, or from the making of any alteration or improvements in or to any portion of the Electronic Site or its equipment.

17. Termination of Communications Use Lease. If Lessor's Communications Use Lease is terminated for any reason whatsoever, this Agreement will terminate at Lessor's election as of the date of the Communications Use Lease's termination, and from and after the date of such termination, the rent payments under this Agreement shall be abated. If Lessee's United States Forest Service special use permit respecting Lessee's use of the Electronic Site is terminated through no action or fault of Lessee, this Agreement will terminate at Lessee's election as of the date of the permit's termination, and from and after the date of such termination, the Rent payments under this Agreement shall be abated. Any amounts remaining unpaid with respect to periods before the termination will be immediately due and payable from Lessee to Lessor. Lessee will immediately remove its Equipment and otherwise act in accordance with the provisions of this Agreement ordinarily applicable to termination of this Agreement. Lessor will have no further liability or obligation under this Agreement from and after the date of such termination.

18. Destruction of Electronic Site. If the Electronic Site, or any part thereof, shall at any time during the term of this Agreement be destroyed by fire, wind or other casualty, Lessor will with all reasonable speed, but subject to the receipt of insurance proceeds and other limitations set forth in this Agreement, cause the Electronic Site to be restored to the same condition as existed immediately prior to the damage. However, if substantial damage occurs within one year before the end of the term of this Agreement (exclusive of any option or ability to renew by either party), then Lessor, at its sole option, will have the right to terminate this Agreement by giving notice to Lessee. If reconstruction or repair of the Electronic Site cannot be made

without dismantling or removing Lessee's Equipment, then Lessee will cooperate fully with Lessor and its contractors, and Lessor may remove Lessee's Equipment or any portion thereof and interrupt its broadcasting activity during the making of the repairs or during reconstruction. Lessee will be entitled to a *pro rata* abatement of its monthly Rent for such time as it is unable to conduct its normal broadcasting activities as a result of the damage or destruction to the Electronic Site or during the making of repairs or reconstruction of the Electronic Site. Lessee will bear the expense of replacing its equipment, fixtures and appurtenances, or any part thereof, arising as a result of or caused by virtue of the damage, destruction, repairing or reconstruction of the Electronic Site, and in all event shall carry sufficient insurance on its own property to cover the expense of any new installation required.

19. Certain Duties of Lessee Upon Termination of This Agreement. At the end of the Term of this Agreement, or upon the earlier termination of this Agreement, or upon the termination of any extensions or renewals of this Agreement, and provided that Lessee is not in default under the provisions of this Agreement, Lessee will within a reasonable time remove from the Electronic Site any and all Equipment and other property placed in or about the Electronic Site by Lessee. To the extent that this removal causes any damage or change to the Electronic Site, the Lessee will repair the damage and correct any change at its sole cost and expense. If the Lessee continues to maintain its Equipment in the Electronic Site or otherwise conducts any activity in or from the Electronic Site, this will in no event be construed to be a renewal of this Lease Agreement. However, to the extent and for the time Lessee maintains such Equipment or continues such activity, it will pay a daily fee to Lessor in an amount equal to double the sum it had paid on a daily basis rate of rent payable in the last month of the Term of this Agreement.

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20. Default. Any of the following events will be events of default by Lessee ("Event of Default") under this Agreement at the election of Lessor:

(a) Lessee fails to pay any installment of the rent or any other sum due to Lessor from Lessee on the date that the same is due (or if there is no specific due date, Lessor's demand for payment), and that failure continues for a period of ten (10) days thereafter;

(b) Lessee fails to comply with any term, condition or covenant of this Lease, other than the payment of money, and does not cure that failure within thirty (30) days after written notice thereof to Lessee, or there is a material failure of any of Lessee's warranties or representations;

(c) A receiver or trustee is appointed for all or substantially all of the assets of the Lessee; or

(d) Lessee attempts to assign its rights or otherwise attempts to allow the use of any of its interest or right under this Lease, except as expressly provided herein or permitted by a previous written instrument from Lessor, which will not be unreasonably withheld.

(e) Remedies Upon Lessee's Default. This Agreement is hereby made subject to the limitation that if and whenever any Event of Default shall occur, Lessor may, at its option, in addition to all other rights and remedies given hereunder or by law or equity, do any one or more of the following:

(i) Terminate this Agreement, in which event, Lessee shall immediately surrender possession of the Cabinet to Lessor or be deemed guilty of forcible detainer of the Cabinet and shall be subject to eviction proceedings.

(ii) Enter upon and take possession of the Cabinet and expel or remove Lessee and any other occupant therefrom through an action for forcible entry and unlawful detainer or by altering the locks and other security devices at the cabinet and Electronic Site, with or without having terminated the Agreement.

Exercise by Lessor of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Cabinet and Electronic Site by Lessee, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written stipulation to that effect by Lessor.

If Lessee shall fail to make any payment or cure any default hereunder within the time herein permitted, Lessor, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Lessee (and enter the leased premises for such purpose), and thereupon Lessee shall be obligated to, and hereby agrees to pay Lessor, upon demand, all costs, expenses and disbursements incurred by Lessor in taking such remedial action.

In the event of termination of this Agreement or of Lessee's right to possession of the Cabinet or repossession of the Cabinet for an Event of Default, Lessor shall have the option to re-let or attempt and in the event of reletting Lessor may relet the whole or any portion of the Cabinet for any period, to any lessee, and for any use and purpose.

In the event Lessor elects to terminate this Agreement by reason of an Event of Default, Lessee shall be liable for all rent and other indebtedness accrued to the date of such termination, plus Lessee shall be liable to Lessor, as liquidated damages, for an amount equal to such rent and other indebtedness as would otherwise have been required to be paid by Lessee to Lessor during the period following termination of the Lease Term measured from the date of such termination by Lessor until the date which would have been the date of expiration of the Term as stated in Section 4 (had Lessor not elected to terminate this Agreement on account of such Event of Default) diminished by any net sums thereunder received by Lessor through reletting the Cabinet during said period (after deducting expense incurred by Lessor to re-let the Cabinet). Actions to collect amounts due by Lessee provided for in this paragraph may be brought from time to time by Lessor during the aforesaid period, on one or more occasions, without the necessity of Lessor's waiting until expiration of such period and in no event shall Lessee be entitled to any excess of rent (or rent plus other sums) obtained by reletting over and above the rent herein reserved.

In the event Lessor elects to terminate Lessee's right to possession of the Cabinet without terminating this Agreement, by reason of an Event of Default, Lessee shall be liable for all rent and other indebtedness accrued to the date of such termination, plus Lessee shall be liable to Lessor for such rent and other indebtedness as would otherwise have been required to be paid by Lessee to Lessor during the period following termination of Lessee's right to possession of the Cabinet measured from the date of such termination by Lessor until the date which would have been the date of expiration of the Term as stated in Section 4 (had Lessor not elected to terminate Lessee's right to possession on account of such Event of Default) diminished by any net sums thereafter received by Lessor through reletting the Cabinet during said period (after deducting expense incurred by Lessor to relet the Cabinet). Actions to collect amounts due by Lessee provided for in this paragraph may be brought from time to time by Lessor during the aforesaid period, on one or more occasions, without the necessity of Lessor's waiting until expiration of such period and in no event shall Lessee be entitled to any excess of rent (or rent plus other sums) obtained by reletting over and above the rent herein reserved.

21. Miscellaneous Provisions.

(a) Failure of Lessor to declare an Event of Default immediately upon its occurrence, or delay in taking any action in connection with an event of default, or any delay by Lessor in enforcing any right of Lessor hereunder, shall not constitute a waiver of the default or right, but Lessor will have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement at any time. Pursuit of any one or more of the remedies set forth in Section 20 above will not preclude pursuit of any one or more of the other remedies provided elsewhere in this Agreement or provided by law, nor will pursuit of any remedy provided constitute forfeiture or waiver of any amount or damages accruing to Lessor

by reason of the violation of any of the terms, provisions or covenants of this Agreement. The receipt of any amount by Lessor with knowledge of any breach of this Agreement by Lessee or of any default on the part of Lessee in the observance or performance of any of the terms, covenants or conditions of this Agreement, will not be deemed to be a waiver of any provision of this Agreement. No receipt of any amount by Lessor from Lessee after the termination hereof will reinstate the Term of this Agreement, or affect any notice theretofore given to Lessee or operate as a waiver of the right of Lessor to enforce the payment of any other amount required to be paid by Lessee by law or under the terms of this Agreement.

(b) Neither party will be required to perform any covenant or obligation in this Agreement not involving the payment of money to the other party, or be liable in damages to the other, so long as the performance or non-performance of the covenant or obligation is delayed, caused by or prevented by an act of God or *force majeure*. An "act of God" or "*force majeure*" is defined for purposes of this

Agreement as negligent or intentional destruction of property by another party, strikes, lockouts, sitdowns, power shortages or blackouts, adverse weather, material or labor restrictions by any governmental authority, any governmental action, unusual transportation delays, military or criminal action, floods, washouts, explosions, earthquakes, fire, acts of the public enemy, insurrections, and any other cause not reasonably within the control of the party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.

(c) If Lessee fails in the performance of any of the terms, covenants, agreements or conditions contained in this Agreement and by it to be performed, and Lessor places in the hands of an attorney the enforcement of all or any part of this Agreement, Lessee agrees to pay Lessor without any further notice or demand Lessor's reasonable attorney fees and costs, whether suit is actually filed or not; provided, however, that Lessee will not be required to pay such fees and costs if Lessee cures its failure of performance within ten (10) days of the commencement of the failure.

(d) If Lessee continues to occupy or otherwise use the Electronic Site after the expiration or termination of this Agreement, all of the terms and provisions of this Agreement will be applicable during the period, except that Lessee will pay the increased rent described in Section 19 of this Agreement. No holding over by Lessee, whether with or without the consent of Lessor, will operate to extend this Agreement except as otherwise expressly provided.

(e) Lessee agrees to furnish promptly, from time to time, upon Lessor's request, a statement certifying that this Agreement is in full force and effect and that there is no prepayment of the Rent, and that there is no existing default by reason of any act or omission by Lessor, and such other matters as may be reasonably required by Lessor.

(f) This Agreement will be binding upon and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors and assigns. The parties agree that Lessor may assign this Agreement, and upon such assignment Lessor shall have no further responsibility hereunder.

(g) The captions appearing in this Agreement are employed only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any paragraph or section.

(h) If any provision of this Agreement is ever held to be invalid or unenforceable, that invalidity or unenforceability will not affect any other provision of this Agreement, and the other provisions will continue in full force and effect.

(i) All payments required to be made by Lessee will be payable to Lessor at Lessor's address set forth below. Any notice or document required or permitted to be delivered under the terms of this Agreement will be deemed to be delivered when personally delivered or (whether or not actually received) when deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below.

If to Lessor:

Xcell Towers II

Attention:

If to Lessee: See Exhibit A

13010 Morris Dr. Ste 600
Alpharetta, GA 30004

Any party may change its address by giving notice in the prescribed fashion to all of the other parties hereto.

(j) Lessee and Lessor will execute, acknowledge as appropriate and deliver to the other any document or instrument reasonably necessary to effectuate or carry out the provisions of this Agreement promptly upon request therefor.

(k) Nothing contained in this Agreement will be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties, and it is understood and agreed that neither the method of computation of rent nor any other provision contained in this Agreement nor any acts of the parties, will be deemed to create any relationship other than the relationship of lessor and lessee.

(l) This Lease Agreement will be interpreted according to the substantive laws of the State of New Mexico. If a dispute arises under the terms of this Agreement or with respect to the subject matter hereof, suit shall be brought, if at all, in the courts of general jurisdiction, federal or state, for Santa Fe, New Mexico.

(m) If Lessee is a corporation or partnership, then Lessor may require guaranties of Lessee's obligations hereunder by Lessee's shareholders, officers, or partners; and any such persons, by their execution of any counterpart of this Agreement, do hereby guarantee the timely and complete performance by Lessee of all of its undertakings and covenants herein contained, including the payment of money, and do further guarantee the payment of any sum of money or the performance of any act which it is later determined that Lessee is required to pay or do as a result of any breach of this Agreement by Lessee. This shall be a continuing guaranty given as a further inducement to Lessor to enter into this Agreement, and may not be terminated in any respect by any guarantor. Lessor may extend any obligation of Lessee or any guarantor and may renew, exchange, surrender or otherwise deal with any collateral offered or given by Lessee or any person. Each of the guarantors hereby waives presentment, demand for payment by any person, protest and notice of nonpayment, dishonor or protest and all other notices and demands.

(n) Lessor may require that Lessee make a deposit with Lessor against Lessee's obligations hereunder (i) in an amount of three months' rent and then applicable electricity and utilities charges and taxes, if Lessee shall have been late in making two or more payments of rent or any other charge in any six month period and Lessor has elected not to treat the late payments or any of them as events of default under this Agreement, or (ii) at the inception of this Agreement, as specified in Exhibit A. The deposit shall be held by Lessor as security for Lessee's full, faithful and timely performance of Lessee's obligations under this Agreement. The deposit is not an advance payment of rent or a measure of Lessor's damages. If at any time during the Term of this Agreement Lessee is late in making any payment of rent or amount hereunder to Lessor or to any other person, Lessor may (but is not required to) apply any part or all of the deposit as Lessor determines, without waiving any right to elect an event of default or any other right. If Lessor applies any part or all of the deposit as specified in the preceding sentence, Lessee shall pay to Lessor the amount applied, immediately on demand, so that the deposit with Lessor is fully replenished. Upon the termination of this

Agreement, and Lessee shall have fully and faithfully performed all of its agreements hereunder, Lessor shall return the deposit, without interest, to Lessee.

(o) Lessee shall pay to Lessor as additional rent upon invoice by Lessor any additional charge, fee or rent imposed upon Lessor by the United States Forest Service or other U.S. government agency

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under Lessor's Communications Use Lease. Lessor shall allocate any such additional charge, fee or rent among its lessees (including Lessee) in accordance with a reasonable method of proration based upon the lessees' respective base rents or other factors.

(p) IT IS EXPRESSLY AGREED BY LESSEE, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT, THAT THIS LEASE AGREEMENT, WITH ANY SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS AGREEMENT OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS ATTACHED TO OR INCORPORATED IN THIS AGREEMENT. THIS AGREEMENT SUPERSEDES ALL PRIOR NEGOTIATIONS AND AGREEMENTS, WRITTEN OR ORAL, PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT. THERE WILL BE NO MODIFICATION OF THIS AGREEMENT EXCEPT BY A SUBSEQUENT WRITTEN INSTRUMENT EXECUTED BY THE PARTIES HERETO. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES BY LESSOR OF MERCHANTABILITY, USE, FITNESS FOR AN PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS AGREEMENT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE WHICH MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF this Agreement is executed as of the date stated in Exhibit A attached hereto and made a part hereof.

LESSOR:

XCell Towers II, LLC a
Delaware corporation

By: 

LESSEE:

SANTA FE COUNTY,
a political subdivision of the
State of New Mexico

By: _____

Anna Hansen, Chair
Santa Fe Board of County Commissioners

ATTESTATION:

By: _____

Geraldine Salazar
Santa Fe County Clerk

Date: _____

Approved as to form:

By: 

R. Bruce Frederick
County Attorney

Date: 10/1/18

Finance Department:

By: 

Stephanie S. Clarke
Finance Director

Date:

10/2/16

EXHIBIT A
TO
ELECTRONIC SITE LEASE AGREEMENT

<u>Lessee:</u>	Santa Fe County	Date of original Lease: July 1, 2018
	102 Grant Avenue	Santa Fe County Agreement No.
	Santa Fe, New Mexico 87504	2019-0036-FD/SO
	Telephone: (505) 986-6200	

Commencement Date: July 1, 2018

Termination Dates: June 30, 2021, subject to automatic renewal under Section 4 of the Lease Agreement.

Description of Equipment:

Two (2) ICOM model IC-FR 3000 repeaters,
Two (2) Sinclair Model Q 2220E duplexers,
Two (2) Decibel Products (Andrew) model DB 222-A omnidirectional exposed
dipole antennas

Operating Frequencies: Transmit	Receive
155.430 MHz	158.790 MHz
156.180 MHz	159.015 MHz

One (1) ICOM model IC-FR 3000 repeater
One (1) Sinclair Model 2220E duplexer
One (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed
dipole antenna

Operating Frequencies: Transmit	Receive
154.415 MHz	158.970 MHz
154.010 MHz	159.450.MHz
154.235 MHz	150.775 MHz

Monthly Base Rent and Charges for Lessee from July 1, 2018 through June 30, 2019 (Base Rent and other charges are subject to adjustment in accordance with the Lease Agreement).

Base Rent	\$1,189.38 X 12 months =	\$ 14,272.56
NM grt @ 7.125%	\$84.74 X 12 months =	\$ 1,016.92
	Subtotal	\$ 15,289.48

Electric 7/1/18 to 12/31/19	\$41.50 X 6 months =	\$ 249.00
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Electric 1/1/19 to 6/30/19	\$49.80 X 6 months =	\$ 298.80
Fuel (propane) 7/1/18 to 12/31/19	\$24.62 X 6 months =	\$ 147.72
Fuel (propane) 1/1/19 to 6/30/19	\$28.32 X 6 months =	\$ 169.92
	Subtotal	\$ 16,154.92
Back charges (Forest Service fee, electricity)		\$ 970.00
	Total:	\$17,124.92

\$17,124.92 ÷ 2 (between SFC Fire Department and SFC Sheriff's Office) = \$8,562.46 each

Lessor will submit an annual invoice to the Lessee by sending separate invoices to the Santa Fe County Fire Department and the Santa Fe County Sheriff's Office. The Santa Fe County Fire Department and Santa Fe County Sheriff will equally share the payment of the Lessor's total annual invoice.

Deposit: None

Other Terms:

This Lease and Exhibit A replaces all prior leases between Tesuque Radio Company and Santa Fe County. The following provisions modify and supersede the provisions of the Electronic Site Lease Agreement to which this Exhibit A is attached. In the event of any conflict between this Exhibit A and the Agreement, the provisions of this Exhibit A shall control.

1. Section 3(a) of the Lease Agreement (Rent). The second sentence ends after the words "Exhibit A" and the remainder of the second sentence and the entirety of the third sentence are deleted. Any increase in the Rent shall be effective on July 1 and notice of any increase shall be provided to the Lessee in no less than 120 days prior to July 1. The Rent will be subject to adjustment (increase or decrease) in accordance with Section 2 below (CPI Calculation).

2. CPI Calculation- The procedure for adjusting the Rent shall be as follows. The Consumer Price Index - All Urban Consumers - U. S. Cities hereinafter (Index) as published by the United States Department of Labor's Bureau of Labor Statistics ("Bureau") will be the basis for adjustment of the Rent. The first January after the effective date of this Agreement shall be used as the Base Month Index. Lessor shall review the January Index annually and compare it with the Base Month Index. If there has been an increase in the Index, the Rent for the next calendar year commencing July 1 may be increased by an amount equal to the Initial Term Rent multiplied by the percentage of the increase over the Base Month Index, or 3%, whichever is higher. Any increase in the Rent shall be rounded to the nearest whole dollar. In no event shall the Rent be adjusted downward to an amount less than the previous year's rent. Should the Bureau discontinue the publication of the Index, or publish the Index less frequently, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

3. Section 3(b) of the Lease Agreement (Electricity Charge) is modified to insert the following at the end of 3(b):

At the end of each calendar year, Lessor will determine the actual electricity charges for the Electronic Site and the actual charge to Lessee. If the Lessee underpaid for the year, Lessee will pay the balance of the actual charge owed on July 1 of each year. If the Lessee has overpaid for the year, Lessor will credit the amount of the overpayment to the next year's estimated charge for electricity.

4. Section 3(c) of the Lease Agreement (Fuel Charge) is modified by deleting the 4th, 5th and 6th sentences and replace them with the following:

At the end of each calendar year, Lessor will determine the actual fuel charges for the Electronic Site and the actual charge to Lessee. If the Lessee underpaid for the year, Lessee will pay the balance of the actual charge owed on July 1 of each year. If Lessee overpaid for the year, Lessor will credit the overpayment to the next year's estimated charge for fuel.

5. Section 3(d) of the Lease Agreement (Gross Receipts Tax) is modified to insert the following at the end of 3(d):

If the annual settlement of the New Mexico State gross receipts tax or other tax shows that Lessee underpaid, Lessee will pay the balance of the actual New Mexico gross receipts tax or other tax owed on July 1 of each year. If the annual settlement of the New Mexico State gross receipts tax or other taxes shows that Lessee overpaid for New Mexico State gross receipts tax or other taxes for the year, Lessor will credit any overpayment to the next year's estimated charge for New Mexico State gross receipts tax or other taxes.

6. Section 3(f) of the Lease Agreement (Additional Charges) is modified to insert the following at the end of 3(f):

Any additional charges will be due on July 1 of each year and notice of any additional charges shall be provided to the Lessee in not less than 120 days prior to July 1.

7. Section 6 (c) (Sewer, Water and Natural Gas), the second sentence is modified to insert the phrase "unless otherwise agreed to by the Lessor and Lessee" at the end of the second sentence so the second sentence reads: If Lessor in the future supplies propane, liquefied natural gas or a similar energy source to lessees generally, Lessor will make the same available to Lessee in an equitable manner upon appropriate subscription and payment for services therefor independent of this Agreement, unless otherwise agreed to by the Lessor and Lessee.

8. Section 9 (Governmental Regulations) of the Lease Agreement is modified to insert the phrase "to the extent permitted by New Mexico law" between the words "and" and "Lessee", so Section 9 should read as follows:

9. Government Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including, specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect); and, to the extent permitted by New Mexico law, Lessee shall indemnify and hold harmless Lessor from any and all penalties, fines, costs, expenses or damages, including attorney fees and costs, resulting from the failure of Lessee or its employees or contractors to comply with any of these laws, rules or regulations applicable to Lessee's Use of the Electronic Site. .

9. Section 12(a) (Lessee's Risk of Loss or Injury) of the Lease Agreement is modified to insert the phrase "To the extent permitted by New Mexico law," at the beginning of the second sentence.

10. Sections 12(b) and 12(c) (Lessee's Risk of Loss or Injury), is modified to insert the phrase "To the extent permitted by New Mexico law," at the beginning of the first sentence of 12(b) and 12(c), respectively.

11. Section 13 (Insurance) is modified to insert the following sentence at the end of Section 13.

Lessee's obligation to obtain insurance coverage may be satisfied by Lessee's participation in the insurance pool of the New Mexico Association of Counties, provided that such insurance coverage otherwise meets all of the requirements of this Section 13.

12. Section 20 (Default), subsection (e), the first full paragraph on page 11 of the Lease Agreement is modified to end the first sentence after the words "such termination" and the remainder of this sentence after the word "plus" is deleted in its entirety.

13. Section 21 (Miscellaneous Provisions), subsection (n) is deleted in its entirety.

14. The following provision is inserted into Section 21 (Miscellaneous) as subsection (q).

(q) Limitations on Lessee's Liability; No Waiver of Sovereign Immunity; Appropriations. As a political subdivision of the state of New Mexico, any liability on the part of Lessee Santa Fe County is limited by state law,

including the Bateman Act, NMSA 1978, § 6-6-11; Art. IX, Sec. 10 (County indebtedness), and the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq. Nothing in this Lease Agreement shall be interpreted as a waiver of Lessee's sovereign immunity under the Tort Claims Act. Nothing in this Lease Agreement shall require the Lessee to become indebted or contract any indebtedness of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as provided above, shall be void. Any obligation on the part of the Lessee to expend funds under this Agreement shall be subject to the availability of sufficient appropriations from the Santa Fe County Board of County Commissioners.

15. Section 21(i), notice to Lessee is as follows:

Santa Fe County
Attn: Santa Fe County Manager
P.O. Box 276
102 Grant Avenue
Santa Fe, NM 87504-0276

and,

Santa Fe County
Attn: Real Property Specialist
P.O. Box 276
102 Grant Avenue
Santa Fe, NM 87504-0276

