



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5068

Board Order

Agreement No.: A-12440

Upon motion of Supervisor Salinas, seconded by Supervisor Parker and carried by those members present, the Board of Supervisors hereby:

- a. Approved and authorize the Contracts / Purchasing Officer to sign a "County of Monterey Wireless Communication Site Lease Agreement" between the County of Monterey and Weathertop Ranch LLC for a 5 year term beginning April 1, 2013 with 3 additional 5 year renewals and an autorenewal clause after that for a cost of \$500 per year; and
- b. Accepted Non-Standard County Indemnification Provisions as recommended by the Acting Director of Emergency Communications.

PASSED AND ADOPTED on this 16th day of April 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter
 NOES: None
 ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on April 16, 2013.

Dated: April 23, 2013
File Number: 13-0318

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By 
Deputy

COUNTY OF MONTEREY WIRELESS COMMUNICATION SITE LEASE AGREEMENT

This Lease Agreement (hereinafter "Agreement") is made and entered into by and between the County of Monterey, (hereinafter "LESSEE") and Weathertop Ranch LLC (hereinafter "LESSOR") as of April 1, 2013 (the "Effective Date").

LESSOR and LESSEE hereby agree as follows:

SECTION 1. RIGHT TO USE LESSOR'S PROPERTY AND PREMISES

- A. **PROPERTY AND PREMISES:** LESSOR is the owner of certain real property described in Exhibit A ("Premises") attached hereto and made a part hereof. LESSEE accepts the Premises in an "as is" condition.
- B. **RIGHT TO INSTALL, MAINTAIN, AND OPERATE EQUIPMENT:** LESSOR hereby grants to LESSEE non-exclusive permission to install, maintain, and operate the radio communications equipment described in Exhibit B ("Equipment") including space for connections and access to power and telecommunications and any easements required to provide utilities to the Premises with locations of any easements to be approved by LESSOR. All repairs and improvements and the cost of all utilities shall be at LESSEE'S sole cost and expense. LESSEE shall keep its installation in good, neat and clean condition in conformity with the standards of the local governing body regulations. LESSEE shall be responsible for the timely repair of all damage to Premises caused by the negligence or willful misconduct of LESSEE, its employees, agents or business vendors. LESSEE shall be responsible for the timely repair of all damage to Premises caused by the installation, maintenance, and/or operations of LESSEE's Equipment. Equipment installed by the LESSEE shall remain the sole property of LESSEE. LESSEE may not sublease space on this communications facility.
- C. **ACCESS TO PREMISES:** LESSEE shall have the reasonable and non-exclusive right for pedestrian and vehicular ingress and egress to the property for the purpose of routine installation and maintenance of the Equipment located on the Premises. LESSOR reserves the right to enter into and access the Premises at any time. LESSOR consents to LESSEE's use of the existing access road and LESSOR shall maintain the access road to the Premises and to the location of Equipment described in Exhibit B.
- D. **MODIFICATIONS TO EQUIPMENT OR PREMISES:** Once the initial Equipment is installed, LESSEE shall not make any material alterations thereto (or to the Premises structure itself) without obtaining the prior written approval of LESSOR except for repairs and replacements of "like kind" equipment. In the event of proposed modifications, LESSEE agrees to submit plans to the LESSOR covering proposed alterations by LESSEE for LESSOR's approval which shall not be unreasonably withheld, conditioned or delayed.
- E. **LESSOR USE OF PREMISES:** Nothing contained in this Agreement shall be deemed or construed in any way to limit the LESSOR's authority to exercise any right or power concerning the utilization of the Premises. LESSEE's use of the Premises shall be subordinate to the LESSOR's use of the Premises. LESSOR retains the right to use the grazing rights on the surface of the Premises. LESSOR shall not be liable for any damage to LESSEE's property, including but not limited to its Equipment and vehicles, resulting from LESSOR's exercise of grazing rights. LESSOR shall maintain the Premises in a manner that complies with fire requirements of the fire protection authority for the Premises.
- F. **GOVERNMENTAL APPROVALS:** LESSEE shall apply for and obtain all applicable permits as are required to perform the work described in this Agreement, shall bear all costs of such permits, and shall comply with all of the terms and conditions set forth in such permits.
- G. **RF INTERFERENCE:** If at any time during the term of this Agreement, LESSEE's Equipment causes interference with any radio or other wireless communications systems utilized by and/or

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belonging to LESSOR, LESSEE shall take all steps necessary to resolve and eliminate such interference at LESSEE's sole cost and expense. LESSOR acknowledges that interference may emanate from different sources, and LESSEE shall only be responsible to correct interference caused by LESSEE's Equipment.

SECTION 2: LEASE FEES: For the rights granted under this Agreement, LESSEE shall pay to LESSOR a lease fee of \$500 ("Lease Fee") annually. LESSEE shall pay the first annual Lease Fee on the Effective Date, and then LESSEE shall pay each subsequent annual Lease Fee on the anniversary of the Effective Date. An invoice need not be presented for payment of the Lease Fee. The Lease Fee shall be made payable to LESSOR and sent to LESSOR at the address referenced in Section 5, Notices.

SECTION 3: TERM / TERMINATION: The initial term of this Agreement shall be for five (5) years commencing on the Effective Date. This Agreement shall automatically be extended for three (3) additional five (5) year terms unless either party terminates according to the provisions of this Agreement. If at the end of the third (3rd) five (5) year extension term this Agreement has not been terminated, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated according to the provisions of this Agreement. LESSEE shall have the right to terminate this Agreement upon 30 days' notice to LESSOR. LESSOR shall have the right to terminate this Agreement upon 30 days' notice to LESSEE. In the event of termination of this Agreement, LESSEE shall remove the Equipment and repair and restore the affected areas of the Premises prior to the termination of this Agreement, and to the extent reasonably requested by LESSOR, restore the Premises as nearly as possible to the condition in which it existed immediately prior to the date that LESSEE first began utilizing the Premises.

SECTION 4: DEFAULT: Notwithstanding any other provision to the contrary contained herein, in the event there is a default by the LESSEE with respect to any of the provisions of this Agreement or its obligations under it, the LESSOR shall give LESSEE written notice of such default. After receipt of such written notice, the LESSEE shall have thirty (30) days in which to cure any default, provided the LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and the LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The LESSOR may not maintain any action or effect any remedies for default against the LESSEE unless and until the LESSEE has failed to cure the same within the time periods provided in this paragraph.

SECTION 5: NOTICES Any demand or notice which either party shall be required, or may desire, to make upon or give to the other shall be in writing and shall be delivered personally upon the other or be sent by prepaid certified mail and shall be effective as of the date sent to the respective parties as follows:

To LESSEE:

County of Monterey
Contracts / Purchasing Officer
168 W. Alisal
Salinas, CA 93901
(831)769-8882

TO LESSOR:

Weathertop Ranch, LLC
Attention: David Ratliff, Manager –
david.ratliff@citi.com
c/o Citibank
Citibank Tower SOF
3 Garden Road Central
Hong Kong

Either party may, from time to time, designate any other address for this purpose by written notice to the other party. Either party for general communication may use telephone, email or facsimile.

SECTION 6: INSURANCE AND INDEMNIFICATION:

- A. **INDEMNIFICATION:** LESSEE, during the term hereof, shall indemnify and hold harmless the LESSOR from and against any and all claims and demands for injuries to persons or loss of life, or

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damage to property, relating to this Agreement and/or arising out of the installation, operation or maintenance of the Equipment on the Premises by the LESSEE, excepting however, such claims and demands for injuries to persons or loss of life, or damage to property, caused by the gross negligence or intentional acts or omissions of the LESSOR. LESSOR, during the term hereof, shall indemnify and hold harmless the LESSEE from and against any and all claims and demands for injuries to persons or loss of life, or damage to property, occurring within the Premises and arising out of the gross negligence or intentional acts of the LESSOR.

- B. INSURANCE REQUIREMENTS:** LESSEE throughout the term of this Agreement, as extended, shall comply with the insurance requirements described in this Agreement. In the event that LESSEE is self-insured in any or all of the required insurance areas, a letter certifying that LESSEE is lawfully self-insured shall be furnished upon request of the LESSOR prior to execution of this Agreement or during the term of the Agreement. The procuring of the policy or policies of insurance or certifications of self-insurance as required under this Agreement shall be construed to fulfill the indemnification provisions of this Agreement. The General and Automobile Liability policies shall be endorsed to contain, or the LESSEE shall agree to provide comparable coverage under its self-insurance programs, the following provisions: (1) The LESSOR, its owners, and managers are to be covered as additional insureds; (2) LESSEE's insurance coverage shall be primary insurance as respects LESSOR, its owners, managers, officers, employees, agents and contractors. Any insurance or self-insurance maintained by LESSOR, its officers, employees, agents or contractors shall be in excess of LESSEE's insurance and shall not contribute with it; (3) Any failure to comply with reporting provisions of the policies by LESSEE shall not affect coverage provided LESSOR, its officers, employees, agents, or contractors; (4) Coverage shall state that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (4) The minimum limits of such coverage shall be \$1,000,000 per occurrence and in the aggregate; (5) LESSEE shall be responsible for the full amount of any deductibles or self-insured retentions, and LESSOR shall not be called upon to satisfy such amounts in order to receive the benefits of the protection. Each insurance policy required by this Agreement, or the LESSOR shall similarly agree to communicate under its self-insurance program, shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to LESSOR. Upon request, LESSEE shall furnish LESSOR with certificates of insurance and with endorsements affecting coverage required by this Agreement upon LESSOR's request. LESSEE shall keep the insurance or self-insurance in effect throughout the term of the Agreement and as the same may be extended.

SECTION 7: ACKNOWLEDGMENT OF TITLE: It is understood and agreed that LESSEE, by the acceptance of this Agreement and by the use or occupancy of said Premises, has not acquired and shall not acquire hereafter any property rights or interest in or to said Premises (other than the leasehold interest granted herein), and LESSEE may use the Premises only as herein provided. LESSEE shall not have, nor will it obtain, any right or claim to the continued use of said Premises beyond that specifically given in this Agreement. LESSOR covenants that LESSEE, on paying the Lease Fee and performing the covenants, shall peaceably and quietly have, hold and enjoy the Premises. LESSOR covenants that LESSOR is seized of good and sufficient title and interest to the Premises and has full authority to enter into and execute this Agreement. LESSOR further covenants that there are no other liens, judgments or impediments of title on the Premises or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Premises by the LESSEE as set forth above.

SECTION 8: RECORDING: LESSOR agrees to execute a Memorandum of this Agreement that LESSEE may record with the appropriate Recording Officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either term or Lease Fee payments.

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SECTION 9: REAL ESTATE TAXES: LESSEE shall pay all personal property taxes assessed against the LESSEE's personal property that is located within the Premises. LESSOR shall pay all real property taxes and all other fees on the LESSOR's premises or LESSOR's personal property or improvements thereon owned and maintained by the LESSOR.

SECTION 10: SUBORDINATION AND NON-DISTURBANCE: At LESSOR's option, this Agreement shall be subordinate to any mortgage or other security interest by LESSOR which from time to time may encumber all or part of the Premises or right-of-way; provided, however, every such mortgage or other security interest shall recognize the validity of this Agreement in the event of a foreclosure of LESSOR's interest and also LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement. LESSEE shall execute whatever instruments may reasonably be required to evidence this subordination clause. In the event the Premises are encumbered by a mortgage or other security interest, the LESSOR, immediately after this Agreement is executed, will obtain and furnish to LESSEE a non-disturbance agreement for each such mortgage or other security interest in recordable form. A general template shall be provided by LESSEE upon request. In the event the LESSOR defaults in the payment and/or other performance of any mortgage or other security interest encumbering the Premises, LESSEE may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgages or security interest and the LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

SECTION 11: JURISDICTION AND COMPLIANCE WITH LAWS: The laws of the State of California shall govern this Agreement. The duties and obligations of the parties created hereunder are performable in Monterey County, and Monterey County shall be the venue for any action or proceeding that may be brought or arise by reason or connection with this Agreement. LESSEE shall maintain and operate its Equipment during the term of this Agreement in compliance with all present and future rules and regulations of any local, State, or Federal authority having jurisdiction with respect hereto, including without limitation, the rules and regulations of the Federal Communications Commission ("FCC"), the Federal Aviation Administration ("FAA"), and the Occupational Safety and Health Administration ("OSHA")

SECTION 12: MISCELLANEOUS

- A. **AGREEMENT:** This Agreement, including exhibits, constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements written or oral concerning the subject matter contained herein including, without limitation, that certain Lease between the parties with respect to LESSEE's use of the Property, which was entered into on March 3, 2004, to the extent that such Lease, as may have been amended, is still in effect as of the Effective Date of this Agreement. Any amendments to this Agreement must be in writing and executed by both parties.
- B. **WAIVER:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the LESSEE and the LESSOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions of this Agreement.
- C. **NON-EXCLUSIVE AGREEMENT:** This Agreement is non-exclusive and both LESSEE and LESSOR expressly reserve the right to contract with other entities for the same or similar services, except as otherwise prohibited by this Agreement.
- D. **AUTHORITY:** Any individual executing this Agreement on behalf of the LESSEE or the LESSOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- E. **TIME IS OF THE ESSENCE:** Time is of the essence in each and every provision of this lease.

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F. **SUCCESSORS AND ASSIGNS:** Subject to any provision hereof restricting assignment or subletting by LESSEE, this Agreement shall bind the parties, their personal representatives, successors, and assigns.

G. **SEVERABILITY:** The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates appearing below their respective authorized signatures.

LESSEE

By: [Signature]
Contracts / Purchasing Officer
Date: 10-2-13

LESSOR

By: [Signature]
Name: David R. Hitt
Title: _____
Date: 21 March 2013

Approved as to Form:

By: [Signature]
Deputy County Counsel
Date: 5-30-13

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Fiscal Provisions:

By: [Signature]
Deputy Auditor Controller
Date: 8-31-13

Approved as to Liability Provisions:

By: _____
Risk Management
Date: _____

*INSTRUCTIONS: If LESSOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two authorized representatives. If the LESSOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If LESSOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

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Exhibit A: Property and Leased Premises

Real property, assessor's parcel number 187-011-006, situated in the County of Monterey, State of California, described as follows:

A portion of the El Rancho de Los Laureles, Monterey County, California, and being a portion of that certain tract of land owned by Weathertop Ranch LLC and located at Global Positioning Coordinates (G.P.S.) North $36^{\circ}29' 56.3''$ and West $121^{\circ}42'47''$ shown in this Exhibit as Existing Radio Site.