

AGENDA ITEM #4

DATE: January 27, 2022

#4 Cell Tower:

Option and Lease Agreement with DW Tower, LLC.

STAFF RECOMMENDATION: Staff recommends designating Chief Morris as the representative for Hellsgate Fire District to sign the Option and Lease Agreement with DW Tower, LLC.

FINANCIAL CONSIDERATION: Funds coming into the district that can help close the projected shortfall

SUGGESTED MOTION: I make a motion to designate Chief Morris as the district representative to sign any and all agreements with DW Tower, LLC to place a cell tower on district property located at 230 N. Fitch Lane, Tonto Village.



HELLSGATE FIRE DISTRICT

BOARD OF DIRECTORS

NOTICE OF SPECIAL MEETING

January 27th, 2022

Pursuant to ARS §38-431.02, notice is hereby given to members of the HFD Governing Board and to the public that the Governing Board will meet in Public Session on Thursday, January 27th, 2022 at 2:00 PM in the Training Room of Station 21, 80 S. Walters Lane, Star Valley, AZ 85541. Members of the Fire Board and legal counsel may attend either in person or by telephone conference call.

NOTICE: Due to Coronavirus/COVID-19, Arizona Executive Order #2021-06, and CDC recommendations on social distancing, public will be limited to social distancing requirements.

Members of the public may participate through zoom. Meeting ID 864 986 5085.

Link: <https://zoom.us/j/8649865085>

If you have questions for the board you may also submit them to info@hellsgatefire.org.

During this meeting, Board Members may ask questions about, discuss, consider, approve, and/or take possible action on any listed Agenda item and any variable related thereto unless specifically otherwise indicated (such as under Public Forum). HFD may vote to go into Executive Session, which will not be open to the public, on any agenda item pursuant to ARS §38-431.03(A)(3) for legal advice with the Fire District Attorney on the matter(s) set forth in the agenda. **All Agenda items are set for possible action.**

Public Input: Citizens may make oral comments on specific Agenda items or any topic relevant to District business during the public forum. Citizens who wish to speak should complete a Request to Address form, indicating the topic they intend to address. Citizens may submit written comments of any length to the Fire Board. Notice: Public comment is encouraged, but it is important that everyone demonstrate the appropriate decorum, courtesy and respect during the meeting. Please treat your fellow citizens with courtesy. Outbursts, interruptions, and personal attacks will not be tolerated.

~ AGENDA ~

1. CALL TO ORDER
2. ROLL CALL OF BOARD MEMBERS
3. PLEDGE OF ALLEGIANCE
4. CELL TOWER – Option and Lease Agreement
 - a) Board to review Option and Lease Agreement with DW Tower, LLC.
 - b) Board to consider signing Option and Lease Agreement with DW Tower, LLC to place a cell tower on 230 N. Fitch Lane, Tonto Village (Station 22 location).
 - c) **POSSIBLE ACTION:** Discussion, Motion or Postpone.



HELLSGATE FIRE DISTRICT

BOARD OF DIRECTORS

NOTICE OF SPECIAL MEETING

January 27th, 2022

5. PUBLIC FORUM

Speakers are limited to a three-minute oral presentation and may submit written comments of any length for Board files. Board Members may not discuss items that are not specifically identified on the Agenda. Therefore, pursuant to ARS §38-43101(G), Board action taken as a result of public comment is limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.

6. ADJOURNMENT

Angie Lecher, On behalf and with Permission of Board Clerk, Nick Fitch

Nick Fitch, Clerk of the Board

HFD Training Room is accessible to the handicapped. In compliance with Americans with Disabilities Act, those with special needs, such as large print or other reasonable accommodations, may request them by calling 928-474-3835.

Posted by: Angie Lecher

Date: 1/26/2022

Time: 2:00 PM

OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT (“**Agreement**”), dated as of the date below, is entered into by Hellsgate Fire District, a public agency of the State of Arizona, having a mailing address of 80 Walters Lane, Star Valley, AZ, 85541 (hereinafter referred to as “**Landlord**”) and DW Tower, LLC, a Delaware limited liability company, having a mailing address of 1603 Golf Course RD SE, STE A4, Rio Rancho, NM 87124 (hereinafter referred to as “**Tenant**”).

BACKGROUND

Landlord owns that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 230 N. Fitch Lane, Payson, AZ 85541, in the County of Gila, State of Arizona (collectively, the “**Property**”). Tenant desires to use a portion of the Property in connection with its intention to build a tower structure, provide antenna locations and sublease ground space to federally licensed communications businesses. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. OPTION TO LEASE.

(a) Landlord grants to Tenant an option (the “**Option**”) to lease a portion of the Property measuring approximately 80’ x 80.02’ or 6,402 square feet as described on attached **Exhibit 1**, together with unrestricted access for Tenant and its potential subtenants’ (any such subtenant, a “**Subtenant**”) uses from the nearest public right-of-way along the Property to the Premises as described on the attached **Exhibit 1** (collectively, the “**Premises**”).

(b) During the Option period and any extension thereof, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Property (collectively, the “**Tests**”), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant’s sole discretion for its use of the Premises and including, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the “**Government Approvals**”), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant’s sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord’s title to the Property and the feasibility or suitability of the Property for Tenant’s Permitted Use, all at Tenant’s expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant’s inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term (as defined below), reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant’s Tests.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of Seven Hundred Fifty and No/100 Dollars (\$750.00) within thirty (30) business days of the full execution of this Agreement. The Option will be for an initial term of one (1) year (the “**Initial Option Term**”) and may be renewed by Tenant for an additional one (1) year upon written notification to Landlord and the payment of an additional Seven Hundred Fifty and No/100 Dollars (\$750.00) no later than ten (10) days prior to the expiration date of the Initial Option Term.

(d) During the Initial Option Term and any extension thereof, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option then Landlord leases the Premises to the Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, this Agreement will terminate and the parties will have no further liability to each other.

2. **PERMITTED USE.** Tenant may use the Premises for the construction of a tower structure that will provide antennae locations for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include any suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property; Tenant or its Subtenants further have the right to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. Tenant or its Subtenants shall have the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, and to make Property improvements, alterations, upgrades or additions appropriate for Tenant's or Subtenants use ("**Tenant Changes**"). Tenant Changes include the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. With the exception of relocating the tower, Tenant or its Subtenants shall have the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement. Tenant or its Subtenants will be allowed to make such alterations to the Property in order to accomplish Tenant's Changes or to insure that Tenant's or Subtenants' Communication Facility complies with all applicable federal, state or local laws, rules or regulations.

3. **TERM.**

(a) The initial lease term will be five (5) years ("**Initial Term**"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the fifth (5th) annual anniversary of the Commencement Date occurs.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each five (5) year term shall be defined as the "**Extension Term**"), upon the same terms and conditions unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

(c) If Tenant remains in possession of the Premises after the termination or expiration of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("**Term**").

4. **RENT.**

(a) Commencing on the date that Tenant commences construction (the "**Commencement Date**"), Tenant will pay the Landlord a monthly rental payment of Seven Hundred Fifty and No/100 Dollars (\$750.00) ("**Rent**"), at the address set forth above on or before the fifth (5th) day of each calendar month in advance. Rent will be prorated for any partial month. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Commencement Date.

(b) Beginning on year two (2) of the Initial Term, and each year thereafter, including any extensions, an additional amount of three (3%) shall be added to the previous year's monthly rental payment.

(c) Notwithstanding the above, the parties acknowledge that in the event Tenant chooses to sublease to another wireless carrier building a full macro site on the anticipated tower, Tenant will pay Landlord an additional two hundred and fifty dollars (\$250.00) beginning with the 2nd subtenant and all future subtenants. For clarity sake,



Tenant will not be responsible for paying Landlord Rent for the 1st wireless carrier subtenant, as well as any of Tenant's owned equipment that may be located on the tower for interconnect purposes. Tenant will pay Landlord for wireless carrier subtenant numbers 2 through 4, if Tenant is able to sublease to 4 wireless carriers, this would at \$250 per wireless carriers 2 through 4 equate to an additional \$750 per month in Rent to Landlord. Tenant will only be required to pay Landlord for a full macro site build from a wireless carrier. Wireless carrier subtenants are defined as an FCC licensed wireless carrier building a macro (full antenna array) site on the Premises at the tower.

5. **APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 Default and Right to Cure of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by Tenant; or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable; or

(c) by Tenant, for any reason, on ninety (90) days prior written notice

(d) The Landlord may terminate this Agreement pursuant to the provisions of A.R.S. § 38-511.

(e) Tenant agrees that in the event of a breach of this Agreement by Landlord, Tenants or any Subtenants remedies will be limited to termination of this Agreement or replacement of any personal property damaged by the Tenant. In no event shall a breach of this Agreement by Landlord shall the Landlord be liable for any consequential damages, including any lost profits, etc.

7. **INSURANCE.** Tenant will carry during the Term, at its own cost and expense, the following insurance:

(i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of \$2,000,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. It is understood and agreed that the coverage afforded by Tenant's commercial general liability insurance also applies to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property. Tenant will provide a copy of the then current insurance certificate to Landlord on an annual basis.

8. **INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, the Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its or its Subtenants use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and

Landlord initials: _____
Tenant initials: _____



regulations. Tenant understands and accepts that Landlord is a public safety entity and that Tenant and its Subtenants will not in any way interfere with Landlord's delivery of emergency services.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with Tenant's Communication Facility, including its Tower Structure. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property. Nothing contained herein will restrict Tenant nor its successors and assigns or Subtenants from installing and modifying its communications equipment.

(c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Landlord.

(d) Notwithstanding the above, the parties acknowledge that Landlord shall upon submitting a proposal to Tenant and obtaining Tenants prior written approval, not to be unreasonably withheld, occupy such space on the anticipated tower as is necessary to support the Landlord's public safety communication needs, and that of the county sheriff's office identified by the Landlord from time to time. In conjunction therewith, Tenant agrees that it shall not permit any use by any Subtenant that would interfere with Landlord's public safety communication needs, or that of any other local public safety entity granted use of the tower.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord or its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waive any claims that each may have against the other with respect to consequential, incidental or special damages.

10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents and warrants that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use best efforts to provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

Landlord initials: _____
Tenant initials: _____



11. ENVIRONMENTAL.

(a) To the best of Landlord’s actual knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party’s activity conducted in or on the Property. Landlord makes no other representations or warranties regarding the environmental condition of the Property. Tenant and any Affiliates (defined below) of Tenant shall have the right to test and inspect the property, and waive all claims against Landlord for any damages or losses that might be suffered or incurred by reason of any environmental condition on the Property. Tenant hereby agrees to hold Landlord harmless from any claims, damages, penalties or loss arising from claims by Tenant or Tenant’s Affiliates against Landlord that are based upon the environmental condition of the Property. Nothing herein shall be deemed to require Tenant to indemnify Landlord against any third party claims made except as to any claim made by an Affiliate of Tenant. For purposes of this Agreement, “Affiliate” shall mean any company or entity in which Tenant or any principal of Tenant has a controlling interest, or a Subtenant of Tenant.



(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to the indemnifying party’s failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect. Subject to the limitations below, Landlord agrees to hold harmless and indemnify the Tenant from, and to assume all duties, responsibilities and liabilities at its sole cost and expense for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to any environmental or industrial hygiene conditions that arise out of or are in any way related to Landlord’s use of the Property, except to the extent that any such environmental or other conditions are caused by the Tenant.

(c) The indemnifications of this Paragraph 11 Environmental specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 Environmental will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant’s sole determination, renders the condition of the Premises or Property unsuitable for Tenant’s use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landlord.

(e) In the event of a breach by Landlord of this Paragraph 11, and subject to the other limitations set forth above, Tenant’s remedies shall be limited to the amount available under the Landlord’s insurance coverage then in place by the Tenant and termination of the Agreement.

12. ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, Subtenants and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises and Landlord grants to Tenant an easement for such access. Upon Tenant’s request, Landlord will execute a separate recordable easement evidencing this right. In the event any public utility is unable to use the access or easement provided to Tenant then the Landlord agrees to grant additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

Landlord initials: 
Tenant initials: 

13. REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Tenant or its Subtenants will be and remain Tenant's or its Subtenants personal property and, at Tenant's or its Subtenants option, may be removed by Tenant or its Subtenants at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant or its Subtenants will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant or its Subtenants on the Premises will be and remain the property of the Tenant and its Subtenants and will be removed by Tenant or its Subtenants at any time during the Term, at Tenant's expense. Notwithstanding the foregoing, at the earlier of the expiration or termination of this Agreement, Tenant will not be responsible for the replacement of any trees, shrubs, or other vegetation, nor will Tenant be required to remove from the Premises or the Property any foundations, underground utilities, or any part of the Communication Facility below two foot (2') of grade.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be responsible for paying on a monthly or quarterly basis if necessary, all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is necessary and available, Landlord will read the meter on a monthly or quarterly basis and provide Tenant with the necessary usage data in a timely manner to enable Tenant to compute such utility charges. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement. Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure, No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

16. ASSIGNMENT/SUBLEASE. Except as otherwise provided in this Agreement, Tenant will have the unrestricted right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without the Landlord's consent. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement. Additionally, Landlord agrees that Tenant may



mortgage, hypothecate or grant a security interest in the Agreement and the Communication Facilities, and may assign the Agreement or any rights therein and the Communication Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees interests in the Agreement are subject to any and all of the terms and provisions of the Agreement. In such event, Landlord shall execute such consent or acknowledgements to leasehold financing as may reasonably be required by Mortgagees. Execution of any Mortgagee required documents shall not be unreasonably withheld, conditioned or delayed.

17. **NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed as follows:

If to Tenant: DW Tower, LLC
Attn: Dale Wilson
Re: Site #DWT-001NC; Site Name: Hellsgate Station 22
1603 Golf Course RD SE, STE A4
Rio Rancho, NM 87124

If to Landlord: Hellsgate Fire District
80 Walters Lane
Star Valley, AZ 85541


Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

18. **SEVERABILITY.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

19. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's reasonable determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

20. **CASUALTY.** Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis.

21. **WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Tenant's and its Subtenants Communication Facility or any portion thereof, including the Tower Structure. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to

Landlord initials: 
Tenant initials: 

Tenant's and its Subtenants right to remove all or any portion of the Communication Facility from time to time in Tenant's and its Subtenants sole discretion and without Landlord's consent.

22. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.


(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **No Electronic Signature/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

(i) **No Third Party Beneficiary.** Nothing in the provisions or this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement.

(j) **Title Report Conditions – Curative Matters.** Landlord will be required to provide a release from the existing property restrictions, limiting use to residential only on lots 233 and 234, found in Document 476, page 561 and Document 769, page 941 of the official records of Gila County.

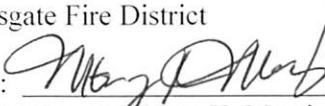
[SIGNATURES APPEAR ON THE NEXT PAGE.]



IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

“LANDLORD”

Hellsgate Fire District

By: 
Print Name: Morey K. Morris
Its: Fire Chief
Date: January 28, 2022

“TENANT”

DW Tower, LLC, a Delaware Limited Liability Company,

By: 
Print Name: Dale Wilson
Its: Managing Member
Date: February 3, 2022

EXHIBIT 1

DESCRIPTION OF PREMISES

to the Agreement dated _____, 2022, by and between Hellsgate Fire District, a public agency of the State of Arizona, as Landlord, and DW Tower, LLC, a Delaware Limited Liability Company, as Tenant.

The Premises are described and/or depicted as follows:

An eighty foot (80') by eighty point 02 foot (80.02') portion of the following:

Lots 233 and 234, of TONTO VILLAGE 3, according to Map No. 565 and 565A, Records of Gila County, Arizona.

Described more particularly as follows:

LEGAL DESCRIPTION (Cell Lease):

A parcel of land, said parcel being a portion of Lots 233 and 234, Tonto Village 3, as recorded in Map 555A of the Records of Gila County, Arizona, situated in Section 5, Township 11 North, Range 11 1/2 East, Gila and Salt River Meridians, Gila County, Arizona, said parcel being more particularly described as follows:

From the Northwest corner of said Lot 233, said point being a found 1/2" rebar w/ Cap 25403, from which the West lot corner of said Lots 233 and 234 bears S 29° 24' 56" W a distance of 93.43 feet, thence S 25° 37' 04" E for a distance of 64,1558.99 feet to the TRUE POINT OF BEGINNING;

thence S 60° 53' 54" E for a distance of 80.02 feet;

thence S 29° 24' 56" W for a distance of 80.00 feet;

thence N 60° 53' 54" W for a distance of 80.02 feet;

thence N 29° 24' 56" E for a distance of 80.00 feet to the TRUE POINT OF BEGINNING,

said parcel contains 6,402 square feet of land, more or less, including any easements of record over the above described parcel.

NES # 21-157 Lease.

LEGAL DESCRIPTION (Access):

A parcel of land, said parcel being a portion of Lot 233, Tonto Village 3, as recorded in Map 555A of the Records of Gila County, Arizona, situated in Section 5, Township 11 North, Range 11 1/2 East, Gila and Salt River Meridians, Gila County, Arizona, said parcel being more particularly described as follows:

From the Northwest corner of said Lot 233, said point being a found 1/2" rebar w/ Cap 25403, from which the West lot corner of said Lots 233 and 234 bears S 29° 24' 56" W a distance of 93.43 feet, thence S 29° 24' 56" W, along the Northwestern lot line of said Lot 233, for a distance of 37.05 feet to the TRUE POINT OF BEGINNING;

thence S 60° 53' 26" E for a distance of 52.61 feet;

thence S 29° 24' 56" W for a distance of 14.00 feet;

thence N 60° 53' 26" W for a distance of 52.61 feet;

thence N 29° 24' 56" E for a distance of 14.00 feet to the TRUE POINT OF BEGINNING,

said parcel contains 737 square feet of land, more or less, including any easements of record over the above described parcel.

NES # 21-157 Access.

Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant and reviewed by Landlord.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.

Landlord initials: _____/_____
Tenant initials: _____

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

Landlord initials: _____/_____
Tenant initials: _____

EXHIBIT 1**DESCRIPTION OF PREMISES**

The Premises are described and/or depicted as follows:

An eighty foot (80') by eighty point 02 foot (80.02') portion of the following:

Lots 233 and 234, of TONTO VILLAGE 3, according to Map No. 565 and 565A, Records of Gila County, Arizona.

Described more particularly as follows:

LEGAL DESCRIPTION (Cell Lease):

A parcel of land, said parcel being a portion of Lots 233 and 234, Tonto Village 3, as recorded in Map 555A of the Records of Gila County, Arizona, situated in Section 5, Township 11 North, Range 11 1/2 East, Gila and Salt River Meridian, Gila County, Arizona, said parcel being more particularly described as follows:

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thence S 60' 53' 54" E for a distance of 80.02 feet;

thence S 29' 24' 56" W for a distance of 80.00 feet;

thence N 60' 53' 54" W for a distance of 80.02 feet;

thence N 29° 24' 56" E for a distance of 80.00 feet to the TRUE POINT OF BEGINNING,

said parcel contains 6,402 square feet of land, more or less, including any easements of record over the above described parcel.

NES # 21-157 Lease.

LEGAL DESCRIPTION (Access):

A parcel of land, said parcel being a portion of Lot 233, Tonto Village 3, as recorded in Map 555A of the Records of Gila County, Arizona, situated in Section 5, Township 11 North, Range 11 1/2 East, Gila and Salt River Meridian, Gila County, Arizona, said parcel being more particularly described as follows:

From the Northwest corner of said Lot 233, said point being a found 1/2" rebar w/Cap 25403, from which the West lot corner of said Lots 233 and 234 bears S 29' 24' 56" W a distance of 93.43 feet, thence S 29° 24' 56" W, along the Northwesterly lot line of said Lot 233, for a distance of 37.05 feet to the TRUE POINT OF BEGINNING;

thence S 60° 53' 26" E for a distance of 52.61 feet;

thence S 29' 24' 56" W for a distance of 14.00 feet;

thence N 60° 53' 26" W for a distance of 52.61 feet;

thence N 29' 24' 56" E for a distance of 14.00 feet to the TRUE POINT OF BEGINNING,

said parcel contains 737 square feet of land, more or less, including any easements of record over the above described parcel.

NES # 21-157 Access.

Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant and approved by Landlord.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.



Return to:

DW Tower, LLC
1603 Golf Course Rd., SE, STE A4
Rio Rancho, NM 87124

Site Name: Hellsgate Station 22
Site No.: DWT-001NC

State: Arizona
County: Gila

**MEMORANDUM
OF
LEASE**

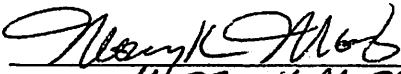
This Memorandum of Lease is entered into on this 3rd day of February, 2022, by and between Hellsgate Fire District, a public agency of the State of Arizona, having a mailing address of 80 Walters Lane, Star Valley, AZ, 85541 (hereinafter referred to as "Landlord") and DW Tower, LLC, a Delaware limited liability company, with an office at 1603 Golf Course Rd., SE STE A4, Rio Rancho, NM 87124 (hereinafter referred to as "Tenant").

1. Landlord and Tenant entered into a certain Lease Agreement ("Agreement") on the 3rd day of February, 2022, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The term of the Agreement is for an Initial Term of five (5) years commencing on the date that Tenant commences construction and ending on the last day of the month in which the fifth (5th) anniversary of the Commencement Date occurs, with five (5) successive five (5) year options to renew.
3. The portion of the land being leased to Tenant (the "Premises") is described in Exhibit 1 annexed hereto.
4. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.


"LANDLORD"

Hellsgate Fire District, a public agency of the State of Arizona

By: 
Print Name: MOREY K MORRIS
Its: Fire Chief
Date: Jan. 28, 2022

"TENANT"

DW Tower, LLC, a Delaware Limited Liability Company

By: 
Print Name: Dale Wilson
Its: Managing Member
Date: 7/3/2022

LANDLORD ACKNOWLEDGMENT

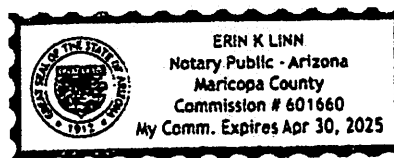
STATE OF Arizona)
) ss:
COUNTY OF Maricopa)

On the 22 day of January, 2022, before me, Erin Linn, Notary Public, personally appeared MORRY K MORRIS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]

Notary Public



[Notary Seal]

TENANTS ACKNOWLEDGMENT

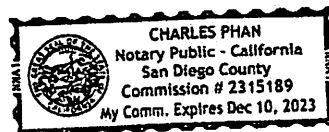
STATE OF California)
) ss:
COUNTY OF San Diego)

On the 3 day of February, 2022, before me, Charles Phan, Notary Public, personally appeared Dale Wilson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]

Notary Public



[Notary Seal]