

RESOLUTION NO. 22-18

A RESOLUTION OF THE HUMBOLDT TRANSIT AUTHORITY GOVERNING BOARD OF DIRECTORS APPROVING THE SALE OF THE CELLULAR COMMUNICATIONS TOWER AND GRANT OF A 50 YEAR NONEXCLUSIVE CELL TOWER ACCESS AND OPERATION EASEMENT TO TOWERCO IV LLC

WHEREAS, in 2000 Humboldt Transit Authority (HTA) constructed a 120-ft self-support cellular communications facility on its property located at 133 V Street, Eureka, CA, as shown in the site plan attached as Attachment A, to be used primarily for communications within the HTA organization and to the Fire Department, Police Department, and emergency personnel of the City of Eureka (“Cell Tower”);

WHEREAS, beginning December 1, 2000 HTA has leased excess capacity on the Cell Tower through agreement (amended on February 1, 2002, April 1, 2003, June 1, 2005, October 1, 2009, November 11, 2010, June 19, 2013, and March 28, 2018) with Edge Wireless LLC and AT&T, its successor in interest (the original lease and its seven amendments are collectively referred to as the “Lease Agreement”);

WHEREAS, under the Lease Agreement, the lessee also leases a portion of an existing controlled temperature room to house ground-based utility equipment that supports the lessor’s communication facilities located on the Cell Tower, as shown in the diagram attached hereto as Attachment B;

WHEREAS, additionally under the Lease Agreement, the lessor reserved 60KW of backup power on HTA’s 200 KW diesel generator subject to payment of a monthly maintenance fee;

WHEREAS, beginning December 1, 2000, HTA and Pacific Coast Towers, successor in interest to P.W.M. Inc., entered into a marketing agreement having a term concurrent with the term of the Lease Agreement for purposes of finding additional Cell Tower tenants (“Site Manager Agreement”);

WHEREAS, on May 26, 2022, HTA and HTA TowerCo IV LLC (“TowerCo”) entered into a purchase and sale agreement in which HTA agreed to sell and TowerCo agreed to purchase the Cell Tower for \$1,400,000.00, excluding certain HTA communications and surveillance equipment located on the Cell Tower;

WHEREAS, HTA and TowerCo now seek to consummate said Cell Tower sale;

WHEREAS, HTA and Pacific Coast Towers also desire to terminate the Site Manager Agreement concurrently with the sale of the Cell Tower.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Humboldt Transit Authority hereby finds, determines, orders, and resolves as follows:

1. To affirm that the foregoing recitals are true and correct and incorporated herein by this reference;
2. To approve the sale of the Cell Tower to TowerCo IV LLC for One Million Four Hundred Thousand Dollars (\$1,400,000) substantially on the terms contained in the Bill of Sale and Assignment, attached hereto as Attachment C and incorporated herein, which includes among other terms the exclusion of HTA equipment located on the Cell Tower specified in Exhibit A to said Bill of Sale;

3. To convey a 50 year non-exclusive easement to TowerCo IV LLC substantially on the terms contained in the Grant of Easement, attached hereto as Attachment D, and incorporated herein, for the following purposes:
 - a. To access, operate, and maintain the Cell Tower;
 - b. To access, operate and maintain ancillary ground-based utility equipment in a portion of HTA's controlled temperature room; and
 - c. To reserve 60KW of backup power on HTA's 200 KW diesel generator for the maintenance payment of \$1,200 per year, subject to increase based on HTA's cost increases
4. To approve termination of the Site Manager Agreement.
5. To authorize and direct the HTA General Manager to execute said Bill of Sale and Assignment and said easement, to record said easement in the official records of Humboldt County, to execute a termination agreement to terminate the Site Manager Agreement; and to take all other action as necessary to complete this transaction.

PASSED AND ADOPTED by the Humboldt Transit Authority of Humboldt County, State of California, at a special meeting of said Board Meeting held on the _____ of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

Natalie Arroyo, Chair of the HTA Governing
Board of Directors

ATTEST:

Brenda Fregoso, Secretary to the Board

Attachments:

A: Cell Tower Site Plan

B: Controlled Temperature Room, Utility Equipment

C: Bill of Sale and Assignment (with Exhibits)

D: Grant of Easement

RESOLUTION 22-18
Attachment A, Cell Tower Site Plan

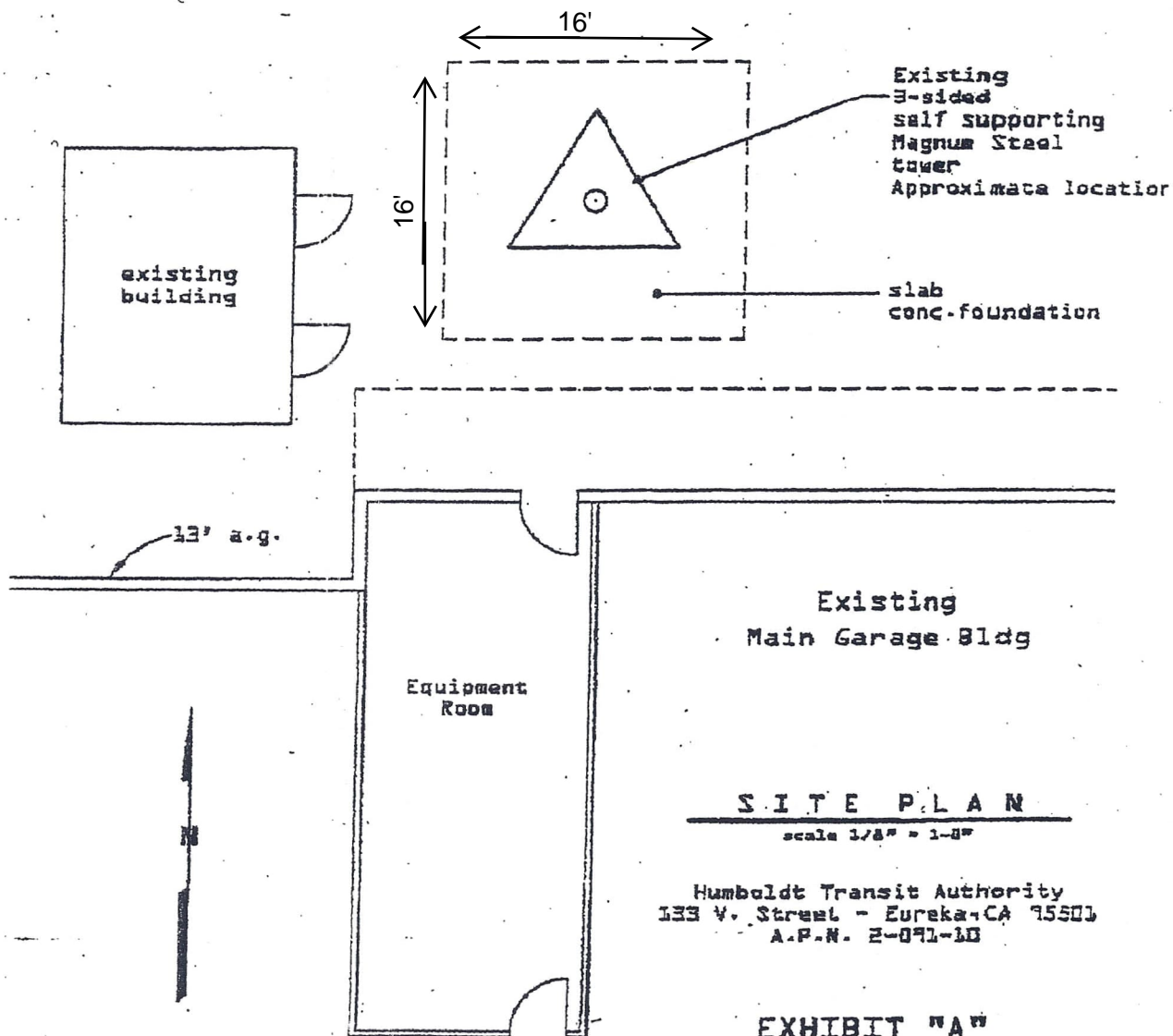


EXHIBIT "A"

Humboldt Transit Authority
Site Plan
Edge Wireless
12/18/2008

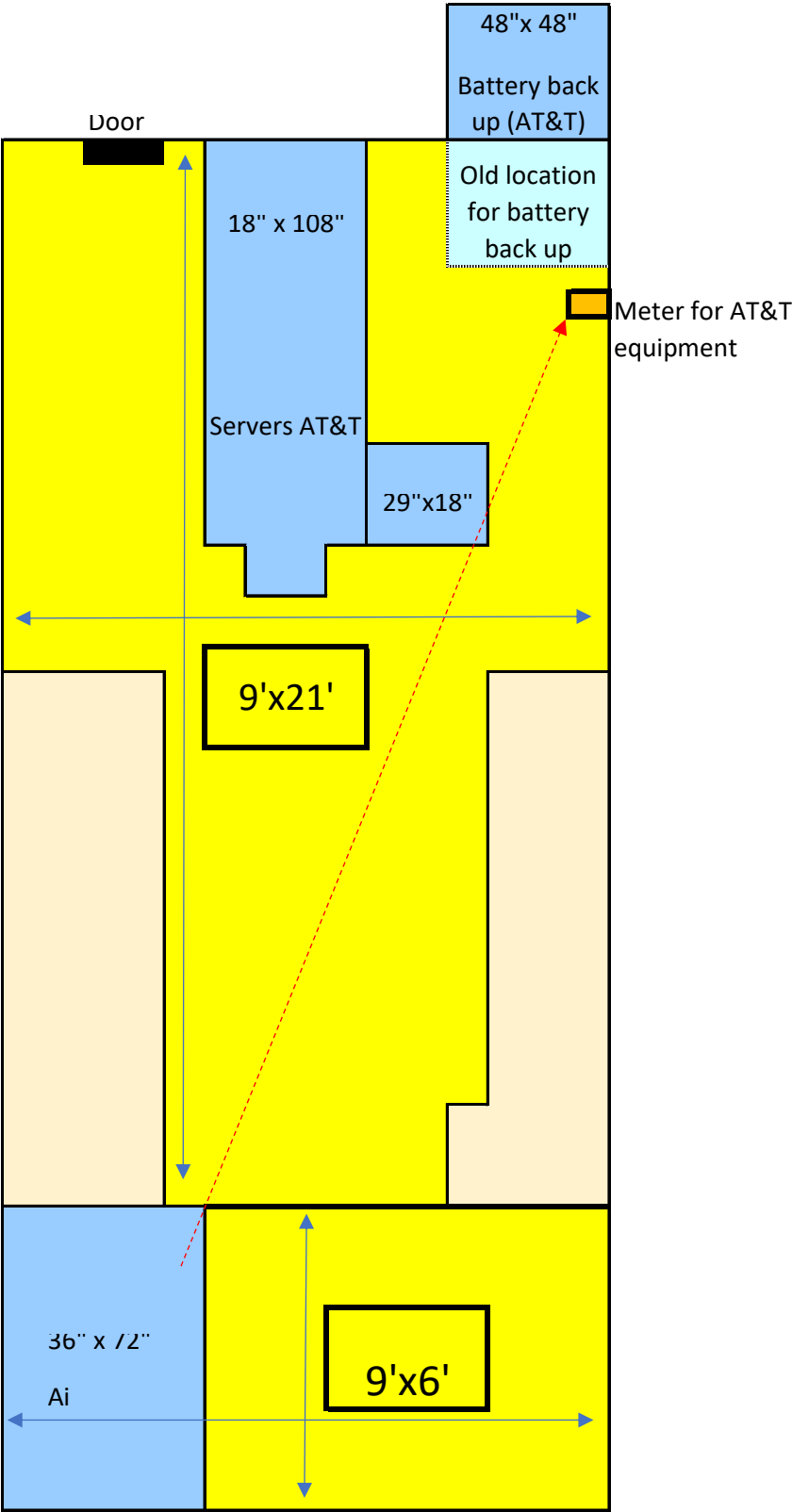
RESOLUTION 22-18

Attachment B, Controlled Temperature Room, Utility Equipment

Tower Co Equipment

Humboldt Transit Equipment

	<u>Inches</u>	<u>sq. ft.</u>
Servers	18"x108" 29"x18"	13.500 3.625
Batterys	48"x48"	16.000
Air Cond.	36"x72"	<u>18.000</u>
TOTAL		51.125



RESOLUTION 22-18
Attachment C, Cell Tower Bill of Sale, with Exhibits (sample form only)
[attach Bill of Sale Exhibit A, Attachment 1, Cell Tower Elevations]

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Assignment") is made and entered into as of this ____ day of _____, 2022 ("Transfer Date"), by Humboldt Transit Authority, a joint powers authority with an address of 133 V Street, Eureka, CA 95501 ("Assignor"), to TowerCo IV LLC, a Delaware limited liability company with an address of 5000 Valleystone Drive, Suite 200, Cary, North Carolina 27519 ("Assignee").

Preliminary Statement:

Pursuant to that certain Letter Agreement made effective May 26, 2022 ("Purchase Agreement"), by and between Assignor and Assignee, Assignor is conveying, selling and assigning to Assignee all of Assignor's interest in that certain communication tower site and all improvements thereon owned by Assignor, including but not limited to one (1) communication tower (the "Tower") excepting certain equipment specified below. All capitalized terms not otherwise defined in this Assignment shall have the meaning ascribed thereto in the Purchase Agreement.

Assignor desires to convey and assign all of its right, title and interest in and to the Tower, Tenant Leases, and materials such as drawings, surveys, studies, permits, if any, ("Due Diligence Materials") to Assignee as of Transfer Date.

In consideration of the mutual covenants contained in this Assignment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. SALE OF PERSONAL PROPERTY. Assignor hereby conveys, sells, transfers and delivers to Assignee, and its successors and assigns, all Due Diligence Materials owned by Seller and developed in connection with the Tower, including but not limited to the Tower and any Tower related appurtenances to or improvements deemed personalty but not including Assignor's equipment as identified on the attached Exhibit "A" or equipment owned and operated by AT&T (collectively, "Personal Property"). Assignor hereby warrants to Assignee, and its successors and assigns, that (a) Assignor is the lawful owner of the Personal Property, (b) the Personal Property is free from all encumbrances and (c) Assignor has good right to sell the Personal Property.

2. ASSIGNMENT. As of the Transfer Date, Assignor hereby assigns and transfers to Assignee, and its successors and assigns, all of Assignor's right, title, claim and interest in, to and under (a) the Tenant Leases with respect to the Property (including those identified on the attached Exhibit "B"); (b) all security deposits under such Tenant Leases, if any; (c) all rights to any unpaid rents or other payments under such Tenant Leases from and after the Transfer Date; and (d) all guarantees and other assurances with respect to such Tenant Leases (collectively, "Assigned Lease Interests").

3. ACCEPTANCE OF ASSIGNMENT. Assignee, as of the Transfer Date, hereby accepts the foregoing assignment and assumes all of the Assignor's obligations under the Assigned Lease Interests which arise or relate to the period after the Transfer Date, provided, however, Assignee only assumes the

obligations with respect to the Security Deposits to the extent Assignee has received such Security Deposits from Assignor.

4. ATTORNEYS FEES AND COSTS. In the event of any litigation or arbitration arising out of this Assignment, the prevailing party will be entitled to recover all expenses and costs incurred in connection therewith, including reasonable attorneys' fees and costs.

5. BINDING EFFECT. This Assignment will be binding upon, and will inure to the benefit of, the Assignor, Assignee and their respective successors and assigns.

6. GOVERNING LAW. This Assignment will be governed by and construed and enforced in accordance with the internal laws of the State of California without regard to principles of conflicts of laws.

7. COUNTERPARTS. This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

8. PURCHASE AGREEMENT. Nothing contained in this Assignment will be deemed or construed as relieving the Assignor or Assignee of their respective duties and obligations under the Purchase Agreement, or amending, modifying or altering the terms of the Purchase Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK
SIGNATURE PAGE FOLLOWS

THIS ASSIGNMENT has been executed by Assignor and Assignee on the Transfer Date.

ASSIGNOR:

Humboldt Transit Authority

By: _____

Name: _____

Its: _____

ASSIGNEE:

TowerCo IV LLC, a Delaware limited liability
company

By: _____

Name: _____

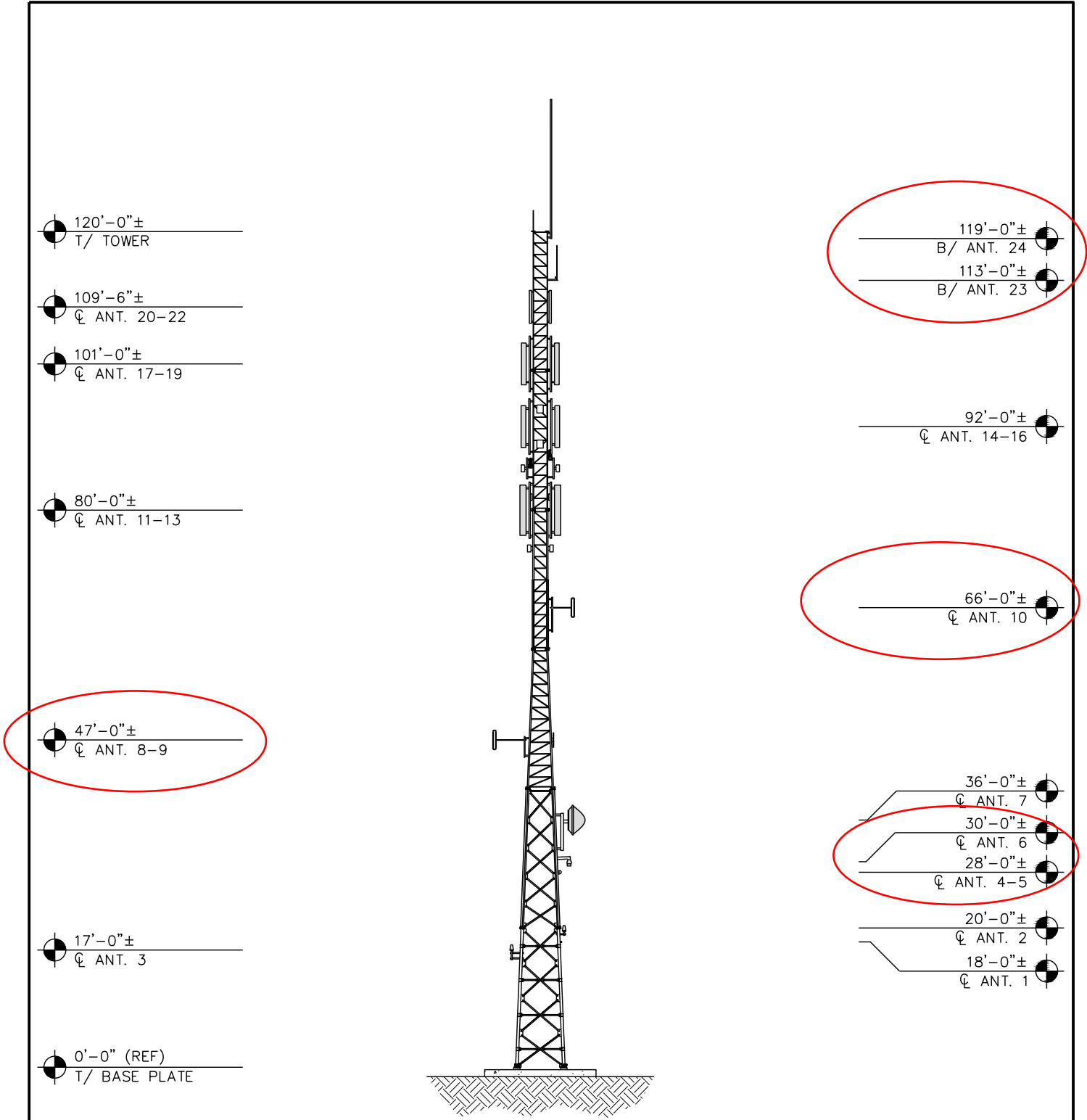
Its: _____

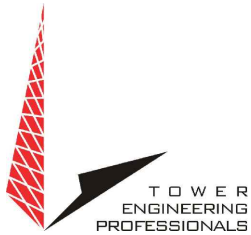
EXHIBIT "A"
Assignor's Equipment Excluded From Sale

1. Surveillance camera
2. Antenna #'s 6, 8, 9, 10, 23, 24, as depicted in Attachment 1, Cell Tower Elevations, attached hereto.

**TOWER MAPPING**

Site Name HTA
 TEP # 314211.710356
 Client # CA0635
 Date JUNE 21, 2022
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TOWER ELEVATION

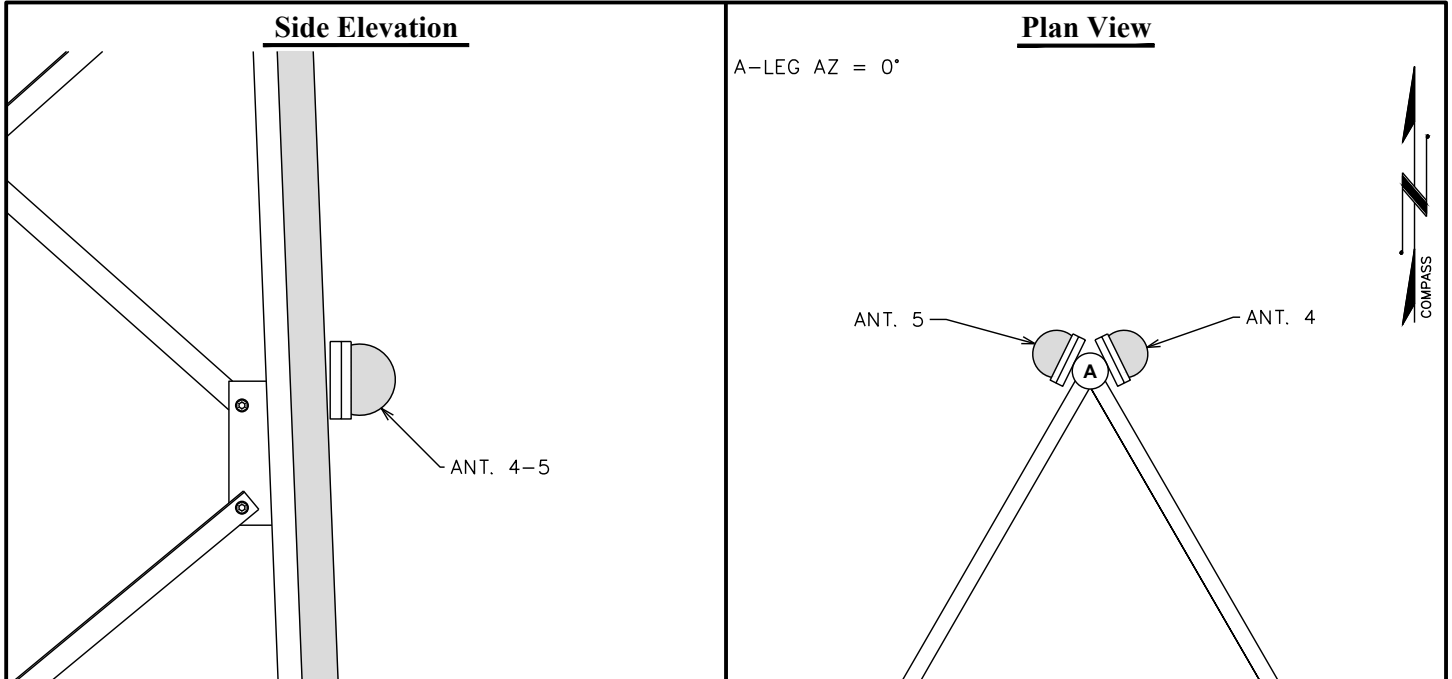


Carrier AT#T

TOWER MAPPING

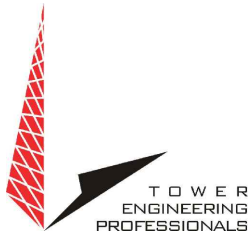
Site Name HTA
 TEP # 314211.710356
 Client # CA0635
 Date JUNE 21, 2022
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ANTENNA AND MOUNT SKETCH



Antenna #	Mount Elevation	Antenna Elevation	Mount Type	Leg	Azimuth
4-5	28'-0"	28'-0"	DIRECT	A	--
Antenna Manufacturer	Antenna Model #	Equipment (#) / Model #	Coax # / Size		
HIKVISION [FADED TAG]	CAMERA	--	#11 / (1) 1" Ø 5M		



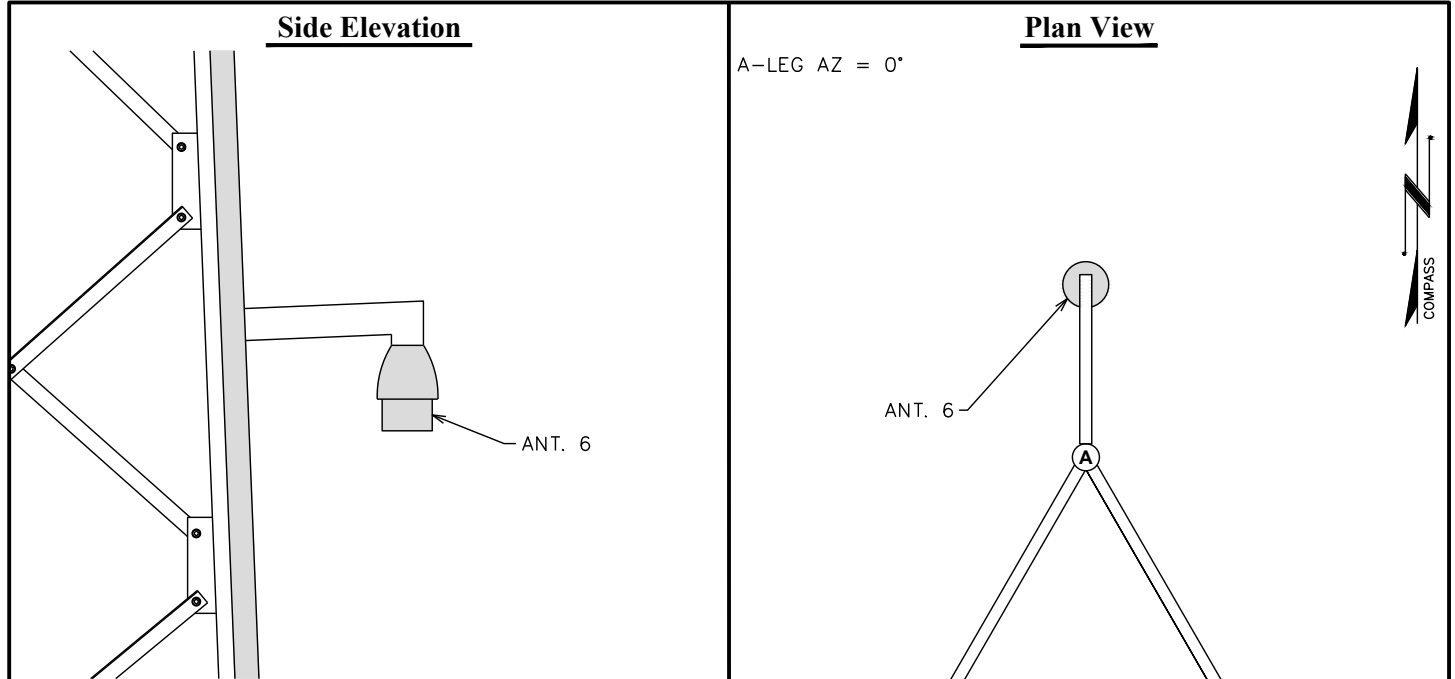


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TOWER MAPPING

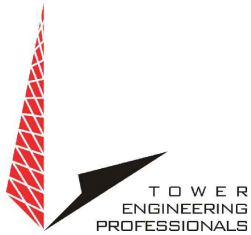
Site Name HTA
 TEP # 314211.710356
 Client # CA0635
 Date JUNE 21, 2022
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ANTENNA AND MOUNT SKETCH



Antenna #	Mount Elevation	Antenna Elevation	Mount Type	Leg	Azimuth
6	30'-0"	30'-0"	STANDOFF	A	--
Antenna Manufacturer	Antenna Model #	Equipment (#) / Model #	Coax # / Size		
UNKNOWN [NO TAG]	UNKNOWN CAMERA	--	#11 / (1) 1" Ø 5M		



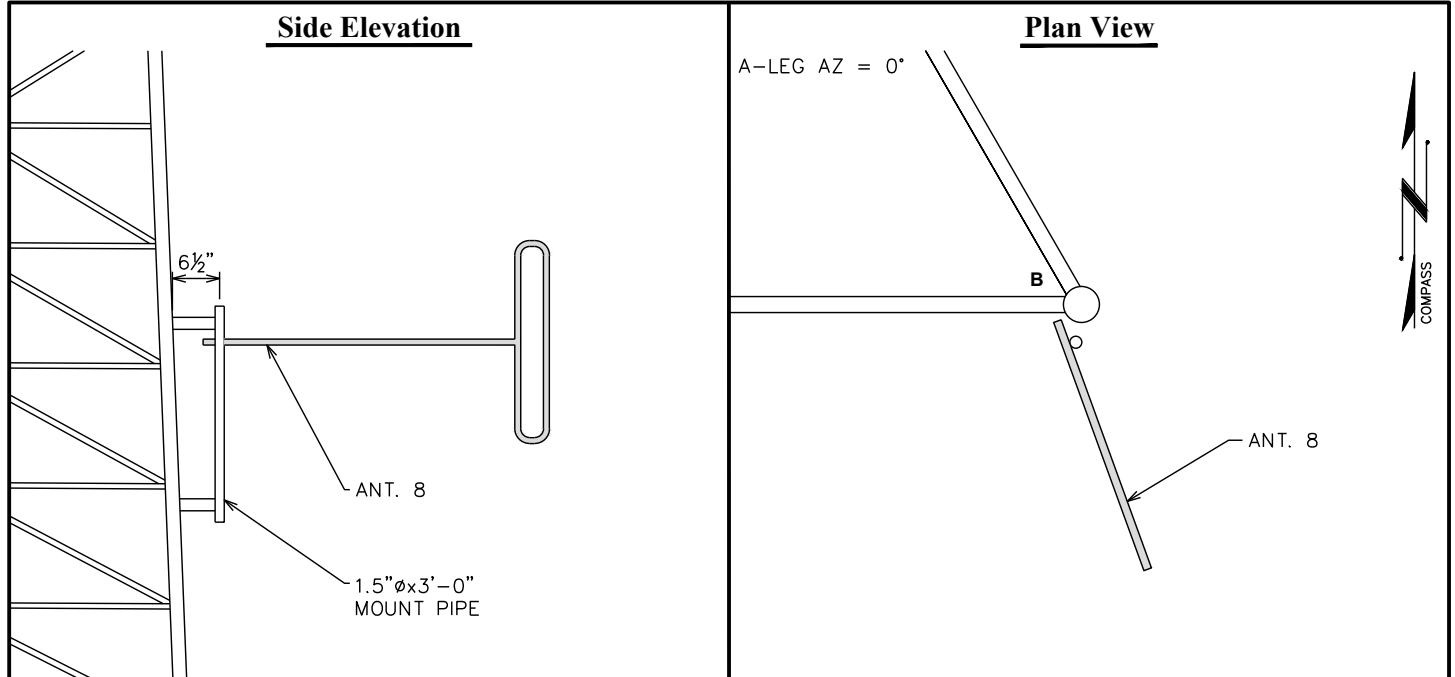


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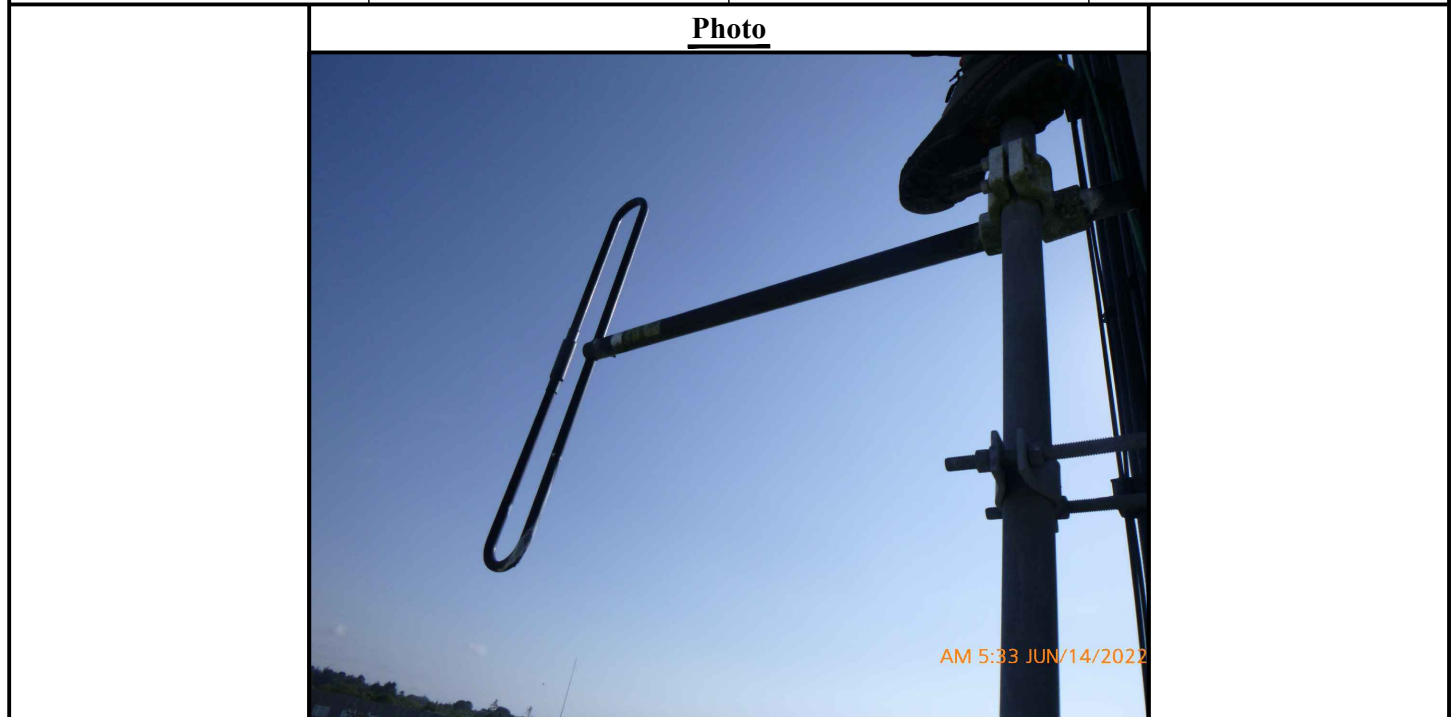
TOWER MAPPING

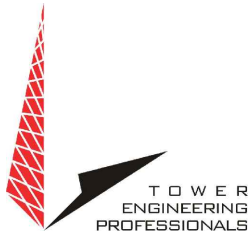
Site Name HTA
 TEP # 314211.710356
 Client # CA0635
 Date JUNE 21, 2022
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ANTENNA AND MOUNT SKETCH



Antenna #	Mount Elevation	Antenna Elevation	Mount Type	Leg	Azimuth
8	46'-0"	47'-0"	PIPE	B	160°
Antenna Manufacturer	Antenna Model #	Equipment (#) / Model #	Coax # / Size		
UNKNOWN [NO TAG]	I-ELEMENT DIPOLE	--	#33 / (1) 1/2 FH		



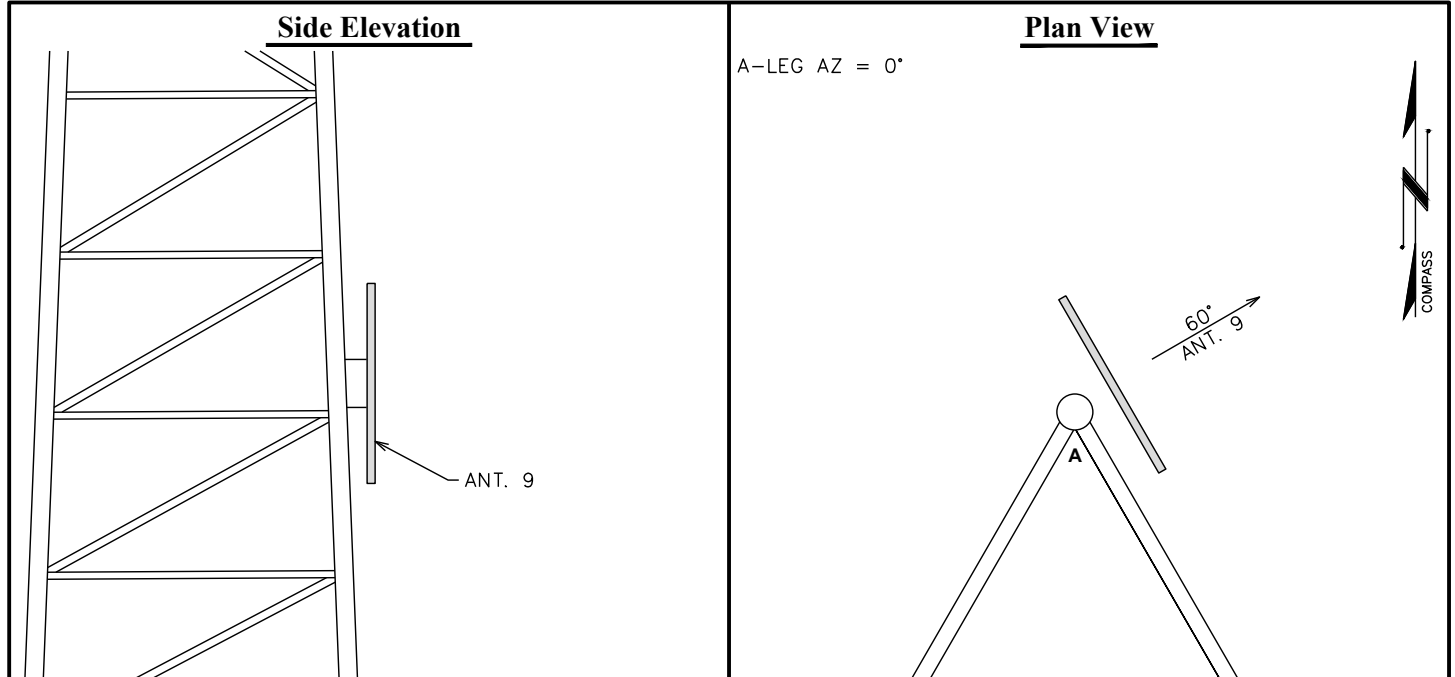


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TOWER MAPPING

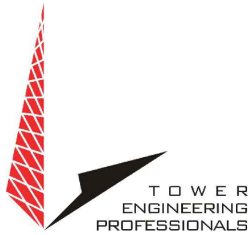
Site Name HTA
 TEP # 314211.710356
 Client # CA0635
 Date JUNE 21, 2022
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ANTENNA AND MOUNT SKETCH



Antenna #	Mount Elevation	Antenna Elevation	Mount Type	Leg	Azimuth
9	47'-0"	47'-0"	DIRECT	A	60°
Antenna Manufacturer	Antenna Model #	Equipment (#) / Model #	Coax # / Size		
UNKNOWN [NO TAG]	25"x25"x1" PANEL	--	NO COAX		



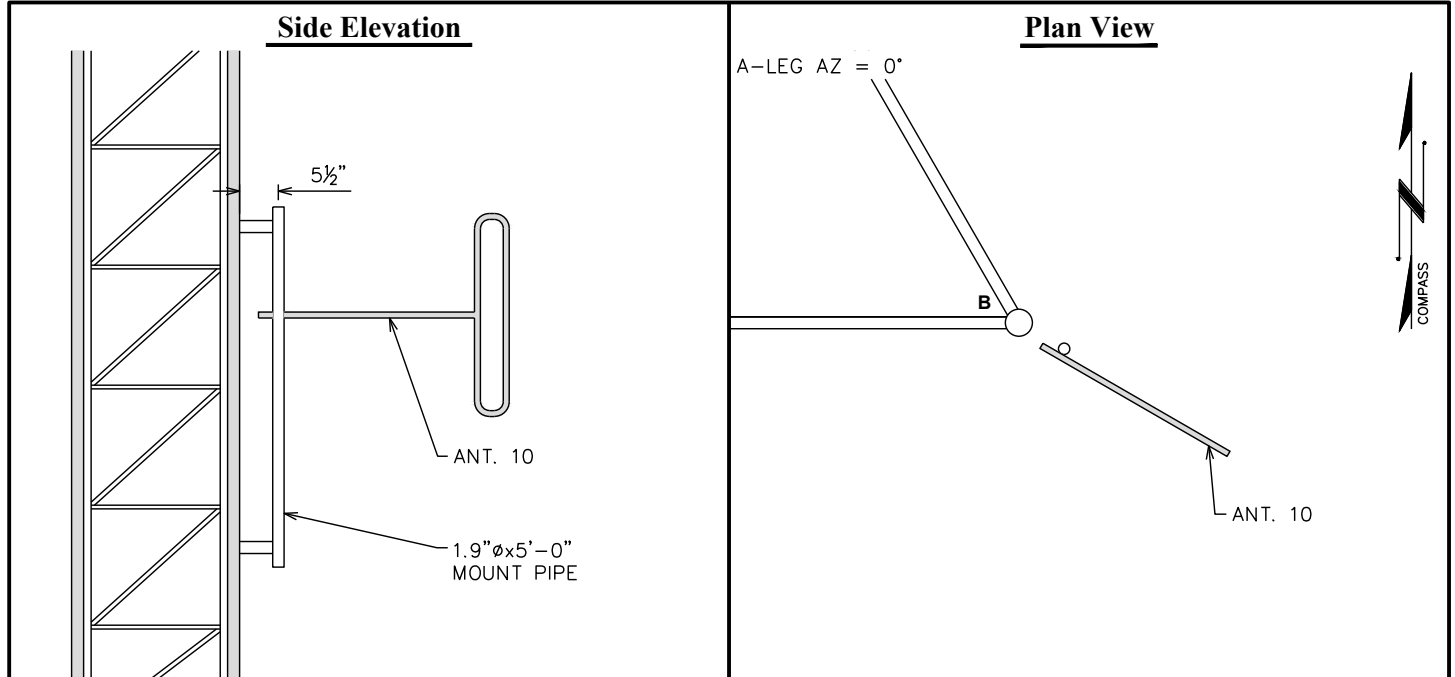


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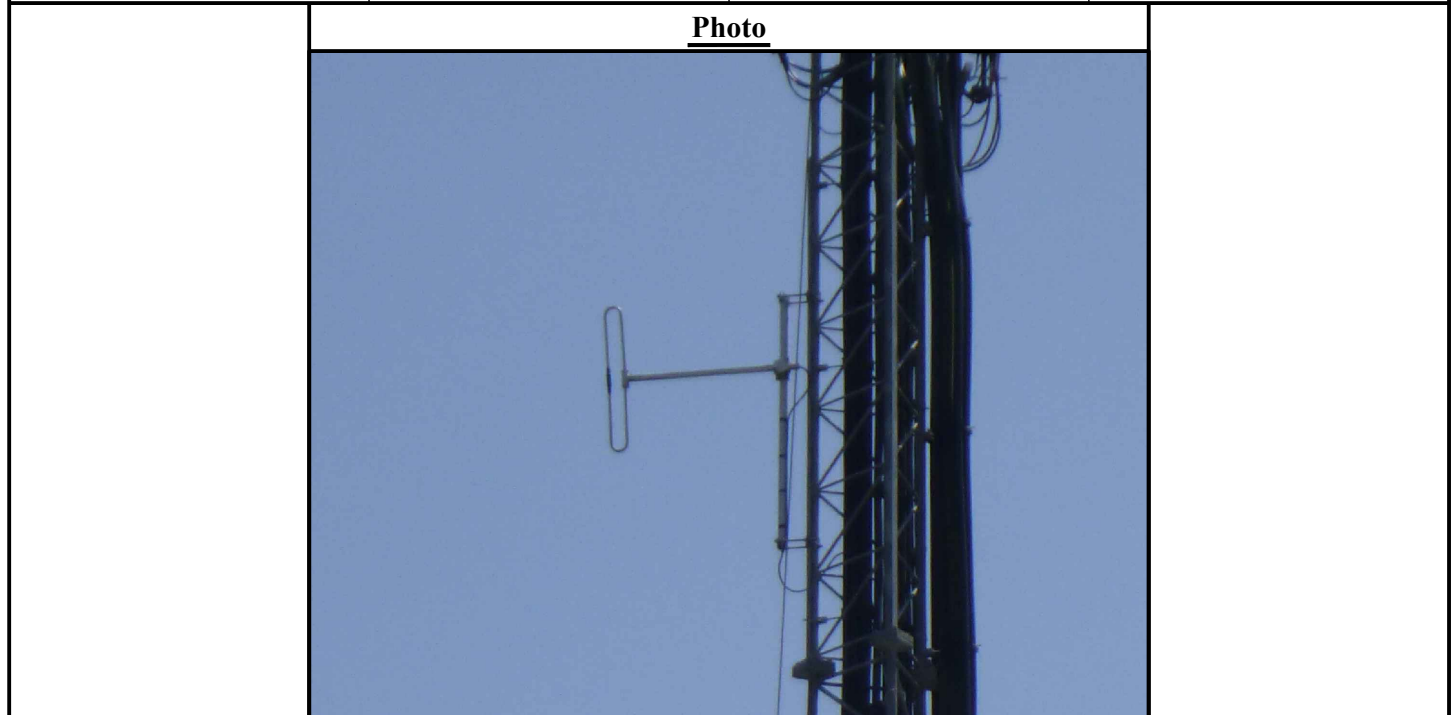
TOWER MAPPING

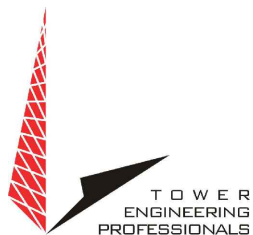
Site Name HTA
 TEP # 314211.710356
 Client # CA0635
 Date JUNE 21, 2022
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ANTENNA AND MOUNT SKETCH



Antenna #	Mount Elevation	Antenna Elevation	Mount Type	Leg	Azimuth
10	65'-0"	66'-0"	PIPE	B	120°
Antenna Manufacturer	Antenna Model #	Equipment (#) / Model #	Coax # / Size		
UNKNOWN [NO TAG]	I-ELEMENT DIPOLE	--	#9 / (1) 5/8"Ø SM		



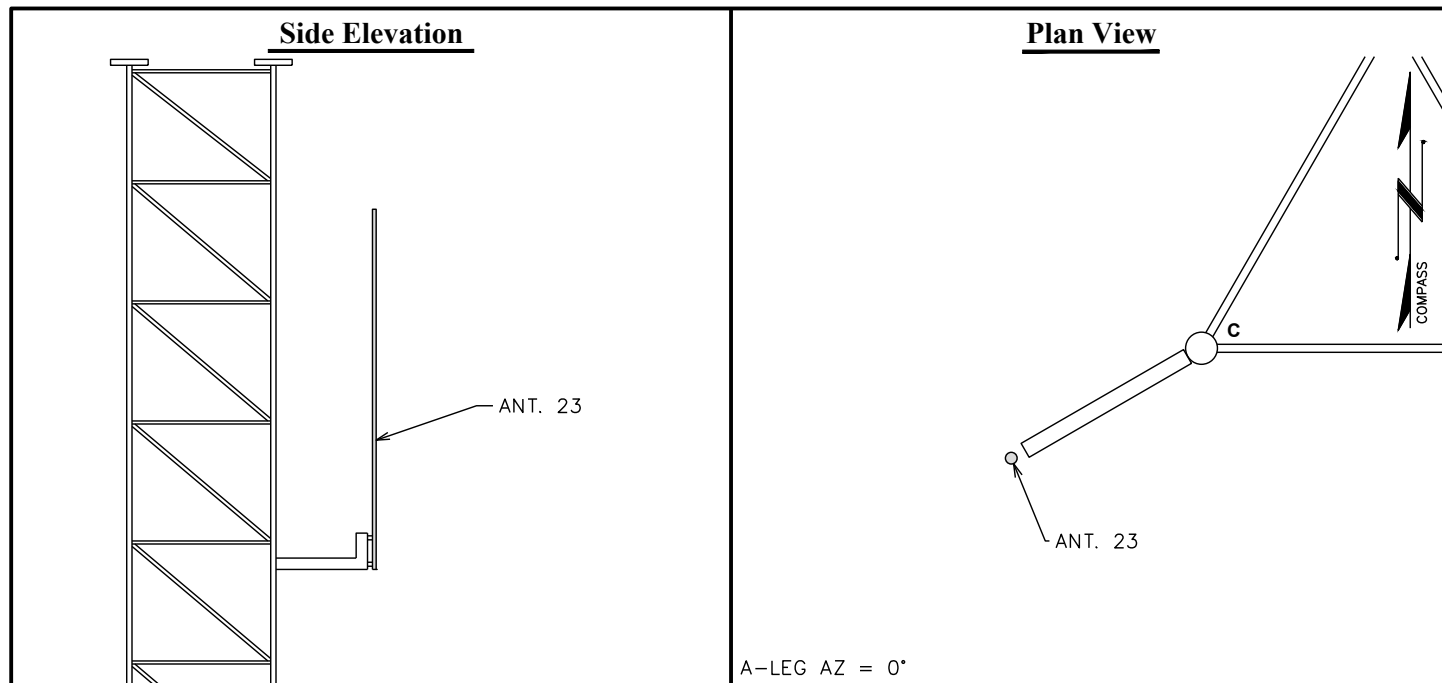


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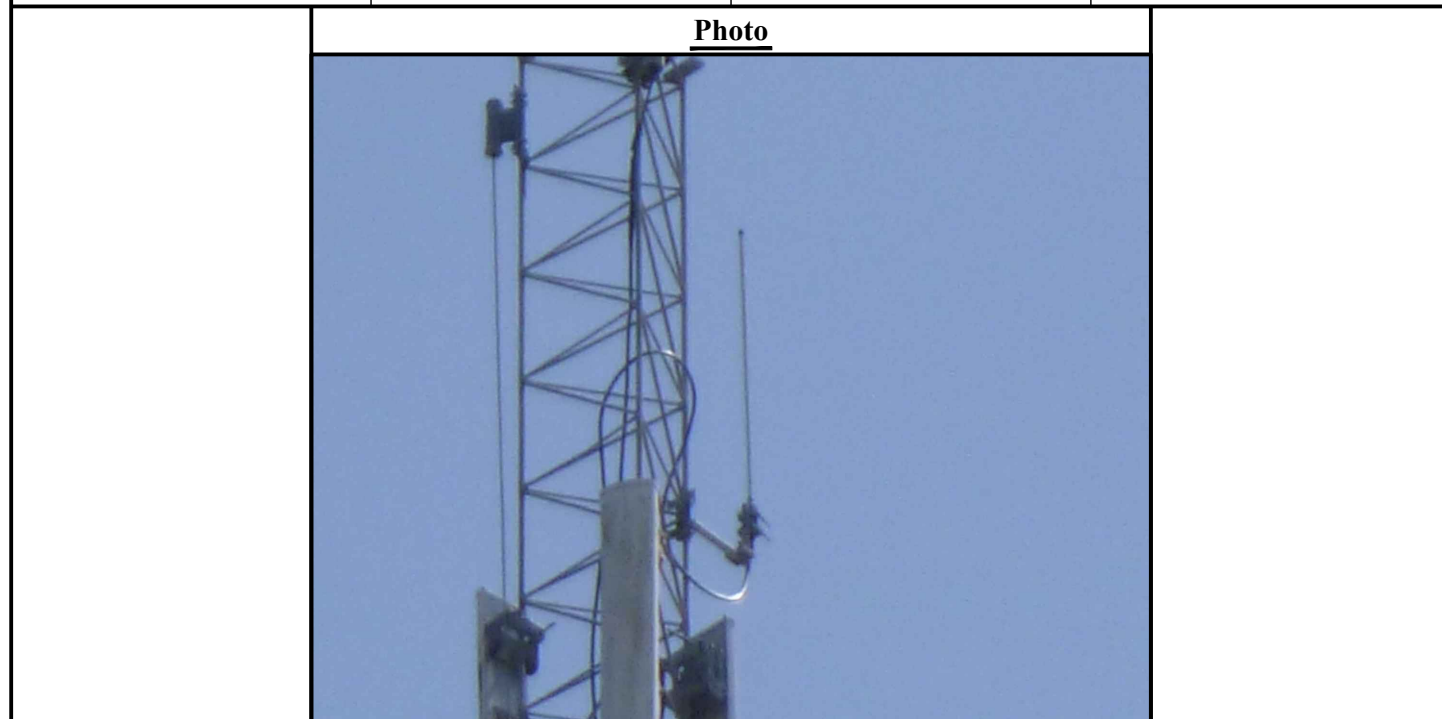
TOWER MAPPING

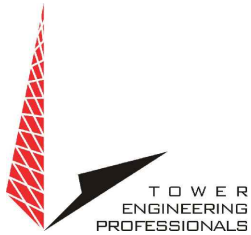
Site Name HTA
 TEP # 314211.710356
 Client # CA0635
 Date JUNE 21, 2022
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ANTENNA AND MOUNT SKETCH



Antenna #	Mount Elevation	Antenna Elevation	Mount Type	Leg	Azimuth
23	113'-0"	B/ 113'-0"	STANDOFF	C	--
Antenna Manufacturer	Antenna Model #	Equipment (#) / Model #	Coax # / Size		
UNKNOWN [NO TAG]	5/8"Øx5'-0" OMNI	--	#10 / (1) 1/2"Ø SM		





Carrier AT#T

TOWER MAPPING

Site Name HTA
 TEP # 314211.710356
 Client # CA0635
 Date JUNE 21, 2022
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ANTENNA AND MOUNT SKETCH

<u>Side Elevation</u>	<u>Plan View</u>
	<p>A-LEG AZ = 0°</p>

Antenna #	Mount Elevation	Antenna Elevation	Mount Type	Leg	Azimuth
24	119'-0"	B/ 119'-0"	DIRECT	A	--
Antenna Manufacturer	Antenna Model #	Equipment (#) / Model #	Coax # / Size		
UNKNOWN [NO TAG]	2.5"Øx20'-0" OMNI	--	#7 / (1) 1 3/16"Ø SM		

	<u>Photo</u>	

Bill of Sale
EXHIBIT "B"
Tenant Leases

1. Lease Agreement between Humboldt Transit Authority and AT&T Wireless, successor in interest to Edge Wireless, dated December 1, 2000, as amended.

RESOLUTION 22-18
Attachment D, Grant of Easement (sample form only)

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

**Humboldt Transit Authority
Attn: General Manager
133 V. Street, Eureka CA 95501**

***SAMPLE FORM ONLY
NOT FOR EXECUTION***

SPACE ABOVE THIS LINE RESERVED FOR RECORDER’S USE

**TowerCo Site ID: CA0635
Tax Parcel ID: 002091010**

GRANT OF EASEMENT

THIS GRANT OF EASEMENT (the “Easement”) is made effective as of the latter signature date below by and between **Humboldt Transit Authority**, a joint powers entity, having a mailing address of 133 V Street, Eureka, CA 95501 (“Grantor”) and **TowerCo IV LLC**, a Delaware limited liability company with its national headquarters located at 5000 Valleystone Drive, Cary, Suite 200, NC 27519 (together with its successors and assigns, the “Grantee”).

RECITALS

WHEREAS, Grantor is the owner of certain real property located at 133 V. Street, Eureka, Humboldt County, CA (together with Grantor’s improvements thereon and thereto), more particularly described in Exhibit A, attached hereto and incorporated herein (hereinafter, the “Property”);

WHEREAS, Grantor constructed on the Property a 120-foot self-support wireless communications tower and foundation (“Cell Tower”);

WHEREAS, pursuant to Resolution No. 22-18 adopted by the Humboldt Transit Authority Board of Directors on _____, 2022, Grantor sold the Cell Tower to Grantee on such terms as recited therein;

WHEREAS, Grantor desires to convey and Grantee desires to accept such easements as defined and described herein over and across the Property by which Grantee can ingress and egress the Property to operate and maintain the Cell Tower.

1. Grant and Permitted Use. For good and valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor and Grantee, Grantor grants and conveys unto Grantee, its successors and assigns, a fifty (50) year nonexclusive easement over a portion of the Property (collectively, “Easement”) for the purposes set out herein and no other purpose. The Easement is comprised of three components: (1) Cell Tower Easement, (2) Access Easement, and (3) Utility Room Easement, which are further described as follows:

- a. Cell Tower Easement: to operate and maintain the Cell Tower, at the location more particularly depicted in Attachment A to Resolution No. 22-18, adopted by the Humboldt Transit Authority Board of Directors on _____, 2022 (hereinafter, the “Cell Tower Easement”). The Cell Tower Easement shall be used for maintaining, operating, replacing, and decommissioning a wireless communications facility and uses incidental thereto for Grantee’s use and the use of its lessees and/or licensees (the “Permitted Use”) and no other use. Grantor expressly reserves the right to reasonably relocate the Cell Tower Easement in its sole discretion and at Grantor’s cost, upon advance notice to Grantee.
- b. Access Easement: for ingress and egress to the Cell Tower Easement (hereinafter, “Access Easement”). Said access is currently through Grantor’s gated entrance on V Street. Grantor expressly reserves the right to reasonably relocate the Access Easement in its sole discretion, upon advance notice to Grantee. Grantee’s use of the Access Easement shall be during Grantee’s business hours, and after hours upon three days’ advance notice.
- a. Utility Room Easement: to maintain, repair and replace existing ground-based equipment ancillary to the operation of the Cell Tower including computer servers, an air conditioning unit, and a battery backup (collectively, “Utility Equipment”) in an approximately 51 square feet portion of a room (“Utility Room”) as more particularly depicted in that map attached to Humboldt Transit Authority Resolution No. 22-18 as Attachment B. The Utility Room is currently located within the HTA administrative services building. Grantee’s non-exclusive access to the Utility Room (“Utility Room Access”) is currently through the existing side door located in the Easement. The Utility Room and Utility Room Access are collectively referred to herein as the “Utility Room Easement”). Grantee shall not relocate or move any equipment inside the Utility Room, whether Grantee’s or Grantor’s equipment, without Grantor’s consent. Grantor expressly reserves the right to require Grantee to reasonably relocate any or all Utility Equipment, the Utility Room Access, or the Utility Easement, at Grantor’s expense. Grantee’s use of the Easement shall be during Grantee’s business hours, and after hours upon three days’ advance notice.

2. Term of Easement, Termination.

- a. Term. This Grant of Easement and Grantee’s rights and privileges hereunder shall be for a term of fifty (50) years from the date of recording this Grant of Easement, unless terminated earlier as set forth herein. Upon termination, this Grant of Easement shall become null and void and the parties shall have no further obligations to each other. Grantee agrees to quitclaim this Grant of Easement to Grantor upon termination.
- b. Early termination. Grantee shall have the unilateral right to terminate this Easement for any reason. Said early termination shall be effective upon Grantee providing written notice of termination to Grantor at least sixty (60) days prior to such termination.
- c. Abandonment. If Grantee abandons the Easement granted herein, or any portion thereof, by non-use for a consecutive period of two (2) years, Grantor may provide written notice of

Easement abandonment to Grantee and assert that non-response will result in termination of the Easement or Easements. Grantee shall have thirty (30) days after the date of such notice in which to respond to Grantor. Grantor may treat Grantee's failure to respond within thirty (30) days as prima facie evidence of Grantee's unequivocal intent to abandon all future use of the Easement, Grantor may declare the Easement or Easements abandoned and quiet title against Grantee.

- d. Cell Tower Ownership Reversion. Upon termination of this Grant of Easement for any reason except by Grantee's abandonment, Grantor shall have the option of reacquiring ownership of the Cell Tower by transfer of title from Grantee, or requiring Grantee to remove the Cell Tower and all appurtenant equipment pursuant to Section 2(e) of this Grant of Easement. If this Grant of Easement is terminated due to Grantee's abandonment, title of ownership of the Cell Tower and all appurtenant equipment shall automatically transfer to Grantor upon abandonment. Cell Tower title shall revert and transfer to HTA without cost to HTA.
- e. Removal of Equipment. Upon termination of this Grant of Easement for any reason except by Grantee's abandonment and upon Grantor's written notice to Grantee to not exercise its option to reacquire Cell Tower ownership, Grantee shall, at Grantee's sole cost and within a reasonable time, remove the Cell Tower, all of Grantee's aboveground fixtures, and Grantee's personal property from the Property. Grantee shall, at Grantee's sole cost, restore the Property to its original condition, reasonable wear and tear excepted.

3. Maintenance and Additional Conditions of Use.

- a. Grantor shall have the ability to utilize as backup power up to 60 KW of Grantor's existing 200 KW diesel generator for the communications facility for as long as Grantor deploys this generator. Grantor's obligation to continue to deploy this generator will be determined in Grantor's sole discretion. Grantee shall pay Grantor an annual maintenance fee of \$1,200, which may be periodically increased by Grantor commensurate with Grantor's actual costs associated with maintaining said generator. Grantee shall pay for the generator operational costs such as fuel and labor with a proration of any fuel use by Grantor.
- b. All power consumed by Grantee or Grantee's subtenants or licensees in carrying out the Permitted Use of the Easement shall be at Grantee's sole cost and expense. With the exception of Grantee's use of the 60 KW Diesel generator, all power used by Grantee or Grantee's subtenants or licensees shall be separately metered or sub-metered.
- c. Grantor shall maintain security fencing around the perimeter of the Cell Tower Easement.
- d. Grantee shall not have the right to use any of Grantor's Property outside of the Easement or to expand the Permitted Use. Grantee shall not make any improvements to the Easement or Cell Tower without Grantor's advance written approval, not to be unreasonably withheld.
- e. During the term of this Easement, Grantee shall reasonably maintain the Cell Tower and all appurtenant aboveground and underground equipment. Grantee shall not disturb the surface of Easement without the prior written consent of the Grantor, which consent shall not be unreasonably withheld. In the event that Grantee's use of the Easement causes any damage to the Property, including without limitation curbs, paving, sidewalks and drive lanes, Grantee shall be responsible for all costs and expenses incurred by Grantor to repair and/or replace the same as determined necessary by the Grantor in its sole and reasonable discretion.

- f. Grantee agrees to comply with all applicable governmental laws, rules, statutes, regulations, and permits relating to its use of the Easement, and to do so at Grantee's sole cost.
- g. Grantee shall promptly report to Grantor any violations of any laws, regulations, or permits relating to the Permitted Use of which Grantee has knowledge and shall promptly send to Grantor a copy of any notice of violation received by Grantee that relates to the Permitted Use. A copy of all citations or other written documents Grantee receives from any agency shall accompany the notice of violation. Grantee shall provide Grantor with copies of all correspondence to and from government agencies relating to any permits or regulations affecting (or claimed by any persons to affect) operations under this Agreement. Grantee shall promptly notify Grantor of any litigation or agency enforcement action arising in connection with this Agreement, including environmental actions.
- h. Grantee shall obtain prior written permission from Grantor's authorized representative before storing equipment on the Easement. Grantee shall at no time be allowed to, or allow others to, dump or deposit any waste, debris, fill, soil, or other material upon any portion of the Easement.
- i. Grantee acknowledges that its use of the Easement is not exclusive, and that Grantor is entitled to use the Easement.

4. Reservations, HTA Equipment. Grantor expressly reserves from the Cell Tower Easement capacity on the Cell Tower as required for the proper operation, function, and maintenance of equipment to provide 1) communication services within the HTA organization, 2) communication services to and from local emergency agencies and entities, and 3) security cameras.

5. Insurance. At all times, Grantee, at its sole expense, shall obtain and keep in force (i) a comprehensive general liability insurance policy covering its operations in the Easement, which policy shall meet the insurance requirements of Grantor in effect at the time of Grantee's annual insurance renewal, and (ii) any additional insurance policy which may be required by any federal, state or local statute or ordinance of any governmental body having jurisdiction in connection with Grantee's use of the Easements granted hereunder. All insurance carriers shall be admitted in the state of California and with an A.M. Best's rating of A- or better and a minimum financial size VII. Said coverage shall include an endorsement to add Grantor, its officers, agents and employees, as additional insureds with respect to liability arising out of or connected with the Permitted Use. Said coverage shall additionally be endorsed to specify that the Grantee's insurance is primary and that insurance or self-insurance maintained by Grantor shall not contribute with it. Upon request, Grantee shall furnish Grantor with certificates of insurance and endorsements of all required insurance. Said documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to Grantor. Grantor acknowledges that during the first year after recordation of this Easement, Grantee shall carry comprehensive general liability in the amount of no less than \$2,000,000,

6. Waiver of Subrogation. The parties hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Easement or any other portion of Grantor's Property resulting from any fire or other casualty of the kind covered by property insurance policies with extended coverage regardless of whether or not, or in what amount, such insurance is now or hereafter carried by the parties.

7. Indemnification.

- a. Grantee shall indemnify, release, defend and hold harmless Grantor and its officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with Grantee's use of the Easement including without limitation installation, repair and maintenance of any communications equipment, except such loss or damage which is caused by the negligence or willful misconduct of Grantor. Grantee releases Grantor from all losses, claims, injuries, damages, or other liability, including, but not limited to, consequential damages, whether to persons or property and no matter how caused, in any way connected with the interruption of communications services due to the failure of any telecommunications equipment. Acceptance of insurance, does not relieve Grantee from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by Grantee's operations regardless if any insurance is applicable or not.
- b. Grantor shall indemnify, defend and hold harmless Grantee and its officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with Grantor's use of the Easement, except such loss or damage which is caused by the negligence or willful misconduct of Grantee.

8. Hazardous Substances and Hazardous Wastes.

- a. Grantee shall not (either with or without negligence) cause or permit the use, storage, generation, escape, disposal or release of any Hazardous Substances or Hazardous Wastes in any manner not sanctioned by law. In all events, Grantee shall indemnify and hold Grantor harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the presence or release of any Hazardous Substances or Hazardous Wastes on the Easement if caused by Grantee or persons acting under Grantee. Grantee shall execute such affidavits, representations and the like from time to time as Grantor may reasonably request concerning Grantee's best knowledge and belief as to the presence of Hazardous Substances or Hazardous Wastes within the Easement.
- b. Grantor shall not (either with or without negligence) cause or permit the use, storage, generation, escape, disposal or release of any Hazardous Substances or Hazardous Wastes in any manner not sanctioned by law. In all events, Grantor shall indemnify and hold Grantee harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the presence or release of any Hazardous Substances or Hazardous Wastes on Grantor's Property unless caused by Grantee or persons acting under Grantee. Grantor shall execute such affidavits, representations and the like from time to time as Grantee may reasonably request concerning Grantor's best knowledge and belief as to the presence of Hazardous Substances or Hazardous Wastes on Grantor's Property.
- c. For purposes of this Easement, the term "Hazardous Substances" shall be as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, and any regulations promulgated pursuant thereto, and as used to define "Hazardous Wastes" in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, and any regulations promulgated thereto.

9. **Possessory Interest Tax.** Pursuant to California Revenue and Taxation Code section 107.6, this Easement conveys to Grantee a possessory interest that may be subject to property taxes and Grantee may be subject to the payment of such taxes. Grantee shall pay when due any and all taxes, fees and charges that may be levied against Grantee's easement interest.

10. **Enforcement.** In the event either Grantor or Grantee fails to cure any of its violations of the terms of this Easement within thirty (30) days after written notice from the other party, the non-breaching party shall have the right to injunctive relief, to require specific performance of this Easement, to collect damages from the breaching party, and to take such actions as may be necessary in the discretion of the non-breaching party to cure such violation and charge the breaching party with all reasonable costs and expenses incurred by the non-breaching party as a result of such violation, including, without limitation, reasonable attorneys' fees. All rights and remedies provided under this Easement are cumulative and may be pursued singularly, in any combination, and in any order. The failure to enforce any of the terms and provisions contained herein shall in no event be deemed to be a waiver of the right to thereafter strictly enforce the terms and provisions hereof.

11. **Recording.** The parties intend to record this Easement with the appropriate recording officer upon execution of this Easement.

12. **Covenants and Warranty.**

- a. Grantor covenants that subject to the terms and conditions including without limitation Grantor's retained rights to continue to use and improve the Easement, Grantee shall have quiet possession, use and enjoyment of the Easement;
- b. Grantee covenants and warrants to Grantor 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 signatory for Grantee below.
- c. The privileges granted herein to Grantee are given expressly subject to existing encumbrances, regulatory requirements, and other matters of record affecting the privileges in any manner whatsoever. Grantor does not warrant that it has authority to permit the Permitted Use on behalf of any third party and Grantee shall secure all other permits, privileges or rights required for the Permitted Use. Grantor does not warrant title to the Property and shall not be liable for defects thereto or failure thereof.
- d. Grantor makes no representation as to the present or future conditions of the Easement and its fitness for the Permitted Use under this Agreement. Grantee accepts this Agreement subject to all danger or injury to persons and damages or destruction to property while Grantee is on or about the Easement. In this regard, Grantee assumes all risk of injury or death to individuals who are on the Easement pursuant to this Agreement and all risk of damage to property upon or in proximity to the Easement with Grantee's knowledge or consent, without regard to whether such injury or damage is occasioned by known or unknown, hidden or disclosed defects in the Easement or by the negligence of Grantor or any person in the employ or service of Grantor.

13. **Non-Interference.** From and after the date hereof and continuing until this Easement is terminated, neither party shall interfere with the rights of the other party to use the Easement for the intended purposes stated herein and subject to the retained rights of the Grantor to continue to use and improve the Property.

14. Eminent Domain. If the whole or any part of the Exclusive Easement Area shall be taken by right of eminent domain or any similar authority of law, the entire award for the value of the land and Grantee's improvements so taken shall belong to the Grantee. If the whole or any part of the Non-Exclusive Access and Utility Easement shall be taken by right of eminent domain or any similar authority of law, the entire award for the value of the land and Grantor's improvements so taken shall belong solely to Grantor.

15. Entire Agreement. Grantor and Grantee agree that this Easement contains all of the agreements, promises and understandings between Grantor and Grantee. No verbal or oral agreements, promises or understandings shall be binding upon either Grantor or Grantee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Easement shall be void and ineffective unless made in writing and signed by the parties hereto.

16. Construction of Document. Grantor and Grantee acknowledge that this document shall not be construed in favor of or against the drafter and that this document shall not be construed as an offer until such time as it is executed by one of the parties and then tendered to the other party.

17. Applicable Law. This Grant of Easement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State where the Easement is located. The parties agree that the venue for any litigation regarding this Easement shall be Humboldt County, California.

18. Notices. All notices hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices may also be given by facsimile transmission, provided that the notice is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to the parties at the following addresses:

Humboldt Transit Authority
Attn: General Manager
133 V Street
Eureka, CA 95501

TowerCo IV LLC
Attn: Legal Dept.
5000 Valleystone Drive, Suite 200
Cary, NC 27519

19. Assignment. The parties hereto expressly intend that the easements granted herein are transferable, assignable, inheritable, divisible and apportionable. Grantee has the right, within its sole discretion, to sell, assign, lease, convey, license or encumber any of its interest in the Easement, subject to the terms and provisions hereof. Any such sale, assignment, lease, license, conveyance or encumbrance shall be binding upon the successors, assigns, heirs and legal representatives of the respective parties hereto. Grantee shall provide prompt written notice to Grantor of any such assignment. An assignment of this Easement shall relieve Grantee from any further liability or obligation accruing hereunder on or after the date of the assignment.

20. Partial Invalidity. If any term of this Easement is found to be void or invalid, then such invalidity shall not affect the remaining terms of this Easement, which shall continue in full force and effect.

21. Successors and Assigns. The terms of this Easement shall constitute a covenant running with the Grantor's Property for the benefit of Grantee and its successors and assigns and shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto and upon each person having any interest therein derived through any owner thereof. Any sale, mortgage, lease or other conveyance of Grantor's Property shall be under and subject to this Easement and Grantee's rights hereunder.

22. Construction of Easement. The captions preceding the Sections of this Easement are intended only for convenience of reference and in no way define, limit or describe the scope of this Easement or the intent of any provision hereof. Whenever the singular is used, the same shall include the plural and vice versa and words of any gender shall include the other gender. As used herein, "including" shall mean "including, without limitation."

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Grantor and Grantee have caused this Easement to be executed as of the later of the signature dates below:

GRANTEE:

TowerCo IV LLC, a Delaware limited liability company

By: Sample Form Only

Name: Mike Smith

Title: CFO

Date: _____

GRANTOR:

Humboldt Transit Authority

By: Sample Form Only

Name: Greg Pratt

Title: General Manager

Date: _____

EXHIBIT A

Grantor's Property Legal Description

Description under review.