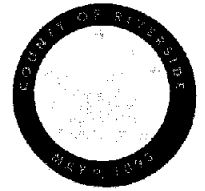


**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

113



FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel 8-4-11  
DATE: \_\_\_\_\_  
SYNTHIA M. GUNZEL  
County Counsel

**FROM:** Economic Development Agency / Facilities Management

**SUBMITTAL DATE:**  
August 4, 2011

**SUBJECT:** Public Safety Enterprise Communications Project Business Lease, Quail Mesa, Ehrenberg, Arizona

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the attached Business Lease for the Quail Mesa Public Safety Enterprise Communication site; and,
2. Authorize the Chairman of the Board to execute the same on behalf of the County.

**BACKGROUND BY:** (Commences on Page 2)

Christopher Hans  
Christopher Hans

FISCAL PROCEDURES APPROVED  
PAUL ANGULO, CPA, AUDITOR-CONTROLLER  
BY: Samuel Wong  
SAMUEL WONG

Robert Field  
Robert Field  
Assistant County Executive Officer/EDA

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 25,000	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

**COMPANION ITEM ON BOARD OF DIRECTORS AGENDA:** No

<b>SOURCE OF FUNDS:</b> PSEC and RCIT	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE  
BY: Jennifer L. Sargent  
**County Executive Office Signature** Jennifer L. Sargent

By: Nathan C. Hodney  
Nathan C. Hodney, Chief Information Officer  
Riverside County Information Technology

Dep't Recomm.:  Consent  Policy   
Per Exec. Ofc.:  Consent  Policy

**BACKGROUND: (Continued)**

The Public Safety Enterprise Communications Project utilizes long term ground leases in those situations where the site owner is unable to sell the land parcel required for the wireless communication site.

The Quail Mesa Public Safety Enterprise Communications Project site is located on the Colorado River Indian Tribes Reservation on the east side of the Colorado River near Ehrenberg, Arizona. Eastern Riverside County presents a serious communication challenge in that severe topography and wilderness designation are combined with heavy recreational use. The best solution is a site which "looks" westward into California, covering the river and valley areas to the west, replacing an existing County communication facility known as Big Maria, which is being abandoned when the current BLM entitlement expires in 2013, due to environmental concerns expressed by other tribes in the area.

The Colorado River Indian Tribes (CRIT) Reservation includes land on both the California and Arizona sides of the Colorado River and encompasses much of the riverbank in this area. The Riverside County Sheriff's Department and CRIT law enforcement need effective communications over this area which sees heavy vehicular traffic and recreational use of both the river and back county areas.

The annual rent business lease is summarized below:

Location: 33°45'55.62"N 114°26'26.69"W, Near State Highway 1 and Welsh Road, north of Ehrenberg, Arizona

Lessor: Colorado River Indian Tribes (CRIT)

Size: Approximately 10,000 square feet plus access for vehicles and electrical power

Term: 25 years with an option to extend an additional 25 years

Rent: \$25,000 upon lease execution, \$25,000 beginning of year two, then \$3,000 per year

Rent Adjustments: None

Utilities: By County

Interior/Exterior

Maintenance: By County

The Form 11 and attached business lease have been reviewed and approved by County Counsel as to legal form.

**FINANCIAL DATA: (Commences on Page 3)**

**FINANCIAL DATA:**

All first and second year rents and associated development costs for the Quail Mesa Leased communications site will be fully funded through the PSEC budget. Riverside County Information Technology's (RCIT) annual budget will fund future rents and all operating costs.

1 Colorado River Indian Tribes  
2 26600 Mohave Road, Parker, Arizona  
3 Colorado River Indian Reservation 85344

4 U.S. Department of the Interior  
5 Bureau of Indian Affairs, Colorado River Agency  
6 Route 1, Box 9-C, Parker, Arizona  
7 Colorado River Indian Reservation 85344

8 **LEASE NO.** \_\_\_\_\_

9 **BUSINESS LEASE**

10 THIS LEASE AGREEMENT (hereinafter "Lease") is made and entered into this \_\_\_\_\_ day of  
11 \_\_\_\_\_, 2011 by and between the Colorado River Indian Tribes, an Indian Tribe  
12 organized in accordance with Section 16, of the Act of June 18, 1934, 25 U.S.C. Section 476  
13 (hereinafter "Lessor"), whose address is 26600 Mohave Road, Parker, Arizona, Colorado River  
14 Indian Reservation 85344, and The County of Riverside (hereinafter "Lessee"), a political  
15 subdivision of the State of California, existing under the laws of the State of California whose  
16 address is 3403 10<sup>th</sup> Street, Suite 500, Riverside, CA 92501. Lessor and Lessee may  
17 individually be referred to in this Lease as the "Party" and collectively as the "Parties." This  
18 Lease is made in accordance with the provisions of the Act of April 30, 1964 (78 Stat. 188), as  
19 implemented by the regulations contained in 25 CFR Part 162, including all amendments  
20 thereto, and other applicable federal laws and regulations.

21 **ARTICLE I. DEFINITIONS**

22 A. "Secretary" means the Secretary of the Interior of the United States of America or  
23 his authorized representative, delegate or successor.

24 **ARTICLE II. LEASED PREMISES**

25 **2.1 LEASED PREMISES**

Lessor is the owner of that certain real property described as follows: an area located within the S ½, N ¼, NW ¼, NE ¼ of Section 21, Township 5 North, Range 21 West of Gila River and Salt River B&M La Paz County Arizona within the Colorado River Indian Reservation as described or depicted on Exhibit "A", "Property".

For the considerations, covenants and agreements hereinafter set out, the Lessor hereby leases to Lessee and Lessee leases and accepts subject to the terms and conditions of this Lease, that certain portion of the Property referred to as the "Leased Premises", defined as a 100' x 100' area located within the Property, as described or depicted on Exhibit "B", attached hereto and, by this reference, incorporated herein, together with rights of vehicular ingress and egress over public reservation streets and roads for the construction, operation and maintenance of the wireless communication facility, the right to access electrical power via overhead lines from the nearest power pole, and the right to manage nearby vegetation for fire control for distance of one hundred (100) feet around the Leased Premises.

1 All of the above land located on the Colorado River Indian Reservation and containing a  
2 dedicated use area aggregate of 10,000 SF, more or less, and subject to any prior,  
3 valid, existing claims or rights-of-way, including the present existing roads. The square  
4 footage figures shown above will be adjusted, if necessary, after Lessee has completed  
5 actual surveys and provided the survey documents to Lessor.

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8 **2.2 SURVEY**

9 Within one hundred eighty (180) days after this Lease is approved and executed by the  
10 Secretary, Lessee, at its own expense, shall have the Leased Premises surveyed by a  
11 registered surveyor, the boundaries posted with substantial monuments, and a tie  
12 established with the nearest United States Land Survey Marker or with some other  
13 known and recognized point or monument. Corners shall be re-staked, if needed, after  
14 the site has been graded. A plat map and legal description of the Leased Premises  
15 shall be furnished to the Lessor and the Secretary.

16  
17 **2.3 CONDITION OF THE LEASED PREMISES**

18 Lessee has previously examined and knows the Leased Premises and no warranties or  
19 representations as to the condition thereof have been made by the Lessor or any agent  
20 of Lessor prior to or at the time of execution of this Lease. Lessee accepts the Leased  
21 Premises in an "as is" condition.

22  
23 **ARTICLE III. LEASE TERM AND POSSESSION OF PREMISES**

24  
25 **3.1 INITIAL TERM OF LEASE**

The Initial term of this Lease shall be 25 years, commencing on the date the Lease is  
approved and executed by the Secretary, whichever is later ("Commencement Date").  
The initial term of this Lease and any Renewal Term shall be referred to collectively as  
the "full term of this Lease."

**3.2 RENEWAL TERM**

Provided Lessee is not in Default under Article XI of this Lease, Lessee shall have the  
option to renew this Lease for an additional twenty-five (25) year period ("Renewal  
Term"). The option to renew the term of the Lease shall be exercised by Lessee  
providing written notice to Lessor by certified mail at least ninety (90) days prior to the  
expiration of the initial term of this Lease. The Renewal Term shall be on the same  
terms, covenants, conditions, and subject to the same restrictions and exceptions  
contained in this Lease Agreement.

**3.3 CONSIDERATION**

During the initial term of this Lease, and during any Option term, there shall be  
Consideration in the form of rent as set forth in Article 4.1 A.

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3.4 PURPOSE

Lessee shall develop, use and operate the Leased Premises for the following purposes only: Design, construction, operation, maintenance, and modernization of a non-commercial public safety wireless microwave and radio communications site.

On a "no fee" basis and subject to space availability and technical review and on a first come, first served basis, Lessee shall permit Lessor's Police, Fire, Fish and Game and related public safety departments to co-locate communications equipment on the Leased Premises and Lessee's personal property or Trade Fixtures. This right shall be limited to one full rack (approximately 2'x2') of equipment together with the necessary antenna and tower attachments. This right shall not extend to other police, fire or fish & game or public safety agencies working in conjunction with Lessor, but those entities may pursue a separate contractual arrangement with Lessee, subject to space availability.

Lessee may permit co-location of communications equipment belonging to other public and quasi public agencies on the Leased Premises and may collect and retain Lessee's approved fee for such co-locations. Such agencies include, by illustration, road repair agencies, public utilities, police departments, U.S. Coast Guard, immigration and drug enforcement. Such co-located tenants shall have the same rights of access to the Leased Premises as does the Lessee. Lessee shall provide Lessor with the name and contact information of each agency that has co-located communications equipment on the Leased Premises. Said development, use and operation will be by the Lessee or through sub-lessees approved in accordance with Article X hereof.

Lessor shall not permit future pad development which interferes with Lessee's use of the premises.

Any future tenants occupying the Leased Premises shall grade and develop their own sites at their own expense.

The Leased Premises shall not be used by Lessee, or any sub-lessee, licensee or concessionaire, or any assignees for any commercial income generation purpose or purposes other than those set out above, except with prior written consent of Lessor.

3.5 UNLAWFUL USES

The Lessee agrees that the Leased Premises, or any part of the Leased Premises, will not be used for any unlawful conduct or purpose.

3.6 SURRENDER OF PREMISES

- A. Upon any termination of this Lease whether by expiration, cancellation, or otherwise, Lessee shall surrender possession of the Leased Premises to Lessor in good condition, reasonable wear and tear excepted. The Lessee will retain the rights to its personal property and Trade Fixtures as defined in this Section below. Other improvements and fixtures not included in definition subsection 3.6.D. below can become part of the real property at Lessor's discretion.

1 B. At any time before the termination date of this Lease, Lessee, if not in default  
hereunder, shall have the right to remove its personal property and Trade Fixtures.

2 C. At the end of the term of this Lease, if directed by Lessor, Lessee shall remove from the  
3 Leased Premises all personal property and Trade Fixtures then installed or in place in,  
4 on or about the Leased Premises returning the site to the good condition, reasonable  
5 wear and tear excepted. If Lessor directs Lessee to remove such property, Lessee  
6 agrees to do so, and, in the event Lessee shall fail to remove such property if and when  
7 directed, to reimburse Lessor for any expense of removal. If any of Lessee's personal  
8 property or Trade Fixtures shall remain on the Leased Premises after the term of this  
9 Lease, it shall become the property of the Lessor without any claim therein of Lessee.

7 D. Lessee's Trade Fixtures shall include modular buildings, propane or diesel generator  
fuel tanks, generators, battery plant and the lattice tower structure. Lessee's personal  
property shall include, but shall not be limited to, all county radio and microwave  
transmitters and receivers, antennae and support equipment.

9 E. Lessor shall have the right to require Lessee to remove any damaged facilities and/or  
10 improvements on the Leased Premises, or otherwise restore the Leased Premises,  
11 after termination of this Lease, by giving written notification to Lessee within thirty days  
after such termination.

12 If so notified, Lessee, at Lessee's sole cost and expense shall remove improvements  
13 within one hundred and eighty (180) days after the date of written notification and shall  
14 restore the Lease Premises to a condition acceptable to the Lessor.

14 F. Upon termination of this Lease, whether by expiration, cancellation or otherwise,  
15 Lessee shall, if requested by Lessor, execute a quitclaim deed, quitclaiming all of its  
16 right, title and interest in and to the Leased Premises and all improvements made to or  
17 placed on the Leased Premises to the Lessor.

16 3.7 HOLDING OVER

17 Holding over by the Lessee after the expiration of this Lease shall not constitute a  
18 renewal of this Lease or give Lessee any rights under this Lease or in the Leased  
19 Premises. Notwithstanding this provision, however, any holding over after the  
20 expiration of the term of this Lease, with the consent of Lessor, shall be construed to be  
21 a tenancy from month to month, revocable upon thirty (30) days written notice, and at  
22 an annual rental of \$12,000 per year and further upon the terms and conditions as  
23 existed other than rental during the last year of the term hereof.

21 3.8 ABANDONMENT

22 If, prior to the expiration or other termination of this Lease, Lessee relinquishes  
23 possession of the Leased Premises without Lessor's written consent such  
24 relinquishment shall be deemed to be an abandonment of the Leased Premises and an  
25 event of default under this Lease. Any such period of default shall be deemed to begin  
on the date on which possession was relinquished.

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3.9 TERMINATION

If Lessee is unable for any reason to proceed with the initial construction of the Leased Premises within the first five years of the term granted herein, Lessee may terminate this Lease with sixty (60) days advance written notice of its election to do so. Lessor shall be entitled to retain any lump sum or annual payments made by Lessee as its sole liquidated damages for such termination.

After the wireless communications facility has been constructed, Lessee shall have the right to terminate this Lease for any reason or for no reason by giving Lessor 24 months advance written notice of its election to do so.

**ARTICLE IV. RENT AND LESSEES CONTRIBUTIONS**

4.1

A. CONSIDERATION: Consideration, in the form of Rent, shall be paid by Lessee to Lessor in amounts as follows:

- i. \$25,000.00 upon full execution of this Lease;
- ii. \$25,000.00 on the first anniversary of the execution of this Lease;
- iii. \$3,000.00 per year for the remaining portion of the 25 year Primary term of this Lease; and,
- iv. \$12,000.00 per year during the 25 year Option term, if exercised.

Further, to the satisfaction and acceptance of Lessor, Lessee shall be responsible for all costs associated with the primary and secondary access routes and site grading necessary to establish and maintain the communication facility together with all cost associated with bringing 3Ø phase commercial power to the site, "Site Improvements". The Site Improvements consist of approximately 10,000 sq feet of soils grading and approximately one half (½) mile of commercial power pole line. The work shall commence within ninety (90) days of the Commencement Date as defined in Section 3.1 herein.

B. EVIDENCE OF PERFORMANCE: Lessee shall provide satisfactory evidence to the Secretary within ninety (90) days following the completion of construction of the facility. Acceptable evidence of site improvements shall be either a wet stamped wet signed Site Grading Plan or a wet stamped wet signed Statement Letter from a licensed grading contractor stating that the site has been graded in accordance to the approved and accepted Site Grading Plan. Such evidence shall be provided without notice or request.

C. INTEREST AND LATE CHARGES: Lessee covenants and agrees that all sums to be paid under this Lease, if not paid when due, shall bear interest on the unpaid portion thereof at the rate of eighteen (18%) percent per annum from the date when due. Lessee further agrees that for each calendar month, in which the fixed minimum rent or monthly percentage rent is not paid to Lessor within ten (10) days of the due date, Lessee shall promptly pay to Lessor a sum equal to the greater of fifty dollars (\$50.00) or ten percent (10%) of the unpaid rentals as special damages.



1 D. If the Lessor shall pay any moneys, or incur any expenses in correction of any violation  
2 of any covenant of Lessee set forth in this Lease, the amounts so paid, or incurred  
3 shall, at Lessor's option and on notice to Lessee, be considered additional rentals  
4 payable, and may be collected or enforced as by law provided with respect to rentals.

5 E. Lessee shall pay to Lessor fifty dollars (\$50.00) for each of Lessee's checks returned to  
6 Lessor unpaid by Lessee's bank.

7 **4.2 TAXES AND ASSESSMENTS ON LESSEE'S PROPERTY**

8 Lessor acknowledges that Lessee, as a governmental body, may be a tax exempt entity  
9 as to the leasehold, its improvements and its trade fixtures. Lessee shall be responsible  
10 for and shall pay before delinquency all taxes assessed against Lessee's leasehold  
11 interest or any personal property of any kind owned or placed in, upon or about the  
12 Leased Premises by Lessee. Lessee hereby agrees to protect and hold harmless  
13 Lessor and the Leased Premises from all liability for any and all such taxes,  
14 assessments and charges together with any interest, penalties or other charges thereby  
15 imposed, and from any sale or other proceedings to enforce payment thereof, and to  
16 pay all such taxes, assessments and charges before they become a lien on the Leased  
17 Premises.

18 **4.3 UTILITIES CONSUMED ON THE LEASED PREMISES**

19 In addition to all rentals herein specified, Lessee shall be responsible for and shall pay  
20 for all utilities supplied to, used, or consumed in or upon the demised Leased Premises,  
21 including, but not limited to, electricity and water for construction as and when the  
22 charges therefore shall become due and payable. Commencing on the date that the  
23 Leased Premises are ready for occupancy, Lessee shall make all appropriate  
24 applications to the local utility companies and pay all required deposits for meters and  
25 service for all utilities.

**ARTICLE V. (INTENTIONALLY DELETED)**

**ARTICLE VI. IMPROVEMENTS, ADDITIONS,  
ALTERATIONS, MAINTENANCE AND REPAIRS**

**6.1 INITIAL CONSTRUCTION**

Lessee shall be responsible for all costs associated with any construction. All  
improvements shall require approval by the Lessor's Building and Safety Department  
pursuant to the Lessor's Health and Safety Code. Lessee shall submit to Lessor's  
Building and Safety Department complete plans and specifications covering all work  
which Lessee proposes to do on the Leased Premises, including the fixturization  
thereof, whether such work is to be done by Lessee or others. Such plans and  
specifications shall be prepared in such detail as Lessor may require, and Lessee  
agrees not to commence work upon any portion of the Leased Premises until Lessor  
has approved such plans and specifications in writing. Lessor agrees to act with  
reasonable promptness with respect to approval of such plans and specifications.

1 6.2 IMPROVEMENTS, APPROVAL

2 Lessee shall not make any additions, alterations, or other improvements other than  
3 replacement of radio and microwave equipment and antennas (hereinafter referred to in  
4 this Article VI as "improvements") to the Leased Premises without the approval of  
5 Lessor. Lessee shall submit to Lessor complete plans and specifications covering all  
6 such work, whether such work is to be done by Lessee or others. Lessee agrees not to  
commence work upon any portion of the Leased Premises until Lessor has approved  
such plans and specifications in writing. Lessor agrees to act with reasonable  
promptness with respect to such plans and specifications. Any changes in said plans or  
specifications must be similarly approved by Lessor.

7 6.3 IMPROVEMENTS, CONSTRUCTION, DUTY TO MAINTAIN AND REPAIR PREMISES

8 All improvements, including the initial construction improvements, on the Leased  
9 Premises shall be constructed and/or maintained in a good workmanlike manner in  
10 compliance with all laws, code, rules, regulations and orders of all governmental  
11 authorities having jurisdiction thereof. Lessee shall, at Lessee's own expense, promptly  
12 remove from the Leased Premises all trash and debris which may accumulate in  
13 connection with any work in or on the Leased Premises. The Lessee or sub lessee  
14 shall at all times during the full term of this Lease and at Lessee's sole cost and  
15 expense, maintain the Premises and all improvements thereon and any alterations,  
16 additions, or appurtenances thereto, in good order, condition and repair (including any  
such replacement, periodic painting, and restoration as is required for that purpose) and  
in a safe, sanitary, neat and attractive condition, and shall comply with all public laws,  
ordinances and regulations applicable to said Leased Premises. Lessee shall  
indemnify and hold harmless Lessor and the United States Government against liability  
for all claims arising from any failure to maintain, repair, or alter the Leased Premises  
and the improvements thereon, or from any construction, alteration or repair of the  
Leased Premises or from the non-observance of any law, ordinance, or regulation  
applicable to such construction, alteration or repair.

17 6.4 MECHANIC'S LIENS

18 When Lessee makes any improvements in the Leased Premises, Lessee must pay for  
19 same when made. Nothing in the Lease shall be construed to authorize Lessee or any  
20 dealing with or under Lessee, to charge the rents of the Leased Premises, or the  
21 property of which the Leased Premises form a part, or the interest of Lessor in the  
22 estate of the Leased Premises, or any person under and through whom Lessor has  
23 acquired its interest in the estate of the Leased Premises, with a mechanic's lien or  
24 encumbrance of any kind, and under no circumstances shall Lessee be construed to be  
25 the agent, employee or representative of Lessor in the making of any such  
improvements to the Leased Premises, but on the contrary, the right or power to charge  
a lien, claim or encumbrance of any kind against Lessor's rents or the Leased Premises  
or said land is denied. If a mechanic's or materialmen's lien is threatened by any  
contractor or supplier, or in the event of the filing of a notice of any such lien, Lessee  
will promptly pay same and take steps immediately to have same removed. If the lien is  
not removed within ten (10) days from the date of written notice from Lessor, Lessor  
shall have the right at Lessor's option to cause the same to be discharged by record of  
payment, deposit, bond or other of a court of competent jurisdiction or otherwise, or to

1 pay any portion thereof and of the amounts so paid, including attorney's fees and  
2 expenses connected therewith and interest at the rate of 18% per annum on any sums  
3 paid or advanced, shall be deemed to be additional rent due from Lessee to Lessor and  
4 shall be paid to Lessor immediately upon rendition to Lessee of the bill. Lessee will  
indemnify, and hold harmless Lessor and the United States from and against all loss,  
claims, damages, costs or expenses suffered by Lessor by reason of any repairs,  
installations or improvements made by Lessee.

5 **6.5 NON-RESPONSIBILITY NOTICES**

6 Prior to the commencement of construction of each improvement on the Leased  
7 Premises, or any repair or alteration thereto, or work or labor thereon, the Lessee shall  
8 give the Lessor and the Secretary ten (10) days written notice of the intention to begin  
said activity, so that non-responsibility notices may be posted. Lessor hereby  
authorizes Lessee to post said notices on Lessor's behalf.

9 **ARTICLE VII. USE OF PREMISES**

10 **7.1 LESSEE'S USE OF LEASED PREMISES**

11 Lessee shall use and occupy the Leased Premises only for those permitted uses set  
12 forth in paragraph 3.5 of this Lease and for no other purpose without Lessor's prior  
written consent.

13 **7.2 CONDUCT OF LESSEE'S OPERATIONS**

14 At all times throughout the Lease term, Lessee shall:

- 15 A. Comply with any and all requirements of any of the constituted public authorities, and  
16 with the terms of any Tribal, Federal, State, or local statutes, ordinances, or regulations  
applicable to Lessee or its use, safety, cleanliness, or occupation of the Leased  
Premises, and save Lessor harmless from penalties, liens, costs, expenses or damages  
17 resulting from failure to do so.
- 18 B. Give to Lessor prompt written notice of any accident, fire or damage occurring on or to  
the Leased Premises.
- 19 C. Conduct its business in the Leased Premises in all respects in a dignified manner and in  
accordance with high standards of operation.

20 **7.3 SEWAGE**

21 Lessee will provide and maintain chemical toilets during the construction period of the  
22 communication facility.

23 **7.4 RIGHTS RESERVED BY LESSOR**

- 24 A. EASEMENTS. Lessor expressly reserves all rights in and with respect to the land  
25 hereby leased, not inconsistent with Lessee's use of the Leased Premises as provided  
in the Lease, and to enter upon the Leased Premises and give easements to others for  
the purpose of installing, using, maintaining, renewing and replacing such overhead or

1 underground water, gas, sewer and other pipelines, and telephone, electric, and power  
2 lines, cables and conduits as Lessor may deem desirable in connection with the  
3 development or use of any other property in the neighborhood of the land hereby  
4 leased, whether owned by Lessor or not, all of which pipelines, lines and conduits shall  
5 be buried to a sufficient depth or raised to a sufficient height so as not to interfere with  
6 the use or stability of the building or any other improvements on the land hereby leased.

- 7 B. PRESENTATION FOR SALE OR LEASE. Lessor hereby reserves the right during  
8 usual business hours to enter the Leased Premises and to exhibit the same for  
9 purposes of sale, lease or mortgage, and during the last six (6) months of the term of  
10 this Lease, to exhibit the same to any prospective Lessee, and after notice from either  
11 party of intention to terminate this Lease, or at any time within six (6) months prior to the  
12 expiration of this Lease, display a "For Rent" sign, except on doors leading into the  
13 Leased Premises. Prospective purchasers or Lessees authorized by Lessor may  
14 inspect the Leased Premises at reasonable hours at any time.

### 9 **ARTICLE VIII. LIABILITY INSURANCE AND INDEMNIFICATION**

#### 10 **8.1 ALLOCATION OF RISKS AND INSURANCE**

- 11 A. LEASED PREMISES. Lessee bears the risk of and shall keep the Leased Premises and  
12 all improvements at all times insured against loss or damage by fire, with extended  
13 coverage, rent loss insurance and vandalism and malicious mischief endorsement or  
14 their equivalents. Lessee is a public agency and maintains programs of self insurance  
15 for Liability coverage and insurance for Property that includes replacement coverage for  
16 all improvements on the Leased Premises. Lessee shall, from the date of execution of  
17 this Lease Agreement, carry such insurance or provide evidence of self insurance, in  
18 the names of the Lessee, Lessor, and the United States of America, covering not less  
19 than the full replacement value of all improvements on the Leased Premises.  
20 Certificates of Self Insurance for Liability and Evidence of Insurance for Property shall  
21 be provided to the Lessor and the Secretary, and Lessee shall pay all premiums and  
22 other charges payable with respect to such insurance. In the event of damage to any  
23 improvement on the Leased Premises, the Lessee shall repair or otherwise reinstate  
24 the damaged improvement in a good and substantial manner according to the plan and  
25 elevation of the improvement so destroyed or damaged or according to such modified  
plan as shall be previously approved in writing by the Lessor. Such reconstruction shall  
commence within one (1) year after the damage occurs and shall be pursued diligently.  
Insurance proceeds shall be deposited in escrow with an institution approved by the  
Lessor. The Lessee shall also deposit in said escrow all additional funds required to  
reconstruct the damaged improvement. Escrow instructions shall include provisions  
that all funds so deposited shall be used to reconstruct the damaged improvement, and  
funds shall be disbursed during the progress of reconstruction on proper architect's,  
engineer's, or contractor's certificates. All money in escrow after reconstruction has  
been completed shall be paid to the Lessee. Should Lessee elect not to reconstruct,  
the Leased Premises shall be cleared at Lessee's expense.

- 26 B. PROPERTY OF LESSEE. Lessee agrees that all property owned by it in, on or about  
the Leased Premises shall be at the sole risk and hazard of the Lessee. Lessor shall  
not be liable or responsible for any loss or damage to Lessee, or anyone claiming under  
or through Lessee, or otherwise, whether caused by or resulting from a peril required to  
be insured hereunder, and whether or not originating in the Leased Premises or

1 elsewhere, irrespective of whether or not Lessor may be deemed to have been  
2 negligent with respect thereto, and provided such damage of loss it is not the result of  
3 an intentional and willful wrongful act of Lessor. Lessee agrees that, if any property  
4 owned by it and located in the Leased Premises shall be damaged or destroyed by an  
5 insured peril, Lessor shall not have any liability to Lessee, nor to any insurer of Lessee,  
6 for or in respect of such damage or destruction, and Lessee shall require all policies of  
7 risk insurance carried by it on its property in the Leased Premises to contain or be  
8 endorsed with a provision in and by which the insurer designated therein shall waive its  
9 right of subrogation against Lessor.

10 C. OPERATIONS OF LESSEE. All operations conducted by Lessee shall be at Lessee's  
11 sole risk. In addition, Lessee shall procure liability insurance for its operations as  
12 follows: At all times during the full term of this Lease, Lessee shall keep in force or  
13 maintain program of self insurance at its own expense, public liability insurance and  
14 comprehensive general liability insurance including contractual liability insurance  
15 sufficient to cover all phases and aspects of the operation and conduct of its business  
16 with minimum limits of \$1,000,000 combined single limit with a \$3,000,000 million dollar  
17 aggregate covering bodily injury including death and property damage.

18 D. REQUIREMENTS OF ALL POLICIES. All liability insurance policies required of Lessee  
19 in this Lease shall name as additional insured the Lessor, the United States of America  
20 and Lessee as insured and shall contain an express waiver of any right of subrogation  
21 against Lessor and other named insurers designated by Lessor. Said policies shall  
22 provide against cancellation, for any reason including non-payment of premiums,  
23 without 30 days prior notification to Lessor and the Secretary. There shall be a periodic  
24 review, at no less than three (3) year intervals, of coverage and coverage amounts held  
25 under this Lease. The review shall give consideration to the economic conditions at the  
time and may result in an adjustment of the type of insurance coverage or the amounts  
of any coverage if, in the sole discretion of the Lessor or the Secretary such adjustment  
is necessary for the protection of Lessor and the United States. Said policies shall be in  
such responsible companies as are rated A-, A, A+ or better in the current edition of  
Best's Insurance Guide.

E. Lessee shall provide Lessor with a Certificate(s) of Insurance or Certificate(s) of Self  
Insurance and/or Evidence of Coverage evidencing the insurance required by this  
section, on or before the commencement date, and promptly following the renewal  
replacement of such coverage. At Lessee's option, Lessee may self insure for a portion  
or all insurance coverage provided in this paragraph.

F. FAILURE TO PROCURE INSURANCE. In the event Lessee shall fail to procure  
insurance or maintain the self insurance required under this Article and fail to maintain  
the same in force continuously during the term, Lessor or the Secretary shall be entitled  
to procure the same and Lessee shall immediately reimburse Lessor or the Secretary  
for such premium expense.

G. RISK OF LOSS. Neither Lessor nor the United States Government, nor their officers,  
agents, and employees shall be liable for any loss, damage, death or injury of any kind  
whatsoever to the person or property of Lessee or sub lessees or of any other person  
whomsoever, caused by Lessee's use of the Leased Premises, or by any defect in any  
structure erected thereon, or arising from any accident, fire, or from any other casualty  
on the Leased Premises or from any other cause whatsoever; and Lessee, as a

1 material part of the consideration for this Lease, hereby waives on Lessee's behalf all  
2 claims against Lessor and the United States Government.

3 **8.2 INDEMNIFICATION AND WAIVER OF CLAIMS**

4 Lessee as a material part of the consideration for this Lease indemnifies Lessor and the  
5 United States Government and waives claims as follows:

6 A. INDEMNIFICATION. Lessee will indemnify Lessor and the United States of America  
7 and save them harmless from and against any and all claims, cause of actions,  
8 damages, liability and (including without limitation, reasonable attorney fees and  
9 expenses) imposed upon or asserted against Lessor by reason of (i) loss of life,  
10 personal injury, accident or loss of or damage to property of Lessee or any other person  
11 during the term occurring in, on or about, or arising from or out of, the Leased Premises  
12 or any part thereof, adjacent sidewalks and loading platforms, (ii) any failure on part of  
13 Lessee to perform or comply with any of the terms of this Lease, (iii) any use, nonuse or  
14 condition of the Leased Premises or any part thereof, (iv) any acts or omissions of  
15 Lessee, its agents, contractors, customers or employees, (v) performance of any labor  
16 or services or the furnishing of any material or other property with respect to the Leased  
17 Premises or any part thereof or (vi) any failure on the part of Lessee to comply with any  
18 of the matters set forth in Article IX, including without limitation, any suit or proceeding  
19 brought by reason of any such occurrence, Lessee shall at its own expense resist and  
20 defend such action, suit or proceeding or cause the same to be resisted and defended  
21 by counsel designated by Lessee and approved by Lessor. If any such action, suit or  
22 proceeding should result in a final judgment against Lessor, Lessee shall promptly  
23 satisfy and discharge such judgment or shall cause such judgment to be promptly  
24 satisfied and discharged. The final obligations of Lessee under this Section arising by  
25 reason of any such occurrence taking place while this Lease is in effect shall survive  
any termination of this Lease, by expiration, cancellation, or otherwise.

B. NOTICE OF CLAIMS OR SUITS. Lessee agrees to promptly notify Lessor of any claim,  
action, or proceeding and cause the same to be resisted and defended by counsel  
designated by Lessee and approved by Lessor. If any such action, suit or proceeding  
should result in a final judgment against Lessor or the United States, Lessee shall  
promptly satisfy and discharge such judgment or shall cause such judgment to be  
promptly satisfied and discharged. The final obligations of Lessee under this Section  
arising by reason of any such Occurrence taking place while this Lease is in effect shall  
survive any termination of this Lease, whether by expiration, cancellation, or otherwise.

**8.3 LESSOR PAYING CLAIMS**

Lessor shall have the option to pay any lien or charge payable by Lessee under this  
Lease, or settle any action therefore, if the Lessee after written notice from Lessor or  
the Secretary fails to pay or post bond against enforcement. All costs and other  
expenses incurred by Lessor in so doing, shall be paid to Lessor by Lessee upon  
demand, with interest at the rate of eighteen percent (18%) per annum, from the date of  
payment until repaid. Failure to make such repayment on demand shall constitute a  
default under this Lease.

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1                                   **ARTICLE IX. LOSS, DESTRUCTION OR TAKING OF PREMISES**

2   **9.1 LESSEE'S REGULATORY AND ENVIRONMENTAL REQUIREMENTS**

3       A. Lessee shall observe and comply with all laws, present or future ordinances,  
4       requirements, rules and regulations of all governmental authorities having jurisdiction  
5       over the Leased Premises or any part thereof and of all insurance companies written  
6       policies covering the Leased Premises or any part thereof. Lessee shall also promptly  
7       obtain each and every permit, license, certificate or other authorization required in  
8       connection with the lawful and proper use of the Leased Premises or required in  
9       connection with any building or improvement now or hereafter erected thereon.  
10      Exclusive of Hazardous Materials normally associated with Lessee's permitted use,  
11      Lessee covenants and agrees not to use, generate, release, manage, treat,  
12      manufacture, store or dispose of, on, under or about, or transport to or from (any of the  
13      foregoing, hereinafter a "Use") the Leased Premises any Hazardous materials. Lessee  
14      shall comply with all rules, regulations, laws and ordinances of all governmental  
15      authorities having jurisdiction over the Leased Premises relative to Lessee's use,  
16      management, storage or disposition of Hazardous Materials. For the purpose of this  
17      Lease, "Hazardous Materials: shall include but not be limited to flammable explosives,  
18      radioactive materials, hazardous waste, toxic substances and any other related material  
19      or substance defined as hazardous or regulated by, any governmental authority and/or  
20      Hazardous Materials Laws (including, but not limited to the Comprehensive  
21      Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section  
22      9601, et seq.) or any rules or regulations adopted and guidelines promulgated pursuant  
23      to any Hazardous Materials Laws or any other applicable laws. Lessee further agrees  
24      to pay all costs and expenses associated with all enforcement, removal, remedial or  
25      other governmental or regulatory actions or agreements, instituted or completed  
26      pursuant to any Hazardous Materials Laws, and all audits, tests, investigations,  
27      cleanups, reports and other such items incurred in connection with any efforts to  
28      complete, satisfy or resolve any matters issues or concerns, whether governmental or  
29      otherwise, arising out of or in any way related to the use, generating, management,  
30      treatment, manufacturing storage or disposal of hazardous Material in any amount by  
31      Lessee, its employees, agents, invitees, sub lessees, licensees, concessionaires,  
32      assignees or contractors. Lessee further agrees to remove all underground storage  
33      tanks and repair any damage caused by the use of such tanks on the Leased Premises  
34      or the removal such tanks if directed to do so by Lessor. Lessee further agrees to  
35      comply with the terms of the Hazardous Substance Rider set forth in Section 12.7 of  
36      this Lease.

37       B. The Lessee shall, during the full term of this Lease, take whatever mitigation measures  
38       the Lessor, Secretary, or applicable federal and/or tribal agencies may require to reduce  
39       the harmful effects to surrounding environment from the creation of any pollution,  
40       including without limitation, air, water, soil, and aesthetic view pollution. The anti-  
41       pollution devices installed as a result of this clause are required to conform to the laws  
42       and ordinances of the Colorado River Indian Tribes and the United States of America  
43       government with respect to the installation and quality of said devices.

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1 9.2 FIRE OR OTHER CASUALTY

2 Lessee shall give to Lessor prompt written notice of any accident, fire or damage  
3 occurring on or to the Leased Premises. Lessee's obligation to pay all monies owed  
4 when due under this Lease shall continue regardless of any partial or substantial  
5 destruction of any buildings or common areas.

6 9.3 CONDEMNATION

7 If at any time during the full term of this Lease the Leased Premises or any part thereof  
8 is taken or condemned under the laws of Eminent Domain, then and in every such case  
9 the leasehold estate and interest of the Lessee in said Leased Premises taken shall  
10 cease and terminate. Lessee shall be entitled to participate and receive any part of the  
11 damages or award, where said award shall provide for moving or other reimbursable  
12 expenses for the Lessee under applicable statute in which event the latter sum shall be  
13 received by Lessee, and that portion of any award allocated to the taking of Lessee's  
14 building, improvements, trade fixtures, equipment and personal property, or to a loss of  
15 business by Lessee. None of the awards or payments to Lessor shall be subject to any  
16 diminution or apportionment on behalf of Lessee or otherwise.

17 **ARTICLE X. ASSIGNMENT, SUBLETTING,  
18 MORTGAGING AND SUBORDINATION**

19 10.1 ASSIGNMENT AND SUBLETTING BY LESSEE

- 20 A. Lessee shall not convey or assign this Lease other than to permitted co-location radio  
21 equipment of other public and quasi-public agencies, in whole or in part, nor sublet the  
22 whole or any part of the Leased Premises, or permit the use of the whole or any part of  
23 the Leased Premises by any licensee or concessionaire, without first obtaining the  
24 written consent of Lessor, which consent shall not be unreasonably withheld,  
25 conditioned or delayed. This prohibition shall be construed to include a prohibition  
against any assignment or subletting by operation of law, assignment for the benefit of  
creditors, voluntary or involuntary bankruptcy or reorganization, or otherwise, without  
the prior written consent of Lessor. Any assignment or sublease without Lessor's  
written consent is in violation of this Lease and a default hereunder and, at the option of  
Lessor, shall be void.
- B. Any transfer of this Lease or any right to or interest in this Lease or any transfer of the  
improvements on the Leased Premises, or any transfer of the ownership or controlling  
interest of Lessee other than permitted co-locations of radio equipment of other public  
and quasi-public agencies shall be deemed an assignment of this Lease. The creation  
of any partnership, corporation, joint venture or any other arrangement under which any  
person other than Lessee is entitled to share in profits derived directly or indirectly from  
the Leased Premises shall also be deemed an assignment of this Lease.
- C. Lessor and Lessee agree that no conveyance, assignment or subletting of the Leased  
Premises, by either party, shall be valid without the written consent of the other party.  
The Parties' consent or refusal to consent to any such subletting or assignment may be  
based upon, but shall not be limited to, factors pertaining to:



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1. The acceptability and/or compatibility of any proposed sub lessee or assignee to the Leased Premises and to the whole of any building, structure, or other development wherein said Leased Premises are located, and

2. The financial statement, credit and ability of any proposed sub lessee or assignee to meet the obligations, terms and conditions of this Lease.

D. The acceptance of any rental payments by Lessor from any alleged sub Lessor or assignee shall not constitute approval of the assignment of this Lease by the Lessor, and the consent by Lessor to one assignment or subletting of the Leased Premises shall not constitute a waiver of Lessor's rights hereunder.

E. Lessee shall pay to Lessor the sum of \$1,500.00 as a Transfer Fee for such written consent. In the event of any such assignment, subletting, licensing or granting of a concession, made with the written consent of the Lessor as aforesaid, Lessee will nevertheless remain liable for the performance of all the terms, conditions, and covenants of this Lease. Any permitted assignment or subletting shall be by written agreement, in form and content acceptable to Lessor, and shall specify and require that each one of the sub lessees or assignees shall assume, be bound by, and be obligated to perform the terms and conditions of its sublease and assignor under this Lease.

F. Termination of this Lease, by cancellation or otherwise, shall not serve to cancel approved subleases or sub tenancies, but shall operate as an assignment to Lessor of any and all such subleases or sub tenancies.

10.2 TRANSFER AND MORTGAGING BY LESSOR

A. TRANSFER BY LESSOR. The term 'Lessor' as used in this Lease, means the Owner, only for the time being, of the Leased Premises. So long as all sums held on Lessee's behalf in trust or escrow by Lessor are paid over to any purchaser of said Leased Premises, Lessor shall be and is hereby relieved of all covenants and obligations of Lessor hereunder after the date of sale of said Leased Premises, and it shall be construed without further agreement between the Parties that the purchaser has assumed and agreed to carry out any and all covenants and obligations of Lessor hereunder from the date of such sale.

B. SUBORDINATION. This Lease is subordinate to any and all mortgages or deeds of trust hereinafter placed upon the Leased Premises, now or in the future, or any part thereof, and to all future modifications, consolidations, replacements, extensions and renewals of, and all amendments and supplements to said mortgages or deeds of trust. Notwithstanding such subordination, as aforesaid, this Lease, except as otherwise hereinafter provided, shall not terminate or be divested by foreclosure or other default proceedings under said leases, mortgages, deeds of trust, or obligations secured thereby, and Lessee shall attorn to and recognize the Lessor, Mortgagees, Trustee, Beneficiary or the purchaser at the foreclosure sale in the event of such foreclosure or other default proceeding, as Lessee's Lessor for the balance of the term and provisions hereof.

C. ESTOPPEL & SUBORDINATION DOCUMENTS. Lessee agrees to execute, acknowledge and deliver any and all documents required to effectuate the provisions of this Article within sixty (60) days after request thereof by Lessor or in the event that

1 upon any sale, assignment, lease or hypothecation of the Leased Premises and/or the  
2 land thereunder by Lessor, a statement shall be required by Lessee, Lessee agrees to  
3 deliver in recordable form a certificate (if such be the case) that this Lease is in full force  
4 and effect and there are no defenses or offsets thereto, or stating those claimed by  
5 Lessee, the dates to which the rental or other sums have been paid in advance, and  
6 any other such certifications of lease terms as may reasonably be required by the  
7 Lender. It being intended that any such statements delivered pursuant to this Section  
8 may be relied upon by any prospective purchaser, mortgagee, assignee or beneficiary.

## 9 **ARTICLE XI. DEFAULT AND REMEDIES FOR DEFAULT**

### 10 **11.1 EVENTS OF DEFAULT**

11 A. The occurrence of any of the following shall constitute an event of default hereunder:

- 12 1. The filing of a petition by or against Lessee for adjudication as a bankrupt or  
13 insolvent, or for its reorganization or for the appointment of a receiver or trustee of  
14 Lessee's property; an assignment by Lessee for the benefit of creditors or the taking  
15 of possession of the property of, Lessee by any governmental officer or agency  
16 pursuant to statutory authority for the liquidation of Lessee.
- 17 2. Failure of Lessee to meet the Consideration in lieu of traditional rents above.  
18 Required to be provided by Lessee.
- 19 3. Abandonment or misuse of the Leased Premises.
- 20 4. The failure to perform any other covenant or condition of this Lease.

### 21 **11.2 REMEDIES OF LESSOR FOR DEFAULT BY LESSEE**

22 Upon the occurrence of an event of default, Lessor shall have the right, then or at  
23 anytime thereafter, and in addition to and not in lieu of any other remedies, relief or  
24 rights available to Lessor or the Secretary at law or equity or contained in this Lease or  
25 in Part 162 of Volume 25 Code of Federal Regulations, to do any of the following:

- 26 A. Lessor by itself or its authorized agents may cure the default and charge Lessee for the  
27 costs of such cure, which charge shall be due and payable as rental under this Lease  
28 immediately upon written notice to Lessee.
- 29 B. Lessor may distrain for rent due.
- 30 C. Lessor may look to the following security as provided in Article V above:
  - 31 1. Lessor may exercise its general lien on the leasehold estate and all property in the  
32 Leased Premises;
  - 33 2. Lessor may apply all or part of the performance bond, or other security deposit, to  
34 the default of Lessee as provided in Section 5.1

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1 D. Lessor, irrespective of the date on which its right of re-entry shall have accrued or be  
2 exercised, shall have the right, whether for rent or possession or otherwise, to forfeit  
3 this Lease and terminate the state of tenancy hereby created. This right to terminate is  
4 exercisable by a written notice to Lessee, which written notice may be part of a notice of  
5 default previously delivered to Lessee, and, as such, may be conditioned upon Lessee's  
6 failure to cure the default and the event of default. The termination may be made  
7 effective as of the event of default, or thereafter, and, if not otherwise specified, will be  
deemed to be effective immediately. Upon such termination and forfeiture, Lessor shall  
be entitled to and may take immediate possession of the Leased Premises, any other  
notice or demand being hereby waived. Such termination does not, however, release  
Lessee from liability for rentals then overdue or remaining under the Lease but shall  
operate to accelerate the entire balance of the term rental, which shall become  
immediately due and payable by Lessee, along with all overdue rentals and charges.

8 11.3 NON-WAIVER OF REMEDIES

9 A. It is expressly agreed that neither the taking of possession of the Leased Premises nor  
10 the institution of any proceedings by way of unlawful detainer, ejectment, quiet title, or  
11 otherwise, to secure possession of said Leased Premises, nor the re-entry by Lessor  
12 with or without the institution of such proceedings, nor the re-renting or subletting of  
said Leased Premises, shall operate to terminate this Lease in whole or in part, nor of  
itself constitute and exercise of Lessor's option to do so, but only by the giving of the  
written notice specifically specifying terminations shall such termination be effected.

13 B. In the event Lessee breaches this Lease, or any covenant, term or condition hereunder,  
14 and abandons the Leased Premises, this Lease shall continue in force and effect for so  
15 long as the Lessor does not terminate Lessee's right to possession, and Lessor may  
16 enforce all rights and remedies of Lessor including, without limitation, the right to  
17 *recover rental as it becomes due hereunder*. Acts of maintenance or preservation or  
efforts to re-let the Leased Premises, or the appointment of a receiver upon the initiation  
of the Lessor to protect the Lessor's interest under this Lease shall not constitute a  
termination of Lessee's right to possession.

18 C. No waiver of any default, breach or failure of Lessee under this Lease shall be  
19 construed as a waiver of any subsequent or different default, breach or failure. In case  
20 of a breach by Lessee of any of the covenants or undertakings of Lessee, Lessor  
21 nevertheless may accept from Lessee any payments hereunder without in any way  
22 waiving Lessor's right to exercise the remedies hereinbefore provided for by reason of  
23 any breach or lapse which was in existence at the time such payment or payments were  
accepted by Lessor.

24 D. It is expressly understood that the enumeration herein of express rights, options and  
25 privileges shall not limit Lessor or the Secretary, nor deprive Lessor or the Secretary of  
any other remedy or action or cause of action by reason of any default of Lessee,  
including the right to recover from Lessee any deficiency upon re-renting.

E. The specific remedies to which Lessor may resort under the terms of this Lease are  
cumulative and are not intended to be exclusive of any other remedies or means of  
redress to which they may be lawfully entitled in case of any breach of threatened  
breach by either of them or of any provisions of this Lease.

1 **ARTICLE XII. GENERAL PROVISIONS**

2 **12.1 BROKERS**

- 3 A. **LESSEE'S BROKERS.** Lessee warrants that it has employed no broker who has or  
4 may have a legitimate claim to a commission arising of Lessee's acceptance of the  
5 Lease, other than the broker or brokers specifically listed as Lessee's Broker(s) in the  
6 addendum to this Lease. Unless otherwise agreed in prior writing by Lessor, any  
7 obligation or potential obligation for commission to the brokers so listed are the sole  
8 obligation of the Lessee. Should a claim be made upon Lessor or the Leased Premises  
9 by the named brokers or any other broker who in Lessor's discretion Lessor determines  
10 to have legitimate claim for commission arising out of this transaction, whether such  
11 claim is ultimately upheld or not, Lessor may, but shall not be obligated to, discharge  
12 the claim either by paying the amount claimed to be due or by any other means.  
13 Lessee shall reimburse and pay to Lessor on demand any amount so paid by Lessor  
14 and all costs and expenses, including reasonable attorney's fees incurred by Lessor in  
15 connection therewith, together with interest thereon at the rate of eighteen percent  
16 (18%) per annum from the respective date of Lessor's notice to Lessee of the making of  
17 the payment or of the incurring of the cost and expense, including such attorney's fees.
- 18 B. **LESSOR'S BROKERS.** Any commission or other compensation due brokers employed  
19 by Lessor shall be the sole responsibility of Lessor.

20 **12.2 SUCCESSORS AND ASSIGNS**

21 All rights, obligations and liabilities herein, given to, or imposed upon, the respective  
22 parties hereto shall extend to and bind the several and respective heirs, executors,  
23 administrators, successors, sub lessees, and assigns of said parties, subject to the  
24 provisions of Article X, provided, however, that no assets of the Lessor other than his or  
25 its interest in the Leased Premises shall be affected by reason of any liability which  
Lessor or any successor in interest may have under his Lease. If there shall be more  
than one Lessee, they shall all be bound jointly and severally by the terms, covenants  
and agreements herein and the word "Lessee" shall be deemed and taken to mean  
each and every person or party mentioned as a Lessee herein, be the same one or  
more. If there shall be more than one Lessee, any notice required or permitted by the  
terms of the Lease may be given by or to any one thereof and shall have the same  
force and effect as if given by or to all thereof.

20 **12.3 NOTICES**

21 Wherever in this Lease it shall be required or permitted that notice or demand be given  
22 or served by either party to this Lease to or on the other, such notice or demand shall  
23 not be deemed to have been duly given or served unless made in writing and either  
24 personally delivered or forwarded by Certified Mail, Return Receipt Requested, postage  
25 prepaid, to the address for each party provided in this Lease. Such addresses may  
change from time to time by either party by serving notices as above provided. While  
Lessee is in possession of the Leased Premises, notices to the Lessee may also be  
delivered or forwarded by Certified Mail to the address provided in the introductory  
paragraph of this Lease.

12.4 SCOPE AND INTERPRETATION OF THIS AGREEMENT

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2 A. ENTIRE AGREEMENT. This Lease shall be considered to be the only agreement  
3 between the parties hereto pertaining to the Leased Premises. It is understood that  
4 there are no oral agreements between the parties hereto affecting this Lease and this  
5 Lease supersedes and cancels any and all previous negotiations, arrangements,  
6 brochures, agreements and understandings, if any, between the parties hereto or  
7 displayed by Lessor to Lessee with respect to the subject matter thereof, and none shall  
8 be used to interpret or construe this Lease. It is further agreed by and between the  
9 parties hereto that there shall be no modifications or amendment to this Lease except  
10 as may be executed in writing between the parties hereto. Lessee further agrees not to  
11 cancel its Lease, or pursue any other remedies available under this Lease, or at law or  
12 equity, with respect to Lessor, for any violation, breach or default of this Lease by virtue  
13 of any act or omission on, or with respect to, property not owned by Lessor. All notices  
14 must be in writing.

9 B. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS. As used in this  
10 Lease and whenever required by the context thereof, each number, both singular and  
11 plural, shall include all numbers, and each gender shall include all genders. Lessor and  
12 Lessee as used in this Lease or in any other instrument referred to in or made a part of  
13 this Lease shall likewise include both the singular and the plural, a corporation, co-  
14 partnership, individual or person acting in any fiduciary capacity as executor,  
15 administrator, trustee, or in any other representative capacity. All covenants herein  
16 contained on the part of Lessee shall be joint and several.

13 C. GOVERNING LAW. This Agreement shall be governed by and construed in  
14 accordance with the laws of the Colorado River Indian Tribes, in cases where no law  
15 relating to a specific matter exists and if, and only if, such are necessary for the proper  
16 completion of this agreement, the laws of the State of Arizona shall be applied. Lessee  
17 agrees to at all times abide by and follow the applicable laws, policies, and regulations  
18 of the Colorado River Indian Tribes. The Codes of the Colorado River Indian Tribes are  
19 available electronically at [www.crit-nsn.gov](http://www.crit-nsn.gov).

17 D. PARTIAL INVALIDITY. If any term covenant or condition of this Lease or the  
18 application thereof to any person or circumstance shall, to any extent, be invalid or  
19 unenforceable, the remainder of this Lease, or the application of such term covenant or  
20 condition to person or circumstances other than those as to which it is held invalid or  
21 unenforceable shall not be affected thereby and each term, covenant or condition of the  
22 Lease shall be valid and be enforced to the fullest extent permitted by law.

21 E. AMENDMENT. Oral agreements in conflict with any of the terms of this Lease shall be  
22 without force and effect. All amendments to be in writing executed by the parties or  
23 their respective successors in interest.

23 F. Neither the preparation nor the delivery of this Lease to Lessee for examination shall be  
24 deemed to be an offer by Lessor to lease the premises to Lessee but shall be merely a  
25 part of the negotiations between Lessor and Lessee. The execution of this Lease by  
Lessee shall be deemed to constitute an offer by Lessee and compliance with all  
requirements necessary for the Secretary's approval, to lease the Leased Premises  
from Lessor upon the terms and conditions contained in this Lease which, offer may be  
accepted by Lessor only by the execution of this Lease by Lessor.

1 12.5 ENCUMBRANCES.

- 2 A. This Lease or any right to or interest in this Lease, may not be encumbered without the  
3 prior written approval of the Lessor, the Secretary. Any encumbrance made without  
4 said approval shall be void. An encumbrance must be confined to the leasehold  
5 interest of a lessee or a sub lessee and shall not jeopardize in any way Lessor's interest  
6 in the land.
- 7 B. In the event of default by the Lessee of the terms of an encumbrance, the encumbrance  
8 may exercise any rights provided in the encumbrance, provided that before any sale of  
9 the leasehold, whether under power of sale or foreclosure, the encumbrancer shall give  
10 to the Lessor and the Secretary notice of the same character and duration as is  
11 required to be given to Lessee by such encumbrance or by law.
- 12 C. If such notice of sale is given and the defaults or any of them upon which such notice of  
13 sale is based shall then continue. Lessor shall have the following rights which may be  
14 exercised at any time prior to completion of sale proceedings: (1) to pay the  
15 encumbrancer the full unpaid principal amount of the encumbrance, plus unpaid interest  
16 accrued to the date of such payments, plus sale costs incurred to the date of such  
17 payment, or (2) to execute in favor of the encumbrancer a promissory note and a new  
18 encumbrance, which new encumbrance must be approved by the Colorado River Indian  
19 Tribes, for the full unpaid principal amount of the encumbrance, plus unpaid interest  
20 accrued to the date of such execution, plus sale expenses incurred to the date of such  
21 execution, upon no less favorable terms and conditions as originally provided by the  
22 existing encumbrance, or, (3) to exercise any other rights inuring prior to completion of  
23 sale proceedings. If Lessor exercises any of the above rights, this Lease shall  
24 automatically terminate on the date the rights are exercised and shall be of no further  
25 force and effect, provided, however, that such termination shall not relieve Lessee from  
any obligation or liability which had accrued prior to the date of termination.

16 12.6 MINERALS

17 This Lease confers no vested interest, right, or title to any minerals including sand and  
18 gravel and building stone materials within the Leased Premises. However, moving dirt,  
19 sand and rock for the purpose of developing and improving the Leased Premises as  
20 required by this Lease, in and of itself, shall not be construed as mining.

20 12.7 HAZARDOUS SUBSTANCES

21 The term 'hazardous substances' as used herein shall include any substances declared  
22 to be hazardous or toxic under any law, ordinance or regulations now or hereafter  
23 enacted or promulgated by any government authority having jurisdiction over the  
24 Leased Premises, Lessor will indemnify and save Lessee harmless from liability, loss or  
25 damage including Lessee's legal and other cost directly attributable to said violation  
resulting from any hazardous substance violation due to any condition or cause located  
on the Leased Premises that was precedent to Lessee taking possession of Leased  
Premises. Lessee shall not cause or permit its agents, employees or licensees to  
cause the use, generation, release, manufacture, production, processing, storage or  
disposal of any hazardous substances on or from the Leased Premises, other than fuels  
for the stand-by generator, fire suppression materials and materials used in back up

1 batteries which shall be used in conformance with all regulations and good  
2 management practices. Lessee will indemnify and save Lessor harmless from liability,  
3 loss or damage (including Lessor's legal and other costs directly attributable to said  
4 violations resulting from Lessee's violation of this paragraph).

### 5 **ARTICLE XIII. SPECIAL PROVISIONS**

#### 6 **13.1 SPECIAL PROVISIONS**

- 7 A. While the Leased Premises are in trust or restricted status, all of the Lessee's  
8 obligations under this Lease, and the obligation of his sureties, are to the United States  
9 as well as to the owner of the land.
- 10 B. Nothing contained in this Lease shall operated to delay or prevent a termination of  
11 Federal trust responsibilities with respect to the land by the issuance of a fee patent or  
12 otherwise during the term of the Lease, however, such termination shall not serve to  
13 abrogate the Lease. The owners of the land and the Lessee and his surety or sureties  
14 shall be notified of any such change to the status of the land.

#### 15 **13.2 ANTIQUITIES**

16 In accordance with the Laws of Antiquity of 1906, the National Historic Preservation Act  
17 of 1966, and the Archaeological Resources Protection Act of 1979, or any amendment  
18 to these Acts, and any other applicable Federal and Tribal Laws, it is understood and  
19 agreed by the parties hereto that any areas within the exterior boundaries of the Leased  
20 Premises containing graves, ruins, or other antiquities, shall be undisturbed and plainly  
21 marked by Lessee and reported immediately to the Lessor and the Secretary for  
22 appropriate disposition and action. This shall likewise apply to any discoveries made in  
23 excavations during the development of the Leased Premises. Any areas designated as  
24 antiquities shall be automatically withdrawn from the Leased Premises, and the  
25 minimum rental adjusted accordingly.

#### 16 **13.3 RESERVATION LAWS AND ORDINANCE; CONSENT TO JURISDICTION**

17 The Lessee, Lessee's employees, agents and sub lessees and assignees and their  
18 employees and agents shall abide by all laws, regulations and ordinances of the  
19 Colorado River Indian Tribes now in force and effect or that may be hereafter in force  
20 and effect. The Lessee, Lessee's employees and agents, and sub lessees and  
21 assignees and their employees and agents, hereby consent to the jurisdiction of the  
22 Tribal Court of the Colorado River Indian Tribes. Such jurisdiction shall include, without  
23 limitation, jurisdiction to levy fines and enter judgments for compensatory and punitive  
24 damages and injunctive relief, in connection with all activities conducted by Lessee, sub  
25 lessees, and assignees, and their respective employees and agents, on the Colorado  
River Indian Reservation or which have a proximate effect on persons or property on  
the Colorado River Indian Reservation. Lessee hereby appoints the Clerk of the Board  
of Supervisors as its agent for service of process.

#### 17 **13.4 INSPECTION**

18 The Lessor and the Secretary and their authorized representatives shall have the right,  
19 at any reasonable times during the full term of this Lease, to enter upon the Leased

1 Premises, or any part thereof, to inspect the same and all buildings and other  
2 improvements erected and placed thereon.

3 13.5 INTEREST OF MEMBER OF CONGRESS

4 No member of, or delegate to Congress, or Resident Commissioner, shall be admitted  
5 to any share or part of this contract or to any benefit that may arise here from, but this  
6 provision shall not be construed to extend to this contract if made with a corporation or  
7 company for its general benefits.

8 13.6 LIMITED WAIVER OF SOVEREIGN IMMUNITY

9 The Colorado River Indian Tribes hereby grants a limited waiver of its sovereign  
10 immunity from uncontested suits (hereinafter "Limited Waiver") as described herein  
11 solely for actions brought by the County of Riverside ("County"), but not brought by any  
12 other person or entity, requesting specific performance against the Colorado River  
13 Indian Tribes to enforce the terms of this Agreement. This limited waiver is to be strictly  
14 construed in favor of the Colorado River Indian Tribes and may be enforced only under  
15 the conditions and procedures set forth herein. Prior to instituting an action hereunder,  
16 the County must first raise the matter in dispute for which it is seeking specific  
17 performance with the Tribal Council of the Colorado River Indian Tribes utilizing the  
18 Meet and Confer and Mediation procedures set forth below.

- 19 A. MEET AND CONFER. Prior to instituting an action hereunder, the County must first  
20 raise the matter in dispute for which it is seeking Specific Performance with the  
21 Colorado River Indian Tribes Tribal Council by requesting that a Meet and Confer be  
22 held. This notice shall be in writing and shall set the Meet and Confer for a time at least  
23 twenty-one days after the notice is delivered, and shall state the location for the  
24 meeting, which shall be held on the Colorado River Indian Tribes Indian Reservation.  
25 The County and the Colorado River Indian Tribes may jointly decide to meet at another  
time and place. Attendees at the Meet and Confer shall have sufficient authority to  
resolve the matter at issue. Meet and Confer sessions shall be private. The parties  
agree to maintain the confidentiality of the Meet and confer and shall not rely on, or  
introduce as evidence in any judicial or other proceeding: (a) views expressed or  
suggestions made by the other party with respect to a possible settlement of the  
dispute: (b) admissions made by the other party during Meet and Confer: (c) proposals  
made or views expressed: or (d) the fact that the other party had or had not indicated a  
willingness to accept a proposal. This section shall apply to anything communicated,  
exchanged, said, done or occurring in the course of the Meet and Confer. The Meet and  
Conger is to be considered a settlement negotiation for the purpose of all state and  
federal rules protecting disclosures made during such conference from later discovery  
or use in evidence. All conduct, statements, promises, offers, views and opinions, oral  
or written, made during a Meet and Confer by any party or a party's agent,  
representative, employee, or attorney are confidential and, where appropriate, are to be  
considered work product and privileged. Such conduct, statements, promises, offers,  
views and opinions shall not be subject to discovery or admissible for any purpose  
including impeachment, in any litigation or other proceeding involving the parties;  
provided, however, that evidence otherwise subject to discovery or admissible is not  
excluded from discovery or admission in evidence simply as a result of it having been  
used in connection with the Meet and Confer.



1 B. MEDIATION. If the parties are unable to resolve their dispute through a Meet and  
2 Confer, either party may compel mediation under this paragraph by providing written  
3 notice to the other party. The parties shall then make their best efforts to agree on a  
4 single mediator. If, within fifteen (15) days of the delivery of written notice to compel  
5 mediation, the parties do not agree upon a single mediator, each party shall select a  
6 mediator and, within thirty (30) days after the delivery of the written notice to compel  
7 mediation, provide written notice to the other party of the name and contact information  
8 for the mediator chosen. The two selected mediators shall confer and by joint  
9 agreement select a third mediator. That third mediator (if agreed upon by the parties)  
10 or, in the alternative, all three mediators shall determine a time and place for the  
11 mediation and the rules that shall govern the mediation, and shall provide notice of such  
12 to each party. The mediator(s) shall adopt rules that the mediator(s) deem(s) fair and  
13 reasonable subject to the terms of the Limited Waiver of sovereign Immunity set forth  
14 herein. The parties shall bear their own fees and costs related to any mediation and  
15 shall each pay one-half the fees of the mediator(s), the reasonable expenses of the  
16 mediator(s), and joint costs incurred in the mediation.

9 C. CLAIMS FOR SPECIFIC PERFORMANCE. An action for Specific Performance, if any,  
10 may only be brought by the County after a Meet and Confer is held, and after Mediation  
11 has been completed following the procedures set forth in subsections (A) and (B)  
12 above. No causes of action or claims in law or in equity are cognizable against the  
13 Colorado River Indian Tribes except actions against the Colorado River Indian Tribes  
14 itself for specific performance of this Agreement. Only actual damages (specifically  
15 excluding consequential, punitive, and all other damages) suffered by the County may  
16 be sought hereunder. The source from which any damages are to be paid by the  
17 Colorado River Indian Tribes shall be limited to the general revenues of the Colorado  
18 River Indian Tribes and shall specifically exclude any funds from a federal, state, tribal  
19 or other governmental grant or contract and shall further exclude any trust assets of the  
20 Colorado River Indian Tribes, any assets of its business enterprises, or those funds set  
21 aside for per capita distribution to Tribal members. This Limited waiver does not allow  
22 any actions to be brought against Tribal Council Members, Tribal Employees, Tribal  
23 Agents, Tribal Members, attorneys for the Colorado River Indian Tribes, or any other  
24 individual acting on behalf of the Colorado River Indian Tribes. Any cause of action or  
25 claim brought pursuant to this Limited Waiver shall be submitted for hearing in the  
United States District Court for the Central district of California.

13.7 WARRANTIES AND REPRESENTATIONS

Each of the Parties signing this Lease warrant and represent (i) the full power to enter  
into this Lease on behalf of itself; (ii) that it is entitled to conduct business as described  
herein; (iii) that all actions and approvals have been taken which are necessary to  
make this Lease a binding and enforceable obligation of each Party; (iv) that the  
individuals signing this Lease are authorized to execute this Lease; and (v) that the  
delivery, and performance of this Lease is not in conflict with and will not cause an  
event of default under any agreement or instrument to which either Party is bound.

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///  
///

1 IN WITNESS WHEREOF, the parties have executed and delivered this Lease as of the date  
2 first written above.

3 Dated: \_\_\_\_\_

**LESSOR:**  
**COLORADO RIVER INDIAN TRIBES**

4 Resolution No. \_\_\_\_\_

By: \_\_\_\_\_  
Eldred Enas, Chairman

5 Approved \_\_\_\_\_

6 By: \_\_\_\_\_  
7 Merving Scott, Secretary

**LESSEE:**  
**COUNTY OF RIVERSIDE**

8  
9 **ATTEST:**  
10 Kecia Harper-Ihem  
11 Clerk of the Board

By: \_\_\_\_\_  
Bob Buster, Chairman  
Board of Supervisors

12 By: \_\_\_\_\_

13 **APPROVED AS TO FORM:**  
14 Pamela J. Walls  
15 County Counsel

16 By: Synthia M. Gunzel  
17 Cynthia M. Gunzel  
18 Deputy County Counsel

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UNITED STATES DEPARTMENT OF THE INTERIOR

The within Lease is hereby approved and declared to be made in accordance with the law and the rules and regulations prescribed by the Secretary of the Interior thereunder, and now in force.

Date Approved: \_\_\_\_\_  
Superintendent, Colorado River Agency

Pursuant to authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8, 230 DM 1, and to the Western Regional Director by 3 IAM 4 (Release No. 99-03) and 10 BIAM 11, as amended by Western Regional Release No. 97-1, and any further delegations needed to effectuate the Reorganization embodied in DM Releases dated April 21, 2003.

# EXHIBIT "A"

"Property"

Legal Description

That Portion within the S  $\frac{1}{2}$ , N  $\frac{1}{4}$ , NW  $\frac{1}{4}$ , NE  $\frac{1}{4}$  of Section 21, Township 5 North, Range 21 West of Gila River and Salt River B&M La Paz County Arizona within the Colorado River Indian Reservation

## Notes

1. This Exhibit may be replaced by a land survey or a Site Plan of the Premises once it is received by Lessee.

## EXHIBIT "B"

"Premises"

A 100' x 100' area located within the S ½, N ¼, NW ¼, NE ¼ of Section 21, Township 5 North, Range 21 West of Gila River and Salt River B&M La Paz County Arizona within the Colorado River Indian Reservation as depicted herein.

(See Note 1. Below)

### Notes

1. This Exhibit may be replaced by a land survey or a Site Plan of the Premises once it is received by Lessee.