



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

December 13, 2017

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, NH 03301

Retroactive

Requested Action

Authorize the Department of Safety, Division of Emergency Services and Communications (E911), to **retroactively** exercise the third five-year lease renewal option with Wayne D. Mitchell and Rosario A. Matias-Mitchell (VC#2043630-B001) in the amount of \$51,878.67 for a portion of real property with right-of-ways to Ayers Mountain for access to Department of Safety communications equipment. Effective upon Governor and Council approval for the period of January 1, 2018, through December 31, 2022. Funding source: 100% Agency Income.

Funding is available in the SFY2018/SFY2019 operating budget and is contingent upon availability and continued appropriations in SFY 2020, SFY 2021, SFY 2022, and SFY 2023 with the authority to adjust between fiscal years through the Budget Office if needed and justified.

02-23-23-236510-40010000 Dept. of Safety – Emergency Communications – Communications Section
022-0248 Rents-Leases Other Than State – Rent to Owners Non-State Space

<u>SFY2018</u>	<u>SFY2019</u>	<u>SFY2020</u>	<u>SFY2021</u>	<u>SFY2022</u>	<u>SFY2023</u>	<u>Total</u>
\$4,813.60	\$9,916.01	10,213.49	\$10,519.89	\$10,835.48	\$5,580.20	\$51,878.67

Explanation

This request is **retroactive** due to a recent transition of responsibilities for the communications towers and related agreements to the Division of Emergency Services and Communications. This third of five lease renewal options is vital for continued access, at this location, to the radio communications tower located on Ayers Mountain. Under this lease renewal, a payment of 6 month's rent will be made on January 1, 2018 for January through June 30, 2018. Thereafter, payment will be made on an annual basis beginning July 1 of each year and ending with a payment for six months for July 1, 2022 through December 31, 2022. The total contract price increases by 3% each fiscal year beginning July 1 as shown above.

The original lease agreement was approved by Governor and Council on December 4, 2002, Item #94, and authorized five 5-year renewal options to be exercised at the sole discretion of the State. The first 5-year lease renewal option was approved by Governor and Council on December 11, 2007, Item #80, and the second lease renewal option was approved by Governor and Council on December 19, 2012, Item #72.

Respectfully submitted,

John J. Barthelmes
Commissioner of Safety

AGREEMENT EXTENSION

As provided by Section 3.2.2 of the Agreement, the Department of Safety, Division of State Police hereby give Wayne D. Mitchell and Rosario A. Matias-Mitchell, successor transferee of the property described in the Lease Agreement, written notice of its intent to exercise the option to extend the term of the Lease Agreement for five (5) additional years (through December 31, 2022). The property is described in Exhibit A, dated November 14, 2002 (also referred to as the right of ways to Ayers Mountain).

The extension shall be as set forth in Section 3.2.2 of Exhibit A of the original agreement and shall commence on January 1, 2018 and end on December 31, 2022. This is the third of the five (5) year extensions. Notwithstanding the foregoing provisions, it is hereby understood that the commencement of this "extension of term" is conditioned on the approval by the Governor and Council of the State of New Hampshire, as previously agreed to in Section 3.2.3.1 of the Lease Agreement.

The contract pricing consists of:

- a. Lease a portion of real property with right-of-ways to Ayers Mountain in the Town of Haverhill, New Hampshire in the amount of \$9627.20 per year commencing January 1, 2018 and ending December 31, 2022 effective upon Governor and Council approval.
- b. Payment of six (6) months' rent shall be made January 1, 2018, for the fiscal year ending June 30, 2018. Thereafter, payment shall be made on an annual basis, beginning July 1, 2018, and as of July 1st of each subsequent year, in an aggregate amount not to exceed \$51,878.67, and ending December 31, 2022.
- c. Total contract price to increase by three (3) percent each fiscal year, effective July 1st as follows (See Exhibit B):

FY2018	\$4,813.60
FY2019	\$9,916.01
FY2020	\$10,213.49
FY2021	\$10,519.89
FY2022	\$10,835.48
FY2023	<u>\$5,580.20</u>
TOTAL	\$51,878.67

All other terms and conditions of the Lease Agreement remain in full force and effect.

Acknowledged by: Wayne D. Mitchell Date: 12/09/2017

Acknowledged by: Rosario A. Matias-Mitchell Date: 12/9/17

Exhibit B

PAYMENT FOR SERVICES

Terms and Conditions of the original Exhibit B are amended as follows:

Effective upon Governor and Council approval, the State of New Hampshire agrees to pay the Landlord an amount not to exceed \$51,878.67. Payments will be made as outlined below:

1/1/2018	\$4,813.60	for 6 months ending 6/30/2018
7/1/2018	\$9,916.01	for 12 months ending 6/30/2019
7/1/2019	\$10,213.49	for 12 months ending 6/30/2020
7/1/2020	\$10,519.89	for 12 months ending 6/30/2021
7/1/2021	\$10,835.48	for 12 months ending 6/30/2022
7/1/2022	\$5,580.20	for 6 months ending 12/31/2022

The above annual rates were increased by 3% on July 1st for each of the remaining years of this extension.

3.2.4 Rent

During the Term hereof and any extended Term, the tenant shall pay the LANDLORD rent, payable on an annual basis every July 1st through 2022. The original agreement is amended to allow annual payments as outlined above.



State of New Hampshire

DEPARTMENT OF SAFETY
 OFFICE OF THE COMMISSIONER
 33 HAZEN DR. CONCORD, NH 03305
 603/271-2791

JOHN J. BARTHELMES
 COMMISSIONER

ENC #72

November 8, 2012

12-19-12

His Excellency, Governor John H. Lynch
 and the Honorable Council
 State House
 Concord New Hampshire 03301

Requested Action

Authorize the Department of Safety, Division of Emergency Services and Communications (E911) to exercise a five-year lease renewal option (the second of five) with Wayne D. Mitchell and Rosario A. Matias-Mitchell, [REDACTED] North Haverhill, NH (VC#204363) in the amount of \$43,451.47 for a portion of real property with right-of-ways to Ayers Mountain for access to State Police communications equipment. The original lease agreement with Eula Mitchell (VC#116800) of Woodsville, NH was approved by Governor and Council on December 4, 2002, Item #94, and the first 5-year lease renewal option was approved by Governor and Council on December 11, 2007, Item #80. Effective upon Governor and Council approval for the period of January 1, 2013, through December 31, 2017. Funding source: 100% Agency Income.

Funding is available in the account titled Communications Section in the SFY2013 operating budget and is contingent upon availability and continued appropriations in the SFY 2014, SFY 2015, SFY2016, SFY2017, and SFY2018 operating budgets with the authority to adjust between fiscal years through the Budget Office if needed and justified.

Funds are available in the following account:

02-23-23-236510-40010000 Dept. of Safety – Division of Emergency Services and Communications
 022-0248 Rents and Leases other than State

<u>SFY2013</u>	<u>SFY2014</u>	<u>SFY2015</u>	<u>SFY2016</u>	<u>SFY2017</u>	<u>SFY2018</u>	<u>Total</u>
\$4,031.71	\$8,305.33	\$8,554.48	\$8,811.11	\$9,075.44	\$4,673.40	\$43,451.47

Explanation

This request to exercise the second five-year lease renewal option is vital since this location is essential for access to the State Police radio communications tower located on Ayers Mountain. The original lease agreement authorized five renewal options, to be exercised at the sole discretion of the State, with each renewal option being for a five-year period. The New Hampshire Department of Safety, Division of State Police entered into the first five-year lease renewal option with Mr. Wayne and Rosario Mitchell for lease of the above-mentioned property on December 11, 2007. The first renewal option will expire on December 31, 2012. Under this lease renewal, a payment of 6 month's rent will be made on January 1, 2013, for January through June 30, 2013. Thereafter, payment will be made on an annual basis beginning on July 1 of each year and ending with a payment for six months for July 1, 2017, through December 31, 2017. The total contract price increases by 3% each fiscal year, effective July 1 as shown above.

Respectfully submitted,

John J. Barthelmes
 Commissioner of Safety

AGREEMENT EXTENSION

As provided by Section 3.2.2 of the Agreement, the Department of Safety, Division of State Police hereby give Wayne D. Mitchell and Rosario A. Matias-Mitchell, successor transferee of the property described in the Lease Agreement, written notice of its intent to exercise the option to extend the term of the Lease Agreement for five (5) additional years (through December 31, 2017). The property is described in the Lease Agreement as Exhibit A, dated November 14, 2002 (also referred to as the right of ways to Ayers Mountain).

The extension shall be as set forth in Section 3.2.2 of Exhibit A of the original agreement and shall commence on January 1, 2013 and end on December 31, 2017. This is the second of five (5) year extensions. Notwithstanding the foregoing provisions, it is hereby understood that the commencement of this "extension of term" is conditioned upon the approval by the Governor and Council of the State of New Hampshire, as previously agreed to in Section 3.2.3.1 of the Lease Agreement.

The contract pricing consists of:

- a. Lease a portion of real property with right-of-ways to Ayers Mountain in the Town of Haverhill, New Hampshire in the amount of \$8,063.43 per year, commencing January 1, 2013 and ending December 31, 2017 effective upon Governor and Council approval.
- b. Payment of six (6) months' rent shall be made January 1, 2013 for the fiscal year ending June 30, 2013. Thereafter, payment shall be made on an annual basis, beginning July 1, 2013, and as of July 1st of each subsequent year, in an aggregate amount not to exceed \$43,451.47, and ending December 31, 2017.
- c. Total contract price to increase by three (3) percent each fiscal year, effective July 1st as follows (see Exhibit B):

FY 2013	\$4,031.71
FY 2014	\$8,305.33
FY 2015	\$8,554.48
FY 2016	\$8,811.11
FY 2017	\$9,075.44
FY 2018	<u>\$4,673.40</u>
	\$43,451.47

All other terms and conditions of the Lease Agreement remain in full force and effect.

Acknowledged by: Wayne Mitchell
Wayne D. Mitchell

Acknowledged by: Rosario A. Matias-Mitchell

Rosario A. Matias-Mitchell

Acknowledged by:

Dir. Admin 11-15-12
Department of Safety

Approved by the Department of Justice as to form; substance and execution:

By:

Ray J. A.

Approval Date:

11/29/2012

Approved by the Governor and Executive Council:

Signature of the
Deputy Secretary of State:

Approval Date:

Exhibit B

PAYMENT FOR SERVICES

Terms and Conditions of the original Exhibit B are amended as follows:

Effective upon Governor and Council approval, the State of New Hampshire agrees to pay the Landlord an amount not to exceed \$43,451.47. Payments will be made as outlined below:

01/01/2013	\$4,031.71	for 6 months ending 06/30/2013
07/01/2013	8,305.33	for 12 months ending 06/30/2014
07/01/2014	8,554.48	for 12 months ending 06/30/2015
07/01/2015	8,811.11	for 12 months ending 06/30/2016
07/01/2016	9,075.44	for 12 months ending 06/30/2017
07/01/2017	4,673.40	for 6 months ending 12/31/2017

The above annual rates were increased by 3% on July 1st for each of the remaining years of this extension.

3.2.4 Rent

During the Term hereof and any extended Term, the TENANT shall pay the LANDLORD rent, payable on an annual basis every July 1st through 2017. The original agreement is amended to allow annual payments as outlined above.



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

11-20-07
G+C 12-11-07
#80

JOHN J. BARTHELMES
COMMISSIONER

November 8, 2007

His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

Requested Action

Authorize the Department of Safety, Division of State Police to exercise a five-year lease renewal option (the first of five) with Eula Mitchell (VC# 116800) of Woodsville, NH in the amount of \$36,390.39, for a portion of real property with right-of-ways to Ayers Mountain for access to State Police communications equipment. The original lease agreement was approved by Governor and Council on December 4, 2002, Item #94. Effective upon Governor and Council approval or January 1, 2008, whichever is later, through December 31, 2012. Funding source: 100% Highway.

Funding is available in the account titled Communications Section in SFY 2008 and SFY 2009. Funding for SFY 2010, SFY 2011, SFY 2012 and SFY 2013 is expected to be available based upon continued appropriation of funds in the future operating budgets.

Activity Code: 2340

Account No.: 010-023-4001-022-0248 Rents and Leases other than State

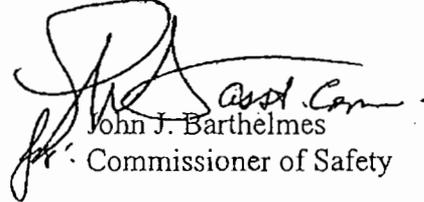
<u>SFY2008</u>	<u>SFY2009</u>	<u>SFY2010</u>	<u>SFY2011</u>	<u>SFY2012</u>	<u>SFY2013</u>
\$3,376.50	\$6,955.60	\$7,164.26	\$7,379.18	\$7,600.56	\$3,914.29

Explanation

New Hampshire Department of Safety, Division of State Police entered into an agreement with Ms. Mitchell for lease of the above-mentioned property on November 14, 2002. The original lease which expires December 31, 2007 was for a five-year period and contained the option, at the sole discretion of the State, to renew for five additional

five-year terms. This is the first of those authorized five-year extensions. This location is essential to the State Police radio communication system.

Respectfully submitted,


John J. Barthelmes
Commissioner of Safety

G&C: Eula Mitchell Lease Renewal 10-23-07

AGREEMENT EXTENSION

As provided by Section 3.2.2 of the agreement, the Department of Safety, Division of State Police hereby gives Eula C. Mitchell written notice of its intent to exercise the option to extend the term of the lease agreement for five (5) additional years (through December 31, 2012), for the property described in the lease agreement, Exhibit A, dated November 14, 2002 (also referred to as the right-of-ways to Ayers Mountain).

The extension shall be as set forth in Section 3.2.2 of Exhibit A of the original agreement, and shall commence on January 1, 2008 and end on December 31, 2012. This is the first of five (5), five-year extensions. Notwithstanding the foregoing provisions, it is hereby understood that the commencement of this "extension of term" is conditioned upon the approval by the Governor and Council of the State of New Hampshire, as previously agreed to in Section 3.2.3.1 of the lease agreement.

The contract pricing consists of:

- a. Lease a portion of real property with right-of-ways to Ayers Mountain in the Town of Haverhill, New Hampshire in the amount of \$6,753.00 per year, commencing January 1, 2008 and ending December 31, 2012, effective upon Governor and Council approval.
- b. Payment of six (6) months' rent shall be made January 1, 2008 for the fiscal year ending June 30, 2008. Thereafter, payment shall be made on an annual basis, beginning July 1, 2008, and as of July 1st of each subsequent year, in an aggregate amount not to exceed \$36,390.39, and ending December 31, 2012.
- c. Total contract price to increase by 3 (three) percent each fiscal year, effective July 1st. as follows (see Exhibit B):

FY 2008	\$ 3,376.50
FY 2009	6,955.60
FY 2010	7,164.26
FY 2011	7,379.18
FY 2012	7,600.56
FY 2013	<u>3,914.29</u>
	\$36,390.39

All other terms and conditions of the agreement remain in full force and effect.

Acknowledged
by: Eula C. Mitchell
Eula C. Mitchell

Acknowledged.
by: Wesley J. Colby
Department of Safety

Approved by the Department of Justice as to form; substance and execution:

By: Rosemary Reid - Atty

Approval
date: 11-19-07

Approved by the Governor and Executive Council:

Signature of the Deputy Secretary of
State: _____

Approval

Date: _____

Exhibit B

Payment for Services

Terms and conditions of the original Exhibit B are amended as follows.

Effect upon Governor and council approval, the State of New Hampshire agrees to pay the Landlord an amount not to exceed \$36,390.39. Payments will be made as outlined below:

01/01/2008	\$ 3,376.50	for 6 months ending 06/30/2008
07/01/2008	6,955.60	for 12 months ending 06/30/2009
07/01/2009	7,164.26	for 12 months ending 06/30/2010
07/01/2010	7,379.18	for 12 months ending 06/30/2011
07/01/2011	7,600.56	for 12 months ending 06/30/2012
07/01/2012	<u>3,914.29</u>	for 12 months ending 12/31/2012
	\$36,390.39	

The above annual rates were increased by 3% on July 1st for each of the remaining years of this extension.

3.2.4 Rent

During the Term hereof and any extended Term, the TENANT shall pay the LANDLORD rent, payable on an annual basis every July 1st through 2012. The original agreement is amended to allow annual payments as outlined above.



RICHARD M. FLYNN
COMMISSIONER

State of New Hampshire

OFFICE OF THE COMMISSIONER

JAMES H. HAYES BLDG. 10 HAZEN DR. CONCORD, NH 03305

603/271-2791

DEPARTMENT OF SAFETY

#94
G&C
approved
12/4/02

Her Excellency, Governor Jeanne Shaheen
and the Honorable Council
State House
Concord, New Hampshire 03301

November 22, 2002

REQUESTED ACTION

The Department of Safety, Division of State Police respectfully requests approval to enter into a 5-year lease agreement with Eula C. Mitchell of Woodsville, NH for a portion of real property with right of way to Ayers Mountain with option to renew for five (5) additional terms of (5) years. The cost is \$500.00 per month for the first year with a 3% rate increase each year for the remaining four (4) years. Funding is available in 010-023-4001-020 and is to be encumbered as follows: Vender Code 116800. Effective January 1, 2003 through December 31, 2007.

Fy 2003	\$ 3,000.00
Fy 2004	\$ 6,090.00
Fy 2005	\$ 6,272.70
Fy 2006	\$ 6,460.88
Fy 2007	\$ 6,654.71
Fy 2008	\$ 3,376.53
	\$31,854.82

EXPLANATION

The Department of Safety, Division of State Police, in the accompanying G & C item have succeeded in buying out an existing lease between Eula C. Mitchell and American Tower L.P. for right of way etc. to a certain plot on Ayers Mountain in Haverhill. They are now asking to enter into a lease agreement with Eula C. Mitchell for several years to complete a tower location on Ayers Mountain which is essential to the new State Police radio communication system within the state.

Respectfully submitted,

Richard M. Flynn
Commissioner of Safety

RECEIVED

DEC 09 2002

DEPT. OF SAFETY
BUSINESS OFFICE

G/c tower for sp woodsville 11-21-02

Subject: LEASE OF AYERS MTN FOR STATE POLICE RADIO SITE

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. Identification and Definitions.

1.1 State Agency Name DEPT OF SAFETY, DIV OF STATE POLICE		1.2 State Agency Address 10 HAZEN DR., CONCORD NH 03305	
1.3 Contractor Name EULA C. MITCHELL		1.4 Contractor Address [REDACTED]	
1.5 Account No. 4001-020	1.6 Completion Date DECEMBER 31, 2007	1.7 Audit Date N/A	1.8 Price Limitation \$ 31,854.82 TH
1.9 Contracting Officer for State Agency EXECUTIVE MAJOR FREDERICK H. BOOTH		1.10 State Agency Telephone Number (603) 271-2151	
1.11 Contractor Signature <i>Eula C. Mitchell</i>		1.12 Name & Title of Contractor Signor EULA C. MITCHELL, LANDLORD	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Grafton</u> On <u>11/14/02</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] <i>[Signature]</i> DONNA B. WALLIS, Notary Public My Commission Expires December 17, 2002			
1.13.2 Name & Title of Notary Public			
1.14 State Agency Signature(s) <i>[Signature]</i>		1.15 Name/Title of State Agency Signor(s) <i>TIMOTHY A MASON</i>	
1.16 Approval by Department of Personnel (Rate of Compensation for Individual Consultants) By: _____ Director, On: _____			
1.17 Approval by Attorney General (Form, Substance and Execution) By: <i>May P. Castell</i> Assistant Attorney General, On: <u>11/20/02</u>			
1.18 Approval by the Governor and Council By: _____ On: _____			
2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("the State"), engages contractor identified in block 1.3 ("the Contractor") to perform, and the Contractor shall perform, that work or sale of goods, or both, identified and more particularly described in EXHIBIT A incorporated herein ("the Services").			
3. EFFECTIVE DATE: COMPLETION OF SERVICES. 3.1 This agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this agreement, ("the Effective Date"). 3.2 If the date for commencement in Exhibit A precedes the Effective Date all services performed by Contractor between the commencement date and the Effective Date shall be performed at the sole risk of the contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the contractor for any costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All services must be completed by the date specified in block 1.6.			
4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding anything in this agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the account identified in block 1.5 in the event funds in that account are reduced or unavailable.			

EXHIBIT A

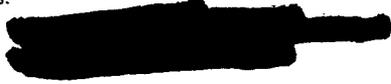
1. Parties.

This lease is entered into as of the 14th day of November, 2002, between:

1.1 The Landlord (hereinafter referred to as "LANDLORD"):

Name: Eula C. Mitchell

Address:



1.2 The Tenant (hereinafter referred to as "TENANT"):

Name: The State of New Hampshire, acting by and through the Commissioner of the Department of Safety

Address: 10 Hazen Drive
Concord, NH 03305

2. Recital.

LANDLORD is the fee simple owner of certain real property located in Grafton County, State of New Hampshire, and Tenant desires to lease a portion of such real property (hereinafter referred to as "LEASED AREA"), containing approximately 100x100 square feet together with a right of way and easement for access on foot, motor vehicles and for utilities over, above and below such right of way and easement (hereinafter referred to as "EASEMENT"), as hereinafter described (such LEASED AREA and EASEMENT hereinafter called the "PROPERTY"). The PROPERTY is more specifically described in Appendix "A" attached hereto and made a part hereof.

3. Lease Agreement

3.1 Grant of Lease and Appurtenant Easement. LANDLORD hereby leases to TENANT the PROPERTY (as defined above), (hereinafter referred to as "LEASE") together with the grant of an exclusive right-of-way and EASEMENT during the term of this AGREEMENT for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits and pipes over, under or along a twenty (20) foot wide right-of-way, more or less, extending from the nearest public right-of-way, which is known as Route 10, to the PROPERTY, as such right-of-way is shown on Appendix A-1 hereto (EASEMENT).

3.2 Initial Term and Extension.

3.2.1 Term. This AGREEMENT shall be for an initial term of five (5) years beginning on the 1st day of January, 2003 and ending on the 31st day of December, 2007, unless sooner terminated in accordance with the provisions hereof.

3.2.2 Extension of Term. TENANT, at the TENANT'S sole discretion, shall have the option to extend the Term for five (5) additional term of five (5) years upon the same terms and conditions by delivering advance written notice to the LANDLORD not later than thirty

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(30) days prior to the expiration of the term or any extension thereof and upon the giving of such notice the term shall be extended.

3.2.3 Condition on the Commencement and Extension of Term:

3.2.3.1 Approval of Governor and Council. Notwithstanding the foregoing provisions, it is hereby understood and agreed by the parties that this LEASE and the Commencement of the term is conditioned upon its approval by the Governor and Council of the State of New Hampshire; provided, however, that upon its approval the Term shall be effective January 1, 2003.

3.2.3.2 Sale of Equipment By American Towers. Notwithstanding the foregoing provisions, it is hereby understood and agreed by the parties that this LEASE is conditioned upon the sale of equipment and improvements (more specifically described and shown on Appendix B attached hereto and made a part hereof) by American Tower, L.P. to the TENANT.

3.2.4 Rent: During the Term hereof and any extended Term, the TENANT shall pay the LANDLORD annual rent (hereinafter referred to as "RENT") as defined in Exhibit B, payable in advance at the LANDLORD'S address set forth in Section 3.2.19, in equal monthly installments.

3.2.5 Conditional Obligation of the TENANT. Notwithstanding any provision in this LEASE to the contrary, it is hereby expressly understood and agreed by the LANDLORD that the existence and continuance of the LEASE and the obligations of the TENANT hereunder are contingent upon the availability of State funds appropriated by the General Court of New Hampshire (and of federal funds) and made available for this purpose, and that neither the State nor the TENANT shall be liable for payments under this LEASE except from such funds and in the event that no portion of such funds are terminated, that TENANT may, at its option and for any reason, serve thirty (30) days written notice on LANDLORD of its intention to cancel the LEASE in whole or in part.

3.2.6 Use TENANT may use the PROPERTY for the purpose of constructing, maintaining and operating a communications facility and uses incidental thereto, which facility may consist of such buildings as are necessary to house telecommunications equipment and for related office space, an antenna support structure of sufficient height, as determined by the TENANT, now or in the future to meet TENANT'S telecommunication objectives and all necessary appurtenances, and a security fence of chain link or comparable constructions that may, at the option of TENANT, be placed around the perimeter of the PROPERTY (collectively hereinafter referred to as "COMMUNICATIONS FACILITY"). All improvements to the PROPERTY necessary for the TENANT'S use shall be made at the TENANT'S expense. LANDLORD grants TENANT the right to use such portions of LANDLORD'S surrounding property as are reasonably required for the construction, installation, maintenance, and operation of the COMMUNICATIONS FACILITY, including (1) the right of ingress, egress, and regress to and from the PROPERTY for construction machinery and equipment, (2) the right to use such portions of LANDLORD'S surrounding property as are reasonably necessary for storage of construction materials and equipment during construction of the COMMUNICATIONS FACILITY, and (3) the right to construct and maintain improvements on LANDLORD'S surrounding property or the EASEMENT reasonably necessary for the maintenance and operation of the COMMUNICATIONS FACILITY. TENANT will maintain the PROPERTY and all of TENANT'S improvements on the PROPERTY in a reasonable condition.

TENANT, at TENANT'S option, may erect either a self-supporting tower or a guyed tower suitable for its proposed use. Should TENANT choose to erect a guyed tower, LANDLORD hereby grants easements(s) to TENANT in, over, and across the PROPERTY as well as LANDLORD'S surrounding property, as is deemed necessary by TENANT for the purpose of

E.C.M.
Initials

JK
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anchoring, mounting, maintaining, repairing and replacing guy wires and guy wire foundation structures extending from TENANT'S tower. The easement granted herein shall extend such distance from the TENANT'S tower as is reasonably necessary, in TENANT'S sole discretion, to properly support said tower. LANDLORD grants TENANT the right to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed and cut, all tree limbs which may interfere with or fall upon TENANT'S tower or the tower's guy wires or the TENANT'S other improvements. The location of any guy wires easements are shown on Appendix C (if produced).

3.2.7 Governmental Approvals. LANDLORD shall cooperate with TENANT in its effort to obtain and maintain in effect all certificates, permits, licenses and other approvals required by governmental authorities for TENANT'S use of the PROPERTY, and upon TENANT'S request, join in any applications. The obligations of LANDLORD as set forth herein shall continue throughout the term of this AGREEMENT. If at any time during the TERM, TENANT is unable to use the PROPERTY for a COMMUNICATIONS FACILITY in the manner intended by TENANT due to imposed zoning conditions or requirements or in the event that the execution of the LEASE, any necessary certificate, permit, license or approval is finally rejected or any previously issued certificate, permit, license or approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, or soil boring tests or radio frequency propagation tests are found to be unsatisfactory so that TENANT, in its sole discretion, will be unable to use the PROPERTY for a COMMUNICATIONS FACILITY in the manner intended by TENANT, TENANT shall have the right to terminate this AGREEMENT by written notice to LANDLORD and all RENT paid to LANDLORD prior to the termination date shall be retained by LANDLORD. Upon such termination, this AGREEMENT shall become null and void and LANDLORD and TENANT shall have no further obligations to each other, other than TENANT'S obligation to remove its property as hereinafter provided.

3.2.8 Termination. TENANT shall have the right to terminate this AGREEMENT by written notice to LANDLORD at any time upon the occurrence of any of the following events (a) any certificate, permit, license or approval necessary for the construction or operation of the COMMUNICATIONS FACILITY in the manner intended by TENANT is rejected, cancelled, expires, lapses, or is otherwise withdrawn or terminated, or TENANT determines the cost of obtaining or retaining any such certificate, permit, license or approval, or of complying with applicable legal and regulatory requirements, is unreasonable; or (b) TENANT determines that, based upon imposed zoning conditions or requirements, soil boring tests, radio frequency propagation tests, or interference with TENANT'S reception or transmission, the PROPERTY is inappropriate for the uses intended by TENANT; (c) LANDLORD breaches or otherwise fails to perform or observe any obligation or covenant herein, or if any representation or warranty of LANDLORD is untrue. Upon such termination, this AGREEMENT shall become null and void and LANDLORD and TENANT shall have no other further obligations to each other, other than TENANT'S obligation to remove its property as hereinafter provided.

3.2.9 Removal of Improvements. Title to all improvements constructed or installed by TENANT on the PROPERTY shall remain in TENANT, and all improvements constructed or installed by TENANT shall at all times be and remain the personal property of TENANT, regardless of whether such improvements are attached or affixed to the PROPERTY. TENANT, upon expiration or earlier termination of this AGREEMENT, shall, within a reasonable period, remove all improvements, fixtures and personal property constructed or installed on the PROPERTY by TENANT and restore the PROPERTY to its original above grade condition, reasonable wear and tear and damage from the elements excepted. At LANDLORD'S option, upon expiration or earlier TENANT will leave the foundation and security fence on the PROPERTY to become the property of LANDLORD. In such case, title to the foundation and security fence will vest in LANDLORD on the date of expiration or earlier termination of this AGREEMENT.

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3.2.10 Transfer of Property. If LANDLORD, at any time, during the TERM of this AGREEMENT, decides to convey, transfer, assign or sell the PROPERTY or an interest therein (hereinafter referred to as "TRANSFER"), or to TRANSFER all or any part of LANDLORD'S surrounding property, to a transferee other than TENANT, LANDLORD shall immediately notify TENANT in writing. LANDLORD understands and agrees that this Agreement runs with the land and any such TRANSFER shall be subject to this AGREEMENT and TENANT'S rights hereunder. LANDLORD agrees not to sell, lease or use any other areas of LANDLORD'S surrounding property for the installation, operation or maintenance of other communications facilities if, in TENANT'S judgment, such installation, operation or maintenance would interfere with TENANT'S facilities. Notwithstanding any other provision or statement to the contrary, if such other communications facilities causes interference to TENANT or TENANT'S sublessees or TENANT'S other tower users, LANDLORD agrees to cease or to cause others to cease such interference, upon notice from TENANT.

3.2.11 Representations and Warranties. LANDLORD agrees, represents and warrants to TENANT: (a) LANDLORD has not and shall not offer to TRANSFER the PROPERTY in such manner as would conflict or interfere with TENANT'S contemplated use herein and there is no existing agreement to TRANSFER the PROPERTY as contemplated herein; (b) there are no pending or threatened investigations, proceedings, charges, complaints, demands, notices, lawsuits, enforcement actions, liens or attachments by any person or government agency against the PROPERTY; (c) the PROPERTY is owned solely by LANDLORD as an unencumbered fee simple parcel, excepting taxes not yet due and payable and those liens listed on Appendix D, attached hereto and incorporated herein; (d) the use of the PROPERTY does not violate any applicable zoning, subdivision or other land use laws; (e) if LANDLORD is a business organization, LANDLORD is duly organized and in good standing; (f) the consent or approval of any other person or the filing of documents is not required for LANDLORD to enter into this AGREEMENT or to perform LANDLORD'S obligations herein; (g) LANDLORD'S execution and performance of this AGREEMENT will not violate or conflict with the provisions of any agreement, court order, decree, mortgage or other encumbrance to which LANDLORD is bound; (h) LANDLORD has not voluntarily entered into any bankruptcy proceeding and is not insolvent; (i) LANDLORD has not engaged in, nor allowed anyone claiming by or through LANDLORD to engage in the refining, manufacture, generation, production, storage, containment, handling, transferring, processing, treating or transporting of hazardous substances or hazardous wastes, products or pollutants so as to give rise to any liability or corrective remedial obligation under any applicable local, state or federal laws, or any other applicable environmental law, rule, directive or regulation on or about the PROPERTY; (j) there are no underground storage tanks, asbestos-containing material and no PCB-containing equipment or fluids present on or about the PROPERTY.

3.2.12 Quiet Enjoyment. LANDLORD covenants that TENANT, on paying the RENT and performing the covenants, terms and conditions required of TENANT contained herein, shall peaceably and quietly have, hold and enjoy the PROPERTY by virtue of this AGREEMENT.

3.2.13 Assignment and Subleasing. This AGREEMENT may be sold, assigned or transferred at any time by TENANT to any third party agreeing to be subject to the terms hereof. Otherwise, this AGREEMENT may not be sold, assigned or transferred without the written consent of LANDLORD, such consent to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, TENANT may (a) lease all or any part of the PROPERTY, including, but not limited to ground space and tower space and (b) convey and allow its lessees to convey security interests in any owned property. In the event that any such holder of a security interest (hereinafter referred to as

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"MORTGAGEE") shall foreclose its interest, LANDLORD agrees to attorn to such MORTGAGEE as if MORTGAGEE is TENANT or TENANT'S lessee hereunder.

- 3.2.14 Taxes. It is expressly understood by the parties that the communications tower to be erected by the TENANT is personal property, and exempt from taxation pursuant to NH R.S.A. 73 and New England Telephone and Telegraph Co. v. City of Franklin, 141 N.H. 449 (1996).
- 3.2.15 Condemnation. If, in TENANT'S sole judgment, the whole of the PROPERTY, or such portion thereof as will make the PROPERTY unusable for the purposes herein granted is condemned by any legally constituted public authority, then this AGREEMENT shall terminate as of the date of vesting of title in the public authority, and any pre-paid RENT shall be promptly reimbursed by LANDLORD to TENANT. Any condemnation of an interest less than in fee simple shall in no way affect the respective rights and obligations of LANDLORD and TENANT hereunder. However, nothing in this paragraph shall be construed to limit or adversely affect TENANT'S right to an award of compensation from any condemnation proceeding for the taking of TENANT'S interest hereunder or for the taking of TENANT'S improvements, fixtures, equipment, and personal property.
- 3.2.16 Subordination. At LANDLORD'S election, this AGREEMENT shall be subordinate to any security interest to secure debt or a mortgage given by LANDLORD which now or hereafter may encumber the PROPERTY, provided that no such subordination shall be effective unless the holder of every such security interest to secure debt or mortgage shall, either in the security interest to secure debt or mortgage or in a separate subordination, non-disturbance and attornment agreement with TENANT agree that in the event of a foreclosure, or conveyance in lieu of foreclosure, of LANDLORD'S interest in the PROPERTY, such holder shall recognize and confirm the validity and existence of this AGREEMENT and the rights of TENANT hereunder, and this AGREEMENT shall continue in full force and TENANT shall have the right to continue its use and occupancy of the PROPERTY in accordance with the provisions of this AGREEMENT as long as TENANT is not in default of this AGREEMENT beyond applicable notice and cure periods. LANDLORD and TENANT shall execute in a timely manner whatever instruments may reasonably be required to evidence the provisions of this paragraph. In the event the PROPERTY is encumbered by a security interest to secure debt or mortgage on the date of the execution of the LEASE, TENANT shall furnish to LANDLORD a non-disturbance agreement, and LANDLORD, no later than ten (10) days after receipt of such non-disturbance agreement, shall return to TENANT such non-disturbance agreement executed in recordable form by the holder of each security interest to secure debt or mortgage.
- 3.2.17 Title Insurance. TENANT, at TENANT'S option, may obtain title insurance on the PROPERTY. LANDLORD agrees to cooperate with TENANT'S efforts to obtain title insurance by executing documents or obtaining requested documentation as required by the title insurance company. If LANDLORD fails to provide requested documentation within thirty (30) days of TENANT'S request, or fails to provide any non-disturbance agreement required in the preceding paragraph of this AGREEMENT, TENANT, at TENANT'S option, may withhold and accrue RENT due until such time as all such documentation is received by TENANT.
- 3.2.18 Opportunity to Cure. If TENANT shall fail to pay RENT or other amounts payable under this AGREEMENT when due, or if TENANT should fail to perform any other of the covenants, terms or conditions of this AGREEMENT, prior to exercising any rights or remedies against TENANT on account thereof, LANDLORD shall first provide TENANT with written notice of the failure and provide TENANT with a thirty (30) day period to cure such failure (if the failure is a failure to RENT or any other sum of money

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under this AGREEMENT) or a sixty (60) day period to cure such failure (if the failure is a failure to perform any other material covenant, term or condition of this AGREEMENT). If the failure is not a failure to pay RENT or any other sum of money hereunder but is not capable of being cured within a sixty (60) day period, TENANT shall be afforded that period of time required to cure the failure provided that TENANT promptly commences curing the failure within sixty (60) days of notice and prosecutes the cure to completion with due diligence.

3.2.19 Governing Law. This Agreement shall be governed and interpreted by, and construed in accordance with the laws of the State of New Hampshire.

3.2.20 Notices. All notices hereunder must be in writing and shall be deemed validly given on the date when deposited in the United States mail, by certified mail, return receipt requested, addressed as follows (or to any other address that the party to be notified may have designated to the other party by like notice at least ten (10) days prior thereto):

TENANT: Commissioner Richard M. Flynn
New Hampshire Department of Safety
10 Hazen Drive
Concord, NH 03305

LANDLORD: Eula C. Mitchell


The parties may substitute recipient's names and addresses by giving notice as provided hereunder. Rejection or refusal to accept delivery of any notice, or the inability to deliver any notice because of a changed address, of which no notice was given, shall be deemed to be receipt of any such notice.

3.2.21 Binding Effect. This AGREEMENT shall extend to and bind personal representatives, successors and assigns of LANDLORD and TENANT and shall constitute covenants running with the land.

3.2.22 Miscellaneous. This AGREEMENT cannot be modified except by a written modification executed by LANDLORD and TENANT in the same manner as this AGREEMENT is executed. The headings, captions and numbers in this AGREEMENT are solely for convenience and shall not be considered construing or interpreting any provision in this AGREEMENT. This AGREEMENT contains all agreements, promises and understandings between the LANDLORD and TENANT, and no verbal or oral agreements, promises, statements, assertions or representations by LANDLORD or TENANT or any employees, agents, contractors or other representations either, shall be binding upon LANDLORD or TENANT. This AGREEMENT may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same AGREEMENT.

3.2.23 Short Form Memorandum. At the request of TENANT, LANDLORD agrees to execute a memorandum or short form of this AGREEMENT in recordable form, setting forth a description of the PROPERTY, the TERM of this AGREEMENT and other information desired by TENANT.

3.2.24 Survival. The provisions hereof, which by their nature are continuing, shall continue to bind the parties beyond any termination hereof.


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3.2.25 No Waiver of Sovereign Immunity. No provision in this LEASE is intended to be, nor shall it be interpreted by either party to be, a waiver of sovereign immunity.

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Appendix "B"

1. The following personal property and site improvements made under the "Options and Lease Agreement, dated January 31st, 2000, between American Tower, L.P., and Eula C. Mitchell, shall be conveyed by Bill of Sale upon the completion date;

Foundation and anchor bolts

H Frame

Chain Link Fence

Three strands of barbwire

Gravel

Grounding ring

Appendix "C"

Not Applicable

List all Instruments to Secure Debts, Mortgages, Liens or Judgments encumbering Landowner's Property.

If none, please state none.

None. E.C.M.

Debts:

Lender:

Loan Officer Name and Telephone:

Loan Number:

Liens:

Judgments:

Other Encumbrances: (other leases, easements, etc.)

November 14, 2002

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY
DIVISION OF STATE POLICE**

EXHIBIT B

The Contractor agrees to invoice the State of New Hampshire on a monthly or annual basis (\$500.00 per month). The State of New Hampshire agrees to make payment of such invoices within 45 days.

The monthly rate will be increased 3% per year for each of the remaining years of the lease.