



Imperial County Planning & Development Services Planning / Building

Jim Minnick
DIRECTOR

TO: Commissioner Mike Goodsell
Commissioner Jenell Guerrero
Commissioner Dennis Logue
Commissioner Sylvia Chavez
Commissioner Jerry Arguelles

FROM: Jim Minnick, Secretary
Planning & Development Services Director

SUBJECT: Public Hearing for the consideration of a proposed 210-foot wireless communication facility (Conditional Use Permit #23-0011 & V #23-0006) located at 1505 East Keystone Road, Brawley, CA 92227 (APN 041-200-008-000; Latitude 32° 58' 43.1112"N – Longitude 115° 32' 21.9444"W) to determine Consistency with the Airport Land Use Compatibility Plan (ALUCP). [Gerardo A. Quero, Planner I] (ALUC 06-23)

DATE OF REPORT: July 19, 2023

AGENDA ITEM NO: 4

HEARING DATE: July 19, 2023

HEARING TIME: 6:00 p.m.

HEARING LOCATION: County Administration Center
Board of Supervisors Chambers
940 Main Street
El Centro, CA 92243

STAFF RECOMMENDATION

It is the Staff's recommendation that the Airport Land Use Commission finds the proposed 210-foot wireless communication facility, located at 1505 East Keystone Road, Brawley, CA 92227 be consistent with the 1996 Airport Land Use Compatibility Plan.

SECRETARY'S REPORT

Project Location:

The proposed wireless communication facility will be located at 1505 East Keystone Road, Brawley, CA 92227. The property is identified as Assessor's Parcel Number (APN) 041-200-008-000 and is further described as a Portion of the State Board of Equalization (SBE) #872-13-34-2 of Tract 90 & 91 14-15, Township 14 South, Range 15 East, S.B.B.M., Latitude 32° 58' 43.1112"N – Longitude 115° 32' 21.9444"W.

Project Description:

The applicant, CitySwitch, is proposing to construct a communications facility which consists of a 200-foot self-supported lattice communication tower with a (10) ten-foot lightning rod, for a total height of 210-foot tower on a 50' x 50' leased, fenced area, within a parcel owned by the Union Pacific Railroad Company and within its railroad right-of-way. The proposed telecommunications tower will be erected, owned, and operated by CitySwitch. CitySwitch has the commitment with Union Pacific Railroad Company and AT&T Mobility, a wireless services provider for this site. Additionally, the facility will be open for co-location to other wireless providers. The proposed telecommunications facility requires a Conditional Use Permit (CUP#23-0011) and a Variance (V#23-0006) to exceed the 120-foot height limitation for the A-2 (General Agriculture) zone by 90 feet.

The proposed facility is designed to house the equipment necessary to provide Union Pacific and AT&T's critical communications for the railroad line and uninterrupted AT&T wireless services to the residents and visitors of Brawley, Imperial County, and surrounding areas, including wireless telephone service, voice paging, messaging, and wireless internet and broadband data transmission. All registered wireless providers' technology operates at various radio frequency bands allocated by the Federal Communications Commission (FCC) as part of their license.

After construction, the proposed wireless telecommunications facility will be unmanned and will only require service technicians, in a pick-up or van sized vehicle, to visit the site approximately once a month. Access will be provided via an easement with the proposed access entry point off East Keystone Road. The only utilities required to service the facility are power and fiber. The site is entirely self-monitored through a sophisticated alarm system, which is connected to a main switch station. The system alerts personnel of any equipment malfunction or breach of security. Additionally, there will be no impacts on County's water and sanitation (sewer) utilities as they will not be used at the site.

In accordance with Federal Communications Commission (FCC) regulations, the proposed wireless telecommunications facility will be designed and constructed to meet and/or exceed all applicable government and industry safety standards. Specifically, CitySwitch will comply with all Federal Communications Commission (FCC) and Federal

Aviation Agency (FAA) rules and regulations regarding construction requirements and technical standards. The proposed wireless communication facility's Radio Frequency (RF) emissions will comply with the Federal Communications Commission's (FCC) Radio Frequency emission standards. Additionally, the proposed wireless communication facility will comply with the Federal Aviation Agency's (FAA) height, lighting, and marking requirements.

General Plan/ALUCP Analysis:

The proposed wireless communication facility is located within vacant parcel owned by the Union Pacific Railroad Company and is not located near any County Public Airport or airstrip. The nearest airports are the Brawley Municipal Airport located approximately seven (7) miles northwest, the Holtville Airport located approximately eight (8) miles southeast, and the Imperial County Airport located approximately nine (9) miles southwest of the proposed project site.

The project site is zoned A-2 (General Agriculture) per Zoning Map #31 of the Imperial County Title 9 Land Use Ordinance.

The Airport Land Use Compatibility Plan (ALUCP), Chapter 2, Policies, Section 2.3, provides "Types of Actions Reviewed" by the Commission, which shall include:

"Any request for variance from a local agency's height limitation ordinance; and any other proposed land use action, as determined by the local planning agency, involving a question of compatibility with airport activities" (Section 2.3.3(c)(h), pg. 2-3 & 2-4)

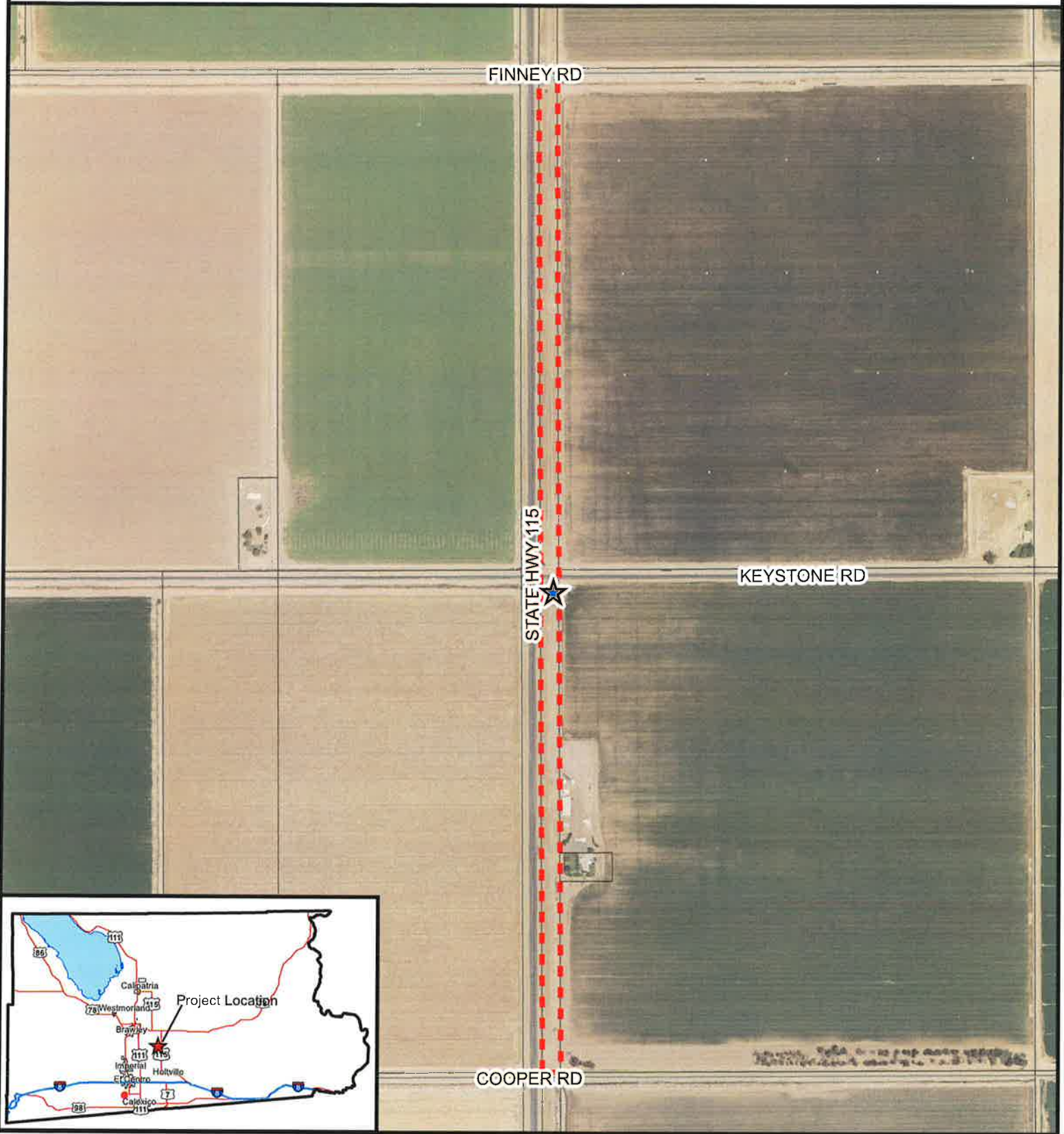
The proposed Variance (V#23-0006) and Conditional Use Permit (CUP#23-0011) have been submitted for the Airport Land Use Commission's review and determination of consistency with the 1996 Airport Land Use Compatibility Plan (ALUCP) due to the nature of the application (a 210-foot wireless communication facility).

ATTACHMENTS:





- A. Vicinity Map
- B. ALUC Map
- C. Assessor's Plat Map
- D. Site Plan
- E. Application & Supporting Documents
- F. ALUCP Section

ATTACHMENT "A" – VICINITY MAP

PROJECT LOCATION MAP

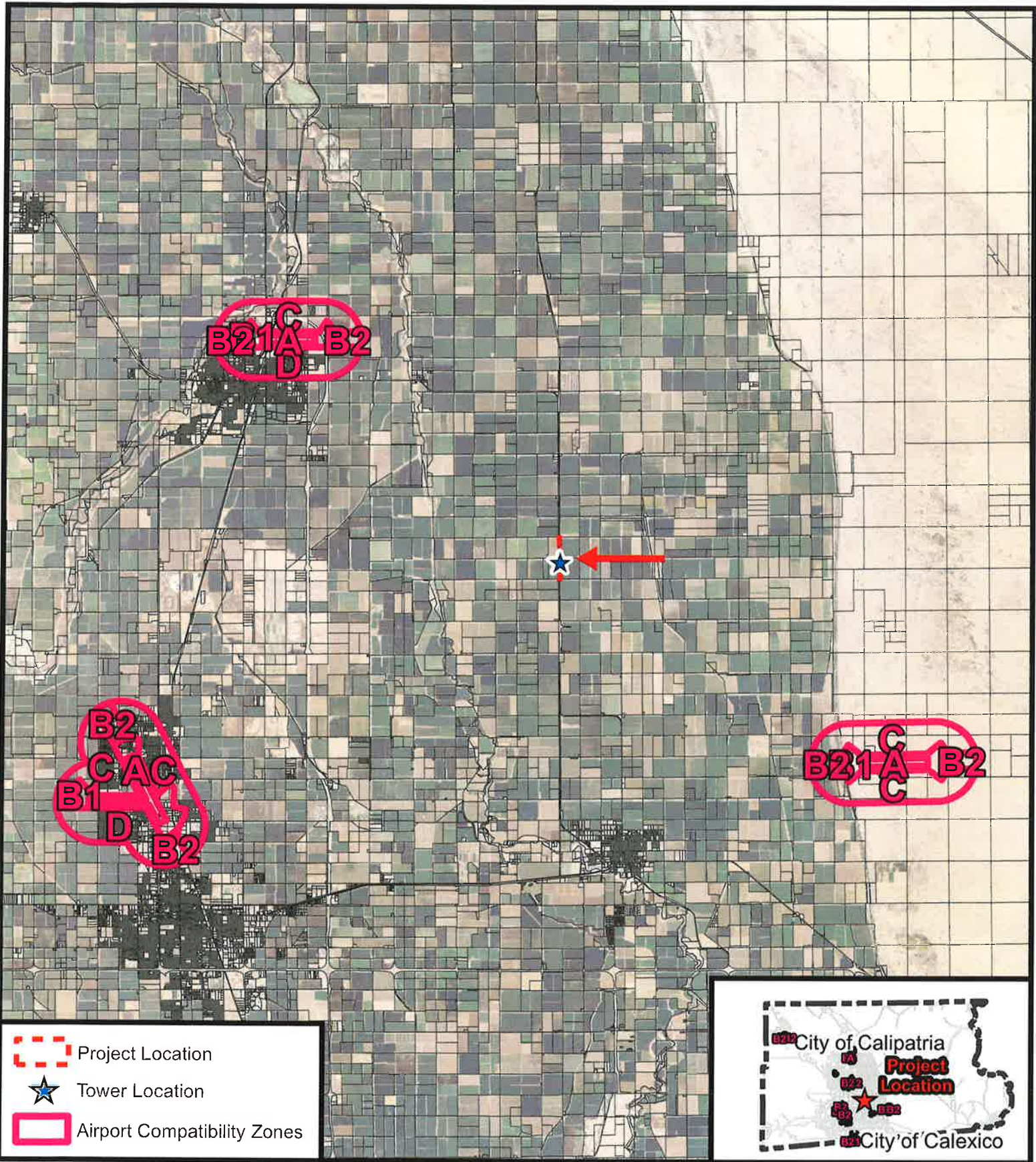


CITYSWITCH
CUP 23-0011 / IS 23-0011 / V 23-0006
APN 041-200-008-000

-  Project Location
-  Parcels
-  Centerline
-  Tower Location



ATTACHMENT "B" – ALUC MAP



IMPERIAL COUNTY AIRPORT LAND USE COMMISSION
CITYSWITCH
 1505 E. KEYSTONE RD. BRAWLEY, CA
 CUP 23-0011 / IS 23-0011 / V 23-0006
 APN 041-200-008-000



ATTACHMENT "C" – ASSESSOR'S PLAT MAP

ATTACHMENT "D" – SITE PLAN



ZONING DRAWINGS
NOT FOR CONSTRUCTION

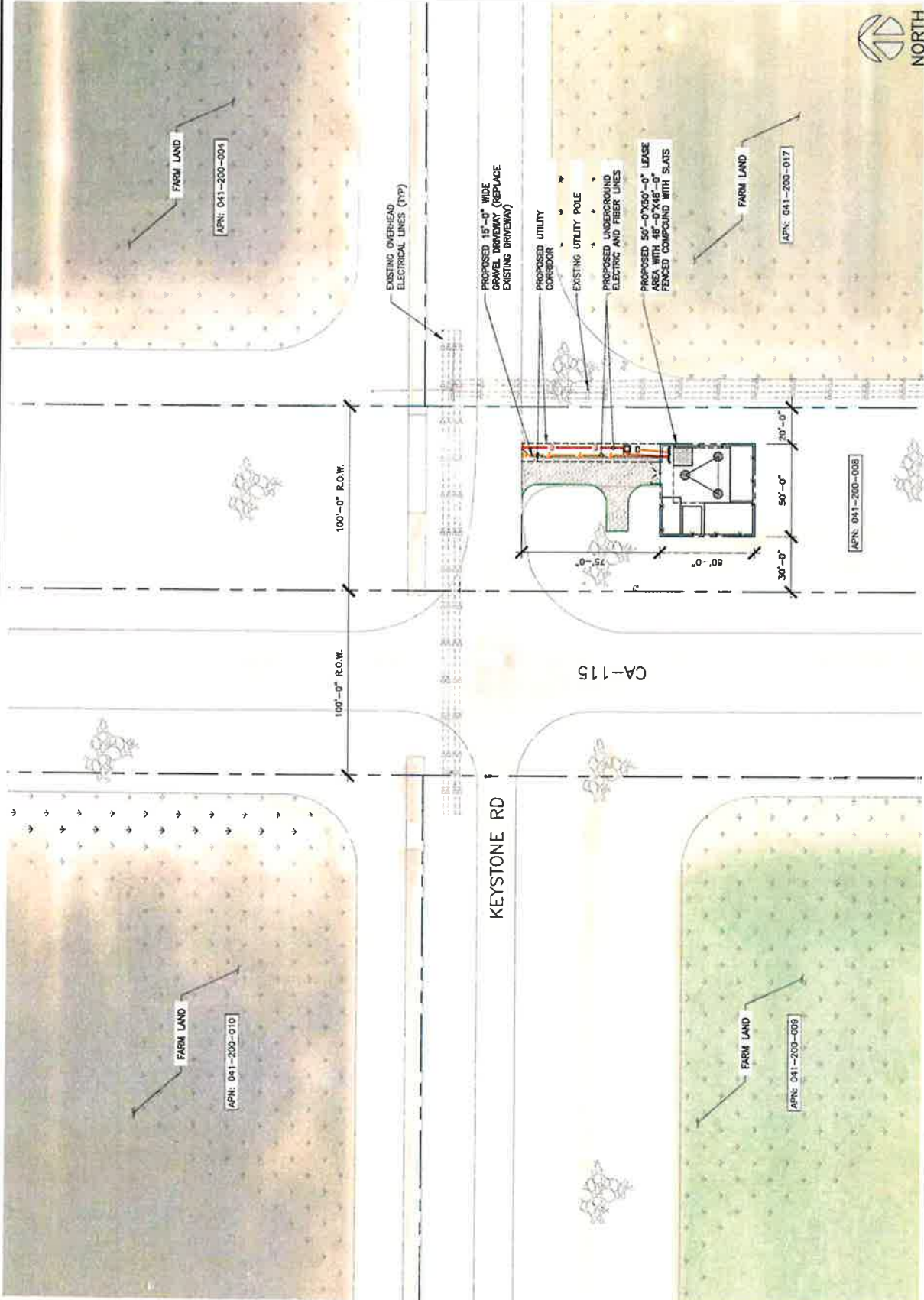
REV	DATE	DESCRIPTION
A	03/19/22	ZONING DRAWINGS
B	03/29/22	ZONING DRAWINGS
C	10/29/22	ZONING DRAWINGS

1. THESE DRAWINGS HAVE BEEN PREPARED BY ME OR UNDER MY CLOSE SUPERVISION AND THAT I AM A DULY REGISTERED PROFESSIONAL ENGINEER OF THE STATE OF CALIFORNIA.

SITE NAME:
BRAWLEY
SITE ADDRESS:
NEAR EAST KEYSTONE RD
BRAWLEY, CA 92227
IMPERIAL COUNTY

SHEET TITLE
OVERALL
SITE PLAN

SHEET NUMBER
C-1



SCALE: 1"=50'-0" (1:157)
1/8"=1'-0" (1:96)

OVERALL SITE PLAN

THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CURRENT SERVICES IS STRICTLY PROHIBITED.



ZONING DRAWINGS
 NOT FOR CONSTRUCTION

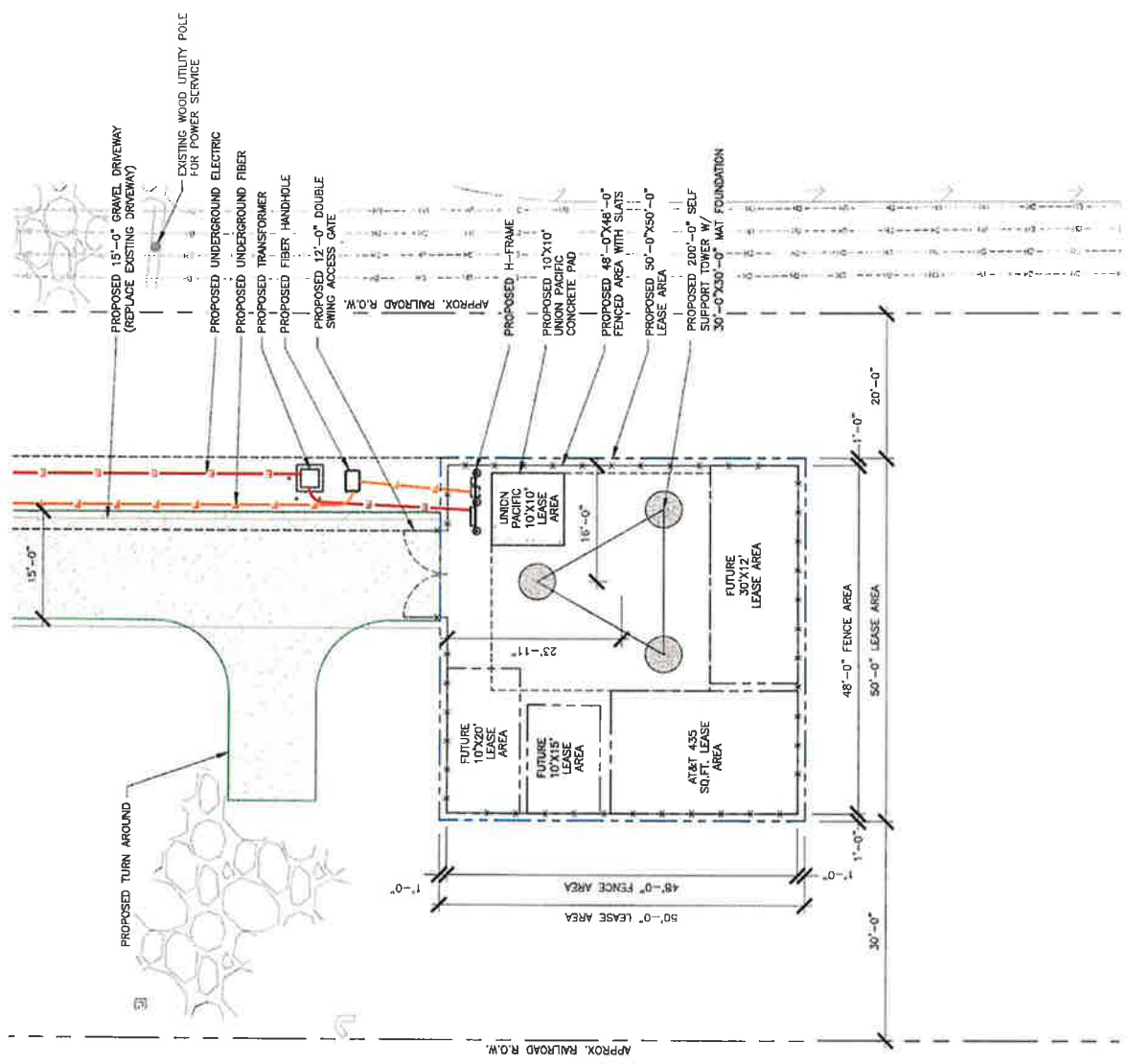
DRWNR BY:	MM	
CHECKED BY:	RSN	
REV#	DATE	DESCRIPTION
A	05/18/22	ZONING DRAWINGS
B	05/28/22	ZONING DRAWINGS
C	10/25/22	ZONING DRAWINGS

1. MEMBER COMPANY THAT THESE PLANS WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND I AM A REGISTERED ARCHITECT UNDER THE LAWS OF THE STATE OF CALIFORNIA.

SITE NAME:
 BRAWLEY
SITE ADDRESS:
 NEAR EAST KEYSTONE RD
 BRAWLEY, CA 92227
 IMPERIAL COUNTY

SHEET TITLE:
 ENLARGED
SITE PLAN

SHEET NUMBER:
 C-2



1	SCALE: 1/8"=1'-0" (1/4"=1'-0") 100' 1/8"=1'-0" (250' 1/4"=1'-0")
THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY TO THE ARCHITECT. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CURRENT SERVICES IS STRICTLY PROHIBITED.	
ENLARGED SITE PLAN	

**ATTACHMENT "E" – APPLICATION &
SUPPORTING DOCUMENTS**

CONDITIONAL USE PERMIT

I.C. PLANNING & DEVELOPMENT SERVICES DEPT.
801 Main Street, El Centro, CA 92243 (760) 482-4236

- APPLICANT MUST COMPLETE ALL NUMBERED (black) SPACES - Please type or print -

1. PROPERTY OWNER'S NAME CitySwitch (Lessee)	EMAIL ADDRESS info@cityswitch.com	
2. MAILING ADDRESS (Street / P O Box, City, State) 1900 Century Place NE, Suite 320, Atlanta, GA	ZIP CODE 30345	PHONE NUMBER 404-857-0858
3. APPLICANT'S NAME Michael Bieniek, AICP / Allison R. Burke (Agents)	EMAIL ADDRESS mbieniek@lcctelecom.com / aburke@shermanhoward.com	
4. MAILING ADDRESS (Street / P O Box, City, State) 10700 W. Higgins, Ste 240, Rosemont, IL / 675 15th Ste 2300 Denver, CO	ZIP CODE 60018 / 80202	PHONE NUMBER 847-287-1156 / 303-299-8045
4: ENGINEER'S NAME Westchester Services, LLC - Glen L Hunt III	CA. LICENSE NO.	EMAIL ADDRESS ghunt@westchesterservices.com
5. MAILING ADDRESS (Street / P O Box, City, State) 3470 W. Jasper Drive, Chandler, AZ	ZIP CODE 85226	PHONE NUMBER 602-403-8614
6. ASSESSOR'S PARCEL NO. 041-200-008	SIZE OF PROPERTY (in acres or square foot) Vacant field	ZONING (existing) A-2
7. PROPERTY (site) ADDRESS Vacant field off East Keystone Road, Brawley, CA 92227		
8. GENERAL LOCATION (i.e. city, town, cross street) Southeast of the intersection of East Keystone and Highway 115		
9. LEGAL DESCRIPTION See attached lease agreement		

PLEASE PROVIDE CLEAR & CONCISE INFORMATION (ATTACH SEPARATE SHEET IF NEEDED)

10. DESCRIBE PROPOSED USE OF PROPERTY (list and describe in detail)	Proposed 200' self-support lattice tower with a 10'-0" lightning rod for a total height of 210'-0" to be located within a 50'-0" x 50' lease parcel.
11. DESCRIBE CURRENT USE OF PROPERTY	Vacant field
12. DESCRIBE PROPOSED SEWER SYSTEM	N/a
13. DESCRIBE PROPOSED WATER SYSTEM	N/a
14. DESCRIBE PROPOSED FIRE PROTECTION SYSTEM	N/a
15. IS PROPOSED USE A BUSINESS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, HOW MANY EMPLOYEES WILL BE AT THIS SITE? No permanent employees

I / WE THE LEGAL OWNER (S) OF THE ABOVE PROPERTY CERTIFY THAT THE INFORMATION SHOWN OR STATED HEREIN IS TRUE AND CORRECT.

Michael Bieniek, AICP
Print Name _____ Date 4/11/23
Signature _____
Allison R. Burke
Print Name _____ Date 4/11/23
Signature _____

REQUIRED SUPPORT DOCUMENTS

A. SITE PLAN	_____
B. FEE	_____
C. OTHER	_____
D. OTHER	_____

APPLICATION RECEIVED BY:	_____	DATE	_____	REVIEW / APPROVAL BY	_____
APPLICATION DEEMED COMPLETE BY:	_____	DATE	_____	OTHER DEPT'S required.	_____
APPLICATION REJECTED BY:	_____	DATE	_____	<input type="checkbox"/> P. W.	_____
TENTATIVE HEARING BY:	_____	DATE	_____	<input type="checkbox"/> E. H. S.	_____
FINAL ACTION:	<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED	DATE	_____	<input type="checkbox"/> A. P. C. D.	_____
		DATE	_____	<input type="checkbox"/> O. E. S.	_____
		DATE	_____	<input type="checkbox"/> _____	_____

CUP #
23-001


VARIANCE


I.C. PLANNING & DEVELOPMENT SERVICES DEPT.
801 Main Street, El Centro, CA 92243 (760) 482-4236

- APPLICANT MUST COMPLETE ALL NUMBERED (black) SPACES - Please type or print -

1. PROPERTY OWNER'S NAME CitySwitch (Lessee)	EMAIL ADDRESS info@cityswitch.com	
2. MAILING ADDRESS (Street / P O Box, City, State) 1900 Century Place NE, Suite 320, Atlanta, GA	ZIP CODE 30345	PHONE NUMBER 404-857-0858
3. ENGINEERS NAME Westchester Services, LLC - Glen L. Hunt III	CA. LICENSE NO.	EMAIL ADDRESS ghunt@westchesterservices.com
4. MAILING ADDRESS (Street / P O Box, City, State) 3740 W. Jasper Drive, Chandler, AZ	ZIP CODE 85226	PHONE NUMBER 602-403-8614
5. ASSESSOR'S PARCEL NO. 041-200-008	ZONING (existing) A-2	
6. PROPERTY (site) ADDRESS Vacant field off East Keyston Road, Brawley, CA 92227	SIZE OF PROPERTY (in acres or square foot) Railroad right-of-way	
7. GENERAL LOCATION (i.e. city, town, cross street) Southeast of the intersection of East Keystone and Highway 115		
8. LEGAL DESCRIPTION See attached lease agreement		
8. DESCRIBE VARIANCE REQUESTED (i.e. side yard set-back reduction, etc.) Maximum allowable height in the A-2 district for a communications tower is 120'		
9. DESCRIBE REASON FOR, OR WHY VARIANCE IS NECESSARY :		
10. DESCRIBE THE ADJACENT PROPERTY East <u>vacant parcel</u> West <u>vacant parcel</u> North <u>vacant parcel</u> South <u>vacant parcel</u>		

I / WE THE LEGAL OWNER (S) OF THE ABOVE PROPERTY CERTIFY THAT THE INFORMATION SHOWN OR STATED HEREIN IS TRUE AND CORRECT.

Michael Bjeniek, AICP
Print Name

Signature
Date 4/11/23

Allison R. Burke
Print Name

Signature
Date 4/11/23

REQUIRED SUPPORT DOCUMENTS

A. SITE PLAN	_____
B. FEE	_____
C. OTHER	_____
D. OTHER	_____

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APPLICATION REJECTED BY:	_____	DATE	_____	<input type="checkbox"/> E. H. S.
TENTATIVE HEARING BY:	_____	DATE	_____	<input type="checkbox"/> A. P. C. D.
FINAL ACTION:	<input type="checkbox"/> APPROVED	<input type="checkbox"/> DENIED	DATE	_____

V #
23-0000



RECEIVED

APR 12 2023

IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES

Sherman & Howard LLC



**APPLICATION FOR CONDITIONAL USE PERMIT AND HEIGHT VARIANCE
APPROVAL FOR
THE PROPOSED COMMUNICATION FACILITY AT**

**NEAR EAST KEYSTONE ROAD
BRAWLEY, CA 92227
APN: 041-200-008**

**CITYSWITCH SITE NAME / # – BRAWLEY CAC008
AT&T SITE NUMBER - 10148059**

Table of Contents

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2. Application Materials
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7. Compliance with Section 92405.01
8. Conditional Use Permit Standards
9. Variance Standards
10. Alternatives Analysis
11. Sworn Statement of AT&T
12. Coverage Plot
13. Fall Zone Certification
14. Site Plan
15. FAA Determination
16. Lease

Letter of Application

April 3, 2023

Mr. Jim Minnick
Planning & Development Services Director, Imperial County
801 W. Main Street
El Centro, CA 92243

RECEIVED

APR 12 2023

**IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES**

**RE: Proposed CitySwitch Communications Facility – Brawley CAC009
AT&T Site - 10148059
Near East Keystone Road
APN 041-200-008
Brawley, CA 92227**

Dear Mr. Minnick:

LCC Telecom Services and Sherman & Howard L.L.C. represent CitySwitch. CitySwitch has finalized an agreement with the property owners of the site referenced above to develop and construct a Communications Facility that will be available to be used by wireless carriers. The proposed shared use facility is designed to house the equipment necessary to provide clear and uninterrupted wireless telecommunications services to the residents and visitors of Imperial County.

This proposed Communications Facility is being constructed pursuant to Sections 92402.01 and 92405.01 of the Imperial County Land Use Code (the "Code"). The proposed facility will consist of a 200'-0" tall self-support lattice tower with a 10'-0" lightning rod for a total height of 210'-0" to be located within a 50'-0" x 50'-0" lease parcel. The proposed tower will be erected, owned, and operated by CitySwitch. CitySwitch has a commitment with Union Pacific and AT&T Mobility, a wireless services provider, for this site. Additionally, the facility will be open for co-location to other wireless providers.


The proposed Communications Facility is located in an A-2, General Agriculture zone. Pursuant to Section 90519.02(d) of the Code, Communications Facilities are allowed in this district with a Conditional Use Permit approval. Communications Facilities exceeding the maximum allowable height are allowed in this district with Variance approval.

On behalf of the applicant CitySwitch, LCC Telecom Services and Sherman & Howard have submitted all required documentation for the proposed tower in accordance with Section 92402.01 of the Code for this application to be deemed complete. Should you have any questions please feel free to contact me. I look forward to working with you during the review and approval process. CitySwitch looks forward to helping provide Imperial County with improved wireless coverage.

Sincerely,



Michael Bieniek, AICP
Zoning Director



Allison R. Burke
Associate

Application Materials

CONDITIONAL USE PERMIT

I.C. PLANNING & DEVELOPMENT SERVICES DEPT.
801 Main Street, El Centro, CA 92243 (760) 482-4236

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2. MAILING ADDRESS (Street / P O Box, City, State) 1900 Century Place NE, Suite 320, Atlanta, GA	ZIP CODE 30345	PHONE NUMBER 404-857-0858
3. APPLICANT'S NAME Michael Bieniek, AICP / Allison R. Burke (Agents)	EMAIL ADDRESS mbieniek@icctelecom.com / aburke@shermanhoward.com	
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13. DESCRIBE PROPOSED WATER SYSTEM	N/a
14. DESCRIBE PROPOSED FIRE PROTECTION SYSTEM	N/a
15. IS PROPOSED USE A BUSINESS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, HOW MANY EMPLOYEES WILL BE AT THIS SITE? No permanent employees

I / WE THE LEGAL OWNER (S) OF THE ABOVE PROPERTY CERTIFY THAT THE INFORMATION SHOWN OR STATED HEREIN IS TRUE AND CORRECT.

Michael Bieniek, AICP
Print Name _____ Date 4/11/23
Signature _____
Allison R. Burke
Print Name _____ Date 4/11/23
Signature _____

REQUIRED SUPPORT DOCUMENTS

A. SITE PLAN	_____
B. FEE	_____
C. OTHER	_____
D. OTHER	_____

APPLICATION RECEIVED BY: _____	DATE _____	REVIEW / APPROVAL BY OTHER DEPT'S required.
APPLICATION DEEMED COMPLETE BY: _____	DATE _____	<input type="checkbox"/> P. W.
APPLICATION REJECTED BY: _____	DATE _____	<input type="checkbox"/> E. H. S.
TENTATIVE HEARING BY: _____	DATE _____	<input type="checkbox"/> A. P. C. D.
FINAL ACTION: <input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED	DATE _____	<input type="checkbox"/> O. E. S.
		<input type="checkbox"/> _____
		<input type="checkbox"/> _____

CUP #
23-001

SITE PLAN REQUIREMENTS

PLAN MUST:

- a. Be drawn to scale upon substantial paper, 11" x 14" (min.) – (20 copies must be submitted.)
- b. Show name of owner, legal description and Assessor's Parcel Number.
- c. Show existing property dimensions, size, adjacent roads, canals, right-of-ways, easements, etc.
- d. Show all existing and proposed structures (both above and below ground) location of sewer and water systems.
- e. Show adjacent property uses and approximate distances to nearest structures.
- f. Indicate name of person preparing site plan.
- g. Show North orientation.
- h. Show sufficient dimensions and information for proper evaluation to be done.

CAUTION: Incomplete or inaccurate applications, plans will cause the entire application to be rejected.

VARIANCE

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801 Main Street, El Centro, CA 92243 (760) 482-4236

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2. MAILING ADDRESS (Street / P O Box, City, State) 1900 Century Place NE, Suite 320, Atlanta, GA	ZIP CODE 30345	PHONE NUMBER 404-857-0858
3. ENGINEERS NAME Westchester Services, LLC - Glen L. Hunt III	CA. LICENSE NO.	EMAIL ADDRESS ghunt@westchesterservices.com
4. MAILING ADDRESS (Street / P O Box, City, State) 3740 W. Jasper Drive, Chandler, AZ	ZIP CODE 85226	PHONE NUMBER 602-403-8614
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8. DESCRIBE VARIANCE REQUESTED (i.e. side yard set-back reduction, etc.)
Maximum allowable height in the A-2 district for a communications tower is 120'.

9. DESCRIBE REASON FOR, OR WHY VARIANCE IS NECESSARY :

10. DESCRIBE THE ADJACENT PROPERTY

East	<u>vacant parcel</u>
West	<u>vacant parcel</u>
North	<u>vacant parcel</u>
South	<u>vacant parcel</u>

I / WE THE LEGAL OWNER (S) OF THE ABOVE PROPERTY CERTIFY THAT THE INFORMATION SHOWN OR STATED HEREIN IS TRUE AND CORRECT.

<u>Michael Bjeniek, AICP</u> Print Name	<u>4/11/23</u> Date
<u>[Signature]</u> Signature	
<u>Allison R. Burke</u> Print Name	<u>4/11/23</u> Date
<u>[Signature]</u> Signature	

REQUIRED SUPPORT DOCUMENTS

A. SITE PLAN	_____
B. FEE	_____
C. OTHER	_____
D. OTHER	_____

APPLICATION RECEIVED BY:	_____	DATE	_____	REVIEW / APPROVAL BY	_____
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APPLICATION REJECTED BY:	_____	DATE	_____	<input type="checkbox"/> P. W.	_____
TENTATIVE HEARING BY:	_____	DATE	_____	<input type="checkbox"/> E. H. S.	_____
FINAL ACTION:	<input type="checkbox"/> APPROVED			<input type="checkbox"/> A. P. C. D.	_____
	<input type="checkbox"/> DENIED			<input type="checkbox"/> O. E. S.	_____
		DATE	_____	<input type="checkbox"/> _____	_____
		DATE	_____	<input type="checkbox"/> _____	_____

V #
13-0006

SITE PLAN REQUIREMENTS

PLAN MUST:

- a. be drawn to scale upon substantial paper, 11" x 14" (min.) – (20 copies must be submitted).
- b. show name of owner, legal description and Assessor's Parcel Number.
- c. show existing property dimensions, size, adjacent roads, canals, right-of-ways, easements, etc.
- d. show all existing and proposed structures (both above and below ground) location of sewer and water systems.
- e. show adjacent property uses and approximate distances to nearest structures.
- f. indicate name of person preparing site plan.
- g. show North orientation.
- h. show sufficient dimensions and information for proper evaluation to be done.

CAUTION: Incomplete or inaccurate applications, plans will cause the entire application to be rejected.

Site Data Sheet

Applicant: CitySwitch
1900 Century Place NE
Suite 320
Atlanta, GA 30345

Authorized Agent: Michael Bieniek, AICP
LCC Telecom Services
10700 Higgins Road
Suite 240
Rosemont, IL 60018

Allison R. Burke
Sherman & Howard, LLC
675 Fifteenth Street
Suite 2300
Denver, CO 80202

Tower Owner: CitySwitch
1900 Century Place NE
Suite 320
Atlanta, GA 30345

Applicant's Interest in the Property: Leasehold

Property Owner: Union Pacific Railroad
1400 Douglas Street
Omaha, NE 68179

Address of Property: Near East Keystone Road
Brawley, CA 92227

Parcel Number: APN: 041-200-008

Request: Application for a Conditional Use Permit, Height Variance and any other approvals or permits necessary to erect a 200'-0" self-support lattice tower with a 10'-0" lightning rod for a total height of 210'-0" and telecommunications equipment to be located within a 50'-0" x 50'-0" ground area.

Right-of-Way Title



U.S. TITLE SOLUTIONS

100 Corporate Drive, Suite 305, Lebanon, NJ 08833

Phone (908) 849-3011 Fax (908) 849-7981

www.ustitlesolutions.com

**REPORT OF TITLE
Document Research and Retrieval
U.S. Title Solutions File No. UST71005
Reference No. Ben Hulse
Site Name: Ben Hulse**

Prepared For: LCC Telecom Services, LLC -

Premises: TBD, Imperial, CA 92251

Parcel: 041-200-008-000

County: Imperial

REPORT POWERED BY LAND-IT™

This Report of Title is for informational purposes only. It is not a representation of the condition of title to real property. It is not an abstract, legal opinion, opinion of title, or any form of title insurance. This report is issued exclusively for the benefit of the applicant therefore, and may not be relied upon by any other person. The liability of U.S. Title Solutions is limited to the amount of the fee paid therefore.

U.S. TITLE SOLUTIONS
File No. UST71005 Reference No. Ben Hulse

REPORT OF TITLE
SCHEDULE - I

1. **DATE OF REPORT :** April 08, 2022
2. **SCOPE OF SEARCH:** Beginning January 01, 1908 and extending through February 28, 2022, a search of the land records for the jurisdiction where the property is located was conducted and we have reported what was found regarding taxes; deeds; mortgages; easements and right of ways; covenants and restrictions; judgments; liens and UCCs; and other matters commonly recorded or filed in the County records.
3. **THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS REPORT IS:**

Fee Simple

4. **TITLE TO SAID ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS REPORT IS AT THE EFFECTIVE DATE HEREOF VESTED IN:**

Southern Pacific Railroad Company

5. **SOURCE OF TITLE :**

Deed made by Fred W. Thatcher, and wife Mabel E. Thatcher, Dated July 13, 1923, Recorded September 20, 1923, in [Book 2, Page 304.](#)

Deed made by Albert G. Finney and wife, Louise Finney, Dated July 31, 1923, Recorded August 16, 1923, in [Book 10, Page 27.](#)

Deed made by Irving H. Shaw and Virginia Shaw, his wife; and Orville W. Shaw and Estella Shaw, his wife, Dated July 16, 1923, Recorded August 01, 1923, in [Book 2, Page 201.](#)

Letter made by Inter-California Railway Company, a corporation, Dated August 12, 1938, in [Instrument Number L-38-791.](#)

Notes: Letter included for reference. Inter-California Railway Company was obtained by Southern Pacific Company in 1935.

6. **PROPERTY IS IDENTIFIED AS FOLLOWS :**

Parcel ID : [041-200-008-000](#)

Tax Year : 2021

Status : Exempt

U.S. TITLE SOLUTIONS
File No. UST71005 Reference No. Ben Hulse

REPORT OF TITLE
SCHEDULE - II

(LEGAL DESCRIPTION)

A survey is required for an accurate metes and bounds description.

U.S. TITLE SOLUTIONS
File No. UST71005 Reference No. Ben Hulse

REPORT OF TITLE
SCHEDULE - V

(OWNERSHIP HISTORY)

1. Deed made by Fred W. Thatcher, and wife Mabel E. Thatcher to Inter-California Railway Company, a corporation, Dated July 13, 1923, Recorded September 20, 1923, in [Book 2, Page 304.](#)
2. Deed made by Albert G. Finney and wife, Louise Finney to Inter-California Railway Company, a corporation, Dated July 31, 1923, Recorded August 16, 1923, in [Book 10, Page 27.](#)
3. Deed made by Irving H. Shaw and Virginia Shaw, his wife; and Orville W. Shaw and Estella Shaw, his wife to Inter-California Railway Company, a corporation, Dated July 16, 1923, Recorded August 01, 1923, in [Book 2, Page 201.](#)

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Narrative Overview

CitySwitch seeks approval for a Conditional Use Permit ("CUP"), a Height Variance ("Variance") and any other permits or approvals necessary in order to install a communications facility on property located at APN# 041-200-008 Near East Keystone Road, Brawley, CA 92227. CitySwitch proposes to erect this tower and will be offering it as a shared facility to Union Pacific (with whom CitySwitch already has a commitment), AT&T Mobility, and any other communication carriers that have a need for a facility in this area. CitySwitch thus submits this Application (as that term is defined in Sections 92404.01 and and 92405.01 of the Imperial County Land Use Code (the "Code")) seeking a CUP and Variance for the siting and construction of a new communication facility.

The proposed site is located in a A-2, General Agriculture zone. Pursuant to Sections 90519.02(d) of the Code, Communication Facilities are allowed in this district with CUP approval. The property consists of a railroad line in the desert, located at the southeast corner of the intersection of East Keystone and Highway 115.

The wireless communications facility that CitySwitch is proposing to install on the property for Union Pacific and AT&T is necessary to provide critical communications for the railroad line and uninterrupted AT&T wireless services to the residents and visitors of Brawley and the surrounding area, including wireless telephone service, voice paging, messaging and wireless internet and broadband data transmission. All registered wireless providers' technology operates at various radio frequency bands allocated by the FCC as part of their license.

Wireless systems operate on a grid system where overlapping cells mesh together, forming a seamless network. No single site can function as a stand-alone entity as each site is interconnected, forming the network. The technical criteria for establishing cell sites are very exacting as to the location and height. The proposed site at APN# 041-200-008 Near East Keystone Road, Brawley, CA 92227 is within the geographic area deemed necessary by radio frequency engineers for the anchor wireless telecommunications providers to provide uninterrupted services.

In accordance with Sections 92404.01 92405.01 of the Code, CitySwitch is submitting this Application to install a new Communications Facility. The proposed new communications facility will consist of a 200'-0" tall self-support lattice tower with a 10'-0" lightning rod for a total height of 210'-0" to be located within a 50'-0" x 50'-0" ground area.

After the initial construction, the facility is unstaffed and will only require service technicians, in a pick-up/van sized vehicle, to visit the site approximately once per month. Access will be provided via an easement with the proposed access entry point off East Keystone Road. The only utilities required to service the facility are power and fiber. The site is entirely self-monitored through a sophisticated alarm system which is connected to a main switch station. The system alerts personnel to any equipment malfunction or breach of security. Additionally, there is no impact on Imperial County's utilities such as water and sanitation, as they are not used at the site.

In accordance with FCC regulations, the mobile service facility will not interfere with any form of communications, including but not limited to, land-line phones, cable and satellite television and radio broadcasts. Wireless technology has become a vital part of emergency services, aiding local residents and motorists in a variety of situations, thus helping to protect the general public's health, safety and welfare. The proposed communications facility at this site will further enhance goals of providing the most reliable wireless coverage possible in this area.

The proposed communications facility will be designed and constructed to meet all applicable governmental and industry safety standards. Specifically, CitySwitch will comply with all FCC and FAA rules and regulations regarding construction requirements and technical standards. RF emissions are subject to the exclusive jurisdiction of the FCC, and the proposed facility will comply with the FCC's RF emission standards.. Any height, lighting or marking issues are also subject to the exclusive jurisdiction of the FAA, and the proposed facility will comply with the FAA's requirements for height, lighting, and marking.

LCC Telecom Services and Sherman & Howard, on behalf of CitySwitch, look forward to working with Imperial County to bring the benefits of the proposed improved wireless services to the area. The addition of the facility will ensure improved railroad communications and the best uninterrupted wireless services for Imperial County. This application addresses all applicable

standards of Sections 92404.01 and 92405.01 of the Code and satisfies the requirements of those sections.

Compliance with Section 92404.01 – General Requirements for Communications Facilities

All new, altered and re-permitted communication facilities in unincorporated areas of Imperial County, with the exception of those exempted under Section 92401.03, shall meet the following general requirements, regardless of the zone in which they are located:

- A. Zones. Wireless communication facilities may be located in all base zones which allow such facilities, upon approval of a conditional use permit as described below.

Telecommunications towers, along with related equipment are allowed with CUP approval in the A-2 General Agriculture zone pursuant to Section 9051902(d) of the ordinance.

- B. Use Permit Required. All wireless communication facilities and all wired or fiber regeneration facilities other than those designated as exempt under Section 92401.03 require a conditional use permit (CUP). To obtain a conditional use permit, a hearing is required before either the planning director or the planning commission, as provided for in Title 9.

The proposed wireless communications facility is not exempt under Section 92401.03, therefore CitySwitch has applied for a CUP, and will follow the CUP process as provided for in Title 9.

- C. Building Permit Required. All communication facilities shall require a building permit issued by the county of Imperial.

If and when the CUP has been approved, CitySwitch will apply for the necessary building permits through Imperial County.

- D. Design Consistency with the Surrounding Environment. To the maximum extent feasible, all wireless communication facilities and all regeneration facilities shall blend in with the predominant features of the existing natural and/or built environments in which they are located. To this end, co-location, stealth mounts, structure mounts and ground mounts are particularly encouraged.

Due to the diminutive size of the parcel and the tower's location in a vacant field, there will be little impact on the surrounding environment.

- E. Height. All communication facilities shall conform to the following height requirements:

1. All communication facilities shall be of the minimum functional height, with additional provisions for co-location, as allowed in the respective base zone unless a variance is approved concurrent with a CUP. (For example, if the number of co-locators that a particular facility is designed for is four and the required height is eighty (80) feet, then the allowed height of the facility would be one hundred ten (110) feet and if it is five co-locators, then it would be one hundred twenty (120) feet).

The proposed self-support lattice tower is designed to be 200'-0" with a 10' lightning rod for a total height of 210'-0". The proposed height is the minimum functional height for Union Pacific and AT&T to provide the necessary coverage for the area. A height variance has been requested as part of this application. See Site Plans

2. All communication facilities constructed within three-quarters mile of a scenic corridor (as designated by the Imperial County General Plan) shall conform with the height limit in the zone in which they are located. New facilities that are co-located with an existing facility may exceed their zone's height limit, provided that the installation of the new facility does not require a height increase of the existing facility.

According to the General Plan, the area is designated as Recreation/Open Space, there is no designation of a scenic corridor in the vicinity. Therefore, this section does not apply.

3. Outside of the three-quarter-mile range of a designated scenic corridor, communication facility, except an exempt facility, may exceed one hundred twenty (120) feet. A bonus of twenty (20) additional feet per facility, up to a maximum height of three hundred (300) feet, is permissible for operators co-locating on a single facility.

The proposed tower height is 200'-0" and a height variance has been requested as part of this application.

4. No roof-mounted wireless communication facility, except an exempt facility, may be more than twelve (12) feet taller than the roof of the building on which it is mounted, unless facility is fully screened and height does not exceed height permitted by applicable zoning code.

The application is for a new communications tower facility and not a rooftop facility Therefore, this section does not apply.

5. If an operator wishes to apply for an exception to these height limitations, then the facility shall be subject to the provisions at Title 9 relating to conditional use permits and variances hearing processes.

The proposed tower height is 200'-0" and a height variance has been applied for as part of this application.

- F. Screening. All communication facilities shall be screened to the maximum extent possible, pursuant to the following requirements.
 1. Ground- and tower-mounted antennas and all sound structures shall be located within areas where substantial screening by vegetation, landform and/or buildings can be achieved. Additional vegetation and/or other screening may be required as a condition of approval. Each structural screening shall be based on a recommendation from the planning department having addressed the visual impacts, which in some instance may, in fact, warrant no screening.

No screening is proposed with this application. The proposed tower site is within the railroad right-of-way in the desert with no residential structures in the area.

2. The projection of structure-mounted antennas from the face of the structure to which they are attached shall be minimized.

The proposed wireless communications facility is a new tower, not a co-location on an existing structure Therefore, this section does not apply.

3. Roof-mounted antennas shall be set back from the edge of the roof a distance greater than or equal to the height of the antenna, except when the antennas are fully screened. For roofmounted antennas, a screening structure that is architecturally compatible with the building on which it is mounted may also be required as a condition of approval. Antenna panels mounted flush on the outside of the parapet wall of an existing building and painted to match the exterior of the building may be allowed.

The proposed wireless communications facility is a new tower, not a co-location on an existing structure Therefore, this section does not apply.

- G. Radio Frequency Exposure. No communication facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end, no communications facility or combination of facilities shall produce at any time power densities that exceed the current FCC adopted standards for human exposure to RF fields. Certification that a facility meets this standard is required. A copy of the certification from the FCC shall be submitted to the county.

All spectrum used by both railroad users and wireless providers are solely regulated by the FCC which includes the power densities, therefore, no signals will exceed the current FCC adopted standards for human exposure.

- H. Cabling. For structure-mounted antennas, all visible cabling between equipment and antennas shall be routed within the building wherever feasible, or on the roof below the parapet wall. Cabling on the exterior of a building or monopole shall be located within cable trays painted to match. All cabling shall be performed in accordance with the NEC (National Electrical Code).

All cabling is proposed to run along the legs of the tower and will be in accordance with the NEC guidelines. In the event that any future cabling needs to be on the exterior of the tower, a cable tray painted to match the tower will be used.

- I. Painting and Lighting. All facilities shall be painted or constructed of materials to minimize visual impact. All towers shall be painted in a non-reflective and preferably earth tone color. All towers shall be lit with approved lighting as required by the FAA and the Airport Land Use Commissions Standards.

The proposed tower is going to be galvanized metal which is a non-reflective material. The proposed tower is going to be 200'-0" with a 10'-0" lightning rod for a total height of 210'-0" which is above the 200' threshold requiring lighting per the FAA. Therefore, lighting will be required.

- J. Noise. All communication facilities shall be designed to minimize noise. If a facility is located in or within one hundred (100) feet of a residential zone, noise attenuation measures shall be included to reduce noise levels to a maximum exterior noise level of fifty (50) L dn at the facility site's property lines.

The proposed wireless communications facility does not generate significant noise. The proposed facility will not initially have a back-up generator, therefore there will be no noise generated at the site. There are no residential zone parcels within one hundred (100) feet of the proposed facility. Therefore no noise attenuation measures will be necessary.

- K. Accessory Structures. Enclosures and cabinets housing equipment related to a wireless communication facility shall meet setback and height restrictions for such structures in their zones. Such structures shall appear architecturally compatible (as determined by the planning director evaluating the facility on the basis of color and materials) with their surroundings and be designed to minimize their visual impact. To meet this requirement, underground vaults may be required.

The proposed facility will be in compliance with all local, state and federal guidelines, therefore the zero setback will be applicable. Additionally, the equipment will be architecturally compatible with the rest of the communications facility and surrounding area.

- L. Roads and Parking. Communication facilities shall be served by the minimum roads and parking areas necessary and shall use existing roads and parking areas whenever possible.

A 12' wide gravel access road is proposed to run parallel to the train tracks in the Union Pacific right-of-way. The access road will connect to East Keystone Road.

- M. Provisions for Future Co-location. All commercial communication facilities shall be encouraged to promote future facility and site sharing. Technical evidence will be provided as to the infeasibility either technical and/or economic, of co-location or grouping prior to the issuance of a new use permit for a facility that would not be considered to be co-located or grouped under this ordinance.

There is an existing tower owned by SBA Structures, LLC which is located approximately 0.18 miles north of the proposed tower site. AT&T is currently co-located on that tower, however, the lease rate has sharply increased over the term of the agreement and has caused an economic burden which is shown in the attached Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC As shown on the drawings the proposed tower is designed to potentially add five additional future carriers.

- N. Removal Upon Discontinuation of Use. All equipment associated with a communication facility shall be removed within one hundred eighty (180) days of the discontinuation of the use and the site shall be restored to its original pre-construction condition. The operator's agreeing to such removal and allowing the county access across private property to effect such removal shall be a condition of approval of each permit issued. At its discretion, the county may require a financial guarantee acceptable to the county to ensure removal.

CitySwitch agrees to removal of the tower in the event it is no longer in use for more than 180 days as a condition of the Conditional Use approval.

- O. Principal or Accessory Use. Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

The proposed wireless communications facility is an accessory use on the property to the principal use of the railroad. As stated above, this will not preclude the installation of antennas on within the right-of-way.

- P. Lot Size. For purposes of determining whether the installation of a facility complies with county development regulations, including, but not limited to, setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on lease parcels within such lot. This shall also take into consideration the height of the tower in the event of a failure whereby it could fall thereby crossing property lines.

The proposed tower will be designed to collapse onto itself in the unlikely event of a failure. The surrounding area is desert, so even an unlikely failure will not have an impact.

- Q. Inventory of Existing Sites. Each applicant for a facility shall provide to the planning director an inventory of its existing towers, antennas, or sites approved for facilities, that are either within the jurisdiction of Imperial County or within one mile of the border thereof, including specific information about the location, height and design of each facility. The planning director may share such information with other applicants applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate facilities within the jurisdiction of Imperial County, provided, however that the planning director is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

See attached Coverage Plots.

- R. Aesthetics. Towers and antennas shall meet the following requirements:

- a. Towers shall either maintain a galvanized steel finish, or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obstructiveness.

The proposed tower will maintain a galvanized steel finish so as to reduce visual obstructiveness.

- b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

The proposed support equipment will consist of galvanized metal equipment cabinets that are similar to gym lockers. The materials will match the tower and fit in with the natural surroundings.

- c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is

identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobstructive as possible.

The proposed wireless communications facility is a new tower, not a co-location on an existing structure, therefore this provision does not apply.

- S. Lighting. Towers shall not artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views and community.

The proposed tower is going to be 200'-0" with a 10'-0" lightning rod for a total height of 210'-0" which is not below the 200' threshold requiring lighting per the FAA, therefore lighting will be required.

- T. State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations as mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

The proposed tower will meet and / or exceed all FAA, FCC and any other agencies of the State of California or federal government with authority to regulate towers and antennas. In the event of a change in regulations, CitySwitch and the providers co-located on the tower will make their equipment compliant.

- U. Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the county concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

CitySwitch will be compliant with all Electronic Industries Association along with any local, state or federal guidelines relating to the construction and maintenance of the communications facility.

- V. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the unincorporated areas of the county of Imperial according to the provisions of Title 9 for the respective base zone.

Noted, the setbacks are shown on the drawings and the separation distance has been calculated based on the coordinates of the existing tower and the coordinates for the SBA tower shown on the FCC ASR Search website.

- W. Not Essential Services. Towers and antennas shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities or private utilities.

CitySwitch, Union Pacific, and AT&T Mobility are private corporations and are not essential service providers.

- X. Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a communication system in Imperial County have been obtained and shall file a copy of all required franchises with the planning director.

Any required certifications of franchise will be filed with Imperial County as required.

- Y. Public Notice. For purposes of this ordinance, any conditional use permit request, variance request, or appeal of an administratively approved CUP or special use permit shall require public notice to all abutting property owners and all property owners of properties that are located within the corresponding separation distance listed for a CUP or variance in the respective base zone, under Title 9, in addition to any notice otherwise required by the planning director.

CitySwitch will comply with any notice obligations for the CUP process, to the extent the public notice is not required by Imperial County.

- Z. Signs. No signs shall be allowed on an antenna or tower except as may be required by law or another permitting or licensing agency.

The only signage displayed on the communications facility site will be that which is required by federal regulations, specifically those signs needed for health and safety reasons.

- AA. Buildings and Support Equipment. Buildings and support equipment associated with antennas or towers shall comply with requirements of Title 9.

All support equipment used in the communications facility will comply with the requirements of Title 9.

BB. Multiple Antenna/Tower Plan. Imperial County encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

CitySwitch is submitting three (3) total applications for sites within Imperial County.

Compliance with Section 92405.01 – Wireless Communications Permitting Requirements

All communication facilities not specifically exempted from these regulations are subject to one of the two permit processes described below. Both processes include a conditional use permit and may have a concurrent variance. Applications for all permits required pursuant to this division shall be made in writing on a form prescribed by the planning director, and shall be accompanied by plans and data to assure the fullest practical presentation of facts for the permanent record. Such application shall be accompanied by a fee or fees as may be set by the board of supervisors. No part of such fee shall be refundable.

- A. Conditional Use Permit before the planning director. Certain communication facilities may be conditionally approved by the planning director, as described in this subsection.
 - 1. Qualifying Facilities. The following types of communication facilities qualify for a use permit before the planning director:
 - a. Receive-only radio and television antennas and satellite dishes or antennas that do not qualify for exemption under Section 92401.3, including multiple antennas or dishes on a single parcel.
 - b. Amateur radio facilities that do not qualify for exemption under Section 92401.3. When required, a conditional use permit before the planning director shall be granted to amateur radio operators with no fee.
 - c. Communication facilities installed on publicly owned property, regardless of zone, provided they comply with the general requirements in Section 92401.04 and hold an executed license or lease agreement.
 - d. Co-located communication facilities, regardless of zone, provided they comply with the general requirements in Section 92401.04.

The proposed wireless communications is located within the Union Pacific right-of-way and does not qualify for a CUP before the Planning Director.

- 2. Required Findings. In order for the planning director to approve a proposed communication facility under a conditional use permit, the planning director shall make the findings required for a conditional use permit, as well as, the following additional findings:
 - a. The facility complies with all applicable Section 92401.04.

The application includes all items required in Section 92401.04 and complies with all requirements in said section.

- a. Locating a tower, antenna or facility, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, in any industrial or heavy commercial zone or a grouped facility.
- b. Locating antennas or existing structures or towers consistent with the terms of subsections (1) and (2) below.
 - (1) Antennas on existing structures. Any antenna, which is not attached to a tower, may be approved by the planning director as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of eight or more dwelling units, provided:
 - (a) The antenna does not extend more than thirty (30) feet above the highest point of the structure;
 - (b) The antenna complies with all applicable FCC and FAA regulations;
 - (c) The antenna complies with all applicable building codes.
 - (2) Antennas on existing towers. An antenna which is attached to an existing tower may be approved by the planning director and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:
 - (a) A tower which is modified or reconstructed to accommodate to collocation of an additional antenna shall be of the same tower type as the existing tower, unless the planning director allows reconstruction as a monopole.
 - (b) Height.
 - (i) An existing tower may be modified or rebuilt to a taller height, not to exceed thirty (30) feet over the tower's existing height, to accommodate the collocation of an additional antenna.
 - (ii) The height change referred to in subsection (b)(i) may only occur one time per communication tower.
 - (iii) The additional height referred to in subsection (c)(i) shall not require an additional distance separation. The tower's premodification height shall be used to calculate such distance separation.
 - (c) On-site location.
 - (i) A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within fifty (50) feet of its existing location.
 - (ii) After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.
 - (iii) A relocation onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to the base zone.
 - (iv) The onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands shall only be permitted when approved by the planning director.

- c. New towers in nonresidential zones. Locating any new tower in a nonresidential zone other than industrial or heavy commercial, provided a licensed professional engineer certifies that the tower can structurally accommodate the number of shared users proposed by the applicant; the planning director concludes the tower is in conformity with the goals set forth in [Section] 92401.00 and the requirements of Section 92401.04; the tower meets all setback and separation requirements of the base zone; and the tower meets the following height and usage criteria:
 - (1) For a single user, up to ninety (90) feet in height;
 - (2) For two users, up to one hundred twenty (120) feet in height; and
 - (3) For three or more users, up to one hundred twenty (120) feet in height; and
 - (4) For four or more users up to one hundred eighty (180) feet in height.
- d. Locating any alternative tower structure in a zone other than industrial or heavy commercial that in the judgment of the planning director is in conformity with the goals set forth in Section 92401.00 of this ordinance.
- e. Installing a cable microcell network through the use of multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

The proposed wireless telecommunications facility requires a CUP and a Variance for height. Therefore, this site does not meet the criteria for an Administratively Approved site.

- B. Conditional Use Permit before the planning commission. All other communication facilities or any facility requiring an exception to these regulations shall require a conditional use permit with a public hearing before the planning commission.
 - 1. Qualifying Facilities. A conditional use permit is required for any communication facility that is not exempt under these regulations and that does not qualify for a conditional use permit before the planning director.

The proposed 200'-0" self-support lattice tower is not exempt under Section 92401. Therefore, a Conditional Use Permit and Variance for height are required.

- 2. Required Findings. In order for the planning commission to approve a proposed communication facility under a conditional use permit, the commission shall make the findings required for a conditional use permit, as well as the following additional findings:
 - a. No alternative site or design is available that would allow for issuance of a conditional use permit before the planning director for the facility. This finding shall be based on the results of an alternatives analysis, as described in Section 92401.06, below.

AT&T Mobility is currently located on the existing SBA tower which is approximately 0.18 miles south of the proposed location. At the current lease rate, AT&T is burdened by the high rent, as stated in the attached Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC. Should SBA be allowed to continue charging above market rates, AT&T will not be able to upgrade its equipment and stay competitive in the market.

- b. Facility either 1) does not require an RF environmental evaluation report as described in Section 92401.08, or 2) the RF environmental evaluation report for the facility shows that the cumulative radio frequency exposure emitted by the facility and any nearby facilities will be consistent with FCC regulations.

The proposed installation is not required to included a RF Environmental Evaluation Report as spelled out in Section Section 92401.08.

- c. The facility blends in with its existing environment and will not have significant visual impacts.

As stated above, the proposed facility is located in a vacant field. The proposed facility will not have a significant visual impact on the surrounding area.

- 4. Conditional Use Permit Process. Applications for conditional use permits under this subsection shall conform to the requirements of Section 92401.04 and shall be subject to the procedures and requirements of Title 9 relating to the granting of conditional use permits.

The proposed application is in conformity with Section 92401.04 and Title 9 relating to the granting of the Conditional Use Permit.

- 5. Conditions. In granting a conditional use permit, the planning commission may impose conditions to the extent the planning commission concludes such conditions are necessary to minimize any adverse effects if the proposed facilities on adjoining properties.

CitySwitch is aware that the Planning Commission may impose conditions on the Conditional Use Permit to minimize adverse effects on the adjoining properties. The proposed location is in a vacant field with no residential use in the area and will designed to mininimize the adverse effects of this application. Further, CitySwitch will work with the County Officials to provide the best possible design for the proposed site.

6. **Professional Engineer.** Any information of an engineering nature that the applicant submits, whether civil, mechanical or electrical, shall be certified by a licensed professional engineer.

All required information relating to the engineering of this site will be certified a California licensed professional engineer, including all civil, mechanical or electrical documents.

Conditional Use Permit Standards

90203.09 Action on a conditional use permit.

An application for a conditional use permit shall be reviewed, and approved, conditionally approved, or denied by the decision-making authority.

The authority may approve or conditionally approve an application only if it finds all of the following:

- A. The proposed use is consistent with the goals and policies of the adopted county general plan;

Legislative Mandate

For the reasons stated above, the California legislature has established the General Plan as the comprehensive statement of public policy by which to evaluate all decisions regarding the development of land, the extension of public infrastructure, and the conservation and wise use of natural resources.

Although wireless telecommunications is not technically the extension of public infrastructure, it does serve the general public as a service that is essential to the fabric of Imperial County. Wireless technology has become as important to society as all other forms of public infrastructure such as roads, water, electricity and others.

County Population

The West Shores communities of Salton City, Salton Sea Beach, and Desert Shores are also largely retirement and recreation communities, though increasingly their populations are becoming more diversified. These communities experience a noticeable increase in population during the winter months when visitors converge to the area to avoid cold, wet winters in other parts of the United States and Canada.

The comprehensive plan acknowledges the influx of “snow-birds” in the winter months causing a noticeable increase in the population. A robust wireless infrastructure is essential to the common good of the population of Imperial County because with the seasonal change in population, a strong wireless network is critical.

Public Safety

Additional public safety is provided by the County Fire Department/Office of Emergency Services in cooperation with the Incorporated cities and volunteer units in the unincorporated communities. The County Fire Department's main facility is located at the County Airport in Imperial.

Companies like CitySwitch have worked with local emergency service agencies to allow for the placement of equipment in and around their facilities. Additionally, with AT&T co-locating on the tower, 5G will be a part of the installation. 5G technology is used by first responders to create a network which supports their needs in the time of crisis which will provide better response times and services by local emergency services.

- B. The proposed use is consistent with the purpose of the zone or sub-zone within which the use will be located;

The proposed communications facility is consistent with the with the purpose of the zone within which it will be located. Per Section 90519.00, the "primary intent" of the A-2 zone is "to preserve the cultural, biological, and open space areas that are rich and natural as well as cultural resources. The A-2 zone is dominated by native desert habitat and stark topographic features. While certain uses are allowed within the A-2 zone, such uses must be compatible with the intent of the open space and conservation element of the general plan."

In this case, a communications facility is an allowable use in the zone with conditional use approval. The site is located at the southwest corner of East Keystone and Highway 115 and will serve to ensure a robust wireless network for AT&T and Union Pacific in this area.

- C. The proposed use is listed as a use within the zone or sub-zone or is found to be similar to a listed conditional use according to the procedures of Section 90203.10;

Communications towers are an articulated conditional use in the A-2 (General Agriculture) zone pursuant to Section 90519.02(d) of the Imperial County Zoning Ordinance.

- D. The proposed use meets the minimum requirements of this title applicable to the use and complies with all applicable laws, ordinances and regulations of the county of Imperial and the state of California;

The proposed communications facility meets the minimum requirements of this title applicable to the use as addressed above and complies with all applicable laws, ordinances and regulations of Imperial County and the State of California.

- E. The proposed use will not be detrimental to the health, safety, and welfare of the public or to the property and residents in the vicinity;

Due to the diminutive size of the proposed equipment, it will not have an adverse effect on the surrounding properties nor the character of the area. Wireless transmissions do not interfere with any other form of communications whether public

or private, or in any way endanger the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors. Wireless telephones provide an alternate communication system which has repeatedly proven its effectiveness in emergency situations and is commonly being used by police and fire departments to protect the general public's health, safety, and welfare. All wireless telecommunications facilities are governed by FCC and FAA regulations. As such, all spectrum used to provide a wireless signal are allocated by the FCC which has deemed the signals will not cause any health-related affects.

- F. The proposed use does not violate any other law or ordinance;

The application on behalf of CitySwitch, Union Pacific and AT&T conforms to the applicable regulations of the A-2 zone and the facility in allowable as a conditional use in that zone. The proposed wireless telecommunications facility is also designed to conform to all federal, state and local regulations.

- G. The proposed use is not granting a special privilege.

No special privilege will be granted to CitySwitch, Union Pacific or AT&T by granting the Conditional Use Permit. AT&T is currently located on an existing tower owned by SBA Structures, LLC approximately 0.18 miles south of the proposed location. At the current lease rate, AT&T is burdened by the high rent, as stated in the attached Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC. Should SBA be allowed to continue charging above market rates, AT&T will not be able to upgrade its equipment and stay competitive in the market.

Variance Standards

The planning director, the planning commission and/or the board of supervisors, shall approve, approve subject to conditions or disapprove a variance with the following findings:

A. Findings. Approval or conditional approval may be granted only if the director/commission/board of supervisors first determines that the variance satisfies the criteria set forth in Government Code Section 65906, and the following findings can be made:

1. That there are special circumstances applicable to the property described in the variance application, that do not apply generally to the property or class of use in the same zone or vicinity;

The proposed location has special circumstances that are not applicable to other properties in the area. The proposed location is in a vacant field and will host communication equipment for railroad use and will also service wireless providers. The property is also located within the desert, there are no residential properties in the area that would be affected.

2. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or vicinity in which the property is located;

The proposed variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or vicinity. The area is a mostly undeveloped area in the desert located as the southwest corner of the intersection of East Keystone and Highway 115. The location is far removed from any residential uses.

3. That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of zoning laws is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications;

There are special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of zoning laws is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications. The proposed location is a vacant field and will host communication equipment that will service wireless providers along with the railroad's needs. The height required for the proposed tower is necessary to allow for the Union Pacific Railroad and AT&T to utilize the tower to provide the necessary signal.

4. That the granting of such variance will not adversely affect the comprehensive general plan.

The granting of such variance will not adversely affect the comprehensive general plan. As previously stated:

Legislative Mandate

For the reasons stated above, the California legislature has established the General Plan as the comprehensive statement of public policy by which to evaluate all decisions regarding the development of land, the extension of public infrastructure, and the conservation and wise use of natural resources.

Although wireless telecommunications is not technically the extension of public infrastructure, it does serve the general public as a service that is essential to the fabric of Imperial County. Wireless technology has become as important to society as all other forms of public infrastructure such as roads, water, electricity and others.

County Population

The West Shores communities of Salton City, Salton Sea Beach, and Desert Shores are also largely retirement and recreation communities, though increasingly their populations are becoming more diversified. These communities experience a noticeable increase in population during the winter months when visitors converge to the area to avoid cold, wet winters in other parts of the United States and Canada.

The comprehensive plan acknowledges the influx of "snow-birds" in the winter months causing a noticeable increase in the population. A robust wireless infrastructure is essential to the common good of the population of Imperial County because with the seasonal change in population, a strong wireless network is critical.

Public Safety

Additional public safety is provided by the County Fire Department/Office of Emergency Services in cooperation with the incorporated cities and volunteer units in the unincorporated communities. The County Fire Department's main facility is located at the County Airport in Imperial.

Companies like CitySwitch have worked with local emergency service agencies to allow for the placement of equipment in and around their facilities. Additionally, with AT&T co-locating on the tower, 5G will be a part of the installation. 5G technology is used by first responders to create a network which supports their needs in the time of crisis which will provide better response times and services by local emergency services.

B. Conditions of Approval. In approving a variance, the director/commission/board of supervisors may impose such conditions deemed necessary to enable making the findings listed under subsection A of this section.

C. Denial of Variance. Where the director/commission/board of supervisors cannot make the findings under subsection A of this section (with or without conditions) the variance shall be denied.

Alternatives Analysis

For a facility requiring a conditional use permit before the planning commission, an alternatives analysis shall be prepared by or on behalf of the operator, as described below.

- A. Alternatives to be Considered. The alternatives analysis shall consider alternative locations and designs for the proposed facility, including those which would not require a conditional use permit. At a minimum, alternatives included in the analysis shall include: (1) co-location at all existing communication facilities whether in the unincorporated area of the county, a city or an adjacent county; (2) lower, more closely spaced communication facilities; and (3) mounting on any existing nonresidential structure within one-half mile of the proposed facility in the unincorporated area of Imperial County. The alternatives analyzed shall be approved by the planning director. For facilities to be located near an incorporated city, the analysis shall also explain why siting within the city is not possible.

Union Pacific and AT&T have considered co-location on existing facilities and deemed that no other tower in the area is appropriate for the following reasons.

(1) As stated in previous narrative, AT&T is currently on an SBA Structures, LLC tower approximately 0.18 miles south of the proposed CitySwitch facility. AT&T has deemed this tower to be economically burdensome as shown in the attached Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC. In addition, Union Pacific requires direct access to their equipment along the railroad line and the ability to upgrade as needed which would be much more difficult locating on the SBA tower.

(2) Providing lower towers more closely spaced out would not benefit AT&T, Union Pacific or the County. When evaluating a network, carriers such as AT&T require specific height and locations based on the existing network. Lowering the height and building more towers would create a degradation of the signal in the area. Doing this would create coverage gaps in some areas and a bleed over into other cell sites.

(3) AT&T is currently on an SBA Structures, LLC tower approximately 0.18 miles south of the proposed CitySwitch facility. The proposed tower is in a non-residential area, near the intersection of East Keystone and Highway 115. The nearest incorporated city is Brawley, California which is approximately 7 miles northwest of the proposed tower which would not be a possible alternative. As stated above, due to the economic burden on AT&T it is no longer desirable to co-locate on this tower.

- B. Findings. The alternatives analysis shall show whether or not the proposed siting and design would have the least possible environmental and visual effect on the community and whether any alternative site or design is available that would allow for issuance of a conditional use permit before the planning director for the facility.

The proposed location for the CitySwitch communications facility is in a vacant field southwest of the intersection of East Keystone and Highway 115. The proposed location is in the desert in an unpopulated area. With the SBA tower being located 0.18 miles south of the proposed facility, Imperial County has already deemed that a communications facility would be visually acceptable in this area. Additionally, CitySwitch has chosen to use a self-support lattice design for the tower which is the least obtrusive design for a 200' tower in this area.

- C. Review. The planning director may, at his or her discretion, employ on behalf of the county an independent technical expert to review this alternative analysis. The operator shall bear the reasonable costs of this review.

Based on the information submitted in the Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC, included as part of this application, CitySwitch believes a third party is not necessary, however, if deemed necessary by the planning director, CitySwitch will bear the reasonable costs for this review.

**Sworn Statement of Spencer Gambrell in
Support of New Tower Construction from
AT&T Mobility Services LLC**



AT&T Mobility Services LLC
Tower Strategy
17000 Cantrell Rd.
Little Rock, Arkansas 72201

**SWORN STATEMENT OF SPENCER GAMBRELL IN SUPPORT OF NEW TOWER
CONSTRUCTION**

BY **CitySwitch II-A, LLC**

PULASKI COUNTY)
) ss.
STATE OF ARKANSAS)

SPENCER GAMBRELL , being first duly sworn on oath, deposes and says that:

1. I am an adult resident of the State of Arkansas and serve as Director-Network Planning for AT&T Wireless (“AT&T”).

2. I manage AT&T’s high-rent relocation program, under which AT&T identifies high-cost or economically burdensome antenna site leases that accommodate AT&T’s communications equipment and materially inhibits AT&T from improving or maintaining wireless services and relocates its communications equipment onto lower-cost alternative antenna site lease locations to either improve or maintain wireless coverage.

3. I am familiar with the proposed tower to be constructed by **CitySwitch II-A, LLC** (“CitySwitch”) at **Near East Keystone Road, Brawley, California 92227, APN 041-200-008** (the “CitySwitch Tower”). I am also familiar with the existing communications tower (the “SBA Tower”) owned by **SBA Towers II, LLC (“SBA”)** which is located at 3574 Highway 115, Brawley, California 92227. Both the existing **SBA** Tower and the location of the proposed **CitySwitch** Tower are located in AT&T’s coverage search ring for this part of **Imperial County**.

4. AT&T currently leases space on the SBA Tower, along with related ground space at the base of the SBA Tower, to locate its communications equipment (the “Wireless Facilities”). AT&T has located its Wireless Facilities on the **SBA** Tower since **[6/27/2013]** but AT&T now desires to relocate its Wireless

Brawley
CA #15797964

Facilities onto the CitySwitch Tower as the SBA Tower has become a high-cost antenna site structure for AT&T.

5. This sworn statement is made to attest that having its Wireless Facilities remain on the SBA Tower, which is the only existing communications support structure in AT&T's search ring, is economically burdensome for AT&T and would not result in the same cost-effective operation as compared to what AT&T could achieve if it relocated its Wireless Facilities to the CitySwitch Tower and, thus, would materially inhibit AT&T from improving and maintaining wireless services.

Co-Location on the SBA Tower is Economically Burdensome.

6. AT&T maintains a co-location agreement with SBA for the SBA Tower. Under this agreement, SBA increases the rent, assesses other costs and poses other logistical issues when AT&T installs additional Wireless Facilities on the SBA Tower. AT&T anticipates future rent increases and costs from SBA if it remains co-located at the SBA Tower. Those rent increases and costs would result from, among other things, AT&T's equipment rights on the SBA Tower.

7. The current rent charged by SBA to co-locate on the SBA Tower is over [Two] times what CitySwitch will charge AT&T to co-locate on the CitySwitch Tower. Pursuant to the agreement between AT&T and CitySwitch, annual rent increases are less than the annual rent increases charged by SBA. At the current rate of rent increases, over the next twenty (20) years, the difference in rent paid by AT&T to remain on the SBA Tower versus relocating on the CitySwitch Tower is well over [Three] million dollars.

8. Since AT&T located on the SBA Tower in [6/27/2013], rent and escalators have become more competitive in the tower marketplace. New tower companies have entered the marketplace since [6/27/2013], which has also led to more competitive economic terms in tower lease agreements. Considering these competitive economic terms from other tower companies, AT&T has requested tower rent reductions from SBA. Unlike other tower companies, SBA has resisted an economically sustainable cost structure with its existing AT&T co-location leases, such that many of these leases have become economically burdensome for AT&T.

9. Decommissioning an existing Wireless Facility in favor of moving to an alternate tower location is something AT&T will only do in limited circumstances. AT&T will bear a significant capital cost in decommissioning its Wireless Facilities installation on the SBA Tower and relocating to the CitySwitch Tower. Despite these relocation costs, the CitySwitch Tower remains a better co-location option for AT&T.

10. AT&T has made this determination because the current rents and other charges to co-locate on the SBA Tower have been categorized as high-cost as compared to other existing sites in AT&T's portfolio and the rents charged by other tower companies, such as CitySwitch.

11. AT&T has entered into nationwide development and master lease agreements with CitySwitch, which I am familiar with. Under these agreements, CitySwitch will construct, at its own expense, its own communications towers upon which AT&T will lease space to install its Wireless Facilities. AT&T does not bear any costs for the construction of a tower owned by CitySwitch.

12. Per these agreements and as is the case with the CitySwitch Tower, AT&T pays CitySwitch rent in return for 30,000 square inches of wind load surface area of loading and defined space on each tower and does not pay increased rent for additions to its Wireless Facilities provided said facilities remain within the predetermined space and loading limits. The agreed upon tower space and loading limits have taken into consideration the future additions and upgrades projected for AT&T's Wireless Facilities.

13. There are no other structures (other than the SBA Tower) located in AT&T's search ring capable of accommodating its Wireless Facilities.

14. The economic terms imposed upon AT&T by SBA to remain co-located on the SBA Tower are not cost-effective and are economically burdensome for AT&T especially when the nearby CitySwitch Tower presents a more competitive and flexible co-location option.

The CitySwitch Tower Provides Superior Mobile Service Functionality.

15. Technological changes and market trends in the wireless communications industry require AT&T to continuously upgrade its Wireless Facilities. AT&T is also obligated to build out FirstNet, which is our country's first nationwide integrated data network for providers of emergency services.

AT&T's lease agreement for the **SBA** Tower does not include "set aside" capacity reserved for the future needs of AT&T's Wireless Facilities. Every time AT&T desires to improve the Wireless Facilities installed on the **SBA** Tower, it must apply to **SBA** which then triggers an application fee and a lengthy administrative review process, which typically includes a structural analysis of the tower and an amendment to the existing lease agreement. This administrative process may take several months and results in unnecessary time delay and additional costs in the deployment of the upgraded Wireless Facilities.

16. Conversely, AT&T's master tower lease agreement with **CitySwitch** allows AT&T to rent 30,000 square inches of tower space and loading on a **CitySwitch** Tower. This space and loading capacity is reserved exclusively for AT&T and will accommodate the needs for AT&T's Wireless Facilities well into the future. This arrangement benefits AT&T because it increases the speed of deploying Wireless Facilities and gives AT&T greater flexibility to upgrade technologies and respond to the ever-changing coverage and capacity demands of its wireless network and does not materially inhibit AT&T from improving and maintaining its wireless services. Provided it does not exceed the reserved space and capacity limits in the co-location agreement, AT&T is free to upgrade its Wireless Facilities on the **CitySwitch** Tower with little to no delay.

Spencer Gambrell



Subscribed and sworn to before me
this 28 day of February, 2023.



Notary Public State of Arkansas
My Commission Expires



Brawley
A #15797966

Carrier Coverage Plots

CAL03747

Coverage Plots

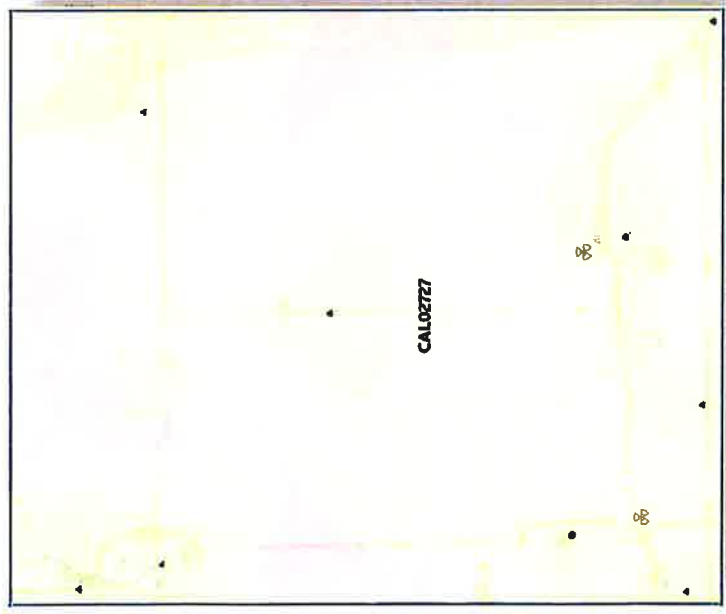
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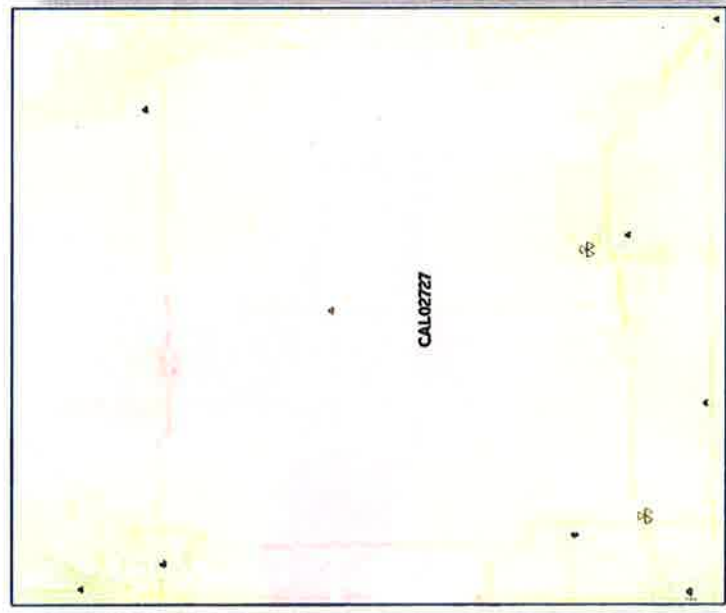
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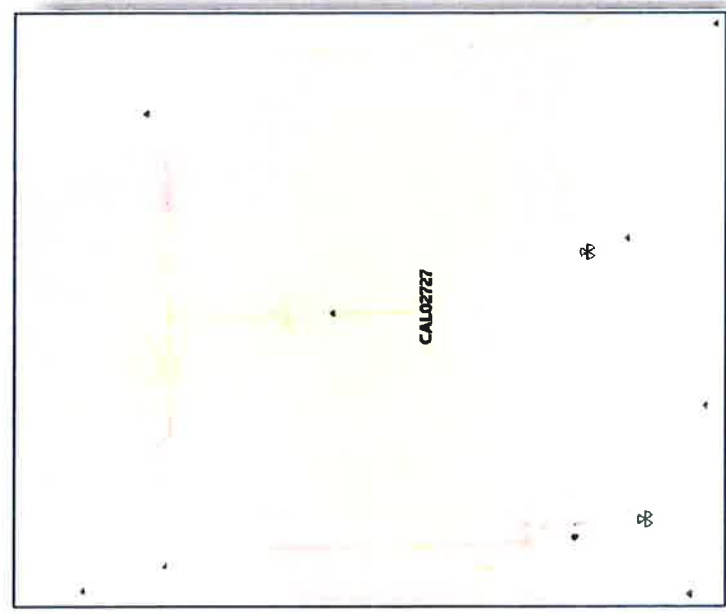
Existing coverage with existing site location



Coverage without site



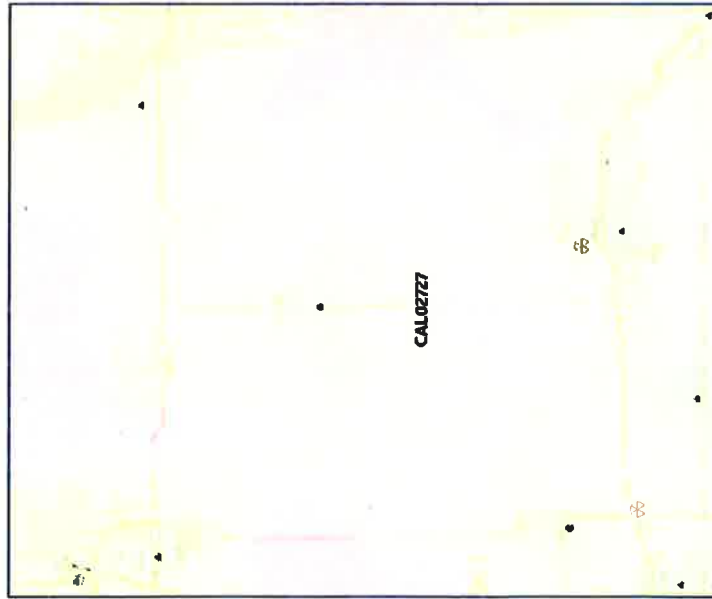
Existing location coverage only



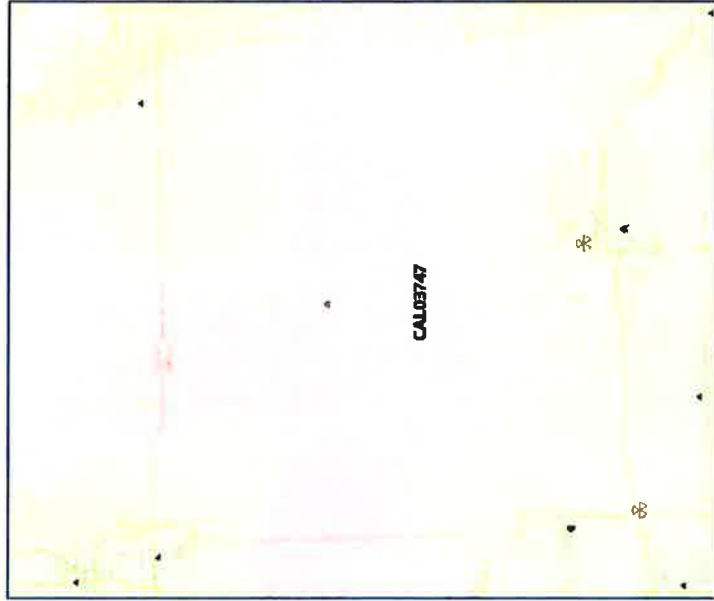
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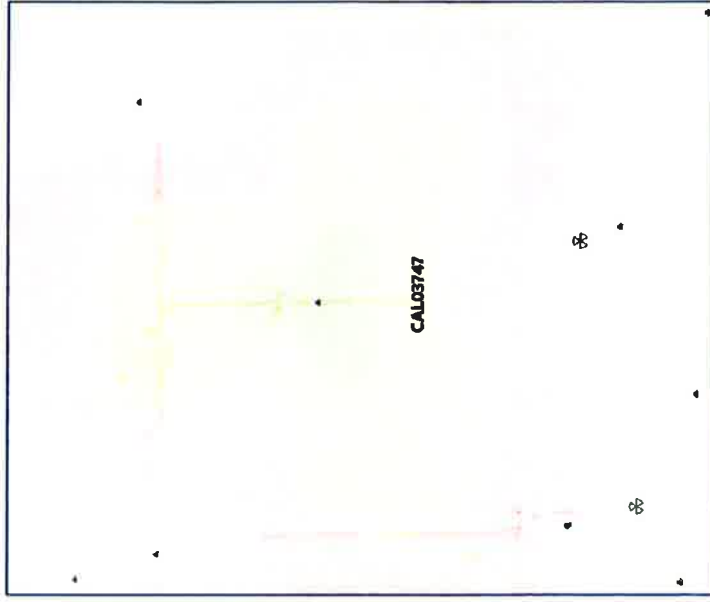
Existing coverage with new location



Coverage without site



New location coverage only



FAA Determination Letter



Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177

Aeronautical Study No.
2022-AWP-12869-OE

Issued Date: 08/29/2022

Leslie Lindeman
Palm-Tech Consulting, LLC
11365 Little Bear Way
Boca Raton, FL 33428

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Antenna Tower Brawley
Location:	Brawley, CA
Latitude:	32-54-58.38N NAD 83
Longitude:	115-24-21.22W
Heights:	-85 feet site elevation (SE) 200 feet above ground level (AGL) 115 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 M.

This determination expires on 02/29/2024 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO

SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (847) 294-7575, or vivian.vilaro@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2022-AWP-12869-OE.

Signature Control No: 539125699-551428762

(DNE)

Vivian Vilaro
Specialist

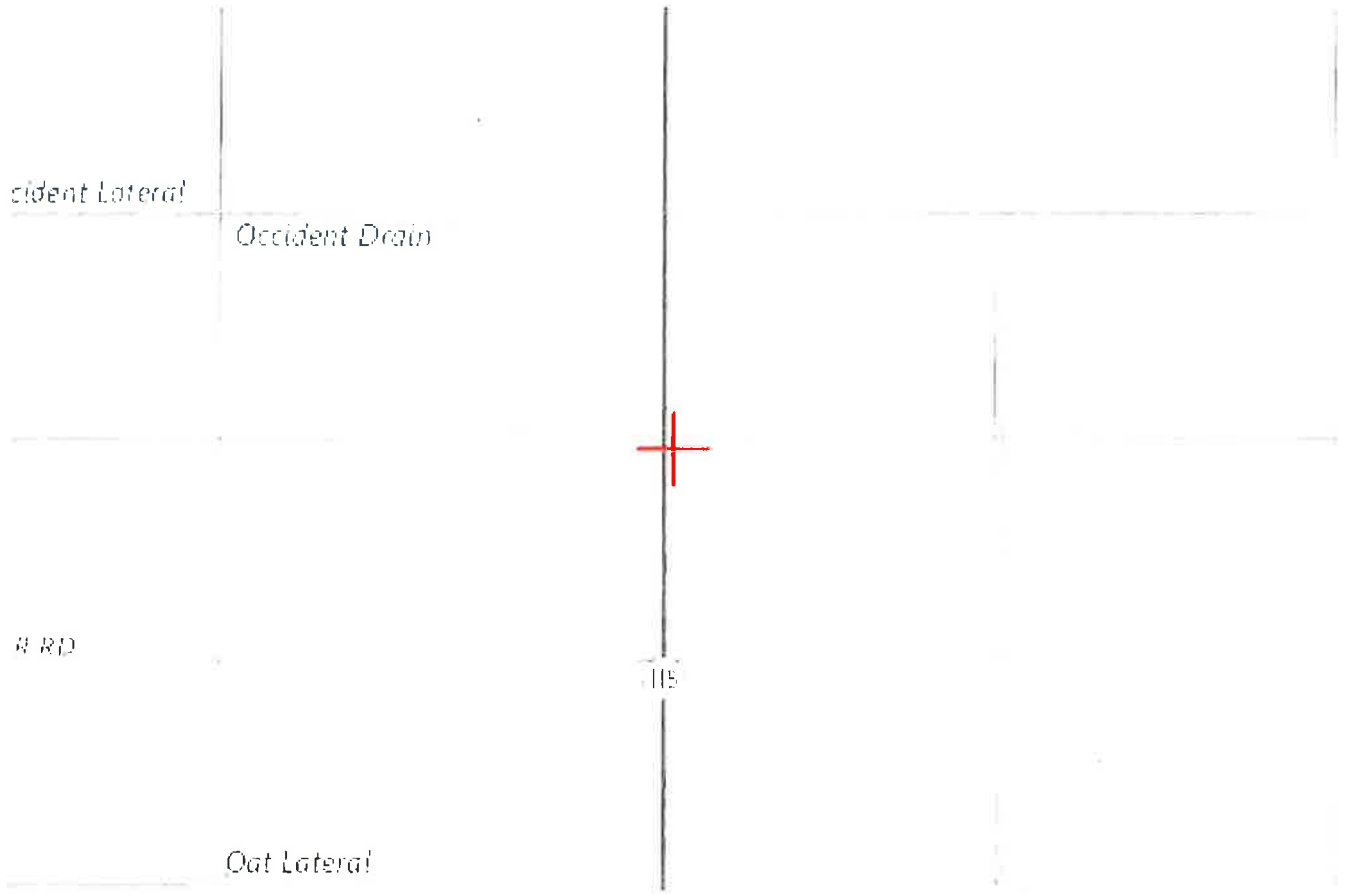
Attachment(s)
Frequency Data
Map(s)

cc: FCC

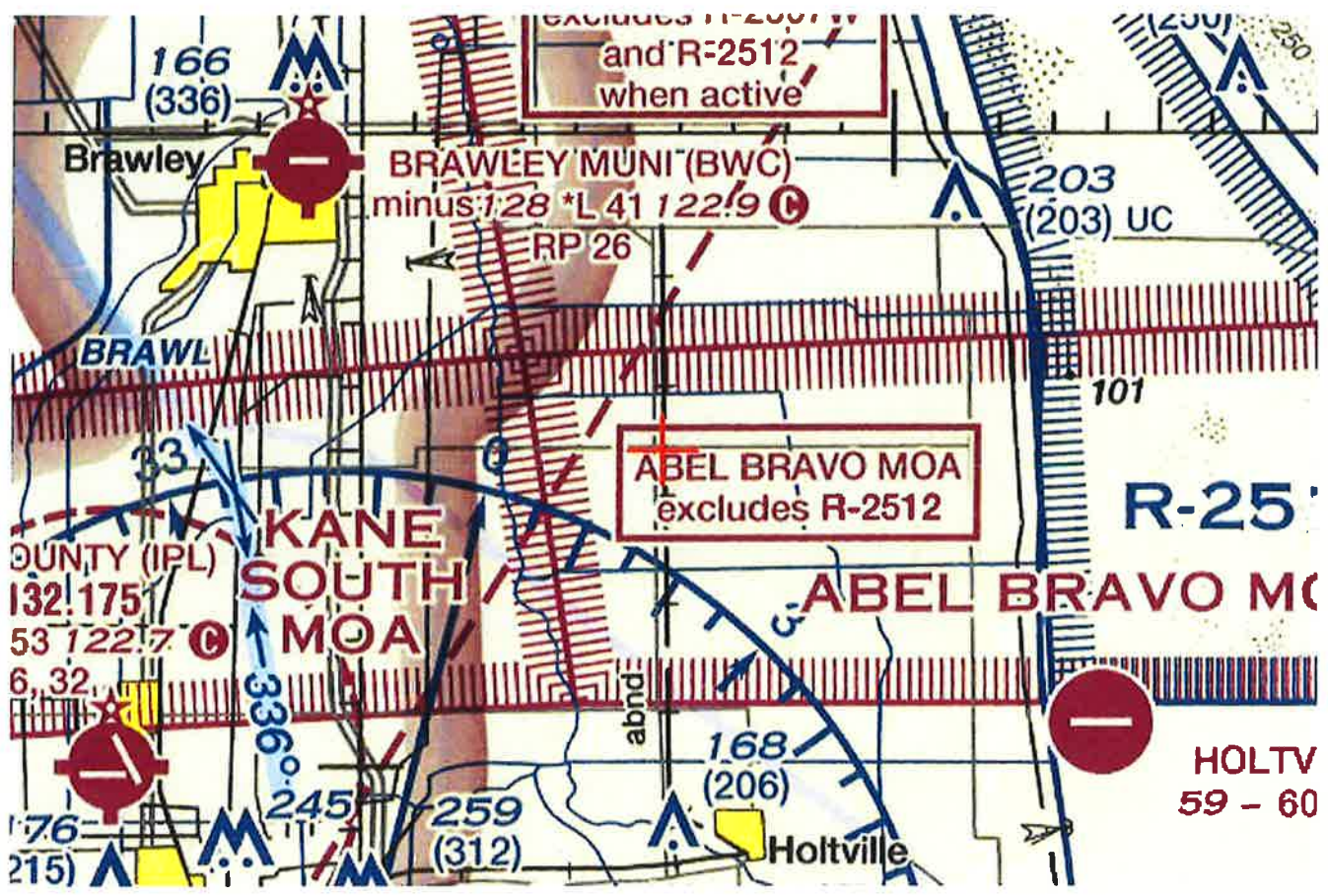
Frequency Data for ASN 2022-AWP-12869-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
6	7	GHz	55	dBW
6	7	GHz	42	dBW
10	11.7	GHz	55	dBW
10	11.7	GHz	42	dBW
17.7	19.7	GHz	55	dBW
17.7	19.7	GHz	42	dBW
21.2	23.6	GHz	55	dBW
21.2	23.6	GHz	42	dBW
614	698	MHz	1000	W
614	698	MHz	2000	W
698	806	MHz	1000	W
806	901	MHz	500	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
929	932	MHz	3500	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1670	1675	MHz	500	W
1710	1755	MHz	500	W
1850	1910	MHz	1640	W
1850	1990	MHz	1640	W
1930	1990	MHz	1640	W
1990	2025	MHz	500	W
2110	2200	MHz	500	W
2305	2360	MHz	2000	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W
2496	2690	MHz	500	W

TOPO Map for ASN 2022-AWP-12869-OE



Sectional Map for ASN 2022-AWP-12869-OE



Fall Zone Certification

March 3, 2023

Mr. Tim Cook
CitySwitch, LLC
1900 Century Place NE, Suite 320
Atlanta, GA 30345

RE: Proposed 200' Sabre Self-Supporting Tower for Brawley, CA

Dear Mr. Cook,

Upon receipt of order, we propose to design a tower for the above referenced project for a Basic Wind Speed of 98 mph, Risk Category II, Exposure Category C, and Topographic Category 1 in accordance with the Telecommunications Industry Association Standard ANSI/TIA-222-H, "Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Structures". The tower will also meet the requirements of the 2022 California Building Code.

When designed according to this standard, the wind pressures and steel strength capacities include several safety factors. Therefore, it is highly unlikely that the tower will fail structurally in a wind event where the design wind speed is exceeded within the range of the built-in safety factors.

Should the wind speed increase beyond the capacity of the built-in safety factors, to the point of failure of one or more structural elements, the most likely location of the failure would be within one or more of the tower members in the upper portion. This would result in a buckling failure mode, where the loaded member would bend beyond its elastic limit (beyond the point where the member would return to its original shape upon removal of the wind load).

Therefore, it is likely that the overall effect of such an extreme wind event would be localized buckling of a tower section. Assuming that the wind pressure profile is similar to that used to design the tower, the tower is most likely to buckle at the location of the highest combined stress ratio in the upper portion of the tower. This would result in the portion of the tower above the failure location "folding over" onto the portion of the tower below the failure location. *Please note that this letter only applies to the above referenced tower designed and manufactured by Sabre Industries.* In the unlikely event of total separation, this would result in a fall radius less than or equal to 30 feet.

Sincerely,



Keith J. Tindall, P.E.
Vice President, Telecom Engineering

Site Plan

ZONING DRAWINGS
NOT FOR CONSTRUCTION

DRAWN BY: [blank]
CHECKED BY: [blank]

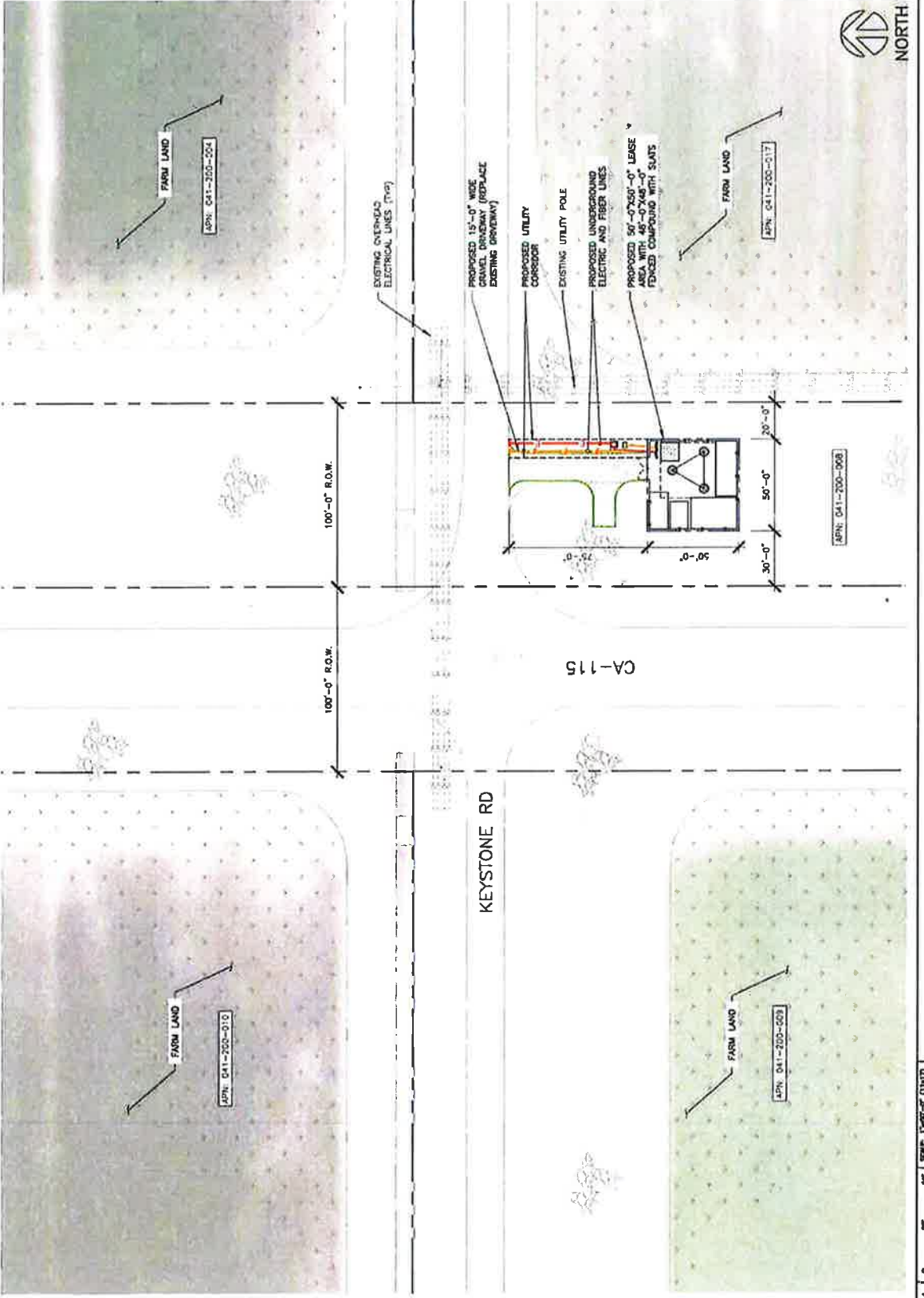
REV	DATE	DESCRIPTION
A	03/16/22	ZONING DRAWINGS
B	03/29/22	ZONING DRAWINGS
C	10/25/22	ZONING DRAWINGS

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SITE NAME:
BRAWLEY
SITE ADDRESS:
NEAR EAST KEYSTONE RD
BRAWLEY, CA 92227
IMPERIAL COUNTY

SHEET TITLE
OVERALL SITE PLAN

SHEET NUMBER
C-1



1 | SCALE: 1"=50'-0" (VERT) 1"=100'-0" (HORIZ) | OVERALL SITE PLAN

THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPERTY OF WESTCHESTER SERVICES, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF WESTCHESTER SERVICES, INC. OR THE STATE OF CALIFORNIA.



ZONING DRAWINGS
 NOT FOR CONSTRUCTION

DRAWN BY: SM
 CHECKED BY: RSM

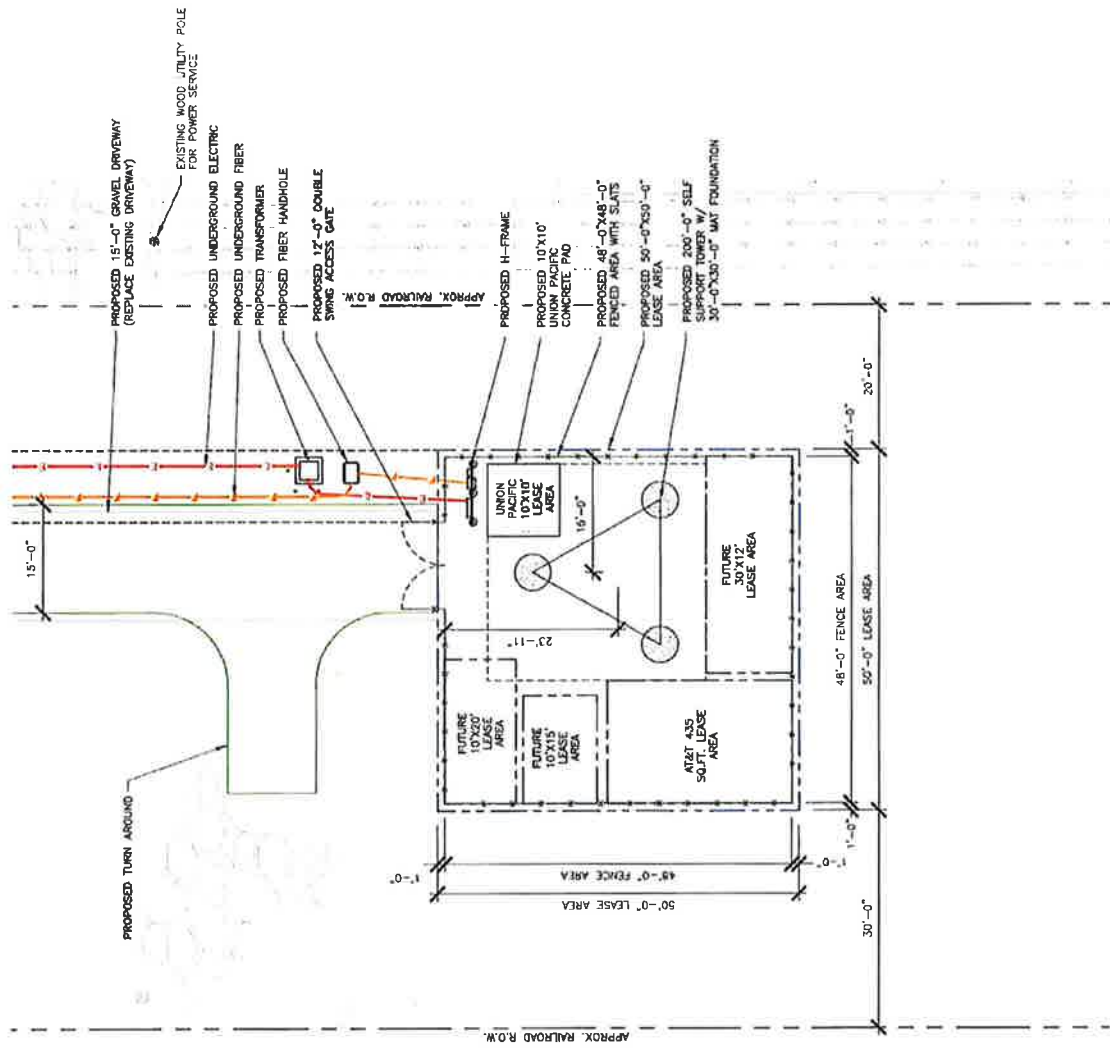
REV	DATE	DESCRIPTION
A	03/16/22	ZONING DRAWINGS
B	03/23/22	ZONING DRAWINGS
C	10/25/22	ZONING DRAWINGS

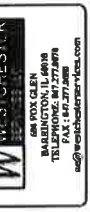
1. THESE DRAWINGS SHALL BE VALID FOR THE PROJECT AND SITE ONLY AND SHALL BE VOID FOR ANY OTHER PROJECTS OR SITES. ANY CHANGES TO THESE DRAWINGS SHALL BE MADE BY A DULY REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA.

SITE NAME:
 BRAWLEY
 SITE ADDRESS:
 NEAR EAST KEYSTONE RD
 BRAWLEY, CA 92227
 IMPERIAL COUNTY

SHEET TITLE
 ENLARGED
 SITE PLAN

SHEET NUMBER
 C-2





ZONING DRAWINGS
NOT FOR CONSTRUCTION

REV	DATE	DESCRIPTION
A	03/18/22	ZONING DRAWINGS
B	03/29/22	ZONING DRAWINGS
C	10/25/22	ZONING DRAWINGS

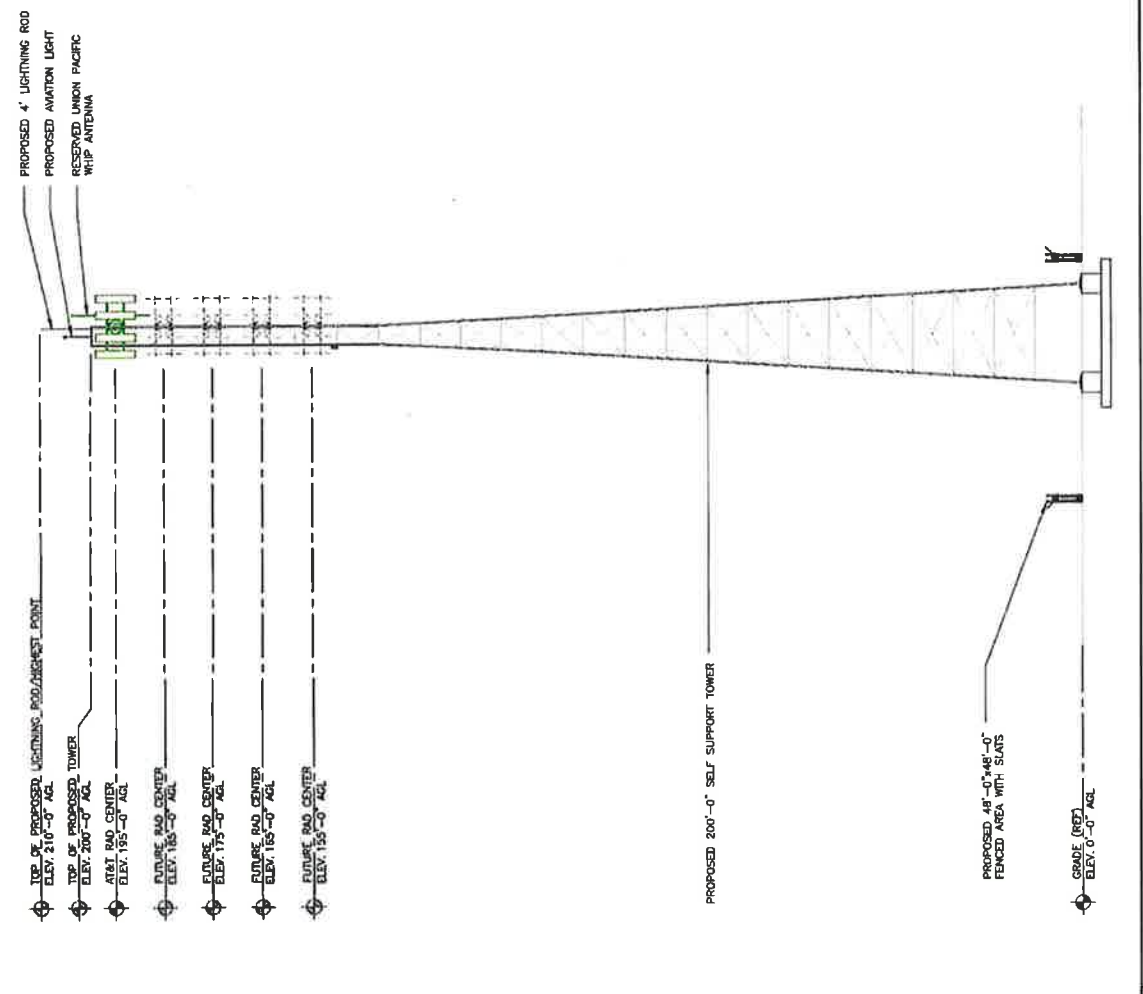
1. ALL RIGHTS RESERVED. THESE PLANS WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THEY COMPLY WITH ALL APPLICABLE REQUIREMENTS OF THE STATE OF CALIFORNIA.

DRAWN BY: [blank]
CHECKED BY: [blank]

SITE NAME
BRAWLEY
SITE ADDRESS:
NEAR EAST KEYSTONE RD
BRAWLEY, CA 92227
IMPERIAL COUNTY

SHEET TITLE
TOWER
ELEVATION

SHEET NUMBER
A-1



1 SCALE - N.T.S.

TOWER ELEVATION

Lease

Site Name: Brawley
CitySwitch Site: CAC008
UP Audit Number: #####

TOWER CONSTRUCTION AGREEMENT

This Agreement, made the 12 day of Apr. 1, 2022 (the "Effective Date"), between Union Pacific Railroad Company, a Delaware corporation, having an office at 1400 Douglas Street, Omaha, Nebraska 68179, hereinafter referred to as "Licensor", and CitySwitch – II-A, LLC, a Georgia company, having an office at 1900 Century Place, Suite 320, Atlanta, Georgia 30345 hereinafter referred to as "Licensee".

The term "Premises" as used in this Agreement, refers to a rectangle measuring approximately eighty-five feet (85.00'), by thirty feet (30.00'), containing a total of 2,550 square feet, combined with an approximate ten feet (10') by seventy-five foot, (75') access and utility corridor containing 750 square feet on the parcel of land on Licensor's railroad right-of-way and located in Brawley, California, in the County of Imperial, as presented on the attached Plot Plan, described in Exhibit "A".

Licensor agrees to allow construction of a One Hundred Ninety-Five (195') foot tower hereinafter referred to as the "Tower"), fenced compound and equipment cabinets (hereinafter referred to as the "Facilities") on the Premises for the location of Licensee's radio equipment; said Tower and Facilities shall be used by Licensee in conducting their communications activities on the Premises.

THEREFORE, in consideration of the mutual covenants herein contained, Licensor and Licensee agree as follows:

1. **GRANT:**

Licensor grants to Licensee the right to construct the Tower and Facilities together with non-exclusive rights of access for: (a) ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle (including trucks), and (b) the installation and maintenance of utility wires, poles, cables (including fiber optic cable), conduits, and pipes over, under, or along the Licensor's property, the location of said rights of access being limited to the locations shown on Exhibit "A" attached hereto. Licensee shall have the right to use the Premises for the location of the Tower and Facilities. Licensee shall be responsible for all costs and activities associated with the construction of the aforementioned Tower and Facilities. Equipment owned by and installed, operated and maintained by Licensee will be installed at the Premises. The Licensee's use of the Premises shall be subject to the terms and conditions of this Agreement, specifically including but not limited to, the General Terms and Conditions, attached hereto as Exhibit "B" and made a part hereof.

2. **TOWER FACILITIES:**

Licensor grants to Licensee the right to construct the Tower on the Premises for the installation of its communications antennas. The Tower and Facilities will be located within the area further defined on Exhibit "A" of this Agreement.

3. **EQUIPMENT FACILITIES:**

Licensor grants to Licensee the right to locate on the Premises, in an area close to the base of the Tower, one (1) concrete slab measuring sixteen (16') feet by twenty-two (22') feet] that will be used to mount the Tower and Facilities installed on the Premises by Licensee. The Facilities will be located within the area further defined on Exhibit "A" of this Agreement. Licensee may install, as part of the Facilities on the Premises all other related equipment, cables, accessories and improvements and any other items necessary to the successful and secure use of the Premises, subject to the other terms and conditions in this Agreement.

4. PLANS:

Licensee shall submit detailed site plans and technical specifications for the construction of the Tower and Facilities at the Premises to Licensor for Licensor's approval prior to the commencement of construction thereof. Licensor shall not unreasonably withhold, condition or delay such approval. The approved site plans shall be made a part of this Agreement and be attached to the Agreement as Exhibit "A". In the event any modifications to the Tower or Facilities, or any other improvements or installations on the Premises, are desired by Licensee or any approved sublicensees of Licensee, then the plans and technical specifications for such modifications, improvements or installations shall also be subject to Licensor's approval prior to commencement of construction thereof.

5. PERMIT:

Licensee shall have the obligation to apply to the municipality or any other state or federal authority, as may be required, for a permit to construct the Tower and Facilities at any time during the term of this Agreement. Licensee shall prepare, at its sole cost and expense, all site plans (i.e., engineering and architectural documents) which are required pursuant to its application for the foregoing permit.

Licensor agrees to reasonably cooperate with Licensee in its efforts to obtain any necessary permits from the municipality or any other state or federal agency, as the case may be. Licensor further agrees not to unreasonably withhold consent to any such application for and during the term of this Agreement, and further agrees to execute all necessary application forms that may be reasonably required. Licensor shall further appear for testimony before any municipal, state or federal board in the event same is required for approval. Any application so filed, however, shall be at the full cost and expense of Licensee, said cost and expense including, but not being limited to engineering fees, application fees, legal fees and such other costs as may be incidental to the pursuance of any such application.

Licensee shall be responsible for ensuring that all equipment installed by Licensee complies with the applicable rules and regulations of the Federal Communications Commission (hereinafter, the "FCC") and the electrical code and other applicable codes of any other governmental authority having jurisdiction over the Premises or such equipment prior to the installation thereof.

6. COST OF PERMITS:

Licensee shall be responsible for payment of expenses for any and all necessary and/or required municipal permits to construct the Tower and Facilities on the Premises. Licensor agrees that it shall not unreasonably withhold or delay its consent of any such application or permit which may be required. Licensee shall pay any and all fees associated with the approval and/or construction of the Tower and Facilities. Licensor

agrees to execute any such document reasonably required by Licensee in its operations which states this Agreement is in full force and effect, and the number of years with renewals remaining in this Agreement.

All costs for any permits, licenses, plans, specifications or any other documentation required shall be at the sole cost and expense of Licensee.

7. GENERAL TERMS AND CONDITIONS:

Licensee represents and warrants that all work on the Premises performed by Licensee, its contractors, agents and/or employees, and all entry upon and use of Licensor's property will be in strict compliance with the General Terms and Conditions.

8. UTILITY SERVICE:

Licensee shall have the non-exclusive right to locate utility lines and cables providing service to the Premises, as described in Exhibit "A", provided, however, that Licensee's utility service providers, or Licensee, as applicable, may be required to apply for and receive a "Wireline Crossing Agreement" from Licensor's Real Estate Department prior to installing any utility service to the Premises at no additional cost to such service provider(s) or Licensee. Licensor will not unreasonably delay or deny granting of any such agreement.

9. RELOCATION:

The approximate location of the Tower and Facilities will be as presented in the attached Exhibit "A". If, for engineering reasons, it is necessary for Licensee to select a different location, such relocation is subject to the approval of Licensor, in Licensor's sole discretion.

If, after the installation of the Tower and Facilities, Licensor determines that either or both constitute a material hindrance or cause material interference to railroad operations (e.g., blocking new track expansion, blocking line of sight, safety needs, etc.), Licensor may require the removal of the Tower and Facilities, as the case may be by Licensee at Licensee's sole cost and expense, within a period of (180) days (provided Licensor shall allow Licensee more than one hundred eighty (180) days to complete such removal, if in Licensor's sole discretion, allowing Licensee such additional time to complete such removal will not result in too much hindrance or interference with Licensor's operations or safety) from the date of receipt of notice from Licensor, provided that (i) such hindrance or interference affects the operation of Licensor's business or creates a safety hazard and ii) Licensee cannot promptly eliminate or minimize such hindrance or interference to an acceptable degree within the aforesaid 180-day period by performing alterations or modifications to the Tower and Facilities, as the case may be, or implementing other mitigative measures at the Premises. In such event, Licensor shall, in consultation with Licensee, use commercially reasonable efforts to designate an alternative location at the Premises upon which Licensee may relocate its Tower and Facilities. Licensee shall then have the right, at its option, to relocate its Tower and Facilities, as the case may be, to said alternative location at Licensee's sole expense. All monthly rent payable by Licensee hereunder shall abate for the time during which Licensee is prohibited from operating its existing tower and facilities at the Premises and the date upon which construction of the new Tower, Facilities and/or equipment cabinets at the alternative location is completed.

In the event Licensee elects to relocate its Tower and Facilities to the alternative location, the parties shall execute new copies of approved Exhibit "A" as necessary, to reflect such change in the location of Licensee's Tower and Facilities at the Premises.

10. PROTECTION OF FIBER OPTIC CABLE:

Licensee represents and warrants that all work on the Premises performed by Licensee, its contractors, agents and/or employees will be in strict compliance with the provisions set forth in "PROTECTION OF SUBSURFACE FACILITIES ON LICENSOR'S PROPERTY" of the General Terms and Conditions.

In addition to the liability terms contained elsewhere within this Agreement, Licensee shall indemnify and hold Licensor harmless against and from all costs, liability and expense whatsoever (including, without limitation, attorneys' fees and court costs and expenses), arising out of or in any way contributed to by any act or omission of Licensee, its contractors, agents and/or employees, that cause or in any way contribute to (a) any damage to or destruction of any fiber optic cable telecommunications system located on the Premises by Licensee, its contractors, agents and/or employees, (b) any injury to or death of any person employed by or on behalf of any fiber optic cable telecommunications company and/or its contractors, agents and/or employees on the Premises, and/or (c) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunications company or companies.

11. TERMINATION:

In the event that any municipal, state, federal or any other governmental authority prevents Licensee from occupying or operating Licensee's equipment at the Premises, or if in Licensee's reasonably exercised judgment, significant engineering, economic or other developments occur that prevent the economic feasibility of this Agreement, Licensee has the right to terminate this Agreement, upon providing Licensor with six (6) months prior notice and removing Licensee's equipment and restoring the Premises to its original conditions, except for reasonable wear and tear, and removing any underground structures to a depth that is mutually agreeable to the Parties.

The Licensee agrees that upon the expiration or termination of this Agreement or the abandonment of the Premises by the Licensee, the Licensee shall (a) remove from the Premises, at the expense of the Licensee, all structures, property and other materials not belonging to the Licensor; and (b) restore the surface of the ground to as good a condition as the same was in before such structures were erected and/or constructed, including, without limiting the generality of the foregoing the removal of foundations of such structures, the filling in of all excavations and pits, and the removal of all debris and rubbish, all of which shall be performed at the Licensee's expense. If the Licensee should fail to perform such removal, the Licensor may perform the work and the Licensee shall reimburse the Licensor for the cost thereof, within thirty (30) days after the bill is rendered. The Licensee's non-use of the Premises for the purposes described in this Agreement continuing for one (1) year shall be sufficient and conclusive evidence of such abandonment, unless the Licensee shall have notified the Licensor in writing of its reasons for such non-use, and shall continue to pay rent as and when due to the Licensor.

12. OWNERSHIP OF TOWER, FACILITIES AND RADIO EQUIPMENT:

It is understood and agreed that Licensee shall own the Tower and Facilities and all related radio equipment, and/or any such improvements constructed or placed on the Premises by Licensee.

13. OWNER'S RIGHT OF INSTALLATION:

Licensee hereby grants to Licensor the right, reasonably exercised, to locate antennas on the Tower and related radio equipment, upon the Premises, subject to a maximum of 10,000 square inches of wind loading and availability of space upon the Tower being available at the time of Licensor's desire to exercise said right.

Licensor shall assume all costs and liabilities associated with the installation, operation and maintenance of Licensor's equipment at the Premises.

Licensee shall charge Licensor no fee for the installation, operation and maintenance of Licensor's equipment at the Premises.

14. MAINTENANCE:

Licensee shall (i) be responsible for any and all improvements located upon the Premises by Licensee or any approved sublicensees, including the Tower and Facilities, and (ii) shall perform whatever remedial and preventive maintenance, repairs, construction and security which may be required to properly maintain the Tower and Facilities and the equipment located thereupon or therewithin.

15. PAYMENT:

Effective upon the first month following the Commencement Date, Licensee shall pay Licensor [REDACTED] per year for the privileges and rights presented in this Agreement which rental shall increase by [REDACTED] annually. At such time as the amount equal to [REDACTED] of the total gross revenue collected by Licensee from all sublicenses at the Premises exceeds the amount of the then-current annual rental, Licensee shall then begin paying to Licensor the greater of the then-current rental per year, as increased by [REDACTED] annually, or [REDACTED] of the total revenue collected annually from Licensee's sublicenses at the Premises. The annual amount shall be paid in twelve monthly increments, each equal to one-twelfth of the annual total. Each monthly payment shall be made on or before the 20th day of each month.

Licensor shall have the right, no more than once per calendar year, to inspect and audit all of Licensee's documents, agreements, and records relating to the Premises, including any documents, agreements, and records of Licensee regarding billing and collection of fees payable or paid under any agreement related to the Premises, and Licensee shall, for as long as this Agreement remains in effect and for three (3) years following any expiration or termination of this Agreement, maintain copies of all such documents and records. In the event Licensor elects to inspect and audit any such documents and records and/or the payments made by the any person related to the Premises, if Licensor determines that Licensee has failed to pay Licensor any material amounts owed to Licensor hereunder, Licensee shall, in addition to paying Licensor any amounts found by such inspection and audit to remain unpaid, reimburse Licensor for its costs to complete such inspection and audit.

16. **TERM:**

This Agreement shall be for an initial term of ten (10) years, commencing on the date that Licensee starts construction ("Commencement Date"). The License shall automatically renew for three (3) additional term of five (5) years unless terminated under terms herein.

17. **INTERFERENCE:**

Licensor grants to Licensee the use of the Premises exclusively for the construction and use of the Tower and Facilities for the installation of radio communications equipment. The equipment installed by Licensee or its sublicensees shall transmit only on frequencies licensed for such equipment. Licensee shall be responsible for performing all radiofrequency ("RF") engineering studies to ensure that the placement of radio equipment at the Premises will not cause interference to existing equipment located near the Premises by Licensor or Licensor's Licensees, lessees or vendors, and Licensee shall submit such studies to Licensor for approval prior to installation.

If any radio equipment installed by Licensee causes RF interference with such existing equipment of Licensor or Licensor's Licensees, lessees or vendors, Licensee shall be responsible for eliminating or minimizing to an acceptable degree such RF interference within 48 hours after receipt after written notice of such interference from Licensor to Licensee by, for example, removing, replacing or repositioning the equipment causing such interference (hereinafter, the "Interfering Equipment"). In the event such interference is not eliminated or minimized to an acceptable degree within the aforesaid 48 hour period, Licensee or its client, as the case may be, shall discontinue use of the Interfering Equipment (except for intermittent operation for the purpose of correcting such interference). If said interference is not corrected within thirty (30) days after Licensee's receipt of the aforesaid notice from Licensor, Licensee shall remove the Interfering Equipment within an additional ten (10) day period.

18. **INSURANCE:**

Licensee and/or its contractors shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- (a) General Liability insurance providing bodily injury including death, personal injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. This insurance shall contain broad form contractual liability. Exclusions for explosion, collapse and underground hazard shall be removed. Coverage purchased on a claims made form shall provide for at least a two (2) year extended reporting or discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.
- (b) Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the general public liability insurance.

- (c) Workers' Compensation insurance covering Licensee statutory liability under the workers' compensation laws of the state(s) affected by this Agreement, and Employers' Liability. If such insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided.
- (d) Railroad Protective Liability insurance naming the Licensor as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The Licensee may meet this obligation with a commercial general liability policy with Endorsement CG2417 Contractual Liability - Railroads, which amends the definition of an insured contract to include construction or demolition operations on or within 50 feet of a railroad. A binder of insurance for Railroad Protective Liability must be submitted to the Licensor and the original policy or a certified duplicate original policy must be forwarded to the Licensor when available.

Where permitted by law and subject to Licensee's indemnification obligations herein, Licensee and its insurers shall endorse the required insurance policy (ies) to waive their right of subrogation against Licensor. Licensee and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody and control. Licensee's insurance shall be primary with respect to any insurance carried by Licensor. The policy (ies) required under (a) and (b) above shall provide severability of interests and shall name Licensor as an additional insured with respect to liability arising from Licensee's operations for which Licensee has legally assumed responsibility herein.

Prior to commencing the any construction work, Licensee shall furnish to Licensor certificate(s) of insurance evidencing the required coverage. The certificate(s) shall contain a provision that obligates the insurance company (ies) issuing such policy (ies) to notify Licensor in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or any cancellation at least thirty (30) days prior thereto.

The insurance policy (ies) shall be written by a reputable insurance company (ies) acceptable to Licensor or with a current Best's Insurance Guide Rating of B and Class VII or better and authorized to do business in the state(s) in which the Job Site is located.

The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee and/or its contractors, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

19. INDEMNIFICATION/HOLD HARMLESS:

Licensee agrees that it shall not, through its actions or omissions, (i) endanger the property or employees of Licensor located at the Premises or (ii) expose any person, including but not being limited to Licensor's employees, contractors, agents or Licensees, or Licensor's property, operations or facilities to any additional hazards. Licensee shall indemnify and hold Licensor and its affiliates, and the officers, agents and employees of each, harmless against and from any and all liability, loss, damage, claims, demands, costs and expenses (including court costs and attorneys' fees) arising directly out of Licensee's use of the Premises, including, without limitation its construction activity thereon pursuant to this Agreement, except for those

claims that are due to or caused solely by the negligence or intentional misconduct of Licensor, its affiliates, or the officers, agents, assigns, contractors and employees.

20. ASSIGNMENT:

The Licensee shall not assign this Agreement, or any interest therein, without the written consent of Licensor. Such consent shall not be unreasonably withheld, conditioned, or delayed. No assignment by Licensee shall relieve Licensee of any of its obligations and liabilities assumed hereunder.

Notwithstanding the foregoing, Licensor agrees that Licensee shall have the right to freely assign its rights and obligations hereunder to any parent company, a wholly-owned subsidiary or affiliate of Licensee, an entity in the business of developing or operating telecommunication towers (excluding FCC licensed wireless carriers and existing Tower sublessees) or a purchaser of all or substantially all of Licensee's assets. The issuance of stock by Licensee shall not be deemed to be an assignment under the provisions of this Paragraph.

Subject to the provisions of this Paragraph, this Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

21. SUBLEASE AUTHORITY:

Licensor acknowledges that Licensee's intent is to design the Tower and Facilities to accommodate sublicensing in the Premises to FCC licensed wireless carriers. Licensee shall not sublicense in the Premises to FCC licensed wireless carriers, in whole or in part, without Licensor's written consent. Such consent shall not be unreasonably withheld, conditioned, or delayed. Prior to sublicensing to FCC licensed carriers in the Premises, Licensee shall provide to Licensor a copy of the sublicensee's application, construction drawings, sublease agreement and construction schedule. Licensee shall not sublicense the Premises, in whole or in part, to unlicensed wireless carriers or other entities, without Licensor's written consent, which consent shall be in Licensor's sole and absolute discretion. Licensor hereby explicitly reserves the right to condition such consent upon additional financial consideration if the sublease is less than \$1750 per month (or \$1250 per month for DISH Wireless).

22. CASUALTY/CONDEMNATION:

In the event there is a total or partial destruction of the Premises by fire or other casualty (hereinafter, a "Casualty") and the Premises are, in Licensee's judgment, thereby rendered insufficient for Licensee's continued operations thereat and/or restoration thereof would not, in Licensee's reasonable judgment, be economically feasible and/or such restoration could not, in Licensee's reasonable judgment, be accomplished within a period of ninety (90) days from the date of such Casualty, Licensee shall have the right to terminate this Agreement upon thirty (30) days' notice to Licensor. In the event Licensee elects not to terminate this Agreement,

- (a) Licensee shall have the right to restore those portions of the Premises upon which its Tower and Facilities are located and to reconstruct same thereupon at Licensee's sole cost and expense.

- (b) In the event those portions of the Premises upon which Licensee's Tower and Facilities are located are, in Licensee's judgment, incapable of being restored, Licensor shall, upon request of and in consultation with Licensee, designate an alternative location at the Premises upon which Licensee may reconstruct its Tower and Facilities.

In the event the Premises, that portion of the Premises upon which Licensee's Tower and Facilities are located, or any significant portion of either is condemned or is otherwise subjected to a taking by any governmental authority exercising the power of eminent domain, this Agreement shall terminate as of the date upon which Licensee is required by the governmental authority to cease its operations at the Premises. Licensee shall be entitled to seek their own award against the condemning authority.

23. **ARBITRATION:**

All controversies relating to, in connection with, or arising out of this Agreement, its modification or making, the authority or obligations of the parties hereto, and whether involving the principals, agents, brokers or others who actually subscribe hereto, shall be settled by arbitration. The arbitration proceedings shall be held in the county and state in which the Premises is located and in accordance with the laws of the aforesaid state. The arbitration proceeding is to be governed by the American Arbitration Association and the "Rules of Arbitration" (hereinafter, the "Rules") as they exist at the time of the arbitration (including provisions as to payment of fees and expenses) and presided over by one arbitrator selected in accordance with the aforementioned Rules. Arbitration is the sole remedy hereunder. All notices or service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforementioned Rules. The parties agree that any dispute or controversy related solely to an engineering matter, as mutually determined by Licensee and Licensor, shall be settled by arbitration in accordance with the foregoing, except that the one presiding arbitrator shall be a professional licensed engineer or engineering consultant selected in accordance with the Rules.

24. **FORCE MAJEURE:**

To the extent that either party to this Agreement is prevented from discharging its duties by an event of Force Majeure, such as by reason of flood, war, fire, explosion or other catastrophe or act of God, both parties shall be temporarily excused from the performance of their obligations under this Agreement until such time as the Force Majeure event has abated.

25. **INTEGRATED AGREEMENT:**

It is agreed and understood that this Agreement including the Exhibits attached hereto and made a part hereof contains all of the agreements, promises, and understandings between Licensor and Licensee and that no prior written, verbal or oral agreements, promises or understandings shall be binding upon either Licensee or Licensor in any dispute, or proceeding at law.

26. **GOVERNING LAW:**

The performance of this Agreement shall be interpreted, construed, and regulated by the laws of the state of California.

27. **LICENSOR'S REPRESENTATIONS:**

Licensor covenants, represents and agrees it has the full right, power and authority to enter into, execute and deliver this Tower Construction Agreement.

28. **SURVIVORSHIP:**

This Agreement shall be binding upon and shall inure to the benefit of any respective successors and assigns of Licensor and Licensee, subject to prior restrictions on assignments by Licensee.

Notwithstanding the foregoing, in the event there is any successor to Licensee, Licensee and/or such successor must notify Licensor of such succession within five (5) days after such event.

29. **SEVERABILITY:**

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

30. **NOTICES:**

All notices hereunder must be in writing and shall be validly given if sent via Registered or Certified Mail, Return Receipt Requested, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

To Licensor: Union Pacific Railroad Company
 1400 Douglas Street - 0640
 Omaha, Nebraska 68179
 Attn.: Mike Wallman

To Licensee: CitySwitch – II, LLC
 1900 Century Place, Suite 320
 Atlanta, GA 30345
 Attn: Legal

31. **AUTHORITY TO SIGN:**

Licensor and Licensee each represent that the signatories of this Agreement presently have full authority to enter into this Agreement and to bind and obligate their respective organizations to the terms, rights and obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this date.

ACCEPTED BY: Licensor
Union Pacific Railroad Company

ACCEPTED BY: Licensee
CitySwitch II-A, LLC

BY: 

BY: 

PRINT NAME: CHRIS D. GOBLE

PRINT NAME: Robert Raville
President & CEO

TITLE: Assistant Vice President - Real Estate

TITLE: _____

DATE: 4/12/2022

DATE: 3/21/22

ACKNOWLEDGMENT OF LICENSEE:

STATE OF GEORGIA)
) ss.:
COUNTY OF FULTON)

On this 21 day of MARCH, 2022 before me personally appeared ROB RAVILLE
_____, known to me (or proved to me on the basis of satisfactory evidence) to be the persons
described in and who executed the foregoing instrument, and acknowledged that she executed the same as his free
act and deed.

WITNESS my hand and Official Seal at office this 21 day of MARCH, 2022

Catherine Habel
Notary Public

My Commission Expires: 07-21-2023



ACKNOWLEDGMENT OF LICENSOR:

STATE OF Nebraska)
) ss
COUNTY OF Douglas)

On this 12th day of April, 2022, Chris D. Gobik before
me personally appeared known to me (or proved to me on the basis of satisfactory evidence) to be the persons
described in and who executed the foregoing instrument, and acknowledged that she executed the same as his free act
and deed.

WITNESS my hand and Official Seal at office this 12th day of April, 2022

[Signature]
Notary Public

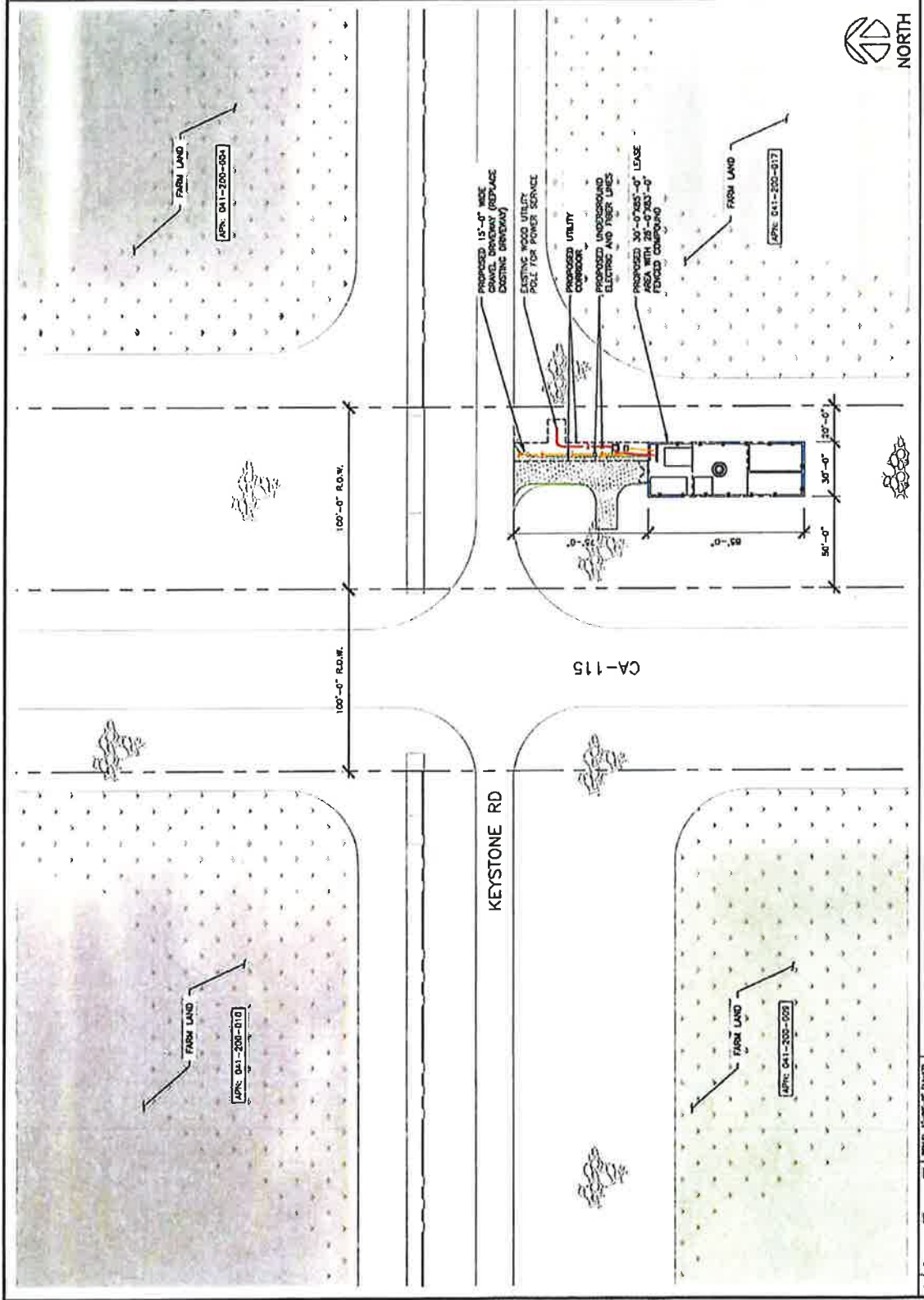
My Commission Expires:

May 9, 2022



Exhibit A

Location Print Depicting the Premises



JOHN M. BANKS ARCHITECT
 BARRINGTON, IL 60010
 TELEPHONE: 847-277-8078
 FAX: 847-277-8079
 WWW: WWW.JMBANKSARCHITECT.COM



**LEASE EXHIBIT
 NOT FOR CONSTRUCTION**

NO.	DATE	DESCRIPTION
A	01/12/22	LEASE EXHIBIT
B	01/14/22	REVISED LE

1. THESE CONDITIONS, TERMS AND SPECIFICATIONS SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE LEASE AGREEMENT AND SHALL BE FULLY INCORPORATED INTO THE LEASE AGREEMENT.

FA # 10148055
 SITE NAME: BRANLEY
 SITE ADDRESS: KEYSTONE RD
 BRANLEY, CA 92227
 IMPERIAL COUNTY

OVERALL SITE PLAN
 SHEET NUMBER
LE-1

SCALE: 1"=50'-0" (VERTICAL)
 1"=100'-0" (HORIZONTAL)
 OVERALL SITE PLAN



JOHN M. BANKS ARCHITECT
 1000 W. 10TH ST.
 SUITE 100
 BRAMBLEY, CA 92227
 TEL: 619-435-7777
 FAX: 619-435-7778
 WWW.JMBANKSARCHITECT.COM

WESTCHESTER
 641 DOWS CIRCLE
 SUITE 100
 BRAMBLEY, CA 92227
 TEL: 619-435-7777
 FAX: 619-435-7778
 WWW.WESTCHESTERARCHITECT.COM

**LEASE EXHIBIT
 NOT FOR CONSTRUCTION**

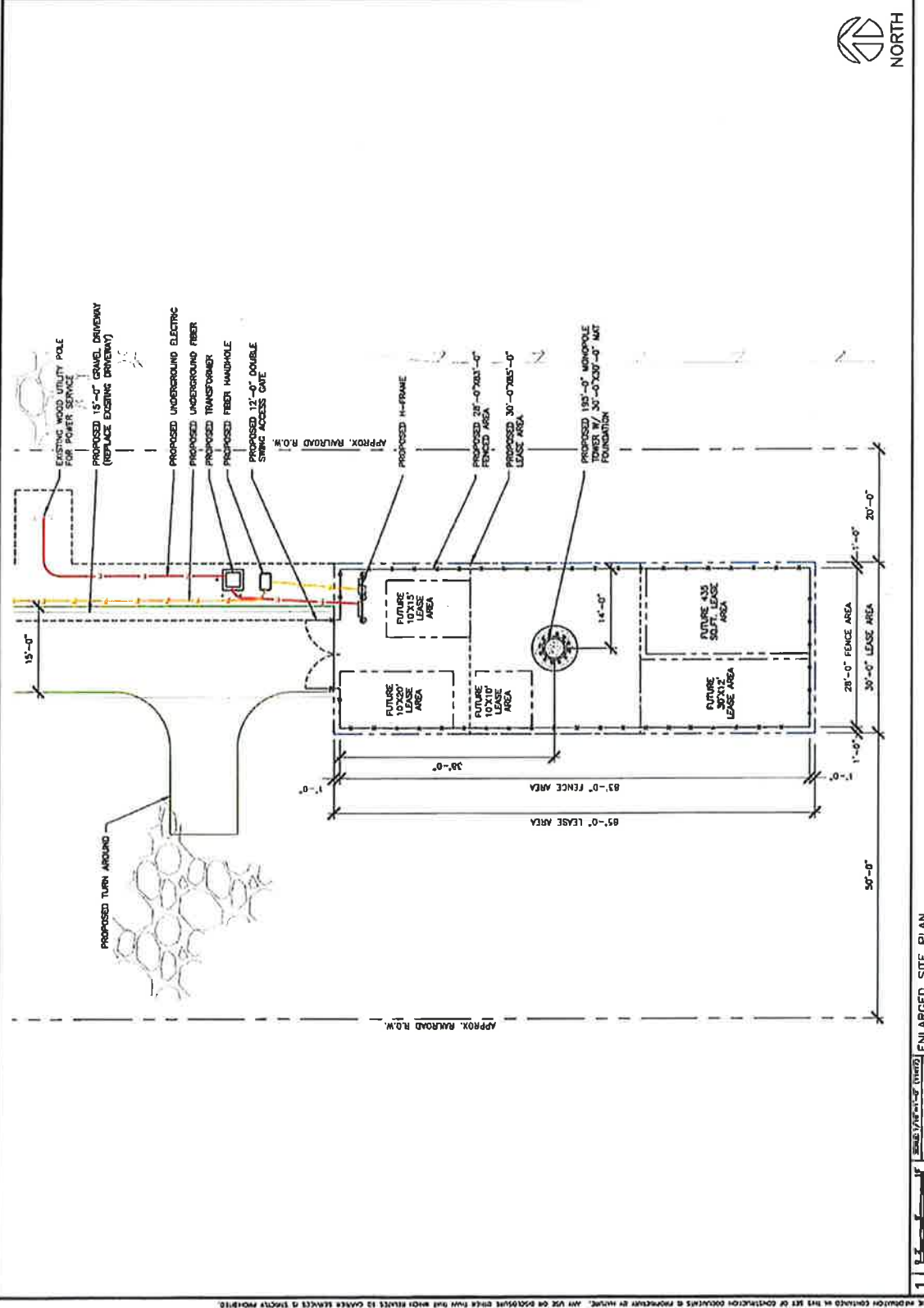
NO.	DATE	DESCRIPTION
A	01/12/22	LEASE EXHIBIT
B	01/18/22	REVISED LE

I HEREBY CERTIFY THAT THESE PLANS AND SPECIFICATIONS WERE PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED ARCHITECT IN THE STATE OF CALIFORNIA.

EA # 10148059
 SITE NAME:
 BRAMBLEY
 321 ADAMS STONE RD
 BRAMBLEY, CA 92227
 IMPERIAL COUNTY

SHEET TITLE
**ENLARGED
 SITE PLAN**

SHEET NUMBER
LE-2



1 [Scale Bar] ENLARGED SITE PLAN

THE FINDER CONTAINS THIS SET OF CONSTRUCTION DOCUMENTS IS PROJECTOR OR ARCHITECT. ANY USE OR MODIFICATION OF THESE PLANS WITHOUT THE WRITTEN PERMISSION OF THE PROJECTOR OR ARCHITECT IS PROHIBITED.



JOHN M. BANKS ARCHITECT
 604 PCH. E. 310
 BURBANK, CA 91502
 TEL: (PHONIC) 818-777-4270
 FAX: (PHONIC) 818-777-4270
 EMAIL: JMBANKS@JMBANKSARCHITECT.COM



LEASE EXHIBIT
NOT FOR CONSTRUCTION

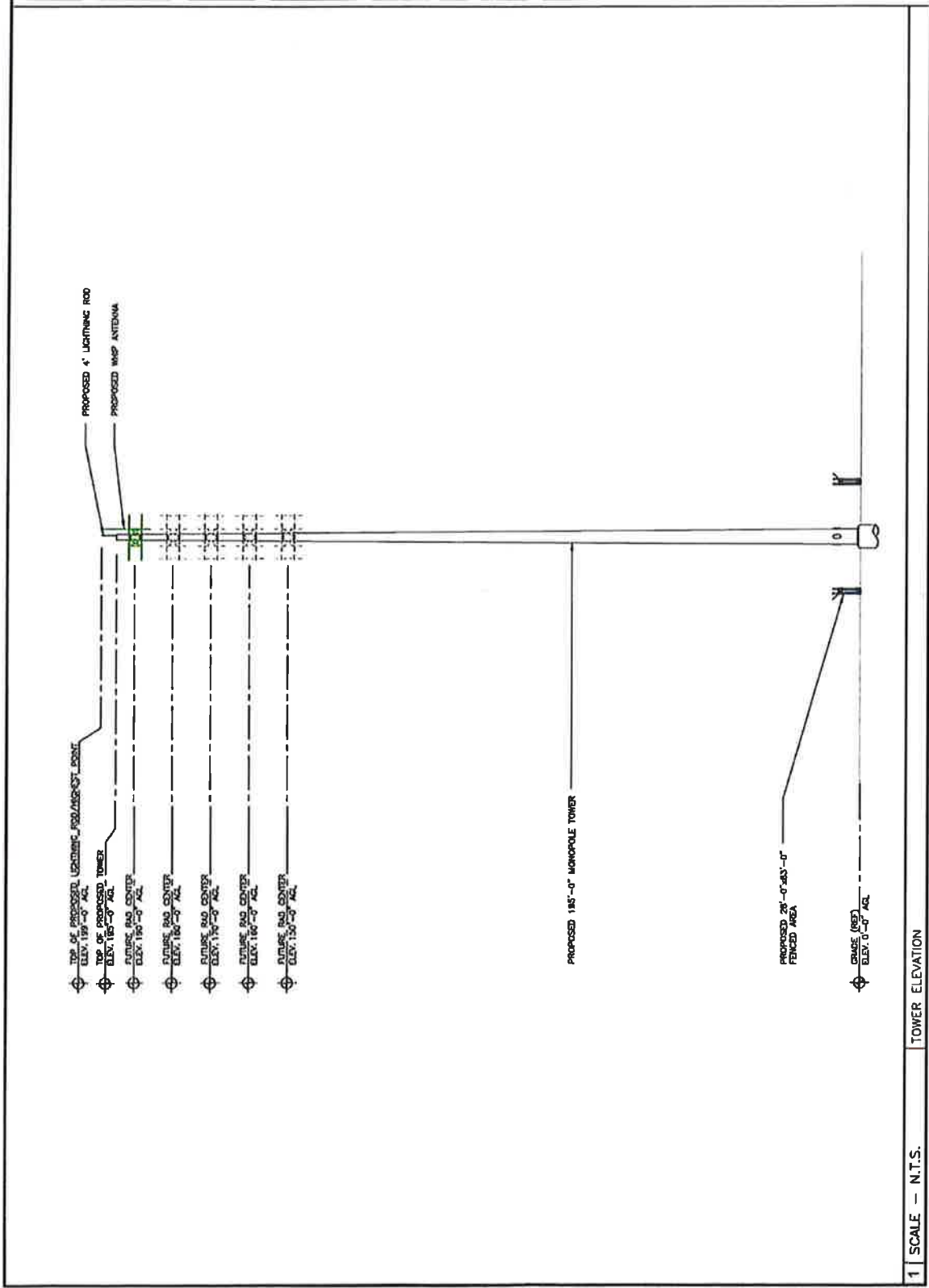
DESIGN BY:	MM	
CHECKED BY:	RSB	
REV	DATE	DESCRIPTION
1	07/12/22	ISSUE EXHIBIT
2	07/19/22	ISSUED LE

1. THESE DRAWINGS HAVE BEEN PREPARED BY WESTCHESTER ENGINEERING AND ARCHITECTURE, INC. FOR THE PROJECT AND THE CLIENT. THE CLIENT HAS REVIEWED AND APPROVED THESE DRAWINGS FOR THE PROJECT AND THE CLIENT'S USE. WESTCHESTER ENGINEERING AND ARCHITECTURE, INC. IS NOT RESPONSIBLE FOR ANY OTHER USES OF THESE DRAWINGS.

TA # 101440059
 SITE NAME:
 BRAWLEY
 SITE ADDRESS:
 101440059 RD
 BRAWLEY, CA 92227
 IMPERIAL COUNTY

SHEET TITLE
TOWER ELEVATION

SHEET NUMBER
LE-3



1 | SCALE — N.T.S. | TOWER ELEVATION

THE PROVISION CONTAINED HEREIN IS FOR INFORMATION ONLY AND DOES NOT CONSTITUTE AN OFFER OF ANY SERVICE OR PRODUCT. THE USER OF THIS DOCUMENT ASSUMES ALL LIABILITY FOR ANY AND ALL DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM THE USE OF THIS DOCUMENT.



JOHN M. BANKS ARCHITECT
 604 TORI CLEN
 8400 S. BURNBURY
 TELEPHONE: 847-777-0070
 FAX: 847-777-0080
 WWW: www.jmbanksarchitect.com



WESTCHESTER
 604 FOX GLEN
 8400 S. BURNBURY
 TELEPHONE: 847-777-0070
 FAX: 847-777-0080
 WWW: www.westchester.com

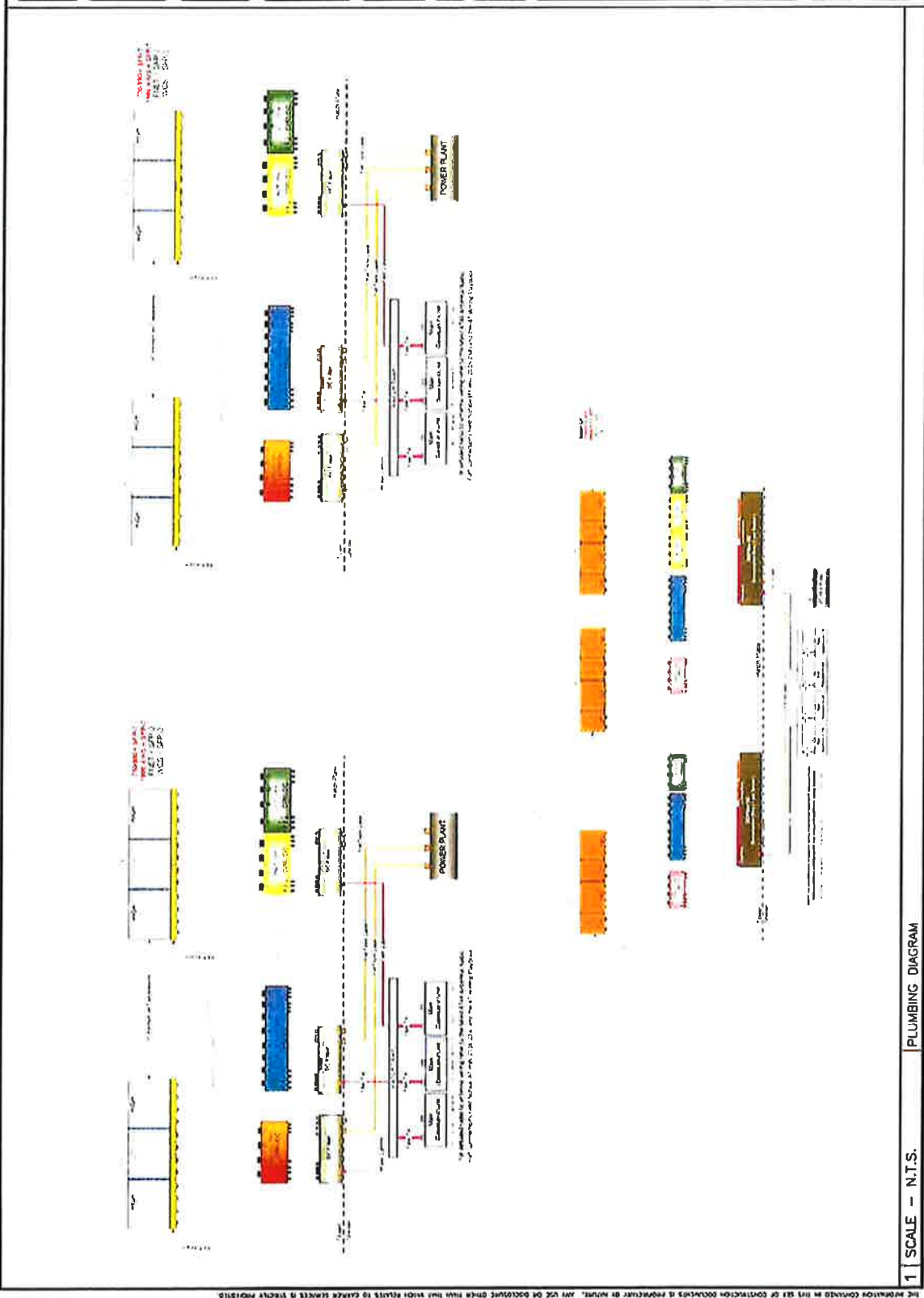
**LEASE EXHIBIT
 NOT FOR CONSTRUCTION**

OWNER: BIC	DATE: 10/20/09
DESIGNED BY: JMB	DATE: 10/20/09
CHECKED BY: JMB	DATE: 10/20/09
DATE: 10/20/09	PROJECT: 09-001
DATE: 10/20/09	PROJECT: 09-001
DATE: 10/20/09	PROJECT: 09-001

PA # 101 ADDRESS
 SITE NAME:
 BRAMLEY
 NEAR EAST KEYSTONE RD
 BRAMLEY, CA 92227
 IMPERIAL COUNTY

SHEET TITLE
**PLUMBING
 DIAGRAM**

SHEET NUMBER
LE-4



1 | SCALE - N.T.S. | PLUMBING DIAGRAM

THE INFORMATION CONTAINED IN THIS EXHIBIT OR CONSTRUCTION DOCUMENTS IS PROPRIETARY TO THE ARCHITECT. ANY USE OR REPRODUCTION OF THIS INFORMATION WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT IS PROHIBITED.

Exhibit B

General Terms and Conditions

Section 1. ENGINEERING REQUIREMENTS; PERMITS.

A. Projects involving construction, inspection, maintenance, repair, renewal, reconstruction and/or removal of the Licensee's Tower and/or Facilities shall not commence until Licensor and Licensee agree on the plans for such projects, cost allocations, right of entry terms and conditions.

B. Licensee's Tower and Facilities will be designed, constructed, operated, maintained, repaired, renewed, modified, reconstructed, and removed on Licensor's property by Licensee or its contractor to Licensor's satisfaction and in strict conformity with: (i) Licensor's current engineering standards and specifications, including those for aerial marker balls, shoring and cribbing to protect Licensor's railroad operations and facilities ("UP Specifications"), except for variances approved in advance in writing by Licensor's Assistant Vice President Engineering - Design or its authorized representative ("UP Engineering Representative"); (ii) such other additional safety standards as Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"); and (iii) all applicable laws, rules, and regulations, including any applicable Federal Railroad Administration, Federal Energy Regulatory Commission, and Federal Aviation Administration regulations and enactments (collectively, "Laws"). If there is any conflict between UP Specifications, UP Additional Requirements, and Laws, the most restrictive will apply.

C. If Licensee's Facilities will be located underground, Licensee shall keep the soil over Licensee's Facilities thoroughly compacted, and maintain the grade over and around Licensee's Facilities even with the surface of the adjacent ground.

D. Licensee shall not transmit electric current from Licensee's Tower or Facilities at a difference of potential in excess of the voltage indicated on **Exhibit A**. If the voltage indicated is in excess of seven hundred fifty volts (750V), and Licensee's Facilities will be buried at any location outside of track ballast or roadbed on Licensor's property, Licensee shall install metallic conduit, or non-metallic conduit encased in a minimum of three inches (3") of concrete with a minimum of four feet (4') of ground cover the entire length of Licensee's Facilities. Any of Licensee's Facilities buried by removal of soil shall have, at a depth of one foot (1') beneath the surface of the ground directly above Licensee's Facilities, with a six inch (6") wide warning tape labeled "Danger-High Voltage" or equivalent wording. Any of Licensee's Facilities encased in conduit, jacked, or bored under Licensor's property must be identified with warning signs ("Warning Signs") at each edge of Licensor's property, to be installed and properly maintained at Licensee's cost and expense. Licensee shall not utilize Warning Signs in lieu of the warning tape where portions of the casing are installed by direct burial.

E. Licensee shall secure and maintain in effect, at Licensee's sole cost and expense, any and all necessary federal, state and local permits and licenses required for the construction, operation and maintenance of Licensee's Tower and Facilities including, without limitation, zoning, building,

health, environmental or communication permits or licenses required to perform any work on Licensee's Tower and/or Facilities.

Section 2. NOTIFICATION; SAFETY; PROTECTION OF RAILROAD OPERATIONS.

It is understood and recognized that safety and continuity of the Licensor's operations and communications, and the safety of Licensor's personnel, property and the public are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all work by Licensee and the presence of Licensee on Licensor's Property, the safety standards set forth in this Agreement will be strictly adhered to by Licensee.

A. **Entry on to Licensor's Property.** Licensee and its contractors are strictly prohibited from entry onto Licensor's Property without first providing notification to Licensor as set forth in this Section.

B. **Work on Licensor's Property.** Licensee and its contractor are strictly prohibited from commencing any work associated with Licensee's Tower and Facilities without Licensor's written approval that the work will be in strict compliance with the "ENGINEERING REQUIREMENTS; PERMITS" Section of this **Exhibit B**. Upon Licensor's approval of work, the Licensee agrees to notify Licensor in accordance with the notification requirements set forth in this Section.

C. **Advance Notification Requirements.**

(i) The Licensee agrees to notify the Licensor at least ten (10) working days in advance of any entry on to Licensor's Property or work by Licensee that will take place at a distance of more than twenty-five (25) feet of any track. Licensee agrees to provide advance notice to Licensor at least thirty (30) working days in advance of proposed performance of any entry on to Licensor's Property or work by Licensee in which any person, equipment, machinery, tool(s), material(s), or thing(s) will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track.

(ii) Upon receipt of such notifications, the Licensor, in its sole and absolute discretion, will determine whether (a) Licensee's contractor will need to enter into Licensor's then current form of Contractor Right of Entry Agreement and/or (b) a flagman or other special protective or safety measures (any of the foregoing, collectively "Flagging Services") are needed.

(iii) Licensee or its contractor shall not commence any work until (a) such determinations have been made by Licensor, (b) Licensee has complied with the "PROTECTION OF SUBSURFACE FACILITIES ON LICENSOR'S PROPERTY" of this **Exhibit B**, and (c) Licensor has provided Licensee written authorization to commence work.

D. **Inspections.** If Licensee needs to enter Licensor's Property in order to perform an inspection of Licensee's Tower and/or Facilities, the same advance notification requirements as set forth in this Section shall apply. Licensee may use unmanned aircraft systems ("UAS") to inspect

Licensee's Tower and Facilities only upon the prior authorization from and under the direction of Licensor. Licensee represents and warrants that its use of UAS on Licensor's Property will comply with Licensor's then-current UAS policy and all applicable laws, rules and regulations, including any applicable Federal Aviation Administration regulations and enactments pertaining to UAS.

E. **Flagging Services.**

(i) Licensor, in its sole and absolute discretion, shall determine whether Flagging Services are required in connection with any entry on to or work upon, Licensor's Property. If Flagging Services are required, no entry or work shall take place on Licensor's Property until arrangements for the Flagging Services have been made and scheduled. If no Flagging Services are required, Licensor will give Licensee written authorization to commence.

(ii) Licensor, in its sole and absolute discretion, shall determine if Flagging Services will be performed by Licensor, or whether Licensor may contract a private contractor commonly known in the railroad industry as a contractor-in-charge ("CIC") for the performance of such services. Alternatively, Licensor may authorize Licensee to hire a CIC directly to perform Flagging Services in lieu of Licensor providing such services or in concert with Licensor providing such services. If Licensor agrees to permit Licensee or its contractor to hire a CIC directly, the Licensor or its contractor, as applicable, shall be required to obtain Licensor's prior written approval for each of the following items, as determined in all respects in Licensor's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the Flagging Services to be performed by the approved CIC; and (iii) any other terms and conditions governing the Flagging Services to be provided by the CIC. Licensor reserves the right to rescind any approval pursuant to this Section, in whole or in part, at any time, as determined in Licensor's sole and absolute discretion

(ii) If any Flagging Services are performed or provided by Licensor or a CIC, Licensee shall be responsible for such costs and expenses in accordance with the "LICENSEE'S PAYMENT OF EXPENSES" Section of this **Exhibit B**.

(iii) If Licensor or a CIC performs any Flagging Services, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

F. **Safety Standards.**

(i) Licensee shall be responsible for initiating, maintaining and supervising all safety operations and programs in connection with any work on Licensee's Tower and Facilities. Licensor and its contractor shall, at a minimum comply, with Licensor's then current safety standards located at the below web address ("Licensor's Safety Standards") to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's Safety Standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of Licensor's Safety Standards, found at the link below, to each of its employees before they enter Licensor's property:

http://www.up.com/es/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf

(ii) Licensee shall keep the job site on Licensor's property free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the work.

(iii) Licensor shall have the right, if it so elects, to provide any support it deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, repair, renewal, modification, relocation, reconstruction, or removal of Licensee's Tower and Facilities. In the event Licensor provides such support, Licensor shall invoice Licensee, and Licensee shall pay Licensor as set forth in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this **Exhibit B**.

G. **Compliance With Laws.** Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the Licensee's Tower and Facilities. The Licensee shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Licensor's Property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Licensor, the Licensee shall reimburse, and to the extent it may lawfully do so, indemnify the Licensor for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Licensor, to defend such action free of cost, charge, or expense to the Licensor.

H. **No Interference or Delays.**

(i) Licensee represents and warrants that all parts of Licensee's Tower and Facilities within and outside of the limits of Licensor's property will not interfere whatsoever with the constant, continuous, and uninterrupted use and operation of the tracks, property, and facilities of Licensor, and nothing shall be done, suffered to be done or permitted by Licensee at any time that would in any manner obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Licensor's tracks or facilities, or any communication or signal lines, installations of any appurtenances thereof, or the operations of others lawfully occupying or using the Licensor's property or facilities, including, without limitation, Licensor's lessees, licensees, and any other railroad company. Licensee shall take all suitable precaution to prevent interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of Licensor or of its tenants. If, at any time, the operation or maintenance of Licensee's Tower and/or Facilities result in any electrostatic effects which Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by Licensor and/or its tenants, Licensee shall, at the sole cost and expense of Licensee, immediately modify or take action as may be necessary to eliminate such interference.

(ii) Licensor's operations and work performed by Licensor's personnel may cause delays in Licensee's or its contractor's work on Licensee's Tower and Facilities. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee must coordinate any work on Licensor's Property by Licensee or any third party with Licensor's representatives in strict compliance with the "NOTIFICATION; SAFETY; PROTECTION OF RAILROAD OPERATIONS" Section of this **Exhibit B**.

(iii) No permanent building, structure or fence, and no material or obstruction of any kind or character shall be stored or maintained by Licensee on Licensor's Property which would obstruct or interfere with the use and enjoyment of rights herein reserved without the prior written consent of Licensor.

I. **Supervision.** The Licensee, at its own expense, shall adequately police and supervise all work to be performed on Licensee's Tower and Facilities, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Licensor may be responsible, or to property of the Licensor. The responsibility of the Licensee for safe conduct and adequate policing and supervision of Licensee's Tower and Facilities shall not be lessened or otherwise affected by the Licensor's approval of any plans or specifications, or by the Licensor's collaboration in performance of any work, or by the presence at the work site of the Licensor's representatives, or by compliance by the Licensee with any requests or recommendations made by such representatives. If a representative of the Licensor is assigned to any portion of Licensee's operation or maintenance of the Licensee's Tower and Facilities, the Licensee will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Licensor's Property and operations.

J. **Suspension of Work.** If at any time the Licensor shall be of the opinion that any operation or maintenance work of the Licensee's Tower and/or Facilities is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Licensor shall notify Licensee and Licensee shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

K. **Removal of Debris.** The Licensee shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Licensor; and any such material and debris shall be promptly removed from the Licensor's Property by the Licensee at the Licensee's own expense or by the Licensor at the expense of the Licensee.

L. **Explosives.** The Licensee shall not discharge any explosives on or in the vicinity of the Licensor's Property without the prior consent of the Licensor, which shall not be given if, in the sole discretion of the Licensor, such discharge would be dangerous or would interfere with the Licensor's property or facilities.

M. **Protection of Subsurface Facilities on Licensor's Property.** Cables, lines, wires, circuits, conduit, pipes and other facilities may be buried on and under Licensor's property, including, without limitation, its right-of-way, as part of, or associated with, various systems and facilities including, without limitation, fiber optic systems, railroad traffic control-related systems

(e.g., wayside horn, switching, and signal control systems), and utility systems and facilities (e.g., electrical lines, natural gas and water main pipelines and distribution / supply lines, and sewer pipes and lines). Protection of such facilities is of extreme importance since any break in or damage to the facilities could, among other things, disrupt service to users, result in business interruption and loss of revenue and profits, result in injury or death to persons and damage to property, cause other economic losses and/or create safety risks. In addition to the notifications required under the "NOTIFICATION; SAFETY; PROTECTION OF RAILROAD OPERATIONS" in Section of this **Exhibit B**, prior to the performance of any work on Licensor's property, Licensee shall (i) comply with all one-call and local and state requirements for subsurface detection, and (ii) exercise due diligence in an effort to determine from the Licensor and all appropriate utilities, telecommunications companies, etc., if such facilities are present, and (iii) telephone Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Licensor's property to be used by Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, and arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will not commence any work on Licensor's property until all such protection or relocation has been completed.

N. **Crossing Railroad Tracks.** Licensee and its contractor are strictly prohibited from vehicular crossings of Licensor's tracks except at existing open public crossings.

O. **Emergencies.** If, at any time, an emergency arises involving Licensee's Tower and/or Facilities, Licensee or its contractor shall immediately contact Licensor's Response Management Communications Center at (888) 877-7267 (a 24-hour line).

P. **Maintenance of Right-of-Way.** Licensor shall not be responsible for maintenance of Licensee's occupancy areas or for clearing or removal of trees, shrubs, plants, ice, snow or debris therefrom. If requested to do so by Licensee and if Licensor agrees to extend maintenance to cover Licensee's area of occupation at Licensee's request and to cut, mow and/or treat such right-of-way growth at the same time as Licensor performs its own track or right-of-way maintenance, Licensor shall perform such extended maintenance and Licensee shall reimburse Licensor for Licensor's actual costs incurred in performing such extended maintenance.

Section 3. LICENSEE'S PAYMENT OF EXPENSES.

A. Licensee shall bear the entire cost and expense of the design, construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Tower and Facilities.

B. Licensee shall fully pay for all materials joined, affixed to and labor performed on Licensor's property in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Tower and Facilities, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of

Licensee. Licensee shall promptly pay or discharge all taxes, charges, and assessments levied upon, in respect to, or on account of Licensee's Tower and Facilities, to prevent the same from becoming a charge or lien upon any property of Licensor, and so that the taxes, charges, and assessments levied upon or in respect to such property shall not be increased because of the location, construction, or maintenance of Licensee's Tower and Facilities or any improvement, appliance, or fixture connected therewith placed upon such property, or on account of Licensee's interest therein. Where such tax, charge, or assessment may not be separately made or assessed to Licensee but shall be included in the assessment of the property of Licensor, then Licensee shall pay to Licensor an equitable proportion of such taxes determined by the value of Licensee's property upon property of Licensor as compared with the entire value of such property.

C. As set forth in the "FLAGGING SERVICES" Section of this **Exhibit B**, Licensor, in its sole and absolute discretion, shall determine if any Flagging Services are required. In the event Licensor requires such Flagging Services, such services will be at the sole cost and expense of Licensee. For any Flagging Services performed by Licensor, Licensor will submit itemized invoices to Licensee's notice recipient listed in the "NOTICES" Article of this Agreement. Licensee shall pay to Licensor the total amount listed on such invoice within thirty (30) days of Licensee's receipt of such invoice.

Section 4. RESTORATION OF RAILROAD PROPERTY.

In the event Licensee, in any manner moves or disturbs any property of Licensor in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Tower and/or Facilities, then, Licensee shall, as soon as possible and at Licensee's sole cost and expense, restore Licensor's property to the same condition as the same were before such property was moved or disturbed.

EXHIBIT C

MEMORANDUM OF LICENSE

[FOLLOWS ON NEXT PAGE]

Site Name: Brawley
CitySwitch Site: CAC008
UP Audit Number: #####

Prepared by, and after recording

Return to:

CitySwitch II, LLC
1900 Century Place, Suite 320
Atlanta, GA 30345

MEMORANDUM OF LICENSE

This Memorandum of License is entered into on this 12 day of April, 2023, by and between Union Pacific Railroad Company, a Delaware corporation, "Landlord", having an office at 1400 Douglas Street, Omaha, Nebraska 68179, and CitySwitch II, LLC, a Georgia limited liability company, whose mailing address is 1900 Century Place NE, Suite 320, Atlanta, GA 30345 ("Tenant").

1. Landlord and Tenant entered into a certain Tower Construction Agreement ("License") on the ___ day of _____, 20___, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the License.
2. The initial term will be ten (10) years commencing on the effective date of written notification by Tenant to Landlord of Tenant's intention to commence the initial term, with three (3) successive automatic five (5) year options to renew.
3. The portion of the land being licensed to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. Landlord will attorn to any mortgagee of Tenant and will subordinate any Landlord's lien to the liens of Tenant's mortgagees.
5. This Memorandum of License is not intended to amend or modify and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the License, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of License and the provisions of the License, the provisions of the License shall control. The License shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the License.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK,
SIGNATURES BEGIN ON NEXT PAGE]

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

ACCEPTED BY: Licensor
Union Pacific Railroad Company

ACCEPTED BY: Licensee
CitySwitch II-A, LLC

BY: 

BY: 

PRINT NAME: CHRIS D. GOBLE

PRINT NAME: Robert Raville
President & CEO

TITLE: Assistant Vice President - Real Estate

TITLE: _____

DATE: 4/12/2022

DATE: 3/21/22

ACKNOWLEDGMENT OF LICENSEE:

STATE OF GEORGIA)
) ss.:
COUNTY OF FULTON)

On this 21 day of MARCH, 2022, before me personally appeared ROB RAVILLE, known to me (or proved to me on the basis of satisfactory evidence) to be the persons described in and who executed the foregoing instrument, and acknowledged that she executed the same as his free act and deed.

WITNESS my hand and Official Seal at office this 21 day of MARCH, 2022.

Catherine Habel
Notary Public

My Commission Expires: 07-21-2023



ACKNOWLEDGMENT OF LICENSOR:

STATE OF Nebraska)
) ss:
COUNTY OF Douglas)

On this 12th day of April, 2022, before me personally appeared Chris D. Goble, known to me (or proved to me on the basis of satisfactory evidence) to be the persons described in and who executed the foregoing instrument, and acknowledged that she executed the same as his free act and deed.

WITNESS my hand and Official Seal at office this 12th day of April, 2022.

[Signature]
Notary Public

My Commission Expires:



May 9, 2022

EXHIBIT 1 TO MEMORANDUM OF LICENSE

DESCRIPTION OF PROPERTY AND PREMISES

**Premises is depicted as follows and shall be replaced with a surveyed legal description
when available.**

ATTACHMENT "F" – ALUCP SECTION

Policies

1. SCOPE OF REVIEW

1. Geographic Area of Concern

The Imperial County Airport Land Use Commission's planning area encompasses:

1. *Airport Vicinity* - All lands on which the uses could be negatively affected by present or future aircraft operations at the following airports in the County and lands on which the uses could negatively affect said airports. The specific limits of the planning area for each airport are depicted on the respective *Compatibility Map* for that airport as presented in Chapter 3.

- (a) Brawley Municipal Airport.
- (b) Calexico International Airport.
- (c) Calipatria Municipal Airport.
- (d) Holtville Airport.
- (e) Imperial County Airport.
- (f) Salton Sea Airport.
- (g) Naval Air Facility El Centro.

2. **Countywide Impacts on Flight Safety** - Those lands, regardless of their location in the County, on which the uses could adversely affect the safety of flight in the County. The specific uses of concern are identified in Paragraph 2.
3. **New Airports and Heliports** - The site and environs of any proposed new airport or heliport anywhere in the County. The Brawley Pioneers Memorial Hospital has a heliport area on-site.

2. Types of Airport Impacts

The Commission is concerned only with the potential impacts related to aircraft noise, land use safety (with respect both to people on the ground and the occupants of aircraft), airspace protection, and aircraft over-flights. Other impacts sometimes created by airports (e.g., air pollution, automobile traffic, etc.) are beyond the scope of this plan. These impacts are within the authority of other local, state, and federal agencies and are addressed within the environmental review procedures for airport development.

3. Types of Actions Reviewed

1. **General Plan Consistency Review** - Within 180 days of adoption of the *Airport Land Use Compatibility Plan*, the Commission shall review the general plans and specific plans of affected local jurisdictions to determine their consistency with the Commission's policies. Until such time as (1) the Commission finds that the local general plan or specific plan is consistent with the *Airport Land Use Compatibility Plan*, or (2) the local agency has overruled the Commission's determination of inconsistency, the local jurisdiction shall refer all actions, regulations, and permits (as specified in Paragraph 3) involving the airport area of influence to the Commission for review (Section 21676.5 (a)).
2. **Statutory Requirements** -As required by state law, the following types of actions shall be referred to the Airport Land Use Commission for determination of consistency with the Commission's plan *prior to their approval* by the local jurisdiction:

- (a) The adoption or approval of any amendment to a general or specific plan affecting the Commission's geographic area of concern as indicated in Paragraph 1 (Section 21676 (b)).
- (b) The adoption or approval of a zoning ordinance or building regulation which (1) affects the Commission's geographic area of concern as indicated in Paragraph 1 and (2) involves the types of airport impact concerns listed in Paragraph 2 (Section 21676 (b)).
- (c) Adoption or modification of the master plan for an existing public-use airport (Section 21676 (c)).
- (d) Any proposal for a new airport or heliport whether for public use or private use (Section 21661.5).

3. *Other Project Review* - State law empowers the Commission to review additional types of land use "actions, regulations, and permits" involving a question of airport/land use compatibility if either: (1) the Commission and the local agency agree that these types of individual projects shall be reviewed by the Commission (Section 21676.5 (b)); or (2) the Commission finds that a local agency has not revised its general plan or specific plan or overruled the Commission and the Commission requires that the individual projects be submitted for review (Section 21676.5 (a)). For the purposes of this plan, the specific types of "actions, regulations, and permits" which the Commission shall review include:

- a) Any proposed expansion of a city's sphere of influence within an airport's planning area.
- b) Any proposed residential planned unit development consisting of five or more dwelling units within an airport's planning area.
- c) Any request for variance from a local agency's height limitation ordinance.
- d) Any proposal for construction or alteration of a structure (including antennas) taller than 150 feet above the ground anywhere within the County.

- e) Any major capital improvements (e.g., water, sewer, or roads) that would promote urban development.
- f) Proposed land acquisition by a government entity (especially, acquisition of a school site).
- g) Building permit applications for projects having a valuation greater than \$500,000.
- h) Any other proposed land use action, as determined by the local planning agency, involving a question of compatibility with airport activities.

4. Review Process

1. *Timing of Project Submittal* - Proposed actions listed in Paragraph 3.1 must be submitted to the Commission for review prior to approval by the local government entity. All projects shall be referred to the Commission at the earliest reasonable point in time so that the Commission's review can be duly considered by the local jurisdiction prior to formalizing its actions. At the local government's discretion, submittal of a project for Airport Land Use Commission review can be done before, after, or concurrently with review by the local planning commission or other local advisory bodies.
2. *Commission Action Choices* - When reviewing a land use project proposal, the Airport Land Use Commission has a choice of either of two actions: (1) find the project *consistent* with the *Airport Land Use Compatibility Plan*; or, (2) find the project *inconsistent* with the Plan. In making a finding of inconsistency, the Commission may note the conditions under which the project would be consistent with the Plan. The Commission cannot, however, find a project consistent with the Plan subject to the inclusion of certain conditions in the project.

Table 2A
Compatibility Criteria

Imperial County Airport Land Use Compatibility Plan

Zone	Location	Impact Elements	Maximum Densities		Required Open Land ¹
			Residential (dw/ac)	Other Uses (people/ac) ²	
A	Runway Protection Zone or within Building Restriction Line	<ul style="list-style-type: none"> High risk High noise levels 	0	10	All Remaining
B1	Approach/Departure Zone and Adjacent to Runway	<ul style="list-style-type: none"> Substantial risk - aircraft commonly below 400 ft. AGL or within 1,000 ft. of runway Substantial noise 	0.1	100	30%
B2	Extended Approach/Departure Zone	<ul style="list-style-type: none"> Significant risk - aircraft commonly below 800 ft. AGL Significant noise 	1	100	30%
C	Common Traffic Pattern	<ul style="list-style-type: none"> Limited risk - aircraft at or below 1,000 ft. AGL Frequent noise intrusion 	6	200	15%
D	Other Airport Environs	<ul style="list-style-type: none"> Negligible risk Potential for annoyance from overflights 	No Limit	No Limit	No Requirement

Zone	Additional Criteria		Examples	
	Prohibited Uses	Other Development Conditions	Normally Acceptable Uses	Uses Not Normally Acceptable
A	<ul style="list-style-type: none"> All structures except ones with location set by aeronautical function Assemblages of people Objects exceeding FAR Part 77 height limits Hazards to flight⁶ 	<ul style="list-style-type: none"> Dedication of aviation easement 	<ul style="list-style-type: none"> Aircraft tiedown apron Pastures, field crops, vineyards Automobile parking 	<ul style="list-style-type: none"> Heavy poles, signs, large trees, etc.
B1 and B2	<ul style="list-style-type: none"> Schools, day care centers, libraries Hospitals, nursing homes Highly noise-sensitive uses Above ground storage Storage of highly flammable materials Hazards to flight⁶ 	<ul style="list-style-type: none"> Locate structures maximum distance from extended runway centerline Minimum NLR⁷ of 25 dBA in residential and office buildings Dedication of aviation easement 	<ul style="list-style-type: none"> Uses in Zone A Any agricultural use except ones attracting bird flocks Warehousing, truck terminals Single-story offices 	<ul style="list-style-type: none"> Residential subdivisions Intensive retail uses Intensive manufacturing or food processing uses Multiple story offices Hotels and motels
C	<ul style="list-style-type: none"> Schools Hospitals, nursing homes Hazards to flight⁶ 	<ul style="list-style-type: none"> Dedication of overflight easement for residential uses 	<ul style="list-style-type: none"> Uses in Zone B Parks, playgrounds Low-intensity retail, offices, etc. Low-intensity manufacturing, food processing Two-story motels 	<ul style="list-style-type: none"> Large shopping malls Theaters, auditoriums Large sports stadiums Hi-rise office buildings
D	<ul style="list-style-type: none"> Hazards to flight⁶ 	<ul style="list-style-type: none"> Deed notice required for residential development 	<ul style="list-style-type: none"> All except ones hazardous to flight 	

Table 2A Continued
Compatibility Criteria

Imperial County Airport Land Use Compatibility Plan

NOTES

- 1 Residential development should not contain more than the indicated number of dwelling units per gross acre. Clustering of units is encouraged as a means of meeting the Required Open Land requirements.
- 2 The land use should not attract more than the indicated number of people per acre at any time. This figure should include all individuals who may be on the property (e.g., employees, customers/visitors, etc.). These densities are intended as general planning guidelines to aid in determining the acceptability of proposed land uses.
- 3 See Policy 2.5.
- 4 These uses typically can be designed to meet the density requirements and other development conditions listed.
- 5 These uses typically do not meet the density and other development conditions listed. They should be allowed only if a major community objective is served by their location in this zone and no feasible alternative location exists.
- 6 See Policy 3.4
- 7 NLR = Noise Level Reduction; i.e., the attenuation of sound level from outside to inside provided by the structure.

BASIS FOR COMPATIBILITY ZONE BOUNDARIES

The following general guidelines are used in establishing the Compatibility Zone boundaries for each civilian airport depicted in Chapter 3. Modifications to the boundaries may be made to reflect specific local conditions such as existing roads, property lines, and land uses. Boundaries for NAF El Centro are modified in recognition of the differences between civilian and military aircraft characteristics and flight tracks.

- A The boundary of this zone for each airport is defined by the runway protection zones (formerly called runway clear zones) and the airfield building restriction lines.

Runway protection zone dimensions and locations are set in accordance with Federal Aviation Administration standards for the proposed future runway location, length, width, and approach type as indicated on an approved Airport Layout Plan. If no such plan exists, the existing runway location, length, width, and approach type are used.

The building restriction line location indicated on an approved Airport Layout Plan is used where such plans exist. For airports not having an approved Airport Layout Plan, the zone boundary is set at the following distance laterally from the runway centerline:

Visual runway for small airplanes	370 feet
Visual runway for large airplanes	500 feet
Nonprecision instrument runway for large airplanes	500 feet
Precision instrument runway	750 feet

These distances allow structures up to approximately 35 feet height to remain below the airspace surfaces defined by Federal Aviation Regulations Part 77.

- B1 The outer boundary of the Approach/Departure Zone is defined as the area where aircraft are commonly below 400 feet above ground level (AGL). For visual runways, this location encompasses the base leg of the traffic pattern as commonly flown. For instrument runways, the

altitudes established by approach procedures are used. Zone B1 also includes areas within 1,000 feet laterally from the runway centerline.

- B2 The Extended Approach/Departure Zone includes areas where aircraft are commonly below 800 feet AGL on straight-in approach or straight-out departure. It applies to runways with more than 500 operations per year by large aircraft (over 12,500 pounds maximum gross takeoff weight) and/or runway ends with more than 10,000 total annual takeoffs.

- C The outer boundary of the Common Traffic Pattern Zone is defined as the area where aircraft are commonly below 1,000 feet AGL (i.e., the traffic pattern and pattern entry points). This area is considered to extend 5,000 feet laterally from the runway centerline and from 5,000 to 10,000 feet longitudinally from the end of the runway primary surface. The length depends upon the runway classification (visual versus instrument) and the type and volume of aircraft accommodated. For runways having an established traffic solely on one side, the shape of the zone is modified accordingly.

- D The outer boundary of the Other Airport Environs Zone conforms with the adopted Planning Area for each airport.

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