

# Agenda

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**Meeting of the Commissioners of Public Works  
of the City of Charleston, South Carolina  
(Charleston Water System)**

November 29, 2011, 9:00 a.m.

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**Our Mission** is to protect public health and enhance the environment of our service community by providing clean water services of exceptional quality and value.

**Our Vision** is to become, by 2012, an organization worthy of a SC Governor's Quality Award achieved through teamwork, customer focus, and performance excellence.

**Our Core Values** Teamwork • Ethical Behavior & Integrity • Accountability • Customer Service Focus • Open & Honest Communication • Innovation

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**Meeting of the Commissioners of Public Works  
of the City of Charleston, South Carolina  
(Charleston Water System)**

**Mr. Thomas B. Pritchard, Chairman**

November 29, 2011

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- I. Call to Order**
  
- II. Compliance With Public Notice – Mr. Pritchard**
  
- III. Invocation – Mr. Koopman**
  
- IV. Pledge of Allegiance – All present**
  
- V. Adjourn to Committee Meetings, followed by Commissioners Meeting**

**Meeting of the Commissioners of Public Works  
of the City of Charleston, South Carolina  
(Charleston Water System)**

**Public Contract and Finance Committee**  
Mr. Thomas B. Pritchard, Committee Chairman

November 29, 2011

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**I. Call to Order**

**II. Approval of Minutes of Committee Meeting of October 25, 2011**

**III. Approval of 2012 External Auditors – Mr. Ropp / Tom McNeish, Elliott Davis, LLC – Exhibit A**

Staff is recommending approval to renew the Annual Financial and Compliance Audit Services Agreement with Elliott Davis, LLC for the year ending December 31, 2011. This is the second year of four one-year renewal options. *(Motion Requested)*

**IV. Presentation on Variable Rate Alternative Products (Window VRDB Product) - Mr. Ropp**

Mr. Ropp will introduce Ms. Jessica Donnelly and Mr. Kent Lawrence with Citi - Municipal Securities Division. They will provide a presentation on alternative products to the standard liquidity agreement for our revenue bonds. The Liquidity Agreement for Series 2007 Bonds expires in November 2012. This presentation is only to provide the Commissioners with another possible option for the handling of future liquidity agreements. Staff has yet to make any formal recommendations. *(Information Only)*

**V. Adjournment**



October 20, 2011

Board of Commissioners  
Charleston Water System  
103 St. Philip Street  
Charleston, SC 29401

Attention: Board of Commissioners

This letter is to explain our understanding of the arrangements for the services we are to perform for the Commissioners of Public Works of the City of Charleston (the Commission) for the year ending December 31, 2011. We ask that you either confirm or amend this understanding.

**Audit Services**

We will perform an audit of the Commission's financial statements as of and for the year ended December 31, 2011. We understand that the financial statements will be prepared in accordance with accounting principles generally accepted in the United States of America. The objective of an audit of financial statements is to express an opinion on those statements.

We are responsible for forming and expressing an opinion about whether the financial statements that have been prepared by management with the oversight of the Commissioners are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America.

We will conduct the audit in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement whether caused by error or fraud. Accordingly, a material misstatement, may remain undetected. Also, an audit is not designed to detect errors or fraud that are immaterial to the financial statements. The determination of abuse is subjective; therefore, Government Auditing Standards do not expect us to provide reasonable assurance of detecting abuse.

An audit of financial statements also includes obtaining an understanding of the Commission and its environment, including its internal control, sufficient to assess the risks of material misstatement of the financial statements, and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, we will communicate to management and the Commissioners any significant deficiencies or material weaknesses that become known to us during the course of the audit.

We will also communicate to the Commissioners (a) any fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements, (b) any illegal acts, violations of provisions of contracts or grant agreements,

and abuse that come to our attention (unless they are clearly inconsequential), (c) should any arise, any disagreements with management and other serious difficulties encountered in performing the audit, and (d) various matters related to the Commission's accounting policies and financial statements.

### **Commissioners of Public Works of the City of Charleston's Responsibilities**

Management is responsible for the financial statements, including the selection and application of accounting policies, adjusting the financial statements to correct material misstatements, and for making all financial records and related information available to us. Management is responsible for providing us with a written management representation letter confirming certain representations made during the course of our audit of the financial statements and affirming to us that it believes the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for establishing and maintaining effective internal control over financial reporting and for informing us of all significant deficiencies and material weaknesses in the design or operation of such controls of which it has knowledge.

Management is responsible for identifying and ensuring that the Commission complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations. In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Commission involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements. Management is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud affecting the Commission received in communications from employees, former employees, analysts, regulators, or others.

The Commission is responsible for informing us of its views about the risks of fraud within the Commission, and its knowledge of any fraud or suspected fraud affecting the Commission.

The Commission agrees that it will not associate us with any public or private securities offering without first obtaining our consent. Our association with an official statement is a matter for which separate arrangements will be necessary. The Commission agrees to provide us with printer's proofs or masters of such offering documents for our review and approval before printing and with a copy of the final reproduced material for our approval before it is distributed. In the event our auditor/client relationship has been terminated when the Commission seeks such consent, we will be under no obligation to grant such consent or approval.

Because Elliott Davis, LLC will rely on the Commission and its management and audit committee to discharge the forgoing responsibilities, the Commission holds harmless and releases Elliott Davis, LLC, its shareholders, and employees from all claims, liabilities, losses, and costs arising in circumstances where there has been a knowing misrepresentation by a member of the Commission management which has caused, in any respect, Elliott Davis, LLC's breach of contract or negligence. This provision shall survive the termination of this arrangement for services.

If, in connection with our audit, you request us to perform accounting services necessary for the preparation of the financial statements (such as maintaining depreciation schedules, computing the provision for income taxes, drafting the financial statements, etc.) you agree to designate an appropriate individual to oversee the services, make all management decisions involved in those services, evaluate the adequacy and results of the services, and accept responsibility for the results of the services.

### **Other Terms of our Engagement**

Our fees for the audit and accounting services described above are \$36,000 as reflected in our proposal letter, dated October 21, 2009. Interim billings will be submitted as work progresses and as expenses are incurred. We will submit our bill for these services promptly upon rendering the report. Billings are due upon submission. In accordance with our Firm policies, work may be suspended if your account becomes 60 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenses through the date of termination. Finance charges will be assessed at the rate of 1% per month on the balances outstanding over 30 days.

The above fees are based on the assumptions that there will be no significant changes that would affect the financial recordkeeping and/or reporting of the Commission and the Commission will provide and/or accurately prepare all requested schedules, reconciliations, account analyses, and other documentation in a timely manner. If circumstances arise that would require us to devote significant time to assist you in these matters, we will perform such additional services at our standard hourly rates which are summarized in the proposal letter.

The assistance to be supplied by Commission personnel, including the preparation of schedules and analyses of accounts, will be discussed and coordinated with Cynthia Wood, Director of Accounting. The timely and accurate completion of this work is an essential condition to our completion of the audit and issuance of our audit report.

Our professional standards require that we perform certain additional procedures, on current and previous years' engagements, whenever a Shareholder or professional employee leaves the firm and is subsequently employed by or associated with a client. Accordingly, the Commission agrees it will compensate Elliott Davis, LLC for any additional costs incurred as a result of the Commission's employment of a shareholder or professional employee of Elliott Davis, LLC.

In the event we are requested or authorized by the Commission or are required by government regulation, subpoena, or other legal process to produce our documents or our personnel as witnesses with respect to our engagements for the Commission, the Commission will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

During the course of our engagement, we may accumulate records containing data which should be reflected in the Commission's books and records. The Commission will determine that all such data, if necessary, will be so reflected. Accordingly, the Commission will not expect us to maintain copies of such records in our possession.

**Claim Resolution**

The Commission and Elliott Davis, LLC agree that no claim arising out of services rendered pursuant to this agreement shall be filed more than two years after the date of the audit report issued by Elliott Davis, LLC or the date of this arrangement letter if no report has been issued. The Commission waives any claim for punitive damages. Elliott Davis, LLC's liability for all claims, damages and costs of the Commission arising from this engagement is limited to the amount of fees paid by the Commission to Elliott Davis, LLC for the services rendered under this arrangement letter.

This letter constitutes the complete and exclusive statement of agreement between Elliott Davis, LLC and the Commission, superseding all proposals, oral or written, and all other communications, with respect to the terms of the engagement between the parties.

If this letter defines the arrangements as the Commission understands them, please sign and date the enclosed copy and return it to us.

Elliott Davis, LLC



Thomas J. McNeish, CPA  
Shareholder

Confirmed on behalf of the Commission of Public Works of the City of Charleston:

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Signature

Title

Date

**Meeting of the Commissioners of Public Works  
of the City of Charleston, South Carolina  
(Charleston Water System)**

**Administrative, Personnel, and Public Relations Committee**  
Mr. William E. Koopman, Jr., Committee Chairman  
November 29, 2011

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**I. Call to Order**

**II. Approval of Minutes of Committee Meeting of October 25, 2011**

**III. Bill Inserts - Ms. Craft – Exhibit B**

**January 2012**

- **City of Charleston - Clean City Sweep - Keep Charleston Beautiful**
- **City of Charleston - Storm Water Awareness**

*(Motion Requested)*

**IV. Update on 2011 SC Governor's Quality Award Recognition – Mr. Hill**

**V. Adjournment**

November 14, 2011

To: Commissioners and Officers  
From: Jenny Craft, Public Relations Manager  
Re: Bill Inserts

In accordance with Charleston Water System's approval process for bill inserts, the following bill inserts are submitted for your approval:

**January 2012**

- **City of Charleston - Clean Cities Sweep Program**
- **City of Charleston - Storm Water Awareness**

Should you have any questions or concerns, please feel free to contact me prior to or during our Board meeting.

Attachments

# 2012 Clean Cities Sweep

*Part of the Great American Cleanup*

Clean Cities Sweep is a program that supports the cleanup and beautification efforts of over **ten thousand volunteers** working together in North Charleston and Charleston during the week of April 22-29!

- Join efforts with a local group volunteering in the community.
- Plan a beautification event to celebrate Earth Day.
- Become a program sponsor.

**In North Charleston:** 745-1073  
[www.keepnorthcharlestonbeautiful.org](http://www.keepnorthcharlestonbeautiful.org)

**In Charleston:** 579-7501  
[www.keepcharlestonbeautiful.org](http://www.keepcharlestonbeautiful.org)

## Why VOLUNTEER for CCS?

- See your efforts “bloom” into something beautiful.
- Receive free project supplies for your CCS group.
- Have an opportunity to win contests and prizes.
- Show the community how much you care!



Printed on recycled paper



From the USEPA, here are some things you can do to prevent stormwater pollution:

1. Use fertilizers sparingly and do not fertilize before rain storms when nutrients can get washed into local waterbodies.
2. Never dump anything down the storm drains.
3. Vegetate bare spots in your yard.
4. Compost your yard waste.
5. Avoid pesticides; learn about Integrated Pest Management.
6. Direct downspouts away from paved surfaces.
7. Check car for leaks, and recycle motor oil.
8. Pick up after your pet.
9. Keep gasoline, paint and other household chemicals in covered areas.



*City of Charleston*

Department of Public Service  
75 Calhoun Street, 3rd Floor  
Charleston, SC 29401

Phone: 843-724-3757

Fax: 843-973-7261

[www.charlestoncity.info/stormwater](http://www.charlestoncity.info/stormwater)



When it rains, stormwater flows over driveways, lawns, streets, and sidewalks, and into storm drains that discharge directly to our streams, lakes, rivers and the ocean.

As the stormwater flows along the ground, it picks up oil, trash, chemicals, dirt and other pollutants and discharges these pollutants directly into our waterbodies, the same waterbodies that we use for swimming, fishing and providing drinking water.

By practicing healthy habits, citizens can help keep common pollutants like trash, yard waste, pet waste, pesticides, chemicals and automotive fluids off the ground and out of our stormwater.

The City of Charleston's new stormwater permit requires the City to educate the public about the impacts of stormwater discharges on waterbodies and the steps the public can take to reduce pollutants in stormwater runoff.

**Meeting of the Commissioners of Public Works  
of the City of Charleston, South Carolina  
(Charleston Water System)**

**Regulatory and Property Committee**  
Mr. David E. Rivers, Committee Chairman

November 29, 2011

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**I. Call to Order**

**II. Approval of Minutes of Committee Meeting of October 25, 2011**

**III. Recommendation on Disposition of the First Citizens Bank Property – Mr. Hill / Mr. Crawford – Exhibit C**

Mr. Crawford will share the results of the public bid process for the First Citizens Bank Property in North Charleston, currently owned by CWS, and make a recommendation for the Commissioners consideration. *(Motion Requested)*

**IV. Cell Tower Lease Agreement – Mr. Crawford – Exhibit D**

Mr. Crawford will present a proposal to the Commissioners for their consideration of a requested cell tower agreement (Exhibit D) on CWS owned property located behind the Crowfield subdivision in North Charleston. *(Motion requested for approval subject to legal review)*

**V. Update on the Sale of CWS Property to Berkeley County for a Public Library – Mr. Hill**

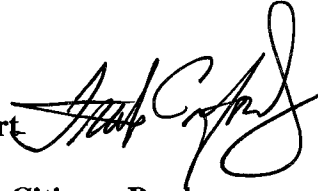
Mr. Hill will inform the Commissioners of the status of the sale of CWS property in Hanahan to Berkeley County for a public library. *(Information Only)*

**VI. Adjournment**



INTEROFFICE COMMUNI

**To:** Kin Hill, P.E., Chief Executive Officer

**From:** Frank Crawford, Jr., Director of Operations Support 

**Subject:** Public Bid # 1644 - 9205 University Boulevard, First Citizens Bank

**Date:** November 17, 2011

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At the July 2011 Commissioner's Meeting, the Commissioners were informed that a Real Estate firm representing First Citizens Bank (FCB) had met with staff to share FCB's interest in purchasing 9205 University Boulevard which is located at the intersection of East Medical Plaza and US Highway 78. As background, in March of 1984, the Commission executed a 30-year ground lease with FCB that will expire in March of 2014. The terms of the Lease stipulate that upon expiration or other termination of the Lease, FCB will surrender all buildings and structures that it erected to the Commission. Staff was directed and authorized to initiate a MAI appraisal and to develop a recommendation in concert with legal counsel for future consideration. At the August 2011 Commissioner's Meeting, authorization was given to publicly advertise the CWS property located at 9205 University Boulevard for sale with a minimum bid price of \$800,000.

CWS publicly advertised six (6) times in the News and Courier and included the notice on our web site from which only one bid was received in the amount of \$850,001 from the current lessee, First Citizens Bank (FCB).

Wherein, the bid from FCB exceeded the appraisal and the minimum bid requirement, consistent with our procurement policies and procedures, it is deemed to be in the best interest of the Commission to accept this publicly-advertised single bid. This .60 acre ground lease has generated from FCB \$311,475 to date and with the early termination and sale of the ground lease, the Commission will realize a total of \$1,161,475 from this 26,260 square foot parcel of land. Based on FCB's successful bid, it is recommended that the Commissioners authorize the sale of 9205 University Boulevard to First Citizens Bank in the amount of \$850,001.

FC/cg

cc: Jinks Patrick, Executive Assistant

## OPTION & LAND LEASE

This Option and Land Lease, hereinafter referred to as "Lease", is made the last day executed below by and between COMMISSIONER OF THE PUBLIC WORKS OF THE CITY OF CHARLESTON, a governmental entity, having an address of 103 St. Philip Street, Charleston, South Carolina 29403, hereinafter referred to as "Lessor", and SBA TOWERS III LLC, a Florida limited liability company, having an office at 5900 Broken Sound Parkway, N. W., Boca Raton, Florida 33487-2797, hereinafter referred to as "Lessee."

### 1. The Option.

(a) For the sum of Two Thousand and No/100 Dollars (\$2,000.00) (the "Option Fee"), to be paid to Lessor by Lessee upon execution of this Lease and other good and valuable consideration, Lessor hereby grants to Lessee the exclusive and irrevocable option for one (1) year from the date hereof (the "Initial Option Period"), to lease the Leased Space (as defined below) on the terms and conditions set forth below (the "Option"). The Option may be extended for an additional one (1) year period upon written notification to Lessor by Lessee accompanied by the payment of an additional Two Thousand Four Hundred and No/100 Dollars (\$2,400.00) (the "Additional Option Fee"), delivered to Lessor prior to the end of the Initial Option Period. The Initial Option Period, as it may be extended, is referred to herein as the "Option Period."

(b) In the event the Additional Option Fee is not made and/or written notice not delivered by the due date for the same, then the Option will terminate and this Lease will terminate and Lessor will be entitled to retain all previously paid sums as full payment for the Option granted hereunder. However, if Lessor accepts any Additional Option Fee, Rent (as defined below), and/or written notice after the due date for the same, then Lessee's failure to make timely payment of the additional fee will be deemed waived and this Lease will be reinstated. Upon Lessee's exercise of the Option, the Lease which follows will take effect and Lessee shall be entitled to a credit for all Option Fees paid against Rent due under this Lease.

(c) During the Option Period, Lessee shall have the right to enter Lessor's property to conduct tests and studies, at Lessee's expense, to determine the suitability of the Leased Space for Lessee's intended use. The tests may include, without limitation, surveys, soil tests, environmental assessments and radio wave propagation measurements. During the Option Period Lessee will contact the Lessor at the CWS Property Management Office prior to entry onto Lessor's Property.

(d) Lessee may exercise the Option by delivery of written notice to Lessor in accordance with the Notice provision specified herein. Upon Lessee's exercise of the Option, the Lease which follows will take effect.

2. Leased Space and Premises. Upon Lessee's exercise of the Option, Lessor shall lease, and hereby leases, to Lessee approximately 10,000 (100' x 100') square feet of space as depicted in Exhibit A attached hereto (the "Leased Space") within the property located at I-26 Frontage Road and Gateway Drive, City of North Charleston, County of Charleston, State of South Carolina 29445, Property Parcel ID: 3930000029 with the legal description set forth in Exhibit B attached hereto ("Premises"). Lessor also hereby grants to Lessee the right to survey the Leased Space at Lessee's cost. The survey will automatically replace Exhibit A and be made a part hereof. The Leased Space legal and access and utility easement set forth in the survey will replace any parent parcel description set forth

in Exhibit B as soon as it becomes available. In the event of any discrepancy between the description of the Leased Space contained herein and the survey, the survey will control. The Leased Space will be utilized to construct, support and operate a wireless communications facility, including a communications tower, antennas, cables, and related structures and improvements (collectively the "Structures"), including the uses as permitted and described in Section 11 of this Lease and for any other purpose with the Lessor's prior written consent which shall not be unreasonably withheld, conditioned or delayed. In the event Lessee chooses to erect a guyed tower, Lessor hereby grants an appurtenant easement to Lessee (i) in, over and across the Premises for the purpose of anchoring, mounting and replacing the guy wires extending from Lessee's tower on the Leased Space, and (ii) in, over and across that portion of the Premises lying within twenty (20) feet from each guy wire anchor and from both sides of every guy wire for the purpose of maintaining and repairing such guy anchors and wires together with the right to clear all trees, undergrowth or other obstructions and to trim, cut and keep trimmed and cut all tree limbs, undergrowth, or other obstructions which may, in the reasonable opinion of Lessee, interfere with or fall upon Lessee's tower, any of the tower's guy anchors and wires or any of Lessee's other improvements on the Leased Space.

3. Term. The initial term of this Lease will be five (5) years from the "Commencement Date" specified below (in no event shall this date be earlier than the date on which Lessee exercises the Option) and shall automatically renew for up to five (5) additional terms of five (5) years each unless Lessee notifies Lessor of its intention not to renew prior to commencement of the succeeding renewal term.

4. Rent. The rent for the first (1<sup>st</sup>) year of the Lease will be One Thousand Two Hundred and No/100 Dollars (\$1,200.00) per month (the "Rent"), paid monthly in advance, which Lessee will pay to Lessor at the place as Lessor will designate to Lessee in writing. If the initial term or any renewal term does not begin on the first day or end on the last day of a month, the Rent for that partial month will be prorated by multiplying the monthly Rent by a fraction, the numerator of which is the number of days of the partial month included in the initial term or renewal term and the denominator of which is the total number of days in the full calendar month. Beginning with the second (2<sup>nd</sup>) year of the Lease and every year thereafter, the then current monthly rental fee will be increased by three (3%) percent. Each such year shall commence on the corresponding anniversary of the Commencement Date. Lessee is entitled to withhold payment of Rent until such time as Lessee receives a completed W-9 form from Lessor, setting forth the Federal tax identification number of Lessor or the person or entity to whom the Rent checks are to be made payable as directed in writing by Lessor. The parties acknowledge and agree that the foregoing is a reasonable requirement in order to allow Lessee to comply with its legal requirements.

5. Ingress and Egress. Lessor hereby grants to Lessee an easement (the "Easement") for ingress, egress and regress over the Premises adjacent to the Leased Space for construction, operation and maintenance of the Structures on the Leased Space, and for installation, construction, operation and maintenance of underground and above ground telephone, telegraph, and power lines, in connection with its use of the Leased Space. The term of this Easement will commence upon exercise of the Option and will continue until the last to occur of (i) expiration of the initial term or

easement ten (10) feet in width around the perimeter of and adjacent to the Leased Space in order to comply with such landscaping or screening requirements.

9. **Assignment and Subleasing.** Lessee is expressly permitted to assign, or transfer its rights under this Lease to entities controlling, controlled by or under common control with Lessee. Any transfer of this Lease by merger, consolidation or liquidation or any change in the ownership of, or power to vote, the majority of its outstanding voting stock shall constitute an assignment for the purposes of this paragraph. Otherwise, Lessee may not assign this Lease without the prior written consent of Lessor, which will not be unreasonably withheld, delayed or conditioned. Lessee shall have the right to freely sublet or transfer space to third parties on the Leased Space without obtaining the prior written consent of Lessor. Lessor may not assign this Lease or any rights thereunder, except in connection with conveyance of fee simple title to the Premises, without the prior written consent of Lessee, which will not be unreasonably withheld, delayed or conditioned. In the event that Lessee from time to time subleases all or a portion of the Leased Space or as otherwise reasonably required by Lessee for work at the Leased Space, Lessor hereby grants to Lessee a temporary construction easement over such portion of the Premises as is reasonably necessary for such work. Following the completion of such work, Lessee shall, at Lessee's sole cost and expense, promptly repair any damage to the temporary easement area arising from Lessee's use thereof.

10. **Notices.** All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Lease will be in writing, signed by the notifying party, or officer, agent or attorney of the notifying party, and will be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or by overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Lessor: Commissioners of Public Works of the  
City of Charleston  
Attn.: Frank Crawford, Director of  
Operations Support  
P.O. Box B  
Charleston, SC 29402  
Phone # - (843) 727-6894  
Email: crawfordf@charlestoncpw.com

Rent Payable to: Commissioners of Public Works of the  
City of Charleston  
Attn: Director of Accounting  
P.O. Box B  
Charleston, SC 29402

Federal Tax ID: 57-6000227

To Lessee: SBA Towers III LLC  
5900 Broken Sound Parkway, N. W.  
Boca Raton, FL 33487-2797  
RE: Fox Chase/SC14377-S  
Attn: Site Administration  
Phone # - (561) 995-7670

The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by the party as above provided. Simultaneously with any notice of default given to Lessee under the terms of this Lease, Lessor shall deliver a copy of such notice to Lender at an address to be provided by Lessee.

11. **Lessee Improvements.** Lessee has the right, at its sole expense, to make the improvements on the Leased Space as it may deem necessary, including any improvements necessary for the construction and operation of the Structures. Lessee will be responsible for the cost of any site preparation work necessary to prepare the Leased Space to support the Structures. All Lessee's improvements, including but not limited to, prefabricated buildings, generators, fencing, Structures and any other improvements will remain the property of Lessee. The Structures may be used for the transmission, reception and relay of communication signals, including, without limitation, radio frequency signals. Upon termination of this Lease, Lessee will, to the extent reasonable, restore the Leased Space to its original condition at the commencement of this Lease, except for ordinary wear and tear and damages by the elements or damages over which Lessee had no control. Lessee and Lessor agree that it will not be reasonable to require Lessee to remove any improvements contemplated hereunder which are permanent in nature, including but not limited to foundations, footings, concrete, paving, gravel, vegetation and utilities.

12. **Insurance, Lessor** - Lessor, at all times during the initial term or renewal term of this Lease, will maintain in full force a comprehensive public liability insurance policy covering all of their operations, activities, liabilities and obligations on the Leased Space, having limits not less than One Million Dollars (\$1,000,000) which will name Lessee as an additional insured party. On or before the Commencement Date, Lessor will give Lessee a certificate of insurance evidencing that such insurance is in effect. Such insurance shall name Lessee as an additional insured with respect to the Leased Space, shall be issued by an insurance company authorized to do business in the state in which the Leased Space is located and shall provide thirty (30) days prior written notice to the Lessee of any cancellation of such policy. Lessor shall deliver to Lessee a renewal certificate evidencing that such insurance is in effect within ten business days of Lessee's request for such insurance. **Lessee** - Lessee, at all times during the term(s) of this Lease, will maintain in full force a comprehensive public liability insurance policy covering all of its operations, activities, liabilities and obligations on the Leased Space, having limits not less than One Million Dollars (\$1,000,000). On or before the Commencement Date, Lessee will give Lessor a certificate of insurance evidencing that such insurance is in effect. Lessee shall deliver to Lessor a renewal certificate evidencing that such insurance is in effect within ten (10) business days of Lessor's request for such certificate. The insurance policy shall be issued by an insurance company authorized to do business in the state in which the Leased Space is located and shall provide thirty (30) days prior written notice to the Lessor of any cancellation of such policy. Any insurance required to be provided by Lessee may be provided by a blanket insurance policy covering the Leased Space and other properties leased or owned by Lessee provided that such blanket insurance policy complies with all of the other requirements with respect to the type and amount of insurance.

13. **Operating Expense.** Lessee will pay for all water, gas, heat, light, power, telephone service, and other public utilities

furnished to the Leased Space and used by Lessee throughout the initial term or renewal term hereof, and all other costs and expenses of every kind whatsoever in connection with the use, operation, and maintenance of the Leased Space and all activities conducted thereon.

14. **Taxes.** Lessee will pay any personal property taxes assessed on, or any portion of the taxes attributable to the Structures. Lessor will pay when due all real property taxes and all other fees and assessments attributable to the Premises.

15. **Maintenance.** Lessee will use best efforts to maintain the Leased Space in good condition and state of repair. Except insofar as Lessee is made responsible by this Lease, Lessor will maintain the premises surrounding the Leased Space in good condition and state of repair.

16. **Hold Harmless.** Lessor will be held harmless by Lessee from any liability (including reimbursement of reasonable attorneys' fees and all costs) for damages to any person or any property in or upon the Leased Space at Lessee's invitation, or for damages to any person or property resulting from the actions of Lessee (including damages caused by or resulting from the existence of the Structures) on the Leased Space, unless the damages are caused by, or are the result of, the misconduct or negligence of Lessor or any of Lessor's agents, servants, employees, licensees or invitees. Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored or maintained in or upon the Leased Space by Lessee will be so installed, kept, stored or maintained at the risk of Lessee. Lessor will not be responsible for any loss or damage to equipment owned by Lessee which might result from tornadoes, lightning, wind storms, or other Acts of God; provided, however, Lessor will be responsible for, and agrees to hold Lessee harmless from any liability (including reimbursement of reasonable legal fees and all costs), for damages to any person or any property in or upon the Leased Space arising out of the misconduct or negligence of Lessor or any of Lessor's agents, servants, employees, licensees or invitees. Except for willful misconduct, neither Lessor nor Lessee will in any event be liable in damages for each other's business loss, business interruption or other consequential damages of whatever kind or nature, regardless of the cause of the damages, and each party, and anyone claiming by or through them, expressly waives all claims for the damages. The extent of Lessor's financial liability shall be no more than allowed under ct. Title 15, Civil Remedies and Procedures: Chapter 78, South Carolina Tort Claims Act Code 15-78-120.

17. **Termination Rights.**

(a) Lessee may terminate this Lease, at its option, after giving Lessor not less than sixty (60) days prior written notice to cure, if: (i) any governmental agency denies a request by Lessee for a permit, license or approval which is required for Lessee to construct or operate the Structures on the Leased Space or any such permit is revoked; (ii) Lessee determines that technical problems or radio interference problems from other antennas or from nearby radio transmitting facilities, which problems cannot reasonably be corrected, impair or restrict Lessee from using the Leased Space for Lessee's intended purpose; (iii) Lessee determines that it does not have acceptable and legally enforceable means of ingress and egress to and from the Leased Space; (iv) Lessor does not have legal or sufficient ownership of or title to the Leased Space or Premises or the authority to enter into this Lease; (v) utilities necessary for Lessee's contemplated use of the Leased Space are not available; (vi) the Leased Space is damaged or destroyed to an extent which prohibits or materially interferes with Lessee's use of the Leased Space or

Lessee's equipment and attachments thereto; (vii) the Premises now or hereafter contains a Hazardous Material; (viii) Lessee is unable to obtain a Subordination, Non-disturbance and Attornment Agreement; (ix) a material default by Lessor occurs; (x) Lessor fails to perform any of the material covenants or provisions of this Lease or if any representation or warranty contained herein is found to be untrue; (xi) the Leased Space is the subject of a condemnation proceeding or taking by a governmental authority, or quasi-governmental authority with the power of condemnation, or if the Leased Space is transferred in lieu of condemnation (rent will be abated during the period of condemnation or taking); (xii) the use of the site will not sufficiently benefit Lessee economically or commercially; (xiii) if Lessee determines, in its sole discretion that it will not be viable to use the site for its intended purpose; or (xiv) if Lessee determines, in its sole discretion, that it will be unable to use the site for any reason. In the event of termination by Lessee or Lessor pursuant to this provision, Lessee will be relieved of all further liability hereunder. Any rental fees paid prior to the termination date will be retained by Lessor. In the event Lessor fails to perform its obligations under this Lease for any reason other than Lessee's breach, Lessee may pursue all remedies available at law and in equity. Lessor hereby acknowledges that Lessee will incur significant expenses in reliance on this Lease, and therefore agrees to pay Lessee for all consequential damages which Lessee will suffer as a result of Lessor's breach. In the event Lessor fails to comply with the terms of this Lease, Lessee may, in its sole and absolute discretion, cure any such default, and to the extent Lessee incurs any expenses in connection with such cure (including but not limited to the amount of any real property taxes Lessee pays on behalf of Lessor), Lessor agrees to promptly reimburse Lessee for such expenses incurred and hereby grants Lessee a security interest and lien on the Premises, to secure Lessor's obligation to repay such amounts to Lessee. In addition, Lessee may offset the amount of any such expenses incurred against any rent payable hereunder.

(b) Lessor may only terminate this Lease, at its option, in the event of a material default by Lessee or Lessee's failure to pay Rent when due, which default or failure is not cured within sixty (60) days after Lessee's receipt of written notice of such default or failure. No such failure to cure a material default, however, will be deemed to exist if Lessee has commenced to cure such default within said period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a material default will be excused if due to causes beyond the reasonable control of Lessee.

18. **Exclusivity.** During the initial term or renewal term, neither Lessor, nor its successors or its assigns, will use or suffer or permit another person, corporation, company, or other entity to use the Premises or any adjacent parcel of land now or hereafter owned, leased or managed by Lessor, its successors or assigns, for the uses permitted herein or other uses similar thereto.

19. **Binding on Successors.** The covenants and conditions contained herein will apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto. Further, this Lease will run with the land and all subsequent purchasers will be subject to the terms and conditions specified herein.

20. **Access to Leased Space/Premises.** Lessee shall have at all times during the initial term or renewal term the right of access to and from the Leased Space and all utility installations servicing the Leased Space on a 24 hours per day/7 days per week basis, on foot or by motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits and pipes over, under

renewal term, or (ii) removal by Lessee of all of its property from the Leased Space after expiration of the initial term or renewal term. The location and configuration of the Easement will be agreed upon by the parties within ten (10) business days after the latter of Lessee's exercise of the Option, or Lessee's approval of the survey. The Easement shall be included in any recorded Memo (as hereinafter defined) of this Lease. In addition, at Lessee's request and expense, this Easement will be set forth in a separate easement agreement (the "Easement Agreement") which Lessor and Lessee agree to execute and which Lessee will have recorded as an encumbrance on the property of Lessor. In all events, the Easement and this Lease shall be binding upon all subsequent owners, successors and assigns.

Lessee agrees that Lessor may, at Lessor's expense, relocate the above described easements to another comparable location on the Premises provided that: (a) Lessee receives no less than sixty (60) days prior written notice thereof; (b) Lessee approves the proposed new location of the easement, which approval will not be unreasonably withheld or delayed; (c) Lessee's access and beneficial use and enjoyment of the Leased Space is not interrupted, obstructed or materially affected; and (d) the utility services to the Leased Space are not interrupted.

**6. Title and Quiet Possession.** Lessor represents and covenants that Lessor owns the Leased Space in fee simple terms, free and clear of all liens, encumbrances and restrictions of every kind and nature, except for those as set forth below:

<u>Name of Lien holder</u>	<u>Type of Lien</u>
N/A	

Lessor represents and warrants that there are no matters affecting title that would prohibit, restrict or impair the leasing of the Leased Space or use or occupancy thereof in accordance with the terms and conditions of the Lease. Lessor represents and warrants to Lessee that Lessor has the full right to make this Lease and that Lessee will have quiet and peaceful possession of the Leased Space throughout the initial term or renewal term.

**7. Subordination, Non-disturbance and Attornment.**

(a) Lessee agrees that this Lease will be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Leased Space and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided that, the holder of any such instrument agrees in writing that Lessee's possession of the Leased Space will not be disturbed so long as Lessee will continue to perform its duties and obligations under this Lease and Lessee's obligation to perform the duties and obligations will not be in any way increased or its rights diminished by the provisions of this paragraph. Lessee agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser in a sale pursuant to the foreclosure thereof; provided that, Lessee's possession of the Leased Space will not be disturbed so long as Lessee will continue to perform its duties and obligations under this Lease. Lessee's obligations hereunder are conditioned upon receipt by Lessee, within ten (10) business days after Lessee's notice of its intent to exercise the Option, or within ten (10) business days after the date of creation of any future mortgages or deeds of trust, of a Subordination, Non-disturbance and Attornment Agreement in form reasonably acceptable to Lessee, from any holder of a mortgage, deed to secure debt, or deed of trust to which this Lease is, or will become, subordinate.

(b) **Secured Parties.** Lessee may from time to time grant to certain lenders selected by Lessee and its affiliates (the "Lenders") a lien on and security interest in Lessee's interest in the Lease and all assets and personal property of Lessee located on the Leased Space (the "Personal Property") as collateral security for the repayment of any indebtedness to the Lenders. Lessor hereby agrees to subordinate any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent, Lessor may have in or on the Personal Property, whether arising by agreement or by law, to the liens and/or security interests in favor of the Lenders, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant a lien upon or security interest in any of Lessor's assets. Should Lender exercise any rights of Lessee under the Lease, including the right to exercise any renewal option(s) or purchase option(s) set forth in the Lease, Lessor agrees to accept such exercise of rights by Lenders as if same had been exercised by Lessee, and Lessee, by signing below, confirms its agreement with this provision. If there shall be a monetary default by Lessee under the Lease, Lessor shall accept the cure thereof by Lenders within fifteen (15) days after the expiration of any grace period provided to Lessee under the Lease to cure such default, prior to terminating the Lease. If there shall be a non-monetary default by Lessee under the Lease, Lessor shall accept the cure thereof by Lenders within thirty (30) days after the expiration of any grace period provided to Lessee under the Lease to cure such default, prior to terminating the Lease. The Lease may not be amended in any respect which would be reasonably likely to have a material adverse effect on Lenders' interest therein or surrendered, terminated or cancelled, without the prior written consent of Lenders. If the Lease is terminated as a result of a Lessee default or is rejected in any bankruptcy proceeding, Lessor will enter into a new lease with Lenders or their designee on the same terms as the Lease within fifteen (15) days of Lenders' request made within thirty (30) days of notice of such termination or rejection, provided Lenders pay all past due amounts under the Lease. The foregoing is not applicable to normal expirations of the term of the Lease. In the event Lessor gives Lessee any notice of default under the terms of the Lease, Lessor shall simultaneously give a copy of such notice to Lender at an address to be supplied by Lessee. Lessee shall have the right to record a memorandum of the terms of this paragraph.

**8. Governmental Approvals and Compliance.** During the initial term or renewal term, Lessee will make reasonable efforts to comply with all applicable laws affecting Lessee's use or occupancy of the Leased Space, the breach of which might result in a penalty on Lessor or forfeiture of Lessor's title to the Leased Space. Lessee will not commit, or suffer to be committed, any waste on the Leased Space. Lessor agrees to fully cooperate with Lessee in order to obtain the necessary permits for construction and use of the Leased Space and its Structures (including any modification(s) to the tower or Leased Space or the addition(s) of equipment or sublessees to the tower or Leased Space), including, but not limited to, zoning approvals/permits and building permits. Lessor agrees not to take any action that may adversely affect Lessee's ability to obtain all of the necessary permits required for construction of the Structures. Lessee will obtain any necessary governmental licenses or authorizations required for the construction and use of Lessee's intended Structures on the Leased Space and will furnish copies of same to Lessor as same are issued. If and to the extent Lessee is at any time required to landscape or provide screening around the outside of the tower or Leased Space, Lessor hereby grants Lessee an

and along the right-of-way extending from the nearest accessible public right-of-way.

21. **Governing Law.** The parties intend that this Lease and the relationship of the parties will be governed by the laws of the State in which the Leased Space is located.

22. **Entire Lease.** All of the representations and obligations of the parties are contained herein, and no modification, waiver or amendment of this Lease or of any of its conditions or provisions will be binding upon a party unless in writing signed by that party or a duly authorized agent of that party empowered by a written authority signed by that party. The waiver by any party of a breach of any provision of this Lease will not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Lease.

23. **Survey and Testing.** Lessee will have the right during the initial term or renewal term of this Lease (and the Option Period, if applicable) to survey, soil test, and make any other investigations necessary to determine if the surface and subsurface of the Leased Space are suitable for construction and operation of the Structures. If Lessee, prior to completion of the Structures determines that for any reason the surface or subsurface of the Leased Space is not suitable to construct and operate the Structures, this Lease, upon written notice given to Lessor prior to completion of the Structures will become null and void; provided that at Lessee's sole expense the Leased Space will be promptly restored to the extent contemplated by the Lessee Improvements section above and provided further that Lessee will deliver copies of all soil tests and investigation reports to Lessor.

24. **Oil, Gas and Mineral Rights.** Lessor does not grant, lease, let or demise hereby, but expressly excepts and reserves here from all rights to oil, gas and other minerals in, on or under and that might be produced or mined from the Leased Space; provided, however, that no drilling or other activity will be undertaken on or beneath the surface of the Leased Space or Easement area to recover any oil, gas or minerals. This Lease is given and accepted subject to the terms and provisions of any valid oil, gas and mineral lease covering the Leased Space or any part thereof, now of record in the office of the County Clerk, provided, however, that any future oil, gas or mineral lease covering the above-described lands or any part thereof will be in all respects subordinate and inferior to the rights, privileges, powers, options, immunities, and interests granted to Lessee under the terms of this Lease.

25. **Hazardous Waste.**

(a) The term "Hazardous Materials" will mean any substance, material, waste, gas or particulate matter which is regulated by the local governmental authority where the Leased Space is located, the State in which the Leased Space is located, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or restricted hazardous waste" under any provision of state or local law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. '1251 et seq. (33 U.S.C. '1317), (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recover Act, 42 U.S.C. '6901 et seq. (42 U.S.C. '6903), or (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act. 42 U.S.C. '9601 et Seq. (42 U.S.C. '9601). The term "Environmental Laws" will mean all statutes specifically described in the foregoing

sentence and all applicable federal, state and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

(b) Lessor makes no representation as to whether, (i) the Leased Space has been used for the use, manufacturing, storage, discharge, release or disposal of hazardous waste, (ii) neither the Leased Space nor any part thereof is in breach of any Environmental Laws, (iii) there are no underground storage tanks located on or under the Leased Space, and (iv) the Leased Space is free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If during the initial term or renewal term of this Lease any Hazardous Materials are discovered on the Property which gives rise to or results in liability (including, but not limited to, a response action, remedial action or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Lessor will promptly take any and all remedial and removal action as required by law to clean up the Leased Space, mitigate exposure to liability arising from, and keep the Leased Space free of any lien imposed pursuant to, any Environmental Laws as a result of the discovery of Hazardous Materials.

(c) In addition, Lessor agrees to indemnify, defend and hold harmless Lessee, its officers, partners, successors and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, attorneys' fees, damages, liabilities, demands, interest, fines, penalties and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by Lessee and its grantees as a result of any matter, condition or state of fact involving Environmental Laws of Hazardous Materials which existed on or arose during the initial term or renewal term of this Lease and which failed to comply with (i) the Environmental Laws then in effect or (ii) any existing common law theory based on nuisance or strict liability.

(d) Lessor represents and warrants to Lessee that Lessor has received no notice that the property or any part thereof is, and, to the best of its knowledge and belief, no part of the Premises is located within an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers or any other governmental body as being subject to special hazards.

(e) The covenants of this section will survive and be enforceable and will continue in full force and effect for the benefit of Lessee and its subsequent transferees, successors and assigns and will survive the initial term or renewal term of this Lease and any renewal periods thereof.

26. **Mechanic's and Landlord's Liens.** Lessee will not cause any mechanic's or materialman's lien to be placed on the Leased Space and Lessee agrees to indemnify, defend and hold harmless Lessor from any such lien from a party claiming by, through or under Lessee. Additionally, Lessor disclaims and waives any now existing or hereafter arising landlord's lien or other statutory or non-statutory lien or security interest in Lessee's and/or its sublessees' communication facilities, equipment, improvement, fixtures or other property.

27. **Headings.** The headings of sections and subsections are for convenient reference only and will not be deemed to limit, construe, affect, modify or alter the meaning of the sections or

subsections.

**28. Time of Essence.** Time is of the essence of Lessor's and Lessee's obligations under this Lease.

**29. Severability.** If any section, subsection, term or provision of this Lease or the application thereof to any party or circumstance will, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of the Lease or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, will not be affected thereby and each remaining section, subsection, term or provision of this Lease will be valid or enforceable to the fullest extent permitted by law.

**30. Real Estate Broker.** Lessor represents and warrants that Lessor has not signed a listing agreement, dealt with or otherwise agreed to pay a broker's commission, finder's fee or other like compensation to anyone in connection with the lease of the Leased Space or the transaction contemplated by this Lease and Lessor agrees to indemnify and hold Lessee harmless from and against any such claims or costs, including attorneys' fees, incurred as a result of the transaction contemplated by this Lease.

**31. Further Assurances.** Each of the parties agree to do such further acts and things and to execute and deliver the additional agreements and instruments (including, without limitation, requests or applications relating to zoning or land use matters affecting the Structures) as the other may reasonably require to consummate, evidence or confirm this Lease or any other agreement contained herein in the manner contemplated hereby. If Lessor fails to provide requested documentation within thirty (30) days of Lessee's request, or fails to provide any Non-Disturbance Agreement required in this Lease, Lessee may withhold and accrue the monthly rental until such time as all such documentation is received by Lessee.

**32. Right to Register or Record.** Lessee may request that Lessor execute a Memorandum of Option and Land Lease, Memorandum of Land Lease or Short Form of Lease (collectively a "Mcmo") for recording in the public records. Lessor agrees and authorizes Lessee to attach and/or insert a certified legal description of the Leased Space, once complete, to the Memo and record same in the public records.

**33. Interpretation.** Each party to this Lease and its counsel have reviewed and had the option to revise this Lease. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Lease or of any amendments or exhibits to this Lease.

**34. Condemnation.** Lessor shall fully advise Lessee in a timely manner of all condemnation proceedings or prospective condemnation proceedings in order that Lessee may fully protect and prosecute its rights and claims relating to the Leased Space. If the whole of the Leased Space shall be taken or condemned by, or transferred in lieu of condemnation to, any governmental or quasi governmental authority or agency with the power of condemnation during the initial Option Period, Additional Option Period or initial term or renewal term of this Lease, Lessee shall be entitled to any award based upon its leasehold interest as set forth in this Lease, along with the value of all Lessee's improvements, including, but not limited to, the Structures, prefabricated buildings, generators, fencing and any other improvements and for all of Lessee's other personal property, trade fixtures, fixtures, moving expenses, business damages, business interruption, business dislocation, prepaid Rent or other losses or expenses as may be incurred. In the event only a

portion of the Premises, which portion does not include the whole of the Leased Space, shall be taken or condemned by, or transferred in lieu of condemnation to any governmental or quasi-governmental authority or agency with the power of condemnation during the Initial Option Period, Additional Option Period or initial term or renewal term of this Lease, Lessee shall have the option to either: (1) terminate this Lease; or (2) continue in possession of the property pursuant to the terms of this Lease with a proportionate reduction in Rent equal to that portion, if any, of the Leased Space so taken, condemned or transferred in lieu of condemnation. In either event, Lessee shall be entitled to any award based upon its leasehold interest in the portion of the Premises condemned, taken or transferred in lieu of condemnation, along with the value of all Lessee's improvements, including, but not limited to, the Structures, prefabricated buildings, generators, fencing and any other improvements and for all of Lessee's other personal property, trade fixtures, fixtures, moving expenses, business damages, business interruption, business dislocation, prepaid Rent or other losses or expenses as may be incurred. Nothing contained herein shall prohibit Lessee from making its own claims against any condemning authority for any losses or damages Lessee shall incur as a result of a condemnation, or sale in lieu of condemnation, of the whole or any portion of the Premises.

**35. Right of First Refusal.** If at any time during the initial term or renewal term of this Lease, Lessor receives a bona fide written offer from a third person (the "Offer") to sell, assign, convey, lease or otherwise transfer or create any interest in the Leased Space and/or Premises, or any portion thereof, which Lessor desires to accept, Lessor shall first give Lessee written notice (including a copy of the proposed contract) of such Offer prior to becoming obligated under such Offer, with such notice giving Lessee the right to purchase the Leased Space for a pro-rata price based on the size that the Leased Space is to the portion of the Premises described in the Offer. Lessee shall have a period of thirty (30) days after receipt of Lessor's notice and terms to accept the Offer or exercise Lessee's right to purchase the Leased Space and exercise this right of first refusal by notifying Lessor in writing. If Lessee has not accepted the Offer or exercised its right to purchase the Leased Space in writing to Lessor within such thirty (30) day period, the Offer will be deemed rejected. In addition to the above, Lessor shall not, at any time during the initial term or renewal term of the Lease, grant any interest in any portion of the Leased Space or any portion of the Premises (other than the conveyance of fee simple title to the entire Premises) to any third party without the prior written consent of Lessee, in Lessee's sole and absolute discretion.

**36. Date of Lease.** The parties acknowledge that certain obligations of Lessor and Lessee are to be performed within certain specified periods of time which are determined by reference to the date of execution of this Lease. The parties therefore agree that wherever the term "date of execution of this Lease," or words of similar import are used herein, they will mean the date upon which this Lease has been duly executed by Lessor and Lessee whichever is the later to so execute this Lease. The parties further agree to specify the date on which they execute this Lease beneath their respective signatures in the space provided and warrant and represent to the other that such a date is in fact the date on which each duly executed his or her name.

**COMMENCEMENT DATE:** The date that Lessee exercises its Option.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the last day and year specified below.

**LESSOR: COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON**

**LESSEE: SBA TOWERS III LLC,**  
a Florida limited liability company

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

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

Print Name: Kin Hill

Print Name: Alyssa Houlihan

Title: Chief Executive Officer

Title: Director of Leasing

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Notary Public:**

I do hereby certify that KIN HILL, who is personally known to me, or who has proved by sufficient evidence to be the person named herein, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

**Notary Public:**

I do hereby certify that ALYSSA HOULIHAN, who is personally known to me, or who has proved by sufficient evidence to be the person named herein, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Signature

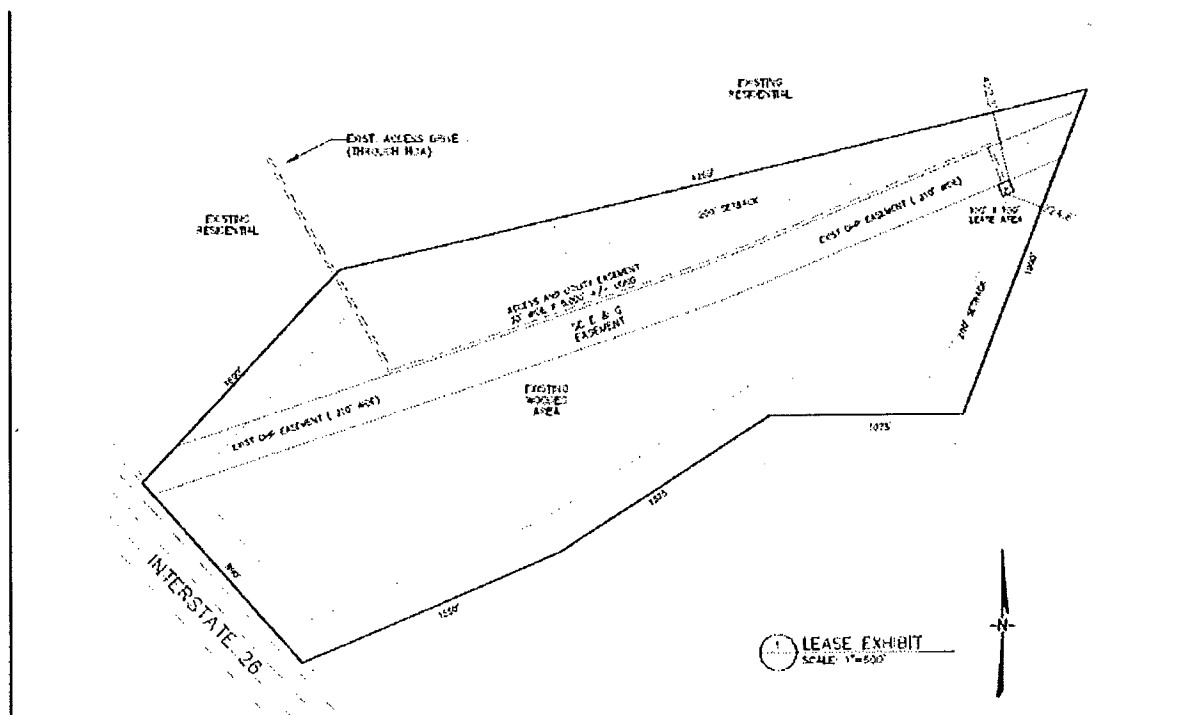
\_\_\_\_\_  
Notary Signature

**EXHIBIT A**

**Current Sketch/Survey of the Leased Space within the Premises**

The Leased Space shall consist of 10,000 (100' x 100') square feet ground space along with easement rights for access to the Leased Space by vehicle or foot from the nearest public way and for the installation of utility wires, poles, cables, conduits and pipes on the Premises in the approximate locations as depicted below:

**DESCRIPTION OF LEASED SPACE TO BE INSERTED UPON COMPLETION OF SURVEY**



Initials: \_\_\_\_\_

Initials: \_\_\_\_\_

**EXHIBIT B**

**LEGAL DESCRIPTION  
ATTACH LEGAL DESCRIPTION FROM DEED**

The Leased Space shall consist of 10,000 (100' x 100') square feet ground space along with easement rights for access to the Leased Space by vehicle or foot from the nearest public way and for the installation of utility wires, poles, cables, conduits and pipes on the Premises in the approximate locations as depicted below:

DESCRIPTION OF LEASED SPACE TO BE INSERTED UPON COMPLETION OF SURVEY

Initials: \_\_\_\_\_

Initials: \_\_\_\_\_

**Meeting of the Commissioners of Public Works  
of the City of Charleston, South Carolina  
(Charleston Water System)**

**Mr. Thomas B. Pritchard, Chairman**

November 29, 2011

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- I. Reconvene Commissioners' Meeting after conclusion of Committee Meetings**
- II. Approval of Minutes of Meeting of October 25, 2011**
- III. Citizens Participation/Public Comment**
- IV. Monthly Customer Service Activity and Financial Report – Ms. Ferguson / Mr. Ropp**
- V. December Board Meeting Date – Mr. Hill**

Mr. Hill will remind the Board that the December meeting has been rescheduled for Tuesday, December 20, 2011 at 9:00 a.m., the third Tuesday of the month.

- VI. CEOs / Staff Report**
  - A. Strategic Plan Team Presentation #2; Operational Enhancement - Baker Mordecai, PE, Director of Wastewater Collection Department
  - B. Update on Charleston County 208 Plan Amendment /Transfer of Service Area to the Town of Ravenel – Mr. Hill
- VII. Reports of Standing Committees – Ms. Harrison**
  - A. Public Contract and Finance Committee Meeting of November 29, 2011
  - B. Administrative, Personnel and Public Relations Committee Meeting of November 29, 2011
  - C. Regulatory and Property Committee Meeting of November 29, 2011

**Meeting of the Commissioners of Public Works  
of the City of Charleston, South Carolina  
(Charleston Water System)**

**Mr. Thomas B. Pritchard, Chairman**

November 29, 2011

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**VIII. Major Capital Project Requests - Mr. Cline**

None

**IX. Citizens Participation/Public Comment**

**X. Executive Session**

Mr. Hill will request that the Commissioners move to enter into Executive Session to discuss legal and/or contractual matters.

**XI. Adjournment**