

Allen Matkins

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Via Electronic Mail

January 12, 2024

Mayor Cabral
Mayor Pro Tem Enmeier
Councilmember Duncan
Councilmember Knoblock
Councilmember Loeffler
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

**Re: City Council Consideration of Changes to or Revocation of
Conditional Use Permit, Voluntary Compliance Agreement, and/or
Wireless Screening Form**

Dear Mayor Cabral and Councilmembers:

Allen Matkins is counsel to American Tower Management LLC (“**American Tower**”) in relation to American Tower’s continuing operation of its existing wireless communication facility (Site No. 89366) (the “**Wireless Communications Facility**”), located at 616 Del Dios, Rancho San Clemente, California 92672 (APN: 690-552-05) (the “**Property**”) in the City of San Clemente, California (the “**City**”). This letter addresses the staff report and proposed resolution prepared for the January 16, 2024 City Council hearing to consider changing or revoking American Tower’s Conditional Use Permit (the “**CUP**”), Voluntary Compliance Agreement, and/or Wireless Screening Form 23-231.

As set forth herein, there is no evidence to support the proposed findings that conditions of approval are being violated or are not being satisfied, or that the Wireless Communications Facility is being operated in a manner that constitutes a nuisance. Accordingly, there is no legal basis for the City to amend the CUP and impose additional conditions of approval. Furthermore, were the City to make the proposed findings and amend the CUP, those actions would constitute a direct and actionable breach of the Voluntary Compliance Agreement. Finally, certain of the proposed new conditions of approval, in addition to being impermissible by law, are unacceptable to American Tower.

American Tower is nevertheless willing to voluntarily implement additional measures to address security concerns resulting from ongoing criminal trespassing and vandalism activities on the Property, which the City has not effectively prevented or curtailed. The proposed voluntary measures are discussed further below.

I. There is No Evidentiary or Legal Basis for the Proposed Findings and Amendment of the CUP.

a. Amendment of the CUP Requires Findings of a Violation or a Nuisance.

San Clemente Municipal Code (“SCMC”) section 17.12.175 provides a process for the City to change or revoke approved applications when conditions of approval are violated, it is necessary to resolve a nuisance, and/or when applications contain incorrect, false, or misleading information. The applicable review authority, here the City Council, must make one or more of the following findings to modify or revoke an approved application:

- “1. Conditions of approval of the approved application(s) are being violated or are not being satisfied.
2. The site or land use is being operated in a manner that constitutes a nuisance.
3. The application contained incorrect, false, or misleading information.”

(SCMC § 17.12.175(C).)

As set forth in the Agenda Report for Item 8C, January 16, 2024 City Council Meeting (“**Staff Report**”) and the accompanying proposed Resolution No. 24-09 (“**Resolution**”), City staff is recommending that the City Council make the first two findings above – that conditions of approval on the existing CUP are being violated and that the Wireless Communications Facility is being operated in a manner that constitutes a nuisance – and that the Council amend the CUP to impose new, additional conditions on the CUP. There is no evidence to support the proposed findings, and accordingly there is no legal basis for the City to make the findings or amend the CUP.

b. There is No Evidence of a Violation of the CUP.

The proposed finding in the Resolution concerning the conditions of approval of the existing CUP is as follows:

“Conditions of approval of the approved application(s) are being violated or are not being satisfied, in that:

i. After the City and Property Owner entered into the Voluntary Compliance Agreement dated July 6, 2023, the property has continued to be maintained in a manner inconsistent with the conditions of Conditional Permit 1021;

ii. The access path has not been maintained in a manner that is sealed and prevents dust; and

iii. The Property Owner and/or their contractors and tenants have continued to access the site through private property via the Del Dios private road, which is not a part of the approved access or in accordance with dedicated easement rights.”

(Resolution, Section 2.A.)

The Staff Report does not contain any evidence and offers scant explanation for these alleged violations of the CUP. The CUP, which was issued by Orange County in 1962, contains no expiration date and only three conditions of approval – that the site be fenced; that the fenced-in area be covered with crushed rock; and that the access road be oil surfaced or treated to eliminate dust. As noted above, the Resolution alleges that the access path has not been maintained in a manner that is sealed and prevents dust, but the Staff Report does not even discuss this alleged violation, let alone provide supporting evidence. To the contrary, the access to the site is via a private utility road that is partially paved and well-maintained, and there have been no allegations or evidence of issues with the road or dust.

The other two alleged violations of conditions of approval do not relate to conditions at all. The first (“the property has continued to be maintained in a manner inconsistent with the conditions of Conditional Permit 1021”) is just a broad, unsubstantiated claim of non-compliance with the CUP. The third, while not related to a condition of approval, concerns an issue with historical access to the site that has been wholly cured and accordingly is not a current or ongoing violation of the CUP; SCMC section 17.12.175(C)(1) refers to conditions of approval of the approved application(s) in the present tense that “**are** being violated or **are not** being satisfied.” Specifically, when American Tower acquired the Property and the Wireless Communications Facility from AT&T in 2000, American Tower believed that access to the site was via Del Dios, and that AT&T

personnel had been accessing the site via Del Dios for the preceding 38 years. American Tower personnel continued to access the site via Del Dios until recently, when members of the community alleged that American Tower did not have access rights in this area.

When this issue has brought to American Tower's attention, American Tower had a survey of the property prepared, which is enclosed herewith as Exhibit A. The surveyor plotted the metes and bounds legal description of the access easement from the vesting deed. As shown on the survey, the easement follows the approximate path of a utility access road before intersecting with Avenida Salvador. While the survey is dated November 1, 2023, it was provided to American Tower by the surveyor on November 13, 2023. American Tower thereafter immediately took steps to address the access route. American Tower personnel confirmed that the Avenida Salvador access course to the site was open and accessible by vehicle. American Tower secured a lock for its use on the gated access to the utility access road at Avenida Salvador. American Tower removed its lock at the Del Dios access gate and instructed all of its contractors and customers to access the site exclusively via Avenida Salvador and the utility access road going forward, and not to access the site via Del Dios (which they would not be able to do anyway because the lock has been removed).

Therefore, any non-compliance with the access provisions of the vesting deed or CUP has been cured and is wholly past. The Staff Report does not contain any evidence – nor could it – of American Tower accessing the Property via Del Dios after November 13, 2023, when American Tower received the survey and confirmed the utility access road via Avenida Salvador.¹ Accordingly, there is no evidence of a current violation of the conditions of approval placed on the project, or of the CUP itself, and this cannot support an amendment to the CUP pursuant to SCMC section 17.12.175(C)(1).

c. There is No Evidence of a Nuisance.

The proposed finding in the Resolution concerning the conditions of approval of the existing CUP is as follows:

“The site or land use is being operated in a manner that constitutes public nuisance within the meaning of SCMC section 8.52.030, in that:

¹ The Staff Report references complaints received regarding underground cable work in Del Dios. However, that work was not commissioned by American Tower or Dish; American Tower is unaware of the cable project or the basis for it. The work may involve another nearby wireless facility or provision of services to a homeowner. It does not appear that the City undertook any independent investigation of the allegations regarding cable work, and the Staff Report further concedes that underground cable work does not require a permit. (See Staff Report at p. 5)

- i. The access path and perimeter fence have not been maintained in a good condition, resulting in numerous Code Compliance complaints related to maintenance, trespass, and vandalism issues at the subject property; and
- ii. The Orange County Sheriff's Department, which manages policing services for the City, has received eighteen (18) calls for service over the past year related to nuisance activity at the subject site, with the most common call related to trespass and unsafe climbing of the telecommunications tower by minors; and
- iii. The Property has been maintained in such condition as to be detrimental to public health, safety or general welfare or in such manner as to constitute a public nuisance as defined by Civil Code Section 3479; and
- iv. The tower structure at the Property is manifestly unsafe for the purpose for which it is used; and
- v. The tower structure in combination with the fence at the Property as to become an attractive nuisance to children who might play therein to their danger, or as to afford a harbor for vagrants, criminals or immoral persons, or as to enable persons to resort thereto for the purpose of committing nuisance or unlawful or immoral acts.”

(Resolution, Section 2.B.)

The Staff Report does not provide evidence to support these findings. To the contrary, the Staff Report plainly demonstrates that there have been repeated acts of criminal trespass and vandalism of the Property; American Tower is the victim of and not responsible for those criminal acts. As required by the CUP, the Wireless Communications Facility is contained within a six-foot-high chain-link fenced area. Trespassers and vandals have repeatedly cut the fence, as documented in the Staff Report. The five “nuisance cases” over the last twelve (12) years cited by the City in the Staff Report all involved the criminal actions of third parties trespassing onto and destroying American Tower's property as follows:

- CE2012-0536 Holes in fence
- CE2012-1479 Hole in fence surrounding cell tower
- CE2016-1519 RSC cell towers vandalized & security breached
- CE2018-0245 Transient Break-in
- CE2020-0468 Graffiti on the Ridge Trail private cell site

(See Staff Report at p. 5.)

Similarly, the Staff Report indicates that eighteen (18) calls for service were received in the five (5) year period between January 1, 2019 and December 14, 2023, by the Orange County Sheriff's Department, and that "[a]ll calls indicate juveniles trespassing onto Owner's property, climbing the tower, and creating noise disturbances or throwing things from the tower. Typically, the teenagers had left the area prior to a deputy arriving for a patrol check, but in a couple of instances, deputies did make contact with the teens directing them to clear the property."²

More recently, unlawful interference with the Property occurred when American Tower personnel were attempting to conduct landscape maintenance for fire safety purposes. Members of the community stood in front of vehicles located lawfully within the access easement area, preventing the vehicles from accessing the Property. American Tower was forced to contact the police and wait for a police escort to access the Property. Thereafter, vandals flattened and inserted ball bearings into the tires of two of American Tower's vendor's trucks while they were conducting the brush clearance.

This is all evidence that American Tower is the **victim** of nuisance and trespass activities caused by vandals, not that American Tower is the perpetrator of a nuisance. American Tower cannot control the actions of individuals who criminally trespass, damage and destroy property on the site, but American Tower works diligently to ensure that damage caused by third parties is cured in a timely manner. American Tower has promptly and repeatedly repaired the site following vandalism activities. American Tower's records show that it regularly contracts for graffiti abatement and fence repair, including at least in and around June of 2020, September of 2021, August of 2022, and August of 2023. (See Repair Invoices, Exhibit B hereto.) Moreover, American Tower has not limited itself to merely responding to these criminal acts; it has taken significant steps to prevent them from occurring in the first place. In or around December of 2019, American Tower invested a significant sum to have a contractor remove all non-structural steel on the tower up to 30 feet and modify the safety climb ladder in an effort to prevent any unauthorized individuals from climbing the tower. In June of 2020, American Tower added razor wire at the top of the fence near the entry gates, and in August of 2022, American Tower installed three new strands of galvanized barbed wire on top of the fence around the entire compound, re-secured the gates, and welded the gate hinge/post hardware, all in an effort to prevent trespassing and further vandalism.

The discussion in the Staff Report does not provide evidence or support the proposed findings in the Resolution that the Wireless Communications Facility is being operated in a manner that constitutes a public nuisance. Specifically, there is no evidence that the "access path and perimeter fence have not been maintained in a good condition," rather the evidence is that there

² The dates of the service calls are not provided; American Tower has not received a report of individuals climbing the tower since 2019.

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have been repeated acts of trespassing and vandalism and American Tower has promptly responded to repair the damage to the Property. The Property is regularly maintained and is clean and in conformance with the CUP and all of the conditions of approval, as shown in pictures included herein as Exhibit C, hereto.

Indeed, there is case law specifically on point, holding that facilities such as this one do not constitute a nuisance even where people have been injured trespassing and climbing upon electrical towers. *See Manuel v. Pac. Gas & Elec. Co.*, 173 Cal. App. 4th 927, 937-38 (2009) (finding that landowner only had a duty to not act willfully and maliciously when individual was injured climbing an electrical transmission tower); *Bacon v. S. Cal. Edison Co.*, 53 Cal. App. 4th 854, 859 (1997) (finding the landowner had the lowest standard of duty owed under the statute when individual was injured climbing an electrical transmission tower). In the latter case, the court found that placing barbed wire and a warning sign at the tower was sufficient to meet the landowner's standard of care. *Bacon*, 53 Cal. App. 4th at 17-18.³

There is no evidence that American Tower "willfully or maliciously" failed to guard or warn of the dangers of climbing the Wireless Communications Facility. On the contrary, American Tower maintains two fences around the Wireless Communications Facility that serve to prevent access to the site, absent criminal acts of vandalism and trespassing. American Tower has exceeded its duty of care to trespassers, which again is to refrain from acting willfully or maliciously, by repairing the holes in the fences and otherwise securing the site.

Accordingly, there is no factual or legal basis supporting the proposed public nuisance findings in the Resolution. Absent the basis for such findings, the City does not have the authority to amend the CUP and impose additional conditions, as proposed.

II. The Proposed Findings and Amendment of the CUP Would Breach the Voluntary Compliance Agreement Between the City and American Tower.

As noted in the Staff Report, American Tower and the City negotiated and entered into a Voluntary Compliance Agreement, dated July 6, 2023 (the "**Voluntary Compliance Agreement**"). As set forth in the Voluntary Compliance Agreement, because no records of any County or City approvals authorizing the expansion of the Wireless Communications Facility from 70 feet to its then-current height of 156 feet had been located, American Tower voluntarily agreed to reduce the height of the existing Wireless Communications Facility to the 70-foot maximum identified in the 1962 CUP. (Voluntary Compliance Agreement, Agreement, Recital 5; § 3.)

³ American Tower addressed applicable nuisance law in depth in my letter dated December 5, 2023, attached hereto as Exhibit E hereto. The December 5 letter also addressed allegations of discontinued use and abandonment raised by community members. As the Staff Report concludes that those allegations are unfounded, they are not addressed further herein.

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On August 30, 2023, the City issued building permit B23-1495 for the height reduction work. American Tower performed the work, incurring costs of approximately \$120,000, and the building permit was closed out following final inspection on October 11, 2023. (*See* Inspection Job Card, Exhibit D hereto.)

The City affirmatively represented in the Voluntary Compliance Agreement that “[t]o the best of the City’s information and knowledge, the only known violation of the 1962 CUP or applicable law with respect to the Wireless Communications Facility is the tower’s height.” (Voluntary Compliance Agreement, Agreement, Recital 6.) The City released American Tower from “any and all known actions, causes of action... claims, [and] demands... arising from or relating to any non-compliance of ATC’s tower.” *Id.* §§ 1 (incorporating Recital 6 into Agreement), 9. Moreover, the City expressly agreed that “following the reduction in the height of the tower,” the tower and Property “will be in compliance with the 1962 CUP....” *Id.* § 6. Finally, the City agreed to “forego any enforcement proceedings for non-compliance” for at least twelve (12) months following the City’s issuance of the building permit to reduce the height of the tower. *Id.* § 8.

Notwithstanding its contractual representations and commitments to the contrary, the City has scheduled a quasi-judicial evidentiary hearing for January 16, 2024 in support of an enforcement action against the Property. This flatly violates the City’s obligation to not institute any such action for at least twelve (12) months after issuance of the building permit to reduce the height of the Wireless Communications Facility. Moreover, the allegations in the Staff Report and the proposed findings in the Resolution directly contradict: (1) the City’s representation, based on “the best of the City’s information and knowledge,” that the only known violation of law was the height of the tower, (2) the City’s release of that and any other alleged instances of noncompliance, and (3) the City’s agreement that the Property and tower would be fully compliant upon American Tower’s completion of work.

The Staff Report cites and relies upon the City’s own nuisance cases dating back to 2012 and calls for service dating back to 2019 to support the proposed nuisance findings in the Resolution. The City cannot claim to have been unaware of or not had information regarding these claims in July 2023 when it entered into the Voluntary Compliance Report and affirmatively represented that the only violation was the height of the tower. Moreover, the Voluntary Compliance Report presents the City’s affirmative agreement that these previously-known events do not constitute a nuisance or a violation of the CUP or any other law or requirement. Accordingly, the City has expressly and affirmatively agreed that the “evidence” cited in the Staff Report does not provide legal or factual support for the very findings now proposed.

The City’s breach of the Voluntary Compliance Agreement has caused and is causing substantial harm to American Tower. American Tower fundamentally changed its position in detrimental reliance on the City’s sworn statements in the contract. American Tower incurred significant costs in reliance on the contract, including the cost to reduce the height of the facility in

accordance with the Voluntary Compliance Agreement. Additionally, American Tower is currently incurring costs responding to the unsubstantiated claims made by the public and the City's actions in response thereto. If the City's actions ultimately cause American Tower to lose tenants at the Wireless Communication Facility, American Tower's recoverable damages for breach of contract are substantial.

III. The Proposed Conditions of Approval, in Addition to being Unlawful, Lack Clarity and are Otherwise Objectionable.

For the reasons set forth above, the City lacks the legal and evidentiary basis to amend the CUP and impose new conditions on American Tower. American Tower is willing to implement voluntary measures, as discussed further below, but those measures are not intended to be amendments to the CUP, because there is no basis for amending the CUP. In addition to this overarching objection to the proposed amendment and new conditions, American Tower has specific concerns with certain conditions, as follows:

- Resolution Section 4.B. is unclear and confusing and almost impossible to comply with. Specifically, the condition does not clarify who would escort American Tower to its own Property and how such escort would be arranged. It suggests that cars (because they are not light duty pickup trucks) would require an escort to the site. It does not define whether the "Ridgeline trail" is intended to refer to American Tower's access easement along the private utility road. If so, the City's role in maintaining that road is unclear. Requiring a contractor of the City's choosing does not make practical sense, as such a vendor would have to be independently approved and hired by American Tower, causing unnecessary delay. Finally, the one (1) month timeframe is unrealistic and does not account for weather, permitting, design, and other aspects of any road improvement project.
- Resolution Section 4.C. is unclear. Replacing the tower with a monopole facility is not required by law, and is costly and time consuming. American Tower has a vested right to the continued operation of the existing Wireless Communications Facility under the CUP. American Tower understands the suggestion of a monopole to be proposed as an option that American Tower in its sole discretion may consider and reject, and which cannot be required by the City.
- Resolution Section 4.G. is unacceptable to American Tower. American Tower provided a negotiated indemnity to the City in the Voluntary Compliance Agreement, in the context of the mutual releases and other provisions of that contract. In this instance, American Tower has not applied to the City for a permit or other entitlement. Rather, the City has unilaterally undertaken an enforcement proceeding against American Tower for alleged violations of the CUP. The City

cannot impose a new – and much broader – indemnity obligation on American Tower without American Tower’s consent to force American Tower to indemnify the City for, among other things, an enforcement proceeding and amendment to the CUP that American Tower did not apply for, does not support, and in fact vehemently objects to. “Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.” (Civ. Code, § 2772.) The essential elements of a contract are: parties who are capable of contracting; their consent; a lawful object; and sufficient consideration. (Civ. Code, § 1550.) The essential elements of a contract are not present here as, *inter alia*, American Tower does not consent to the indemnity and the City is providing no consideration. Moreover, the proposed indemnification provisions are grossly overbroad, and among other things, purport to require American Tower to write the City a blank check for the City’s enforcement actions and claims arising from those actions (“Applicant shall pay all City’s costs upon request”). American Tower does not and will not agree to provide any indemnity to the City beyond what American Tower previously provided in the Voluntary Compliance Agreement.

IV. Proposed Voluntary Measures

While American Tower maintains that the proposed amendments to the CUP and additional conditions of approval are not supported by law, American Tower is nevertheless willing to voluntarily implement additional measures to address security concerns resulting from ongoing criminal trespassing and vandalization activities on the Property. Specifically, American Tower has proposed:

- Installation of motion sensor flood lights;
- Installation of video monitoring and associated signage indicating that the site is under video surveillance;
- Replacement of the chain link fence around the equipment area with expanded metal fencing which deters graffiti, prevents climbing, and cannot be easily cut, but still allows a sightline into the enclosure for safety purposes; and
- Fencing of American Tower’s entire +/- one acre parcel, in addition to fencing of the equipment area.

The proposed Resolution incorporates two of these proposals – video monitoring and repair or replacement of the equipment area fencing – but is silent on motion sensor lighting and fencing of the entire parcel. American Tower remains willing to undertake all of these actions voluntarily,

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not as conditions of approval, but in an effort to work cooperatively with the City and to protect the Property from further damage or destruction by criminal activities.


a. The Proposed Voluntary Measures Are Not Admissions of Culpability.

Offers to compromise are not admissible in state or federal court to prove liability of conduct. (Evid. Code § 1152; Fed. Rules Evid., rule 408, 28 U.S.C.). All above-mentioned proposed measures are strictly voluntary offers for compromise. Nothing in this letter should be construed as an admission of culpability.

V. Conclusion

As described above, American Tower is not in violation of its CUP or its conditions of approval and is not operating the Wireless Communications Facility in a manner that constitutes a nuisance. Accordingly, there is no legal basis for the City to amend the CUP and impose additional conditions of approval. We respectfully request that the City Council decline to take any action with respect to the CUP. American Tower will continue to work cooperatively with City staff to implement additional voluntary measures as set forth herein.


Very truly yours,



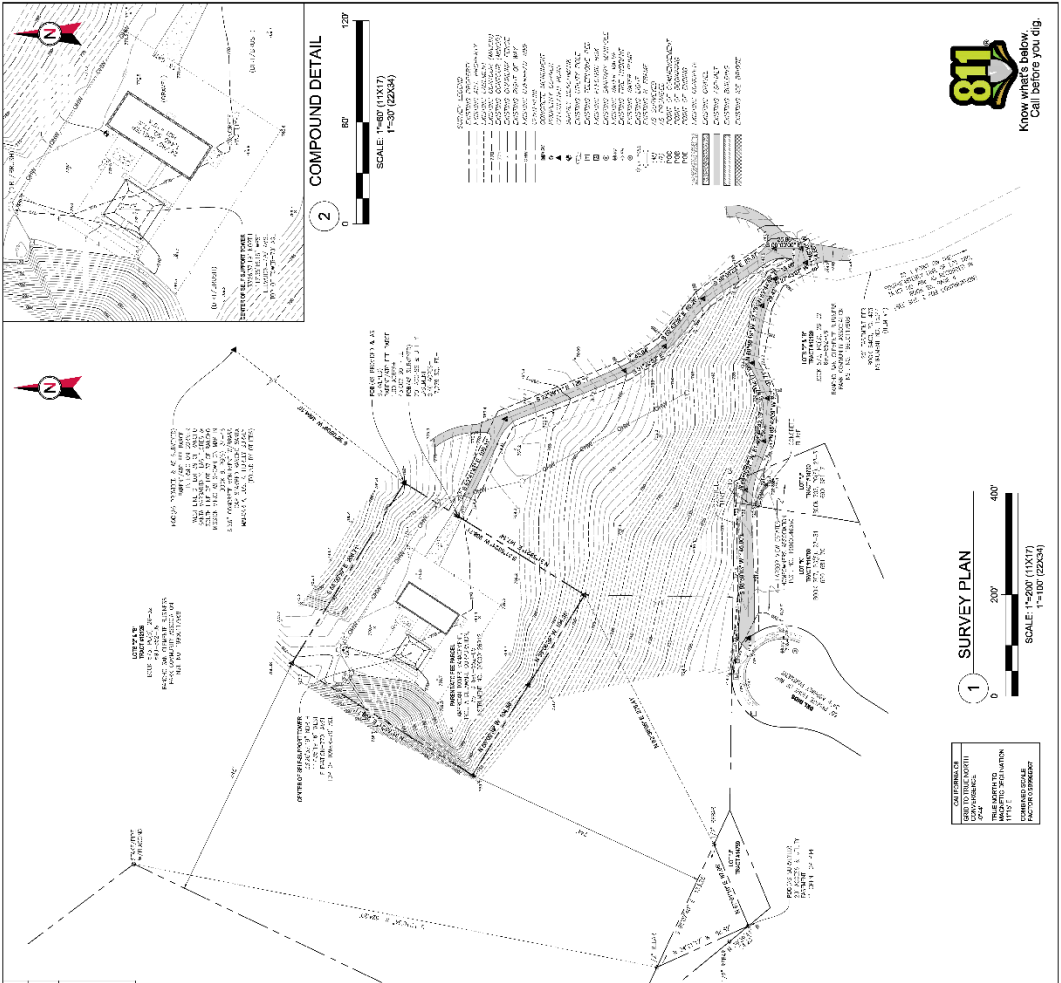
Emily L. Murray

ELM

cc: Atamian, Adam <AtamianA@san-clemente.org>
Hall, Andy <HallA@san-clemente.org>
Lightfoot, Jonathan <LightfootJ@san-clemente.org>
Mitchell, Elizabeth A. <EMitchell@bwsllaw.com>
Belair, Bonnie <Bonnie.Belair@AmericanTower.com>

 AMERICAN TOWER ATC TOWER SERVICES, INC. 2806 RESEARCH PARKWAY CARY, NC 27518 PHONE: (919) 498-4112 FAX: (919) 498-3415	REV. DESCRIPTION BY DATE	PRELIM PRELIM 8C 11/07/23
	ATC SITE NUMBER: 89366	
	ATC SITE NAME: SAN CLEMENTE CA	
SITE ADDRESS: 2M NORTHEAST OF SAN CLEMENTE SAN CLEMENTE, CA 95072-1521		
DRAWN BY: BC APPROVED BY: TLF DATE DRAWN: 11/07/23 ATC JOB NO.: 86386		
DRAWN BY: BC APPROVED BY: TLF DATE DRAWN: 11/07/23 ATC JOB NO.: 86386		
SHEET NUMBER: V-103		
REVISION: 0		
SHEET 2 OF 3		

THESE DRAWINGS AND/OR THE ACCOMPANYING NOTES ARE THE PROPERTY OF AMERICAN TOWER. THE CLIENT AND/OR USER OF THESE DRAWINGS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR OBTAINING ALL NECESSARY INFORMATION FROM THE LOCAL JURISDICTION. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE LOCAL JURISDICTION. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE LOCAL JURISDICTION.



PROJECT SUMMARY <p>THE CLIENT HAS REQUESTED THAT THE SURVEY BE CONDUCTED TO ESTABLISH THE BOUNDARIES AND TO PROVIDE A SURVEY OF THE PROPERTY. THE SURVEY WAS CONDUCTED ON 11/07/23 AND THE RESULTS ARE SHOWN ON THESE DRAWINGS. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE STANDARDS OF PRACTICE FOR SURVEYING AND ENGINEERING AS SET FORTH BY THE BOARD OF PROFESSIONAL ENGINEERS AND SURVEYORS OF THE STATE OF CALIFORNIA. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE STANDARDS OF PRACTICE FOR SURVEYING AND ENGINEERING AS SET FORTH BY THE BOARD OF PROFESSIONAL ENGINEERS AND SURVEYORS OF THE STATE OF CALIFORNIA.</p>	TOWER INFORMATION <p>THESE DRAWINGS SHOW THE PROPOSED LOCATION OF THE TOWER. THE TOWER IS TO BE CONSTRUCTED ON THE PROPERTY SHOWN ON THESE DRAWINGS. THE TOWER IS TO BE CONSTRUCTED ON THE PROPERTY SHOWN ON THESE DRAWINGS. THE TOWER IS TO BE CONSTRUCTED ON THE PROPERTY SHOWN ON THESE DRAWINGS.</p>
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EXHIBIT B

149 S. Cypress Ave
 Ontario, CA 91762
 Phone (909) 944-1066 ccmiral09@ccmail.com

Invoice

Date	Invoice #
6/26/2020	9365

Bill To
 American Towers LLC
 Attn: Accounts Payable Dept.
 PO Box 2009
 Woburn, MA 01801

		P.O. No.	Terms	Project
		567730	Net 45	89366 San Clemente
Description	P.O. Line Item	P.O. Price	Quantity	Amount This Inv...
GRAFFITI ABATEMENT AND COMPOUND FENCE REPAIRS TO AVOID NOY	1	1382.00	1	1,382.00
Total				\$1,382.00



American Towers LLC
 10 Presidential Way
 Woburn, MA 01801

PURCHASE ORDER

PURCHASE ORDER 587739

SHIP TO: 00083336
 TOWER SITE
 2M Northeast of San Clemente
 San Clemente, CA 92672-7521
 United States

BILL TO: Please email your invoices to APInvoices@americantower.com

The Supplier will ensure all exchanges, shipment and invoice documents will display the Customer (ATO) Purchase Order Number including Purchase Order line item number. ATO may define additional information from the Purchase Order be displayed on related documents and Supplier will make all reasonable efforts to comply.

VENDOR: CONTRACT COMMUNICATIONS INC
 140 S CYPRESS AVE
 ONTARIO, CA 91762
 United States

Supplier Contact: andrew.harvey@contractcommunications.com
 Requestor: Sakurota, Tori M (Tria)
 Email: tori.sakurota@americantower.com
 Buyer: Whorf, Colton J (Colton)
 Email: Colton.Whorf@americantower.com

Date of Order: 01-JUL-20
 Revision Date:
 Supplier #: 75324

Payment Terms: Net 45
 Freight Terms:
 Incoterms: FOB DESTINATION

Line Item	Supplier ID	Description	MFG Part	Delivery Date	Quantity	UOM	Unit Price	Extended Price
1		Gratuit abatement and compound fence repairs to avoid NOV.		02-JUL-20		USD	1.00	-362.00
	01227552	Siterra Project / Case Number Task Name	Asset Number	Oracle Project	Oracle Project Name	Ship To		
		SAN CLEMENTE CA	89386	20809	R&M WIRELESS	30083336 TOWER SITE 2M Northeast of San Clemente San Clemente, CA 92672-7521 United States		
TOTAL								1,382.00

The above item does not include any federal, state or local taxes that may be applicable to the material's provider services purchased herein. Please refer to Clause 21 on the terms and conditions of the Purchase Order.

SUBCONTRACTOR'S RECEIPT OF PAYMENT, CONDITIONAL RELEASE AND WAIVER OF LIEN & CLAIM

4. The Subcontractor's receipt of Payment Conditional Release and Waiver of Lien & Claim (Release and Waiver of Lien) is granted to [Contractor Name], which has furnished labor, materials, supplies, and/or goods or services including the Work to American Trust Corporation. The release and Waiver of Lien & Claim, Share of Proceeds, and development of other construction work (Project) performed by AIC. Site # [Redacted] (Project Address: 111 W. [Redacted], Suite of [Redacted], New York, New York 10012) is assigned by, or granted access to an owner of American Trust Corporation (A.C.). Such work is performed under a Purchase Order between the parties dated [Redacted].

E. For Work performed Subcontractor has been paid \$ [Redacted] ("Sum Paid") and \$1388.00 payable to be held under the same and conditions of the Master Contract Agreement ("Master Agreement") for work to be performed.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

I, Subcontractor, do hereby certify that I have read and understand the contents of the Release and Waiver of Lien and Claim and agree that the Release and Waiver of Lien is made for the purpose of releasing Contractor's, its partners, subcontractors, and other persons who are or may be involved in the performance of the Work, and that I have read and understand the contents of the Release and Waiver of Lien and agree that the Release and Waiver of Lien is made for the purpose of releasing Contractor's, its partners, subcontractors, and other persons who are or may be involved in the performance of the Work.

Given under my hand this 23 day of July 2010.

Contractor Company Name: [Redacted]
Signature of Contracting Firm/Owner: [Redacted]
Title of Signatory: [Redacted]

Contract Reference No. [Redacted]
Contract Address: [Redacted]
Contractor Name: [Redacted]
Contractor License No.: [Redacted]

Witness: [Redacted]
Contractor's Representative: [Redacted]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino

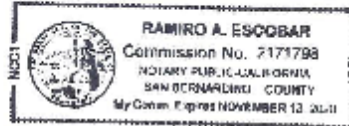
On 0223-2020 before me, Ramiro A. Escobar, Notary Public
(insert name and title of the officer)

personally appeared Andrew Harvey
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Ramiro A. Escobar (Seal)



BDR COMMUNICATIONS, INC.

1944 Kellogg Avenue
Carlsbad, CA 92008
(760) 804-5812 office

American Tower LLC
10 Presidential Way
Woburn, MA 01801

Date: 8/12/2022
Invoice No. 20220820
Purchase Order No. 677870


Buyer: Christopher DeFusco
Requestor: Kevin Jones

| PO Line # | Site # | Description | Amount |
|-----------|--------------------|---------------------------------|-------------|
| 1 | 88366 San Clemente | Fence repair / graffiti removal | \$ 1,500.00 |

TOTAL THIS INVOICE

\$1,500.00

BDR Manager / Contact: Alisa Kaiser

| | | | | | |
|---|-----------|---|-----------------|--|--|
|  | | PURCHASE ORDER | | SHIP TO: | |
| | | PURCHASE ORDER
677870 | REVISION
0 | Page 1 of 8 | 00089366
TOWER K SITE
2M Northeast of San Clemente
San Clemente, CA 92672-7521
United States |
| American Towers LLC
10 Presidential Way
Woburn, MA 01801 | | The Supplier will ensure all exchanges, shipment and invoice documents will display the Customers (ATC) Purchase Order Number including Purchase Order line item number.
ATC may define additional information from the Purchase Order to be displayed on related documents and Supplier will make all reasonable efforts to comply. | | BILL TO:
AP invoices@americantower.com | |
| Date of Order: | 02-AUG-22 | Payment Terms: | Net 60 | Supplier Contact: | |
| Revision Date: | | Freight Terms: | | Requestor: | |
| Supplier #: | 110200 | FOB/Incoterms: | FOB DESTINATION | Email: Kevin.Jones@americantower.com
Buyer: DeFusco, Christopher (Christopher)
Email: Christopher.DeFusco@AmericantTower.com | |
| VENDOR:
RDR COMMUNICATIONS INC
1944 KELLOGG AVE
CARLSBAD, CA 92008
United States | | | | | |

| Line Item | Supplier ID | Description | MFG Part | Delivery Date | Quantity | UOM | Unit Price | Extended Price |
|-----------|------------------------------|--------------------------------|--------------|----------------|---------------------|--|--------------|-----------------|
| 1 | | Fence repair/ Graffiti removal | | 23-AUG-22 | | USD | 1.00 | 1,500.00 |
| | Siterra Project /Case Number | Siterra Task Number/ Task Name | Asset Number | Oracle Project | Oracle Project Name | Ship To | | |
| | | | | 26909 | RMM WIRELESS | 00089366
TOWER SITE
2M Northeast of San
Clemente
San Clemente, CA
92672-7521
United States | | |
| | | | | | | | TOTAL | 1,500.00 |

The prices herein do not include any federal, state or local taxes which may be applicable to the materials and/or services purchased herein, (please refer to Clause 21 on the Terms and Conditions of the Purchase Order)

SUBCONTRACTOR'S RECEIPT OF PAYMENT, CONDITIONAL RELEASE AND WAIVER OF LIEN & CLAIM

A. This Subcontractor's Receipt of Payment, Conditional Release and Waiver of Lien & Claim (Release and Waiver of Lien & Claim) is entered into by BDR Communications, Inc. ("Subcontractor") which has furnished, labor, materials, supplies, and/or other goods or services (collectively, "the Work") to American Tower Corporation or its affiliate, acting as "Contractor" in connection with development and/or construction work (the "Project") performed at ATC Site # ATC 17-18 (the "Property") located, licensed, or granted access to an entity of American Tower Corporation ("ATC"). Such Work is provided under a Purchase Order (the "Purchase Order") in the amount of \$1,500.00 (the "Payment") and \$ _____ (the "Balance Due").

1. For Work performed Subcontractor has been paid \$1,500.00 ("Payment") and \$ _____ remains to be paid under the terms and conditions of the Master Contractor Agreement ("Agreement") for Work to be performed.

2. Pursuant to the Agreement, and in consideration of the Payment, the receipt and sufficiency of which are hereby acknowledged, Subcontractor releases, warrants and covenants that to all those persons claiming by, through, or under Subcontractor with respect to the Work, including, without limitation, any employee, subcontractor, supplier, manufacturer, or laborer, or any other person claiming by, through, or under Subcontractor (each, a "Supplier") who have performed any part of the Work, have been fully and completely paid for the Work hereunder and that all such claims of every nature, including any and all equitable, federal, state and local taxes, fees, awards or similar taxes or import duties, license fees or other royalties, occurred in connection therewith have been fully paid and satisfied. (f) neither Subcontractor nor any Supplier has any right to file any mechanic's lien or other lien, or any notice of intention to file such a lien, or to make any other claim with respect to any part of the Work performed against either the Property, against the Contractor, or against any entity of ATC (each, hereinafter, and claims being referred to collectively as "Lien Claims") and individually as a "Lien Claim").

3. Subcontractor covenants on behalf of itself and of all Suppliers that neither Subcontractor nor any Supplier shall file or make, or permit to be filed or made, any Lien Claim against the Property, or against any entity of ATC. Further, Subcontractor shall notify ATC, and the Contractor, that there are no financing statements, other mortgages, conditional bills of sale, retention of title agreements or any other liens affecting equipment, apparatus or fixtures that have become part of the Work, and that it has not and will not assign its claim for payment or its right to perfect the Work, the Project, or any component thereof.

4. Subcontractor on behalf of itself and all Suppliers hereby waives any Lien Claims that it or any of them may have with respect to the Work, and releases and forever discharges Contractor, and any entity of ATC, their parent, affiliates, successors and assigns and the Property from any and all other claims, suits, proceedings, judgments, debts, accounts, bonds, covenants, warranties, promises, damages, expenses, claims or demands of any kind whatsoever, whether arising in law or in equity, under any law, contract or statutory, that Subcontractor or any Supplier that ever had or may now or in the future have against any entity of ATC, Contractor, or the Property arising in any way by reason of or in connection therewith. Subcontractor agrees to cause each Supplier that Subcontractor engages in connection with the Work to enter into a substantially similar form of Subcontractor's Release and Waiver of Lien pursuant to which each such Supplier shall waive, and release any entity of ATC, Contractor and the Property from any Lien Claim.

5. Subcontractor acknowledges and agrees that this Release and Waiver of Lien is made for the purpose of insuring Contractor to make full payment to Subcontractor, and upon such payment Subcontractor covenants and agrees to Subcontractor's expense to indemnify, defend with counsel acceptable to ATC and give and hold ATC, the Property, and Contractor, harmless from and against any loss, damages, costs, expenses, liability, fees (including reasonable attorney's fees) or other claims asserted or incurred in connection with or by reason of the Work performed by Subcontractor or anyone claiming by, through, or under Subcontractor, his successors or assigns or any other party resulting from or connected with a lien or claim to a lien on the above-described Work, thereon, or asserted or incurred by reason of a breach by Subcontractor of any covenant contained in this Release and Waiver of Lien or the failure or inaccuracy of any warranty or representation contained in this Release and Waiver of Lien, through and including the date hereof, and if this Release and Waiver of Lien is for Final Payment, such Lien Claims which may arise after the date hereof.

Given under my (our) hand(s) and seal(s) this 22nd day of Aug-2024
Contractor Company Name: BDR Communications, Inc.
Signature of Company Principal: [Signature]
Title of Signatory: President

(Print Name, Vice President, Partner or Owner, or if signed by other than the foregoing, accompanied by Power Of Attorney signed by one of the foregoing in favor of the Signer (Please use Designation Applicable))

CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of San Diego)

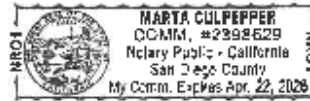
on August 22, 2022 before me, MARTA CULPEPPER, Notary Public
Notary Public and Notary for the State of California

personally appeared Mark BERGMAN

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Marta Culpepper

(Seal)

Optional Information

Although the information on this section is not required by law, it could prevent fraudulent removal and resale of this public document as a false instrument and may assist with a search relating to the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled for the purpose of Subcontractors Receipt of Payment # 89366 / Invoice Receipt containing 04 pages, and dated 8/22/2022.

The signers capacity or authority is/~~are~~
 Individual
 Agent-in-Fact
 Corporate Officer President

General Partner
 Limited Partner/General
 Trustee(s)
 Other:
 representing: BDR Communications, Inc.

| Additional Information | |
|--|--|
| Method of Signer Identification | |
| <input checked="" type="checkbox"/> Based on the basis of satisfactory evidence:
<input type="checkbox"/> Visual Identification <input type="checkbox"/> Audio or Video | |
| Notarial event is set in the notary journal on:
Page <u>59-60</u> Entry # <u>05</u> | |
| Notary contact: <u>760-758-0890</u> | |
| Signature: <u>Marta Culpepper</u>
<input type="checkbox"/> Notary Signature <input type="checkbox"/> Signatory (handwritten) | |

© 2019 Notary Public and Notary for the State of California. All Rights Reserved. Notary Public and Notary for the State of California. All Rights Reserved.

RPM Builds, Inc.
 PO Box 5601
 Norco, CA 92860

Invoice

| Date | Invoice # |
|-----------|-----------|
| 8/11/2023 | 2910 |

| Bill To |
|---|
| American Tower
PU Box 2009
Woburn, MA 01801 |

| Ship To |
|---|
| 2M Northeast of San Clemente
San Clemente, CA 92672-7521 |

| P.O. Number | Terms | Project |
|-------------|--------------|--------------------------|
| 730104 | 1% 30 NET 60 | M3222 89366 San Clemente |

| Quantity | Item Code | Description | Price Each | Amount |
|--|---------------|---------------------------------------|--------------|------------|
| | 1 Maintenance | Paint over graffiti and repair fence. | 5,220.00 | 5,220.00 |
| RPM Contact Info
Mark Helton
909-896-0625
rpmbuilds@gmail.com | | | | |
| TIN #26-3776#17 | | | Total | \$5,220.00 |

SUBCONTRACTOR'S RECEIPT OF PAYMENT, CONDITIONAL RELEASE AND WAIVER OF LIEN & CLAIM

A. This Subcontractor's Receipt of Payment, Conditional Release and Waiver of Lien & Claim (Release and Waiver of Lien"), to be entered into by RFMR, Inc. ("Subcontractor") which has furnished labor, materials, supplies, and/or other goods or services (collectively the "Work") to American Tower Corporation or its affiliate (acting as Contractor) in connection with development and/or construction work (the "Project") performed at ATG Site # 03321 (Street address city) in 02215 County, State of MA (the "Property") owned, leased, licensed to, acquired by, or granted access to an entity of American Tower Corporation ("ATC"). Such Work is provided under a Purchase Order between the parties dated 01/27/21.

B. For Work performed Subcontractor has been paid \$ 6,220.00 (Payment) and \$ 0.00 remains to be paid under the terms and conditions of the Master Contract Agreement ("Agreement") for Work to be performed.

1. Pursuant to the Agreement, and in consideration of the Payment, the receipt and sufficiency of which are hereby acknowledged, Subcontractor represents, warrants and covenants that (i) all those persons claiming to, through, or under Subcontractor with respect to the Work, including without limitation, any employees, subcontractor, supplier, manufacturer, or laborer, or any other person claiming to, through, or under Subcontractor (together, a "Supplier") who have performed any part of the Work, have been fully compensated by Subcontractor as of the date hereof and that all bills and items payable and satisfied, (ii) neither Subcontractor nor any Supplier has any right to file any mechanic lien or other lien, or any notice of intention to file such lien, or to make any other claim with an individual as a "Lien Claim".

2. Subcontractor, on behalf of itself and of all Suppliers that neither Subcontractor nor any Supplier shall file or cause, or permit to be filed or made, any Lien Claim against the Property, or against any entity of ATC. Further, Subcontractor shall certify to ATC, and to Contractor, that there are no financing statements, chattel mortgages, conditional bills of sale, retention of title agreements or any other liens affecting equipment, supplies or fixtures that have become part of the Work, and that it has not and will not assign its claim for payment or its right to perfect a lien against the Work, to the Project, or any component thereof.

3. Subcontractor on behalf of itself and all Suppliers hereby waives any Lien Claims that it or any of them may have with respect to the Work, and releases and forever discharges Contractor, and any entity of ATC, their heirs, assigns, successors and assigns and its Property from any and all other actions, suits, proceedings, judgments, debts, accounts, bonds, contracts, promises, claims, demands, damages, expenses, claims or demands of any kind whatsoever, whether arising in law or in equity, under any law, common or statutory, that Subcontractor or any Supplier has ever had or may have now or in the future have against any entity of ATC, Contractor, or the Property arising in any way by reason of the Work performed or in connection therewith. Subcontractor agrees to cause each Supplier that Subcontractor engages in connection with the Work to make this substantially similar form of Subcontractor's Release and Waiver of Lien pursuant to which each such Supplier shall waive and release any entity of ATC, Contractor and the Property from any Lien Claims.

4. Subcontractor acknowledges and agrees that this Release and Waiver of Lien is made for the purpose of insuring Contractor to make full payment to Subcontractor, and upon such payment Subcontractor covenants and agrees that Subcontractor's expense to indemnify, defend (with counsel acceptable to ATC) and save and hold ATC, the Property, and Contractor, harmless from and against any loss, damages, costs, attorneys' fees, fees (including reasonable attorney's fees) or other claims awarded or incurred in connection with or by reason of the Work performed by Subcontractor or anyone claiming by, through, or under Subcontractor, its successors or assigns (and) or any other party resulting from or connected with a lien or claim to a lien on the above-described Work, in fact or asserted or incurred by reason of a breach by Subcontractor of any covenant contained in the Release and Waiver of Lien or the failure or inaccuracy of any warranty or representation contained in this Release and Waiver of Lien, through and including the date hereof, and if this Release and Waiver of Lien is for Final Payment, such Lien Claims which may arise after the date hereof.

Given under my (our) hand(s) and seal(s) this 11th day of March, 2021.

Contractor Company Name: RFMR, Inc.

Signature of Company Principal: Mark Holton

Title of Signatory: Mark Holton - President

(President, Vice President, Partner or Owner, or if signed by other than the foregoing, accompanied by Power Of Attorney signed by one of the foregoing in favor of the Signer (Please Use Designation Applicable))

ACKNOWLEDGEMENT

Then personally appeared the above-named Mark Helton, of _____,

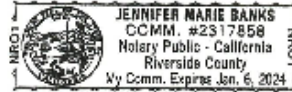
RPM Builds, Inc. of Norbo, CA, acknowledge the foregoing instrument to be _____

his/her free act and deed before me.

Jennifer Marie Banks
NOTARY PUBLIC

State of CALIFORNIA

Commission Expires: Jan 6, 2024



(Seal)

UPON FULL EXECUTION OF THIS DOCUMENT RETURN TO:
AMERICAN TOWER CORPORATION
PO BOX 2008
WOBURN, MA 01801

EXHIBIT C











EXHIBIT D

| | | |
|---|---|---|
| DATE ISSUED
08/30/2023 |  Inspection Job Card
910 Calle Negocio, Suite #100
San Clemente, CA 92673
Office: (949) 361-6100 | PERMIT NUMBER
B23-1495 |
| JOB DESCRIPTION
ES - CELL SITE MODIFICATION | SITE DESCRIPTION
616 DEL DIOS
TOWER, AMERICAN MANAGEMENT INC; | |
| DESTACK A TOWER FROM 138' TO 70' | | |
| ◆ INSPECTION REQUEST WEBSITE www.san-clemente.org CLICK Permits ONLINE -BY 6am same day
◆ CALL (949) 361-3366 AND PROVIDE PERMIT NUMBER & INSPECTION CODE -BY 6am same day
◆ THIS JOB CARD AND APPROVED PLANS MUST BE MADE AVAILABLE TO THE INSPECTOR UNTIL FINAL APPROVAL
◆ THIS PERMIT WILL EXPIRE IF NO APPROVED INSPECTION IS PERFORMED WITHIN A PERIOD OF 180 DAYS | | |
| DO NOT COVER OR CONCEAL THE WORK BELOW UNTIL THE FOLLOWING APPLICABLE ITEMS HAVE BEEN SIGNED OFF | | |
| UNDERGROUND / FOUNDATIONS | DATE / SIGNATURE | GENERAL / MISCELLANEOUS |
| 101 Preconstruction Meeting | | 304 Temporary Power (released) |
| 401 Underground Waste / Cleanouts | | 410 Sewer Connection |
| 402 Underground Water Supply/Drainage | | 408 Water Service |
| 120 Cages / Cassions | | 409 Gas Test (Final) |
| 102 Form Setback / Pad Cert/ Soils Memo | | 121 Roof Tear-off / Pre-sheathing |
| 103 Footings / Steel / Hardware | | 122 Smoke Detectors/Carbon Monoxide |
| 104 Pre - Slab | | 411 Roof Drains / Gutters |
| 301 Ufer Ground | | 701 Patio Cover / Deck - Footings |
| 302 Underground Electrical | | 702 Patio Cover / Deck - Framing |
| 403 Underground Gas Line PE/ Gas Test | | 703 Masonry Wall / Fireplace Footings |
| DO NOT COVER OR POUR CONCRETE UNTIL ABOVE SIGNED OFF | | |
| ROUGH | DATE / SIGNATURE | FINAL INSPECTIONS |
| 105 Floor Sheathing | | 704 Masonry Wall / Fireplace Pre-Grout |
| 106 1st Fir Wall Framing/Shear Walls/HDs | | 705 Erosion Control / BMP Inspection 1 |
| 107 2nd Floor Sheathing | | 706 Erosion Control / BMP Inspection 2 |
| 108 2nd Fir Wall Framing/Shear Walls/HD | | |
| 109 3rd Floor Sheathing | | |
| 110 3rd Fir Wall Framing/Shear Walls/HDs | | |
| 111 Roof Sheathing /Diaphragm | | |
| 201 Rough Mechanical (Heating/Vents) | M | |
| 303 Rough Electrical | E | |
| 404 Rough Plumbing/Top-out | P | FIRE AUTHORITY |
| 112 Final Framing | S | DATE / SIGNATURE |
| 707 Accessibility | | Fire Sprinkler Rough / Hydro |
| 708 Energy / Water Conservation Fixtures | | Fire Sprinkler Final |
| DO NOT COVER OR INSULATE THE WORK ABOVE UNTIL ALL APPLICABLE ITEMS AND FIRE DEPT. HAVE BEEN SIGNED OFF IF REQUIRED | | |
| INTERIOR / EXTERIOR | | BUSINESS LICENSE SUB-LIST VERIFICATION FORM MUST BE SUBMITTED AND APPROVED PRIOR TO FINAL INSPECTION |
| DATE / SIGNATURE | | FINAL INSPECTIONS |
| | | PLANNING FINAL (949) 361-6100 |
| 113 Pre-Lath | | ENGINEERING FINAL (949) 361-6131 |
| 114 Exterior Lath | | FIRE DEPT FINAL (714) 573-6150 |
| 116 Insulation / Floor / Walls / Rf -Ceiling | | HEALTH DEPT FINAL (714) 433-6000 |
| 115 Stucco / Scratch Coat | | 222 MECHANICAL FINAL (949) 361-3366 x9002 |
| 117 Drywall | | 333 ELECTRICAL FINAL (949) 361-3366 x9002 |
| 118 Interior Lath / Shower Pan | | 444 PLUMBING FINAL (949) 361-3366 x9002 |
| 119 Suspended Ceilings / T-Bar | | 999 BUILDING FINAL (949) 361-3366 x9002 |
| DO NOT COVER OR CONCEAL THE WORK ABOVE UNTIL ALL APPLICABLE ITEMS HAVE BEEN SIGNED OFF | | |
| RETAINING WALL | | DATE / SIGNATURE |
| 601 Retaining Wall Foundation | | 305 ELECTRIC RELEASED _____ |
| 602 Retaining Wall Steel / Pre-Grout | | 412 GAS RELEASED _____ |
| 603 Wall Waterproofing | | CERTIFICATE OF OCCUPANCY ISSUED _____ |
| 604 Wall Drainage | | |
| 605 Backfill Compaction | | |

10/11/23 RHM

EXHIBIT E

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
865 South Figueroa Street, Suite 2800 | Los Angeles, CA 90017-2543
Telephone: 213.622.5555 | Facsimile: 213.620.8816
www.allenmatkins.com

Emily L. Murray
E-mail: emurray@allenmatkins.com
Direct Dial: 213.955.5584 | File Number: 374393.00053/4859-2631-8741.2

Via Electronic Mail

December 5, 2023

Mayor Duncan
Mayor Pro Tem Knoblock
Councilmember Cabral
Councilmember Enmeier
Councilmember Loeffler
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

**Re: City Council Consideration of Changes to or Revocation of
Conditional Use Permit, Voluntary Compliance Agreement, and/or
Wireless Screening Form**

Dear Mayor Duncan and Councilmembers:

Allen Matkins is counsel to American Tower Management LLC (“**American Tower**”) in relation to American Tower’s continuing operation of its existing wireless communication facility (Site No. 89366) (the “**Wireless Communications Facility**”), located at Rancho San Clemente Trail, Rancho San Clemente, California 92672 (APN: 690-552-05) (the “**Property**”) in the City of San Clemente, CA 92672 (the “**City**”). This letter addresses the proposed City Council hearing to consider changing or revoking American Tower’s Conditional Use Permit (“**CUP**”), Voluntary Compliance Agreement, and/or Wireless Screening Form 23-231. As set forth in greater detail below, all cited grounds for revocation are invalid, unsubstantiated, and/or conflict with applicable law.

I. Revocation of the CUP would breach the Voluntary Compliance Agreement between the City and American Tower.

In resolution of an alleged violation of the CUP, American Tower and the City negotiated and entered into a Voluntary Compliance Agreement, dated July 6, 2023 (the “**Voluntary Compliance Agreement**”). As set forth in the Voluntary Compliance Agreement, because no records of any County or City approvals authorizing the expansion of the Wireless Communications Facility from 70 feet to its then-current height of 156 feet had been located, American Tower voluntarily agreed to reduce the height of the existing Wireless Communications Facility to the 70

foot maximum identified in the 1962 CUP. Voluntary Compliance Agreement, Agreement, Recital 5; § 3.

The City affirmatively represented in the Voluntary Compliance Agreement that “[t]o the best of the City’s information and knowledge, the only known violation of the 1962 CUP or applicable law with respect to the Wireless Communications Facility is the tower’s height.” Voluntary Compliance Agreement, Agreement, Recital 6. The City further agreed as follows:

The City agrees that, **following the reduction in the height of the tower, the Wireless Communications Facility will be in compliance with the 1962 CUP**, and specifically that (i) the 1962 CUP is vested; (ii) the 1962 CUP does not contain an expiration date; and (iii) the 1962 CUP permits the current use of the Wireless Communications Facility for wireless telecommunication purposes; and (iv) the 1962 CUP permits a 70’ tower. As a result, the City shall not require a discretionary approval, including but not limited to a new CUP or renewal of the 1962 CUP, in connection with the reduction in height and ongoing operation of the Wireless Communications Facility consistent with the 1962 CUP. Voluntary Compliance Agreement, § 6, emphasis added.

The language in the Voluntary Compliance Agreement is clear: after reducing the Wireless Communications Facility’s height, the site complies with its CUP. By the City’s own admission, the height of the Wireless Communications Facility was American Tower’s *only* violation of the CUP.

Notwithstanding its contractual representations and commitments to the contrary, the City now proposes to consider changing or revoking the CUP and the Voluntary Compliance Agreement based solely upon unsubstantiated public testimony alleging abandonment of the facility, violations of the CUP, and nuisance. *See* Agenda Report for Item 10B, December 5, 2023 City Council Meeting (“**Staff Report**”). Notably, the City does not claim to have independently verified – or even attempted to verify – any of the allegations made during public testimony. To the contrary, as set forth herein American Tower has provided the City with substantial evidence refuting each of these claims. *Id.* Yet the City still proposes to continue to pursue revocation of the CUP and Voluntary Compliance Agreement based solely upon claims that the City has neither researched nor confirmed.

The City’s actions constitute a breach of the Voluntary Compliance Agreement. That breach has caused and is causing substantial harm to American Tower. American Tower fundamentally changed its position in detrimental reliance on the City’s sworn statements in the contract. American Tower incurred significant costs in reliance on the contract, including the cost to reduce the height of the facility in accordance with the Voluntary Compliance Agreement. And American

Tower is currently incurring costs responding to the unsubstantiated claims made by the public and the City's actions in response thereto. The City's current actions are so egregious as to suggest that the City may have acted in bad faith in contract negotiations. If the City continues to pursue revocation of the CUP, American Tower intends to pursue litigation, seeking monetary damages, including, among other compensatory damages, payment in full of American Tower's attorneys' fees.

II. American Tower never abandoned use of the Wireless Communications Facility.

The Staff Report refers to San Clemente Municipal Code ("SCMC") section 17.12.150 as potentially applicable to the CUP in this case. However, this section is inapplicable on its face and the evidence provided by American Tower refutes the community's baseless claims of abandonment of the Wireless Communications Facility. SCMC section 17.12.150 provides that "[a]n application approved in accordance with this title shall be deemed to have expired, when either of the following occur: (1) When the activity permitted by the approved application is not commenced,... (2) When the activity permitted by the approved application has lapsed, as defined in Subsection (C) of this section, Lapse of a Permitted Activity." SCMC § 17.12.150(A). Subsection C in turn provides: "An activity permitted by an approved application shall be deemed to have lapsed at the following times: ... For an activity that has become operational or opened for business, one year after the date the activity ceases operation and/or the business closes at such location...". SCMC § 17.12.150(C).

Here, this section is inapplicable on its face because the CUP was not approved in accordance with SCMC Title 17, Zoning as required by section 17.12.150(A); the CUP was not approved or issued by the City at all. To the contrary, the CUP was approved and issued by Orange County in 1962, and section 17.12.150 is wholly inapplicable. Moreover, as American Tower has demonstrated through provision of a tenant summary and supporting documentation going back 60 years, the facility has been in continuous operation and the "activity" has never ceased, nor has the "business closed."

Members of the community claim – without any factual support whatsoever – that the Wireless Communications Facility has been inactive for many years. In considering this issue, the City, by its own admission, solely relies on these assertions from public testimony. That public testimony is demonstrably false, based entirely upon speculation, and is lacking a single evidentiary foundation for any of its assertions. Anyone can stand up in a public meeting and fabricate unsubstantiated claims, and that is obviously the case here. By way of example, the Wireless Communications Facility was constructed in the 1960s, while the neighborhood homes were not built until 1994-1996. The community apparently claims that the Wireless Communications Facility was inactive before their homes were even built, demonstrating the baselessness of these allegations.

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Meanwhile, American Tower has provided a history of tenant leasing, including documented proof going back to the 1960s. Not only that, but American Tower has also documented activity above and beyond the active leases. Specifically, the documentation provides shows that American Tower has at all times pursued permits and potential tenants, negotiated leases, and maintained the site. Accordingly, the Wireless Communications Facility has been in continuous operation since 1962 and the “activity” has never ceased, nor has the “business closed.”

Similarly, the City cannot take the position that the legal non-conforming status of the Wireless Communications Facility has been lost. San Clemente’s Code creates a rebuttable presumption that discontinued legal non-conforming uses have been abandoned. SCMC § 17.72.060(B)(1). Specifically, it states that “Nonconforming Uses discontinued for more than one-year (365 consecutive calendar days) shall be rebuttably presumed to have been abandoned. Abandoned uses shall be converted to uses that meet zoning requirements.” *Id.* The property owner has the burden to prove how many consecutive days a use has been discontinued and/or prove a use has not been abandoned. SCMC § 17.72.060(B)(3).

In 1996, the California Supreme Court clarified that although “[t]he term ‘discontinued’ in a zoning regulation dealing with a nonconforming use is sometimes deemed to be synonymous with ‘abandoned,’” that is not the law. *Hansen Brothers Enterprises, Inc. v. Board of Supervisors*, 12 Cal. 4th 533, 569 (1996). “Cessation of use alone does not constitute abandonment. ‘Abandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use.’” *Id.* To reiterate: “mere cessation of use does not of itself amount to abandonment.” *Id.*

Hansen Brothers is clear indication from the California Supreme Court that abandonment requires both (1) an intent to abandon and (2) an overt act or failure to act. This means that even if American Tower had ceased its use of the Wireless Communications Facility altogether, which we know it did not from its documented activity and tenant leasing history, it still would need an intent to abandon use of the Wireless Communications Facility. American Tower never had, and indeed community members have no evidence that it ever did have, an intention to abandon the Wireless Communications Facility. Therefore, under both the San Clemente Zoning Code and state law, American Tower never abandoned its use of the site.

III. American Tower has actively cured all potential ongoing violations of the CUP.

The City cites public testimony that indicates American Tower’s access to the site through the Harborview Estates neighborhood was without “the legal right to access the site in that manner.” When this issue has brought to American Tower’s attention, American Tower had a survey of the property prepared. The surveyor plotted the metes and bounds legal description of the access easement from the vesting deed. As shown on the survey, the easement follows the approximate

path of a utility access road before intersecting with Avenida Salvador. American Tower personnel confirmed that this access course to the site is open and accessible by vehicle, and American Tower has secured a lock for its use on the gated access to the utility access road at Avenida Salvador. American Tower has and will instruct all of its contractors and customers to access the site exclusively via Avenida Salvador and the utility access road going forward, and not to access the site via Del Dios. Therefore, any non-compliance with the access provisions of the vesting deed or CUP has been cured and is wholly past.

In addition, American Tower has taken aggressive steps to secure the site. This includes repairing the fence, painting over graffiti, and remedying vandalism. American Tower cannot control the actions of community members who continue to trespass, damage and destroy property on the site, but American Tower works diligently to ensure that violations caused by third parties are cured in a timely manner.

The site is also in compliance with the fire code. On Monday, November 27, the Orange County Fire Department surveyed the site and confirmed in writing that they were “satisfied with the work completed.” Specifically, the “complete removal of vegetation” went above and beyond the codified brush clearing requirements. Therefore, no fire code violations exist.

IV. Community members are trespassing, inflicting crimes against property, and interfering with activities on the site.

Community members frequently trespass on the site and commit crimes against property. Among other illegal acts, they have (1) damaged the barbed-wire fence to climb over it so they could trespass, vandalize, and destroy personal property; (2) flattened and inserted ball bearings into the tires of two of American Tower’s vendor’s trucks when they were conducting brush clearance; (3) stood in front of trucks and refused to move to interfere with and delay contractors; (4) dumped trash at the site; and (5) brought an electrician to the site to assess if there was electricity without permission. American Tower alerted the City of these illegal acts, but the City has done nothing to prevent or stop these activities. Thus, the responsibility for the alleged violations of the CUP, such as the damaged fence, are directly attributable to both vandals in the community and the City’s failure to prevent and punish these illegal acts.

V. American Tower is not operating the site in a manner that constitutes a public nuisance.

A nuisance is anything which is injurious to health or interferes with the comfortable enjoyment of life or property. Cal. Civ. Code § 3479. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons. *Id.* § 3480. In other words, a public nuisance is an “obstruction of public right[s].” *Id.* § 3490.

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Importantly, for an action or inaction to constitute a nuisance, the interference must be “unreasonable.” *San Diego Gas & Elec. Co. v. Superior Ct.*, 13 Cal. 4th 893, 938 (1996). When determining this, courts weigh (1) whether the harm to the public outweighs the social utility to it and (2) whether a reasonable person, looking at the whole situation impartially and objectively, is likely to consider the interference unreasonable. *Id.*; *Fashion 21 v. Coal. for Humane Immigrant Rts. of Los Angeles*, 117 Cal. App. 4th 1138, 1154 (2004). The “primary test,” however, is the first social utility prong. *Wilson v. S. California Edison Co.*, 21 Cal. App. 5th 786, 802-03 (2018).

A “mere possibility or fear of future injury from a structure, instrumentality, or business” is not sufficient for nuisance. *Beck Dev. Co. v. S. Pac. Transportation Co.*, 44 Cal. App. 4th 1160, 1213 (1996). To succeed on a nuisance claim, the proponent would have to “at a minimum, establish facts to prove that the apprehension of injury is well founded.” *Id.* (quoting *Payne v. McKinley*, 54 Cal. 532, 533 (1880)). In other words, the proponent must provide evidence to establish the “magnitude and likelihood of danger and it cannot be enough to merely suggest a danger and assert that it has not been ruled out.” *Id.* at 1214.

In the present case, a court would agree that the Wireless Communications Facility does not constitute a public nuisance. First, there is no “public right” in law or history to reside apart from tall structures. On top of that, the use of the Wireless Communications Facility is reasonable. Applying the social utility test, the social benefit of the Wireless Communications Facility outweighs potential harm to the public. In an ever-increasing digital age, internet and wireless service is more important than ever as a part of daily life. The harm that the community alleges is a fear of future injury to children who may trespass and physically hurt themselves. Such harm is speculative and would be disregarded by the courts. Finally, with regards to the second prong, any impartial, reasonable person would look at an unmoving, solid building and conclude that there is no active interference that the structure is causing. Legally then, the Wireless Communications Facility does not constitute a public nuisance in California.

Additionally, there are tall towers, including wireless communication facilities, water towers and cell towers, in cities across the state. The mere existence of the structure of the Wireless Communications Facility does not itself invite dangerous conduct in the absence of intervening illegal acts and trespass. It is unfathomable to think that every tall building in the state should have its permits reexamined because community members can trespass and perform illegal acts that put themselves and others in harm’s way. Again, the Wireless Communications Facility does not constitute a public nuisance.

VI. American Tower is not operating the site in a manner that constitutes an attractive nuisance.

California abolished the attractive nuisance doctrine almost fifty years ago. *Smith v. Americania Motor Lodge*, 39 Cal. App. 3d 1, 7 (Ct. App. 1974) (“The decision of *Rowland*

[citation], in effect, abolishes the attractive nuisance doctrine in California.”); *see also Rowland v. Christian*, 69 Cal. 2d 108 (1968); *Beard v. Atchison, Topeka & Santa Fe Ry. Co.*, 4 Cal. App. 3d 129 (Ct. App. 1970). However, even when attractive nuisance was applicable in the state, the California Supreme Court refused to find that a child climbing a ladder to the top of a building and falling constituted an attractive nuisance. *Doyle v. Pac. Elec. Ry. Co.*, 6 Cal. 2d 550, 552 (1936). This is because “there is nothing uncommon about a ladder ... and the danger of falling from them is familiar to children as well as to adults.” *Id.* at 553.

Modern doctrine replaced attractive nuisance with premises liability. *See Americania Motor Lodge*, 39 Cal. App. 3d at 7. This imposes a duty on private landowners to keep their property safe from hazards. *Hoffmann v. Young*, 13 Cal. 5th 1257, 1266-67 (2022). There are varying degrees of care required, however, and the duty owed to trespassers is the lowest. *Id.* Specifically, the only duty owed to trespassers is to refrain from causing “wanton or willful injury.” *McDaniel v. Sunset Manor Co.*, 220 Cal. App. 3d 1, 7 (Ct. App. 1990).

This concept is codified in the recreational use immunity statute. Cal. Civ. Code § 846. This statute provides that an owner of real property owes no duty of care to keep the premises safe for entry or use by others for recreational purposes unless the landowner “willfully or maliciously” fails to guard or warn against a dangerous condition, or the landowner invites the user onto the premises. *Id.* This provision of the law was applied to trespassing children, including cases where children injured themselves climbing electrical towers. *Manuel v. Pac. Gas & Elec. Co.*, 173 Cal. App. 4th 927, 937-38 (2009) (finding that landowner only had a duty to not act willfully and maliciously when a fourteen-year-old girl was electrocuted climbing an electrical transmission tower); *Bacon v. S. Cal. Edison Co.*, 53 Cal. App. 4th 854, 859 (1997) (finding the landowner had the lowest standard of duty owed under the statute when a thirteen-year-old boy shocked himself and fell climbing an electrical transmission tower). In the latter case, the court found that placing barbed wire and a warning sign at the tower was sufficient to meet the landowner’s standard of care. *Bacon*, 53 Cal. App. 4th at 17-18.

Community members claim that the Wireless Communications Facility operates as an attractive nuisance causing two threats of harm: (1) children may climb the Wireless Communications Facility and injure themselves or fall off, and (2) children may throw items off the Wireless Communications Facility and hit passing pedestrians. However, neither concern constitutes a nuisance attributable to American Tower.

First, modern statutes and case law are clear that courts apply the lowest standard of care to property owners when children trespass and climb electrical towers. Courts agree that children as young as thirteen-years-old can fully understand the dangers of climbing tall electrical towers. Such acknowledgment from the courts suggests that any potential injuries to children from the existence of buildings is the fault of the parents and children, rather than the existence of the structure. Additionally, community members can point to no evidence that American Tower “willfully or

maliciously” failed to guard or warn of the dangers of climbing the Wireless Communications Facility. On the contrary, American Tower has and maintains a fence around the Wireless Communications Facility that prevents access of the site absent criminal acts and trespassing. Thus, the Wireless Communications Facility and its structure cannot be blamed for children climbing it and potentially falling off. This is not grounds for revocation of a CUP.

Additionally, it is not clear how the acts constituting nuisance can be attributable to American Tower. If the conditions presenting the attractive nuisance are a result of frequent and flagrant crime, is it not the responsibility of the City to stop those criminal acts? American Tower has exceeded its duty of care to trespassing children, which again is to refrain from acting willfully or maliciously, by repairing the holes in the fence and otherwise securing the site. Similarly, the second claim, that children will throw items off the Wireless Communications Facility and injure passing pedestrians, surely cannot be attributable to American Tower. A significant and uncontrollable intervening force, namely the children who are trespassing, climbing the Wireless Communications Facility, and throwing items off the Wireless Communications Facility, cuts off any attribution of the potential nuisance to American Tower. Thus, neither of the two attractive nuisance concerns from the community are applicable to American Tower.

VII. The Harbor View Homeowners Association’s letter lacks legitimate legal foundation.

On November 8, 2023, the Harbor View Homeowners Association submitted a comment letter in support of revocation of American Tower’s CUP and building permits. None of the allegations included in that letter are true or founded in valid law. Specifically, the analysis demonstrates a flagrant misunderstanding of the Telecom Act and numerous misunderstandings and misapplications of the California Environmental Quality Act (“CEQA”) and other State laws. American Tower unequivocally denies any and all allegations in the letter.

VIII. Conclusion

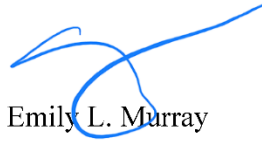
As described above, American Tower is not in violation of its CUP and has consistently rectified all potential violations. All allegations from public testimony claiming that it is in violation are unsubstantiated or legally false. We respectfully request that the City decline initiating a change or revocation hearing.

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Your careful attention to this matter is greatly appreciated. Please do not hesitate to contact me should you have any questions or if I can provide any additional information.

Very truly yours,



Emily L. Murray

ELM

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