Thomas M. Menino, Mayor
Mike Lynch, Director

Mayor's Office of Cable & Web Communications
City of Boston Dept. of Innovation & Technology
43 Hawkins Street
Boston, Massachusetts 02114
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Transmittal Memorandum

January 17, 2012

Jennifer Lewis
Project Manager - DAS Strategic Relations
American Tower Corporation
10 Presidential Way
Woburn, MA 01801
1 781 926 4727 (Direct)
1 617 784 8531 (Mobile)
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Please find enclosed two original and signed copies of the City of Boston and ATC Outdoor DAS, LLC, the American Tower Corporation's Distributed Antenna System division.

American Tower, a Boston-based company, is a leading provider of telecommunications infrastructure, nationally. American Tower Corporation's ATC Outdoor DAS, LLC, is registered with the Secretary of the Commonwealth as of Dec. 27, 2007 under the ID # 000967454. The principal office location is the same as ATC: 116 Huntington Avenue, Boston, MA.

I understand you are about to embark on a new role with ATC Outdoor. Congratulations!

In Boston, I believe the next step will be to introduce ATC Outdoor DAS to the Public Improvement Commission staff and members. I'd be happy to facilitate that step. Please let me know who will be working on the Boston project.

Best regards,

Mike Lynch

LICENSE AGREEMENT

BETWEEN

THE CITY OF BOSTON

and

ATC Outdoor DAS, LLC

THIS LICENSE AGREEMENT ("AGREEMENT") DATED AS OF THIS 12th DAY OF January, 2017, IS ENTERED INTO BY AND BETWEEN THE CITY OF BOSTON, A MUNICIPAL CORPORATION ("CITY"), AND ATC Outdoor DAS, LLC, a Delaware limited liability company ("ATC").

WHEREAS, the City of Boston has made significant investments of time and money in the acquisition and maintenance of the public ways and such investment has enhanced the utility and value of the public ways; and

WHEREAS, the public ways within the City are used by and useful to private enterprises engaged in providing telecommunications services to citizens, institutions, and businesses located in the City; and

WHEREAS, the right to occupy portions of such public ways for limited times, for the business of providing telecommunications services, is a valuable economic privilege, the economic benefit of which should be shared with all the taxpayers of the City; and

WHEREAS, beneficial competition between providers of communications services can be furthered by the City's provision of grants of location and rights to use the public ways on non-discriminatory and competitively neutral terms and conditions; and

WHEREAS, ATC is a private enterprise engaged in providing radio frequency ("RF") transport telecommunications services within the City for commercial mobile radio service ("CMRS") carriers; and

WHEREAS, ATC's private enterprise would be aided if were able to exercise the valuable economic and special privilege of using the public ways in a manner not enjoyed by the general public; and

WHEREAS, ATC desires to physically occupy portions of the public way with its network facilities and transmission lines to operate its Optical Repeater Networks and facilitiate ATC's provision of RF transport telecommunications service; and

WHEREAS, ATC is willing to compensate the City in exchange for a grant of location and the right to use and physically occupy portions of the public way.

NOW THEREFORE BE IT RESOLVED, in consideration of the terms and conditions contained in this Agreement, the City and ATC do hereby agree:

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

1.0 DEFINITIONS

Except as otherwise defined herein, the following terms shall, when capitalized, have the meanings given below:

1.1 "Agency" means any governmental agency or quasi-governmental agency other than City, including, but not limited to, the Federal Communications Commission (FCC) and the Commonwealth of Massachusetts Department of Telecommunications and Energy (DTE).

1.2 "Approval" when used with reference to approval of the City means the prior written approval of the City of Boston Public Improvement Commission ("PIC") unless another person or method for approval is specified herein or under applicable law.

1.3 "PIC" when used herein means the City of Boston Public Improvement Commission.

1.4 "Business Day" means any Day other than a Saturday, Sunday, or Day observed as an official holiday by the City.

1.5 "Day" means any calendar day, unless a Business Day is specified. For the purposes hereof, if the time in which an act is to be performed falls on a Day other than a Business Day, the time for performance shall be extended to the following Business Day. For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first Day and including the last.

1.6 "Commissioner" means the Commissioner of Public Works in his or her capacity as Chair of the City of Boston's Public Improvement Commission, or, the Commissioner's designee.

1.7 "Gross Revenues" means the gross dollar amount of any and all revenue derived directly or indirectly by ATC or its affiliates, subsidiaries, parent companies, holding companies, or any person in whom ATC has a financial interest, proceeding or accruing from the provision of Services (as defined in § 1.15 below) provided within the City of Boston, excluding the (i) Right-of-Way Fee payable pursuant to § 7.1 *et seq.* below, and any utility users' tax, communications tax, or similar business license tax or fee which accrues to the City by operation of the City's Municipal Code or other applicable law; (ii) local, state, or federal taxes that have been billed to the customers and separately stated on customer' bills; and (iii) revenue uncollectible from customers (*i.e.,* bad debts) for Services provided in the City of Boston that were previously included in Gross Revenues.

1.8 "FCC" means the Federal Communications Commission.

1.9 "Hazardous Material" means any substance, waste or material which, because of its quantity, concentration or physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

1.10 "Law" or "Laws" means any federal, state or local statute, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order, or other requirement in effect either at the time of execution of this Agreement or at any time during the period the Optical Repeater Networks are located in the Public Rights-of-Way, including, without limitation, any regulation or order of an official entity or body.

1.11 "Optical Repeater Network(s)" means the fiber optic cables, antennas, brackets, devices, conduits and all other related equipment to be deployed by ATC as described in Exhibit A attached hereto.

1.12 "Person" means an individual, a corporation, a partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business association or government agency.

1.13 "Public Rights-of-Way" means the area in, upon, above, along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, boulevards, and places within the City as the same now or may hereafter exist and which are under the permitting jurisdiction of the Department of Public Works.

1.14 "Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any improvements constructed hereunder by or on behalf of ATC.

1.15 "Services" means the RF transport telecommunications services provided in the City by ATC to its customers. If the City approves the provision of any other services by ATC from or by any use of the Optical Repeater Networks, upon such approval, the definition of "Services" shall automatically be revised to include any such approved additional services.

1.16 "Light poles" means light poles, wooden power poles, traffic light poles, highway sign poles, utility poles, lighting fixtures or other similar poles located in the Public Rights-of-Way owned by the City or other third parties and may refer to such facilities in the singular or plural, as appropriate to the context in which used. The term Light poles excludes any historically or architecturally significant light poles owned by the City located on public ways or other similar street furniture.

2.0 TERM OF AGREEMENT

The term of this Agreement is a period of ten (10) years (the "Initial Term"), commencing on the date of execution by the City of Boston (the "Term Commencement Date"). Upon written application to the City delivered no later than one year from the end date of the Initial Term of the license, the Licensee may request to extend this Agreement for one (1) successive period of ten (10) years (a "Renewal Term"), with the Renewal Term commencing upon the expiration of the Initial Term. The Renewal Term will be on the same terms and conditions set forth in this Agreement except as provided in this section. Assuming the Licensee has met all conditions of the license, this Agreement may be extended to the Renewal Term subject to the negotiation of market based, competitively neutral, mutually acceptable terms and conditions.

3.0 DESCRIPTION OF WORK

3.1 Installation of Optical Repeater Networks. During the term of this Agreement, ATC is authorized, on a non-exclusive basis, to locate a Optical Repeater Network(s), as more particularly identified in Exhibit A, in the Public Rights-of-Way. This agreement does not give any rights to use any light poles not owned by the City for the installation of an Optical Repeater Network, but merely allows its presence in the City's Public Rights-of-Way, consistent with the Code of Mass. Reg. Sec. 220 *et seq.*, to the extent applicable. Prior to initial installation of the Optical Repeater Networks upon any light pole, ATC shall obtain approval for such installation upon such specific light pole from the owner of the light pole and shall provide the Commissioner with written evidence of such approval.

3.1.1. Location of Optical Repeater Networks. The Commissioner may approve or disapprove the location and installation of any Optical Repeater Network on a light pole prior to installation, based on reasonable regulatory factors, such as the location of other present or future communications facilities, efficient use of scarce physical space to avoid premature exhaustion, potential inference with other communications facilities and services, the public safety and other critical public services; provided, however, that approval shall not be unreasonably conditioned, withheld, or delayed. For purposes of Chapter 166 of the Massachusetts General Laws, the execution of this Agreement shall be deemed a grant of location, subject to the pole specific locations to be approved by the PIC in accordance with other provisions of this Agreement.

3.1.2 Map and List of Optical Repeater Networks. ATC shall maintain in a form acceptable to the City, a current map and list of the location of all light poles used by ATC for its Optical Repeater Network pursuant to this Agreement and located on public ways; ATC shall provide such list to the Commissioner within ten (10) Business Days upon receipt of request for same; and ATC shall, whether or not requested by the Commissioner, provide an updated list and map promptly after any change is made in regard to the locations of the specific light poles specified by ATC in such lists and maps. ATC shall obtain all required permits and approvals of the City and any of its departments or agencies, and any other Agency with jurisdiction over the Optical Repeater Networks, services or the property on which the Optical Repeater Networks are or will be located, prior to performing any work under this Agreement and shall comply with all of the terms and conditions set forth in these permits. ATC shall not mount, construct, install, maintain, locate, operate, place, protect, reconstruct, reinstall, remove, repair, or replace any Optical Repeater Networks on any light pole, except as expressly authorized by and in strict compliance with this Agreement, and shall not locate more than one Optical Repeater on each light pole.

3.1.3 Changes to Optical Repeater Networks or Their Location on Light Poles Located on Public Rights-of-Way. If ATC proposes to install different but comparable equipment, or if the Optical Repeater Network or its location on the light poles located on public right-of-way deviate in any material way from the specifications attached hereto as Exhibit A, then ATC shall first obtain, consistent with state law, the approval for the use and installation of the comparable equipment or for any such deviation in the Optical Repeater Network from the owners of the light poles located on Public Rights-of-Way and shall provide the Commissioner with written evidence of such approval. The Commissioner may approve or disapprove of the use of the different but comparable equipment, or material deviation from the specifications set forth in Exhibit A with regard to the placement of the Optical Repeater Networks on the light poles located on public ways, pursuant to the factors enumerated under Section 3.1.1, and such approval shall not be unreasonable conditioned, withheld, or delayed.

3.2 Provision of Services. The Optical Repeater Network installed pursuant to this Agreement may be used solely for the rendering of Services. If ATC proposes to make a material change to the nature and character of the Services not expressly permitted under this Agreement, including, without limitation, video programming services, open video system services, or cable television services, ATC shall notify the City in writing of this intended change not less than sixty (60) days prior to the proposed date of change to Service. The City may either (i) accept the proposed change in Service on mutually agreeable terms and conditions or (ii) require that the Services not be changed but rather continue to be provided as contemplated herein.

3.3 Restoration of Work Site Areas. Upon the completion of each task or phase of work to be performed by ATC under this Agreement, ATC shall promptly restore all work site areas to a condition reasonably satisfactory to the Commissioner and in accordance with construction standards as specified by the Commissioner, ordinary

wear and tear not caused by ATC or the Optical Repeater Networks excepted. The provisions of this paragraph shall survive the expiration, completion or earlier termination of this Agreement.

3.4 Removal of Optical Repeater Network. Upon sixty (60) days' written notice by the City pursuant to the expiration or earlier termination of this Agreement for cause, ATC shall promptly, safely and carefully remove the Optical Repeater Network from all light poles located on Public Rights-of-Way. Such obligation of ATC shall survive the expiration or earlier termination of this Agreement. If ATC fails to complete this removal work on or before the sixty (60) days subsequent to the issuance of notice pursuant to this Section 3.4, then the City, upon written notice to ATC, shall have the right at the City's sole election, but not the obligation, to perform this removal work and charge ATC for the actual costs and expenses, including, without limitation, reasonable administrative costs. ATC shall pay to the City the reasonable costs and expenses incurred by the City in performing any removal work and any storage of ATC's property after removal (including any portion of the Optical Repeater Networks) within twenty (20) Business Days of the date of a written demand for this payment from the City. The City may, in its discretion, obtain reimbursement for the above by making a claim under ATC's performance bond. After the City receives the reimbursement payment from ATC for the removal work performed by the City, the City shall promptly return to ATC the property belonging to ATC and removed by the City pursuant to this Section 3.4 at no liability to the City. If the City does not receive the reimbursement payment from ATC within such twenty (20) Business Days, or if City does not elect to remove such items at the City's cost after ATC's failure to so remove prior to sixty (60) days subsequent to the issuance of notice pursuant to this Section 3.4, any items of ATC's property, including without limitation the Optical Repeater Networks, remaining on or about the Public Rights-of-Way or stored by the City after the City's removal thereof may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner allowed by Law, and in accordance with any legal rights of persons other than the City who own light poles located in the public way and used by ATC. Alternatively, the City may elect to take title to abandoned property, provided that ATC shall submit to the City an instrument satisfactory to the City transferring to the City the ownership of such property. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3.5 Risk of Loss or Damage. ATC acknowledges and agrees that ATC bears all risk of loss or damage of its equipment and materials, including, without limitation, the Optical Repeater Networks, installed in the Public Rights-of-Way pursuant to this Agreement from any cause, and the City shall not be liable for any cost of repair to damaged Optical Repeater Networks, including, without limitation, damage caused by the City's removal of Optical Repeater Networks, except to the extent that such loss or damage was caused by the willful misconduct of the City, including without limitation, each of its commissions, departments, officers, agents, employees and contractors.

3.6 Removal or Relocation of Optical Repeater Network at City's Request. ATC understands and acknowledges that the City, at any time and from time to time, may require ATC to remove or relocate upon a written request from the City on ten (10)

Business Days' notice at ATC's sole cost and expense, portions of the Optical Repeater Network whenever City reasonably determines that the removal or relocation is needed: (l) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a City project, (2) because the Optical Repeater Network interferes with or adversely affects proper operation of the light poles, traffic signals, City-owned communications systems or other City facilities, (3) because of a sale or vacation of the public right of way by the City, (4) because there is a change in use of the public right of way by the City provided such use effects similarly licensed users in the public right of way, (5) because there is damage to and/or removal of the light pole, or (6) to preserve and protect the public health and safety, in a manner not inconsistent with 47 U.S.C. § 332(c)(7). ATC shall at its own cost and expense remove, relocate and/or adjust the Optical Repeater Network, or any part thereof, to such other location or locations in the Public Rights-of-Way, or in such manner, as appropriate, as may be designated or approved, in writing and in advance, by the Commissioner. Such removal, relocation, adjustment shall be completed within the time prescribed by the Commissioner in his written request and in accordance with the terms of this Agreement. ATC shall not be in default hereunder if it has taken appropriate administrative action as directed by the PIC to obtain such approval. If ATC fails to remove, relocate, adjust or support any portion of the Optical Repeater Network as described by the Commissioner within the prescribed time, City may take all reasonable, necessary, and appropriate action, as stated in Section 3.4.

4.0 PERMIT, LIMITATIONS AND RESTRICTIONS

4.1 Limited Authorization. This Agreement does not authorize the placement of Optical Repeater Networks or any other equipment on sites, structures or facilities other than light poles located on Public Rights-of-Way. Placement of the Optical Repeater Networks shall comply with the terms of the PIC's conditions of access in effect as of the date of execution hereof and as are applied equally to all Persons using the Public Rights-of-Way under approval or license by the City. The Agreement does not relieve ATC of its burden of seeking any necessary permission from other City or governmental agencies which may have jurisdiction regarding ATC's proposed use. ATC further acknowledges that it cannot use any historically or architecturally significant light poles located on the public rights-of-way or other street furniture, except as may be otherwise expressly authorized in a specific permit issued by the PIC.

4.2 No Authorization to Provide Other Services. ATC represents, warrants and covenants that its Optical Repeater Networks installed pursuant to this Agreement will be utilized solely for the rendering of Services, and ATC is not authorized to and shall not use the Optical Repeater Networks to offer or provide any other services not specified herein. Failure to abide by this may constitute a breach of this agreement, and the City, after providing ATC with written notice and a meeting concerning the same, may levy fines in an amount not to exceed one thousand dollars ($1,000.00) per day until the breach is remedied.

4.3 Reservation of Powers. The City reserves any and all powers it may have, now or in the future under applicable local, state, or federal law, to regulate the Optical

Repeater Networks, their use, or the use of the Public Rights-of-Way or of other City property. ATC shall be subject to all present and future ordinances of the City of Boston including the rules and regulations of PIC. Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the City or of the City's right to require ATC to secure the appropriate permits or authorizations for exercising the rights set forth in this Agreement.

4.4 All Permitted Activities Fees at ATC's Sole Expense. Notwithstanding any other provision of this Agreement, the construction, operation, maintenance, removal and replacement of Optical Repeater Networks, and all other activities permitted hereunder and all fees or obligations of ATC under this Agreement, shall be ATC's sole responsibility at ATC's sole cost and expense.

4.5 Permit. ATC shall obtain, at its sole expense, all applicable permits as are required by City or any other Agency to perform the work and ongoing use, as described in this Agreement, of light poles located on the Public Rights-of-Way.

4.6 No Real Property Interest Created. Neither ATC's use of the Public Rights-of-Way, nor anything contained in this Agreement, shall be deemed to grant, convey, create, or vest in ATC a real property interest in any portion of the Public Rights-of-Way or any other City property, including but not limited to, any fee or leasehold interest in any land, easement. ATC, on behalf of itself and any permitted successor, lessee, or assign, recognizes and understands that this Agreement may create an interest subject to taxation and that ATC, its successor, lessee or assign may be subject to the payment of such taxes.

4.7 All Rights Nonexclusive. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to ATC under this Agreement shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the City to use, and to allow any other Person or Persons to use, any and all parts of the Public Rights-of-Way, exclusively or concurrently with any other Person or Persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "Encumbrances") which may affect the Public Rights-of-Way now or at any time during the term of this Agreement, including without limitation any Encumbrances granted, created or allowed by the City at any time.

5.0 WAIVERS AND INDEMNIFICATION

5.1 Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to ATC, its successors and assigns, in the event of any default or breach by the city or for any amount which may become due to ATC, its successors and assigns, or for any obligation of City under this Agreement.

5.2 Obligation to Indemnify the City. ATC, its successors and assigns, shall hold harmless, defend, protect and indemnify the City, including, without limitation, each

of its commissions, departments, officers, agents, employees and contractors, from and against any and all actions, losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs, judgments or suits including, without limitation, reasonable attorneys' fees and costs (collectively, "Claims") of any kind allegedly arising directly or indirectly from: (i) any act by, omission by, or negligence of ATC or its contractors or subcontractors, or the officers, agents, or employees of any of them, while engaged in the performance of the work or conduct of the activities authorized by this Agreement, or while in or about the Public Rights-of-Way or any other City property for any reason connected in any way whatsoever with the performance of the work, conduct of the activities or presence of the Optical Repeater Networks authorized by this Agreement, or allegedly resulting directly or indirectly from the presence, construction, installation, maintenance, replacement, removal or repair of the Optical Repeater Networks, (ii) any accident, damage, death or injury to any contractor, subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work, conduct of the activities or presence of the Optical Repeater Networks authorized by this Agreement, or while in or about the Public Rights-of-Way, for any reason connected with the performance of the work or conduct of the activities authorized by this Agreement, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Agreement, (iii) any accident, damage, death or injury, to real or personal property, good will, and Person(s) in, upon or in any way allegedly connected with the work or activities authorized by this Agreement or the presence of the Optical Repeater Networks from any cause or claims arising at any time including, without limitation, injuries or damages allegedly caused, directly or indirectly, in whole or in part, by radio wave transmission or electromagnetic fields emitted by the Optical Repeater Networks, (iv) any Release, or threatened Release, of any Hazardous Material caused in whole or in part by ATC in, under, on or about the property subject to this Agreement or into the environment, or resulting directly or indirectly from the Optical Repeater Networks or the work or activities authorized by this Agreement, (v) any violation by ATC of the terms and conditions hereof or any permit or approval issued by Commissioner or any Agency in connection with the Optical Repeater Networks or Services or pursuant hereto, or any misrepresentation made herein or in any document given by ATC in connection herewith, and (vi) any direct or indirect interference by ATC or the Optical Repeater Networks, except to the extent that such Claims arise from interference with use or placement of facilities in the public way caused by the negligence or willful misconduct of the City, including without limitation, each of its commissions, departments, officers, agents, employees and contractors.

5.3 Scope of Indemnity. ATC shall hold harmless, indemnify and defend the City as required in this Section 5, including without limitation, each of its commissions, departments, officers, agents, employees and contractors, except only for claims resulting from the negligence or willful misconduct of the City, including without limitation, each of its commissions, departments, officers, agents, employees and contractors. ATC specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered in writing

to ATC by the City and continues at all times thereafter. ATC agrees that the indemnification obligations assumed under this Agreement shall survive expiration or other termination of this Agreement.

5.4 No Liability for Damage, Death or Bodily Injury. Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of ATC, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the Optical Repeater Networks or activities authorized by this Agreement, the condition of any City property subject to this Agreement or ATC's use of any City property, exceptas otherwise provided herein.

5.5 Waiver of Claims regarding Fitness of Light Poles Located on Public Ways. ATC acknowledges that the City has made no warranties or representations regarding the fitness, availability or suitability of any of light poles for the installation of the Optical Repeater Networks, or for any other activities permitted under this Agreement, and that, except as expressly provided herein, any performance of work or costs incurred by ATC or provision of Services contemplated under this Agreement by ATC is at ATC's sole risk. ATC on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, the City and its agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the light poles located on public ways, other City property affected by this Agreement or any law or regulation applicable thereto.

5.6 Waiver of All Claims. ATC acknowledges that this Agreement is terminable by the City under certain limited circumstances as provided herein, and in view of such fact ATC expressly assumes the risk of making any expenditures in connection with this Agreement, even if such expenditures are substantial, and ATC expressly assumes the risk of selling its Services which may be affected by the termination of this Agreement. Without limiting any indemnification obligations of ATC or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, ATC fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, Commissioners and employees, and all persons acting by, through or under each of them, under any present or future Laws, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that the City exercises its right to terminate this Agreement, as specifically provided herein. Notwithstanding anything to the contrary herein contained, ATC does not intend to waive, and hereby specifically reserves, all rights at law or in equity to contest any termination by the City.

5.7 No Liability for Consequential or Incidental Damages. ATC expressly acknowledges and agrees that the City will not be liable for any consequential or incidental damages, including, but not limited to, lost profits and loss of good will, arising

out of termination of this Agreement or disruption to the Optical Repeater Networks or ATC's permitted activities hereunder. The City would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its agents, and ATC expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of ATC or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, ATC fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages (including without limitation, lost profits and loss of good will), and covenants not to sue for such damages, City, its departments, commissions, officers, Commissioners and employees, and all persons acting by, through or under each of them, arising out of this Agreement or the work and activities authorized hereunder, including, without limitation, any interference with uses conducted by ATC pursuant to this Agreement, regardless of the cause, and whether or not due to the negligence or gross negligence of City or its agents.

5.8 No Interference. ATC shall not unreasonably interfere in any manner with the existence and operation of any and all public and private facilities existing now or in the future, including but not limited to sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, telecommunications facilities, utility, and municipal property without the express approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement. ATC shall be responsible for repair and restoration of any damage caused by such interference, to the extent it is caused by ATC, to facilities belonging to the City. The City agrees to require the inclusion of the same prohibition on interference as that stated above in all similar type agreements City may enter into after the date hereof.

6.0 INSURANCE

6.1 Amounts and Coverages. ATC will maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

6.1.1 Workers' Compensation, with Employer's Liability limits of not less than five hundred thousand dollars ($500,000) each accident.

6.1.2 Commercial General Liability Insurance with limits not less than two million dollars ($2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Owners and Contractors' Protective, Broadform Property Damage, Products Completed Operations.

6.1.3 Business Automobile Liability Insurance with limits not less than one million dollars ($1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including owned, non-owned and hired auto coverage, as applicable.

6.2 Required Provisions. General Liability and Automobile Liability Insurance shall be endorsed to provide for the following:

6.2.1 Name as additional insureds of the City of Boston, its officers, agents and employees.

6.2.2 That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

6.3 Advance Notice of Cancellation. All policies shall be endorsed to provide: thirty (30) days advance written notice to City of cancellation or intended non-renewal, mailed to the following address:

Mayor's Office of Cable
43 Hawkins Street
Boston, MA 02114
Attn: Mike Lynch

6.4 Claims-Made Policies. Should any of the required insurance be provided under a claims-made form, ATC shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the Agreement expiration, to the effect that, should any occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

6.5 General Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

6.6 Receipt of Certificates of Insurance. Certificates of insurance, in the form and with insurers reasonably satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencing any operations under this Agreement, with complete copies of policies promptly upon the City's written request.

6.7 Effect of Approval of Insurance. Approval of the insurance by the City shall not relieve or decrease the liability of ATC hereunder.

6.8 Effect of Lapse of Insurance. This Agreement shall terminate immediately, after written notice to ATC and an opportunity to cure of three (3) business days, upon any lapse of required insurance coverage.

7.0 LICENSE FEE, RECORD and DEPOSITS

In connection with the work to be performed and activities to be conducted by ATC under this Agreement:

7.1 Right-of-Way Fees. In order to compensate the City for ATC's entry upon and deployment within the Public Rights-of-Way, ATC shall pay to the City, on an annual basis, an amount equal to the greater of (x) Fifteen Thousand Dollars ($15,000.00) or (y) Five Percent (5%) of Gross Revenues (the "ROW Fee"), which amount may be collected from customers of the Services. For the first year of this Agreement, however, the ROW Fee shall be Fifteen Thousand Dollars ($15,000.00) payable upon execution by ATC. Thereafter, payment shall be made annually on the anniversary of the Term Commencement Date that Services are offered to customers using the Optical Repeater Networks in the City and ending on the date of termination of this Agreement, and shall be due on or before the 45th day after the anniversary of the Term Commencement Date. Within forty-five (45) days after the termination of this Agreement, compensation shall be paid for the period elapsing since the end of the last calendar year for which compensation has been paid. To the extent that ATC's payment pursuant to this section exceeds five percent (5%) of Gross Revenues for the periods during which such payment was tendered, the excess shall be deemed a loan from ATC to the City. Such loans shall earn interest at the prime rate of interest as in effect from time to time during the term of the loan, and shall be repaid by application of credits against payments tendered to the City after ascertainment of the excess until such loans are repaid. To the extent that said payments are less than five percent (5%) of Gross Revenues for the periods during which such payments were tendered, ATC shall tender the deficiency, plus interest at the prime rate of interest as in effect from time to time at FleetBoston within thirty (30) days after the ascertainment thereof. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

7.1.1 Reduction of Right-of-Way Fee by Amount of Utility Users or Communications Tax. Notwithstanding anything to the contrary in this Agreement, if the Services or ATC's exercise of rights granted hereunder are subject to, or become subject to, a utility users tax, communications tax, or other similar business license tax or fee which accrues to the City by operation of the City's Municipal Code or other applicable law, then the amount of the Right-of-Way Fee shall be reduced by the amount of the applicable utility users tax, communications tax, or such other similar tax or fee.

7.2 Annual Fee. As compensation for the use of light poles or equivalent facilities owned, in whole or in part, whether held in fee or in trust by the City ("City Facility"), ATC shall pay to the City an annual fee (the "Annual Fee") in the amount of Sixty Dollars ($60.00) for the use of each City Facility upon which an Optical Repeater Network, or any portion thereof, has been installed pursuant to this Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to

the number of City Facilities on which ATC's equipment was installed during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Term Commencement Date. No Annual Fee shall be payable with respect to equipment attached to facilities wholly owned by utilities or other third parties located in the Public Rights-of-Way. If the City is a joint owner of property upon which ATC seeks to attach equipment, City and the other joint owner(s) of such facilities shall decide the appropriate allocation of the Annual Fee among the joint owners.

7.2.1 Reduction of Annual Fee by Pole Attachment Fee or Other Fee. Notwithstanding anything to the contrary in this Agreement, if the installation or attachment of the Optical Repeater Network on the City's Facilities requires ATC to pay any fee or charge to any third-party owner(s) of facilities to which such City Facilities are attached, then the amount of the Annual Fee paid to the City shall be reduced by the amount of any such fee or charge paid to such third-party owner(s).

7.3 Retention of Records. ATC shall at all times keep and maintain full, true and correct business and financial records associated with this Agreement. The following information shall be provided to the Mayor's Office of Cable, in a form acceptable to the City, on a quarterly basis on the 21st day of the month following the end of the prior quarter for the duration of this Agreement: unaudited financial records including but not limited to records of net and gross revenue breakdown of expenses and network and customer information including number of customers, location of customers and average customer bill for ATC's customers within the Commonwealth of Massachusetts. In addition to this quarterly disclosure, ATC shall forward all records and information requested by the City as described above upon five (5) Business Days' written notice. The City reserves the right to inspect the records and information thereunto at City Hall, Boston, Massachusetts.

7.4 Late Payment Charge. If ATC fails to pay any amounts payable under this Agreement within ten (10) days following the due date thereof, and after written notice of such non-payment, such unpaid amount shall be subject to a late payment charge equal to one percent (1%) of the unpaid amount in each instance. The late payment charge has been agreed upon by the City and ATC, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that the City will incur as a result of any such failure by ATC, the actual costs thereof being extremely difficult if not impossible to determine.

7.5 Other Payments and Documentation. In addition to all other fees to be paid to the City hereunder, ATC shall timely pay to the City all applicable deposit fees, permit fees and other fees or amounts, required to be paid by ATC to the City in connection with obtaining permits or performing work under this Agreement, and as required by any federal, state or local law, statute, ordinance, rule or regulation. ATC acknowledges and agrees that this Agreement alone is not sufficient authorization from the City for the installation and operation of the Optical Repeater Networks and that additional documentation may be required by the City.

7.6 Security Deposit. Prior to performing any work necessary under this Agreement, ATC will deliver to the City a valid performance bond in the sum of one hundred thousand dollars ($100,000.00), issued by a surety company acceptable to the City's Controller in the form attached hereto as Exhibit B. ATC agrees and acknowledges that it will obtain a bond which allows for the use of the bond to cover incidental expenses and costs, damages and fees not covered by any insurance policies including but not limited to: interest, charges by the City to remove Optical Repeater Networks and unpaid permit and administrative fees. ATC shall keep such surety bond, at its expense, in full force and effect until the sixtieth (60th) day after the Expiration Date or other termination hereof, to insure the faithful performance by ATC of all of the covenants, terms and conditions of this Agreement. Such bond shall provide thirty (30) days prior written notice to the city of cancellation or material change thereof. In the event of any non-extension of the bond, ATC shall replace such security with another form permitted hereunder at least ten (10) days prior to expiration and if ATC fails to do so the City shall be entitled to present its written demand for payment of the entire face amount of such bond and to hold the funds so obtained as the Security Deposit required hereunder. Any unused portion of the funds so obtained by the City shall be returned to ATC upon replacement of the bond or deposit of cash security in the full amount required hereunder.

8.0 WORK STANDARDS

8.1 Performance of Work. ATC shall use and exercise due care, caution, skill and expertise in performing all work under this Agreement and shall take all reasonable steps to safeguard and maintain in clean and workmanlike manner, all work site areas, including, without limitation, the light poles located on Public Rights-of-Way and other existing facilities and property. All work to be undertaken by ATC in the Public Rights-of-Ways shall at all times be performed by workers in accordance with generally accepted industry practice.

8.2 Work Plan. Prior to performing any work necessary under this Agreement, ATC shall present a map and written proposal describing the work to be performed and the facilities, methods and materials (if any) to be installed ("Work Plan") to the PIC for review and will not perform any work until it has received PIC Approval of the Work Plan. In addition, prior to conducting any work in the Public Rights-of-Way, ATC shall provide to the City a current emergency response plan identifying staff who have authority to resolve, twenty-four (24) hours a day, seven (7) days a week, problems or complaints resulting, directly or indirectly, from the Optical Repeater Network installed pursuant to this Agreement. As soon as is reasonably practical following installation of the Optical Repeater Network, ATC shall deliver as-built drawings to the Mayor's Office of Cable and PIC.

8.3 No Underground Work. ATC hereby represents, warrants and covenants that ATC shall perform no excavation, trenching, coring, boring, or digging into the ground or installation of any equipment or other material into the ground, or any other underground work in connection with the work to be performed or Services to be

provided by ATC under this Agreement, except to the limited and minimum extent necessary in order to connect its Optical Repeater Networks with fiber optic cable to the ATC fiber ring already present in the City's public ways. ATC further represents, warrants and covenants that it shall not otherwise disturb or disrupt the operation or maintenance of any sanitary sewers, storm drains, gas or water mains, or other underground conduits, cables, mains, or facilities.

8.4 Repair or Replacement of Damaged Facilities or Property. Upon written request, ATC agrees to repair or replace to City's reasonable satisfaction any City-owned facilities or city-owned property that the City determines has been damaged, destroyed, defaced or otherwise injured as a result of the work performed or Services provided by ATC under this Agreement. ATC shall perform such work at no expense to the City, except to the extent such damage, destruction, defacement, or injury was caused by the negligence or willful misconduct of City.

8.5 Modification of Work Plans. If during the term of this Agreement, the Commissioner determines that the public health or safety requires a modification of or a departure from the Work Plan submitted by ATC and given Approval, the Commissioner shall have the authority to identify, specify and delineate the modification or departure required, and ATC shall perform the work allowed under this Agreement in accordance with the City-specified modification or departure at ATC's sole expense. The Commissioner shall provide ATC with a written description of the required modification or departure, the public health or safety issue necessitating the modification or departure, and the time within which ATC shall make, complete or maintain the modification or departure required.

9.0 TERMINATION

9.1 Immediate Termination upon Notice in Certain Circumstances. In addition to all other remedies provided by Law or in equity, either party may terminate this Agreement immediately upon written notice to the other party in the event of either of the following:

9.1.1 By City after written notice and after opportunity to meet with representatives of the PIC or Mayor's Office of Cable, if the City reasonably determines that ATC's continued use of the Public Rights-of-Way will adversely affect public health or safety;

9.1.2 By either party (the "Non-Defaulting Party") if the other party has failed to perform any of its material obligations under this Agreement; provided, however, that if the Defaulting Party's failure to perform under or comply with this Agreement is capable of being cured, and if a specific notice or cure period or time for performance of such obligation is not otherwise specified in this Agreement, then the Non-Defaulting Party shall provide the Defaulting Party with a -notice of the Defaulting Party's failure to perform or comply and provide the Defaulting Party with thirty (30) days from the date of the notice to cure the failure to perform or comply to the Non-Defaulting Party's reasonable

satisfaction; provided, further, that upon the occurrence during the term of this Agreement of two (2) defaults of the same obligation by either Party, the Non-Defaulting Party shall not be required to provide any notice regarding the Defaulting Party's failure to perform such obligation, and any subsequent failure by the Defaulting Party after the Defaulting Party has received two such notices shall constitute a default by the Defaulting Party hereunder without any requirement on the part of the Non-Defaulting Party to give the Defaulting Party notice of such failure or an opportunity to cure.

9.2 Effect of Termination. In the event of termination of this Agreement as herein provided, ATC shall immediately cease all work being performed under this Agreement, excepting only that work necessary for ATC to remove all Optical Repeater Networks from the Public Rights-of-Way as provided in Section 3.4 above. Termination of this Agreement by the City as herein provided shall constitute the withdrawal of any Approval, consent or authorization of the City for ATC to perform any construction or other work under this Agreement in the Public Rights-of-way or on public property excepting only that work necessary for ATC to remove all Optical Repeater Networks and leave all work site areas in a clean and safe condition and in accordance with Section 3. Upon any such early termination, the City shall promptly remit to ATC a prorated portion of the annual license fee paid to the City.

10.0 NOTICES

Except as otherwise expressly provided in this Agreement, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested, postage prepaid, or reliable commercial overnight courier, return receipt requested, with postage prepaid, to:

City of Boston
Mayor's Office of Cable
43 Hawkins Street
Boston, MA 02114

Attn: Mike Lynch

ATC Outdoor DAS, LLC
400 Regency Forest Drive
Suite 300
Cary, NC 27518-7723

With a Copy to:

ATC Outdoor DAS, LLC
116 Huntington Ave.
Boston, MA 02116
Attn: Legal Department

or to such other address as either City or ATC may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, return receipt requested, postage prepaid, one (1) day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made.

11.0 COMPLIANCE WITH LAWS

11.1 ATC shall comply with all present and future Laws.

11.2 All facilities installed pursuant to this Agreement shall be constructed to comply with all lawful federal, state and local construction requirements.

12.0 MISCELLANEOUS

12.1 Amendments. Neither this Agreement nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the parties hereto.

12.2. Representations and Warranties. Each of the persons executing this Agreement on behalf of ATC does hereby covenant, represent and warrant that, to the best of his or her knowledge, (a) ATC is a duly authorized and existing Delaware corporation, has and is qualified to do business in the Commonwealth of Massachusetts, and has full right and authority to enter into this Agreement, (b) each and all of the persons signing on behalf of ATC are authorized to do so, (c) all financial statements and reports previously provided to the City by ATC are true and complete in all material respects and accurately reflect the financial condition of ATC as of the date such statements were provided to the City, and ATC's financial condition as of the date it executes this Agreement is not materially worse than that reflected in the most recent of such financial statements and reports, and (d) the Optical Repeater Networks installed pursuant to this Agreement shall comply with all applicable FCC standards regarding radio frequencies and electromagnetic field emissions. Upon the City's written request, ATC shall provide the City with evidence reasonably satisfactory to the City confirming the foregoing representations and warranties.

12.3 Interpretation of Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

12.4 Assignment; Successors and Assigns. Neither this Agreement nor any part of ATC's rights hereto may be assigned, pledged or hypothecated, in whole or in part, without the express written consent of the City, which consent shall not be

unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of ATC hereunder to a parent, subsidiary, successor, or financially viable affiliate shall not be deemed an assignment for the purposes of this Agreement, provided that ATC deliver to the City the following: (1) Bond issued in the name of transferee; (2) Assignment and Assumption Agreement between City and transferee; (3) Certificate of Insurance naming transferee as insured. In the event ATC files a petition in bankruptcy pursuant to 11 U.S.C. Sections 101, et seq., the assignment of this Agreement shall be governed by the provisions of the Bankruptcy Code. An assignment of this Agreement is only enforceable against the City if ATC or its trustee in bankruptcy complies with the provisions of 11 U.S.C. Section 365, including obtaining the approval of the Bankruptcy Court. City hereby expressly reserves all of its defenses to any proposed assignment of this Agreement. Any person or entity to which the Bankruptcy Court approves the assignment of this Agreement shall be deemed without further act to have assumed all of the obligations of ATC arising under this AGREEMENT on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to City an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to City, shall be the exclusive property of City, and shall not constitute property of the ATC or of the estate of ATC within the meaning of the Bankruptcy Code

12.5 Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by Law.

12.6 Governing Law. This Agreement shall be construed and enforced in accordance with the Laws of the Commonwealth of Massachusetts.

12.7 Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Agreement) contains the entire agreement between the parties and supersedes all prior written or oral negotiations, discuss ions, understandings and agreements. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Agreement and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

12.8 Time of Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified.

12.9 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Agreement shall be cumulative, except as may otherwise be provided herein.

12.10 Relationship of Parties. The City is not, and none of the provisions in this Agreement shall be deemed to render the City, a partner in ATC's business, or joint venturer or member in any joint enterprise with ATC. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's prior written consent as provided herein. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

12.11 Non-Discrimination. ATC agrees and shall require all agents conducting business in Massachusetts on its behalf to agree not to discriminate on the basis of race, sex, religious creed, national origin, sexual preference, color, disability or age in connection with this agreement. In addition, ATC shall require all agents to post in a conspicuous place all relevant notices and posters to be provided by the Massachusetts Commission Against Discrimination setting forth the provisions of the Fair Employment Law of the Commonwealth.

12.12 Most Favored Jurisdiction. Should ATC, after the date that ATC receives all permits and Approvals necessary to install and operate the network as contemplated in this Agreement, enter into a Right of Way Agreement with another government body, school, or municipality within the Commonwealth of Massachusetts which contains financial benefits for such government body, school, or municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's reasonable opinion substantially superior to those in this Agreement, City shall have the right to require that ATC modify this Agreement to incorporate the same or substantially similar superior benefits and such other terms and burdens by substitution, *mutatis mutandis,* of such other agreement or otherwise. Any increase in financial benefits in a similar agreement shall be paid to the City retroactive to the date ATC entered into such superior agreement with another entity.

ATC Outdoor DAS, LLC
a Delaware limited liability company

By: Gerard Ainsztein
SVP Managed Networks

Dated: 1/4/12

CITY OF BOSTON

Bill Oates, Chief Information Office,
The Department of Innovation and
Technology

Dated: 1/12/12

APPROVED AS TO FORM:

By:
Bill Sinnott, Corporation Counsel

CL, HL

EXHIBITS

Exhibit A	Optical Repeater Network
Exhibit B	Bond

EXHIBIT A

ION-M W Cabinet: Size: 35.4"X13.0"X11.8" (Height, Width, Depth)
Weight: 121 Lbs.
Power Consumption (Watts): 1595
Qty: 1 (Future: 2)

Antenna Qty: 4
Size: 16.6"X8.3"X3.7"
Weight: 1.6 lbs X 4=5.2 lbs.

Hybrid Coupler Qty: 4
Size: 5.99" X 1.73"

Diplexers Qty: 2
Size: 6.66" x 4.00"
WEIGHT: 3.25 Lbs

Coaxial Cables: 4
Diameter: ½" Cables

EXHIBIT B

(FORM CM-05)

PERFORMANCE BOND

The undersigned surety company hereby binds itself, its successors and assigns to pay to the City of Boston the sum of _____

($) dollars.

This obligation is upon the condition that if the party(s) designated in the contract attached hereto as Contractor and all subcontractors under such contract shall faithfully furnish and perform everything required to be furnished and performed by them under such contract, and for all labor performed or furnished, and for all materials used in the carrying out of such contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

Signed, and sealed and delivered this _____ day of _____, _____.

PRINCIPAL:_____ SURETY:_____

By _____ By_____
Name Attorney-in-fact
(Affix Corporate Seal Here)

Bonding Company is Incorporated in State of _____

President is _____

Treasurer is _____

Place of business of Bonding Corporation in Massachusetts is _____

_____

APPROVED AS TO FORM BY CORPORATION COUNSEL FEBRUARY, 1998
THIS FORM IS VOID AND WITHOUT LEGAL EFFECT IF ALTERED IN ANY WAY