

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Site Access Agreement for Fire/Rescue Tower Training

DEPARTMENT: Public Safety **DIVISION:** EMS/Fire Rescue

AUTHORIZED BY:  Kenneth M. Roberts **CONTACT:** Terry Schenk **EXT.** 5002

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| Agenda Date <u>08/10/04</u> Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/> |
| Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/> |

MOTION/RECOMMENDATION:

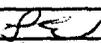
Approve and authorize Chairman to execute the agreement between American Towers, Inc. (ATC) and the Seminole County EMS/Fire/Rescue Division, for use of the ATC tower located on Longwood Hills Rd for the purpose of training in fire and rescue operations.
(Terry Schenk, Fire Chief)

BACKGROUND:

Due to the numerous radio and cell phone towers in our area, there is a need to train our Special Operations personnel and Rope Rescue Technicians in specific safety hazards and rescue methods directly related to these structures.

This is best accomplished by using actual facilities that EMS/Fire/Rescue may be called to, should a rescue need to be accomplished. American Towers has agreed to allow us to do this on their Longwood Hills tower.

The agreement to be executed has already been reviewed and agreed upon by both the County and American Tower legal departments.

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| Reviewed by: Co Atty: <u></u> DFS: _____ Other: <u></u> DCM: <u></u> CM: <u></u> File No. <u>CPSF01</u> |
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SITE ACCESS AGREEMENT

for

FIRE/RESCUE TOWER TRAINING

This Site Access Agreement ("Agreement") is made and entered into this ___ day of _____, 200__, by and between AMERICAN TOWERS, INC., a Delaware corporation on behalf of itself and its wholly owned affiliates and subsidiaries ("ATC") and Board of County Commissioners Seminole County, Florida ("TRAINEE"). For purposes of this Agreement, ATC shall be deemed to be American Towers, Inc. or any of its subsidiaries or affiliates.

RECITALS

WHEREAS, ATC owns, operates, and leases broadcast and wireless communication facilities to third party users via lease, sublease, and licenses, and;

WHEREAS, TRAINEE desires to utilize ATC's communications facility and surrounding land located at Longwood Hills Road (Site Name Longwood Site No: 88448 ("Property") to train its hired and/or volunteer fire and/or rescue workers ("Personnel") in the details of fire and rescue operations on communications facilities; and

WHEREAS, ATC is willing to grant permission to TRAINEE and its Personnel to enter onto the Property to conduct such training under the terms and conditions as set forth herein;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ATC and TRAINEE agree as follows:

1. ATC grants to TRAINEE and its Personnel a temporary right of entry and license to enter and conduct training upon the Property. All Personnel must be either paid or volunteer fire and/or rescue workers of TRAINEE.
2. TRAINEE shall comply with all local, state, and federal laws and ordinances, and reasonable rules and regulations established from time to time by ATC, and shall exercise due care in the performance of all activities on the Property. TRAINEE will be responsible for any damage to any aboveground or underground structures on the Property resulting from its activities, or the activities of its Personnel.
3. TRAINEE shall give ATC fourteen (14) business days notice in writing prior to entering upon the Property to perform the training. As part of its written notice, TRAINEE shall identify all Personnel who will participate in the training. TRAINEE may only bring onto the Property those Personnel who have been approved by ATC, which approval shall not be unreasonably withheld, conditioned or delayed. TRAINEE and its Personnel shall exercise due care in the performance of all activities at the Property.

withheld, conditioned or delayed. TRAINEE and its Personnel shall exercise due care in the performance of all activities at the Property.

4. TRAINEE shall restore the Property to its condition existing immediately prior to the commencement of TRAINEE's activities as authorized herein, casualty and damage from the elements excepted. TRAINEE shall indemnify and hold harmless ATC from all loss, claims, costs or damage to persons (including all Personnel) or property arising out of the entry onto, or any activities performed at or on the Property by TRAINEE's Personnel, or the breach of this Agreement.

5. The indemnity provisions contained herein shall survive the expiration of this Agreement.

6. The rights granted to TRAINEE under this Agreement shall terminate and be of no further effect upon the earliest to occur of: (i) expiration of a certificate of insurance issued in accordance with the provision below; or (ii) the date this Agreement is terminated by ATC in its sole discretion. TRAINEE acknowledges and agrees that this Agreement grants to TRAINEE only a temporary license to enter and perform certain activities at or on the Property and vests no property interest in TRAINEE.

7. To the fullest extent permitted by law, TRAINEE and its Personnel agree to indemnify, defend and hold harmless the owner of the Property, ATC, its subsidiary and affiliated companies, and their respective directors, officers, employees, agents and assigns from and against any and all claims, damages, losses, judgments, liens, demands, liabilities, and expenses of every nature and kind, including without limitation, claims for personal injury or death (including injury or death to TRAINEE's Personnel), property damage, adverse effects on the environment, and reasonable attorneys' fees, expert witness fees and court costs, arising out of, related to or resulting from (a) TRAINEE's activities at the Property, (b) the acts or omissions of TRAINEE, TRAINEE's Personnel or any party for whose acts or omissions they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, or (c) the breach of any of the provisions of this Agreement by TRAINEE, its Personnel, or anyone directly or indirectly employed by them or anyone for whose acts or omissions TRAINEE may be liable. Such indemnity obligations shall be in addition to any other rights available to any party indemnified hereunder, and shall not be limited in any manner by the provisions of applicable worker's compensation statutes.

8. TRAINEE shall be given notice of the institution of any suit, claim or demand within a reasonable time after an officer of ATC acquires actual knowledge thereof, and shall defend the same with counsel satisfactory to ATC and without cost to ATC (saving that ATC shall pay its own counsel fee if it wishes to have separate representatives in any such suit). ATC will cooperate with TRAINEE and give reasonable access to information. TRAINEE shall reimburse ATC for expenses incurred by ATC in giving such information and cooperation. No compromise or settlement of any such suit, claim or demand shall be entered into without the prior written consent of ATC.

9. INSURANCE

TRAINEE shall, at its sole cost, purchase and maintain in full force during the term of this Agreement the following insurance coverage, with limits of liability not less than those set forth below:

General Liability (Comprehensive Form)

Including products/completed operations, contractual liability, broad form property damage and independent contractor's coverage.

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| | Bodily Injury, each occurrence | \$1,000,000 |
| 2. | Property Damage (including explosion, Collapse and underground damage) | |
| | Each occurrence | \$1,000,000 |
| | Annual Aggregate | \$2,000,000 |
| | Or | |
| 3 | Bodily Injury and Property Damage Combined: | |
| | Each Occurrence | \$1,000,000 |
| | Annual Aggregate | \$2,000,000 |

(b) Automobile Liability (Comprehensive Form)

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| 1 | Bodily Injury, | |
| | Each person | \$1,000,000 |
| | Each occurrence | \$1,000,000 |
| | And | |
| 2. | Property Damage | |
| | Each occurrence | \$1,000,000 |
| | Or | |
| 3. | Bodily Injury and property Damage Combined: | |
| | Each Occurrence | \$1,000,000 |
| | Annual Aggregate | \$1,000,000 |

Umbrella Policy \$4,000,000

Worker's Compensation Statutory

(e) Employer's Liability \$500,000

(f) Professional Liability/Errors and Omissions (if applicable) \$1,000,000

For Engineering and Geotechnical Services

9.1.1 Coverage shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of any work until at least the date of termination under this Agreement.

9.1.4 TRAINEE's compliance with this Article shall not constitute a limitation of liability or in any way limit or affect TRAINEE's indemnification obligations under this Agreement. The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self-insurance that may be maintained by either the property owner or ATC.

9.1.5 Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy or failure of any insurance company providing insurance to TRAINEE, or failure of any such insurance company to pay claims accruing, shall not reduce or eliminate TRAINEE's obligations under this Agreement.

10. TRAINEE shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of public authorities applicable to its activities, including without limitation, all federal, state, and local safety regulations and Occupational Safety and Health Act ("OSHA") requirements. Where any rules, regulations, and practices are in conflict, TRAINEE shall comply with the provision that is the most stringent.

11. TRAINEE warrants that it, and that any of its Personnel, has all current and valid licenses required by state and local laws for performing the type of activities covered by this Agreement and agrees to supply copies of those licenses to ATC upon request.

12. Safety Precautions and Procedures

TRAINEE shall take all necessary or required safety precautions with respect to its activities and the activities of its Personnel and shall comply with all applicable laws, ordinances, rules, regulations, and orders of public authorities for the safety of persons or property, including without limitation the requirements of OSHA and other governmental authorities and agencies. TRAINEE shall provide all necessary or required protection, including without limitation the provision of employee training and appropriate fall protection equipment, to prevent damage, injury or loss to: (a) all Personnel engaged in the training and all other persons who may be affected thereby; and (b) all property at the Property or adjacent thereto, including substructures. TRAINEE shall report any injury or death immediately to ATC. TRAINEE shall also immediately notify its insurance carrier of any such injury or death and shall provide a copy of any investigation, report or notification to ATC.

Notwithstanding anything to the contrary herein, in the event that ATC observes any violation by TRAINEE, or TRAINEE's Personnel, of their safe practices obligations under this Article, ATC may order the training stopped until the violation is corrected. If the violation is not corrected within a reasonable period of time after training is stopped, ATC may, in its sole discretion, declare TRAINEE to be in default of this Agreement.

TRAINEE shall provide, and its Personnel shall use, approved safety and health equipment. TRAINER shall work in harmony with other individuals at the Property, and shall be responsible for compliance with all safety rules and regulations under OSHA and other applicable statutes and ordinances related to the training. TRAINER shall indemnify, defend, and hold harmless ATC and its subsidiary and affiliated companies and their respective directors, officers, employees, agents, and assigns from and against any claims, liability, expenses or obligations of every nature and kind, including fines, penalties, counsel fees, expert and other fees and expenses and costs of litigation, defense settlement or judgments, arising out of or related to TRAINER's safety and health practices.

13. This Agreement constitutes the entire understanding between ATC and TRAINER with respect to the activities contemplated by this Agreement. All prior agreements or understandings, whether oral or written concerning the subject matter contained herein, are superseded. This Agreement may be amended only by a written document executed by ATC and TRAINER.

14. This agreement shall be governed by the laws of the state in which the Property is located.

ATC

American Towers, Inc.

By: 

Name: Kenneth J. Carter

Title: Manager of Contractor Development

TRAINEE

Board of County Commissioners
Seminole County, Florida

By: _____

Name: Daryl G. McLain

Title: Chairman

As authorized for execution by the
Board of County Commissioners
at their _____, 2004
regular meeting.

ATTEST:

MARYANNE MORSE
Clerk to the Board of County Commissioners
Seminole County, Florida.

For the use and reliance of Seminole County
only.
Approved as to form and legal sufficiency.

County Attorney