

Felton Fire Protection District
131 Kirby Street, Felton, CA 95018
831-335-4422

AGENDA FOR THE SPECIAL MEETING OF THE BOARD OF DIRECTORS

September 23, 2024 at 6:00 pm

Location: *Felton Fire Station Meeting Room*, 131 Kirby St, Felton California

1.0 Convene Meeting:

- 1.0 Call to Order
- 1.1 Pledge of Allegiance
- 1.2 Roll Call
- 1.3 Considerations of Additions to the Agenda

2.0 Public Comment:

Any person may address the Board at this time on any matter not on this agenda within the subject matter jurisdiction of the Felton Fire Protection District. The Board Chair may request that comments be limited to no more than three (3) minutes. Any matter that requires Board action will be referred to staff for a report and action at a subsequent meeting. The Brown Act prohibits the board from taking action on any item not listed on the agenda. If you would like to comment while using Zoom, use the chat function to express interest in making public comment

3.0 Unfinished Business:

- 3.1 Draft Agreement for Services with Ben Lomond Fire – update- Blum
- 3.2 TowerPoint Proposal to buy-out AT&T Cell Tower Lease -discussion/
possible action

4.0 New Business:

- 4.1 Statement of Opinion regarding Ben Lomond Fire – Mike Ayers

5.0 Closed Session: none

6.0 The date for the next regular meeting is: October 07, 2024 @ 6:00 pm

Location in person @ Felton Fire Station

7.0 Adjourn

Felton Fire Protection District will accommodate persons with disabilities. Please phone the fire station and communicate your specific needs. Any person may comment on any agenda item and must be recognized by the Board Chair prior to comment. Anyone speaking must state their name for the record. **Posted September 19, 2024**

AGREEMENT FOR FIRE CHIEF, ASSISTANT CHIEF, TRAINING, AND FIRE INVESTIGATION SERVICES

**Between
BEN LOMOND FIRE PROTECTION DISTRICT and
FELTON FIRE PROTECTION DISTRICT**

THIS AGREEMENT FOR **FIRE CHIEF, ASSISTANT CHIEF, TRAINING, AND FIRE INVESTIGATION SERVICES** (“Agreement”) is entered into as of the 1st day of October 2024, by and between the Ben Lomond Fire Protection District (“Ben Lomond”) and the Felton Fire Protection District (“Felton”).

RECITALS

WHEREAS, the Ben Lomond Fire Protection District is a fire protection district organized and existing under the laws of the State of California; and

WHEREAS, the Felton Fire Protection District is a fire protection district organized and existing under the laws of the State of California; and

WHEREAS, the Board of Directors of the Felton Fire Protection District desires to Contract with the Ben Lomond Fire Protection District for Fire Chief services; and

WHEREAS, the Board of Directors of the Ben Lomond Fire Protection District has agreed by majority vote of the Board to enter into this contract for Fire Chief services; and

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein set forth, it is agreed as follows:

**ARTICLE 1
TERM AND RENEWAL**

- 1.1 Term. The term of this Agreement shall commence beginning on October 1, 2024 and continuing through June 30, 2026, provided that it is fully ratified and executed by all parties on or before October 1, 2024. The Agreement is subject to termination pursuant to Article 5 below.

**ARTICLE 2
PROVISION OF SHARED SERVICES**

- 2.1 Fire Chief. The parties agree to contract the services of the Ben Lomond Fire Chief so that they will also act as the Fire Chief to Felton in addition to their duties as the Fire Chief for Ben Lomond.
- 2.1.1 Scope of Duties. The duties and authorities of the Fire Chief, shall be those set forth in the Scope of Services attached hereto as **Exhibit A** and incorporated herein by reference. The Fire Chief has the authority to assign tasks and functions of the referenced scope of duties to qualified department staff members, particularly the Assistant Chief or Division Chief. The Scope of Services for the Fire Chief may be amended as appropriate and necessary only with the concurrence of both respective Boards of Directors of the Ben Lomond Fire Protection District and the Felton Fire Protection District.

2.1.2 Division of Service. The parties anticipate that the Fire Chief will reasonably divide their time between Ben Lomond and Felton as the duties and responsibilities of each district require. This includes attending Board of Directors meetings in person or designating an agency representative in sharing time at the physical location of the fire stations in each District. Both parties understand that there will be times when one district requires more of the Fire Chief's attention than the other. Division and allocation of the Fire Chief's time shall be at the sole discretion of the Fire Chief.

2.1.3 Rules and Regulations. The Fire Chief will apply the Ben Lomond Fire Protection District Rules, Regulations, Policies and Practices in both jurisdictions except for specific rules, regulations, and policies pertaining to fiscal and personnel management that are unique to the Felton Fire Protection District. In the event of such unique requirements such changes shall be in the form of an appendix to the Ben Lomond Rules, Regulations, and Practices. The Fire Chief will follow the requirements of the Firefighters Procedural Bill of Rights in both jurisdictions when conducting employee investigations and interviews.

2.1.4 Limitations upon Authority to Bind Felton. Notwithstanding anything to the contrary contained herein, Ben Lomond agrees that the Fire Chief shall not, without the prior approval of Felton Board of Directors or such officer or officers as the Board of Directors may designate, engage in any of the following on behalf of Felton:

- (a) Borrow or obtain credit in any amount or execute any guarantee, except for items for sale by vendors in the ordinary operation of the fire department in amounts and quantities previously approved in the annual budget; and
- (b) Expend funds for capital equipment in excess of expenditures expressly budgeted and approved by the Board of Directors; and
- (c) Sell or transfer capital assets; and
- (d) Apply for, solicit, or accept, any grant, donations, contributions by foundations, or the like, that require any financial commitment on the part of the District either initially or in the future; and
- (e) Execute any lease of real or personal property.

2.2 Consideration. Felton shall pay Ben Lomond for the services of the Fire Chief and Assistant Chief, Division Chief, Battalion Chief, Captain, Engineer and Firefighter as described herein. Ben Lomond will carry Workers Compensation Insurance for all Ben Lomond Fire District personnel and will cover all if injured while acting as, or responding to, within their district or contract district for administrative duties or an emergency incident.

2.3 Expenses. Felton shall reimburse Ben Lomond of any direct expenses incurred in performing duties pursuant to this Agreement provided that documentary evidence of such expenses is presented to Felton to substantiate the expenses incurred and provided the Fire Chief receives prior approval from Board Chair of Felton Five thousand dollars (\$5,000)

- 2.4 Duration. The duration of this agreement shall be valid for up to two years with an option to extend for one additional year for a total of three years. At the end of 120 days initially and each year thereafter both parties agree to meet to discuss if an opener is needed to modify the terms of the agreement. Should one party believe an opener is needed both parties shall agree to meet and confer.
- 2.5 Vehicle. The Fire Chief is currently provided a vehicle by Ben Lomond and it is anticipated that they will continue to use the vehicles as available. They may also transport persons who are not employees of either District in the vehicle in appropriate circumstances. Ben Lomond shall maintain adequate liability insurance, maintenance, and fuel cards on the vehicle at all times.
- 2.6 Contract Services. Ben Lomond retains the right to contract for similar services with other local Fire Service Agencies. This contract with Felton is based on Ben Lomond providing services to Felton. If Ben Lomond anticipates providing services to any other agency, it agrees to reopen the current contract with Felton for the purposes of adjusting contract related considerations.
- 2.7 Independent Contractors.
- 2.7.1 Status. It is the express intention of the Parties that Ben Lomond Fire District is an independent contractor, and persons designated under this agreement are not employees of Felton Fire District. Nothing in this Agreement shall be interpreted or construed as creating or establishing a relationship of employer/employee between of Felton Fire District and Ben Lomond Fire District or between of Felton Fire District and any employee or agent of Ben Lomond Fire District. Both Parties acknowledge that Ben Lomond Fire District is not an employee for state or federal tax purposes, and as such, of Felton Fire District shall not withhold income or employment taxes from the consideration paid to Ben Lomond Fire District under this Agreement.
- 2.7.2 Other Service Recipients. Felton Fire District understands and acknowledges that Ben Lomond Fire District retains the right to perform services for others during the term of this Agreement.
- 2.7.3 Materials. Ben Lomond Fire District may furnish equipment that may be required to perform the services under this Agreement except for office space and equipment furnished by Felton Fire District.
- At the conclusion of the agreement both parties agree to separate out all real property bought by the district funds of the FFPD and return said items to the district.
- 2.7.4 No Benefits. Ben Lomond Fire District and persons designated under this agreement shall not have any claim under this Agreement or otherwise against Felton Fire District for vacation pay, sick leave, retirement benefits, social security, worker's compensation, disability or unemployment benefits, or any other employee benefits.

2.7.5 Indemnity. In the event that Ben Lomond Fire District's services, as provided under this Agreement, are found by any state or federal agency to be those of an employee rather than an independent contractor, Ben Lomond Fire District shall indemnify the Felton Fire District, its officers, officials, employees and agents, and hold them harmless for all damages, costs, taxes imposed upon Felton Fire District pursuant to the Internal Revenue Code or other state or federal taxing laws, including, but not limited to, any penalties and interest which Felton Fire District may be assessed by such state or federal agency for failing to withhold, from the compensation paid to Ben Lomond Fire District under this Agreement, any amount which may have been required to be withheld by law.

ARTICLE 3 **DISPUTE RESOLUTION**

3.1 In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or breach thereof, the parties agree to use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach just and equitable solutions satisfactory to all parties. If they do not reach such solutions within a period of thirty (30) days, any party may terminate this Agreement as provided for in Article 5 below.

ARTICLE 4 **INDEMNIFICATION**

4.1 **Indemnification.** Each party agrees to defend, indemnify, and save all other parties harmless from any and all claims arising out of said party's employees' negligent acts, errors, omissions or willful misconduct while performing pursuant to this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of said party, its officers, employees, or agents.

4.1.1 Each party hereby agrees to defend itself from any claim, action or proceeding arising out of the concurrent acts or omissions of their employees. In such cases, each party agrees to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs.

4.1.2 Notwithstanding the above, where a trial verdict or arbitration award allocates or determines the comparative fault of the members, the members may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with said comparative fault.

4.1.3 For purposes of this section, the terms "employee" or "employees" shall refer to and include employees, officers, agents, representatives, subcontractors, or volunteers.

4.1.4 Notwithstanding the foregoing, no employee, officer, agent, representative, subcontractor, or volunteer of any party to this Agreement shall be considered an "employee" of any other party to this Agreement for purposes of indemnification.

ARTICLE 5 **TERMINATION**

- 5.1 Termination. Upon termination of this Agreement, unless otherwise agreed to by the parties, the current payments under the Agreement shall be prorated and any amount still owed to Ben Lomond will be paid on the date of termination of the Agreement or if Felton has over paid, then Ben Lomond shall reimburse Felton on the date of termination of Agreement.
- 5.2 Unilateral Termination. Any party to this Agreement may unilaterally terminate the Agreement by notice to the other party in writing at least thirty (30) days prior to the effective date of the termination. The notice of termination shall also include the reasons for such termination.
- 5.3 Termination Based on Mutual Agreement. This Agreement may be terminated at any time with the mutual agreement of both party's subject to mutually agreeable terms and conditions.
- 5.4 Termination for Cause. In the event any party breaches a material provision of this Agreement, the non-breaching party shall give the other party written notice of such breach. In the event the breach is not remedied within thirty (30) days of receipt of the written notice, the Agreement may be terminated unless the timelines are extended by mutual agreement.

ARTICLE 6 **INSURANCE COVERAGE**

- 6.1 Each Party shall provide and maintain either insurance in the form and amounts prescribed below or a statement that the Party is self-insured up to the amount specified below:
- 6.1.1 Commercial General Liability insurance, occurrence form, with the limits of not less than \$1 million each occurrence. The general aggregate limit shall be not less than \$2 million. The fire damage component of such insurance shall be not less than \$100,000.
- 6.1.2 Automobile Liability insurance, occurrence form, with a limit of not less than \$1 million each occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.
- 6.1.3 Workers Compensation in at least the minimum statutory limits. With respect to Workers Compensation coverage, the Party employing the fire department employee will provide Workers Compensation coverage for any injuries sustained in the normal course and scope of the employee's performance of services.
- 6.2 General provisions for all insurance shall include the other Party, it's elected and appointed officials, employees, and agents, as additional insureds, except errors and omissions, with respect to this Agreement and the performance of services in this Agreement. Additional

insured status under this provision shall be limited to each Party's obligation to indemnify the other as described in Article 4.

- 6.3 No changes in insurance affecting the requirements above may be made without the written approval of all Parties.

ARTICLE 7 **MISCELLANEOUS**

- 7.1 Force Majeure. Neither party shall be liable if the performance of any part or all of this contract is prevented, delayed, hindered, or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident, illness, death, or any other casualty or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.
- 7.2 Non-assignability. This Agreement and the rights and duties hereunder may not be assigned by any party hereto without obtaining the prior written consent of the other, and the parties expressly agree that any attempt to assign the rights of any party hereunder without such consent will be null and void. This Agreement is not intended to create any rights of a third party beneficiary.
- 7.3 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The article and paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the articles and paragraphs or be considered in their interpretation. This Agreement may be executed in several counterparts, each of which shall be deemed an original.
- 7.4 Entire Agreement. This Agreement shall constitute the full and complete Agreement between the parties hereto. This Agreement supersedes all prior negotiations, representations or agreements, if any.
- 7.5 Amendments. This Agreement may be modified in writing and signed by both parties.
- 7.6 Invalidity of Provisions of this Agreement. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions shall not be affected.
- 7.7 No Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressed.
- 7.8 Negotiated Agreement. The provisions of this Agreement are the product of negotiation among all parties and shall not be construed as having been prepared by one party or another. All parties to this Agreement understand their right to seek independent counsel and advice regarding the terms of this Agreement prior to execution of the Agreement.
- 7.9 No Third-Party Beneficiary. This Agreement is only for the benefit of the Parties as municipal or corporate entities and shall not be construed as or deemed to operate as an agreement for the benefit of any third party or parties, and no third party or parties shall

have any right of action or obtain any right to benefits or position of any kind for any reason whatsoever.

- 7.10 Notices. All notices required or permitted by this Agreement shall be in writing and shall either be hand delivered, sent by telecopy or facsimile, sent by U.S. mail, postage prepaid, addressed as set forth on the signature page hereof. A notice shall be effective either when personally delivered, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

Notices shall be delivered to the following individuals on behalf of each party:

For the Felton Fire Protection District:

Jim Anderson, President of the Board of Directors

For Ben Lomond Fire Protection District:

Sean Castagna, President of the Board of Directors

- 7.11 Authorized Signatures. Each party represents and warrants that the signatories to this agreement are legally authorized to sign and enter into this Agreement on behalf of the parties.

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

FELTON FIRE PROTECTION DISTRICT

Date: _____

By: _____

Jim Anderson, Chair of the Board of Directors

BEN LOMOND FIRE PROTECTION DISTRICT

Date: _____

By: _____

Sean Castagna, President of the Board of Directors

EXHIBIT A
SCOPE OF SERVICES

This Scope of Services is intended to be a broad scope of responsibilities for services to be delivered to the Felton Fire Protection District by Ben Lomond Fire Protection District. In no manner is it meant to be comprehensive, limited, or all-inclusive regarding the roles and responsibilities that will be administered during the duration of this Agreement.

The Ben Lomond Fire Protection District (BLFPD) will furnish the following services to the Felton Fire Protection District (FELTON):

I. EXECUTIVE SERVICES

A. Board of Directors

- i. Agreement includes preparation for and attendance at regular and special meetings of the FELTON Board of Directors.
- ii. The Fire Chief and/or Assistant Chief shall be authorized to speak for the Board of Directors on matters of public record.

B. Budget

- i. Agreement includes the costs of developing a budget and estimating revenues for FELTON.
- ii. Agreement includes assisting the FELTON Board of Directors with developing a 2-year plan leading to fiscal and operational solvency.
- iii. Agreement includes assisting FELTON with evaluating a parcel tax to be placed on the ballot in early 2026.
- iv. Agreement includes pursuing grant opportunities to reduce budget burden and extend cash reserves.

Labor Management and Memorandum of Understanding

- v. Agreement does not include any services that may be required to respond to, prepare for, or participate in, any arbitration, or dispute that may be brought in any State of California or Federal tribunal, including by way of illustration, and not limitation, any proceeding before the California Employment Development Department (EDD), California Public Employees Retirement System (CalPERS), or California Public Employment Relations Board (PERB).
- vi. Any legal fees and costs that may be incurred on behalf of FELTON pursuant to C i. shall be solely the responsibility of FELTON.

C. Personnel Management

- i. Agreement includes oversight and managing personnel issues, scheduling and coordinating of new hires and promotions, The current FELTON staff schedule will remain in place unless changed by mutual agreement.
- ii. Agreement includes administrative services reasonable and necessary to process employee discipline matters. Disciplinary action taken by the Fire Chief or Assistant Chief or Division Chief may be appealed to the Board of Directors in accordance with Felton Fire District policy.
- iii. Agreement does not include services that may be required to respond to, prepare for, or participate in any dispute involving employee discipline that may be filed in a court of law or otherwise appealed to any tribunal beyond the Board of Directors level.
- iv. Any legal fees and costs that may be incurred on behalf of FELTON pursuant to C. ii. through C. iv. shall be solely the responsibility of FELTON.

D. Allied Agency Interaction

- i. Agreement includes working with the FELTON Board of Directors on budgets, future planning, and cooperation with surrounding public safety agencies to improve levels of service.
- ii. Agreement includes the representation of FELTON on various boards, committees, or associations.

E. FELTON agrees to maintain arrangements for a person to perform administrative services for FELTON for the term of this agreement. Should this position be vacated during the term of the agreement, the Fire Chief shall assist the Board in recruiting a replacement.

II. OPERATIONAL SERVICES

A. Incident Management

- i. The Agreement includes the management of all FELTON incidents within the district and working with Cal Fire on State Responsibility Incidents.

B. Daily Operations

- i. Agreement includes coordination of activities of major incidents in FELTON.
- ii. BLFPD will designate an Assistant Chief or Division Chief to coordinate day-to-day operations, provide emergency incident management,

and monitor training needs within FELTON. The Assistant Chief and Division Chief will work under the direction of the Fire Chief.

- iii. BLFPD will maintain office hours at the Felton Fire Station. The number of hours per week and the purpose of the office hours will be as frequent as necessary and mutually determined by the Fire Chief or their designee and the Board.
- iv. A FELTON designated Division Chief will normally act as the Duty Officer for FELTON incidents when available.

C. Staffing Management

- i. The Joint administration, shall mutually manage the process of arranging and scheduling day to day staffing for FELTON, however, the ultimate responsibility and authority for staffing and scheduling rests with the Fire Chief.
- ii. The intent of FELTON is to keep Felton Fire Station staffed 24/7 with at least two personnel.
- iii. The intent of FELTON is to maintain a roster of 30 active volunteers and contract for a minimum of one paid company officers and one paid firefighter daily through BLFPD.

D. Employee Management

- i. The Agreement includes responsibility for hiring, training, evaluating, and promotional testing of FELTON employees.
- ii. FELTON agrees that BLFPD will develop training plans for its staff to address any deficiencies in County recognized training standards. Staff not meeting the minimum training standards will be placed on a performance improvement plan where goals and expectations are clearly stated. Staff not meeting the minimum standards may be subject to coaching, counseling, or disciplinary action. Staff that do not fall into the rank or service structure that BLFPD operates within shall be re-trained or released.
- iii. The Assistant Chief or Division Chief shall serve as the first-line supervisors for all FELTON employees.
- iv. Agreement includes an aggressive recruitment effort for in-district volunteers.

E. Dispatch and Communication Services

- i. The Agreement includes oversight for long term changes in dispatch search orders, response plans, response zones, and incident types with approval by the FELTON Board.

III. SUPPORT SERVICES

A. Facilities Maintenance and Capital Improvement

- i. The Agreement includes forecasting funding opportunities and estimating costs to upgrade the current facility.
- ii. Felton will be responsible for any costs associated with maintenance or repair of the Felton facilities.

B. Apparatus Equipment Maintenance and Replacement Programs

- i. The Agreement includes forecasting funding opportunities for apparatus and estimating costs for replacement.
- ii. Felton will continue its current arrangements for apparatus maintenance and repair services.

IV. FIRE PREVENTION SERVICES

A. Fire Investigations

- i. The Agreement includes responsibility for fire investigations.
- ii. Additional rates for fire investigation services not included in the Agreement shall be for any investigations in which any outside agency is called in to assist in the investigation. Included, but not limited to, are outside agencies such as Alcohol, Tobacco, and Firearms (ATF), Federal Bureau of Investigations (FBI), etc.
- iii. FELTON Division Chief and BLFPD Assistant Chief will become active members of the Arson Task Force.

B. Public Education

- i. The Agreement includes oversight for the FELTON Public Education Program.
- ii. Public Education Services within FELTON shall be shared by FELTON personnel.

C. Plan Review, Inspections, Variances, and Development Meetings

- i. Both FELTON and BLFPD will continue their current relationship with CSG for plan reviews.
- ii. Each agency will be responsible for field inspections within their respective districts unless other arrangements are mutually agreed upon at a later date.

APENDIX A _ - PAY HOURLY

Rank:

Fire Chief - \$46.70 + \$6.88 for H&W = \$53.58
Assistant Chief – \$45.00
Division Chief - \$40.00
Battalion Chief - \$35.00
Captain - \$30.00
Legacy FEL. Captain (Dawson) - \$36.88
Engineer - \$25.00
Firefighter - EMT - \$25.00
Firefighter non EMT \$20.00
Prevention Officer \$25.00

All hourly pay will also be charged an 8 % fee to cover FICA and Social Security

Appendix B – Stipend Pay per call

Rank:

Captain, Battalion Chief, Division Chief, Assistant Chief- \$30
Engineer - \$25
Firefighter - \$25

Appendix C - Stipend Pay – after hours duty shift coverage

Rank:

Assistant Chief - \$75
Division Chief - \$75
Battalion Chief - \$75

Payroll will be turned in biweekly



September 10, 2024

Felton CA Fire Protection District ("Landlord")
131 Kirby Street
Felton, CA 95018

Re: Letter of Intent to Purchase Interest in Wireless Site ("LOI")

Dear Jim Anderson,

In consideration of ten dollars (\$10), the receipt and sufficiency of which is hereby acknowledged, your signature below grants to TowerPoint Acquisitions, LLC and its successors and assigns (including its asset holding company TPA VI, LLC) ("TowerPoint") exclusivity to purchase your interest in the Lease(s) ("Lease(s)") as further described in Exhibit A) through an assignment of the Lease and the grant of an underlying telecommunications easement pursuant to the terms herein (the "Transaction"). TowerPoint may close on the Transaction no later than fourteen (14) days after the Closing Contingencies listed in Exhibit A are met. The basic terms of the transaction are as follows:

Summary of Terms table with columns: Term, Value. Rows: PURCHASE PRICE (\$640,000.00), LEGAL STRUCTURE (Telecommunications Easement), TERM LENGTH (Perpetual)

- Purchase Price shall be pro-rated at closing based on interim monthly or annual rent payments with TowerPoint retaining from the Purchase Price rent paid by the tenant for any period of time from and after the date of Closing.
• Landlord shall only retain rent checks from Tenant for pro-rated periods and during the rent redirection period1.
• TowerPoint pays for due diligence costs, the title insurance policy, and standard closing costs. Each party bears its own legal expenses.
• Landlord pays transfer/stamp or other tax (if any) and recording fees.

From the date you execute this LOI through the date which is thirty (30) days from the date the Closing Contingencies are met, you agree not to directly or indirectly solicit, initiate or participate in any discussions or negotiations with, or encourage or respond to any inquiries or proposals by, any persons, company or group other than TowerPoint concerning your Lease. You agree to promptly notify TowerPoint if any person, company or group seeks to initiate any discussions regarding your Lease. You further agree to work in good faith with TowerPoint to close this Transaction. The terms of this LOI are confidential and may not be disclosed without the prior written consent of TowerPoint, except to professionals engaged to evaluate and conduct the Transaction on your behalf. You acknowledge that TowerPoint has given you no tax or legal advice in evaluating the Transaction.

To the extent the terms of this LOI represent an offer by TowerPoint, the terms herein are subject to change by TowerPoint after October 4, 2024 if this LOI is not mutually executed. TowerPoint reserves the right to change the terms of this LOI following expiration.

Sincerely,
TowerPoint Acquisitions, LLC

Accepted and Agreed:
Felton CA Fire Protection District

Jesse M. Wellner, Chief Executive Officer
September 10, 2024

Landlord's Signature Date
Print Name:
Title:

1Tenants delay rent redirection from the Landlord to TowerPoint by several months while the closing documents are recorded and the redirection is processed. Therefore, the Settlement Statement will show a rent credit to TowerPoint in the amount of the two (2) months following closing.)



Exhibit A

Site Location and Lease Terms

Site Location: 131 Kirby St, Felton, California 95018

Wireless Tenants	Current Rent	Rent Payment Frequency	Escalation (CPI, % or \$)	Escalation Frequency	Date of Next Escalation
AT&T	\$3,270.58	Monthly	7.5%	Term	12/01/2027

Pricing is based on the Lease Terms above and is subject to confirmatory due diligence of the Lease Terms.

Closing Contingencies

1. receipt of the due diligence items listed in Exhibit B;
2. receipt of a title commitment from TitleVest Agency, LLC (a subsidiary of First American Title Insurance Company) as the escrow/closing agent showing title clear of any liens, encumbrances, outstanding taxes which are otherwise due and payable, or other unsatisfied title closing requirements necessary for an insured closing with marketable title;
3. your approval of the Easement Agreement in a mutually agreeable form;
4. proper documentation of the Lease and rents, including your affirmation that you have not received any written or verbal notice of termination, modification or other correspondence from the tenant related to the Lease;
5. compliance with any tenant right of first refusal or consent requirement, if applicable, related to Landlord's assignment of the Lease; and
6. TowerPoint's desktop environmental database search returns a determination of "Low" or "Moderate" risk.

Initial Here:



Exhibit B

Required Due Diligence Items

1. Executed Lease including any and all Amendments thereto (as well as any lease commencement letters, notices, or other correspondence regarding the Lease)
2. Proof of Rent Payments under the Lease (minimum of 3 months received in the last 6 months); e.g.: copies of rent checks/stubs and/or direct deposit statements.
3. Completed Landlord Request for Information (RFI) attached hereto as Exhibit C.
4. Landlord's comments or Landlord's counsel's comments, if any, to the Easement Agreement ("Easement") to be provided under separate cover (to be finalized in a mutually agreeable Easement) or return the Easement with each page initialed showing approval of the form Easement.
5. If an existing mortgage is in place on the property: A Mortgage Statement and Lender contact information for obtaining a non-disturbance agreement from Lender (required only if the property is encumbered by a Mortgage, Deed of Trust, Line of Credit or similar instrument).
6. Legal entity organizational documents (including any Amendments thereto) showing proof of authority, as applicable below, for all entities owning an interest in the Property:

Corporations	LLCs	General Partnership	Ltd. Partnerships	Condo Assoc's	Coop Corp (i.e.: Housing Co-op)	Trust
Articles of Incorporation	Articles of Organization	Certificate of Partnership	Certificate of Limited Partnership	Condominium Declaration	Articles of Incorporation	Trust Agreement
Signed Corporate Bylaws	Signed Operating Agreement	Signed General Partnership Agreement	Signed Limited Partnership Agreement	Signed Condominium Bylaws	Signed Corporate Bylaws	Certificate of Trust

Within 10 days of signing this LOI, I agree to provide to TowerPoint the Required Due Diligence Items listed above to facilitate a timely close under the terms of this LOI.

Initial
Here:

Exhibit C



Landlord Request for Information

EIN for Landlord (if an entity): _____

If Landlord is a natural person, then please circle marital status: **Single or Married**

(Please note: if Landlord is a natural person, we will collect their taxpayer identification number prior to closing to include in the closing documents.)

Access Contact for Site Inspection	Attorney Contact Information
Name: _____	Name: _____
Title: _____	Phone: _____
Phone: _____	Email: _____
Mobile Phone: _____	
Email: _____	

Mortgage/Line of Credit (if none, please indicate below)	
Please check here if there is no mortgage and no line of credit: _____	
<u>Primary Mortgage</u>	<u>Secondary Mortgage (if applicable)</u>
Lender Name: _____	Lender Name: _____
Lender Contact: _____	Lender Contact: _____
Lender Contact Title: _____	Lender Contact Title: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
Email: _____	Email: _____
<u>Line of Credit</u>	
Lender Name: _____	
Lender Contact: _____	
Lender Contact Title: _____	
Phone: _____	
Fax: _____	
Email: _____	

Submitted by: Richard Hatch, Ph: +1(678) 987-1144, Email: richard.hatch@towerpoint.com

Record and Return to:
Joseph Mangus
TitleVest Agency, LLC
110 E. 42nd Street, 10th Floor
New York, NY 10017
TitleVest Title No.: _____

Prepared by:
TPA VI, LLC
1170 Peachtree Street, Suite 1650
Atlanta, GA 30309

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

EASEMENT AGREEMENT

This telecommunication easement and lease assignment agreement ("Agreement") is made and shall be effective on the ____ day of _____, 2024 ("Effective Date"), by and between _____ ("Grantor") and TPA VI, LLC, a Delaware limited liability company ("Grantee").

- 1. Grantor's Property and the Telecom Tenant Lease.** Grantor represents and warrants that it holds fee simple title to certain real property located at _____, as more fully described in the legal description attached hereto as Exhibit A (the "Parent Property"). Grantor and _____ (the "Telecom Tenant") are parties to that certain lease agreement, including all amendments and modifications thereto, cited in Exhibit B and incorporated by reference herein (the "Telecom Tenant Lease").
- 2. Grant of Easement.** For the sum of TEN AND NO/100 DOLLARS and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge as paid on or about the Effective Date along with the purchase price pursuant to the settlement statement executed contemporaneously with this Agreement ("Purchase Price"), Grantor grants and conveys unto Grantee, its successors and assigns, an exclusive easement (subject to the Telecom Tenant Lease) for the Permitted Use defined herein, together with a non-exclusive access easement for ingress and egress to and from the exclusive easement, seven days per week, twenty-four hours per day and a non-exclusive utility easement to install, replace and maintain utilities servicing the exclusive easement, including, but not limited to the installation of power and telephone service cable, wires, switches, boxes and the like as may be required by the Permitted Use (collectively "Easement" as further described in Exhibit C). Grantor shall permit Grantee, Easement Tenant(s) (as hereinafter defined), and any of their affiliates, customers, tenants, subtenants, lessees, sublessees, licensees, successors and/or assigns together with any of the employees, contractors, consultants, and or agents of the foregoing to use the Easement for the installation, construction, operation, maintenance, repair, modification, relocation, replacement and removal of improvements and equipment ("Equipment") for the facilitation of telecommunications uses, communications uses and other related uses, including, but not limited to, any uses permitted by the Telecom Tenant Lease ("Permitted Use").

Grantor represents that there is no pending or threatened action that would adversely affect Grantor's ability to enter into this Agreement or grant the Easement and that entering into this Agreement will not violate or conflict with any provision of Grantor's organizational documents (if Grantor is an organization) or conflict with the provisions of any agreement to which Grantor is a party. Grantor further represents and warrants that Grantee shall have peaceful and quiet possession and enjoyment of the Easement during the term of this Agreement without any disturbance of Grantee's possession or Permitted Use hereunder.

3. **Term.** Commencing on the Effective Date, the term of this Agreement and the Easement shall be for _____ () years (the "Term") and this Agreement and the Easement shall terminate on _____. Upon notice to Grantor as provided herein, Grantee may surrender the Easement to Grantor and execute such documents reasonably required to terminate the Agreement and the Easement. Grantor may not unilaterally terminate the Agreement or Easement, but if the Easement is not used for the Permitted Use for a period of five (5) years the Easement shall be deemed abandoned and shall terminate upon Grantor's notice of such default to Grantee as provided herein. **Sections 11 and 12** shall survive expiration or termination of this Agreement and shall remain in effect in perpetuity, subject to applicable law.
4. **Assignment of Lease, Renewal and Right of Replacement.** Grantor hereby assigns to Grantee all of Grantor's right, title and interest in the Telecom Tenant Lease for the Term, including the right to renew the Telecom Tenant Lease throughout the Term. Except as provided herein, Grantee agrees to assume all of Grantor's rights and obligations under the Telecom Tenant Lease. If Telecom Tenant is obligated under the Telecom Tenant Lease to pay to Grantor any fees (other than base rent and any escalations thereto) for the purpose of utility service or access or tax reimbursement, Grantor shall continue to be entitled to such fees, although Grantee may collect and distribute same to Grantor. Grantor shall continue to perform all obligations of the lessor under the Telecom Tenant Lease which relate to the use, ownership, and maintenance of the Parent Property so that Grantee may fulfill all the obligations under the Telecom Tenant Lease without breaching any provision therein, including, but not limited to, Grantor maintaining the Parent Property in a commercially reasonable condition to allow the Permitted Use of the Easement. Grantor represents and warrants that it has delivered to Grantee true and correct copies of the Telecom Tenant Lease and that Grantor owns 100% of the lessor/landlord's interest in the Telecom Tenant Lease, including the right to collect all rent thereunder. To the best of Grantor's knowledge, no party to the Telecom Tenant Lease has breached or is in default of their respective obligations under the Telecom Tenant Lease and **no party has requested or discussed a modification or termination of the Telecom Tenant Lease.** If during the Term the Telecom Tenant terminates the Telecom Tenant Lease or otherwise vacates the Parent Property, Grantee may lease all or a portion of the Easement to a replacement telecommunications tenant ("Replacement Telecom Tenant") on terms consistent with the Telecom Tenant Lease and such Replacement Telecom Tenant shall occupy the Easement rather than locating on other portions of the Parent Property ("Replacement Telecom Tenant Lease").
5. **Right of First Refusal.** Grantor grants to Grantee the right to acquire through assignment, purchase, or other means any lease or similar conveyance for telecommunications purposes in which Grantor retains an interest outside the Easement ("Grantor's Lease"). Grantor shall deliver to Grantee, a copy of any offer to purchase an interest in Grantor's Lease. Grantee shall have thirty (30) business days to match the terms of any offer by delivering written notice of Grantee's intent to match the offer.
6. **Grantor Cooperation and Non-interference.** Grantor hereby agrees to cooperate with Grantee and/or Telecom Tenant and Replacement Telecom Tenant (collectively, "Easement Tenants") in obtaining all licenses, permits or authorizations from all applicable governmental and/or regulatory entities and in acquiring any necessary upgrades to or relocation of utility service to support the Permitted Use. In furtherance of the foregoing, Grantor hereby appoints Grantee as Grantor's

attorney-in-fact to execute all land use applications, permits, licenses and other approvals on Grantor's behalf in connection with the Permitted Use. Grantor's cooperation shall be at no cost to Grantor and without requiring payment of additional rent or fees by Grantee or Easement Tenants. Grantor shall not interfere with any construction in the Easement so long as such construction is to support the Permitted Use and is proceeding pursuant to a building permit or other required municipal or governmental approvals. Grantor shall not, nor shall Grantor permit its lessees, licensees, employees, invitees or agents to, use any portion of the Parent Property or the Easement in a way which materially interferes with the operations of the Easement Tenants who shall have peaceful and quiet possession and enjoyment of the Easement. Grantor may not directly or indirectly induce, invite, or conspire to induce or invite any Easement Tenants to use or lease space in direct competition with the Easement.

7. **Assignment.** Grantee may pledge, assign, mortgage, grant a security interest, or otherwise encumber its interest created by this Agreement. Grantee may freely assign this Agreement in part or in its entirety, and any or all of its rights hereunder, including the right to receive rent payments. Upon the absolute assumption of such assignee of all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all obligations and liabilities hereunder.
8. **Taxes and Other Obligations.** All taxes and other obligations that are or could become liens against the Parent Property or any subdivision of the Parent Property containing the Easement, whether existing as of the Effective Date or hereafter created or imposed, shall be paid by Grantor prior to delinquency or default. Grantor shall be solely responsible for payment of all taxes and assessments now or hereafter levied, assessed or imposed upon the Parent Property, or imposed in connection with the execution, delivery, performance or recordation hereof, including without limitation any sales, income, documentary or other transfer taxes. If Grantor fails to pay when due any taxes or other obligations affecting the Parent Property, Grantee shall have the right but not the obligation to pay such and demand payment therefor from Grantor, which payment Grantor shall make within ten (10) days of such demand by Grantee.
9. **Insurance.** During the Term, Easement Tenants shall maintain general liability insurance as required under their respective lease. Grantor shall maintain any insurance policies in place on the Parent Property or as required under the Telecom Tenant Lease.
10. **Subordination and Non-Disturbance.** Grantee agrees to subordinate this Agreement to any existing or future mortgage or deed of trust on the Parent Property ("Security Instrument"), provided the beneficiary or secured party ("Secured Party") under the Security Instrument agrees for itself and its successors in interest and assigns that Grantee's rights under this Agreement and rights to the Easement shall remain in full force and effect and shall not be affected or disturbed by the Secured Party in the exercise of Secured Party's rights under the Security Instrument during the Term, including Grantee's right to collect and retain, in accordance with the terms of this Agreement, all rents, fees and other payments due from Easement Tenants. Such non-disturbance agreement must apply whether Secured Party exercises its rights under the Security Instrument, including foreclosure, sheriff's or trustee's sale under the power of sale contained in the Security Instrument, and any other transfer, sale or conveyance of Grantor's interest in the Parent Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.
11. **Mutual General Indemnification.** Grantor and Grantee shall each indemnify and hold harmless the other against any and all claims, damages, costs and expenses (including reasonable attorney's fees and disbursements) caused by or arising out of the indemnifying party's breach of this Agreement or the negligent acts or omissions or willful misconduct on the Parent Property by the indemnifying party or the employees, agents, or contractors of the indemnifying party.

12. Environmental Representations and Indemnification.

- a. Grantor represents and warrants that, to the best of Grantor's knowledge, no pollutants or other toxic or hazardous substances, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., or any other federal or state law, including any solid, liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (collectively, "Hazardous Substances") have been, or shall be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape or migrate (collectively referred to as the "Release") on or from the Parent Property. Neither Grantor nor Grantee shall introduce or use any Hazardous Substances on the Parent Property or the Easement in violation of any applicable federal, state or local environmental laws.
- b. Grantor and Grantee each agree to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substances on the Parent Property caused by the other party. Grantee shall not be responsible for and shall not defend, indemnify or hold harmless Grantor for any Release of Hazardous Substances on or before the Effective Date.

13. Dispute Resolution and Notice.

- a. Jurisdiction and venue under this Agreement shall be in the state and county the Parent Property is located. The parties may enforce this Agreement and their rights under applicable law, and may seek specific performance, injunction, appointment of a receiver and any other equitable rights and remedies available under applicable law. Money damages may not be an adequate remedy for the harm caused to Grantee by a breach or default by Grantor hereunder, and Grantor waives the posting of a bond. Damages as against Grantee shall be limited to the amount of consideration received by Grantor under this Agreement, following any insurance settlement which may have effect. The prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs. Neither party shall be liable to the other for consequential, indirect, speculative or punitive damages.
- b. The non-defaulting party shall provide written notice of a default under this Agreement or under an Easement Tenants' lease, not more than thirty (30) days from discovery of the default. Grantor shall have thirty (30) days to cure the default. Grantee shall have thirty (30) days to commence cure of the default.
- c. All communications shall be delivered by certified mail, return receipt requested or a nationally recognized overnight courier to the address beneath each party's signature block or such other address as advised to the other party pursuant to this Section. Notice shall be deemed given upon receipt if by certified mail, return receipt requested or one (1) business day following the date of sending, if sent by nationally recognized overnight courier service or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery.

14. Miscellaneous.

- a. The terms and conditions of the existing Telecom Tenant Lease shall govern over any conflicting term of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Grantor and Grantee acknowledge that this Agreement is subject and subordinate to the Telecom Tenant Lease.
- b. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties to this Agreement. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the Parent Property upon which the Easement is located and be binding upon all future owners and lessees of the Parent Property and all persons claiming under them for the Term.
- c. Casualty and Condemnation. In the event of any casualty or condemnation of the Easement in whole or in part, Grantee shall be entitled to receive any insurance proceeds or condemnation award attributable to the value of the Easement.
- d. Bankruptcy. Grantee does not consent to rejection in bankruptcy, and Grantor shall provide notice and a copy of any bankruptcy or related filing to Grantee and Grantee's Lender.
- e. Severability. If any provision contained in this Agreement (or any portion of such provision) shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement (or any portion of any such provision.)
- f. Counterparts. This Agreement may be executed in separate counterparts with each counterpart deemed an original and all of which together shall constitute a single agreement.
- g. Entire Agreement. This Agreement and any documents, certificates, instruments and agreements referred to herein constitute the entire agreement between Grantor and Grantee. Without limiting the generality of the foregoing, Grantor acknowledges that it has not received or relied upon any advice of Grantee or its representatives regarding the merits or tax consequences of this Agreement.

[Signature pages and exhibits follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

GRANTOR:

Grantor Notice Address:

STATE OF _____ }
COUNTY _____ } ss.

On this ____ day of _____, 2024, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ _____ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of _____.

{affix notary seal or stamp}

Notary Public
My Commission Expires:

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

GRANTEE: TPA VI, LLC

Jesse M. Wellner, Chief Executive Officer

Grantee Notice Address:
TPA VI, LLC
1170 Peachtree Street, Suite 1650
Atlanta, GA 30309
Attn: Chief Executive Officer

With a copy to:
TPA VI, LLC
1170 Peachtree Street, Suite 1650
Atlanta, GA 30309
Attn: General Counsel

STATE OF GEORGIA

COUNTY OF FULTON

} ss.

On this ____ day of _____, 2024, before me, the undersigned notary public, personally appeared Jesse M. Wellner, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ _____ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Chief Executive Officer of TPA VI, LLC.

{affix notary seal or stamp}

Notary Public
My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PARENT PROPERTY

[Insert property legal description.]

EXHIBIT B

TELECOM TENANT LEASE

[Insert Telecom Tenant lease citation.]

EXHIBIT C

EASEMENT AREA DESCRIPTION

[Insert Easement area description.]