

### SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT ("Lease"), made this \_\_\_\_\_ day of \_\_\_\_\_, year \_\_\_\_\_, between City of \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_ organization and existing under the laws of Minnesota.

WHEREAS, Tenant is under contract to provide \_\_\_\_\_ service to \_\_\_\_\_ and it is in the best interests of Landlord to facilitate Tenant's provision of improved communication by and between Tenant's \_\_\_\_\_.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. **Leased Premises.** Landlord hereby leases to the Tenant, for the period, at the rent, and upon the terms and conditions hereafter set forth, the non-exclusive use of:

The Top of the \_\_\_\_\_ Water Tower Structure and adequate, nominal space in the adjacent water equipment building to install a control panel and also grants to Tenant a non-exclusive easement for reasonable access thereto and for adequate utility services (the Leased Premises).

2. **Term.** The Term of this Lease Agreement shall be for three (3) years commencing on the date of execution of this Agreement, provided, however, that this Agreement shall terminate on the effective date of the termination of the contractual arrangements between Tenant and \_\_\_\_\_ for Tenant's provision of \_\_\_\_\_.

3. **Rental.** Tenant's rental obligation during initial term of this Lease consists of:

Tenant's obligation to reimburse Landlord the attorney's fees the Landlord incurs incident to the preparation and execution of this Site Lease Agreement and related documents including but not limited to a Municipal Ordinance. The amount of such attorney's fees shall be provided to Tenant, in writing, within ten (10) days after execution of this Agreement and shall be paid to Landlord within thirty (30) days thereafter, and

Tenant's obligation to pay Landlord \$\_\_\_\_\_ each year for electricity, or such other amount as is established by separate "metering" of Tenant's electric usage, payable promptly upon request.

4. **Governmental Approval Contingency.**

- a. **Tenant Application.** Tenant's right to use the Leased Premises is expressly made contingent upon its obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. This shall include the engineering study specified Subparagraph 4(b) below on the Structure to be conducted at Tenant's expense. Landlord shall cooperate with Tenant in its efforts to obtain and retain such approvals and shall take no action which would adversely affect the status of the Leased Premises with respect to the Tenant's proposed use thereof.

- b. **Interference Study.** Tenant must pay for the reasonable cost of a radio frequency interference study carried out by \_\_\_\_\_, showing that Tenant's intended use will not interfere with any existing communications facilities. If the study finds that there is a potential for interference that cannot be reasonably remedied, Landlord may terminate this Lease immediately and refund the initial rental to Tenant.

- c. **Non-approval.** In the event that any application necessary under Subparagraph 4(a) above is finally rejected or any certificate, permit, license, or approval issued to Tenant is cancelled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Tenant, in its sole discretion, will be unable

to use the Leased Premises for its intended purposes, Tenant shall have the right to terminate this Lease. Notice of Tenant's exercise of its right to terminate shall be given to Landlord in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by Landlord as evidenced by the return receipt. Except as required under Subparagraph 12(d) below, upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other.

5. **Tenant's Use.**

a. User Priority. Tenant agrees that the following priorities of use, in descending order, shall apply in the event of communication interference or other conflict while this Lease is in effect, and Tenant's use shall be subordinate accordingly:

1. Landlord;
2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the Landlord;
3. Other governmental agencies where use is not related to public safety; and
4. Government-regulated entities whose antenna offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone, not including radio or which Tenant is legally authorized to provide. This use shall be non-exclusive, and Landlord specifically reserves the right to allow the Leased Premises to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Leased Premises.

(b) Purposes. Tenant shall use the Leased Premises only for the purpose of installing, maintaining, and operating a Landlord-approved communications antenna facility, equipment, cabinets and an accessory building, and uses incidental thereto for providing radio and wireless telecommunication services which Tenant is legally authorized to provide. This use shall be non-exclusive, and Landlord specifically reserves the right to allow the Leased Premises to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Leased Premises

(c) Operation. Tenant shall have the right, at its sole cost and expense, to operate and maintain the Antenna Facilities on the Leased Premises in accordance with good engineering practices and with all applicable FCC rules and regulations. Tenant's installation of all Antenna Facilities shall be done according to plans approved by Landlord, which approval shall not be unreasonably withheld. Any damage done to the Leased premises or other Landlord property including the Structure during installation or during operations shall be repaired at Tenant's expense within 30 days after notification of damage. The Antenna Facilities shall remain the exclusive property of the Tenant, unless otherwise provided in this Lease.

(d) Maintenance Improvement Expense. All modifications to the Leased Premises and all improvements made for Tenant's benefit shall be at the Tenant's expense and such improvements, including antenna, facilities and equipment, shall be maintained in a good state of repair, at least equal to the standard of maintenance of the Landlord's facilities on or adjacent to the Leased Premises, and secured by Tenant. If Tenant's Antenna Facilities are mounted on the Structure they shall, at all times, be painted, at Tenant's expense, the same color as the Structure.

(e) Drawings. Tenant shall provide Landlord with as-built drawings of the equipment and improvements installed on the Leased Premises, which show the actual location of all Antenna Facilities. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and Antenna Facilities actually placed on the Leased Premises.

(f) **No Interference.** Tenant shall, at its own expense, maintain any equipment on or attached to the Leased Premises in a safe condition, in good repair and in a manner suitable to Landlord so as not to conflict with the use of the surrounding premises by Landlord. Tenant shall not unreasonably interfere with the operations of any prior tenant using the Structure and shall not interfere with the working use of the water storage facilities thereon or to be placed thereon by Landlord.

(g) **Access.** Tenant, at all times during this Lease, shall have access to the Leased Premises in order to install, operate, and maintain its Antenna Facilities. Tenant shall have access to the Structure only with the approval of Landlord. Tenant shall request access to the Structure twenty-four (24) hours in advance except in an emergency, and Landlord's approval thereof shall not be unreasonably withheld or delayed. In the event it is necessary for Tenant to have access to the Structure at some time other than the normal working hours of Landlord, Landlord may charge Tenant for whatever expense, including employees' wages, that Landlord may incur in providing such access to Tenant.

6. **Additional Maintenance Expenses.** Upon notice from Landlord, Tenant shall promptly pay to Landlord additional Landlord expenses incurred in maintaining the Leased Premises, including painting or other maintenance of the Structure, that are caused by Tenant's occupancy of the Leased Premises.

7. **Advances in Technology.** As technology advances and improved antennas are developed which are routinely used in Tenant's business, Landlord may require, in its sole discretion, the replacement of existing antennas with the improved antennas if the new antennas are more aesthetically pleasing or otherwise foster a public purpose, as long as the installation and use of the improved antennas are practical and technically feasible at this location.

8. **Insurance and Indemnification.**

(a) Tenant shall, during the term of the lease, maintain property coverage on all personal property and fixtures owned by Tenant. Tenant acknowledges that Landlord is not responsible for insuring against the loss of Tenant's equipment improvements. Tenant shall also maintain single limit or combined limit general liability insurance policy of an amount not less than the limits set forth in Chapter 466 of Minnesota Statutes for property damage arising from one occurrence or for bodily or personal injuries or death or damages arising from one occurrence.

(b) Tenant shall hold Landlord harmless from and indemnify Landlord against any and all liability, damage, loss and expense arising or resulting from the acts or omissions or caused by Tenant or Tenant's employees, servants, agents, guests, assigns, subtenants, visitors or licensees, in, upon or about the premises, the building or the adjacent areas, including all common areas or arising out of or related to the use and occupancy of the occupancy or the business or activity conducted with respect to the property, including but not limited to injuries to person or property. This indemnification clause specifically includes reasonable attorney's fees incurred by the Landlord, and Tenant shall reimburse Landlord for attorney's fees as incurred and not only at the termination of the litigation or other dispute necessitating the retention of attorney by Landlord.

9. **Damage or Destruction.** If the Premises are damaged or destroyed by fire, winds, flood or other natural or manmade causes, Landlord shall have the option to repair or replace the Premises at its sole expense, or to terminate this Lease effective on the date of such damage or destruction. In the event it elects to terminate the Lease, neither Tenant nor Landlord shall have any further obligations hereunder. If Landlord elects to repair or replace the premises, until such repair or replacement is completed so that the Tenant can resume full operations, the Tenant's rental hereunder shall abate until the premises are restored to a condition that the Tenant can resume full operations at the premises.

10. **Lease Termination.**

(a) **Events of Termination.** Except as otherwise provided herein, this Lease may be terminated upon sixty (60)

days written notice to the other party as follows:

(i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default to the other party (without, however, limiting any other rights of the parties pursuant to any other provisions hereof);

(ii) by Tenant for cause if it is unable to obtain or maintain any license, permit or other governmental approval necessary for the construction and/or operation of the Antenna Facilities or Tenant's business

(iii) by Tenant for cause if the leased Premises is or becomes unacceptable for technological reasons including without limitation shadowing or interference under Tenant's Antenna Facilities, design or engineering specifications or the communications systems to which the Antenna Facilities belong;

(iv) by Landlord, upon 120 day's prior written notice to Tenant if its Council decides, for any reason, to redevelop the Leased Premises in a manner inconsistent with continued use of the Leased Premises by Tenant and/or discontinue use of the Structure for all purposes;

(v) by Landlord if it determines that the Structure is structurally unsound, including, but not limited to, consideration of age of the Structure, damage or destruction of all or part of the Structure on the Leased Premises from any source, or factors relating to condition of the Leased Premises;

(vi) by Landlord if it determines that a potential user with a higher priority under Subparagraph 5(a) above cannot find another adequate location, or the Antenna Facilities unreasonably interfere with another user with a higher priority, regardless of whether or not such an interference was predicted in the initial interference study that was part of the application process, provided that for a one year period after termination under this subparagraph, Landlord shall not lease the Leased Premises to another party with equal or lesser priority for the same use as that of Tenant; or

(vii) by Landlord if it determines that Tenant has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to government approvals granted thereunder, after a public hearing before the Landlord's Council

(b) Notice of Termination. The parties shall give Notice of Termination in writing by certified mail, return receipt requested. Such Notice shall be effective upon receipt as evidenced by the return receipt, or such later date as stated in the Notice. All rentals paid for the Lease prior to said termination date shall be retained by Landlord.

(c) Site Restoration. In the event that this Lease is terminated or not renewed, Tenant shall have 60 days from the termination or expiration date to remove its Antenna Facilities, and related equipment from the Leased Premises, repair the site and restore the surface of the Structure. In the event that Tenant's Antenna Facilities, and related equipment are not removed to the reasonable satisfaction of the Landlord, they shall be deemed abandoned and become the property of the Landlord and Tenant shall have no further rights thereto.

## 11. **Tenant Interference.**

(a) With Structure. Tenant shall not interfere with landlord's use of the Structure and agrees to cease all such actions which unreasonably and materially interfere with landlord's use thereof no later than three business days after receipt of written notice of the interference from Landlord. In the event that Tenant's cessation of action is material to Tenant's use of the Leased Premises and such cessation frustrates Tenant's use of the Leased Premises, within Tenant's sole discretion, Tenant shall have the immediate right to terminate this Lease.

(b) With Higher Priority Users. If Tenant's Antenna Facilities cause impermissible interference with higher priority users as set forth in under Subparagraph 5(a) above or with pre-existing tenants, Tenant shall take all measures necessary to correct and eliminate the interference. If the interference cannot be eliminated within 48 hours after receiving Landlord's written notice of the interference, Tenant shall immediately cease operating its Antenna Facilities and shall not reactivate operation, except intermittent operation for the purpose of testing, until the interference has been eliminated. If the interference cannot be eliminated within 30 days after Tenant received Landlord's written notice, Landlord may at its option terminate this Lease immediately.

(c) Interference Study - New Occupants. Upon written notice by Landlord that it has a bona fide request from any other party to lease an area including or in close proximity to the Leased Premises ("Leased Premises Area"), Tenant agrees to provide Landlord, within sixty (60) days, the radio frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operational by Tenant on the Leased Premises at the time of such request. Landlord may then have an independent, registered professional engineer of Landlord's choosing perform the necessary interference studies to determine if the new applicant's frequencies will cause harmful radio interference to Tenant. Landlord shall require the new applicant to pay for such interference studies, unless the Landlord or other higher priority user requests the use. In that event, the Tenant and all other tenants occupying the Leased Premises Area shall pay for the necessary interference studies, pro rata.

(d) Interference - New Occupants. Landlord agrees that it will not grant a future lease in the Leased Premises Area to any party who is of equal or lower priority to Tenant, if such party's use is reasonably anticipated to interfere with Tenant's operation of its Antenna Facilities. Landlord agrees further that any future lease of the Leased Premises Area will prohibit a user of equal or lower priority from interfering with Tenant's Antenna Facilities. Landlord agrees that it will require any subsequent occupants of the Leased Premises Area of equal or lower priority to Tenant to provide Tenant these same assurances against interference. Landlord shall have the obligation to eliminate any interference with the operations of Tenant caused by such subsequent occupants. If such interference is not eliminated, Tenant shall have the right to terminate this lease or seek injunctive relief against the interfering occupant, at Tenant's expense.

12. **Assignment**. This Lease may not be sold, assigned, or transferred by Tenant without the written consent of the Landlord, such consent not to be unreasonably withheld.

13. **Miscellaneous Provisions**.

(a) Landlord warrants that it has full right, power, and authority to execute this agreement. Landlord covenants that Tenants, in paying rent and performing the covenants by it herein made, shall and may peacefully and quietly have, hold, and enjoy the leased property.

(b) Tenant's obligations hereunder shall be contingent upon Tenant's ability to use the premises for the purpose described in Paragraph (6) above, including but not limited to receipt of all necessary easements, permits, zoning approvals, and regulatory approvals.

(c) Tenant shall obtain all necessary governmental and regulatory approvals required for its occupation and use of the Premises, including but not limited to zoning changes, and shall be responsible for the cost of obtaining such approvals. The Landlord shall cooperate with the Tenant in obtaining such approvals.

(d) The provisions of this Lease shall bind and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns.

(e) This Lease contains the entire agreement of the parties with respect to any matter mentioned herein and supersedes any prior oral or written agreements.

(f) This Lease may be amended in writing only, signed by the parties in interest at the time of such amendment.

(g) No waiver by either party of any provision hereof shall be deemed a waiver of any other provision or of any prior or subsequent breach or any provision hereof.

(h) If any term or provision of this Lease is held to be invalid or unenforceable, such invalidity or unenforceability shall not be construed to affect any other provision of this Lease, and the remaining provision shall be enforceable in accordance with their terms.

(i) This agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

(j) If Tenant does not promptly vacate the premises at the end of the Lease term, such holding over shall be treated as creating a month to month tenancy.

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

BY: \_\_\_\_\_ BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_