

Sample Site Lease Agreement for Antenna on municipal water tower

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT (this “Lease”), made this _____ day of _____, 20____, between **City of _____** (“Landlord”), and _____, a _____ (“Tenant”).

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. **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** (the “**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 “**Premises**”).

2. **Term.** The term of this Lease shall be for _____ (__) years (the “**Term**”) commencing on the date of execution of this Lease, provided, however, that this Lease shall terminate on the effective date of the termination of the contractual arrangements between Tenant and _____ for Tenant’s provision of _____ service.

3. **Rental.** Tenant’s rental obligation during Term of this Lease consists of:

(a) Tenant’s obligation to reimburse Landlord for the attorney’s fees which Landlord incurs incident to the preparation and execution of this Lease 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 Lease and shall be paid to Landlord within thirty (30) days thereafter; and

(b) 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 Premises is expressly made contingent upon Tenant 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 in **Section 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 Premises with respect to the Tenant’s Permitted Use (defined below).

(b) **Interference Study.** Tenant must pay for the reasonable cost of a radio frequency interference study carried out by _____, showing that Tenant’s use of the Premises for the Permitted 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 by Tenant, Landlord may terminate this Lease immediately and refund the initial rental to Tenant.

(c) **Non-approval.** In the event that any application necessary under **Section 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 a governmental authority so that Tenant, in its sole discretion, will be unable to use the Premises for the Permitted Use, then 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 **Section 12(d)** below, upon such termination, this Lease shall become null and void and the parties shall have no further rights or obligations under this Lease.

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:

- (i) Landlord;
- (ii) Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the Landlord;
- (iii) Other governmental agencies where use is not related to public safety; and
- (iv) 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 Premises to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Premises.

(b) **Purposes.** Tenant shall use the Premises only for the purpose of installing, maintaining, and operating a Landlord-approved communications antenna facility, equipment, cabinets and an accessory building, (collectively, the "**Antenna Facilities**") and uses incidental thereto for providing radio and wireless telecommunication services which Tenant is legally authorized to provide (the "**Permitted Use**") and no other use. This Permitted Use shall be non-exclusive, and Landlord specifically reserves the right to allow the Premises to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Premises

(c) **Operation.** Tenant shall have the right, at its sole cost and expense, to operate and maintain the Antenna Facilities on the 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 in writing by Landlord, which approval shall not be unreasonably withheld. Any damage done to the 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 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 Premises, and secured by Tenant. If Tenant's Antenna Facilities are mounted on the Structure, then the Antenna Facilities 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 Antenna Facilities and all other equipment and improvements installed on the Premises, which show the actual location of all Antenna Facilities. Said drawings shall be accompanied by a complete and detailed inventory of the Antenna Facilities and all equipment, personal property actually placed on the Premises.

(f) **No Interference.** Tenant shall, at its own expense, maintain the Antenna Facilities and all equipment on or attached to the 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 other tenant using the Structure and shall not interfere with the working use of the Structure and the water storage facilities thereon or to be placed thereon by Landlord.

(g) **Access.** Tenant, at all times during the Term, shall have access to the 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 Premises, including painting or other maintenance of the Structure, that are caused by Tenant's occupancy of the 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 this 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 Structure 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 Premises, 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 Structure is damaged or destroyed by fire, winds, flood or other natural or man-made causes, Landlord shall have the option to repair or replace the Structure at its sole expense, or to terminate this Lease effective on the date of such damage or destruction. In the event Landlord elects to terminate this Lease, neither Tenant nor Landlord shall have any further obligations hereunder after the effective date of the termination. **If Landlord elects to repair or replace the Structure, 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 {IF THERE IS ANY RENT BESIDES COSTS}.**

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 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 days prior written notice to Tenant if its Council decides, for any reason, to redevelop the Premises in a manner inconsistent with continued use of the 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 Premises from any source, or factors relating to condition of the Premises;
- (vi) by Landlord if Landlord determines that a potential user with a higher priority under **Section 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 (1) year period after termination under this **Section 10(a)(vi)**, Landlord shall not lease the Premises to another party with equal or lesser priority for the same use as that of Tenant; or
- (vii) by Landlord if Landlord 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 under this 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 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) **Interference With the 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 Premises and such cessation frustrates Tenant's use of the Premises, within Tenant's sole discretion, Tenant shall have the immediate right to terminate this Lease.

(b) **Interference With Higher Priority Users.** If Tenant's Antenna Facilities cause impermissible interference with higher priority users as set forth in under **Section 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 Landlord has a bona fide request from any other party to lease an area including or in close proximity to the Premises ("**Premises Area**"), Tenant agrees to provide to 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 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 Premises Area shall pay for the necessary interference studies, pro rata.

(d) **Interference - New Occupants.** Landlord agrees that Landlord will not grant a future lease of space near the 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 by Landlord of space near the Premises Area will prohibit a user of equal or lower priority from interfering with Tenant's use of the Antenna Facilities. Landlord agrees that it will require any subsequent occupants of the 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 Lease. Landlord covenants that Tenant, in paying rent and performing the covenants required of Tenant in this Lease, shall and may peacefully and quietly have, hold, and enjoy the use of the Premises for the Permitted Use, subject to the terms of this Lease.

(b) Tenant's obligations hereunder shall be contingent upon Tenant's ability to use the Premises for the Permitted Use, 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 any required zoning changes, and shall be responsible for the cost of obtaining such approvals. Landlord agrees to cooperate with 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 Lease shall be governed by and construed in accordance with the laws of the State of _____.

(j) If Tenant does not promptly vacate the Premises and remove all of its property including, without limitation, the Antenna Facilities at the end of the Term, such holding over shall be treated as creating a month to month tenancy with additional rent payable by Tenant in the amount of \$2,000.00 per month.

(k) **OFAC.** Tenant warrants that Tenant is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation or orders are collectively called the "**Orders**"). Tenant warrants that neither Tenant nor any of its affiliates: (a) is listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or

terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the “**Lists**”); (b) is a Person (as defined in the Order) who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (c) is owned or controlled by (including without limitation by virtue of such Person being a director or owning voting shares or interests), or acts for or on behalf of, any person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders. The foregoing warranties will not apply with respect to the beneficiaries of any pension plan participating in Tenant.

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

LANDLORD:

_____, a _____

By: _____

Name: _____

Title: _____

TENANT:

_____, a _____

By: _____

Name: _____

Title: _____