

## SITE LEASE AGREEMENT

**THIS SITE LEASE AGREEMENT** ("Lease"), made this \_\_\_\_ day of \_\_\_\_\_, 2021, between City of Peoria, an Illinois Municipal Corporation ("Landlord"), and Peoria Public Schools District 150 and existing under the laws of Illinois.

### 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:
  - a. Landlord's Public Safety Communications Tower located at 3615 N Grand View Drive, Peoria, Illinois 61614 to attach Tenant's communications equipment to (the Leased Premises).
  - b. Tenant will obtain a non-exclusive easement from the landowner, Peoria Park District, for reasonable access thereto.
2. **Term.** The Term of this Lease Agreement shall be for five (5) years commencing on the date of execution of this Agreement.
3. **Rental.** Tenant's rental obligation during initial term of this Lease consists of:
  - a. Tenant's obligation to pay Landlord \$500.00 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 it obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. 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. 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or any certificate, permit, license, or approval issued to Tenant is cancelled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Tenant, in its sole discretion, will be unable to use the Leased Premises for its intended purposes, Tenant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. 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:
    - 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 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 and related equipment, 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. **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 other communications facilities thereon or to be placed thereon by Landlord.
  - f. **Access.** Tenant shall obtain a non-exclusive easement from the Peoria Park District to access the property. The negotiation and approval of any easement is exclusively between Tenant and the Peoria Park District. Tenant shall have the right to terminate this Lease if Tenant is unable to reasonably obtain an easement from the Peoria Park District. Upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other.
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.
  - 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.
- 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 - 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.

**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 (5) 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 Illinois.
- 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.

**City of Peoria, an Illinois Municipal Corporation**

By: 

Name: Patrick Clark

Title: City Manager

Date: 11/15/21

**Peoria Public Schools District 150**

By: 

Name: Gregory Wilson

Title: President

Date: 11/8/2021