

NOTICE TO BIDDERS
Town of Leesburg
BID No. 500610-FY15-04

Sealed bids will be received by the Town of Leesburg, Virginia for:

**LEASE OF MUNICIPAL LAND AND TANK SPACE AT
HOGBACK MOUNTAIN TANK SITE FOR
TELECOMMUNICATIONS ANTENNA AND EQUIPMENT
LOCATED AT 518 Clagett Street, SW, Leesburg, VA
Parcel No. 272-26-0489-000, Tax Map No. /48/N/9/////A/
LOUDOUN COUNTY, VIRGINIA**

OBTAINING BID DOCUMENTS: Interested bidders may obtain bid documents from the Town's bid board on the Town of Leesburg's website at www.leesburgva.gov.

SUBMISSION OF BIDS: The bid documents will consist of this Notice to Bidders, Instructions to Bidders, Specifications, Lease Agreement, Bid Forms and the required Affidavit. These documents must be completed (each blank must be filled in unless otherwise specified), signed and received by the Town of Leesburg, chief purchasing officer, 25 W. Market St., Leesburg, VA 20176 no later than 4:30 P.M. (EST) Tuesday, May 27, 2014. Bid documents must be delivered in a sealed envelope with the signature of a company officer across the envelope seal. Envelopes must be clearly marked: **BID NO. 500610-FY15-04: LEASE OF MUNICIPAL LAND AND TANK SPACE AT HOGBACK MOUNTAIN TANK SITE FOR TELECOMMUNICATIONS ANTENNA AND EQUIPMENT.**

BID OPENING: Bids will be publicly opened as soon after 7:30 p.m., depending on the Town council agenda. The Bid process will be conducted pursuant to section 15.2-2100 through 2105 of the Code of VA. Bids will be publicly opened and read aloud.

RENT, INITIAL TERM: The minimum (non- negotiable) bid per Antenna lease is **\$3500.00** per month. Any BID less than this minimum will be deemed non-responsive, and will not be considered.

TIE BIDS: In the event that two or more bidders bid the same amount (are tied) for the lease, the Evaluation Team will review the offers and determine which business, in his opinion, would be best suited to occupy the space.

NOTICE OF AWARD: Within a reasonable number of days following the bid opening, Town staff will review the high bidder's documents. The Lease will be awarded to the highest responsive, responsible bidder.

Notice of the award will be posted on the Town's Public Notice Board located at 25 W. Market St., Leesburg, VA 20176.

QUESTIONS: Questions must be directed to the Chief Purchasing Officer, Kathy Elgin, at kelgin@leesburgva.gov. The subject line of the email must include **HOGBACK MOUNTAIN TANK SITE LEASE FOR TELECOMMUNICATIONS ANTENNA AND EQUIPMENT.**



TOWN OF LEESBURG, VIRGINIA BID No. 500610-FY15-04
LEASE OF MUNICIPAL LAND AND TANK SPACE AT
HOGBACK MOUNTAIN TANK SITE FOR
TELECOMMUNICATIONS ANTENNAS
LOCATED AT 518 CLAGETT STREET, SW, LEESBURG, VA
PARCEL No. 272-26-0489-000, TAX MAP No. /48/N/9/////A/
LOUDOUN COUNTY, VIRGINIA

Issue Date	May 2, 2014
Due Date:	May 27, 2014, 4:30 PM
Bid Opening	May 27, 2014, 7:30 PM
Contact:	Kathy S. Elgin, CPPO Chief Purchasing Officer Phone: 703-737-7176 Email: kelgin@leesburgva.gov

NOTICE OF ADDENDA: Any addenda to this BID will be posted on the Town's bid board and will only be emailed to those firms who have downloaded the BID from this site. It is the firm's responsibility to provide a correct email address, and to be aware of any addenda.

TABLE OF CONTENTS

Instructions to Bidders 3

Specifications 5

Attachment A - Lease Submission Form 7

Attachment B – Bid Pricing Form 8

Attachment B-2 – Non-Collusion Affidavit..... 9

Attachment C – Lease Agreement 10

 Exhibit 1 – Drawing depicting premises and Right of Way Area..... 31

 Exhibit 2 – Lessee’s Operating Licenses and Other Pertinent Licenses 32

 Exhibit 3 – Memorandum of Lease Agreement..... 33

 Exhibit 4 – List of Lessee’s Equipment on the Water Tower 37

 Exhibit 5 – Lessor’s Contact Persons for Access 38

INSTRUCTIONS TO BIDDERS

1. **SUBMISSION OF BID PROPOSAL** - The Town of Leesburg, Virginia, invites sealed bid proposals pursuant to the Notice to Bidders.
 - A. Sealed bids will be received by the chief purchasing officer until 4:30 p.m. at 25 West Market Street, Leesburg, VA 20176 and will be publicly opened as soon after 7:30 PM during the normal Town Council meeting as possible. See front page for the dates.
 - B. The bid proposal form shall be submitted, (1) in a sealed envelope; (2) addressed as required in the Instruction to Bidders; (3) bearing the name and address of the bidder written on the face of the envelope; (4) clearly marked "BID" with the bid number being bid.
 - C. It is the bidder's responsibility to see that bids are presented to the Town of Leesburg by the hour and at the place designated. Bids may be hand delivered or mailed; however, the Town disclaims any responsibility for bids forwarded by regular or overnight mail. Bids received after the designated time and date will be returned unopened.
 - D. Sealed bids forwarded to the Town before the time of opening of bids may be withdrawn upon written application of the bidder who shall be required to produce evidence showing the individual is or represents the principal or principals involved in the bid. Once bids have been opened, they must remain firm for a period of sixty days.
 - E. All prices and amounts must be written in ink or preferably typewritten. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind may be rejected by the Town. Any changes, white-outs, strikeouts, etc. on the proposal page must be initialed in ink by the person responsible for signing the bid.
 - F. Each bid proposal form must give the full business address of the bidder and be signed by an authorized representative. Bids by partnerships must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed in the legal name of the corporation, followed by the name of the state in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter. When requested, satisfactory evidence of the authority of the officer signing shall be furnished. Corporations organized in jurisdictions other than Virginia shall supply satisfactory evidence of authority to transact business and the name and address of a Virginia registered agent.
2. **BID SECURITY** - Accompanying each bid shall be a certified check, cashier's check or a bid bond in an amount equal to three months' rent payable unconditionally to the Town of Leesburg. When submitting a bid bond, it shall contain Power of Attorney for the full amount of the bid bond from a surety company authorized to do business in the Commonwealth of Virginia and acceptable to the Town. The check or bond of the unsuccessful bidders shall be returned at the completion of award of one or more leases pursuant to this bid package. The check or bond of the bidder to whom a contract is awarded shall be retained until the contract is executed and the required performance bond or other security is submitted. The check or bond of any successful bidder shall be forfeited if the bidder fails to enter into a lease pursuant to this bid package.

3. **BID DOCUMENTS** - The bid must be returned in its entirety in order to be considered for an award. Each bid must be accompanied by the items requested below in the form attached as Attachment B.

Failure to provide these items and the entire bid package may be cause for rejecting the bid.

1. Proposal Form
2. Non-collusion affidavit

4. **FAILURE TO ENTER INTO LEASE** - Should the successful bidder(s) fail to execute and deliver the lease and certificate of insurance within sixty days after receipt of written notification by the Town Administrator that the lease is ready for execution, the bidder shall forfeit to the Town as liquidated damages the bid guarantee deposited with its bid.
5. **RIGHT TO REJECT BIDS** - The Town reserves the right to reject any and all bids or parts thereof and to waive any informality if deemed in the best interests of the Town.
6. **FORM OF LEASE** - The proposed form of lease is attached as Attachment C. Bidders shall insert the amount of base rent proposed as part of its bid. If deemed by the Town, in its sole discretion, as material change(s) to the bid package, such proposed changes may be cause for rejection of the bid unless the bidder clearly acknowledges its willingness to enter the lease without such modifications.
7. **TERM OF CONTRACT** - The term of the lease shall be for a period of 5 years with the possibility of four 5 year extensions unless terminated by either Lessee or Lessor in accordance with the lease provisions.
8. **AWARD OF BID(S)** - Bidders are hereby notified and advised that the Town has invited bids that allow for co-location on the water tank premises.

Subject to the rights of any existing tenants and to the Town's, and conditioned upon all required governmental approvals, including zoning and engineering approvals, the highest responsive and responsible bidder, as tabulated by the Evaluation Team will be awarded the right to select its desired location on the tank(s) for its antenna array and ground facility. In the event of a tie in the bidding between two or more bidders, the order of priority between such bidders shall be determined by a coin toss made by the Chief Purchasing Officer.

9. **AWARD OF CONTRACT** - Award of the contract, if any, will be made within sixty days following the bid date, but shall be conditioned upon successful receipt by the bidder of all required approvals, including governmental approvals.

SPECIFICATIONS

The successful Lessee shall at its own cost and expense and in strict conformity with all applicable regulations and specifications, furnish all material, labor and equipment for the installation of the antenna array, cable connections and ground building.

The successful Lessee shall coordinate the location of its control building with the staff of Department of Utilities located such that its operation will in no way conflict with the operational activities of Town at this location.

The successful Lessee will be subject to strict guidelines as far as personnel access and maintenance of a secure site at all times. Town will coordinate and cooperate with all procedures with regards to security with the lessee.

The successful Lessee will be required to apply and obtain a zoning and building permits. Also required will be plan approval.

In the event that the subject water tower is destroyed or demolished, then the lease agreement shall terminate. If the demolition is voluntary by the Town, at least twelve months advance notice of demolition will be given to the Lessee.

All facilities constructed by the successful bidder shall be erected in accordance with all applicable municipal, state and Federal laws and regulations.

Access to the tank site and tank shall be maintained at all time for Town personnel.

Permission to use the access road shall be obtained by the Lessee.

The successful lessee will procure and maintain commercial general liability insurance as required by the lease throughout its term. Installation of equipment on the tank will require certification from a professional structural engineer registered and authorized to practice in commonwealth of Virginia.

The Town makes no representations regarding the status or condition of the facility. Bidders may contact Aref Etemadi, Assistant Director of Utilities to arrange for inspection of the site and to satisfy themselves as to its suitability for its proposed use.

The successful Lessee will comply with EPA, OSHA, and FCC requirements to ensure Town staff will not be exposed to unsafe RF fields.

The successful Lessee will provide an OSHA required site-specific RF Safety Program to the Town.

The Town will not allow welding on the tank structure. All conduits and antenna infrastructure will be attached with Magna-Mounts.

All cable will be installed in threaded galvanized steel conduit attached to tank structure with Magna-Mounts.

Antenna infrastructure will not be installed at any tank structure location which will hinder access by the Town. All antenna infrastructures will be coated with Tnemec Clover E-N07 to match existing color.

The successful Lessee will provide and install a 4-foot personnel gate to access and service Lessee equipment.

Building specifications

1. The control building for use by the cell service providers shall be located in the general area shown on the site plan.
2. The location of the building is subject to approval by the Town zoning department. Lessee shall inform themselves with all necessary approvals prior to bidding.
3. The control building shall be constructed of concrete brick imprint walls matching the existing building at the tank site as manufactured by Smith-Midland Company. Color shall be stained red brick matching existing building.

Underground Utilities

1. All conduits (Schedule 40) shall be located underground to and from the tank and building.
2. Hand-holes shall be installed as required by code.
3. The power and phone service to the building shall be coordinated by the applicant through a separate meter.
4. All conduits shall be encased in concrete and be at depth of no less than 2' from the finished grade.
5. Crossing of conduits with Town's utilities shall occur at 90 degree where possible. Paralleling conduits on top of town's utilities will not be allowed.
6. Easements for all underground utility conduits will be procured by the Lessee.

Restoration

1. All disturbed areas will be graded and seeded/sodded and returned to their original conditions.
2. Contractor shall record the conditions of the access road by taking pre and post photographs. All such damages to the pavements must be repaired to match the existing pavement section.
3. Contractor will be required to provide their lock for the gate during construction (double lock the gate).

BID FORM -

LEASE SUBMISSION FORM

SECTION I – COMPANY IDENTIFICATION AND OWNERSHIP DISCLOSURE

Company _____
 Address _____
 Contact Person _____ Title _____
 Telephone No. _____ Fax No. _____ Email _____
 Organized under the laws of the State of _____
 Principal place of business at _____
 Federal Id Number _____ Registered Agent _____

Following are the names and addresses of all persons having ownership of 3% or more in the company (attach more sheets if necessary):

Name	Address
_____	_____
_____	_____
_____	_____

The Town of Leesburg requests, as a matter of policy, that any consultant or firm receiving a contract of award resulting from a formal solicitation issued by the Town shall make certification as specified below. Receipt of such certification, shall be a prerequisite to the award of contract and payment thereof.

SECTION II – EMPLOYEES NOT TO BENEFIT - I (we) hereby certify that if the contract is awarded to our firm, partnership, or corporation, that no employee of the Town of Leesburg, or members of his/her immediate family, including spouse, parents or children has received or been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder’s fee, political contribution or any similar form of remuneration on account of the act of awarding and/or executing this contract.

SECTION III – CONFLICTS OF INTEREST - This solicitation is subject to the provisions of VA Code Ann. Section 2.1-639.2 et seq., the State and Local Government Conflict of Interests Act. The Offeror [] is [] is not aware of any information bearing on the existence of any potential organizational conflict of interest.

SECTION IV – COLLUSION - I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same services, materials, supplies, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the State and federal law and can result in fines, prison sentences, and civil damage awards. I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of this RFP and certify that I am authorized to sign for my company.

Signature _____ Date _____
 Name (Printed) _____ Title _____

OFFEROR MUST RETURN THIS FORM WITH PROPOSAL

ATTACHMENT B

BID No. 500610-FY15-04

**LEASE OF MUNICIPAL WATER TOWER SPACE FOR
TELECOMMUNICATIONS ANTENNAS
LOCATED AT 518 CLAGETT STREET, LEESBURG, VA
PARCEL No. 272-26-0489-000, TAX MAP No. /48/N/9/////A/**

LOUDOUN COUNTY, VIRGINIA

The firm of _____ (Bidder)
submits a binding bid for consideration of Bid No 500610-FY15-04 for an annual rent
during the initial term for each year at \$_____ per year, subject to a
minimum of 3% escalation on each anniversary of the Commencement Date.

Signed by Authorizing Person for Bidder _____

Typed _____
(Name) (Position)

Witnessed by: _____

Typed _____
(Name) (Position or Notary)

NON-COLLUSION AFFIDAVIT

State of _____)
)SS:
County of _____)

I, _____ (“Affiant”), residing in _____, in the County of _____, and State of _____, being of full age and duly sworn according to law on my oath depose and say that:

I am _____ of the firm of _____, the bidder making this Proposal for the bid proposal entitled Leasing Space for Cellular Antennas on Municipal Water Towers Located at (the “Project”), Bid No. _____, and that I executed the said proposal with full authority to do so, that this bidder has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action or non-action in restraint of free, competitive bidding in connection with the above named Project; and that all statements contained in the said proposal and in this affidavit are true and correct, and made with full knowledge that the Town of Leesburg relies upon the truth of the statements contained in the said proposal and in the statements contained in this affidavit in awarding the contract for the said Project.

I further warrant that no person or selling agency has been employed or retained by this bidder to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by _____.

AFFIANT

Subscribed and sworn
Before me this _____ day
of _____, 2014.

Notary Public

My Commission expires:_____

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Agreement”), made this _____ day of _____, 2014, between The Town of Leesburg, a municipal corporation of the State of Virginia with its principal mailing address of 25 W. Market Street, Leesburg, Virginia 20176, hereinafter designated “Lessor” and _____ with its principal offices at hereinafter designated ‘Lessee”. The Lessor and Lessee are at times collectively referred to hereinafter as the “Parties” or individually as the “Party”.

WITNESSETH:

WHEREAS, Lessor is the owner of that certain real property located at the end of Clagett St. SW, Leesburg, VA, identified as Parcel ”A” on that certain plat dated 17 August 1973 of Section 4, Leesburg Country Club recorded in the Clerk’s Office of the Circuit Court of Loudoun County, Virginia, in Plat Book 14, Page 11, upon which, among other things, is a water tower owned by Lessor (the “Water Tower”); and

WHEREAS, Lessee desires to locate certain communications equipment on space on the Water Tower and to use a portion of the Property, consisting of approximately three hundred (300-500) square feet of ground space for placement of Lessee’s equipment structure for related purposes, together with rights-of-way for access thereto and for utilities and related services (such space on the Water Tower, land area and right-of-way being collectively referred to herein as the “Premises”); and

WHEREAS, Lessor has determined that leasing a portion of the Property will not interfere with the public needs of Lessor’s operations at the Property but will benefit both by defraying a part of the cost of operating Lessor’s facility at the Property.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and conditions set forth herein (including the foregoing recitals, which are a material part of this Agreement and not mere prefatory language, and are herein fully incorporated by this reference), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Lease.**
 - (a) Lessor hereby leases to Lessee (a) a portion of that certain space on the Water Tower, located at the end of Clagett Rd. SW Leesburg, in Loudoun County, Virginia 20175 (Parcel ”A” on that certain plat dated 17 August 1973 of Section 4, Leesburg Country Club recorded in the Clerk’s Office of the Circuit Court of Loudoun County, Virginia, in Plat Book 14, Page 11 (the entirety of Lessor’s property is referred to hereinafter as the “Property”); together with (b) space on the Water Tower necessary to

maintain Lessee's vertical and horizontal separation requirements; together with (c) the non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, (with reasonable notice to the Town's designated contact, such notice to be given as practicable in the event of an emergency) on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a right-of-way extending from the nearest public **right-of-way** to the demised premises and identified as "Ex. Ingress-egress easement" on **Exhibit 1 Part 1** and **Exhibit 1 Part 2**; together with (d) all of the following:

- (i) Approximately 300 to 500 square feet of ground space located within the fenced compound at the Property as shown on **Exhibit 1** hereto for installation of a control building and a generator pad. Use of these pads shall be limited to the installations and purposes detailed on **Exhibit 1 Part 2** and **Exhibit 1 Part 3** hereto and any approved revisions thereto;
 - (ii) The space to run electrical cable from the main electrical feed point to Lessee's transmitter/receiver base station(s), together with access to Lessor's electrical wiring infrastructure so that Lessee can install an electric or sub-meter direct from the utility company and the electric circuit(s) serving Lessee's equipment;
 - (iii) The space for phone lines, with the necessary telephone blocks and the space to route these telephone lines from their demarcation point to Lessee's transmitter/receiver base station(s); and
 - (iv) The space to run cable, including but not limited to phone lines, electrical cable, and coaxial cable, from the cable's source point to Lessee's transmitter/receiver base station(s), and its antenna systems. Lessor agrees to grant to Lessee or to the utility companies as Lessee may designate, a utilities path necessary to serve Lessee's equipment.
- (b) Lessee shall have the right to survey the Property, the Premises and the Right of Way Area, and said survey shall then become **Exhibit 1 Part 1** which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and **Exhibit 1 Part 1**. Cost for such survey shall be borne by Lessee.

2. **Term.**

- (a) This Agreement shall be effective as of the date of execution by both parties, provided, however, the initial term shall be for 5 years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and will be due at an annual rental

rate of _____ Dollars (\$ _____) for the first year, increasing by three percent (3%) on each anniversary of the Commencement Date, to be paid in equal monthly installments on the fifth day of the month, in advance. The initial term shall commence on the first day of the month following the date Lessee obtains a building permit authorizing installation of its equipment on the Premises (the "Commencement Date"). Lessor and Lessee agree that they shall acknowledge the Commencement Date in writing (which may be by exchange of emails) (the "Commencement Acknowledgement"). Lessor and Lessee acknowledge and agree that initial rental payment(s) shall not actually be sent by Lessee until thirty (30) days after the Commencement Acknowledgement. By way of illustration of the preceding sentence, if the Commencement Date is January 1 and the Commencement Acknowledgement is dated January 14, Lessee shall send to Lessor the rental payments for January 1 and February 1 by February 13. The foregoing notwithstanding, if the Lessee fails to obtain a building permit within 120 days of approval of this Agreement by Lessor, or of approval of a Special Use Permit by Lessor's Town Council, whichever occurs later, then upon 45 days written notice, Lessor may terminate this Agreement unless within the notice period Lessee tenders its initial rental payment and thereafter pays rent in accordance with the terms of this Agreement.

- (b) This Agreement shall automatically be extended at the end of the initial and subsequent renewal term for up to 4 additional 5 year terms unless either Lessee or Lessor terminates it at the end of the then current term by giving the other party written notice of the intent to terminate at least six (6) months prior to the end of the then current term.
- (c) During the Term, but subject to Lessee's substantial compliance with such reasonable regulations regarding access to the Property as Lessor may promulgate from time to time (and which are applicable to all tenants, occupants and users of the Property and shall not be revised in a manner which unduly frustrates the purposes of this Agreement), Lessee's employees, agents, contractors, subcontractors, lenders and invitees (collectively, "agents") shall have access to the Premises, for any purpose related to Lessee's communications facility, twenty-four (24) hours a day, seven (7) days a week, at no additional charge in accordance with the provisions of this Paragraph (with reasonable notice to the Town's contact). Lessor will at all times during the term of this Lease provide Lessee with the name and telephone number of the person responsible for giving Lessee access to the Site. The current name(s) and phone number(s) are set forth on **Exhibit 5**. Lessor shall provide Lessee with a key granting Lessee access to the grounds and Lessee's equipment. Access to the Water Tower shall be allowed as provided in Paragraph 4(f) of this Agreement.

- (d) All charges payable under this Agreement such as utilities and taxes shall be billed by Lessor within the statute of limitations; any charges beyond such period shall not be billed by Lessor, and shall not be payable by Lessee. The foregoing shall not apply to monthly rent which is due and payable without a requirement that it be billed by Lessor. The provisions of this subsection shall survive the termination or expiration of this Agreement.

3. **Rent.**

- (a) **Rental Payments.** (i) During the Initial Term, Lessee shall pay directly to Lessor, the monthly rental (“Rent”) set forth in Section 2(a), above. Partial months at the beginning and end of the Term will be prorated, in advance. Subject to the provisions of Paragraph 4(b) hereof, the Rent is exclusive of charges for the furnishing of electricity to Lessee. Lessee will install a separate metering system and is responsible for its electrical costs relating to its use of the site.

(ii) The annual rental for each year of the Term (as hereinafter defined shall increase on each anniversary of the Commencement Date by three percent (3%) above the annual rental payable with respect to the immediately preceding year. The initial term and all extensions shall be collectively referred to herein as the "Term".

- (b) **Late Payments.** If Lessee fails to pay to Lessor any Rent, additional fees or other payments as hereinafter provided, within ten (10) calendar days after notice from Lessor of such failure, Lessee shall pay to Lessor, as an additional fee, a late payment fee equal to five (5%) percent of such delinquent payment for each and every month or part thereof that such payment remains unpaid or not paid in full.
- (c) **Address for Payments.** All sums payable hereunder by Lessee shall be payable to Lessor at: Town, or to such other person or address that Lessor shall designate in writing at least thirty (30) days in advance of any Rent payment date.

4. **Compliance with Laws and Lessor’s Requirements.**

- (a) Lessee shall operate and maintain the Premises (exclusive of the Right of Way Area) during the Term in compliance with all present and future applicable laws, statutes and regulations imposed by any local, state, or Federal authority having jurisdiction with respect thereto (including, without limitation, the rules and regulations of the Federal Communications Commission (the “FCC”) and the Federal Aviation Administration (the “FAA”) (collectively, “Regulations”). Lessor agrees

to cooperate with Lessee in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises. Lessee shall attach as **Exhibit 2** to this Lease, copies of all FCC operating licenses and copies of other licenses which it has been issued pertinent to this Lease. Lessee has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Lessee or Lessor. Lessee will be allowed to make such alterations to the Property in order to ensure that Lessee's equipment complies with all applicable federal, state or local laws, rules or regulations. Prior to construction of the Equipment Shelter(s), and any installations in the Right of Way Area, or any modifications or changes thereto ("Work"), if any, Lessee and Lessor shall comply with the following:

- (i) Lessee shall submit detailed plans and specifications for Lessee's contemplated Work for Lessor's reasonable approval at the address given in Paragraph 3(c), above (when approved, the "Approved Plans"). Lessee shall have a reputable water tank contractor complete a structural stability analysis of the water tank based on the proposed antenna size, location and method of attachment. Structural stability analysis must be signed and sealed by a registered Professional Engineer in the State of Virginia. Lessee shall cooperate in all respects with Lessor's reasonable requests for applicable documentation in connection with this Paragraph 4(a)(i).
- (ii) Prior to commencement of any Work, Lessee shall obtain Lessor's prior written approval and the required approvals of all applicable federal, state and local agencies. Lessee shall promptly deliver to Lessor copies of any written evidence Lessee receives of its compliance with all applicable Regulations in connection with Lessee's contemplated Work, and Lessor agrees that copies of building permit(s) will satisfy the conditions of this sentence. Notwithstanding anything to the contrary in this Agreement, Lessee may make like-kind exchanges and replacements of equipment throughout the Term without Lessor's approval.
- (iii) Lessee's Work shall be completed substantially in accordance with the Approved Plans, with exception for minor, non-material deviations as are required by site conditions. Lessee's Equipment shall not cause material interference that is measurable by applicable industry standards to radio frequencies of any incumbent telecommunications equipment located on the Property as of the Commencement Date. Lessee's Work and installation of

equipment shall be in compliance with all applicable regulations, including but not limited to zoning, FAA and FCC specifications. Lessee shall be entitled to install on the Water Tower, as part of Lessee's Work, the equipment listed on **Exhibit 4** to this Lease. In connection with Lessee's Work completed in accordance with the first set of Approved Plans, Lessee will employ the services of a reputable water tank contractor approved by Lessor at Lessee's expense to inspect the proposed welding, structural stability of the water tank, flush the water tank, disinfect the water tank, sample the water tank for bacteriological quality, fill the tank and inspect paint job and submit such certification to the Lessor for their records. Certification must be signed and sealed by a registered Professional Engineer in the State of Virginia.

- (iv) Prior to commencement of any Work, Lessee shall review with Lessor's project manager the known locations, if any, of existing substances or materials that are defined as hazardous by any applicable local, state or federal law, regulation or directive ("Hazardous Material") on the Property, that may affect Lessee's Work. If Lessee encounters Hazardous Material (other than as identified by Lessor as required in the preceding sentence) on the Property during the course of Lessee's Work, Lessee shall immediately stop Work and contact Lessor's project manager (as designated in writing by Lessor) if Lessee is unable to contact Lessor within four (4) hours of encountering such Hazardous Material. Lessee shall thenceforth follow all of Lessor's reasonable instructions with respect to such Hazardous Material. Lessor shall use reasonable efforts to remediate the Hazardous Material, at its cost. Lessee shall not re-commence Work until notified that it may do so by Lessor, such authorization to re-commence Work not to be unreasonably delayed, conditioned or withheld. If notice of such authorization is not given within thirty (30) days of Lessee's ceasing Work, Lessee shall, in addition to any other rights available under this Agreement, at law and/or at equity, have the right to terminate this Agreement upon written notice to Lessor or to relocate to an alternate location on the Property and/or the Water Tower, as applicable, promptly selected by Lessor but reasonably acceptable to Lessee. If, in Lessor's reasonable discretion, continuation of Lessee's Work may (i) violate applicable law regarding the management, transport, disposal or other activity with respect to Hazardous Material; (ii) pose an additional threat to the health, safety or welfare of persons on the Property and permitted by Lessee to be on the Premises; or (iii) impose additional, adverse legal liability upon Lessor, then, at Lessor's election, Lessor shall either relocate the Premises to an alternate location selected by Lessor but reasonably acceptable to Lessee,

or, if such relocation is impracticable, Lessor shall have the right to require Lessee to cease all Work until such time as Lessor's concerns are addressed in a manner approved by Lessor.

- (v) Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Without having any duty of inspection or research, Lessor represents to the best of its actual knowledge (i) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Property in violation of any law or regulation, and (ii) that Lessor will not, and will not permit any third party to use, generate, store, or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. Notwithstanding anything to the contrary in this Section 4(a)(v), each of the party's indemnification obligations shall be only to the extent permissible under law.
- (b) If Lessee requires an electric power (and/or other utility) supply and/or usage for the operation of its communications facilities, Lessee at its sole cost and expense shall obtain such power supply. Any work performed in connection with this subparagraph (b) shall comply with provisions of subparagraph (a) hereof. In connection therewith, Lessor agrees to sign, or cause to be signed, such documents or easements as may be required by any servicing utility company to provide such power supply to the Premises, including the grant to Lessee, or to the servicing utility company, at no cost to Lessee, of an easement in, over, across, or through the Property as required by such servicing utility company to provide utility services as provided herein.
- (c) As security for the performance of its obligations hereunder, Lessee shall post a bond in the amount of in an amount equal to three months' rent, which may be a certified check, cashier's check or a bid bond. In the event that there shall be no material default by Lessee prior thereto, Lessor shall reasonably cooperate and take all necessary or appropriate action to release such bond at the expiration or sooner termination of the term of this Agreement.

- (d) In any case where the approval or consent of Lessor is required, requested, or otherwise to be given under this Agreement, such approval or consent shall not be unreasonably delayed, conditioned or withheld.
- (e) In addition to any other rights of termination created by this Agreement, Lessee shall have the right to terminate this Agreement upon thirty (30) days written notice if (i) due to no act or omission of Lessee, Lessee does not obtain or maintain any license, permit, or other approval necessary for the construction and/or operation of the Equipment Shelter and Lessee's Equipment; or (ii) due to no act or omission of Lessee, Lessee is unable to occupy or utilize the Premises due to an action of the FCC, including without limitation, a take-back of channels or change in frequencies; or (iii) Lessee determines that the Premises is not appropriate for its operations for technological reasons, including, without limitation, signal interference, due to no act or omission of Lessee; or (iv) for any reason or for no reason, provided Lessee delivers written notice of such termination pursuant to this clause (iv) to Lessor no later than thirty (30) days prior to the Commencement Date.
- (f) Provisions Regarding Water Tower.
 - (i) Lessor agrees that Lessee shall have free access to the Water Tower at all times for the purpose of installing and maintaining Lessee's equipment thereon. Lessor shall furnish Lessee with necessary means of access for the purposes of ingress and egress to the site and the Water Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Lessee or persons under their direct supervision will be permitted to enter said premises. Access shall be conditioned in accordance with Lessor's adopted policies requiring proper identification of any person gaining access to the Property. No prior notice shall be required for access sought as provided in a maintenance schedule approved by Lessor; otherwise access shall be granted only after 24 hours' notice for non-emergency and 3 hours' notice for emergency maintenance or repair purposes and only under the supervision by Lessor's employee or agent.
 - (ii) Lessor acknowledges that it is obligated to keep the Water Tower in good repair as required by all applicable federal, state, county and local laws. Lessor shall also comply with all applicable rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers. Except as expressly provided otherwise elsewhere in this agreement, nothing herein is intended to or shall be deemed to create a contractual duty by the Lessor to maintain the Water Tower for the benefit of Lessee. In the event that Lessor must

undertake repair or maintenance on the water or sewer facilities adjacent to the Lessee's structure and/or facilities, any reasonable additional costs for the project necessitated by the placement of Lessee's structures and/or facilities, including but not limited to additional shoring, sheeting, or other trench reinforcement, shall be paid for by Lessee.

Lessor and Lessee agree that the Lessor may need to maintain the tank during the term of the Lease, including but not limited to painting. Lessor shall give Lessee six (6) months notice or less if the parties agree of any planned maintenance which may interrupt Lessee's operations and permit Lessee to install a temporary facility for the duration of the interruption. The Lessee further agrees to pay the additional cost to Lessor of painting and maintaining such water tank with the antennas and equipment of Lessee present on such tank, and for any increased cost of painting or maintaining the tank resulting from the location of Lessee's equipment on or near the tank.

Removal of Lessee's equipment from the water tank for maintenance and repairs shall be at Lessee's cost.

- (iii) No material may be used in the installation of Lessee's equipment or transmission lines that will cause corrosion or rust or deterioration of the Water Tower structure or its appurtenances. All antennas on the Water Tower must be identified by a marking fastened securely to the bracket(s) therefore on the Water Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

5. **Interference.**

- (a) Lessee agrees to install equipment of the type and frequency which will not cause material interference which is measurable in accordance with then existing industry standards ("Interference") to any equipment of Lessor or other lessees of the Property which existed on the Property or was approved for installation and for which Lessor had executed a lease prior to the date this Agreement is executed by the Parties as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations, provided that prior to Lessee's installation Lessor provides Lessee with sufficient information as to such equipment approved for installation but not yet installed. In the event any after-installed Lessee's equipment causes such Interference, and after Lessor has notified Lessee in writing of such Interference, Lessee will take all commercially reasonable steps necessary to correct and eliminate the Interference.

Lessee agrees that it will, in the event that such interference cannot otherwise be remedied within seventy-two (72) hours after notice from Lessor, at the end of the seventy-two (72) hour notice period it will power down the equipment causing such interference (except for intermittent testing) until such interference can be remedied. In no event will Lessor be entitled to terminate this Agreement or relocate the equipment as long as Lessee is making a good faith effort to remedy the Interference issue. Lessor agrees that Lessor and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause Interference to the then existing equipment of Lessee. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance. The foregoing provisions notwithstanding, nothing herein is intended or will be construed to make Lessor the guarantor of any third party's performance.

- (b) Subsequent to the installation of Lessee's Equipment, Lessor shall not permit itself, any of its tenants, agents or Lessees to install new equipment on the Property or property contiguous thereto owned or controlled by Lessor, if such equipment would cause Interference with Lessee's operations. Such Interference shall be deemed a material breach by Lessor. If Interference occurs, Lessor agrees, upon request by Lessee, to take all action reasonably necessary to eliminate such Interference, in a reasonable time period, not later than fifteen (15) business days after notice from Lessee. If Lessor fails to comply with this paragraph, Lessee may terminate this Agreement, and/or pursue any other remedies available under this Agreement, at law, and/or in equity. The foregoing provisions notwithstanding, nothing herein is intended or will be construed to make Lessor the guarantor of any third party's performance.
- (c) Prior to installation of Lessee's Equipment, Lessor may require that an intermodulation study be performed at Lessee's sole cost and expense, prior to the Commencement Date, and Lessee also agrees to share results of said study with Lessor.
- (d) If required to remedy Interference by Lessee as described in paragraph 5(a), above, Lessor reserves the right to require Lessee to relocate Lessee's Equipment (or a portion of Lessee's Equipment) to an alternate location designated by Lessor. Lessee shall remove and relocate Lessee's Equipment at its sole cost and expense within ten (10) calendar days of Lessor's directive, if Lessee's Equipment is a source of Interference to the pre-existing equipment of other wireless operators. If Lessee fails to complete such relocation to Lessor's reasonable satisfaction, then Lessor may require Lessee to power down and cease transmissions from Lessee's

interfering equipment until such time as the Interference is resolved in a manner reasonably approved by Lessor.

- (e) If required to remedy interference to Lessee as described in Paragraph 5(b) above, and a relocation of the interfering party is not possible, Lessor may request Lessee to relocate Lessee's Equipment (or a portion of Lessee's Equipment) to an alternate location designated by Lessor, at Lessor's cost and expense.
- (f) Lessee is aware of its obligation to comply with all applicable rules and regulations of the FCC and other applicable rules and/or regulations of any other federal or state agency (to the extent any state law is not preempted by federal requirements) having jurisdiction over the installation, operations and maintenance of Lessee's Equipment. Lessee agrees to be solely responsible for compliance with all applicable FCC and other governmental requirements with respect to installation, operation and maintenance of Lessee's Equipment and for repairs to Lessee's Equipment.

6. **Lessee's Maintenance Obligations.**

- (a) Prior to the commencement date, Lessee shall inspect those portions of the Premises over which it will have exclusive control and may designate in writing any reasonable repairs Lessor must accomplish prior to taking possession. The fact of Lessee taking possession under this lease shall conclusively demonstrate that Lessor has met all obligations of the foregoing sentence. Thereafter, Lessee, at its sole cost and expense (except as provided herein to the contrary), shall be responsible for the maintenance of Lessee's Equipment and the Equipment Shelter(s) and shall keep any part of its Premises over which Lessee has exclusive control neat and clean, in accordance with all laws and regulations applicable to Lessee's use thereof and this Agreement. Lessee shall also remedy any damage and remove any trash from any of the Property left by Lessee or any of its contractors, employees or agents. Lessee shall not create any nuisance in violation of applicable laws, unreasonably interfere with, or unreasonably disturb any other lessee of other parts of the Property (subject to the provisions hereof relating to Interference with equipment installations), or Lessor. Lessee shall be solely responsible for securing the safety and security of Lessee's Equipment. Prior to the execution of this Agreement, Lessee has undertaken such studies and inspections so as to satisfy itself that the Water Tower is of such construction and condition as to permit Lessee to enter upon the Premises for the purposes of the operations authorized hereunder. The parties agree that by signature hereto, Lessor assumes no contractual duty to Lessee to maintain the Water Tower or Property except for remedying conditions caused by Lessor or its authorized employees or agents that materially

affect Lessee's ability to occupy and use the Premises for the purposes of this Agreement and then only to the extent of returning the Property to same or equivalent condition as the date of this Agreement; however, the foregoing shall not affect Lessor's acknowledgement of its obligations under applicable laws as set forth in Paragraph 4(f)(ii) above. Lessor shall have no obligation to obtain or maintain any license, permit or other approval of any federal, state or local agency having jurisdiction solely as a result of Lessee's use of the Premises as a communications facility. Lessor shall have no obligation to maintain or insure Lessee's Equipment, and Lessee shall have no obligation to maintain or insure any equipment or property of Lessor. All maintenance work required of Lessee hereunder shall be performed by licensed contractors, previously approved in writing by Lessor, such approvals not to be unreasonably withheld, delayed or conditioned.

If Lessee, in its reasonable opinion, determines that any repairs to the Water Tower are necessary due to Lessor's failure to maintain the Water Tower as provided above, Lessee shall advise Lessor thereof and shall provide information in reasonable detail with respect to the need for such repairs. Provided that Lessor has approved such repairs, which approval will not be unreasonably withheld, Lessor shall cause such repairs to be made at Lessor's cost within thirty (30) days after approval of such repairs, or if necessary such longer time as may be reasonably required for completion of such repairs.

- (b) Lessor shall be responsible for compliance with all marking and lighting requirements of the FAA and FCC other than those necessitated because of Lessee's Equipment. Lessee shall be solely responsible for compliance with all FAA and FCC requirements, and all requirements under applicable laws, with respect to Lessee's Equipment.
- (c) Lessee, upon termination of this Agreement, shall, within ninety (90) days, remove its Equipment Shelter(s), its equipment on the Water Tower, fixtures and all personal property and otherwise restore the Premises to its original condition, reasonable wear and tear excepted. Lessor agrees and acknowledges that all of the equipment, fixtures and personal property of Lessee shall remain the personal property of Lessee and Lessee shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. If such time for removal causes Lessee to remain on the Premises after termination of this Agreement, Lessee shall pay the Rent at the then existing monthly rate until such time as the removal of the Equipment Shelter(s), equipment, fixtures and all personal property are completed.

7. **Indemnification.**

- (a) Lessee agrees to indemnify, defend and hold Lessor harmless from any and all loss, damage or liability and from all costs for any such loss or damage to Lessor's facilities or equipment located on the Property that occur as a result of Lessee's Work or Lessee's Equipment, and from any and all third party claims, actions, judgments, causes of action (and any damages resulting therefrom) proximately arising out of Lessee's activities on the Property, except if due to the negligence or misconduct of Lessor or due to the presence or operation of Lessor's Equipment. Lessee hereby assumes the risk of the inability to operate as a result of any structural or power failures at the Property unless the same is due to any act or omission of Lessor.
- (b) Lessee agrees to indemnify and save Lessor harmless from and against any and all third party claims and any loss, costs, liabilities, damages, judgments, and expenses (including attorneys' fees) arising from such third party claims, resulting from bodily injury or death of any person or property damage to any property sustained by any person, provided such third party claims are proximately arising from Lessee's or Lessee's contractors', agents', invitees', servants' or employees' operations at the Property including, but not limited to, the installation, removal and maintenance of Lessee's Equipment, except if due to the negligence or misconduct of Lessor.
- (c) Lessor shall be entitled to recover from Lessee its actual, direct damages under the foregoing indemnities, and each party shall be entitled to recover from the other party its actual, direct damages for any breach of this Lease or other act or omission of such party (subject to any applicable sovereign immunity), but neither party shall be entitled to recover from the other party any special, incidental, indirect or consequential or punitive damages, or to recover for any lost revenue, lost profits, loss of technology, rights or services, loss of data or interruption or loss of use of service, in any case or controversy however arising, even if such party has been advised of the possibility of such damages, and whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

8. **Casualty and Condemnation.**

- (a) Lessor will provide notice to Lessee of any casualty or other harm affecting the Property within a reasonable period of time following the casualty or other harm. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Right of Way Area is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may at any time following such fire or other casualty, provided Lessor has not completed the restoration or alternative means of

access required to permit Lessee to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days written notice to Lessor. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, provided that the casualty was not caused by the acts or omissions of Lessee, all Rent shall abate during the period following such fire or other casualty in proportion to the degree to which Lessee's use of the Premises is impaired, until the time repairs are complete and Lessee is able to use the Premises in accordance with its intended purposes. Lessor agrees to permit Lessee to place temporary transmission and reception facilities on the Property, but only until such time as Lessee is able to activate a replacement transmission facility at another location or Lessor completes restoration of the Property.

- (b) In the event Lessor receives notification of any condemnation proceedings affecting the Property, Lessor will provide notice of the proceeding to Lessee in accordance with statutory law. If any governmental, public body or other condemning authority takes, or if Lessor transfers in lieu of such taking, all or part of the Premises, then Lessee may elect to (i) terminate this Agreement, effective on the date that title vests in the condemning authority, or (ii) relocate to an alternative location on the Property, reasonably acceptable to Lessor, for the Equipment Shelter(s) and Lessee's Equipment. Lessee shall provide written notice of its election within thirty (30) days after receiving actual notice of a taking. Lessee can pursue its own separate award in accordance with applicable state law.

9. **Insurance**

- (a) The parties each agree to provide the other with 30 days prior written notice of any cancellation of any applicable liability insurance policy required by this Agreement which is not replaced. To the extent liability attaches, Lessor and Lessee each agree to be responsible for the acts or omissions of its officers, employees and agents arising out of their job duties; provided, however, that neither sovereign immunity nor any other applicable defense is waived by this Agreement and the applicable insurance coverage. This Agreement is not intended to benefit or create rights in any third party.
- (b) Lessor and Lessee each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than \$2,000,000.00 for injury to or death of one or more persons in any occurrence and \$2,000,000 for damage or destruction to property in any

one occurrence. Lessor and Lessee each agree that it will include the other Party as an additional insured.

- (c) Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for Lessee, or failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve Lessee from any obligations under this Agreement.

10. **Taxes.** Lessee hereby acknowledges that personal property taxes may be assessed against Lessee's Equipment by the taxing authority. Lessee agrees to promptly pay any and all personal property tax assessed against Lessee's Equipment, or to promptly reimburse Lessor on presentation of documentation of such taxes.

11. **Notices.** All notices required to be given hereunder shall be given in writing either by an overnight courier, or certified or registered mail at the following addresses or at such other address as may be designated in writing by either Party:

If to Lessor: John Wells, Town Manager
25 W. Market St.

Leesburg, VA 20176

With copy to:

Jeanette A. Irby, Town Attorney
25 W. Market St.

Leesburg, VA 21076

If to Lessee:

With a Copy to:

Notice given by mail shall be deemed given three (3) calendar days after the date of mailing thereof.

12. **Default and Right to Cure.**

- (a) An event of default by Lessee ("Lessee Default") shall be defined as (i) the failure to pay Rent, additional fees or other payments set forth herein for a period of more than twenty (20) calendar days immediately succeeding written notice from Lessor. In the event that Lessee requires such written notice more than two times in a calendar year Lessee shall pay one hundred dollars (\$100.00) for the first such notice given during that calendar year, five hundred dollars (\$500.00) for the second notice, and one thousand dollars (\$1,000.00) for each additional notice given; (ii) failure to perform any material term, condition or covenant contained herein for a period of more than thirty (30) days immediately succeeding written notice thereof from Lessor; provided, however it shall be a Lessee Default under this Agreement if Lessee fails, within five (5) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessee if the failure to perform such obligation interferes with the water quality, health issues, damage to the property or other circumstances deemed an emergency by the Lessor, but provided further that if the nature of Lessee's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be in default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.. Lessee shall be afforded such additional time to cure any non-monetary Lessee default that cannot reasonably be cured within such thirty (30) day period provided, however, that Lessee commences to cure such default within the applicable notice period and diligently pursues such cure.
- (b) In the event of a Lessee Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessor shall be entitled to terminate this Agreement upon thirty (30) days written notice to Lessee.
- (c) An event of default by Lessor ("Lessor Default") shall be defined as the failure by Lessor to perform any material term, condition or covenant contained herein for a period of more than thirty (30) days immediately succeeding written notice thereof from Lessee; provided, however, it shall be a Lessor Default under this Agreement if Lessor fails, within five (5) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessor if the failure to perform such obligation interferes with Lessee's ability to conduct its business at the Property, but provided further that if the nature of Lessor's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if

performance is commenced within such five (5) day period and thereafter diligently pursued to completion. In the event of a Lessor Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessee shall be entitled to terminate this Agreement upon thirty (30) days written notice thereof to Lessor.

- (d) Other Remedies. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the laws or judicial decisions of the state in which the Premises are located; provided, however, each party shall use reasonable efforts to mitigate its damages in connection with a default by the other party. If either Party so performs any of the defaulting Party's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by the non-defaulting Party shall immediately be owing by the defaulting Party, and the defaulting Party shall pay to the non-defaulting Party upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if Lessor is the defaulting Party and does not pay Lessee the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from Lessor, Lessee may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to Lessor until the full undisputed amount, including all accrued interest, is fully reimbursed to Lessee.

13. **Assignment.**

- (a) Lessor reserves the right to assign, transfer, mortgage or otherwise encumber the Property and its interest in this Agreement (collectively, "Lessor Transfer"). In the event of any such Lessor Transfer, Lessor agrees to cause the transferee to accept an assignment and assumption of this Agreement and to recognize Lessee and Lessee's rights hereunder, and Lessee shall recognize such transferee provided that the prospective transferee executes and delivers to Lessee a Subordination and Non-Disturbance and Attornment instrument (SNDA) agreeing to recognize Lessee and to not disturb Lessee's tenancy. If the Lessor Transfer is to a lender to Lessor, Lessee agrees to execute and deliver to such lender an

SNDA subordinating this Agreement and Lessee's rights hereunder, as may be required by Lessor and such Lender provided the same is reasonably acceptable to Lessee and such lender agrees to recognize Lessee's rights under this Agreement so long as there is no Lessee Default beyond all applicable cure and grace periods, in connection with Lessor's contemplated transaction.

- (b) Lessee, upon notice to Lessor but without any approval or consent by Lessor, may assign this Agreement and its rights hereunder to its principals, affiliates, subsidiaries, to any entity which acquires all or substantially all of Lessee's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization or transaction; or to any entity which acquires or receives an interest in the majority of communications towers of Lessee in such market. No change of ownership or control of Lessee shall constitute an assignment hereunder. Lessee may assign this Agreement and its rights hereunder to any other person entity only upon consent by Lessor, which consent will not be unreasonably withheld, delayed or conditioned.
- (c) If Lessor, at any time during the Term, decides (i) to sell or transfer all or any part of the Property or the Water Tower or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Agreement. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith assigns this Agreement to said third party, Lessor shall not be released from its obligations to Lessee under this Agreement, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Agreement.

- 14. **Miscellaneous.** This Agreement is made subject to all local, state and federal laws and regulations now or hereafter in force, and shall not be modified or extended, except by an instrument duly signed by Lessor and Lessee. Waiver of a breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach of such provision, or of a breach of any other provision of this Agreement.
- 15. **Title.** Lessor covenants that Lessor is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. Lessor further covenants that, to the best of Lessor's knowledge,

information and belief, there are no liens, judgments or impediments of title on the Property or affecting Lessor's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Premises by Lessee as contemplated in this Agreement.

16. **Quiet Enjoyment.** The parties acknowledge that the Property is part of Lessor's municipal water supply system and, as such, is regulated and subject to regulation by, *inter alia*, the Virginia Department of Health and federal Environmental Protection Agency and that their decisions, ruling, letters or orders may supersede the parties' rights and obligations under this Lease. Subject to the foregoing, Lessor covenants and agrees that Lessee shall be entitled to quiet enjoyment of the Premises and Lessee's occupation thereof shall not be disturbed, provided that Lessee shall not be in default hereunder beyond all applicable cure and grace periods.
17. **Memorandum of Agreement.** Lessee may record a short form memorandum or notice of this Agreement in the land records of the applicable jurisdiction where such records are filed. Any such memorandum shall be in the form attached hereto as **Exhibit 3.**
18. **Estoppel Letter.** Either Lessor or Lessee shall, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges, if any, are paid in advance, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or Lessee's Equipment.
19. **Authority of Lessor and Lessee.** Lessor and Lessee warrant and represent to each other that: (i) each possesses the full power and authority to enter into this Agreement and perform the duties and obligations required hereunder; (ii) the individual(s) signing on behalf of Lessor and Lessee are duly authorized to sign on behalf of Lessor and Lessee, respectively, and by their signatures hereon, bind and benefit Lessor and Lessee; and (iii) no consent from any other person or entity is necessary as a condition to the legal effect of this Agreement.
20. **Waiver of Lien.** - Lessor waives any lien rights it may have concerning Lessee's Equipment, which is deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.
21. **Testing.** Lessee shall have the right, at any time following the full execution of this Agreement, so long as Lessee has Lessor's permission which shall not be unreasonably withheld, to enter upon the Property for the purpose of making

appropriate engineering and boundary surveys, inspections, soil test borings and other reasonably necessary tests.

22. **Submission of Agreement; Severability.** The submission of this Agreement for examination does not constitute an offer for a lease of the Premises and this Agreement becomes effective only upon the full execution of this Agreement by both parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement.
23. **Survival.** The provisions of the Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.
24. **Captions.** The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.
25. **Governing Law.** This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia, without giving effect to principles of conflict of laws.
26. **Exhibits.** All exhibits referenced herein are incorporated herein by reference as though set forth at length herein. The exhibits are:

- | | |
|-------------|---|
| Exhibit 1 | Drawing depicting Premises and Right of Way Area |
| Exhibit 1-A | Survey (to be attached if prepared by Lessee pursuant to Section 1 of this Agreement) |
| Exhibit 2 | Lessee's operating license(s) and other licenses pertinent to this Agreement |
| Exhibit 3 | Form of Memorandum of Agreement |
| Exhibit 4 | List of Lessee's Equipment to be located on the Water Tower |
| Exhibit 5 | Lessor's contact information for site access |

IN WITNESS WHEREOF, the undersigned have affixed their hands and seals to this Lease Agreement as of the date first written above.

LESSOR:

TOWN OF LEESBURG, a municipal corporation

By: _____

Its: _____

Date: _____, 2014

LESSEE:

By:
Its: Manager

WITNESS

WITNESS

BY: _____

Date: _____, 2014

Exhibit 1

Drawing Depicting Premises and Right of Way Area

[attached, in three parts]

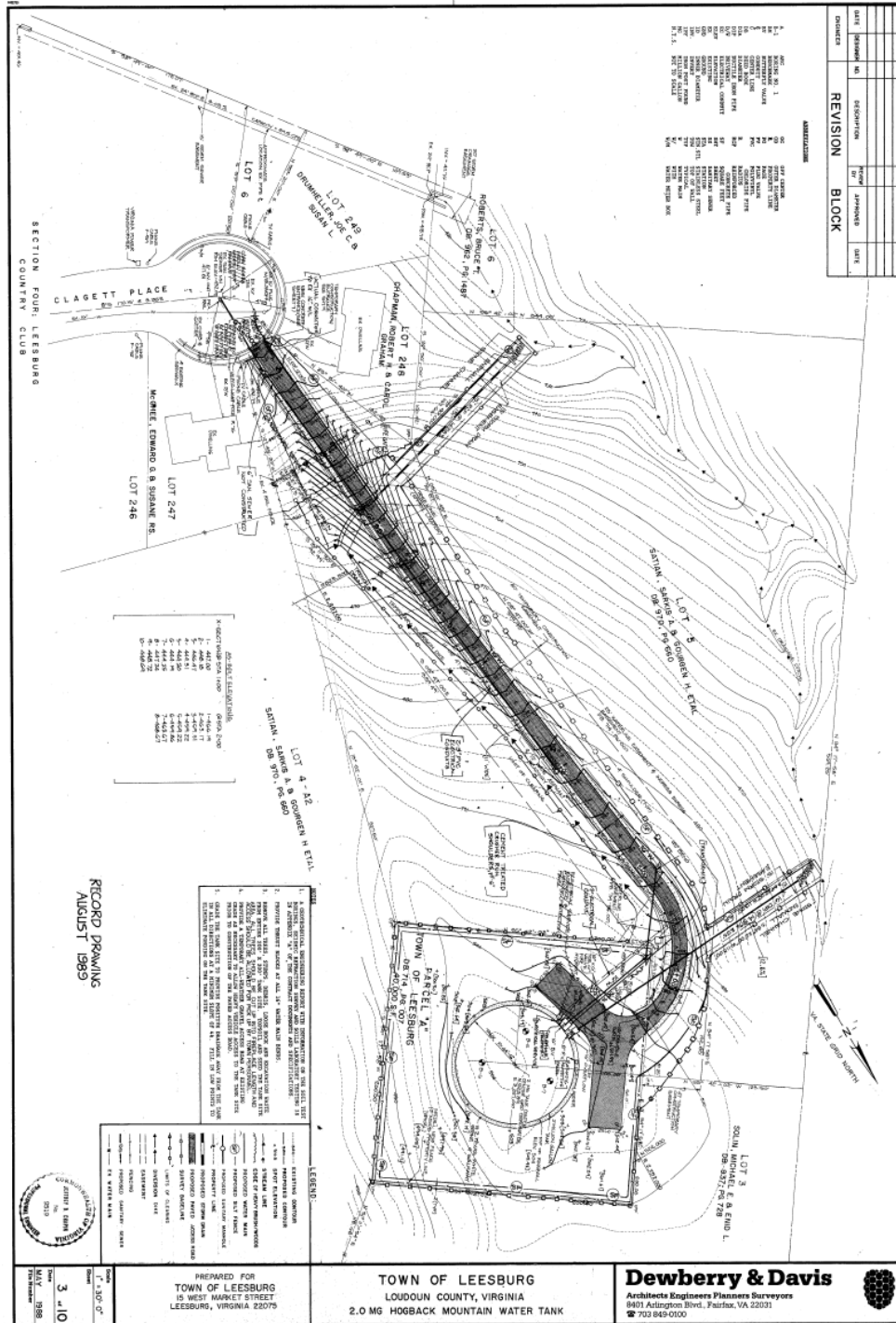


Exhibit 2

Lessee's Operating Licenses and Other Pertinent Licenses

[attached]

Exhibit 3

MEMORANDUM OF LEASE AGREEMENT

This Memorandum made this ____ day of _____, 2014, between the TOWN OF Leesburg, a municipal corporation with its principal mailing address of 25 W. Market Street, Virginia 20176, Federal Tax ID No., hereinafter designated “Lessor” and _____ with its principal offices at _____ hereinafter designated “Lessee”.

1. Lessor and Lessee entered into a Lease Agreement (the “Lease”) on _____, 2014 leasing the Premises (as hereinafter defined) to Lessee for a term of five (5) years with the right to renew for four (4) additional five (5) year terms.
2. The Lease concerns space on Lessor’s certain water tower and that certain parcel of land containing Three hundred (300) to five hundred fifty (550) square feet (together with the rights-of-way described in the Agreement, the “Premises”) located on that certain property known as, Loudoun County, Virginia (the “Property”) (Parcel ID No. 272-26-0489-000, Tax Map No. /48/N/9/////A/), as more thoroughly described on Exhibit "A" attached hereto and incorporated herein by reference.
3. The term of the Lease shall commence on the first day of the month following the date Lessee commences installation of the equipment on the Premises, and a copy of the Lease is on file in the offices of Lessor and Lessee.
4. The terms, covenants and provisions of the Lease of which this is a Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Lessor and Lessee.

[signatures appear on the following page]

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, Lessor and Lessee have caused this Memorandum to be duly executed on the dates indicated below.

LESSOR:

TOWN OF LEESBURG, a municipal corporation

By: _____

WITNESS _____

Its: _____

Date: _____, 2014

LESSEE:

By:

Its: Manager

BY: _____

WITNESS _____

Its: _____

Date: _____, 2014

ACKNOWLEDGEMENTS

_____)
_____) ss:
_____)

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, a _____ of the TOWN OF LEESBURG, a municipal corporation, a party to the foregoing Memorandum, personally appeared before me in said jurisdiction and, being personally well known to me, acknowledged said Memorandum as the lawful act and deed of said corporation and that he/she delivered the same as of such date.

GIVEN under my hand and seal this ____ day of _____, 2014

_____)
Notary Public

My commission expires: _____

INDIVIDUAL ACKNOWLEDGMENT

State of _____)
) ss:
County of _____)

On this _____ day of _____, 2014, before me, the undersigned personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, that by his signature on the instrument, the individual, , d/b/a, by , its general partner, upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned.

Notary Public

My Commission expires on: _____

Exhibit 4

List of Lessee's Equipment on the Water Tower

Antenna Information

Transmission Lines

Shelter

Generator pad

Frequencies

[Note: The foregoing specification of frequencies shall not be deemed to require Lessor's prior consent or approval for Lessee to operate on such frequencies as to which Lessee may be licensed by federal authorities to operate from time to time, nor for installation or substitution of equipment on Lessor's tower for operations on such frequencies.]

Exhibit 5

Lessor's Contact Persons for Access

Name

Telephone Number