

## **SAMPLE WATER TOWER / LAND LEASE AGREEMENT**

THIS TOWER/LAND LEASE AGREEMENT ("this Lease") is entered into this \_\_\_day of \_\_\_\_\_, \_\_\_\_ between the \_\_\_\_\_, (CITY) a municipal corporation and \_\_\_\_\_ (COMPANY).

In consideration of the terms and covenants of this Agreement, and for other good and valuable consideration, the parties agree as follows:

1. Leased Property. Subject to the terms and conditions of this Lease, \_\_\_\_\_ (CITY) leases to \_\_\_\_\_ (COMPANY) and COMPANY leases from CITY a certain portion of real property owned by CITY, which property is located in \_\_\_\_\_ County, \_\_\_\_\_, and legally described in Exhibit "B" as Parcel A and attached hereto (the "Property") which Property is subject to all existing easements, covenants, conditions, and restriction of record, if any. Legal descriptions of the Property and access easement as provided by the surveyor are included in Exhibit "B." CITY also leases to COMPANY and COMPANY leases from CITY certain space on CITY's water tower (the "Tower") located on the Property, which location and orientation of space is more particularly described in Exhibit "A" attached hereto. The actual location of the leased premises on the Tower and on the Property shall be depicted by drawings shown in Exhibit A attached hereto.

2. Term. The initial term of this Lease shall be five (5) years, commencing upon the date this document is executed by CITY and COMPANY ("Commencement Date"). If COMPANY fails to begin installation and use of the Tower within 60 days of execution, this lease will lapse unless rent payments as set out below are made. If COMPANY has failed to install its equipment upon the site described in this Lease within 12 months of execution, even though all rent payments have been made, CITY may choose to terminate this Lease. If termination is chosen, CITY will inform COMPANY in writing. COMPANY shall have the right to extend this Lease for four additional five-year terms, subject to all the terms and conditions of this Lease. This Lease shall automatically be renewed for each successive renewal term unless COMPANY shall notify CITY of COMPANY's intention not to renew the Lease at least six (6) months prior to the expiration of the any original or any renewal term.

### 3. Rent.

a. This Agreement shall be for an initial term of five (5) years, subject to other provisions of this document, commencing on the date this lease is fully executed. Rent shall be paid in equal annual installments, on the same day of the year as the Commencement Date, each year, in advance, to the CITY, or to such other person, firm, or place as CITY may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date.

b. The rent for the first three (3) years of the initial term of this Lease shall be \$6,000.00 per year. The rent for years four and five of the initial term of this lease shall be \$8,400 per year.

c. The annual rent for the first (1st) five (5) year extension term shall be increased to \$11,640.00- per year; the second (2nd) five (5) year extension term annual rental shall be increased to \$13,968.00 - per year; the third (3rd) five (5) year extension term annual rental shall be increased to \$16,762.00- per year-, the fourth (4th) five (5) year extension term annual rental shall be increased to \$20,114- per year.

d. If this Lease is terminated at a time other than on the last day of a lease term, rent shall be prorated as of the date the water tower and premises are restored to their condition on the commencement date of this Lease, normal wear and tear excepted, and, in the event of termination for any reason other than nonpayment of Rent, all prepaid Rents prorated after said date shall be refunded to COMPANY. In the event of termination for any other reason than nonpayment of rent, the prorated rent to be returned to COMPANY are subject to deductions of costs incurred by CITY if COMPANY fails to remove equipment within sixty (60) days of notice of termination.

e. If this Lease is terminated at a time other than on the last day of a lease term, Rent shall be prorated as of the date of termination, and, in the event of termination for any reason other than nonpayment of Rent, all prepaid Rents shall be refunded to COMPANY.

4. Use. COMPANY may use the leased premises for the installation, operation, and maintenance of facilities for the transmission and reception of radio communication signals in such frequencies as may be assigned to COMPANY by the Federal Communications Commission ("FCC") and for the operation of related equipment in accordance with the

provisions of this Lease. COMPANY shall use the leased premises in compliance with all federal, state, local laws and regulations. If for any reason COMPANY's use of the leased premises fails to comply with any federal, state or local law and COMPANY fails to bring its use within compliance within thirty days of written notice of such noncompliance, this Lease shall be terminated as provided herein, unless sooner authorized by such law. CITY agrees to reasonably cooperate with COMPANY in obtaining, at COMPANY's expense, all licenses and permits required for COMPANY's use of the leased premises.

5. Installation of Improvements. Access. Utilities.

a. COMPANY shall have the right, at its sole cost and expense, to install, operate and maintain the facilities on the leased portions of the Tower described in Exhibit "A" attached hereto, which facilities include radio transmitting and receiving antennas (the "Antenna Facilities"). COMPANY's installation of all such equipment, personal property, and facilities shall be done according to plans approved by CITY, and no equipment or property shall be subsequently relocated without CITY's approval which approvals shall not be unreasonably withheld or delayed. The Antenna Facilities shall remain the exclusive property of COMPANY, subject to the provisions of Paragraph 7 of this Lease.

b. COMPANY may update or replace the Antenna facilities from time to time with the prior written approval of CITY, provided that the replacement facilities are not greater in number or size than the existing facilities and provided that their location on the leased portions of the tower is satisfactory to CITY. COMPANY shall submit to CITY a proposal for any such replacement facilities, and for any supplemental materials as may be reasonably requested for CITY's evaluation and approval, which approval shall not be unreasonably withheld or delayed. All costs for required structural studies will be paid by COMPANY within 30 days of receipt of a detailed invoice.

c. COMPANY shall have the right, at its sole cost and expense, to install, operate and maintain on the leased portions of the Property the improvements described in Exhibit "A" attached hereto, which improvements include a structure to house COMPANY's equipment. All such improvements shall be constructed in accordance with CITY's specifications and according to a site plan approved by CITY. The Equipment Shelter and all equipment stored or operated therein, for the benefit of COMPANY, shall remain the exclusive property of COMPANY, subject to the provisions of Paragraph 7 of this Lease. No equipment shall be stored on the Property outside of the Equipment Shelter, and all appropriate permits must be obtained prior to construction and use of the Equipment Shelter.

d. At all times during this Lease, CITY hereby grants to COMPANY a nonexclusive easement for ingress, egress, and access over the Property which gives COMPANY access to the Equipment Shelter and to the base of the water tower at no additional charge to COMPANY. All routine site maintenance will be by foot, with vehicle access by vehicle only in emergency situations.

e. COMPANY, at all times during this Lease, shall have access to the Property and the Equipment Shelter in order to install, operate and maintain its transmission facilities. COMPANY shall have access to the Tower only with the approval of CITY and in the presence of an employee of CITY. COMPANY shall request access to the Tower twenty-four hours in advance and CITY's approval thereof shall not be unreasonably withheld or delayed.

f. COMPANY shall separately meter charges for the consumption of electricity and any other utilities associated with its use of the Property and shall pay all costs associated therewith. All utilities will be buried.

g. COMPANY shall provide CITY with "as built" drawings of the equipment installed on the water tower and improvements installed on the Property which show the actual location of all equipment and improvements. Such drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and Antenna Facilities actually placed on the Tower. A site plan will be provided showing the proposed placement of the shelter.

h. COMPANY shall have sole responsibility for the maintenance, repair, and security of its equipment, personal property, Antenna Facilities, Equipment Shelter, and any other leasehold improvements, and shall keep the same in good repair and condition during the Lease term.

i. COMPANY will adhere to all OSHA safety requirements.

j. COMPANY shall place no advertising on the site or on any structure on the site.

k. All antennae panels will be painted to match the water tower.

1. The site will be landscaped at COMPANY sole expense to screen the building from all adjacent rental properties and streets. All disturbed areas will be restored to a condition reasonably acceptable to the CITY. Final approval of landscaping and the landscaping plan shall be given by City's Board and Planning and Zoning Commission. Said approval shall not be unreasonably delayed, withheld, or conditioned.

m. Any additional costs for servicing or maintaining the tower that are due to the presence of the installation of the shelter, or any other equipment, will be the responsibility of COMPANY.

n. COMPANY shall install at its sole expense a motion-sensitive security light on the equipment building.

o. All heating, ventilating or air conditioning equipment belonging to COMPANY will comply with the Noise Ordinance of the CITY.

p. CITY will notify COMPANY at least forty-five (45) days in advance of the date when the water tower is scheduled to be painted, repaired, rebuilt or scheduled for general maintenance. The parties will cooperate to determine which of the following two options will be used to address the impact of the Antenna Facility on the cost of painting or repairing the water tower: 1) Shortly before the painting date, COMPANY will place a temporary antenna array on a crane parked near the site. COMPANY will then remove the antennas from the water tower and the painting will proceed as it normally does. Once the painting or repair is finished, COMPANY will then re-attach the antennas where they were and will have them painted to match the newly repaired/painted water tower. All costs incurred in removing the antenna, placement of a temporary antenna array, reattaching and painting the antennas shall be the sole responsibility of COMPANY. 2) The contractor will bid on the cost of painting/repairing the tower without the Antenna Facility. The contractor will then bid on the cost of painting/repairing the tower with COMPANY antennas left in place. The contractor will then proceed to paint/repair the tower with COMPANY's antennas left in place. COMPANY will reimburse CITY for the difference between the two bids.

6. Reasonable Approval. Both parties shall not unreasonably withhold or delay approvals required under this lease.

#### 7. Interference.

a. COMPANY's installation, operation, and use of its transmission facilities under this Lease shall not damage or interfere in any way with CITY's water tower operations or related repair and maintenance activities. CITY, at all times during this Lease, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the leased premises and to temporarily interfere with COMPANY's leasehold improvements as may be necessary in order to carry out any of such activities. CITY agrees to give reasonable advance notice of such activities to COMPANY and to reasonably cooperate with COMPANY to carry out such activities with a minimum amount of interference with COMPANY's transmission operations.

b. COMPANY shall operate its telecommunication facility in a manner that will not cause radio frequency interference to any and all of the City's current and future communications equipment COMPANY shall operate its telecommunications facility in a manner that will not cause radio frequency interference to the operations of other subtenants, lessees, and/or licensees' operations which predate installation of COMPANY'S telecommunications facilities under this lease. Any lease subsequent to this lease by the City which permits the installation of telecommunications equipment on the site shall include the following provision:

Tenant agrees to operate its transmission facilities so as to not create unreasonable radio frequency interference with the present transmission operations of the City or COMPANY or its successors. In the event such interference occurs, tenant agrees to correct such interference within 48 hours of written notice or cease use of its facilities.

Said clause may be enforced by either the City or COMPANY, either jointly or individually at the party's sole expense. The City shall be under no obligation to enforce said clause on behalf of COMPANY. Without limiting any other remedy at law or equity, COMPANY shall have the right to terminate this lease upon 30 days written notice in the event its reception or transmission is interfered with by other antenna equipment, or obstacles constructed or operated in COMPANY'S reception or transmission paths. COMPANY shall pay nine (9) months rent as liquidated damages for such termination.

c. This lease is made with the knowledge of both parties that CITY has no current tenant on the water tower.

d. In the event that COMPANY's transmission operations interfere with any type of electronic reception or transmission of any other parties in the surrounding area, COMPANY agrees to use its reasonable best efforts to remedy such interference in accordance with applicable regulations and standards of the FCC and any other governing body. COMPANY warrants that it shall maintain all of its Antenna Facilities in full compliance with all applicable regulations of the FCC and other governing bodies. COMPANY will be responsible for correcting any intermod problems with other users of the property, should they occur due to the equipment installed and operated by COMPANY. In the event the interference cannot be eliminated, CITY may immediately terminate this agreement and the easement granted hereunder, whereafter COMPANY shall immediately remove all of its personal property and fixtures which interfere with City's use of the premises and remove all remaining personal property and fixtures in accordance with paragraph Sc.

#### 8. Termination.

a. Except as otherwise provided herein, this Lease may be terminated by one party upon thirty (30) days written notice to the other party as follows:

1) By either party, upon a default of any covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default to the other party;

2) By COMPANY, if it is unable to obtain or maintain any license, permit, or other governmental approval necessary for the construction and/or operation of the transmission facilities or COMPANY business;

3) By CITY, if it determines in its sole discretion and for any reason, that the tower is structurally unsound for use as a water tower, including but not limited to consideration of age of the structure, damage or destruction of all or part of the water tower or the Property from any source, or factors relating to condition of the Property; or

4) By CITY, if COMPANY's use of the Property becomes illegal under any federal, state or local law, rule or regulation.

b. If the water tower is destroyed, dismantled, or removed, COMPANY shall have the right to construct its own tower, at its cost, of design approved by CITY, which approval shall not be unreasonably withheld or delayed, at a location as close as reasonably possible to the location of the water tower so as to give COMPANY similar radio signal coverage as COMPANY enjoyed from the water tower. If a replacement water tower is constructed anywhere on CITY's property, COMPANY shall have the right to place COMPANY's antenna and appurtenance on top of the new replacement water tower at COMPANY's cost and in a similar manner as COMPANY's antenna and appurtenance on the existing water tower.

c. Upon termination of this Lease for any reason, COMPANY shall remove all of its equipment, personal property, Antenna Facilities, structure and leasehold improvements from the water tower and the Property within sixty (60) days after the date of termination, and shall restore the water tower and the Property to the condition it was in on the Commencement Date of the term of this Lease ordinary wear and tear excepted, all at COMPANY's sole cost and expense. Any such property which is not removed by end of said sixty (60) day period shall become the property of CITY.

d. In the event this agreement is terminated by CITY any prepaid rents prorated from the date the water tower and property are reasonably restored to their condition on the commencement date of this Lease will be refunded to COMPANY. In the event of termination for any other reason than nonpayment of rent, the prorated rent to be returned to COMPANY are subject to deductions of costs incurred by CITY if COMPANY fails to remove equipment within 60 days of notice of termination.

#### 9. Insurance.

a. COMPANY shall provide Comprehensive General Liability Insurance coverage, including premises/operations coverage, independent contractor's liability, completed operations coverage, contractual liability coverage, and CITY will be held harmless for acts of outside vendors in a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, and Two Million Dollars (\$2,000,000.00) aggregate, and name CITY as an additional

insured on such policy or policies. COMPANY may satisfy this requirement by an endorsement to its underlying Insurance or umbrella liability policy.

b. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard "All Risk" insurance policy, and, in the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

c. COMPANY shall provide to CITY, prior to Commencement Date of the Lease Term, evidence of the required insurance in the form of a certificate of insurance issued by an insurance company licensed to do business in the State of Wisconsin, which includes all coverage required above and contains evidence of the waiver of subrogation contained above. Said certificate shall also provide that the coverage may not be concealed, nonrenewable, or materially changed without thirty (30) days prior written notice to CITY.

10. In the event that it is established that COMPANY's operation of the wireless facility is

determined to be medically related to a health problem, CITY must notify COMPANY of the related issues. In the event that COMPANY causes, permits or allows such activities determined to be medically

related to a health problem to continue, CITY shall have the right to immediately terminate this Lease if COMPANY fails to discontinue or remedy the operation within 60 days of written notice of any such relationship.

11. Damage or Destruction of Property. If the Property, water tower, or Antenna Facilities are destroyed or damaged so as, in COMPANY's judgment to render the site unusable as an Antenna Facility, COMPANY may elect to terminate this Lease upon thirty (30) days written notice to CITY. In the event COMPANY elects to terminate the Lease, COMPANY shall be entitled to reimbursement of any prepaid rent prorated prior to the date of termination.

12. Condemnation. In the event the whole of the Property is taken by eminent domain, this Lease shall terminate as of the date title to the Property vests in the condemning authority. In the event a portion of the Property is taken by eminent domain, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days written notice to the other party. In the event of any taking under the power of eminent domain, COMPANY shall not be entitled to any portion of the award paid for the taking and CITY shall receive the full amount of such award, COMPANY hereby expressly waiving any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the leasehold or the fee of the Property, shall belong to CITY, COMPANY shall have the right to claim and recover from the condemning authority, but not from CITY, such compensation as may be separately awarded or recoverable by COMPANY on account of any and all damage to COMPANY's business by reason of the taking and for or on account of any cost or loss to which COMPANY might be put in removing and relocating its equipment, personal property, Antenna Facilities and leasehold improvements. CITY will refund any prepaid rents prorated as of the date the Property is taken by the Condemning Authority.

13. Indemnification. Except for the negligent acts or willful misconduct of CITY's agents or employees, COMPANY agrees to indemnify, defend, and hold harmless CITY and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by CITY or for which CITY may be held liable, which arise from the negligence, willful misconduct, or other fault of COMPANY or its employees, agents, or subcontractors in the performance of this Lease or from the installation, operation, use, maintenance, repair, removal, or presence of COMPANY's transmission facilities on the Property and the water tower, including but not limited to electrical interference or health problems caused by COMPANY's transmission operations, and specifically including the representations and warranties of Paragraph 15(b) of this Lease.

14. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to CITY, to:

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If to COMPANY, to:

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15. Representations and Warranties.

a. CITY warrants that (1) it has full right, power, and authority to execute this Lease; and (2) to the best of its knowledge, it has good and unencumbered title to the Property free and clear of any liens or mortgages, except as may be disclosed by review of title. CITY warrants that COMPANY shall have the quiet enjoyment of the Property during the term of this Lease in accordance with its terms.

b. CITY warrants that it has no knowledge of any substance, chemical, or waste (collectively, "Substance") on the site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

c. COMPANY represents and warrants that its storage and use of any Substance on the Property will comply with applicable federal, state or local law or regulation and that it will store and use said Substance on the property only if necessary for its transmission operations. COMPANY agrees to indemnify and hold harmless CITY from and against any and all liability, loss, cost, damage, and expense, including reasonable attorneys' fees relating from or due to the release, threatened release, storage or discovery of any of the above named materials that are part of COMPANY equipment, personal property, Antenna Facilities, or any component parts or by-products thereof in violation of applicable law.

d. COMPANY, at its own cost, has the right to obtain a title commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of COMPANY, such title commitment shows any defects of title or any liens or encumbrances which may adversely affect COMPANY use of the Property, COMPANY shall have the right to cancel this Lease immediately upon written notice to CITY.

16. Assignment. COMPANY may not assign or sublet this Lease without the prior written consent of CITY except to any entity which controls, is controlled by, or is under the common control with COMPANY, or to any entity resulting from any merger or consolidation with COMPANY, or to any partner of COMPANY, or to any partnership in which COMPANY is a general partner, or to any person or entity which acquires all of the assets of COMPANY as a going concern, or to any entity which obtains a security interest in a substantial portion of COMPANY's assets, provided that COMPANY continues to indemnify and hold CITY harmless in accordance with Paragraph 13 above.

17. Successors and Assigns. This Lease shall run with the Property described in Exhibit "B." This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, and assigns.

18. Miscellaneous.

a. Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

b. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.

c. This Lease shall be construed in accordance with the laws of the State of Wisconsin.

d. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

e. This Lease is subject to all zoning approvals and building permits.

END OF TERMS

THE UNDERSIGNED LESSOR HEREBY AGREES TO LEASE THE ABOVE-MENTIONED PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN