

WATER TOWER LICENSE AGREEMENT

This Water Tower License Agreement (the "**Agreement**") is entered into as of the latter of the signature dates hereof (the "**Effective Date**"), by and between the **City of Pflugerville**, with its principal offices located at 100 East Main Street, Pflugerville, Texas 78660, hereinafter designated **LICENSOR**, and **Travis County Emergency Services District # 2** hereinafter designated **LICENSEE**. The LICENSOR and LICENSEE are at times collectively referred to hereinafter as the "**Parties**" or individually as the "**Party**".

RECITALS:

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

PREMISES. LICENSOR hereby grants to LICENSEE a license to occupy and use a portion of the space on LICENSOR's water tower, hereinafter referred to as the "**Tower**", located at 1500 Cherokee Run, Pflugerville, Travis County, Texas, as shown on the Tax Map of the Travis County as Tax Parcel No. 370438, (the entirety of LICENSOR's property is referred to hereinafter as the "**Property**"), at specific mounting heights as identified on the attached Exhibit B (the "**Tower Space**") for the transmission and reception of communications signals, together with the non-exclusive right (the "**Right of Way**") for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, fiber, poles and cables over and through the Property, to and between the Land Space and the Tower Space, for the installation and maintenance of utility wires, fiber, poles, cables, fiber, conduits, and pipes. The Tower Space, Land Space, Right of Way, and Further Rights of Way, if any, are substantially described in **Exhibit A**, attached hereto and made a part hereof, and are collectively referred to hereinafter as the "**Premises**".

LICENSOR hereby grants permission to LICENSEE to install, maintain and operate the communications equipment, antennas, and appurtenances described in **Exhibit B** attached hereto.

LICENSEE may at any time during the Term of this Agreement submit an application to LICENSOR to modify or upgrade equipment described in Exhibit B, which application shall include all frequencies equipment is proposed to operate under, weight and dimensions of all equipment, and specification sheets provided by the equipment manufacturer. With the submission of LICENSEE's application and materials, LICENSEE shall submit a payment of five thousand dollars (\$5,000.00) to LICENSOR to cover the cost of LICENSOR's professional expenses in reviewing LICENSEE's request. LICENSOR shall have forty-five (45) days to review LICENSEE's request. In the event LICENSOR fails to respond in writing to LICENSEE's request within forty-five (45) days, Licensee's request shall be deemed approved. After approval or deemed approval, the plans approved by LICENSOR will be considered incorporated in this Agreement as **Exhibit B**. If LICENSOR disapproves LICENSEE's request then the LICENSEE will provide LICENSOR with revised plans for LICENSOR to review. In the event LICENSOR disapproves of the revised plans, LICENSEE may either i) make further revisions to the plans and submit them to LICENSOR for review or ii) terminate this Agreement by providing written notice to LICENSOR and fulfilling their removal obligations as set forth in this Agreement. LICENSEE maintains the right to perform routine

maintenance and repairs, and modifications to ground based equipment, within the Premises, upon prior written notice as required in Section 11. LICENSEE shall provide written notice to Licensor of all frequencies in use by LICENSEE at the Premises and any changes in such frequencies, provided such frequency use, and any changes in frequencies, shall neither require an application nor be subject to LICENSOR's approval.

1. SURVEY. LICENSOR also hereby grants to LICENSEE the right to survey the Property and Premises at LICENSEE's sole cost and expense. Once LICENSEE has performed a survey at any time during this Agreement, it may be attached to this LICENSE as Exhibit C, only after submitting the survey to LICENSOR for LICENSOR's review and receiving LICENSOR's written approval of the survey. Exhibit C shall control in the event of boundary and access discrepancies between it and Exhibit A.

2. TERM.

a. This Agreement shall be effective as of the Effective Date, provided, however, the initial term shall be for five (5) years (the "Initial Term") and shall commence on the first day of the month following full execution of this Agreement (the "Commencement Date")

Upon agreement of the Parties, LICENSEE may pay the license fee by electronic funds transfer and, in such event, LICENSOR agrees to provide to LICENSEE bank routing information for such purpose upon request of LICENSEE.

b. EXTENSIONS. This Agreement shall automatically renew for one (1) additional five (5) year term unless LICENSEE notifies LICENSOR of its intent not to extend the term at least one hundred eighty (180) days prior to the expiration of the then current term. The initial term and all extensions shall be collectively referred to herein as the "**Term**".

3. TAXES. LICENSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges assessed on LICENSEE's improvements, within thirty (30) days of a receipt of an invoice from LICENSOR. LICENSOR and LICENSEE shall each be responsible for the payment of any taxes, levies, assessments, and other charges imposed, including franchise and similar taxes imposed upon the business conducted by LICENSOR or LICENSEE at the Property. Notwithstanding the foregoing, LICENSEE shall not have the obligation to pay any tax, assessment, or charge that LICENSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed, provided that no lien attaches to the Property. Nothing in this Paragraph shall be construed as making LICENSEE liable for any portion of LICENSOR's income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any taxes of a similar nature, in connection with any Property or otherwise. Except as set forth in this Paragraph, LICENSOR shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property, and shall do so prior to the imposition of any lien on the Property. LICENSEE shall have the right but not the obligation to pay any taxes due by LICENSOR hereunder if LICENSOR fails to timely do so, in addition to any other rights or remedies of LICENSEE. In the event that LICENSEE exercises its rights under this paragraph due to such LICENSOR default, LICENSEE

shall have the right to deduct such tax amounts paid from any monies due to LICENSOR from LICENSEE.

In the event LICENSOR receives a notice of assessment with respect to which taxes or assessments are imposed on LICENSEE's improvements on the Premises, LICENSOR shall provide LICENSEE with copies of each such notice immediately upon receipt, but in no event later than sixty (60) days prior to the due date for such taxes. Any tax-related notices shall be sent to LICENSEE in the manner set forth in Paragraph 21. LICENSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge, or seek modification of any tax assessment or billing for which LICENSEE is wholly or partly responsible for payment. LICENSOR shall reasonably cooperate with LICENSEE, at LICENSEE's sole cost and expense, in filing, prosecuting, and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal, or other similar document. If there is a reduction, credit or repayment received by the LICENSOR for any taxes previously paid by LICENSEE as a result of any appeal or challenge by LICENSEE, LICENSOR agrees to promptly reimburse to LICENSEE the amount of that reduction, credit, or repayment. If LICENSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this Paragraph, LICENSOR will pursue that dispute, at LICENSEE's sole cost and expense, upon written request of LICENSEE.

4. USE; LABELING; GOVERNMENTAL APPROVALS. LICENSEE shall use the Premises for the purpose of constructing, maintaining, repairing, and operating the Communication Facility for the transmission and reception of communications signals, in accordance with Exhibit B and for no other uses without LICENSOR's consent. All improvements, equipment, antennas, fiber, and conduits (the "Communication Facility") shall be installed in accordance with Exhibit B, which may be updated from time to time by LICENSEE only upon receipt of LICENSOR's written approval in accordance with the requirements of Paragraph 1 above. Licensee shall install identifying information on its equipment shelter and at the bottom of each support of the Tower on which LICENSEE has equipment installed containing Licensee's name, contact phone number, and the height of equipment installed on the Tower, and date of installation. In the event that Licensee fails to comply with this provision and fails to cure such material deficiency within thirty (30) days after Licensor's written notice of such failure, Licensor may, but is not obligated to, in addition to any other rights it may have hereunder, label the approved equipment and assess against Licensee a fee of \$1,000 ("Labeling Fee") which shall be payable to Licensor upon receipt of an invoice therefor. Licensor shall not be responsible to Licensee for any expenses or damages incurred by Licensee arising from the interruption of Licensee's service caused by Licensor if Licensor is reasonably unable to identify the approved equipment as belonging to Licensee as a result of Licensee's material failure to label such approved equipment. LICENSEE's use of the Tower and Premises shall not interfere with LICENSOR's use of and access to the Tower and Property at all times during this Agreement. It is understood and agreed that LICENSEE's ability to use the Premises is contingent upon LICENSEE obtaining, at LICENSEE's sole cost and expense, after the execution date of this Agreement all of the certificates, permits and other approvals (collectively, the "**Governmental Approvals**") that may be required by any Federal, State or local authorities, and a structural analysis, at LICENSEE's sole cost and expense, which will permit LICENSEE use of the Premises as set forth above. LICENSOR shall reasonably cooperate with LICENSEE, at LICENSEE's sole cost and expense, in LICENSEE's effort to obtain the Governmental Approvals, and shall take no action which

would adversely affect the status of the Property with respect to LICENSEE's proposed use thereof. LICENSEE shall have the right to terminate this Agreement if: (i) any of the applications for the Governmental Approvals is finally rejected; (ii) any Governmental Approval issued to LICENSEE, through no fault of LICENSEE, is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; or (iii) prior to the installation of the Communication Facility, LICENSEE determines that the structural analysis is unsatisfactory. Notice of LICENSEE's exercise of its right to terminate shall be given to LICENSOR in writing in accordance with Paragraph 21. Only after the initial five (5) years of the Term may LICENSEE have the right to terminate this Agreement upon One Hundred Eighty (180) days prior written notice. Upon such termination and the completion of LICENSEE fulfilling their removal obligations in this Agreement, this Agreement shall be of no further force or effect except to the extent of the representations, warranties, and indemnities made by each Party to the other hereunder.

5. INDEMNIFICATION. To the extent allowed by Texas law, the City and ESD agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions and will indemnify the other party to the extent of said liability.

6. INSURANCE.

a. Notwithstanding the indemnity in Paragraph 6, the Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All required policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party. LICENSEE shall have the right to self-insure its property insurance, which right shall be limited to Travis County ESD # 2 _____ and shall be non-transferable to any other entity or individual this Agreement is assigned to by Licensee, and in satisfaction of the waiver of subrogation requirement will include LICENSOR as joint loss payee to the extent of LICENSOR's insurable interest which would have been covered had LICENSEE purchased property insurance.

b. LICENSEE will maintain at its own cost;

	<u>Type</u>	<u>Amount</u>
A.	Workers Compensation and Employer's Liability	Statutory - \$500,000.00 each accident/disease policy limit/disease per employee
B.	Commercial General Liability per ISO form CG 00 01 or equivalent to include coverage for the following where the exposure exists: (1) Premises/Operations (2) Independent Contractors	Combined Single Limit for Bodily Injury and Property Damage: \$1,000,000.00 per occurrence and in the aggregate

	(3) Products/Completed Operations (4) Personal Injury (5) Contractual Liability	
C.	As applicable, if requested by City's Risk Manager: Business Automobile Liability Insurance to include coverage for: (1) Owned/Leased Automobiles (2) Non-owned Automobiles (3) Hired Automobiles	Combined Single Limit for Bodily Injury and Property Damage: \$500,000.00
D.	Property Insurance or self insurance for physical damage to the property of a Licensee located on the Property.	Coverage for a minimum of one hundred percent (100%) of the replacement cost

LICENSEE will include the LICENSOR as an additional insured by endorsement on the Commercial General Liability and Auto Liability policies, as LICENSOR's interests may appear under this Agreement.

7. LIMITATION OF LIABILITY. Except for indemnification specifically identified in other paragraphs, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special, or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

8. ACCESS TO TOWER. LICENSOR agrees the LICENSEE shall have free access to the Tower, however LICENSEE shall call LICENSOR's 24/7 duty operator phone number (512) 554-2204 at least thirty (30) minutes prior accessing the Property, for the purpose of installing and maintaining LICENSEE's equipment subject to the terms and conditions of this Agreement. LICENSOR shall furnish LICENSEE with necessary means of access for the purpose of ingress and egress to the Premises and Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of LICENSEE or persons under their direct supervision will be permitted to enter said premises.

9. TOWER COMPLIANCE; TEMPORARY RELOCATION. LICENSOR covenants that it will keep the Tower in good repair as required by all Laws (as defined in Paragraph 25 below). The LICENSOR shall also comply with all rules and regulations enforced by the Federal Communications Commission and Federal Aviation Administration with regard to the lighting, marking and painting of towers. If the LICENSOR fails to make any required repairs, including maintenance, LICENSEE must provide LICENSOR written notice and only after thirty (30) days have passed without a response from LICENSOR of the written notice may LICENSEE may make the repairs on LICENSOR's behalf and LICENSOR shall pay LICENSEE's costs for the repairs on demand. If the LICENSOR does not make payment to the LICENSEE within thirty

(30) days after such demand, LICENSEE may exercise all rights available to LICENSEE under the law.

No materials may be used by LICENSEE or any of LICENSEE's agents, contractors, or sub-contractors, in the installation of any and all equipment, support structures, or communications lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances. In the event LICENSOR identifies any corrosion, rust, or deterioration of the Tower structure or its appurtenances as a result of LICENSEE's equipment, LICENSOR may provide written notice to LICENSEE and LICENSEE shall have thirty (30) days to cure the damage. In the event LICENSEE is unable to cure the damage, LICENSOR may in LICENSOR's sole discretion immediately terminate this Agreement upon written notice to LICENSEE.

Upon request of LICENSOR, LICENSEE agrees to relocate its Tower based equipment on a temporary basis to another location on the Property, hereinafter referred to as the "**Temporary Relocation Site**", or otherwise protect the Tower based equipment if feasible, for the purpose of LICENSOR performing maintenance, repairs, or similar work at the Property or on the Tower, provided:

- a. The Temporary Relocation Site is fully compatible for LICENSEE's use, in LICENSEE's reasonable determination, however, LICENSEE acknowledges LICENSOR will be unable to provide a comparable antenna height during a Temporary Relocation event;
- b. LICENSEE pays all costs incurred by LICENSEE for relocating LICENSEE's equipment to the Temporary Relocation Site and improving the Temporary Relocation Site so that it is fully compatible for the LICENSEE's use, in LICENSEE's reasonable determination;
- c. LICENSOR gives LICENSEE at least one hundred eighty (180) days written notice prior to requiring LICENSEE to relocate;
- d. It shall be LICENSEE's sole responsibility to ensure LICENSEE's use of the Premises is not interrupted during the relocation and LICENSEE is allowed, if necessary, in LICENSEE's reasonable determination, to place a temporary "cell on wheels" on the Property during any such relocation;
- e. Upon the completion of any maintenance, repair, or similar work by LICENSOR, LICENSEE is permitted to return to its original location from the temporary location with all costs for the same being paid by LICENSEE;

10. INTERFERENCE. LICENSEE agrees to install equipment of the type and frequency which will not cause harmful interference, which is measurable in accordance with then existing industry standards, to any equipment of LICENSOR or other tenants of the Property at all times during this Agreement, including but not limited to the following frequencies used by the city services, 902-908 Mhz, 2401-2495 Mhz, 3550-3700 Mhz, 4910-4990 Mhz, 5180-5875 Mhz, 5850-5925 Mhz, 19540.000S(4) 17980.000S(4) Mhz, 19620.0000S(5) 18060.0000S(5) Mhz,

17980.0000S(4) 19540.0000S(4) Mhz, 19460.0000S(3) 17900.0000S(3) Mhz, 18060.0000S(5) 19620.0000S(5) Mhz, 17820.0000S(2) 19380.0000S(2) Mhz, 19460.0000S(3) 17900.0000S(3) Mhz. If any of LICENSEE's after-installed equipment causes such interference, after LICENSOR has notified LICENSEE in writing of such interference, LICENSEE will take all reasonable steps necessary to correct and eliminate the interference within forty-eight (48) hours, including but not limited to, at LICENSEE's option, powering down the interfering equipment and later powering up the interfering equipment for intermittent testing. In the event License has not remedied the situation within one hundred twenty (120) hours of receipt of notice, LICENSOR will be entitled to terminate this Agreement or require LICENSEE to relocate LICENSEE's interfering equipment. LICENSOR 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 harmful interference which is measurable in accordance with then-existing industry standards to the then-existing equipment of LICENSEE. LICENSOR will cause any such interference to cease within five (5) business days after receipt of notice of interference from LICENSEE. In the event any such interference does not cease within the aforementioned cure period, LICENSOR shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. LICENSEE shall only operate its equipment on frequencies permitted by the FCC.

11. REMOVAL AT END OF TERM; HOLDOVER. Within thirty (30) days after the expiration of the Term, LICENSEE shall remove its building(s), antenna(s), equipment, conduits, fixtures, and all personal property, and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. Notwithstanding the foregoing, LICENSEE will not be required to remove from the Premises or the Property any underground utilities. LICENSOR agrees and acknowledges that all of the equipment, conduits, fixtures, and personal property of LICENSEE shall remain the personal property of LICENSEE, and LICENSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. Any property not so removed shall, at LICENSOR's sole option, be deemed abandoned and may be removed and disposed of by LICENSOR in such manner as LICENSOR shall determine and at LICENSEE's reasonable expense, without notice to LICENSEE and without any obligation on the part of LICENSOR to account to LICENSEE for any proceeds therefrom. LICENSEE shall reimburse LICENSOR for any actual and reasonable expense incurred in restoring the Premises should LICENSEE fail to restore the Premises as provided herein.

12. RIGHTS UPON SALE. At any time during the Term, if LICENSOR decides to (i) sell or transfer all or any part of the Property or the Tower to a purchaser other than LICENSEE, or (ii) grant to a third party by easement or other legal instrument an interest in that portion of the Tower and or Property occupied by LICENSEE, 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 subject to this Agreement, and any such purchaser or transferee shall recognize LICENSEE's rights hereunder under the terms of this Agreement. To the extent that LICENSOR grants to a third party by easement or other legal instrument an interest in that portion of the Tower and/or Property occupied by LICENSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to that third party, LICENSOR shall not be released from its

obligations to LICENSEE under this Agreement, and LICENSEE shall have the right to look to LICENSOR and the third party for the full performance of this Agreement.

13. QUIET ENJOYMENT. LICENSOR covenants that LICENSEE shall peaceably and quietly have, hold and enjoy the Premises.

14. TITLE. LICENSOR represents and warrants to LICENSEE as of the execution date of this Agreement, and covenants during the Term, that LICENSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LICENSOR further covenants during the Term that there are no liens, judgments, or impediments of title on the Property, or affecting LICENSOR's title to the same, and that there are no covenants, easements, or restrictions that prevent or adversely affect LICENSEE's use or occupancy of the Premises as set forth in this Agreement.

15. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises, and understandings between LICENSOR and LICENSEE, and that no verbal or oral agreements, promises, or understandings shall be binding upon either LICENSOR or LICENSEE in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. If any provision of the Agreement is found to be invalid or unenforceable, that finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement, or to exercise any of its rights under the Agreement, shall not waive those rights, and that Party shall have the right to enforce its rights at any time, and take such action as may be lawful and authorized under this Agreement, in law or in equity.

16. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the Laws of the State in which the Property is located.

17. ASSIGNMENT; SUBLEASING. LICENSEE may not, directly or indirectly, assign this Agreement as a whole, or any portion of LICENSEE's rights, title and interests hereunder without LICENSORS's prior written consent.

18. NOTICES. All notices hereunder must be in writing and shall be validly given if sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service, and provided further that the courier guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, and addressed as follows (or to any other address that the Party to be notified may have designated to the sender by like notice):

LICENSOR: City of Pflugerville
100 East Main Street
Pflugerville, Texas 78660

LICENSEE: _____
Attn: _____

Re: _____
Name: _____

Austin, Texas _____

With a copy to: _____
Attn.: _____
Re: _____
Name: _____

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

19. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors, and assigns of the Parties hereto.

20. DEFAULT.

a. If there is a breach by LICENSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of license fees, LICENSOR shall give LICENSEE written notice of the breach. After receipt of the written notice, LICENSEE shall have thirty (30) days in which to cure any breach; provided LICENSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days, and LICENSEE commences the cure within the thirty (30) day period, and LICENSEE thereafter continuously and diligently pursues the cure to completion. LICENSOR may not maintain any action or effect any remedies for default against LICENSEE unless and until LICENSEE has failed to cure the breach within the time periods provided in this Paragraph.

b. If there is a breach by LICENSOR with respect to any of the provisions of this Agreement or its obligations under it, LICENSEE shall give LICENSOR written notice of the breach. After receipt of the written notice, LICENSOR shall have (i) five (5) business days after written notice of such failure to cure such failure relating to access; (ii) five (5) business days to cure an interference problem as identified above; and thirty (30) days in which to cure any other breach; provided LICENSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days, and LICENSOR commences the cure within the thirty (30) day period, and LICENSOR thereafter continuously and diligently pursues the cure to completion. LICENSEE may not maintain any action or effect any remedies for default against LICENSOR unless and until LICENSOR has failed to cure the breach within the time periods provided in this Paragraph.

21. 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 only after thirty (30) days receipt of written notice from the other Party, 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 that the non-defaulting Party may have by reason of the 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, LICENSOR shall use reasonable efforts to mitigate its damages in connection with a default by LICENSEE. If LICENSEE so performs any of LICENSOR's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by LICENSEE shall immediately be owing by LICENSOR.

22. ENVIRONMENTAL. LICENSOR represents to the best of its knowledge, that (i) the Property, as of the Effective Date, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has not been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Licensor shall be responsible for all obligations of compliance with applicable Federal, State and local requirements governing environmental and industrial hygiene matters including, but not limited to, those set out in any applicable statute, regulation, order, legal decision or by common law, except to the extent that any failure to comply with a requirement is caused by the activities of Licensee. Licensor agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of soils excavated at the Property during construction of Licensees facility.

23. CASUALTY. In the event of damage by fire or other casualty to the Tower, or Premises, not caused by LICENSEE, that cannot reasonably be expected to be repaired within ninety (90) days following the casualty or, if the Property is damaged by fire or other casualty, not caused by LICENSEE, such that the damage may reasonably be expected to disrupt LICENSEE's operations at the Premises for more than forty-five (45) days, then LICENSEE may terminate this Agreement upon fifteen (15) days prior written notice to LICENSOR at any time following the fire or other casualty, provided LICENSOR has not completed the restoration required to permit LICENSEE to resume its operation at the Premises. LICENSOR agrees to permit LICENSEE to place temporary transmission and reception facilities on the Property, but only until such time as LICENSEE is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement. 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.

24. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Tower, LICENSEE, in LICENSEE's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt LICENSEE's operations at the Premises for more than forty-five (45) days, LICENSEE may, at LICENSEE's option, to be exercised in writing within fifteen (15) days after LICENSEE receives notice of the condemnation from LICENSOR (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession),

terminate this Agreement as of the date the condemning authority takes such possession. 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. LICENSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs, and its damages and losses (but not for the loss of its license interest).

25. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to license the Premises, and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision in this Agreement is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of that Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

26. APPLICABLE LAWS. During the Term, LICENSOR shall maintain the Property and all structural elements of the Premises in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "**Laws**"). LICENSEE shall, in respect to the condition of the Premises, and at LICENSEE's sole cost and expense, comply with (a) all Laws relating solely to LICENSEE's specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by LICENSEE in the Premises.

27. 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.

28. 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.

29. ESTOPPEL. Either party will, 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 Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed.

30. SIGNATURE. In the event the Agreement is not fully executed and returned to the other party within thirty (30) days after the date the first party executes the Agreement, the Agreement shall be null and void and the parties shall have no further obligations to each other.

31. TIME OF THE ESSENCE. Where LICENSEE is required by this Agreement to pay any sum of money or to do any act within an indicated period or by a particular date, it is understood that time is of the essence.

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first above written.

LICENSOR:

City of Pflugerville

ATTEST:

By: _____

Printed Name: _____

Title: _____

Date: _____

LICENSEE:

By: _____

Print Name: _____

Its: _____

Date: _____

Exhibit A

Description of the Premises

The Property on which the Premises are located is legally described as follows:

BEING 100 feet by 100 feet out of the Alexander Walters Survey No. 67, in Travis County, Texas, same being a part of that certain 258.466 acre tract of land conveyed to Howard Sumerlin by Deed recorded in Volume 8028, Page 431, Deed Records, Travis County, Texas:

BEGINNING at an iron rod set for the Northwest corner of the tract herein described and from which the most westerly Southwest corner of that certain 258.466 acre tract of land conveyed to Howard Sumerlin by deed recorded in Volume 8028, Page 431 of the Deed Records, bears the following courses:

N 0° 35' 20" W 954.09 feet to an iron stake at the Northeast corner of that certain 199.6 acre tract of land conveyed to R. T. Weber by deed recorded in Volume 722, Page 595, of the Travis County Deed Records and N 60° 36' W 498.36 feet;

THENCE s 61° 14' E 100.0 feet to an iron rod set for the Northeast corner of this tract;

THENCE s 28° 46' W 100.0 feet to an iron rod set for the Southeast corner of this tract;

THENCE N 61° 14' W 100.0 feet to an iron rod set for the Southwest corner of this tract;

THENCE N 28° 46' E 100.0 feet to the PLACE OF BEGINNING, containing 0.23 acres of land.

Exhibit B

**Description of Licensee's Communications Equipment,
Antennas & Appurtenances**

Exhibit C

Survey of the Premises in the Property