

# Exhibit C

## OPTION AND LICENSE AGREEMENT Between the City of Madison and DISH Wireless L.L.C For the Placement of Communication Facilities at Larkin Tower

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THIS OPTION AND LICENSE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by City of Madison, a Wisconsin municipal corporation having a mailing address of City of Madison, Economic Development Division, Office of Real Estate Services P.O. BOX 2803 Madison WI 53701-2983 (“**Optionor**” or “**Licensor**”) and DISH Wireless L.L.C., a Colorado limited liability company having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112 (“**Optionee**” or “**Licensee**”).

### BACKGROUND

WHEREAS, Licensor owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, together with all rights and privileges arising in connection therewith, located at 125 Larkin Street, Madison, WI 53705, with a latitude/longitude of 43.06531°, -89.44003°, (collectively, the “**Property**”).

WHEREAS, Licensor owns a self-supporting tower on the Property (“**Tower**”).

WHEREAS, Licensor desires to grant to Licensee the right to use a portion of the Property and certain space on the Tower in accordance with this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

#### **1. OPTION TO LICENSE.**

(a) During the Option Term, as defined below in this Section, Optionor grants to Optionee an exclusive option (the “**Option**”) to license a certain portion of the Property containing approximately seventy five (75) square feet including the air space above such ground space, and a certain portion of the Tower, as described and depicted on attached **Exhibit 2**, (the “**Premises**”), for the placement of a Communication Facility, as defined in Section 3(a) below, in accordance with the terms of this Agreement.

(b) During the Option Term, Optionee and its agents, engineers, surveyors and other representatives will have following limited rights only: the right to enter upon the Property to inspect, examine, conduct Phase 1 Environmental Site Assessments, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property, excepting therefrom Phase 2 Environmental Site Assessments which are not permitted without Optionor’s approval in its sole discretion (collectively, the “**Tests**”), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Optionee’s sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the “**Government Approvals**”), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Optionee, are necessary in Optionee’s sole discretion to determine the physical condition of the Property, the environmental history of the Property, Optionor’s title to the Property and the feasibility or suitability of the Property for Optionee’s Permitted Use, all at Optionee’s expense. Within thirty (30) days, Optionee will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Optionee’s control excepted. The rights granted to Optionee in this subsection (b) of Section 1 shall continue during the Term, if the Option is exercised. During the Option Term, Optionee may not file, or permit to file, any liens, memorandums or other recordings against the Property. Optionee’s exercise of the rights under this Option are further subject to any special conditions as noted on **Exhibit 3**.

(c) During the Option Term, Optionee shall carry commercial general liability insurance per ISO form CG 00 01 or its substantial equivalent covering as insured the Optionee and including the Optionor, its officers, officials, agents and employees as additional insureds by endorsement as respects this Option, with a

limit of One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. This policy shall also provide contractual liability coverage in the same amount and apply on a primary and noncontributory basis. Optionee shall provide the Optionor Thirty (30) days advance written notice of cancellation or non-renewal of the policy unless replaced during the term of this Option. As evidence of this coverage, the Optionee shall furnish the Optionor with a certificate of insurance on an ACORD form, and if requested by the City Risk Manager, the Optionee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while this Option is in effect, the Optionee shall provide a renewal certificate to the Optionor for approval. Notwithstanding the foregoing, the Optionee shall be entitled to self-insure all or part of the foregoing insurance coverages. However, if the Optionee self-insures and ceases to self-insure to the standards required above or is unable to provide continuing evidence of financial ability to self-insure to these standards, the Optionee shall promptly obtain the commercial general liability insurance required above. Furthermore, the Optionee shall provide the Optionor with defense and self-insurance coverage on a primary and non-contributory basis, as if the Optionor were an additional insured under the Optionee's insurance policies.

(d) During the Option Term, the Optionee shall be liable to and agrees to indemnify, defend and hold harmless the Optionor, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the Optionor or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Optionee and/or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Option, whether caused by or contributed to by the negligent acts of the Optionor, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of this Option.

(e) In consideration of Optionor granting Optionee the Option, Optionee agrees to pay Optionor the sum of One Thousand Five Hundred Dollars (\$1,500.00) within sixty (60) business days after the Effective Date. The Option may be exercised during an initial term of Six (6) months commencing on the Effective Date (the "Option Term").

(f) During the Option Term, Optionee may exercise the Option by notifying Optionor in writing. If Optionee exercises the Option, then, under Section 2, Optionor licenses, as the Licensor, the Premises to Optionee, as now the Licensee, subject to the terms and conditions of this Agreement. If Optionee does not exercise the Option during the Initial Option Term or any extension thereof, then this Agreement will terminate, and the parties will have no further liability to each other.

(g) Optionor agrees that during the Option Term, or during the Term if the Option is exercised, Optionor shall not initiate or consent to any change in the zoning of the Premises, the Property or impose or consent to any other use or restriction that would prevent or unreasonably limit Optionee from using the Premises for the Permitted Use.

(h) The exercise of the Option is conclusive evidence that the Optionee accepts the Premises as suitable for Optionee's purposes and accepts the Premises and every part thereof in an as-is condition, with all defects, except for latent defect.

(i) Only this Section 1 and Sections 13 "Environmental", 14 "Access", 19 "Notice" and 28 "Miscellaneous", shall apply during the Option Term.

2. **LICENSE.** Upon the Optionee's exercise of the Option under Section 1, Licensor grants to the Licensee, and Licensee hereby accepts, the right to use the Premises for the placement of a Communication Facility, as defined in Section 3 below (the "**LICENSE**"). Licensor's exercise of its rights under this License shall be on the terms and conditions set forth in this Agreement.

3. **PERMITTED USE.**

(a) Subject to the special conditions contained in Exhibit 3, and only after the Term Commencement Date, as defined below in Section 4, Licensee may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and

upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the “**Communication Facility**”), as well as the right to test, survey and review title on the Property; Licensee further, upon prior notice to Licensor 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, (collectively, the “**Permitted Use**”). If **Exhibit 2** includes drawings of the initial installation of the Communication Facility, Licensor’s execution of this Agreement will signify Licensor’s approval of **Exhibit 2**.

(b) Prior to contacting Licensor, Licensee shall consult Licensor’s agent, Terabonne, LLC, for any engineering, design, leasing and easement matters at info@terabonne.net. For any operational or access matters, Licensee shall contact City Operations at 608-266-4768.

(c) For a period of Ninety (90) days following the start of construction (“**Construction Period**”), Licensor grants Licensee the right to use such portions of the Property as may be reasonably required for construction staging during construction and installation of the Communication Facility. The construction period cannot be longer than One Hundred Twenty (120) days from the Term Commencement Date (defined Section 4(a) below). Disturbed areas during construction shall be restored within ten (10) days following the maximum of 120-day construction period to their original state to Licensor’s reasonable expectations, normal wear and tear excepted. Licensee shall provide Licensor with a notice signifying the completion of construction (“**Notice of Construction Completion**”) within Five (5) days of construction completion, and shall provide As-Built documentation, as defined in Section 28(p), within Thirty (30) days after the Notice of Construction Completion is provided to Licensor.

(d) Licensee has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property’s main entry point to the equipment shelter or cabinet, install warning signs to make individuals aware of risks and install any other control measures reasonably required by Licensee’s safety procedures or applicable law.

(e) In the event Licensee desires to modify or upgrade the Communication Facility or disturb the ground outside the Premises, Licensee shall first obtain Licensor’s consent, not to be unreasonably withheld, conditioned or delayed and Licensor has 60 days to grant consent. Licensee installations that require a structural analysis shall require the stamp approval of a structural engineer licensed in the State of Wisconsin and Licensor’s consent, which shall not be unreasonably withheld, conditioned or delayed, it being understood that Licensor reserves the right to review Licensee’s engineering plans prior to such consent. Nothing in this Agreement grants Licensee the right to load the Tower up to 100% structural capacity. In the event the Licensor requires the expertise of a third-party engineer/consultant to review the installation of the Communication Facility, or any future modifications to the Licensee’s Communication Facility on the Tower and/or Shelter, the Licensee shall be required to reimburse Licensor reasonable actual costs incurred by Licensor as a result of hiring said engineer/consultant. Licensor shall provide sufficient supporting documentation and detailed invoices evidencing such reasonable actual costs to Licensee within Sixty (60) days of the date on which such costs were incurred, in order for Licensor to be entitled to such reimbursement. Such third-party review shall include, but not be limited to, the following: the review of plans and specifications; review of structural, interference, and other reports; and on-site inspections and meetings. All fees and invoices must be paid within Forty-Five (45) days after Licensor sends the Licensee an invoice for the same together with reasonable supporting documentation evidencing such fees as set forth herein.

(f) In the event Licensor consents to Licensee’s modification, within Thirty (30) days following any modification to the Communication Facility, the Licensee shall provide the Licensor with an as-built construction drawings showing the actual location of the Communication Facility installed on the Premises, and of all installations and accessories on the Tower. Said drawings shall be accompanied by a complete and detailed inventory of all equipment installed on the Property. All antennas, radios, brackets, attachments, cables and equipment, not in use, shall be removed from the Tower and updated in all current structural drawings.

(g) Licensee shall have the right to park vehicles only within the Premises or designated access easement areas, as depicted in Exhibit 2.

(h) Licensee agrees to join and maintain membership in Diggers Hotline and secure and maintain the services of a competent locating service. That membership in Diggers Hotline and contracting of a locating service shall be continuous and uninterrupted throughout the term of this Agreement.

(i) In the event Licensee desires, after the Construction Period, to bring onto the Property “**Heavy Equipment**” which is defined as any vehicle with more than Two (2) axles, or any trailers, or any vehicle and equipment designed to extend above 6 feet, such as bucket trucks, scaffolds, or cranes that pose risks to people, traffic or property below, Licensee shall first notify Licensor and shall pay Licensor a fee of Five Hundred Dollars (\$500.00) for each day any Heavy Equipment is on the Property.

(j) Licensor shall not be liable for any damage within the Premises except to the extent caused by the gross negligence or willful misconduct of the Licensor.

#### **4. TERM.**

(a) The initial license term will be Five (5) years (the “**Initial Term**”), commencing on the date of written notification by Licensee to Licensor of Licensee’s exercise of the Option (the “**Term Commencement Date**”). The Initial Term will terminate on the end of the Fifth (5th) anniversary of the Term Commencement Date.

(b) This License will automatically renew for Five (5) additional Five (5) year term(s) (each additional Five (5) year term shall be defined as an “**Extension Term**”), upon the same terms and conditions set forth herein unless Licensee notifies Licensor in writing of Licensee’s intention not to renew this License at least One Hundred Eighty (180) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) If Licensee remains in possession of the Premises after the termination of this License, then Licensee will be deemed to be occupying the Premises on a month-to-month basis (the “**Holdover Term**”), subject to the terms and conditions of this Agreement, provided the Rent during the Holdover Term shall be equal to One Hundred Fifty percent (150%) of the Rent at termination or expiration of the License.

(d) The Initial Term, any Extension Terms, and any Holdover Term are collectively referred to as the “**Term.**”

#### **5. RENT.**

(a) Commencing on the first day of the month following the date that Licensee commences construction (the “**Rent Commencement Date**”), Licensee will pay Licensor on or before the Fifth (5<sup>th</sup>) day of each calendar month in advance, Three Thousand Dollars (\$3,000.00) (the “**Rent**”), at the address set forth to the following beneficiaries:

1. Eighty-Five percent (85%) of all payments shall be made to the City Treasurer, referenced to Real Estate Project No. 12832, and sent to Economic Development Division, Office of Real Estate Services P.O. BOX 2983 Madison WI 53701-2983, their respective heirs and assigns.
2. Fifteen percent (15%) of all payment shall be sent to Bella Ranch, LLC., 30 North Gould Street, Suite R, Sheridan, WY 82801 or its heirs and assigns;

Nothing herein shall be deemed to imply that Bella Ranch has any rights as Licensor or otherwise under this Agreement, or that any changes to the Agreement must be approved by Bella Ranch (except for changes to the payment due to Bella Ranch, as expressly set forth in this Section 5(a)). Neither the Rent payees nor their respective percentage shares listed above may be changed without the prior written approval of both payees. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Licensee to Licensor within Sixty (60) days after the Rent Commencement Date.

(b) On the first anniversary of the Commencement Date, and on each anniversary of the Commencement Date thereafter for the duration of the Term, Rent will increase by three (3%) over the Rent payable during the immediately preceding year.

(c) Licensee shall have the right to install up to six (6) antennas and twelve (12) radios and required cabling and additional equipment during the initial term. After the initial term, Licensee may elect to install additional antennas and radios and shall pay an additional three thousand (\$3,000) dollars per year for each set of three (3) antennas and (6) radios. This fee is subject to and indexed at the escalation rate. Additionally,

Licensee shall pay Licensor a fee of five thousand (\$5,000) dollars for each addendum or site modification. It is understood that like-for-like equipment modifications, swaps or exchanges are not subject to the incremental fee.

(d) All charges payable under this Agreement such as utilities and taxes directly attributable to Licensee's use of the Premises shall be billed by Licensor within One (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Licensor and shall not be payable by Licensee. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Licensor. The provisions of this subsection shall survive the termination or expiration of this Agreement.

**6. APPROVALS.**

(a) Licensor agrees that Licensee's ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Licensee's ability to obtain and maintain all Government Approvals. Licensor authorizes Licensee to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Licensee with such applications and with obtaining and maintaining the Government Approvals.

(b) Licensee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Licensee may also perform and obtain, at Licensee's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Licensee's use of the Premises will be compatible with Licensee's engineering specifications, system, design, operations or Government Approvals.

(d) Licensor's consent shall be required for all zoning plans and construction drawings prior to submittal for governmental approvals, including any subsequent changes to survey drawings, and any drawings affecting changes to access and utility easements, zoning drawings, and construction drawings, which consent shall not be unreasonably withheld, delayed, or conditioned.

**7. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on Thirty (30) days prior written notice, if the other party remains in default under Section 17 of this Agreement after the applicable cure periods;

(b) by Licensee upon written notice to Licensor, if Licensee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Licensee; or if Licensee determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Licensee, upon written notice to Licensor, if Licensee determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Licensee upon written notice to Licensor for any reason or no reason, at any time prior to commencement of construction by Licensee.

(e) by Licensee upon written notice to Licensor if it is determined that the Premises are unsuitable to the Licensee for economic or technological reasons.

**8. INSURANCE.** The Licensee shall carry commercial general liability insurance per ISO form CG 00 01 or its substantial equivalent covering as insured the Licensee and including the Licensor, its officers, officials, agents, employees and Terabonne, Inc. as additional insureds by endorsement as respects this License, with a limit of One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. This policy shall also provide contractual liability coverage in the same amount and apply on a primary and noncontributory basis. Licensee shall provide the Licensor Thirty (30) days advance written notice of cancellation or non-renewal of the policy unless replaced during the term of this License. As evidence of this coverage, the Licensee shall furnish the Licensor with a certificate of insurance on an ACORD form, and if requested by the City Risk Manager, the Licensee shall also provide copies of additional insured endorsements

or policy. If the coverage required above expires while this License is in effect, the Licensee shall provide a renewal certificate to the Licensor for approval. Notwithstanding the foregoing, the Licensee shall be entitled to self-insure all or part of the foregoing insurance coverages. However, if the Licensee self-insures and ceases to self-insure to the standards required above or is unable to provide continuing evidence of financial ability to self-insure to these standards, the Licensee shall promptly obtain the commercial general liability insurance required above. Furthermore, the Licensee shall provide the Licensor with defense and self-insurance coverage on a primary and non-contributory basis, as if the Licensor were an additional insured under the Licensee's insurance policies.

**9. INTERFERENCE.**

(a) The Licensee's installation, operation, and maintenance of the Communication Facility shall not damage or interfere in any way the Licensor's Tower operations or related repair and maintenance activities or with such activities of other licensees on the Property. The Licensee agrees to cease all such actions which materially interfere with the Licensor's use of the Tower immediately upon actual notice of such interference, provided however, in such case, the Licensee shall have the right to terminate the License. Licensor, at all times during this License, reserves the right to take any action it deems necessary, in its sole discretion to repair, maintain, alter or improve the Property, excluding the Communication Facility, in connection with Tower operations as may be necessary, including licensing part of the Tower and/or the Property to others, subject to the terms hereof. Except in cases of emergency, Licensor will endeavor to provide the Licensee with written notice in advance of any scheduled repair, maintenance, alteration or improvement of the Property. The Licensee agrees to reimburse the Licensor for any actual additional repair, maintenance, alteration or improvement costs which the Licensor incurs as a result of the Licensee's Communication Facility being located on the Tower. Licensor shall attempt to minimize, at no additional expense to the Licensor, any disturbance to the Licensee's operations during such repairs, maintenance, alterations or improvements. Should Licensor's activities interfere with the Licensee's operation, Licensor shall, if feasible, allow the Licensee to install temporary facilities, at its sole cost, at an agreed upon location on the Property until such activities are completed.

(b) Licensor does not guarantee to the Licensee subsequent noninterference with the Licensee's communications operations, provided, however, that in the event any other party except a governmental unit, office or agency requests a license and/or permission to place any type of additional antenna or transmission facility on the Tower, the following procedures shall govern to determine whether such antenna or transmission facility will interfere with the Licensee's transmission operations:

If the Licensor receives any such request, the Licensor shall submit a proposal complete with all technical specifications reasonably requested by the Licensee to the Licensee for review for noninterference; however, the Licensor shall not be required to provide the Licensee with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. The Licensee shall have Thirty (30) days following receipt of said proposal to make any objections thereto, and failure to make any objection within said Thirty (30) day period shall be deemed consent by the Licensee to the installation of antennas or transmission facilities pursuant to said proposal. If the Licensee gives notice of objection due to interference during such Thirty (30) day period and the Licensee's objections are verified by the Licensor to be valid, then the Licensor shall not approve such proposal unless the third party modifies the proposal in a manner determined, in the Licensor's reasonable judgment, to adequately reduce the interference. In that case, the Licensor may approve the proposal.

Licensor shall not cause or permit the construction of communications towers or structures, on the Premises or Property that interfere with Licensee's Permitted Use.

(c) In the event of electronic interference, Licensor shall reasonably cooperate with Licensee's technical team to identify the source of the interference and determine the method to cease the electronic interference.

(d) Before making any modifications to the Communication Facility, Licensee shall provide to Licensor, at the Licensee's expense, an interference study indicating whether the Licensee's modifications will interfere with any existing communications facilities on the Property.

(e) The Licensee's use and operation of the Communication Facility shall not interfere with the use and operation of other communication facilities on the Property which pre-existed the Communication Facility. If the Communication Facility causes interference, Licensee shall take all measures reasonably necessary to promptly correct and eliminate the interference. If the interference cannot be eliminated within Five (5) days after the Licensee has actual notice of this interference, the Licensee shall immediately cease operating its Communication Facility until the interference has been eliminated (except for periodic testing pursuant to FCC regulations and generally accepted industry standards). If the interference cannot be eliminated within Thirty (30) days, the Licensee shall have the right to terminate this Agreement. If the interference cannot be eliminated within One Hundred Twenty (120) days, the Licensors may revoke this Agreement.

(f) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility. This Agreement does not grant Licensee the exclusive right to operate telecommunications facility on the Property and the Parties acknowledge that the Lessor will continue to use the Tower and shall have the right to lease or grant other licenses to one or more entities on the Tower, provided that any such subsequent use, lease, or license shall not interfere with the Licensee's rights under this Agreement as provided in this Section 9.

**10. INDEMNIFICATION.** The Licensee shall be liable to and agrees to indemnify, defend and hold harmless the Licensors, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the Licensors or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Licensee and/or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligent acts of the Licensors, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of this Agreement.

**11. DEED RESTRICTION INDEMNIFICATION.** Except as otherwise provided herein, for the term of this License and any renewal or extension hereof, the Licensee agrees to indemnify, hold harmless and defend the City from any loss and expense and any and all lawsuits, liability, claims and demands arising from, in connection with, caused by or resulting from the Licensee's occupancy and use of the Premises alleging violation of the deed restriction contained in that certain warranty deed/indenture dated November 29, 1924, from Mr. and Mrs. Hammersley, et al. to the City (the "Deed Restriction"). The Licensee shall defend such action with counsel of its choice. The City retains the right, but not the obligation to participate in the defense of such action. The City further agrees to cooperate with the Licensee, including, but not limited to, supporting the City Attorney's Opinion 97-007 dated May 1, 1997, in the Licensee's and/or the City's defense of such action. Failure to defend any actions and/or claims shall be a material default under the terms of this License and shall be cause for termination by the City of this License. The parties understand and agree that the Licensee's indemnification of the City contained in this Paragraph does not apply to: (i) lawsuits, liability, claims and demands brought solely and exclusively against any subsequent licensee(s) of the Tower and/or Land, including, but not limited to, matters involving the subject Deed Restriction; (ii) lawsuits, liability, claims and demands alleging solely and exclusively or whose only remaining issues are that the City improperly permitted any subsequent licensee of the Tower and/or Land; and (iii) lawsuits, liability, claims and demands alleging solely and exclusively or whose only remaining issues are the City's and/or any other licensee's failure (other than the Licensee) to in any way properly permit, construct, and/or maintain the Tower and/or Land or their respective facilities on the Tower and/or Land. Further, in the event of any lawsuits, liability, claims or demands alleging multiple claims against one or more parties including the City, among them claims alleging a violation of the Deed Restriction by the Licensee which requires the Licensee to indemnify, hold harmless and defend the City under this Paragraph ("Claims"), if the Licensee procedurally and/or substantively disposes of such Claims, the Licensee shall be

relieved of any further obligation to indemnify, hold harmless and defend the City in such matter unless otherwise required to do so under this License.

In the event the Licensee solely defends any such actions relating to the Deed Restriction and remains a licensee on the Tower and/or Land, each subsequent non-governmental licensee on the Tower and/or Land must reimburse the Licensee, and the next prior licensee(s) the proportionate share of the Licensee's costs to conduct such defense based on the number of non-governmental licensees on the Tower and/or Land, such that all share the costs equally. Such reimbursement must be paid to and received by the Licensee before the City will allow such licensee(s) to install its communications facilities on the Property, and reimbursement of any subsequent expenses shall be a condition of such licensee's(s') continued occupancy.

The City shall require that all subsequent non-governmental licensees indemnify, hold harmless and defend the City on the same terms as the Licensee. In the event any non-governmental licensee fails to indemnify, hold harmless and defend against such action(s) as required, the City or the Licensee, with counsel of its choice, may defend the action(s). Further, failure to indemnify, hold harmless and defend any actions(s) and/or claims(s) shall be a material default under the terms of those licenses and shall be cause for termination by the City. If the Licensee alone indemnifies, holds harmless and defends the City, the other non-governmental licensees shall pay to the Licensee their proportionate share of the costs and expenses incurred.

The Licensee's obligations and duties in this Paragraph are limited as specifically set forth. The obligations set forth in this Paragraph do not constitute nor do they contemplate or include the defense of any other actions or issues relating to the Tower and/or Land, except as otherwise provided in this License.

Notwithstanding any other provision of this Paragraph, in the event the defense of such an action or actions by the Licensee, or any other licensee or the City should not prevail and the Licensee is required to remove its Equipment from the Tower and/or Land, the Licensee shall have the right to terminate this License without penalty or obligation in excess of the obligations due through indemnification, termination and the removal requirements as set forth in this License, upon thirty (30) days' written notice to the City and any prepaid fees shall be prorated to the date of termination and the balance immediately refunded to the Licensee, and no future liability or obligation to indemnify, hold harmless or defend the City shall accrue to the Licensee following removal of its facilities from the Premises for actions and claims accruing or arising subsequent to removal from the Premises, however, the indemnification provision of this Paragraph relating to the period of occupancy and use shall still apply.

## **12. WARRANTIES.**

(a) Each of Licensee and Licensor (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Licensor represents, warrants and agrees that: (i) Licensor solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) to the best of the Licensor's knowledge, the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases or any other agreements which would adversely affect Licensee's Permitted Use and enjoyment of the Premises; Licensor grants to Licensee sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Licensor; (iv) Licensor's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Licensor; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Licensor will make reasonable efforts to provide promptly to Licensee a mutually agreeable subordination, non-disturbance and attornment agreement executed by Licensor and the holder of such security interest.

(c) Licensor makes no representations or warranties as to the suitability of the Premises for Communication Facilities, or as to the condition of the Premises. By accepting this License, Licensee accepts



the Premises as suitable for the purposes for which it is licensed. Licensee also accepts the Premises and every part thereof in an as-is condition, with all defects, except for latent defects.

**13. ENVIRONMENTAL.**

(a) Licensor represents and warrants, except as may be identified in **Exhibit 3** attached to this Agreement, (i) to the best of Licensor's knowledge and without Licensor's inspection, the Property, as of the Effective Date, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) to the best of Licensor's knowledge and without Licensor's inspection, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Licensor and Licensee agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) Licensee represents and warrants that its use of the Property will not generate any hazardous substance, and it will not store or dispose on the Property nor transport to or over the Property any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. Licensee further agrees to hold the Licensor harmless from and indemnify the Licensor against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the Licensor, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.

**14. ACCESS.**

(a) At all times throughout the Term of this Agreement, Licensee, Licensee and its employees, agents, and subcontractors shall have pedestrian and vehicular access ("**Access**") to and over the Licensor's Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Licensee may access the Premises during ordinary business hours of 8:00 AM – 5:00 PM, Monday through Friday, excepting government holidays therefrom, for regular maintenance and repairs, by first providing notice to Licensor at 608-266-4768 provided, however, in the event of an emergency, which shall be deemed to include any outage or failure of the Communication Facility, Licensee shall have Twenty Four (24) hours per day, Seven (7) days per week emergency Access to the Premises by providing Licensor reasonable notice of any such emergency access as soon as reasonably practicable in light of the emergency circumstance, by contacting Licensor at 608-266-4768.

(b) Any additional keys required for such access shall be paid for by Licensee at Five Hundred Dollars (\$500) each. If special gates/locks are required to provide Licensee with full daily access, then Licensee shall pay for the cost of that installation and maintenance. As may be described more fully in **Exhibit 2**, Licensor grants to Licensee an easement for such Access and Licensor agrees to provide to Licensee such codes, keys and other instruments necessary for such Access to Licensee.

(c) Licensee must accept road conditions in their current and future states. Licensor does not warrant road conditions fit for any particular use or purposes and has no obligations to maintain any roads for Licensee. Notwithstanding the foregoing, Licensee shall be responsible for the cost of damage only to the extent such damage is caused by Licensee or its authorized 3<sup>rd</sup> party representatives. Together with the invoice, Licensor shall provide Licensee with evidence documenting to what extent the damage was caused by Licensee's use.

(d) Licensee shall have the right to park vehicles only within the Premises or designated areas.

(e) At all times during which the Licensee has access to the Premises, the Licensee will take all reasonable steps to ensure that all enclosures, gates, ladders and any other access ways to the Premises are

properly secured when not in use in order to prevent unauthorized access to the Premises. The Licensee shall be assessed a penalty of Two Thousand Dollars (\$2,000.00) for each instance of non-compliance with the requirements of this Subparagraph, payable within sixty (60) after Licensee's receipt of notice and invoice from the Licensor; and, in the event that curing such violation requires the Licensee to access the Premises, the Licensor shall grant the Licensee such access as soon as reasonably possible after providing notice of such violation.

(f) If Licensee elects to utilize an Unmanned Aircraft System ("UAS") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at a Property, Licensor hereby grants Licensee, or any UAS operator acting on Licensee's behalf, express permission to fly over the applicable Property and Premises, but not take off nor land the UAS on the Property or Premises, and consents to the use of audio and video navigation and recording of the Premises in connection with the use of the UAS.

(g) Licensor acknowledges that in the event Licensee cannot obtain Access to the Premises, Licensee may incur damages. If Licensor fails to provide the Access granted by this Section 14, such failure shall be a default under this Agreement. Notwithstanding Access granted by this Section 14, Licensor, in its sole discretion, reserves the right to deny access during high fire hazard or other natural disasters or acts of God without incurring damages, except in the case of an emergency, in which case, Licensee shall have Access as provided herein.

**15. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Licensee will be and remain Licensee's personal property and, at Licensee's option, may be removed by Licensee at any time during or after the Term, except for utilities installed by the utility company, including power meters. Licensor covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Licensee will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Licensor that all improvements of every kind and nature constructed, erected or placed by Licensee on the Premises will be and remain the property of Licensee and may be removed by Licensee at any time during or after the Term. Within One Hundred Twenty (120) days after the latter of the end of the Term and cessation of Licensee's operations at the Premises, Licensee shall remove its Communications Facility, including all footings and foundations to three feet below grade, and Licensee will restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted. Licensee will repair any damage to the Property resulting from Licensee's removal activities. Licensee shall continue to pay Rent during the 120-day removal period in an amount that is the same as that which was paid for the month immediately prior to expiration or termination. Any portions of the Communication Facility that Licensee does not remove within such 120-day period shall be deemed abandoned and owned by Licensor. Thereafter, Licensor may remove all Licensee's Communications Facility and restore the Premises to its original condition, wear and tear and underground utilities excepted. Licensor shall invoice Licensee for Licensor's actual out of pocket costs incurred in such removal, to be paid to Licensor within Forty Five (45) days of Licensee receipt of an invoice therefor. Notwithstanding the foregoing, Licensee will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Licensee be required to remove from the Premises or the Property any underground utilities. Licensee shall continue to pay Rent until the Communication Facility is removed in accordance with this Section 15. All rights to access and utility easements, of record and not of record, shall cease and be considered terminated at the expiration or termination of this Agreement and any portions of the Communication Facility that remain within such access or utility easements or rights of way shall be deemed abandoned and owned by the Licensor in accordance with the terms of this Section 15.

**16. MAINTENANCE/UTILITIES.**

(a) Licensee will keep and maintain the Premises in good condition, free of any debris, reasonable wear and tear and damage from the elements excepted and in a presentable condition consistent with good business practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. Maintenance responsibilities include, but shall not be limited to, any required paving, general repairs, removal of garbage and debris, snow removal, landscape and upkeep as

related to Licensee's equipment and activities. Licensor has no obligations to maintain road conditions or warrants their fit for any particular uses or purposes. Licensee must accept road conditions in as-is conditions. Licensee shall not use the Premises for storage, including but not limited to the storage of equipment or hardware, except the temporary and orderly placement of items in conjunction with maintenance, repair or construction activities.

(b) Licensee will have the right to install utilities, at Licensee's expense, and to improve present utilities on the Property and the Premises. Licensor shall have no obligation to provide utility services to Licensee. Existing utility infrastructure will be utilized where possible for Licensee's separate utilities. If new utility service is needed Licensor hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Licensee an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of initially constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises, at locations and upon conditions approved in writing by Licensor. Upon Licensee's or service company's request, Licensor will execute a separate recordable easement evidencing this grant. Licensee or service company shall compensate Licensor for any actual out of pocket expenses borne by Licensor to provide the easement document. Licensee shall obtain the prior written approval of Licensor regarding any work activities outside of the Premises and within the easements. Licensee shall not interfere with Licensor's normal operations nor harm the Property.

(c) Licensee will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Licensee on the Premises directly to the utility company

(d) Licensee shall cooperate with Licensor's maintenance and upgrade activities. This cooperation includes but is not limited to Licensor's general property maintenance activities, construction upgrades or enhancements to the Tower as may be required from time to time with increased use of the Tower's structural capacity.

## **17. DEFAULT AND RIGHT TO CURE; TERMINATION.**

(a) In addition to the occurrences set forth in subsections (c) and (d) below, the following will be deemed a default by Licensee and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than sixty (60) days after written notice from Licensor of such failure to pay; or (ii) Licensee's failure to perform any other term or condition under this Agreement within sixty (60) days after written notice from Licensor specifying the failure. No such failure, however, will be deemed to exist if Licensee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Licensee. If Licensee remains in default beyond any applicable cure period, then Licensor will have the right to exercise any and all rights and remedies available to it under law and equity. Failure of Licensor to declare this License revoked upon the breach or default of the Licensee for any reason set forth in this Section 17 shall not operate to bar or destroy any right of Licensor to revoke this License for any subsequent breach or default of any term or condition of this License.

(b) The following will be deemed a default by Licensor and a breach of this Agreement: (i) Licensor's failure to provide Access to the Premises in accordance with the provisions in Section 14 within a reasonable period after written notice of such failure; (ii) Licensor's failure to assist in curing an interference problem as required by Section 9 within a reasonable period after written notice of such failure; or (iii) Licensor's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within Forty Five (45) days after written notice from Licensee specifying the failure. No such failure, however, will be deemed to exist if Licensor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Licensor. If Licensor remains in default beyond any applicable cure period, Licensee will have any and all other rights available to it under law and equity.

(c) The following occurrences shall constitute an act of default by the Licensee under this Agreement, and are subject to the provisions of paragraph (a) above:

1. The failure of the Licensee to make any payment due under this License at any time following the filing by the Licensee of a voluntary petition in bankruptcy.
2. The institution of proceedings in bankruptcy against the Licensee and the adjudication of the Licensee as bankrupt pursuant to such proceedings.
3. The taking by a court of competent jurisdiction of the Licensee's assets pursuant to proceedings brought under the provisions of any federal or state reorganization act.
4. The appointment of a receiver of the Licensee's assets.
5. The divestiture of the Licensee's interest herein by other operation of law, except as permitted in Section 18.
6. The Licensee's use of the Premises for an illegal purpose.

(d) In the event that the Licensee shall fail to maintain insurance as required by this License, Licensor may elect to: (a) immediately revoke this License and cause the removal of the Communication Facility installed upon the Premises at the sole expense of the Licensee; or (b) purchase or pay for any insurance coverage required by this License and charge the Licensee the cost of same as an Additional Fee. In the event of revocation under this paragraph, any License Fee that has been prepaid shall be retained by Licensor as liquidated damages.

(e) The Licensee shall have the right to give notice to terminate this License at any time during the Term of this License by giving Licensor a minimum of One (1) year's written notice of termination. In the event of termination under this paragraph, the date of termination must coincide with the last day of the then-current Term.

(f) The primary purpose of the Tower is to support Licensor's municipal communication uses. As such, the Licensor shall have the right to terminate this License, at any time during the Term, in the event Licensor determines, in its sole and absolute discretion, that the Tower is no longer necessary for municipal communication uses or if the Tower no longer supports communication municipal uses. Licensor shall provide Licensee notice of such termination with no less than 180 days written notice.

**18. ASSIGNMENT.** Licensee will have the right to assign this Agreement for the Premises and its rights herein, in whole or in part, subject to Licensor's consent, which shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, Licensee will have the right to assign, sell or transfer its interest under this Agreement without the approval or consent of Licensor, to Licensee's Affiliate (defined below) or to any entity which acquires all or substantially all of the Licensee's assets by reason of a merger, acquisition, or other business reorganization. Upon obtaining Licensor's written consent and completing such assignment or upon completion of assignment if no such consent is required, Licensee will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment. Should Licensor, at any time during the Term, sell or transfer all or any part of the Property to a purchaser other than Licensee, such transfer shall be subject to this Agreement and Licensor shall require any such purchaser or transferee to recognize Licensee's rights under the terms of this Agreement in a written instrument signed by Licensor and the third-party transferee. Licensee shall not have the right to lease, sublease or grant licenses to the Premises without Licensor's consent.

**19. NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Licensee:                   DISH Wireless L.L.C., Attn: Lease Administration  
   5701 S. Santa Fe Drive  
   Littleton, CO 80120

If to Licensor:                   City of Madison  
   Economic Development Division  
   Office of Real Estate Services

Madison Municipal Building  
215 Martin Luther King, Jr. Boulevard  
P.O. Box 2983  
Madison, WI 53701-2983

With a copy to: Terabonne, Inc.  
P.O. Box 6257  
Edmonds, WA 98026

Either party hereto may change the place for the giving of notice to it by Thirty (30) days' prior written notice to the other party hereto as provided herein.

**20. CONDEMNATION.**

(a) In the event the Premises or any part thereof shall be needed either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefor, including, but not limited to, all damages and compensation for diminution of value of this License, and the reversion and fee interests, shall belong to Licensor without any deduction therefrom for any present or future estate of the Licensee, and the Licensee hereby assigns to Licensor all of its right, title and interest to any such award. However, the Licensee shall have the right to recover from the condemning authority such compensation as may be separately awarded to the Licensee on account of interruption of the Licensee's business and for moving and relocation expenses.

(b) In the event the whole of the Premises or any part thereof shall be taken or condemned so that the balance cannot be used for the same purpose and with substantially the same utility to the Licensee as immediately prior to such taking, this License shall terminate upon delivery of possession to the condemning authority and any License Fee that has been prepaid for the period following the termination shall be prorated on a per diem basis and refunded to the Licensee unless the Licensee will receive compensation for any prepaid License Fee from the condemning authority.

(c) In the event of a taking of any portion of the Premises not resulting in a termination of this License, Licensor shall use so much of the proceeds of Licensor's award for the Premises as is required therefor to restore the Premises to a complete architectural unit, and this License shall continue in effect with respect to the balance of the Premises, with a reduction of the License Fee in proportion to the portion of the Premises taken.

(d) In the event of a condemnation of a portion of the Property, Licensor may agree to permit Licensee to place temporary transmission and reception facilities on the Property, at Licensee's sole cost, upon Licensee presentation of a construction drawing that Licensor finds reasonably acceptable, at a mutually agreed upon location 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, including Rent. If Licensee undertakes to relocate the Communication Facility, as applicable, Licensor agrees to permit Licensee to place temporary transmission and reception facilities on the Property until the relocation of the Communication Facility is complete.

(e) If a condemning authority takes all of the Property, or a portion sufficient, in Licensee's sole determination, to render the Premises unsuitable for Licensee, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, consistent with applicable law, which for Licensee will include, where applicable, the value of its Communication Facility, moving expenses and business dislocation expenses so long as Licensee's award does not diminish Licensor's award.

**21. CASUALTY.** Licensor will make a good faith effort provide notice to Licensee of any casualty or other harm affecting the Property within Forty-eight (48) hours of the casualty or other harm upon discovery. If the Tower is damaged or destroyed by fire, winds, flood, lightning or other natural or manmade cause, the Licensor shall have the option to repair or replace the Tower at its sole expense or to terminate the License, without

penalty, effective on the date that Licensor provides written to Licensee. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Licensee's sole determination, then Licensee may terminate this Agreement by providing written notice to Licensor, which termination will be effective as of the date Licensee provides Licensor written notice of termination pursuant to this Section. Upon such termination, Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof. In the event that the Tower can no longer support Licensee's equipment, and the License has not been terminated by Licensor or Licensee under this Section, Licensor agrees to permit Licensee to place temporary transmission and reception facilities on the Property upon Licensee presentation of a construction drawing that Licensor finds reasonably acceptable, 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, including Rent. If Licensor or Licensee undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Licensor agrees to permit Licensee to place temporary transmission and reception facilities on the Property until the reconstruction of the Premises and/or the Communication Facility is completed. Licensee agrees to restore the Property to its condition prior to the installation of the temporary transmission and reception facility within Thirty (30) days after the same is removed, reasonable wear and tear excepted. The restoration of Licensor's services shall be given the highest priority in the event that any of Licensor's services and the Licensee's telecommunication services are interrupted at the same time, unless otherwise agreed to by Licensor and the Licensee at the time of restoration.

**22. WAIVER OF LICENSOR'S LIENS.** Licensor waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Licensor consents to Licensee's right to remove all or any portion of the Communication Facility from time to time in Licensee's sole discretion and without Licensor's consent.

**23. TAXES.**

(a) Licensor is currently a tax-exempt entity and the Property is currently not subject to real estate taxes or assessments. In the event that Licensor is required to pay to taxes, Licensee shall be responsible for and pay, before delinquency, (i) any real estate taxes and assessments attributable to and levied upon Licensee's improvements on the Premises if and as set forth in this Section 23 and (ii) all municipal, county and state or federal personal property taxes assessed against any interest of the Licensee in the Premises or assessed against the Communication Facility. Licensee shall make commercially reasonable efforts to pay taxes associated with its license improvements directly to the taxing authority without requiring Licensor to pay Licensee's share of taxes so as to avoid Licensor managing any tax payments on behalf of Licensee.

(b) If it is not possible to pay taxes directly to the taxing authority, and in the event Licensor receives a notice of assessment with respect to which taxes or assessments are imposed on Licensee's license improvements on the Premises, Licensor shall provide Licensee with copies of each such notice. then Licensee shall reimburse Licensor for the tax or assessments identified on the notice of assessment on Licensee's license improvements, which has been paid by Licensor within Thirty (30) days of receipt of such notice.

(c) For any tax amount for which Licensee is responsible under this Agreement, Licensee shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. If the taxing authority requires Licensee to institute any legal, regulatory, or informal action in the name of the Licensor, Licensor shall reasonably cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Licensee and any refunds or rebates secured as a result of Licensee's action shall belong to Licensee, to the extent the amounts were originally paid by Licensee.

**24. SALE OF PROPERTY.**

(a) Licensors may sell the Property or a portion thereof to a third party, provided the sale is made subject to the terms of this Agreement.

(b) If Licensors, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property, to a purchaser other than Licensee, Licensors shall promptly notify Licensee in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Licensee's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within Ten (10) days of such transfer, Licensors or its successor shall send the documents listed below in this Section 24(b) to Licensee. Until Licensee receives all such documents, Licensee's failure to make payments under this Agreement shall not be an event of default and Licensee reserves the right to hold payments due under this Agreement.

1. Old deed to Property
2. New deed to Property
3. Bill of Sale or Transfer
4. Copy of current Tax Bill
5. New IRS Form W-9
6. Completed and Signed Licensee Payment Direction Form
7. Full contact information for new Licensors including phone number(s)

(c) The provisions of this Section 24 shall in no way limit or impair the obligations of Licensors under this Agreement, including interference and access obligations.

**25. LICENSOR'S RIGHT OF ENTRY.** Licensors and its representatives shall have the right to enter upon the Premises (but shall not have access to any interior space without prior notice to the Licensee or without allowing the Licensee to have its representative accompany the Licensors) at any reasonable time for the following purposes:

(a) To make any inspection it may deem expedient to the proper enforcement of any term or condition of this Agreement or in the exercise of its police powers.

(b) For the purpose of performing work related to any public improvement, provided that Licensors restore the Premises to a condition equivalent to that which existed on the date Licensors initiated the installation of the public improvement. The Licensee agrees to hold Licensors harmless for any loss of access to the Premises by the Licensee which may occur during the period of installation of the public improvement.

**26. RELOCATION.** Licensors shall have the right to relocate the Tower on the Property during the Term. In the event Licensors desires to relocate the Tower on the Property, Licensors shall provide Licensee with One Hundred Eighty (180) days written notice of such relocation along with a rendering depicting the ground equipment location and space on the Tower that Licensee may relocate its Communications Facility at a new location on the Property. Licensee, may, at its discretion, elect to relocate its Communications Facility to the new location on the Property, at its sole cost and expense or Licensee may terminate this Agreement, upon written notice, without penalty. In the event Licensee requires a temporary communications facility on the Property so as to avoid any network outages, Licensors shall take commercially reasonable steps to cooperate with Licensee on identifying a temporary location acceptable to both Licensors and Licensee for the placement of a temporary communications facility on the Property, so long as Licensee continues to pay Rent. Except for an Emergency, Licensee shall not be required to relocate equipment to a new location more than one (1) time within any five (5) year period.

**27. TOWER COOPERATION.** Licensee, shall cooperate with Licensors in Licensors's efforts to maintain, repair, upgrade or enhance the Tower, at Licensee's sole cost and expense. The cooperation described in this Section 27 includes, and is not limited to, the temporary removal of equipment, antenna, cabling or brackets by Licensee.

**28. MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Licensor and Licensee. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **RF Emissions.** The Licensee shall be responsible for ensuring that the Communication Facility does not cause radio frequency ("RF") emissions that are in excess of the safe limits established by the FCC ("RF Standards"). Before installing or making any modifications to the Communication Facility, the Licensee shall survey the existing RF environment at the Property. By installing the Communication Facility, the Licensee shall be deemed to have represented to the Licensor that the Communication Facility shall not itself violate, or, in conjunction with other RF sources located at the Property as of the Effective Date, exceed the RF Standards. The Licensee shall provide the Licensor with safety recommendations that address the protection of those who must be on the Property due to maintenance, repair, or other activities related to the operations carried out at the Property. The Licensee shall cooperate with the Licensor in reducing RF exposure to maintenance personnel by powering down, or powering off, the Communication Facility, as necessary, during periods of maintenance at the Property. The Licensor shall provide the Licensee with as much advance notice of any such maintenance as is reasonably available.

(c) **Rights Upon Expiration, Revocation or Termination.** Upon the expiration, revocation or termination of this License for any cause, the Licensee's rights in the Premises and its obligations hereunder (except any obligations that by their nature or by their language survive termination) shall cease, and the Licensee shall immediately surrender the Premises, subject to the provisions of Section 15.

(d) **Compliance with Law.** Licensee agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Licensee's use of the Communication Facility on the Property. Licensor agrees to comply with all Laws relating to Licensor's ownership and use of the Property and any improvements on the Property. The Licensee may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Licensee agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state of Wisconsin, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate;



and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to “Licensee” shall be deemed to include any Affiliate of Licensee using the Premises for any Permitted Use or otherwise exercising the rights of Licensee pursuant to this Agreement. “Affiliate” means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. “Control” of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Licensor agrees to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Licensee, including any change in Licensor’s name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises except based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Licensor and Licensee. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Further Acts.** Upon request, Licensor will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Licensee may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and permitted use contemplated by this Agreement.

(n) **Free of Encumbrances/Liens.** The Licensee shall in no way encumber, or allow to be encumbered, the Licensor’s title to the Premises. Licensee shall keep the Premises and the Property and Licensor’s interest therein free from any liens arising from any work performed, materials furnished or obligations incurred by or on behalf of Licensee. Licensee indemnifies Licensor for, and agrees to defend with counsel acceptable to Licensor, and hold Licensor harmless from and against, all liability, loss, damages, costs or expenses, including but not limited to attorneys’ fees, expenses and court costs incurred in connection with any such lien. Within sixty (60) days after the filing of any such lien, Licensee shall either discharge or cancel such lien of record. If Licensee desires to contest any such claim of lien, Licensee will cause such lien to be released of record by bonding off said lien or by posting adequate security with a court of competent jurisdiction as may be provided by Wisconsin law. If Licensee fails to so discharge or bond such lien within sixty (60) calendar days after written demand from Licensor, Licensor may, at its option, bond or discharge the same by paying the amount claimed to be due, and 150% of the amount so paid by Licensor, including the maximum allowable attorney’s fees under Wisconsin law to defend against such lien or procure the bonding or discharge of such lien be due and payable within 30 days upon demand by Licensee to Licensor.

(o) **Quality of Work.** Work shall be performed in a high-quality manner. The completely constructed Communication Facility shall be free of debris and no unused parts or remnants shall be stored in or around the Premises or Property. Access easements and any areas disturbed by Licensee due to construction staging, parking, and equipment storage shall be repaired and restored to their pre-construction state to Licensor reasonable satisfaction.

(p) **As-Built.** Within 30 days after the completion of construction of the Communication Facility, Licensee shall provide Licensor with a close out package in PDF format containing construction drawings, zoning approval documents, building permits, and photo documentation of the Communication Facility at the time of construction completion as part of Licensor’s permanent records for the Premises.

(q) **Non-Discrimination.** In the performance of the services under this License, the Licensee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge,

physical appearance, sexual orientation, gender identity, political beliefs or student status. The Licensee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

(r) **Accessibility.** The Premises shall conform where applicable to the accessibility provisions of the Wisconsin Administrative Code, Madison General Ordinance 39.05, the Federal Fair Housing Act as amended, and the Americans with Disabilities Act, regarding accessibility for the use of the Premises by the Licensee's employees, with all costs of compliance to be paid by the Licensee.

(s) **Subordination.** This Agreement is subordinate to rights and privileges granted by the Licensor to public and private utilities across, over or under the Premises. The Licensee shall subordinate its rights in this License, without compensation, at the request of the Licensor to provide easements and rights-of-way for all public and private utilities across or along the Premises, provided that neither such subordination nor such easements shall interfere, except temporarily during construction or temporarily pursuant to rights which accrue to such easements or rights-of-way, with the use of the Premises by the Licensee under the terms of this License.

(t) **Authorized Agent.** The Director of the City's Economic Development Division or the Director's designee is hereby designated as the official representative of the Licensor for the enforcement of all provisions of this License, with authority to administer this Agreement lawfully on behalf of the Licensor.

(u) **Conflict of Interest.** The Licensee warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this License. The Licensee shall not employ or contract with any person currently employed by Licensor for any services included under the provisions of this License.

(v) **Third Party Rights.** This License is intended to be solely between the parties hereto. No part of this License shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

(w) **Goodwill.** Any and all goodwill arising out of this License inures solely to the benefit of Licensor; the Licensee waives all claims to benefit of such goodwill.

(x) **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable by a court or agency of competent jurisdiction, (a) the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired; and (b) the Parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal or unenforceable) that is valid, legal and enforceable and carries out the Parties' intentions to the greatest lawful extent. If any such action or determination renders the overall performance of this Agreement impossible or materially impairs the original purpose, intent or consideration of this Agreement, and the Parties are, despite the good faith efforts of each, unable to amend this Agreement to retain the original purpose, intent and consideration in compliance with that court or agency determination, the provision held invalid, illegal or unenforceable shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement.

(y) **Counterparts.** This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

(z) **Public Record.** A Memorandum of Agreement (**Exhibit 4**) will be recorded by the Licensor at the office of the Dane County Register of Deeds upon the Term Commencement Date.

## EXHIBIT 1

### DESCRIPTION OF PROPERTY

#### LEASE AREA

Being a part of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of Section Twenty-One (21), Township Seven (7) North, Range Nine (9) East, City of Madison, Dane County, Wisconsin containing 208 square feet (0.005 acres) of land and being described by:

Commencing at the West Quarter Corner of said Section 21; thence S89°-24'-23"E 951.79 feet along the North line of the SW1/4 of said Section 21 to a point on the east right of way line of Larkin Street; thence S00°-05'-56"E 955.51 feet along said east right of way line; thence N90°-00'-00"E 73.48 feet; thence S00°-00'-00"E 10.00 feet to the point of beginning; thence continuing S00°-00'-00"E 13.00 feet; thence S90°-00'-00"W 16.00 feet; thence N00°-00'-00"W 13.00 feet; thence N90°-00'-00"E 16.00 feet to the point of beginning. Being subject to any and all easements and restrictions of record.

#### 10' WIDE UTILITY EASEMENT

Being a part of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of Section Twenty-One (21), Township Seven (7) North, Range Nine (9) East, City of Madison, Dane County, Wisconsin containing 735 square feet (0.017 acres) of land and being described by:

Commencing at the West Quarter Corner of said Section 21; thence S89°-24'-23"E 951.79 feet along the North line of the SW1/4 of said Section 21 to a point on the east right of way line of Larkin Street; thence S00°-05'-56"E 955.51 feet along said east right of way line to the point of beginning; thence N90°-00'-00"E 73.48 feet; thence S00°-00'-00"E 10.00; thence S90°-00'-00"W 73.48 feet to a point on the east right of way line of Larkin Street; thence N00°-00'-00"W 10.00 feet along said east right of way line to the point of beginning. Being subject to any and all easements and restrictions of record.