

Sample Model Site Lease Agreement

Source: League of Minnesota Cities, Research memo for city officials, 575B4.2 July 1996

Site Lease Agreement for Personal Communications Systems, Cellular or Page Antenna Locations

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT ("Lease"), made this day of _____ between City of _____ ("Landlord"), and _____ a _____ organized and existing under the laws of _____ ("Tenant").

For good and valuable consideration, the parties agree as follows:

1. **Leased Premises.** Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord a portion of Landlord's property, consisting of approximately ____ square feet, located at _____, County of _____, State of Minnesota, legally described in Exhibit A attached hereto, subject to any and all existing easements, and a portion of the _____ Water Tower or other structures ("Structure"), between a minimum height of ____ feet and a maximum height of feet measured from grade as more particularly shown in Exhibit B attached hereto, on which directional antennas, connecting cables and appurtenances will be attached and located, the exact location of each to be reasonably approved by Landlord's Director of _____ together with a non-exclusive easement for reasonable access thereto and for adequate utility services, including sources of electric and telephone facilities also shown on Exhibit B ("Leased Premises").

2. **Rent.**

(a) **Amount. Adjustments.** As consideration for this Lease, Tenant shall pay Landlord an annual rent in the amount of _____ for the initial year, which shall be increased each year on January 1, by the greater of: (a) five percent (5%) of the previous year's annualized rental, or (b) by an amount equal to the increase in the Consumer Price Index ("CPI"). The CPI shall mean the "Consumer Price Index - for All Urban Consumers, All Cities, All Items (1967 = 100)" as published by the United States Department of Labor Statistics, or if such index shall be discontinued, the successor index, or if there shall be no successor index, such comparable index as mutually agreed upon by the parties. To determine the annual rental increase to be paid by Tenant under a CPI adjuster, the annualized rental for the previous year shall be multiplied by a percentage figure, computed from a fraction, the numerator of which shall be the CPI for the third quarter of the preceding year and the denominator of which shall be the CPI for the corresponding quarter of one year earlier. Such fraction shall be converted to a percentage equivalent. The resulting percentage fixture shall be multiplied by the previous year's rent (annualized for the first year, see Paragraph 4 below).

(b) **Time of Payment. Taxes.** Landlord shall communicate all rental increases to the Tenant in writing by the preceding December 1 of each year. The annual rental shall be paid before January 1 of each year. For the first year, the rental shall be pro-rated through December 31 and shall be paid to Landlord in full at the time Lease is executed. If the Tenant does not meet the requirements referenced in Subparagraph 3(a) below by _____ and Tenant has diligently pursued such requirements, Landlord shall refund the Tenant rental payment made at the time of Lease execution and this Lease shall terminate. In addition to the annual rental, Tenant agrees to timely pay its pro rata share of any taxes or payment in lieu of taxes required as a result of this Lease.

3. **Governmental Approval Contingency.**

(a) **Tenant Application.** Tenant's right to use the Leased Premises is expressly made contingent upon its obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. This shall include the engineering study specified in Subparagraph 3(b) below on the Structure to be conducted at Tenant's expense. Landlord shall cooperate with Tenant in its efforts to obtain and retain such approvals and shall take no action which would adversely affect the status of the Leased Premises with respect to the Tenant's proposed use thereof.

(b) **Interference Study.** Before obtaining a building permit, Tenant must pay for the reasonable cost of (i) a radio frequency interference study carried out by an independent and qualified professional selected by the Landlord showing that Tenant's intended use will not interfere with any existing communications facilities and (ii) an engineering study showing that the Structure is able to support the Tenant's Facilities, as defined in Subparagraph 5(b), without prejudice to the City's use of the

Structure. If the study finds that there is a potential for interference that cannot be reasonably remedied or for prejudice to the Structure, Landlord may terminate this Lease immediately and refund the initial rental to Tenant.

(c) Non-approval. In the event that any application necessary under Subparagraph 3(a) above is finally rejected or any certificate, permit, license, or approval issued to Tenant is cancelled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Tenant, in its sole discretion, will be unable to use the Leased Premises for its intended purposes, Tenant shall have the right to terminate this Lease and be reimbursed for the rental payment if made pursuant to Subparagraph 2(b) above. Notice of Tenant's exercise of its right to terminate shall be given to Landlord in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by Landlord as evidenced by the return receipt. Except as required under Subparagraph 13(d) below, upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other.

4. **Term and Renewals**. The "Initial Term" of this Lease shall commence on the date in the first paragraph of this Lease ("Effective Date") and end on December 31 of the fifth calendar year of the Lease. Subject to the terms and conditions of this Lease, Tenant shall have the right to extend this Lease for three (3) additional five (5) year renewal periods ("Renewal Term") commencing on January 1 following the expiration date of the Initial Term or of any subsequent Renewal Term.

¹[OPTION 1: This Lease shall be automatically renewed for each successive Renewal Term unless either Landlord or Tenant sends written notice of non-renewal to the other no later than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, such notice to be provided in accordance with Paragraph 21 of this Lease.]

[OPTION 2: This Lease shall expire at the end of the Initial Term or any Renewal Term unless Tenant sends written notice to Landlord of Tenant's election to renew at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, such notice provided in accordance with Paragraph 21 of this Lease.]

5. **Tenant's Use**.

(a) User Priority. Tenant agrees that the following priorities of use, in descending order, shall apply in the event of communication interference or other conflict while this Lease is in effect, and Tenant's use shall be subordinate accordingly:

1. Landlord;
2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the Landlord;
3. Other governmental agencies where use is not related to public safety; and
4. Government-related entities whose antennae offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone, not including radio or television broadcasters.

(b) Purposes. Tenant shall use the Leased Premises only for the purpose of installing, maintaining, and operating a Landlord-approved communications antenna facility, equipment, cabinets and an accessory building, and uses incidental thereto for providing radio and wireless telecommunication services which Tenant is legally authorized to provide to the public. This use shall be non-exclusive, and Landlord specifically reserves the right to allow the Leased Premises to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Leased Premises. Tenant's communications antenna facility shall consist of antennas at a Landlord-approved location, along with cables and appurtenances connected to an accessory building or cabinet located on the Leased Premises ("Antenna Facilities"). Tenant shall comply with all applicable ordinances, statutes and regulations of local, state and federal government agencies.

(c) Construction. Tenant may erect and operate an antenna array in accordance with its submitted application attached as Exhibit B. If Tenant seeks to increase the number of antennas, it must first pay for an evaluation carried out by a qualified professional, retained by Landlord demonstrating that (i) each additional antenna will not interfere with existing antennas or with proposed antennas with a higher priority and that (ii) any Structure can structurally support the additional antennas. The cost of each evaluation must be paid by the Tenant within 30 days after receiving written notice of the cost.

Landlord must consent to installation of additional antennas, such consent will not be unreasonably withheld. If Landlord consents, the parties will negotiate the amount of additional rental for the antennas.

¹Option 1 and Option 2 represent alternative renewal rights of Landlord and Tenant. Option 1 is an automatic renewal, but also gives Landlord the right of non-renewal at the end of each five year term. Option 2 requires an affirmative notice to renew by Tenant, but does not give the Landlord the right of non-renewal (unless it is for cause or otherwise provided in section 14).

(d) Operation. Tenant shall have the right, at its sole cost and expense, to operate and maintain the Antenna Facilities on the Leased Premises in accordance with good engineering practices, with all applicable FCC rules and regulations. Tenant's installation of all Antenna Facilities shall be done according to plans approved by Landlord, which approval shall not be unreasonably withheld. Any damage done to the Leased Premises or other Landlord property including the Structure during installation or during operations, shall be repaired at Tenant's expense within 30 days after notification of damage. The Antenna Facilities shall remain the exclusive property of the Tenant, unless otherwise provided in this Lease.

(e) Maintenance. Improvement Expenses. All modifications to the Leased Premises and all improvements made for Tenant's benefit shall be at the Tenant's expense and such improvements, including antenna, facilities and equipment, shall be maintained in a good state of repair, at least equal to the standard of maintenance of the Landlord's facilities on or adjacent to the Leased Premises, and secured by Tenant. If Tenant's Antenna Facilities are mounted on the Structure they shall, at all times, be painted, at Tenant's expense, the same color as the Structure.

(f) Replacements. Before the Tenant may update or replace the Antenna Facilities, Tenant must notify and provide a detailed proposal to Landlord. Tenant shall submit to Landlord a detailed proposal for any such replacement facilities and any other information reasonably requested by Landlord of such requested update or replacement, including but not limited to a technical study, carried out at Tenant's expense. Landlord may not unreasonably withhold approval.

(g) Drawings. Tenant shall provide Landlord with as-built drawings of the equipment and improvements installed on the Leased Premises, which show the actual location of all Antenna Facilities. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and Antenna Facilities actually placed on the Leased Premises.

(h) No Interference. Tenant shall, at its own expense, maintain any equipment on or attached to the Leased Premises in a safe condition, in good repair and in a manner suitable to Landlord so as not to conflict with the use of the surrounding premises by Landlord. Tenant shall not unreasonably interfere with the operations of any prior tenant using the Structure and shall not interfere with the working use of the water storage facilities thereon or to be placed thereon by Landlord.

(i) Access. Tenant, at all times during this Lease, shall have access to the Leased Premises in order to install, operate, and maintain its Antenna Facilities. Tenant shall have access to the Structure only with the approval of Landlord. Tenant shall request access to the Structure twenty-four (24) hours in advance, except in an emergency, and Landlord's approval thereof shall not be unreasonably withheld or delayed. In the event it is necessary for Tenant to have access to the Structure at some time other than the normal working hours of Landlord, Landlord may charge Tenant for whatever expense, including employees' wages, that Landlord may incur in providing such access to Tenant.

(j) Payment of Utilities. Tenant shall separately meter charges for the consumption of electricity and other utilities associated with its use of the Leased Premises and shall promptly pay all costs associated therewith.

6. **Emergency Facilities**. In the event of a natural or man made disaster, in order to protect the health, welfare, and safety of the community, Tenant may erect additional Antenna Facilities and install additional equipment on a temporary basis on the Leased Premises to assure continuation of service. Such temporary operation shall not exceed 90 days unless Tenant obtains written approval from the Landlord.

7. **Additional Maintenance Expenses**. Upon notice from Landlord, Tenant shall promptly pay to Landlord all additional Landlord expenses incurred in maintaining the Leased Premises, including painting or other maintenance of the Structure, that are caused by Tenant's occupancy of the Leased Premises.

8. **Advances in Technology**. As technology advances and improved antennas are developed which are routinely used in

Tenant's business, Landlord may require, in its sole discretion, the replacement of existing antennas with the improved antennas if the new antennas are more aesthetically pleasing or otherwise foster a public purpose, as long as the installation and use of the improved antennas are practical and technically feasible at this location.²

9. **Additional Buildings.** Tenant acknowledges that Landlord may permit additional buildings to be constructed on the property described in Exhibit A. At such time as this may occur, Tenant will permit said buildings to be placed immediately adjacent to Tenant's building and will allow "attachments" to its building so as to give the appearance that all buildings are a connected facility. Said attachments will be made at no cost to Tenant and will not compromise the structural integrity of Tenant's building.

10. **Defense and Indemnification.**

(a) **General.** Tenant agrees to defend, indemnify and hold harmless Landlord and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by Landlord or for which Landlord may be liable in the performance of this Lease, except those which arise solely from the negligence, willful misconduct, or other fault of Landlord. Tenant shall defend all claims arising out of the installation, operation, use, maintenance, repair, removal, or presence of Tenant's Antenna Facilities, equipment and related facilities on the Leased Premises. _____

²The industry tends to object strongly to this provision. Thus if the initial installation of the antenna array is not aesthetically objectionable, you may choose to negotiate this term away for other provisions the City wants or for larger rental payments.

(b) **Hazardous Materials.** Without limiting the scope of Subparagraph 10(a) above, Tenant will be solely responsible for and will defend, indemnify, and hold Landlord, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the Leased Premises resulting from Tenant's use of Hazardous Materials. For purposes of this Lease, "Hazardous Materials" shall be interpreted broadly and specifically includes, without limitation, asbestos, fuel, batteries or any hazardous substance, waste, or materials as defined in any federal, state, or local environmental or safety law or regulations including, but not limited to, CERCLA.

(c) **Tenant's Warranty.** Tenant represents and warrants that its use of the Leased Premises will not generate and Tenant will not store or dispose of on the Leased Premises, nor transport to or over the Leased Premises, any Hazardous Materials, unless Tenant specifically informs Landlord thereof in writing twenty-four hours prior to such storage, disposal or transport, or otherwise as soon as Tenant becomes aware of the existence of Hazardous Materials on the Leased Premises. The obligations of this Paragraph 10 shall survive the expiration or other termination of this Lease.

11. **Insurance.**

(a) **Workers' Compensation.** The Tenant must maintain Workers' Compensation insurance in compliance with all applicable statutes. The policy shall also provide Employer's Liability coverage with limits of not less than \$500,000 Bodily Injury each accident, \$500,000 Bodily Injury by disease, policy limit, and \$500,000 Bodily Injury by disease, each employee.

(b) **General Liability.** The Tenant must maintain an occurrence form comprehensive general liability coverage. Such coverage shall include, but not be limited to, bodily injury, property damage -- broad form, and personal injury, for the hazards of Premises/Operation, broad form contractual, independent contractors, and products/completed operations.

The Tenant must maintain aforementioned comprehensive general liability coverage with limits of liability not less than \$1,000,000 each occurrence; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate, and \$2,000,000 products and completed operations aggregate. These limits may be satisfied by the comprehensive general liability coverage or in combination with an umbrella or excess liability policy, provided coverage afforded by the umbrella or excess policy' are no less than the underlying comprehensive general liability coverages.

Tenant will maintain Completed Operations coverage for a minimum of two years after the construction is completed.

(c) Automobile Liability. The Tenant must carry Automobile Liability coverage. Coverage shall afford total liability limits for Bodily Injury Liability and Property Damage Liability in the amount of \$1,000,000 per accident. The liability limits may be afforded under the Commercial Policy, or in combination with an Umbrella or Excess Liability Policy provided coverage of rides afforded by the Umbrella Excess Policy are no less than the underlying Commercial Auto Liability coverage.

Coverage shall be provided for Bodily Injury and Property Damage for the ownership, use, maintenance or operation of all owned, non-owned and hired automobiles.

The Commercial Automobile Policy shall include at least statutory personal injury protection, uninsured motorists and underinsured motorists coverage's.

(d) Tenant Property Insurance. The Tenant must keep in force during the term and any renewals of the Lease a policy covering damages to its property at the Leased Premises. The amount of coverage shall be sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements.

(e) Hazardous Materials Coverage. Tenant must carry sufficient coverage, to the reasonable satisfaction of Landlord, for damage caused by Hazardous Materials.

(f) Adjustment to Insurance Coverage Limits. The coverage limits set forth herein shall be increased at the time of any Renewal Term by the greater of the Consumer Price Index as calculated under Paragraph 2(a) or 25%.

(g) Additional Insured - Certificate of Insurance. The Tenant shall provide, prior to tenancy, evidence of the required insurance in the form of a Certificate of Insurance issued by a company (rated A+ or better) by Best Insurance Guide, licensed to do business in the state of Minnesota, which includes all coverages required in this Paragraph 11. Tenant will name Landlord as an Additional Insured on the General Liability and Commercial Automobile Liability Policies. The Certificate(s) shall also provide the coverage may not be canceled, non-renewed, or materially changed without thirty (30) days prior written notice to Landlord.

12. **Damage or Destruction.** If the Leased Premises is destroyed or damaged, without contributory fault of the Tenant or its agents, so as, in Tenant's judgment, to hinder its effective use of the Antenna Facilities, Tenant may elect to terminate this Lease upon 30 days' written notice to Landlord. In the event Tenant elects to terminate the Lease, Tenant shall be entitled to reimbursement of prepaid rent covering the period subsequent to the date of damage to or destruction of the Leased Premises.

13. **Lease Termination.**

(a) Events of Termination. Except as otherwise provided herein, this Lease may be terminated upon sixty (60) days written notice to the other party as follows:

(i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default to the other party (without, however, limiting any other rights of the parties pursuant to any other provisions hereof);

(ii) by Tenant for cause if it is unable to obtain or maintain any license, permit or other governmental approval necessary for, the construction and/or operation of the Antenna Facilities or Tenant's business;

(iii) by Tenant for cause if the Leased Premises is or becomes unacceptable for technological reasons including without limitation shadowing or interference under Tenant's Antenna Facilities, design or engineering specifications or the communications systems to which the Antenna Facilities belong;

(iv) by Landlord, upon 120 day's prior written notice to Tenant if its Council decides, for any reason, to redevelop the Leased Premises in a manner inconsistent with continued use of the Leased Premises by Tenant and/or discontinue use of the Structure for all purposes;

(v) by Landlord if it determines that the Structure is structurally unsound, including, but not limited to, consideration

of age of the Structure, damage or destruction of all or part of the Structure on the Leased Premises from any source, or factors relating to condition of the Leased Premises;

(vi) by Landlord if it determines that a potential user with a higher priority under Subparagraph 4(a) above cannot find another adequate location, or the Antenna Facilities unreasonably interfere with another user with a higher priority, regardless of whether or not such an interference was predicted in the initial interference study that was part of the application process, provided that for a one year period after termination under this subparagraph, Landlord shall not lease the Leased Premises to another party with equal or lesser priority for the same use as that of Tenant; or

(vii) by Landlord if it determines that Tenant has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to government approvals granted thereunder, after a public hearing before the Landlord's Council.

(b) Notice of Termination. The parties shall give Notice of Termination in writing by certified mail, return receipt requested. Such Notice shall be effective upon receipt as evidenced by the return receipt, or such later date as stated in the Notice. All rentals paid for the Lease prior to said termination date shall be retained by Landlord.

(c) Tenant's Liability for Early Termination. If Tenant terminates this Lease other than of right as provided in this Lease, Tenant shall pay to Landlord as liquidated damages for early termination, 150% of the annual rent for the year in which Tenant terminates, unless Tenant terminates during the last year of any Term under Paragraph 3 and Tenant has paid the annual rental for that year.

(d) Site Restoration. In the event that this Lease is terminated or not renewed, Tenant shall have 60 days from the termination or expiration date to remove its Antenna Facilities, and related equipment from the Leased Premises, repair the site and restore the surface of the Structure. Upon the commencement of this Lease, Tenant shall deposit with Landlord the sum of \$5,000.00, which shall be fully refunded to Tenant upon the timely removal of the Antennas Facilities, and related equipment, the repair of the site and the restoration of the Structure surface to the reasonable satisfaction of the Landlord. In the event that Tenant's Antenna Facilities, and related equipment are not removed to the reasonable satisfaction of the Landlord, they shall be deemed abandoned and become the property of the Landlord and Tenant shall have no further rights thereto. Tenant has notified the Landlord that the following entities have an interest in the Antenna Facilities and related equipment because of financing arrangements:

If Landlord removes the Antenna Facilities or related equipment, Landlord must give written notice to the above entities at the addresses provided, informing them that Antenna Facilities or related property have been removed and will be deemed abandoned if not claimed and the storage fees and other reasonable costs paid within thirty (30) days.

14. **Limitation of Landlord's Liability.** If Landlord terminates this Lease other than as of right as provided in this Lease, or Landlord causes interruption of the business of Tenant or for any other Landlord breach of this Lease, Landlord's liability for damages to Tenant shall be limited to the actual and direct costs of equipment removal, relocation or repair and shall specifically exclude any recovery for value of the business of Tenant as a going concern future expectation of profits, loss of business or profit or related damages to Tenant.

15. **Temporary Interruptions of Service.** If Landlord determines that continued operation of the Antenna Facilities would cause or contribute to an immediate threat to public health and/or safety (except for any issues associated with human exposure to radio frequency omissions, which is regulated by the federal government), Landlord may order Tenant to discontinue its operation. Tenant shall immediately comply with such an order. Service shall be discontinued only for the period that the immediate threat exists. If Landlord does not give prior notice to Tenant, Landlord shall notify Tenant as soon as possible after its action and give its reason for taking the action. Landlord shall not be liable to Tenant or any other party for any interruption in Tenant's service or interference with Tenant's operation of its Antenna Facilities, except as may be caused by the willful misconduct of the Landlord, its employees or agents. If the discontinuance extends for a period greater than three days, either consecutively or cumulatively, Tenant shall have the right to terminate this Lease within its sole discretion.

16. **Tenant Interference.**

(a) **With Structure.** Tenant shall not interfere with Landlord's use of the Structure and agrees to cease all such actions which unreasonably and materially interfere with Landlord's use thereof no later than three business days after receipt of written notice of the interference from Landlord. In the event that Tenant's cessation of action is material to Tenant's use of the Leased Premises and such cessation frustrates Tenant's use of the Leased Premises, within Tenant's sole discretion, Tenant shall have the immediate right to terminate this Lease.

(b) **With Higher Priority Users.** If Tenant's Antenna Facilities cause impermissible interference with higher priority users as set forth in under Subparagraph 5(a) above or with pre-existing tenants, Tenant shall take all measures necessary to correct and eliminate the interference. If the interference cannot be eliminated within 48 hours after receiving Landlord's written notice of the interference, Tenant shall immediately cease operating its Antenna Facilities and shall not reactivate operation, except intermittent operation for the purpose of testing, until the interference has been eliminated. If the interference cannot be eliminated within 30 days after Tenant received Landlord's written notice, Landlord may at its option terminate this Lease immediately.

(c) **Interference Study - New Occupants.** Upon written notice by Landlord that it has a bona fide request from any other party to lease an area including or in close proximity to the Leased Premises ("Leased Premises Area"), Tenant agrees to provide Landlord, within sixty (60) days, the radio frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operational by Tenant on the Leased Premises at the time of such request. Landlord may then have an independent, registered professional engineer of Landlord's choosing perform the necessary interference studies to determine if the new applicant's frequencies will cause harmful radio interference to Tenant. Landlord shall require the new applicant to pay for such interference studies, unless the Landlord or other higher priority user requests the use. In that event, the Tenant and all other tenants occupying the Leased Premises Area shall pay for the necessary interference studies, pro rata.

(d) **Interference - New Occupants.** Landlord agrees that it will not grant a future lease in the Leased Premises Area to any party who is of equal or lower priority to Tenant, if such party's use is reasonably anticipated to interfere with Tenant's operation of its Antenna Facilities. Landlord agrees further that any future lease of the Leased Premises Area will prohibit a user of equal or lower priority from interfering with Tenant's Antenna Facilities. Landlord agrees that it will require any subsequent occupants of the Leased Premises Area of equal or lower priority to Tenant to provide Tenant these same assurances against interference. Landlord shall have the obligation to eliminate any interference with the operations of Tenant caused by such subsequent occupants. If such interference is not eliminated, Tenant shall have the right to terminate this Lease or seek injunctive relief against the interfering occupant, at Tenant's expense.

17. **Assignment.** This Lease, or rights thereunder, may not be sold, assigned, or transferred at any time by Tenant except to Tenant's affiliates or subsidiaries. As to other parties, this Lease may not be sold, assigned, or transferred without the written consent of the Landlord, such consent not to be unreasonably withheld. For purposes of this paragraph, an "affiliate" or "subsidiary" means an entity in which Tenant owns greater than a 50% interest. Landlord hereby consents to the assignment by Tenant of its rights under this Lease as collateral to any entity which provides financing for the purchase of the equipment to be installed at the Leased Premises.³

18. **Condemnation.** In the event the whole of the Leased Premises is taken by eminent domain, this Lease shall terminate as of the date title to the Leased Premises vests in the condemning authority. In event a portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and the Landlord shall receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises, shall belong to Landlord, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, Antenna Facilities, and leasehold improvements.

19. **Disputes.** Any claim, controversy or dispute arising out of this Lease not resolved within ten (10) days following notice of the dispute, shall be submitted first and promptly to mediation. Each party shall bear its own costs of mediation. If mediation does not result in settlement within forty-five (45) days after the matter was submitted to mediation, either party

may file a claim in arbitration in accordance with the applicable rules of the American Arbitration Association. The award rendered by the arbitrator may be entered as a judgment in any court having jurisdiction thereof. The arbitration shall be conducted in the county where the Leased Premises is located. Arbitration shall be the exclusive remedy of the parties.⁴

20. **Enforcement and Attorneys' Fees.** In the event that either party to this Lease shall bring a claim in arbitration to enforce any rights hereunder, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees incurred as a result of such claim.

³The industry may strongly object to this language as an interference with their power to reorganize as business conditions may demand. You may choose to negotiate this term away if the City Council feels that one company is about as good a tenant as another.

⁴Some companies in the industry strongly object to arbitration. Some cities do not like it either. This is certainly a subject for negotiation.

21. **Enforcement and Attorney's Fees.** All notices hereunder must be in writing and shall be deemed validly given if delivered personally or if sent by certified mail, return receipt requested, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

If to Landlord, to:

If to Tenant, to:

with a copy to:

22. **Authority.** Each of the individuals executing this Lease on behalf of the Tenant or the Landlord represents to the other party that such individual is authorized to do so by requisite action of the party to this Lease.

23. **Binding Effect.** This Lease shall run with the Leased Premises. This Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

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

25. **Governing Law.** This Lease shall be construed in accordance with the laws of the State of Minnesota.

26. **Limitation of Liability.** Nothing in the Lease shall be deemed a waiver of any limitation of liability or defenses under Minnesota Statutes Chapter 466 or any other provision of law.

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

28. **Memorandum.** Upon request by either party, the parties agree to promptly execute and deliver a recordable Memorandum of this Lease in a form acceptable to both parties which may be recorded by the party requesting the

Memorandum of Lease.⁵

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

LANDLORD: CITY OF _____

By _____

Its Mayor

By _____

Its City Manager

TENANT: _____, a

_____ corporation

By _____

Its _____

STATE OF MINNESOTA)

) SS

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ the Mayor and City Manager respectively of the City of _____ on behalf of the corporation.

Notary Public

⁵If you choose to use this language and do not intend to record this Lease immediately, you need not fill in the acknowledgement blanks at the end.

STATE OF _____))SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, the _____ of _____, on behalf of the corporation.

_____ Notary Public