

**EQUIPMENT CO-LOCATION AGREEMENT
BETWEEN
DAKOTA CARRIER NETWORK
AND
CITY OF DICKINSON**

This is an Equipment Co-Location Agreement (this “Agreement”) effective May 21, 2024 (“Effective Date”) between City of Dickinson (“Owner”), and DCN, LLC (“DCN”), doing business as Dakota Carrier Network.

WHEREAS DCN wishes to colocate Equipment (as defined herein) at the Owner Location (as defined herein) on the terms and conditions set forth herein in this Agreement.

NOW THEREFORE, in consideration of the premises and obligations set forth herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the parties agree as follows:

SERVICE DESCRIPTION

1. **DEFINITIONS.** For the purposes of this Agreement and in addition to those defined terms contained elsewhere in this Agreement, the following definitions shall apply:
 - A. “Equipment” means DCN’s owned or leased equipment, cabling, cards, and other personal property existing within the Space as specified in the Co-Locate Schedule (as defined herein).
 - B. “Space” means the portion of the Owner Location that will be made available to DCN for operation of DCN’s existing Equipment as further described in Schedule A, which may be changed in the sole discretion of Owner upon written notice to DCN.
 - C. “Owner Location” means the physical location located at Public Safety Center, 2475 State Ave N, Dickinson, North Dakota 58601 (which Owner has an ownership or leasehold interest which may be through an affiliate of Owner).
2. **TERM.** This Agreement will commence on the Effective Date and shall remain in full force and effect for a term of five (5) years following the Effective Date (the “Term”) unless earlier terminated as set forth herein. Thereafter, this Agreement will renew only upon mutual agreement of the parties.
3. **EXCLUSIVE, LIMITED LICENSE.** Owner hereby grants to DCN an exclusive, limited, non-transferable, revocable license to use and occupy the Space identified on the Co-Locate Schedule for the sole purpose of operating and maintaining the existing Equipment in accordance with this Agreement. DCN will not provide, make available, sublicense or permit in any manner any third party to use all or a portion of the Space or the Owner Location. The parties agree that any failure by DCN to comply with this provision will be deemed a material breach giving rise to termination by Owner under this Agreement.
4. **NO ESTATE OR REAL PROPERTY INTEREST.** DCN acknowledges and agrees that it has been granted only a license (as indicated above in Section 3 to the Service Description) to occupy designated portions of the Owner Location and that it has not been granted any real property interests in the Space or the Owner Location. No use of the Space or Owner Location by DCN under this Agreement will create or vest in DCN (or in any other entity or person) any leasehold estate, easement, ownership interest, or other ownership or real property right of any kind or nature. This Agreement is expressly made subject and subordinate to the terms and conditions of any underlying ground or facilities lease or other superior right by which Owner or Owner’s affiliates have acquired its interest in the Owner Location. DCN agrees to comply with any terms and conditions of such superior right. If the consent of the holder of such superior right is required for the parties to enter into this Agreement, then this Agreement will not become effective until such consent is obtained. If this Agreement is subsequently construed by the landlord or the sub-landlord of the Owner Location (if applicable) to be a violation of the lease or sublease under which Owner occupies the Owner Location, DCN will either enter into an agreement approved by such landlord or sub-landlord, or remove the Equipment from the Owner

Location in accordance with the Section of this Agreement entitled "Removal of Equipment". Owner agrees to cooperate with DCN in obtaining the approvals DCN may need to obtain from the landlord or sub-landlord.

5. **FIXTURES.** The parties agree that the Equipment, whether physically affixed or not to the Owner Location, is not a fixture and will not be construed as such. DCN will report the Equipment as its personal property wherever required by applicable laws and will pay all taxes levied upon such Equipment.
6. **IMPROVEMENTS OR MODIFICATIONS TO THE SPACE.** No material improvements or modifications will be made to the Space or any portion of the Space or the Owner Location by DCN unless approved (in advance and in writing) by the Owner.
7. **REMOVAL OF EQUIPMENT UPON EXPIRATION OR TERMINATION.** Upon the expiration or termination of this Agreement, DCN will (at its cost and expense) promptly remove the Equipment from the Owner Location and surrender the space to Owner. DCN will (at its cost and expense) fully repair any damage to the Owner Location caused by DCN, including, without limitation, any damage resulting from DCN's removal of the Equipment from the Space to the reasonable satisfaction of Owner.
8. **DCN'S RESPONSIBILITIES.**
 - A. DCN will not damage the property of Owner, Owner's vendors, Owner's other customers, or the landlord (if applicable) in any manner.
 - B. DCN agrees not to alter, tamper with, adjust, or repair any equipment or property not belonging to DCN. DCN further agrees not to erect signs or devices on the exterior of the storage cabinet or rack or on or around any Owner Location without Owner's consent, which may be withheld at Owner's sole discretion.
 - C. DCN is prohibited from bringing any harmful or dangerous materials (as determined by the Owner in its sole discretion) into the Owner Location. Such materials include, but are not limited to, wet cell batteries, explosives, flammable liquids or gases, alcohol, controlled substances, weapons, cameras and video or voice recording devices.
 - D. DCN will clearly mark and identify all the Equipment. DCN will maintain and operate the Equipment in a safe and orderly manner and will keep the Space and any portion of the Owner Location it accesses in good order and condition. DCN will be responsible for the prompt removal of all trash, packing material, cartons, and other items or materials that DCN brings into or delivers to the Owner Location. Equipment installation and removal will be coordinated with the Owner personnel at the Owner Location.
 - E. Access to the Owner Location is restricted to DCN's employees and agents. DCN assumes responsibility for all acts and omissions of the individuals authorized by DCN to enter the Owner Location. DCN shall require any contractor, subcontractor, or other vendor that will install the Equipment or otherwise enter the Owner Location to perform work for DCN to enter into a reasonable independent contractor agreement with Owner, which shall require such contractor, subcontractor, or vendor to maintain reasonable insurance levels, name Owner as an additional insured, and contain a waiver of subrogation in favor of owner.
 - F. DCN will immediately remove or render non-infringing, at DCN's expense, any Equipment alleged to infringe any patent, trademark, copyright, or other intellectual property right.
 - G. DCN will comply with all applicable laws, rules, regulations, and ordinances, and with all Owner security procedures, rules, requirements, and safety practices (which include, but are not limited to, a prohibition against smoking in the Owner Location), as amended from time to time. The owner may (at its sole discretion) revoke the entry privileges of any person in noncompliance.
 - H. DCN will ensure that noise or interference generated by the Equipment will not exceed the threshold limits for EMI/RFI established by the FCC.
 - I. DCN shall be solely responsible for accepting delivery of Equipment and any other facilities or materials delivered to the Owner Location on behalf of DCN. At DCN's request, the Owner may, in its sole discretion, accept delivery of Equipment at the Owner Location if Owner has the means to do so. Notwithstanding the foregoing, DCN will remain responsible for the risk of loss of the Equipment unless such loss is caused by the negligence or willful misconduct of Owner.

9. OWNER’S RESPONSIBILITIES.

- A. The owner will provide DCN space on the public safety roof for non-penetrating roof mount and dish.
- B. The owner will provide DCN ability to run cable from roof mount through existing access points to PSC’s IT room/data center.
- C. The owner will provide DCN with means of access to the Space upon reasonable advance written notice.

10. LIENS AND ENCUMBRANCES. No mechanic’s lien or other lien or encumbrance shall be filed against property of Owner by reason of or arising out of any labor or materials furnished, alleged to have been furnished, or to be furnished to or for DCN or by reason of any change or addition to property made at the request or under the direction of DCN. If such a lien shall be filed, DCN shall, within thirty (30) days after receipt of written notice from Owner, either pay such lien or cause the same to be bonded off Owner’s property in the manner provided by law. DCN shall also defend, on behalf of Owner, at DCN’s sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of such liens and DCN shall pay any damage and discharge any judgment entered thereon.

11. DCN CONTENT. DCN, not Owner, has sole and exclusive control over the content residing on the Equipment (the “DCN Content”). The parties acknowledge and agree that in the provision of Service hereunder Owner is not provided, either directly or indirectly, and will not seek access to, the DCN Content. The owner does not and will not exercise any control over the DCN Content. In addition, DCN will promptly and thoroughly respond to any notices forwarded to DCN by Owner, including but not limited to, notices that the DCN Content violates the Digital Millennium Copyright Act, 17 U.S.C. § 101 *et. Seq.* or any other law, rule or regulation.

GENERAL TERMS AND CONDITIONS

- 1. TERMINATION.** Either party may terminate this Agreement for (A) cause provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within such thirty (30) day period, or (B) insolvency (immediately upon written notice) should the other party (i) admit in writing its inability to pay its debts generally as they become due; (ii) make a general assignment for the benefit of its creditors; (iii) commence, or has commenced against it, proceedings under any bankruptcy, insolvency, debtor’s relief law, or any equivalent proceeding under applicable law; and/or (iv) is liquidated or dissolved. Cause is any material breach of the terms of this Agreement.
- 2. FORCE MAJEURE.** Should the performance of any act required by this Agreement be prevented or delayed by reason of an act of God; strike; lockout; labor troubles; water; the elements; fire; flood; adverse weather conditions or other major environmental disturbance; power surges or failure; material shortage or unavailability; act of military authority; government ordinance, law, rule, regulation, or restrictions; inability to obtain necessary License, permit, or right; or any other cause beyond the control of the party required to perform the act; then the time for performance will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. Provided, however, if a force majeure event is not remedied within ninety (90) days, either party may, without liability and as its sole and exclusive remedy, terminate this Agreement.
- 3. INDEMNITY.** DCN agrees to defend, at its own expense, and indemnify and hold harmless Owner, employees, agents, contractors and its subcontractors (collectively, the “Owner Indemnities”), from and against any claims, suits, damages and expenses asserted against or incurred by any of the Owner Indemnities arising out of or relating to any third-party’s alleged ownership or possessory interest, lien, trust, pledge, or security interest in the Equipment, including, without limitation, any attempt by such third party to take possession of the Equipment.
- 4. DISCLAIMER OF CERTAIN DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF TORT, CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

5. **CONFIDENTIAL INFORMATION.** Each party shall protect as confidential, and shall not disclose to any third party, any Confidential Information received from the disclosing party or otherwise discovered by the receiving party during the Term of this Agreement, including, but not limited to, the terms of this Agreement, and any information relating to the disclosing party's technology, business affairs, and marketing or sales plans (collectively the "Confidential Information"). The parties shall use Confidential Information only for the purpose of this Agreement. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (A) is in the possession of the receiving party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (B) is or becomes publicly known, through no wrongful act or omission of the receiving party; (C) is received without restriction from a third party free to disclose it without obligation to the disclosing party; (D) is developed independently by the receiving party without reference to the Confidential Information, or (E) is required to be disclosed by law, regulation, or court or governmental order. The parties acknowledge that this Agreement is subject to disclosure under North Dakota Open Records Laws.
6. **SERVICE MARKS, TRADEMARKS AND NAME.** Neither Owner nor DCN shall: (a) use any service mark or trademark of the other party; or (b) refer to the other party in connection with any advertising, promotion, press release or publication unless it obtains the other party's prior written approval.
7. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of North Dakota without regard to its choice of law principles.
8. **ASSIGNMENT.** Neither party may assign this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided that Owner may assign this Agreement to an affiliate or successor without DCN's written consent.
9. **SURVIVAL.** The rights and responsibilities of the parties hereto under the provisions of Sections 3 through 9 of the General Terms and Conditions will survive expiration or earlier termination of this Agreement along with any other provisions of this Agreement that by their nature extend beyond any such expiration or termination.
10. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other representations, understandings or agreements that are not expressed herein, whether oral or written. Except as otherwise set forth herein, no amendment (or waiver of a term or condition) to this Agreement shall be valid unless in writing and signed by both parties.

MISCELLANEOUS. If any provision of the Agreement should be found by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The parties to the Agreement are independent contractors. Neither party is an agent, representative, joint ventures, or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. Neither party shall act or fail to act in a way that could reasonably cause others to believe it has authority to act on behalf of the other beyond the authority expressly granted herein. Except as provided for in the Agreement, each party shall bear its own costs and expenses in performing the Agreement. Except as otherwise expressly provided in the Agreement, all remedies provided for in the Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law or in equity. This Agreement may be executed by facsimile and in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

AGREED AND ACCEPTED BY DCN, LLC:

Signature _____

Printed Name _____

Title _____

Date _____

AGREED AND ACCEPTED BY CITY OF DICKINSON:

Signature _____

Printed Name _____

Title _____

Date _____

CO-LOCATE SCHEDULE: EQUIPMENT DESCRIPTION AND LOCATION

Equipment Description: [Picture below of non-penetrating roof mount, CommScope dish, and Aviat radio to be installed by DCN – for reference the roof mount at Dickinson Public Safety Center will only have 1 dish while picture below depicts 2 dishes and a camera on top of the roof mount).



Space Description: [Owner to Provide]