

99 669

Contract No. A- 14989
Tax ID No. 416005346
Vendor No. _____

ANTENNA SITE LEASE AGREEMENT

THIS AGREEMENT, is made by and between the CITY OF MAPLE PLAIN, State of Minnesota, hereinafter referred to as "LESSOR", and the COUNTY OF HENNEPIN, State of Minnesota, hereinafter referred to as "COUNTY", and the METROPOLITAN RADIO BOARD, a political subdivision, or its successors or assigns, as provided for by law, hereinafter referred to as "BOARD", (COUNTY and BOARD collectively, hereinafter referred to as "LESSEE").

WHEREAS, LESSEE desires to install public safety communications antennas, microwave dishes and related equipment on LESSOR's elevated water storage tank, hereinafter referred to as "Tower", said Tower being located at 1664 Budd Avenue, Maple Plain, Minnesota; and

WHEREAS, LESSEE desires to install an equipment shelter building, emergency generator, and related equipment on lands owned by LESSOR, hereinafter referred to as "Site", said Site being located at 1664 Budd Avenue, Maple Plain, Minnesota; and

WHEREAS, LESSEE intends to construct an 800 MHz countywide public safety radio communications system and believes that placement of LESSEE's public safety communications equipment on said Tower and said Site will contribute importantly to said system, particularly with respect to providing highly reliable public safety communications coverage and capacity in and near the City of Maple Plain, and LESSEE has requested permission to do so from the LESSOR; and

WHEREAS, LESSOR and LESSEE desire to make excess capacity on said Tower and Site available to commercial wireless providers while assuring the priority of public safety communications;

NOW THEREFORE, in consideration of the mutual undertakings and agreement hereinafter set forth, the LESSOR and LESSEE agree as follows:

1. LEASED PREMESIS

LESSOR grants and LESSEE accepts a lease including access easement, of the following described Leased Premises located in the City of Maple Plain, County of Hennepin, Minnesota:

The municipal elevated water storage tank and adjoining lands located at 1664 Budd Avenue, Maple Plain, Minnesota, in conformance with the legal description contained in Exhibit A - Site Plan and Legal Description, which is attached hereto and incorporated herein as part of this Agreement.

*Maple Plain -
(Hennepin
County
only)*

2. TERM

The term of this Lease Agreement shall be for an initial term of twenty-five (25) years, commencing on September 1, 1999 and continuing through September 30, 2024. After the initial twenty-five (25) year term, this Agreement, upon mutual consent of both parties hereto, will be extended for a five (5) year period commencing on each anniversary date after the twenty-fifth anniversary date hereof. Mutual consent shall be shown and the extension shall be effective if each party shall, within ninety days (90) prior to the last year of the term, starting with the initial twenty-five year term, receive written notice from the other party of said other parties desire or intent to so extend.

3. USE

- A. LESSOR hereby grants LESSEE the right to install, maintain and operate a public safety wireless telecommunications transmission facility on the Tower and Site in accordance with Exhibit A – Site Plan, which is attached hereto and incorporated herein as part of this Agreement. Any substantive alterations or additions to the Site Plan including changes to the configuration of antennas and equipment on the Tower or Site shall be subject to prior written approval of LESSOR; such approval shall not be unreasonably withheld, delayed or conditioned.
- B. Subject to Site Plan and construction plan approvals by LESSOR in accordance with Sections 3A and 4A of this Agreement, LESSEE may sublease, license, or otherwise permit use of, excess space or capacity on the Tower or Site for installation and maintenance of equipment by other governmental units and by non-governmental entities responsible for providing emergency public safety services. The LESSEE shall request approval of the LESSOR for any such additions pursuant to this section, provided that the LESSOR shall not unreasonably withhold such approval.
- C. LESSOR shall provide LESSEE with an access easement providing twenty-four (24) hour, seven (7) day a week, year-round access to the Site. LESSEE, its employees, agents, tenants and contractors, are hereby granted the right, at its sole cost and expense, to enter upon the LESSOR's Site and conduct such studies as LESSEE deems necessary to determine the Site's suitability for LESSEE'S intended use. These studies may include surveys, soil tests, environmental evaluations, radio wave propagation measurements, field strength tests and such other analyses and studies as LESSEE deems necessary or desirable.
- D. LESSEE, its employees, agents, tenants and contractors, may operate, drive and temporarily park vehicles of any kind on said Site in order to transport equipment, supplies, materials and personnel in connection with the accomplishment of any or all of the foregoing purposes.
- E. LESSEE, its employees, agents, tenants and contractors, may temporarily store equipment, materials or supplies on said Site in order to accomplish any or all of the foregoing purposes.

- F. LESSEE, its employees, agents, tenants and contractors, may install utilities and make improvements to the present utilities on the Site in accordance with the approved Site Plan. LESSEE may request utility easements for the installation of such facilities. LESSEE shall make such requests in writing to the LESSOR, which approval shall not be unreasonably withheld. LESSEE shall coordinate any such utility installation or improvements, in advance, with the LESSOR. LESSEE shall be responsible to pay all installation and recurring charges for utilities installed or improved for the benefit of LESSEE.
- G. LESSEE, its employees, agents, tenants and contractors, may have access, ingress and egress over, across, upon, into and through said Tower and Site in order to accomplish any or all of the aforesaid purposes.

4. LESSEE CONDITIONS

This Lease is granted subject to the following conditions:

- A. LESSEE shall submit to the LESSOR a construction plan to include the location of utilities, installation drawings, and equipment placement plans, which must be approved by the LESSOR in accordance with the City of Maple Plain Building Code prior to commencement of construction on the Tower or Site.
- B. All radio communications equipment placed at the Site by the LESSEE, or others in accordance with this Agreement, shall be installed, operated and maintained in accordance with all applicable rules and regulations established by the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC).
- C. LESSEE shall not sublease, license, or otherwise permit use of, space or capacity on the Tower or Site by non-governmental entities, except for those non-governmental entities responsible for providing emergency public safety services in accordance with Section 3B of this Agreement.
- D. LESSEE shall not permit advertising of any kind on the Tower or Site.

5. RENT

LESSEE shall pay LESSOR annual rent in the amount of ten thousand dollars (\$10,000) commencing on September 1, 1999 to reimburse LESSOR for use and services of Tower and Site in accordance with Section 7 of this Agreement. The LESSOR shall have the right to increase the annual rental use charge due hereunder at the end of each five year period during the initial twenty-five year term and prior to each subsequent five year term as may be extended, based upon not more than the percentage increase, if any, in the Bureau of labor Statistics Consumer Price Index over the previous five year period.

LESSOR shall invoice LESSEE in advance in four quarterly installments due on the first (1st) business day of each calendar quarter, i.e., Jan. 1; April 1; July 1; and Oct. 1. All partial period rent shall be prorated on a daily basis. The LESSEE shall pay LESSOR within 35 days of receipt of invoice. All original bills and statements from LESSOR to LESSEE shall be mailed or personally delivered to the address set forth as follows:

Hennepin County Sheriff's Office
Attention: Radio Communications Manager
9300 Naper Street
Golden Valley, MN 55427-3728

6. LESSEE INSTALLED PROPERTY

Any equipment, trade fixtures or personal property installed on the Tower or Site by LESSEE and its tenants, including but not limited to antennas, antenna mounts, transmission lines, equipment shelter building, emergency generator and fuel tank shall remain the property of LESSEE and its tenants. LESSEE and its tenants shall have the right to remove any or all the above equipment, fixtures or property at the expiration or termination of this Lease Agreement or any extension thereof, even though said equipment, fixtures or property are attached to the Tower or Site.

7. DUTIES OF LESSOR

- A. LESSOR agrees that in exercising its ownership responsibilities of the real property of which the Site is a part, including the maintenance, repair, alterations and construction relating thereto, it shall comply with all applicable laws, statutes, rules, ordinances and regulations, including but not limited to building code, disabilities access, zoning, air quality, pollution control, recyclable materials and prevailing wage requirements, as issued by any federal, state or local political subdivisions having jurisdiction and authority in connection with said property.
- B. LESSOR shall be responsible, at its sole cost, for the general maintenance of the Tower, including obstruction lights, light monitoring and any other FCC or FAA requirements, inspections, painting and any other measures necessary to maintain the safety and utility of the Tower for the purpose of water storage. LESSOR shall be responsible, at its sole cost, for providing a plowed access road to the Site, and for providing weed control, tree trimming, lawn mowing and other related maintenance duties at the Site.
- C. LESSOR agrees to notify LESSEE within fourteen (14) days of any requests to change or install new or additional wireless telecommunications equipment on the Tower or at the Site. The LESSEE shall have 30 days to evaluate the proposed change or installation to determine if the proposed change or installation will physically or electronically interfere with LESSEE's then current or planned future use of the Tower or Site and shall forward said evaluation to the LESSOR in writing within said thirty (30) day period. LESSOR agrees to not permit the installation of

any additional uses on the tower that will result in interference with the LESSEE's radio system or interference with the equipment of any sublessee or licensee.

- D. LESSOR shall provide LESSEE with two (2) sets of keys to access any locks necessary to enter the Tower or Site.

8. DUTIES OF LESSEE

Except as otherwise provided herein, LESSEE shall furnish all materials and services required for its use of the Site, and shall maintain the Site in a reasonably good condition and state of repair during the continuance of its tenancy, and shall surrender the Site to LESSOR at the termination of such tenancy in such condition as the same are in at the commencement of such tenancy, reasonable wear and damage by the elements excepted, and further provided that LESSEE shall not be required to remove below ground foundations and wiring upon termination of such tenancy.

9. DAMAGE TO SITE

If the Site or Tower are damaged or destroyed due to acts of nature, fire or other casualty and LESSEE's equipment becomes inoperable as a result thereof, or if access to the Site for purposes of required repair, maintenance, replacement, removal, installation, change, etc., becomes unavailable as a result thereof, LESSEE's rent payments to LESSOR shall be abated until the Site or Tower is sufficiently repaired, restored, or rehabilitated sufficiently for LESSEE to resume its use of, or access to, the Tower and Site as provided for under this Agreement.

If the Site or Tower are permanently damaged or destroyed by acts of nature, fire or other casualty and LESSEE equipment becomes permanently inoperable as a result thereof, the LESSOR may elect to:

- A. Terminate this Agreement upon one hundred eighty (180) days notice to LESSEE; or
- B. To have repaired, restored or rehabilitated the Site or Tower at no expense to LESSEE.

The LESSOR shall not be responsible to LESSEE for damage or destruction of LESSEE equipment or other personal property in, on, or about the Site or Tower unless caused by the negligent or willful acts of the LESSOR, its agents, contractors or employees.

10. CANCELLATION

If the LESSEE determines the Tower and Site are no longer necessary for the County Public Safety Radio Communications System, the LESSEE shall have the right to terminate this Agreement upon providing twelve (12) months written notice to LESSOR.

LESSOR may cancel this Agreement with twelve (12) months written notice to LESSEE.

11. INDEMNIFICATION AND INSURANCE

Each party agrees that it will be responsible for its own acts and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts of the other party and the results thereof. LESSOR's, and COUNTY's liability is governed by the provisions of Minn. Stats., Chapter 466.

LESSOR and COUNTY each warrant that they are able to comply with the aforementioned indemnity requirements through an insurance or self-insurance program and have minimum coverage consistent with the liability limits contained in Minn. Stats., Chapter 466.

12. SALE OR ASSIGNMENT

In the event the real property of which the Site is a part shall be sold, conveyed, transferred, assigned, leased or sublet, or if LESSOR shall sell, convey, transfer, or assign this Lease Agreement or rents due under this Lease Agreement, or if for any reason there shall be a change in the manner in which the rental reserved hereunder shall be paid to LESSOR, proper written notice of such change must be delivered to LESSEE as promptly as possible.

The terms and conditions of this Agreement shall extend to and bind the purchasers, heirs, personal representatives, successors and assigns of LESSOR and LESSEE.

13. QUIET ENJOYMENT

LESSEE shall peaceably and quietly use and enjoy the Site for the purpose of installing, removing, replacing, maintaining and operating the public safety wireless telecommunications transmission facility consistent with the terms and conditions of this Agreement.

14. DEFAULT BY LESSOR

If LESSOR shall default in the performance of any of the terms or provisions of this Lease Agreement, LESSEE shall promptly so notify LESSOR in writing. If LESSOR shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such character as to require more than thirty (30) days to cure, and LESSOR shall fail to commence to do so within thirty (30) days after receipt of such notice and thereafter diligently proceed to cure such default, than in either event, LESSEE may cure such default and any reasonable and actual expenses paid by LESSEE shall be paid by LESSOR to LESSEE within ten (10) days after statement therefore is rendered. LESSEE shall have a specific right to set-off any such amounts against any rent payments or other amounts due under this Lease Agreement. In lieu of curing said default, LESSEE shall have the specific right to set-off against any rent payments or other amounts due under this Lease Agreement any damages incurred through the LESSOR's breach. This provision in no way limits LESSEE's other remedies for breach under common law or this Lease Agreement.

15. MERGER AND MODIFICATION

- A. It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.
- B. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.
- C. LESSOR's or the LESSEE's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, or a modification of this Agreement, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement, unless specifically so stated, consistent with terms and conditions of this Section.

16. INDEPENDENT CONTRACTOR

Each party is, and shall remain, an independent contractor with respect to all services performed under this Agreement. Each party shall select the means, method, and manner of performing their respective services herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting either party as the agent, representative, or employee of the other for any purpose or in any manner whatsoever. Each party represents that it has or will secure at its own expense all personnel required in performing their respective services under this Agreement. Any and all personnel of either party or other persons engaged in the performance of any work or services under this Agreement shall have no contractual relationship with the other party, and shall not be considered an employee of any other party. Any and all claims that might arise under the Unemployment Compensation Act, the Workers' Compensation Act of the State of Minnesota, or any other applicable Federal or State law, rule, or regulation on behalf of said personnel, arising out of employment or alleged employment, including, without limitation, claims of discrimination against either party, its officers, agents, contractors, or employees shall in no way be the responsibility of the other party. Each party shall defend, indemnify, and hold the other party, its officers, agents, and employees harmless from any and all such claims. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the other party, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-Employment Insurance, disability, severance pay, or PERA.

17. HAZARDOUS SUBSTANCES

LESSOR represents that it has no knowledge of any substance, chemical, or waste on, under, or around, LESSOR's Site or adjacent properties that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

LESSOR shall defend, indemnify, and hold harmless the LESSEE, its elected officials, officers, agents, employees, tenants, contractors, assignees and successors from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including consultant fees and attorney fees, resulting from the presence of hazardous substances on, under, or around LESSOR's Site as long as the hazardous substances are not brought to the Site by LESSEE, its employees, agents, tenants or contractors.

LESSEE shall defend, indemnify, and hold harmless the LESSOR, its elected officials, officers, agents and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including consultant fees and attorney fees, resulting from LESSEE, its employees, agents, tenants or contractors bringing hazardous substances onto the LESSOR's Site.

The obligations of Section 17 of this Agreement shall survive the expiration or other termination of this Agreement, consistent with applicable statute of limitations.

18. NOTICES

All notices or communications between LESSOR and LESSEE shall be deemed sufficiently given or rendered if in writing and delivered to the other parties personally or sent by registered or certified mail addressed as follows:

LESSOR: City of Maple Plain
Clerk-Treasurer
1620 Maple Avenue, Box 57
Maple Plain, MN 55359

COUNTY: Hennepin County Administrator
A-2300 Government Center
Minneapolis, MN 55487

With a Copy to:
Hennepin County Sheriff's Office
Attention: Radio Communications Manager
9300 Naper Street
Golden Valley, MN 55427-3728

BOARD: Chair
Metropolitan Radio Board
230 East 5th Street
St. Paul, MN 55101

19. CONTRACT ADMINISTRATION

In order to coordinate the services of LESSOR with the activities of the LESSEE so as to accomplish the purposes of this contract, Roger R. Laurence, Radio Communications Manager, or his designee or successor, shall manage this contract on behalf of the LESSEE and serve as liaison between the LESSEE and LESSOR.

20. NON-DISCRIMINATION - AFFIRMATIVE ACTION

In accordance with Hennepin County's policies against discrimination, no person shall be excluded from full employment rights or participation in or the benefits of any program, service, or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status or national origin; and no person who is protected by applicable Federal or State laws, rules, or regulations against discrimination shall be otherwise subjected to discrimination.

21. RECORDS - AVAILABILITY

LESSOR and LESSEE agree that each party hereto, the State Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the other party hereto and involve transactions relating to this Agreement.

22. DATA PRIVACY

LESSOR and LESSEE agree to abide by all applicable State and Federal laws and regulations and confidential information concerning individuals and/or data including but not limited to information made non-public by such laws or regulations.

23. PAPER RECYCLING

The LESSEE encourages LESSOR to develop and implement an office paper and newsprint recycling program.

24. MINNESOTA LAWS GOVERN AND SEVERABILITY

The laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations and performance obligations between the parties herein. If any provisions of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

25. APPLICABLE PROVISIONS OF LAW

Applicable provisions of Minnesota State Law, Federal Law and any applicable local ordinance shall be considered a part of this Agreement as though fully set forth herein. Specifically, LESSEE agrees to comply with all federal, state and local applicable laws and ordinances relating to nondiscrimination, affirmative action, public purchases, contracting, employment including workers compensation and state labor wage provisions, and surety deposits required for construction contracts.

26. SUCCESSION OF AGREEMENT

At such time as this Agreement becomes effective between the parties, this Agreement shall supercede lease agreement No. 01096 between the Lessor and the COUNTY dated April 15, 1980, and lease agreement No. 01096 shall terminate.

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COUNTY BOARD APPROVAL

CITY, having signed this contract, and the COUNTY having duly approved this contract on the 28 day of Sept, 1999, and pursuant to such approval, the proper COUNTY officials having signed this contract, the parties hereto agree to be bound by the provisions herein set forth.

Approved as to form and execution

[Signature]
Assistant County Attorney
Date: 9/11/99

COUNTY OF HENNEPIN
STATE OF MINNESOTA

[Signature]
An original document was personally signed by the
By: Chair and is on file with the Clerk of the Board
Chair of Its County Board

And: [Signature]
Assistant/Deputy/County Administrator

Attest: [Signature]
Deputy/Clerk of County Board

METROPOLITAN RADIO BOARD APPROVAL

Approved as to form

[Signature]
Legal Counsel
Date: 8/2/99

METROPOLITAN RADIO BOARD

By: [Signature]
Its Chair
Date: 8/6/99

CITY OF MAPLE PLAIN APPROVAL

Approved as to form

[Signature]
City Attorney
Date: 7-13-99

CITY OF MAPLE PLAIN
STATE OF MINNESOTA

By: [Signature]
Its Mayor

And: [Signature]
Its Clerk-Treasurer

Date: 7-13-99

EXHIBIT A

SITE PLAN and LEGAL DESCRIPTION OF PROPERTY

LESSOR grants and LESSEE accepts a lease for the use of the water tower and adjacent land on the following described Leased Premises located in the City of Maple Plain, County of Hennepin, Minnesota described as follows:

PARCEL B (As per Document 5005660) Commencing at a point in the West line of the Southeast Quarter (SE1/4) a distance of 22 rods North from the Southwest corner thereof, thence North 4 rods; thence East 12 rods; thence North 4 rods; thence West 12 rods; thence North 46 rods; thence East 40 rods; thence South 54 rods; thence West 40 rods to beginning except roads, all in Section 24, Township 118, Range 24, Hennepin County, State of Minnesota.

Area = 506,371 Square feet (11.625 Acres)

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P.O. BOX 57 • MAPLE PLAIN, MN 55359
PHONE: (612) 479-0515 • FAX: (612) 479-0519

**STATE OF MINNESOTA
COUNTY OF HENNEPIN
CITY OF MAPLE PLAIN**

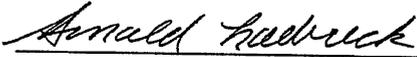
I, the undersigned Clerk of the City of Maple Plain, hereby certify that the following motion was passed by the city council on July 13th, 1999

Hennepin County

Antenna Site Lease Agreement

A motion was made by Vigoren that we authorize and direct the Mayor and Clerk to execute Contract No. A-14989 for the Antenna Site Lease Agreement between the City of Maple Plain and Hennepin County. The motion was seconded by Kurth. All members voted in favor of such motion.

WITNESS my hand and official seal this 16th day of August 1999.



City Clerk

(SEAL)