

# LIMITED SITE USAGE LICENSE AGREEMENT

by and between

CITY OF JESUP, IOWA

And

CITY OF OELWEIN, IOWA

Dated \_\_\_\_\_, 20\_\_

## LIMITED SITE USAGE LICENSE AGREEMENT

### RECITALS:

WHEREAS, City of Jesup, Iowa, ("Jesup"), is an Iowa governmental body acting by and through its City Council located in Buchanan County, Iowa; and

WHEREAS, City of Oelwein, Iowa, ("Oelwein"), is an Iowa governmental body acting by and through its City Council located in Fayette County, Iowa; and

WHEREAS, Jesup and Oelwein desire to enter into this Limited Site Usage License Agreement ("Agreement") upon the following terms and conditions.

### NOW THEREFORE IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. Grant of License. Jesup hereby grants, subject to the terms and conditions hereinafter set forth, a non-exclusive license to Oelwein for limited use of a part of the water tower site ("Site"). The Site and area thereon for use by Oelwein is the water tower located at 110 4th Street, Jesup, Iowa.
2. Scope of License. Oelwein's use of the Site is non-exclusive and is for purposes related to Oelwein's public safety communications responsibilities including installing, removing, replacing, maintaining and operating, at its expense six foot diameter 6 GHz microwave dish antennas mounted to the railing system at the top of the water tower including associated feed lines and reasonably related equipment and fixtures upon the licensed Site as required by this Agreement. Oelwein shall use the Site in a manner which will not disturb or interfere with antennas currently located on said tower and do not interfere with the openings to the water tower, ladders, braces, paint removal or painting of the tower, the use and occupancy of the Site by Jesup and/or Jesup's present or future tenants and/or licensees, except that Oelwein shall have priority of use in such regard over any subsequent licensees (i.e., no subsequent licensee shall interfere with any then-existing use or frequencies of Oelwein).
3. Term. The term of this Agreement shall commence upon approval by both parties (hereinafter the "Commencement Date") and end on \_\_\_\_\_, 20\_\_\_\_ (hereinafter the "Termination Date").
4. Renewal. This Agreement shall be automatically renewed upon the same terms set forth herein and for the same number of years unless either party gives notice to the other of the termination of same more than sixty (60) days prior to a Termination Date; whereupon this Agreement may be renewed, but then only pursuant to a new written Agreement between the parties.

5. Duties of Oelwein. In addition to any and all other duties of Oelwein described in this Agreement, Oelwein shall:
  - a. Lease space from Black Hawk County in Black Hawk County's equipment shelter.
  - b. Pay an annual license fee of \$1 per year, the initial payment due upon the Commencement Date and all subsequent payments due on or before the annual anniversary of the Commencement Date.
  - c. Oelwein shall procure and, at all times this Agreement is in existence, maintain a public liability policy, with limits of \$1,000,000 for bodily injury, \$1,000,000 for property damage, \$2,000,000 aggregate, with a certificate of insurance to be furnished to Jesup within 30 days following the initial Commencement Date and annually thereafter. Such policy shall provide that cancellation shall not occur without at least 30 days prior written notice to Jesup. Jesup shall be named as an additional insured on Oelwein's insurance policy.
  
6. Duties of Jesup. In addition to any and all other duties of Jesup described in this Limited Site Usage License Agreement, Jesup shall:
  - a. Provide and maintain the water tower at the Site for Oelwein's use subject to the terms of this Agreement.
  - b. Provide Oelwein reasonable access to the Site for the purposes permitted under this Agreement.
  - c. Coordinate the addition of any tenant with Oelwein to ensure the addition does not adversely affect Oelwein's use of the site.
  
7. Location of Equipment. Final permission relative to precise locations and allowances of space for placement of Oelwein's fixtures, equipment and antennae at the Site (all of which shall be done at Oelwein's sole expense), and any alterations thereof, shall remain at all times with Jesup. However, Jesup shall not unreasonably withhold permission from Oelwein when Oelwein requests permission to make alterations to or upon the Site provided such requested alterations (all of which shall be done at

Oelwein's expense) shall be completed in a good and workmanlike manner, shall not adversely affect the integrity of the Site or the structures located on the Site and shall not interfere with the use of the Site by Jesup, its tenants, successors, assigns and/or other licensees. The existing uses of the Site by Jesup or any other licensee at the time of requested Site alterations by Oelwein shall be considered a primary use. Jesup may withhold permission from time to time and may limit such fixtures, equipment and antennae and their respective placement if such placement is, at such time, likely to unreasonably interfere with or in any manner unreasonably disturb the use and occupancy of the Site by Jesup or any of its other licensees.

8. Installation of Antenna and Equipment. All installation and cabling of the antennas shall be by means of clamping or strapping and in no event shall any part of the antenna or cabling system be at risk of falling or detaching. All installation work shall be done in a good, skillful manner, satisfactory in every respect to Jesup. Welded attachments shall not be allowed except with prior approval by Jesup. If welded attachments are approved, Oelwein shall be responsible for replacing interior or exterior tank coatings that are damaged by welding. All replacement of coatings shall meet the exact specifications of the existing tank coating and must be completed within sixty (60) days of the time that welding on the tank occurs. All costs associated with the new coatings including Jesup's operational costs (i.e. draining elevated tank), shall be borne by Oelwein. Oelwein shall not pierce or drill into the exterior of the water tower except with prior approval by Jesup.

Oelwein shall provide Jesup with "as built" drawings of the equipment to be installed on the water tower which show the actual location of all equipment and improvements. Such drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and antenna facilities actually placed on the water tower site.

9. Maintenance. Oelwein recognizes that the primary function of the elevated water tower is to provide water storage for Jesup and its customers. Oelwein understands that Jesup may find it necessary from time to time to interrupt Oelwein's use of the premises for maintenance of the water tower. Oelwein acknowledges and agrees that it shall be responsible for moving or protecting its equipment during any repairs or renovations to the water tower and Jesup shall incur no liability to Oelwein for any injury, expense, or claim incurred by Oelwein during any such repair or renovation so long as Jesup provides Oelwein at least sixty (60) days prior written notice for nonemergency maintenance. The maintenance period shall not exceed sixty (60) days. The parties will cooperate to determine which of the following options or combination of options will be used to address the impact of the antennas on the cost of maintenance/painting of the water tower:

- 1) Before the painting date, Oelwein will place a temporary antenna array or move its equipment to a structure such as portable tower or crane. If not previously removed, Oelwein will then remove the antennas from the water tower and the

maintenance/painting will proceed. Such temporary location shall not exceed the maintenance period. Once the painting/maintenance is finished, Oelwein will then re-attach the antennas where they were previously located. All costs incurred in removing the antenna, placement of a temporary antenna array and reattaching the antennas shall be the sole responsibility of Oelwein.

- 2) The contractor will bid on the cost of the maintenance/painting of the tower without the antennas. The contractor will then bid on the cost of maintenance/painting of the tower with Oelwein's antennas left in place. The contractor will then proceed to maintain/paint the tower with Oelwein's antennas left in place. Oelwein will reimburse Jesup for the difference between the two bids.
- 3) Oelwein, at its sole cost and expense, may relocate temporarily its antennas to a different location on the water tower, provided however, that such relocation shall not interfere with Jesup's maintenance/painting or any other users on the water tower. Such temporary location shall not exceed the maintenance period. Oelwein shall be allowed to relocate to any location on the water tower that is not being used or intended to be used by Jesup and will not cause interference with any other equipment located on the water tower.

Oelwein will only be responsible for its equipment located on the tower. Any other equipment will be the responsibility of its respective owner.

10. Existing Uses. The existing uses of the Site by Jesup or any other licensees at the time of any Site alterations requested by Oelwein shall be considered a primary use. Jesup may withhold permission from time to time and may limit such fixtures, equipment and antennae and their respective placement if such placement is, at such time, likely to unreasonably interfere with or in any manner unreasonably disturb the use and occupancy of the Site by Jesup and/or Jesup's tenants and/or Jesup's other licensees at the Site.
11. Interference. To the extent required by applicable rules and laws, Oelwein will at all times immediately resolve any and all technical interference problems with other equipment located at the Site within ninety days of notice of such interference, relative to existing equipment and to any equipment that becomes attached to the Site at any future date. Jesup will not knowingly permit the installation of any future equipment that results in technical interference problems with Oelwein's then existing equipment. In the case that any equipment is installed that causes technical interference with Oelwein's equipment, its use will be discontinued until such time the issue is resolved to Oelwein's satisfaction.
12. Hold Harmless. Oelwein shall hold harmless and indemnify Jesup for and from any and all liability in any way arising from or related to any activity undertaken by Oelwein (or its agents, employees and/or subcontractors) pursuant to, in regard to or in any

way relating to any aspect of this Agreement or any action authorized by this Agreement any acts of negligence by Jesup, its employees, agents, and contractors. Among other things, this hold harmless agreement requires Oelwein to pay and reimburse Jesup for all attorney fees, costs, expenses, judgments and settlements related to any such claims for which Oelwein is required to hold Jesup harmless. Jesup assumes absolutely no liability in any matter relating to the installation, use or maintenance of any antenna or other radio or related equipment placed upon the subject real estate under this Agreement.

Jesup shall hold harmless and indemnify Oelwein for and from any and all liability in any way arising from or related to any activity undertaken by Jesup (or its agents, employees and/or subcontractors) pursuant to, in regard to or in any way relating to any aspect of this Agreement or any action authorized by this Agreement or taken pursuant to this Agreement (whether expressly authorized or not), regardless of any acts of negligence by Oelwein, its employees, agents, and contractors. Among other things, this hold harmless agreement requires Jesup to pay and reimburse Oelwein for all attorney fees, costs, expenses, judgments and settlements related to any such claims for which Jesup is required to hold Oelwein harmless.

13. Limited Usage and Non-Assignability. This license shall not be deemed a grant unto Oelwein any interest in real estate but is a personal and non-assignable limited usage allowance upon the Site; provided, however, that this provision shall not interfere with or preclude any present or future security or other interests granted by Jesup.
14. Notices. All notices required under this Agreement must be in writing and are effective when deposited in the U.S. mail, certified and postage prepaid, to the parties of this Agreement as provided for below:

**City of Oelwein, Iowa**  
City of Oelwein  
Att: City Clerk  
Fayette, Iowa  
20 2<sup>nd</sup> Ave SW  
Oelwein, IA 50662  
Phone: (319) 283-5440

**City of Jesup, Iowa**  
City of Jesup  
Att:, City Clerk  
791 6<sup>th</sup> Street  
PO Box 592  
Jesup, Iowa 50648-0592  
Phone: (319) 827-1522

15. Compliance with Laws. Oelwein shall fully and timely comply with all applicable laws, rules and regulations relating to its license for non-exclusive possession and use of the Site.
16. Termination. This Agreement shall terminate pursuant to Paragraph Three (3) or Seventeen (17) herein EXCEPT that Oelwein may terminate this Agreement prior to the Commencement Date without further liability by written notice to Jesup prior to the Commencement Date [a] if Oelwein is unable to obtain all permits or other approvals (collectively, "approval") required from any governmental authority or any off-site easements required from any third party required to enable Oelwein to use the Site as described herein or [b] if any such approval is canceled, expires or is withdrawn or

terminated, or [c] if Jesup fails to have proper ownership or leasehold or licensure rights in and to the Site or authority to enter into this Agreement, or [d] if Oelwein, for any reason in its sole discretion determines that it will be unable to use the Site for its intended purpose. Upon termination, all prepaid license fees shall be retained by Jesup and Oelwein shall promptly pay to Jesup any deficiencies.

17. Default. If either party is in default under this Agreement for a period of (a) twenty (20) business days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) thirty (30) days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money. In either event, the non-defaulting party, at its discretion, may declare this Agreement terminated, void and of no further force and pursue any remedies available to it against the defaulting party under applicable law. However, if the non-monetary default may not reasonably be cured within a thirty (30) day period, this Agreement may not be terminated if the defaulting party commences and substantially concludes appropriate action to cure the default within such thirty day period and proceeds with all due diligence to fully cure the default within sixty (60) days of receiving notice of such default.
18. Removal of Property. Upon termination or expiration of this Agreement, Oelwein shall promptly remove any and all of its property from the Site within sixty (60) days and shall restore the Site to the condition existing on the date of this Agreement, except for ordinary wear and tear. Oelwein's failure to remove such property within 60 days shall result in such property and improvements reverting to and becoming the sole property of Jesup and shall no longer be subject to any claimed lien hold or security interests of others; provided however that Oelwein shall pay Jesup all expenses Jesup incurs in removing Oelwein's property and improvements from the Site.
19. Miscellaneous.
  - (a) This Agreement applies to and binds the respective successors of the parties to this Agreement and for all purposes to be deemed a mere personal property usage interest in relation to the subject real estate.
  - (b) Until further written notice, all notices required to be sent shall be mailed or delivered at the respective addresses of the parties as shown in paragraph 14 above.
  - (c) This Agreement is governed by the laws of the State of Iowa, and any action for enforcement must be brought in the Iowa District Court for Buchanan County or the United States District Court for the Northern District of Iowa.
  - (d) This Agreement constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties.
  - (e) Any amendments to this Agreement must be in writing and executed by both

parties.

- (f) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.
- (g) The prevailing party in any action or proceeding in court to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.



**OELWEIN, IOWA**

Executed in triplicate by licensee, Oelwein, Iowa, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Oelwein, Iowa

By: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

STATE OF IOWA, COUNTY OF \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a notary public in and for the State of Iowa, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of City of Oelwein, Iowa; that the seal affixed to the foregoing instrument is the Corporate Seal of City of Oelwein, and that the instrument was signed and sealed on behalf of City of Oelwein, by authority of its City Council, as contained in the Resolution No. \_\_\_\_\_ adopted by Oelwein of Oelwein Council on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and that \_\_\_\_\_ and \_\_\_\_\_ acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of City of Oelwein by it voluntarily executed.

\_\_\_\_\_  
Notary Public  
In and For the State of Iowa

CITY OF JESUP, IOWA

Executed in triplicate by City of Jesup, Iowa, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,

City of Jesup

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

By: \_\_\_\_\_

\_\_\_\_\_, City Clerk

State of Iowa, County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a notary public in and for the State of Iowa, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of City of Jesup, Iowa; that the seal affixed to the foregoing instrument is the Corporate Seal of City of Jesup, and that the instrument was signed and sealed on behalf of City of Jesup, by authority of its City Council, as contained in the Resolution No. \_\_\_\_\_ adopted by Jesup of Jesup Council on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ and that \_\_\_\_\_ and \_\_\_\_\_ acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of City of Jesup by it voluntarily executed.

\_\_\_\_\_  
Notary Public  
In and for the State of Iowa