

No: 21-047
Date: September 1, 2021

RESOLUTION
OF THE CITY COUNCIL
CITY OF SANDPOINT

**TITLE: BALDY MOUNTAIN COMMUNICATION SITE LEASE AGREEMENT
WITH U.S. FOREST SERVICE (CITY AGREEMENT #A21-1600-2)**

WHEREAS: The City of Sandpoint owns real property on Baldy Mountain in Bonner County and leases transmitter sites on this property to various individuals and entities for placement of buildings and towers suitable for AM/FM and broadcast radio, two-way radio, television, microwave radio, cellular and wireless broadband applications;

WHEREAS: The U.S. Forest Service (USFS) is an existing Lessee, occupying Parcel #7, which comprises 4,534 square feet of land area, and desires to enter into a new five-year lease agreement for continued use of this site;

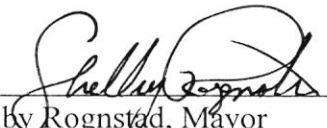
WHEREAS: The rent amount for the first year, including a \$500 Road Use Fee, is \$3,025.66, based on the City's adopted Fee Schedule for this site, which includes rent for leasing land area and a per radio unit equipment rental amount for each radio unit placed upon the USFS tower;

WHEREAS: The rate beginning October 1, 2021, and thereafter for the remaining term is subject to Lease Section 3.01, which allows for a 2% annual rent adjustment; and

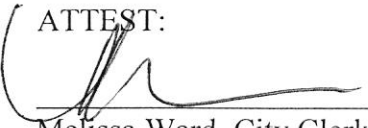
WHEREAS: As USFS is a government agency, the deposit requirement as stated in the adopted Baldy Mountain Communication Site Lease Policy is not applicable.

NOW THEREFORE BE IT RESOLVED THAT: The Baldy Mountain Communication Site Lease Agreement with the U.S. Forest Service (City Agreement #A21-1600-2), a copy of which is attached hereto and made a part hereof as if fully incorporated herein, is hereby approved.

BE IT FURTHER RESOLVED THAT: The Mayor or his designee is authorized, on behalf of the City, to execute the lease described herein.


Shelby Rognstad, Mayor

ATTEST:


Melissa Ward, City Clerk

**BALDY MOUNTAIN COMMUNICATION SITE LEASE AGREEMENT BETWEEN THE CITY OF
SANDPOINT AND US FOREST SERVICE**

This Baldy Mountain Communication Site Lease Agreement (hereinafter "Agreement") effective 10/01/2020 is made and entered into by and between the City of Sandpoint, Idaho, a municipal corporation, 1123 Lake Street, Sandpoint, Idaho 83864 (hereinafter referred to as "City"), and US Forest Service, Federal Government Agency, 24 Ft. Missoula Road, Missoula, Montana 59804 (hereinafter referred to as "Lessee"), as of the Effective Date (as hereinafter defined). The City grants to Lessee a lease on that portion of Baldy Mountain as described on Exhibit A and depicted on the Site Map on Exhibit B, each attached hereto and incorporated herein, hereinafter collectively referred to as the ("Site"). To the extent there is a difference between the legal description of the Site set forth on Exhibit A and the depiction of the Site set forth on Exhibit B, the legal description of the Site shall control.

SECTION 1 - OCCUPANCY

1.01 Term. The term of this Lease is for a five (5) year period. The lease shall commence on October 01, 2020 ("Commencement Date") and end on September 30, 2025.

1.02 No Warranty of Quiet Enjoyment. The City makes no warranty of quiet enjoyment of the Site.

1.03 No Warranty of Non-interference. The City will provide no interference protection during the term of this Lease.

1.04 Condition of Site. Lessee has had an opportunity to inspect the Site and enters into this Lease solely in reliance on Lessee's own examination and not by reason of any representation by the City. Lessee accepts the Site in its present condition "AS IS WHERE IS". Lessee shall not rely on any opinion, material, or information provided by or through the City, and Lessee leases the site at its own risk, cost, and expense.

1.07 Holding Over. Any holding over after the expiration of the term, with the consent of the City, shall be construed to be a tenancy from month to month at a rental rate as set forth in paragraphs four (4) and sixteen (16) above entitled respectively, "Payment" and "Subleases" and shall otherwise be on the terms and conditions specified in this Lease, so far as are applicable.

1.07 Failure to Vacate. At the time the Lessee is required to vacate the Site, as provided herein, and Lessee fails to do so, Lessee will be a trespasser and shall owe the City as allowed within the terms of this Agreement.

SECTION 2 - USE OF SITE

2.01 Permitted Use. Lessee's use of the Site shall be to install, maintain, repair, and operate electronic equipment as described in, approved, and signed the Baldy Mountain Communication Site Transmission Facilities Information Sheet, attached as **Exhibit D**. New or amended Technical Data Sheets may be added upon written approval by the City.

2.02 Reservation by City.

1. Inspection. Lessee shall permit the City and persons authorized by the City to enter the Site after notification and permission has been granted by Lessee during regular business hours and at all other reasonable times for the purpose of inspecting the installations, equipment or units, provided that, except in case of an emergency. This notice enables Lessee to arrange to accompany the City to protect the integrity of its equipment. An emergency is defined as an event posing an imminent threat of bodily injury, property damage, or critical equipment failure. In the event of an emergency, the City and persons authorized by the City may enter the Site and any Improvements thereon at any time and shall provide notice immediately upon discovery to Lessee. This clause shall not be construed to impose on the City a duty to inspect

2. Compatible Uses. The City will coordinate and receive authorization to access the Site with Lessee to grant easements and licenses over the Site, to sell, lease, or otherwise dispose of minerals, coal, oil, timber, gas, or other valuable materials from the Site insofar as such uses are compatible with Lessee's permitted use of the Site. The City shall do so in a manner that does not unreasonably interfere with Lessee's permitted use of the Site.

SECTION 3 PAYMENT**3.01 Payment.** Payments made hereunder will be as follows:

1. Rent. Lessee shall pay within thirty (30) days of September 30th annually (in arrears), beginning September 30, 2021 the rent of Three Thousand Twenty-Five and sixty-six/100 Dollars (\$3,025.66) for the period October 01, 2020 through September 30, 2021, subject to an annual 2% adjustment as set forth in Section 3.02 (collectively, "Rent") beginning October 01, 2021. The breakdown of the initial total rent is as follows:

- a. October 01, 2020 through September 30, 2021:
 - i. Land area rent up to 2,500 sq ft: \$1,351.00
 - ii. Area over 2,500 sq ft: 2,034 sq ft @ \$0.49/sq ft: \$996.66
 - iii. Rent per radio unit: 2 @ \$339.00 each: \$678.00

2. Deposit. Lessee not be required to pay a deposit for use of the Site.

3. Road Use Fee. Lessee shall pay in arrears the required road use fee of

Agreement No. A21-1600-2
US Forest Service Lease Number 12034321L0410

Five Hundred Dollars (\$500.00) for the period of October 01, 2020 to September 30, 2021 and annually thereafter within 30 days of September 30th ("Road Use Fee") for the remaining term of this Lease, subject to adjustment as set forth in Section 3.02.

3.02 Adjustment.

1. Periodic Adjustment.
 - a. Rent Adjustment. On January 01 each year, the Rent will increase by two percent (2%), including the portion of rent derived from Sublessees.
 - b. Road Use Fee. The Road Use Fee may be adjusted/increased on January 01 each year at the discretion of the City with a maximum annual adjustment of 5%.
2. Equipment Change Adjustment. Rent will be adjusted when new equipment is added to or removed from the Site according to the City's "Baldy Mountain Communication Site Lease Rent Schedule" then in effect or market value.
3. Rent from Sublessees. From and after the commencement of any sublease, license or any other occupancy agreement between Lessee and any and all sublessees, licensees, and any other such third parties (collectively, "Sublessees") to occupy the Site, the Rent shall be due according to Section 3.01 and will be adjusted by two percent (2%) annually on January 01. Such increase in Rent will be prorated from the commencement date of each such subsequent occupancy agreement with such Sublessee to the next succeeding January 01. If the term of the sublease, license, or other occupancy agreement with such Sublessee shall expire or terminate prior to the expiration or termination of this Lease, the Rent shall be reduced proportionate to the number of days remaining until the next January 01 date to reflect such expiration or termination.
4. Change in Use. The City shall pro rate Rent to Lessee to reflect any changes in occupancy made prior to January 01. If Lessee fails to notify the City of any additional occupancy or use, the City shall charge the value of the use from the date that such occupancy or use began. Should the date that such occupancy or use began be indeterminable, the City shall charge no less than one (1) years' Rent.

The City shall not be required to refund Rent, or any portion thereof, for removal of any and/or all equipment. Rent will be adjusted for removals upon the next January 01.

3.03 Verification of Percentage Rent

1. Payment Statement. At any time during the term of this Lease, but no more than twice per year beginning with the Commencement Date, State may require that Lessee submit to State an accurate statement detailing the source and amount of Lessee's receipt of all Sublessee's rent or other similar payments for the lease year (or period owed) (the "Payment Statement"). Each Payment Statement shall be signed and certified to be correct by an individual or officer of Lessee who is fully authorized to execute such statement on behalf of Lessee.

2. Inspection of Records. Lessee shall permit and make available to the City all Sublessee agreements, payment records, and all other records related to the computation of Rent, including Rent from Sublessees, owed. Inspection of such records may be electronically, City of Sandpoint City Hall, or at a physical location mutually agreeable between the City and Lessee. The City shall provide Lessee at least fourteen (14) calendar days' prior written notice before the City inspects such records. This clause shall not be construed to impose a duty on the City to inspect any such records. Prior to, during, and after such inspection by the City, Lessee or an authorized representative of Lessee shall maintain physical custody of all such Lessee records.

2. Inspection of Records. Once per calendar year, the City may submit a written request to Lessee for a certified business summary affidavit pertaining to Lessee's Rent obligations for Sublessees for the prior twelve (12) month period, and Lessee shall provide such written report to the City within sixty (60) days after Lessee's receipt of such written request. The City shall send such written request to Lessee's notice address set forth in this Lease.

3. Incorrect Payments. If the Payment Statement or the City's inspection of records shows that Lessee failed to notify the City of any Sublessee agreement, the City shall charge the value of the change in occupancy from the date of the change in occupancy. Should the date of change in occupancy be indeterminable, the City shall charge no less than fifteen percent (15%) of one (1) years' Rent. If the Payment Statement or City inspection of records shows that Lessee underpaid the City for any Sublessee agreement, Lessee shall immediately pay the City the amount owed.

3.06 Utilities. Lessee shall pay or cause to be paid when due, and shall indemnify, defend, and hold harmless the City and the Site from all charges for public or private utility services to or for the Site during the term of this Lease, including without limiting the generality of the foregoing, all charges for heat, light, electricity, water, gas, telephone service, garbage collection, and sewage and drainage service, if applicable.

SECTION 4 - SPECIAL REQUIREMENTS

4.01 Electronic Standards. Lessee shall comply with the standards in the "Minimum Communication Site Standards", attached as "Exhibit C". The City reserves the right to amend the standards set forth in "Exhibit C". Lessee shall be informed of such amendments and given six (6) months to comply after receipt of written notice.

4.02 Compliance with Laws. Lessee shall conform to all applicable laws and regulations of applicable governmental authority affecting the Site and the use thereon and assume, at Lessee's sole expense, any costs of such compliance including any fines and/or penalties. Lessee shall obtain all federal, state, and local permits and licenses necessary to operate under this Lease.

4.03 Fire. To the extent possible, Lessee shall protect the Site from fire and shall report any fires on the Site to the City, by phone, as soon as possible.

4.04 Debris. Lessee shall not allow debris or refuse to accumulate on the Site.

4.05 Frequency Interference. Lessee, upon written or verbal notification by the City, shall immediately take remedial action to eliminate interference with other operators at the Site or at nearby locations caused by Lessee's operations. In the event Lessee fails to eliminate the interference within 48 hours of notification, the City will have the right to disconnect power to any transmitters causing interference. If the interference affects emergency services or public safety, the City shall have a right to disconnect power to any transmitter causing interference immediately upon contacting Lessee. For the purposes of this section, the City shall be deemed to have contacted Lessee when the City places a call to Kaley Haupt (406) 329-3159 – kaley.haupt@usda.gov.

In the event Lessee's operations continue to cause interference with other operators at this Site or nearby Sites, the City reserves the right to designate placement or relocation of antennas. Lessee shall make such placements or relocations at Lessee's own expense.

4.06 New Equipment/Frequencies. Lessee shall not change or add frequencies, equipment or units without submitting new or amended Technical Data Sheets for the City's prior written authorization. If Lessee fails to comply with this requirement, the City shall have the option to declare Lessee in material breach and exercise the rights set forth under Section 6 Default, or to authorize the equipment to remain subject to the rent provisions set forth hereinafter. When Lessee changes or adds frequencies, upon written approval by the City, the priority rights for the new frequencies will be the date of approval shown on the new approved Technical Data Sheet. A new Lessee operation shall not interfere electronically or physically with an existing Lessee's operations.

If the City allows the unauthorized frequencies, equipment or units to remain on the Site, Lessee shall be liable to pay the City two time's the Rent for each previously unauthorized frequency,

equipment, or unit according to the City's "Baldy Mountain Communication Site Lease Rent Schedule" in effect or market value on the date of discovery from the period of installation or operation, whichever comes first, to the date of discovery by the City. After the date of discovery, should the City authorize the frequency, equipment, or unit, Lessee shall be liable for single Rent for such frequency, equipment, or unit based on the City's "Baldy Mountain Communication Site Lease Rent Schedule" then in effect. Back Rent shall be calculated based on the installation date of said frequency, equipment, or unit and due upon receipt of invoice from the City.

4.07 FCC License. Lessee shall operate its equipment and units in compliance with the rules and regulations of the Federal Communications Commission ("FCC"). Within thirty (30) days of the beginning of operation and any subsequent renewals, Lessee shall furnish the City with a copy of its current FCC license and subsequent renewals to the address as shown on the signature page.

4.08 Hazardous, Toxic, or Harmful Substances.

1. Deleterious Material. Lessee shall not make, or suffer to be made, any filling in of the Site or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological, or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the Site, except as approved in writing by the City. If Lessee fails to remove all non-approved fill material, refuse, garbage, wastes, or any other of the above materials from the Site, Lessee agrees that the City may, but is not obligated to, remove such materials and charge Lessee for the cost of removal and disposal. Lessee's obligation to reimburse the City for removal and disposal shall survive termination of this Lease.

2. Hazardous, Toxic, or Harmful Substances.

a. Lessee shall not keep on or about the Site, any substances subject to regulation under any state or federal government regulation; any hazardous substance or hazardous waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9602 et seq.) and implementing regulations, as these laws are amended from time to time; underground storage tanks, whether empty, filled, or partially filled with any substance; asbestos; urea formaldehyde foam insulation; PCBs; and any other substance, waste, material, or chemical deemed or defined as hazardous, toxic, a pollutant, contaminant, dangerous or potentially dangerous, noxious, flammable, explosive, or radioactive, the removal of which is required or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any federal, state, county, municipal or other local governmental statute, regulation, ordinance, or resolution as these laws are amended from time to time (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out Lessee's permitted use under Subsection 2.01 and unless Lessee fully complies with all federal, state, and local laws, regulations,

Agreement No. A21-1600-2
US Forest Service Lease Number 12034321L0410

statutes, and ordinances now in existence or as subsequently enacted or amended pertaining to the use, presence, transportation, or generation of such Hazardous Substances.

b. Lessee shall immediately notify the City and any other required regulatory agencies, as applicable, of any of the following:

- (1) all spills or releases of any Hazardous Substance in, on, or adjacent to the Site;
- (2) all failures to comply with any federal, state, or local law, regulation, or ordinance, as now enacted or as subsequently enacted or amended, pertaining to the use, presence, transportation, or generation of any Hazardous Substance in, on, or adjacent to the Site;
- (3) all inspections of the Site by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Site; and
- (4) all regulatory orders or fines, or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Site.

Also, on request, Lessee shall provide copies to the City of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation, or generation of Hazardous Substances in, on, about, or adjacent to the Site.

c. Lessee shall be fully and completely liable to the City, and, to the extent permitted by law, shall indemnify, defend, and hold harmless the City and its employees, officers, and agents with respect to any and all damages, costs, fees (including attorney's fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, possession, transportation, generation, and/or sale of Hazardous Substances or that of Lessee's employees, agents, assigns, Sublessees, contractors, subcontractors, licensees, or invitees and for any other breach of this Section 4.09. Lessee's obligations under this Section 4.09 shall survive termination of this Lease.

4.09 Non-Ionizing Electromagnetic Radiation (NIEP). Lessee shall comply with standards or requirements in effect for non-ionizing electromagnetic radiation levels as established by the Environmental Protection Agency (EPA) or other local governing agencies.

SECTION 5 - ASSIGNMENT, INSURANCE, INDEMNITY

5.01 Assignment. Lessee shall not hypothecate, mortgage, assign, transfer, or otherwise alienate this Lease ("Assignment"), or any interest therein, with the exception of agreements with Sublessees, without the prior written consent of the City, which consent shall be at the sole discretion of the City. The consent of the City to any one Assignment shall not constitute a waiver of the City's right to consent to subsequent Assignments, nor shall consent of the City to any one Assignment relieve any party previously liable as Lessee from any obligations under this Lease. The acceptance by the City of the payment of Rent following an Assignment shall not constitute consent to any Assignment and the City's consent shall be evidenced only in writing.

5.02 Subletting. Notwithstanding the restrictions on Assignment of this Lease, Lessee has the right, at its sole discretion and without the City's consent, to sublease, or otherwise enter into occupancy and use arrangements of the Site with Sublessees, subject to the terms of this Lease. Upon any permitted subletting in accordance with this Section, Lessee shall provide the City prior notice including the name of such Sublessee utilizing the Site.

5.03 Insurance**1. INSURANCE:**

Lessee is self-insured. Any claims arising out of use or operation of this agreement shall be governed by the terms and conditions of the Federal Tort Claims Act.

Sublessee's shall maintain liability insurance of a type acceptable to the Lessor, and placed with a company qualified to do business in the State of Idaho, with Lessor named as an additional insured. A certificate of such insurance shall be filed annually with the Lessor and shall provide that such insurance shall not be cancelled without 30 days written notice to the Lessor.

5.04 Name Change. If during the term of this Lease, Lessee changes its name, Lessee shall provide the City with documentation legally supporting the name change within sixty (60) days of the effective date of the change.

SECTION 6 - DEFAULT

6.01 Breach by Lessee or City. In the event of any breach of any provision of this Lease by Lessee or City, the breach, whether material or not, shall be deemed a default entitling the City or Lessee to cancel this Lease and seek any other remedies set forth in this Lease or otherwise available at law or equity, after the City or Lessee has delivered to the other party notice of the breach and a demand that the same be remedied immediately. The Lessee or City shall have forty-five days to cure the breach, including for any non-payment of rent by Lessee as set forth in this Agreement. Any breach that has not been remedied by either Lessee or the City within the requirements of this Section, shall entitle the other party to terminate this Lease.

6.02 Reentry. In the event of any default by Lessee, the City shall have the right, with or without canceling the Lease, to reenter the Site and remove all persons and property from the Site and take whatever actions may be necessary or advisable to relet, protect or preserve the Site. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in the City's discretion at the expense and for the account of Lessee. The City shall not be responsible for any damages or losses suffered by Lessee as a result of such reentry, removal, storage or other disposition, and no such action shall be construed as an election to terminate this Lease unless a written notice of termination is given to Lessee.

6.03 Termination of Agreements. Whether or not the City elects to terminate this Lease on account of any default by Lessee and subject to any non-disturbance and attornment agreements, if any, the City shall have a right to terminate any and all subleases, licenses, concessions or other arrangement for possession affecting Site. Alternatively, the City, in its sole discretion, may succeed to Lessee's interest in such sublease, license, concession or arrangement, and Lessee shall have no further right to or interest in the rent or other consideration receivable thereunder.

6.04 Right to Cure. If Lessee fails to perform any undertaking or promise contained herein, the City shall have the right but not the obligation to make such performance thirty (30) days after expiration of the default cure periods stated in Section 6.01 above. Lessee shall reimburse the City for any City expenditures to correct Lessee's failure to perform.

6.05 Remedies Cumulative. The specified remedies to which the City or Lessee may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the City or Lessee may lawfully be entitled in case of any breach or threatened breach by the City or Lessee of any provision of this Lease.

6.06 Insolvency. If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Lessee; or if any action is taken or suffered by Lessee pursuant to an insolvency, bankruptcy or reorganization act; or if Lessee makes a general assignment for the benefit of its creditors; and if such appointment, action or assignment continues for a period of thirty (30) days, it shall, at the City's option, constitute a material breach by Lessee.

SECTION 7 - ACCESS ROADS AND ROAD MAINTENANCE

7.01 Road Maintenance and Repair.

1. As seasonal conditions allow, the City shall provide road maintenance of the access to the Site except as otherwise provided herein. Road maintenance is defined as work normally necessary to preserve and keep the roads in their present condition or as hereafter improved. City will not perform snow plowing or removal services on the access road to the site.

Agreement No. A21-1600-2
US Forest Service Lease Number 12034321L0410

2. In the event of a catastrophe, or other event that deems the road impassable, as determined by the Lessor, and requires extraordinary road repair, Lessee shall pay its pro rata share of the cost incurred in repairing said road or portion thereof, also determined by the Lessor; provided that Lessee's pro rata share of such costs shall not exceed Five Thousand and No/100 Dollars (\$5,000.00) without Lessee's prior written consent ("Max Fee"). The pro rata share will be determined by the cost of repair and dividing it equally amongst the parcels as identified on the map in Exhibit B.
3. In the event Lessee's pro rata share of the costs exceeds the Max Fee and Lessee does not waive the Max Fee limitation, the City reserves the right to not repair the road, and in such case, the City shall not guarantee or warrant Lessee's access to the Site. Lessee assumes all risk of loss associated with accessing the Site.
4. Site Access Limitations – Lessee has examined the site and the access to the site and acknowledges the access road to the site is seasonally impaired. Lessee accepts the site and access to the site in its present condition and acknowledges and accepts the limited access. City makes no guarantee of access to the site as a result of seasonal conditions.

7.02 Road Repair. Lessee shall repair or cause to be repaired at its sole cost and expense that damage to said road(s) occasioned by it which is in excess of that which it would cause through normal and prudent usage of said road(s). Within fifteen (15) days of the damage, Lessee shall meet with the City and provide a plan of operation for the repairs.

7.03 Road Improvements. Lessee shall not construct any improvements to roads where access has been provided by the City without the prior written consent of the City, which shall not be unreasonably withheld. Unless the City agrees to share in the cost of the improvement in writing, the improvements shall be at the sole cost of Lessee.

7.04 Insurance. The provisions under Section 5 Insurance/Indemnity, shall apply to Lessee's use of roads authorized herein.

SECTION 8 IMPROVEMENTS

8.01 Utilities. Prior to excavation, clearing, or construction, Lessee will employ a utility locator service, at no cost to the City, to check the Site for buried utilities.

8.02 Improvements. "Improvements" means anything considered a fixture in law placed upon or attached to the Site that has changed the value of the Site or any changes in the previous condition of the fixtures that changes the value of the Site, including without limitation any buildings, support structures, generators, and fuel tanks.

1. **Unauthorized Improvements.** Lessee shall not construct any Improvements unless authorized in writing by the City. All Improvements made on the Site without the written consent of the City are unauthorized and shall, at the option of the City, be removed by Lessee, be removed by the City at the cost to Lessee, or become the property of the City.
2. **Lessee-Owned Improvements.** Those Improvements authorized by the City and located within the Site that have been (1) made by Lessee or a Sublessee, or (2) acquired by Lessee from the City, a prior tenant, or a Sublessee, shall be referred to herein as "Lessee-Owned Improvements." Lessee-Owned Improvements are listed on Exhibit E, attached hereto and incorporated herein. Lessee shall obtain prior written approval from the City for any Lessee-Owned Improvements to be added to or removed from the Lease Area sixty (60) days prior to installation or removal. The City's approval of Lessee's request to add or remove Improvements shall not be unreasonably withheld, conditioned, or delayed. Within sixty (60) days of the installation or removal of any new Lessee-Owned Improvements, Lessee and the City shall execute an amendment to this Lease to update the list of Lessee-Owned Improvements.

8.03 Maintenance and Repair of Lessee-Owned Improvements. Lessee shall maintain and repair all Lessee-Owned Improvements, at its own cost.

8.04 End of Term. Disposition of any Lessee owned out buildings, antennas, mounting hardware, cables, cable housing, radio units, batteries, duplexers, and all other personal property on the Site ("Equipment"), and all Lessee-Owned Improvements shall be disposed of in accordance with the following terms and conditions:

1. By the Termination Date, all Equipment and Lessee-Owned Improvements, including impervious surfaces and/or outbuildings, constructed or installed by or at the direction of Lessee shall be removed from the Site, except as otherwise provided in this Lease or as Lessee and the City otherwise agree in writing.
2. For any Equipment or Lessee-Owned Improvements left on the Site after the Termination Date, the City shall have the right, at its option, to (i) deem any or all of such Equipment and/or Lessee-Owned Improvements abandoned and take ownership thereof; or (ii) remove, sell, or dispose of such Equipment and Lessee-Owned Improvements as the City sees fit, in accordance with all applicable laws.
3. If the City removes any or all of the Equipment or Lessee-Owned Improvements from the Site as permitted herein, Lessee shall reimburse the City for costs in excess of the initial rent deposit received and invoiced for any direct costs in excess of the rent deposit. Lessee will not receive a reimbursement of the rental deposit should any equipment or Lessee-Owned improvements left on the Site for longer than thirty (30) days following the termination date of the Lease.

Agreement No. A21-1600-2
US Forest Service Lease Number 12034321L0410

4. Notwithstanding anything in this Lease or under applicable laws to the contrary, Lessee shall retain ownership of their Equipment and Lessee-Owned Improvements if the term of this Lease is extended by mutual written agreement of the City and Lessee or if Lessee re-leases the Site under a new lease with the City.

SECTION 9 - MISCELLANEOUS

9.01 Non-Waiver. Waiver by either party of strict performance or any provisions of this Lease shall not be a waiver of nor prejudice the party's right to require strict performance of the same provision or of any other provision of this Lease in the future.

9.02 Attorney Fees and Controlling Law. This Lease is to be governed by the law of the State of Idaho. The jurisdiction/venue for any action arising out of performance of this Contract, or interpretation of its terms and conditions, shall be in the District Court in the First Judicial District of the State of Idaho, Bonner County. In any action to enforce the terms and conditions of this Lease, the prevailing party may recover its reasonable attorney fees.

Lessor shall comply with all Federal, state, and local laws applicable to its ownership and leasing of the property, including, without limitation, laws applicable to the construction, ownership, alteration or operation of all Buildings, structures, and facilities located thereon, and obtain all necessary permits, licenses and similar items at its own expense. The Lessee shall comply with all Federal, state and local laws applicable to an enforceable against it as a Lessee under this Lease Agreement, provided that nothing in this Lease Agreement shall be construed as a waiver of the sovereign immunity of the Lessee. This Lease Agreement shall be governed by Federal law.

9.03 Notices.

1. Any notice given under this Lease shall be deemed received when delivered by hand or five (5) days after deposit in the United States mail with first class postage affixed addressed as follows: At the address given by each party in the signature block of this Lease. Changes of address may be given in accordance with this section.
2. Lessee shall notify the City within fourteen (14) calendar days of any change of address, business name, contact person's name or other changes that may affect the lease.

9.04 Liens. Lessee shall not suffer nor permit any lien to be filed against Lessee's leasehold interest in the Site or any Improvement thereon by reason of work, labor, services or materials performed or supplied to Lessee or anyone holding Site or any part thereof under this Lease. If any such lien is filed against Lessee's leasehold interest or any Improvements thereon, Lessee

shall cause the same to be discharged of record within thirty (30) days after the date of filing the same unless other arrangements are authorized in writing by the City. Lessee shall indemnify the City for any costs, damages or expenses (including attorneys' fees) incurred as a result of the filing of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to lease termination.

9.05 Force Majeure. The City's or Lessee's failure to perform any of its obligations under this Lease shall be excused if due to causes beyond its control and without the fault or negligence of the City or Lessee, including but not restricted to acts of God, acts of the public enemy, acts of any government, vandalism, fires, lightning, floods, epidemics or labor strikes.

9.06 Preservation of Markers. Any legal land subdivision survey corners, reference points or monuments are to be preserved. If such are destroyed or disturbed by Lessee, Lessee shall reestablish them by a licensed land surveyor in accordance with U. S. General Land Office standards at their own expense. Corners, reference points or monuments that must necessarily be disturbed or destroyed in the process of carrying out the operations allowed by this Lease must be adequately referenced and/or replaced. Such references must be approved by the City prior to removal of said corners, reference points or monuments.

9.07 Proprietary Information/Public Disclosure. Materials or information submitted as required in this Lease shall become public records within the meaning of Idaho Statute §74-102, Public Records Act. Any submitted materials or information that the Lessee claims as exempt from disclosure under the provisions of Idaho Statute §74-102 must be clearly designated and submitted in writing to the City. The page must be identified and the particular exemption from disclosure upon which the Lessee is making the claim must be identified as allowed within Idaho Statute §74-102.

The City will consider a Lessee's request for exemption from disclosure; however, the City will make an independent decision on the applicability of any claimed exemption consistent with applicable laws. Marking the entire submitted materials or information exempt from disclosure cannot be honored.

9.08 Effective Date. The date of this Lease shall be the date on which the last party executes this Lease ("Effective Date").

Agreement No. A21-1600-2
US Forest Service Lease Number 12034321L0410

NOW THEREFORE, the parties by their authorized signing officers have executed this Lease Agreement:

CITY OF SANDPOINT
1123 Lake Street
Sandpoint, Idaho 83864

DocuSigned by:

Mayor Shelby Rognstad

15B8DFE89CFB492...

Name: Shelby Rognstad
Title: Mayor

U.S. FOREST SERVICE
24 Ft. Missoula Road
Missoula, Montana 59804

JAMES

THOMPSON

Digitally signed by JAMES
THOMPSON
Date: 2021.08.25
13:43:05 -06'00'

James W. Thompson, RPLO, RA
Title: Lease Contract Officer

Attest:

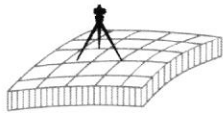
DocuSigned by:

Melissa Ward

4217A7549626469...

Melissa Ward
City Clerk

EXHIBIT A
LEGAL DESCRIPTION OF SITE



GLAHE & ASSOCIATES, Professional Land Surveyors

P.O. Box 1863
303 Church Street
Sandpoint, ID 83864

Phone: (208) 265-4474
Fax: (208) 265-0675
Website: glaheinc.com

City of Sandpoint-Bald Mtn
Lease Parcel #7 – 4,535 sq ft.

Bonner County, Idaho
Section 35, Township 58 North, Range 3 West, B.M.

A portion of the South 1/2 of the southwest 1/4 of Section 35, Township 58 North, Range 3 West, Boise Meridian, Bonner County, Idaho and being more particularly described as follows:

COMMENCING at an existing U.S.C and G.S Brass Cap marked "Baldy" 1964 from which the southwest Section Corner of said Section 35 monumented with a 2 1/2" x 30" aluminum pipe with a 3" diameter cap by RLS 853, bears S 49°31'01" W, 1733.78 feet;

Thence N 28°23'02" E, 15.37 feet to a found 1 1/2" brass cap on a copperweld and the **TRUE POINT OF BEGINNING**;

Thence S 42°22'57" W, 90.81 feet to a found 1 1/2" brass cap on a copperweld;

Thence S 47°47'44" E, 49.95 feet to a found 1 1/2" brass cap on a copperweld;

Thence N 42°27'13" E, 37.78 feet to a found 1/2" rebar and cap by PLS 974;

Thence N 42°24'35" E, 52.80 feet to a found bent 1 1/2" brass cap on a copperweld;

Thence N 47°32'13" W, 50.02 feet to a found 1 1/2" brass cap on a copperweld and the **TRUE POINT OF BEGINNING** encompassing an area of 4,534 square feet or 0.10 acres.



EXHIBIT C
MINIMUM COMMUNICATION SITE STANDARDS

1. The City retains the right to inspect Lessee's equipment with 21 calendar days advance written notice to ensure compliance with Site standards presently in effect or as may be amended. This clause shall not be construed as a duty to inspect.
2. Each transmitter at the Site will be identified with Exhibit D, Baldy Mountain Communication Site Transmission Facilities Information Sheet.
3. All communications fixed transmitter installations shall employ isolators or alternative techniques meeting the same criteria, to minimize spurious radiation and intermodulation products. Additional filtering may be required according to frequency and interconnect devices as listed below. As the industry progresses, superior devices may be available and installed only with the written approval of the City.
 - a. Transmitters in the 29.8 to 54 MHZ range shall have a low pass filter, band pass filter or cavity providing a minimum of 30 dB of attenuation removed 1.0 MHZ from the operating frequency.
 - b. Transmitters in the 66 to 88 MHZ range shall have at least 25 dB of isolation followed by a band pass cavity providing at least 20 dB of attenuation 1.0 MHZ removed from the operating frequency.
 - c. Transmitters in the 88 to 108 MHZ range operating at a power level of 350 watts or less shall have at least 25 dB of isolation followed by a band pass cavity providing at least 35 dB of attenuation 1.0 MHZ from the operating frequency.
 - d. Transmitters in the 88 to 108 MHZ range operating at a power level above 350 watts shall have a band pass cavity providing at least 25 dB of attenuation 1.4 MHZ from the operating frequency.
 - e. Transmitters in the 130 to 225 MHZ range shall have at least 50 dB of isolation followed by a low pass filter and a band pass cavity with a minimum of 15 dB of attenuation 1.0 MHZ removed from the operating frequency.
 - f. Transmitters in the 400 to 470 MHZ range shall have at least 50 dB of isolation followed by a low pass filter and a band pass cavity with a minimum of 15 dB of attenuation 2.0 MHZ removed from the operating frequency.
 - g. Transmitters in the 806 to 990 MHZ range shall have at least 50 dB of isolation followed by a low pass filter or a band pass filter with a minimum of 15 dB of attenuation 10 MHZ removed from the operating frequency and 40 dB of attenuation at 20 MHZ. Where mixed services share a common site, series cavities need be incorporated.

4. Lessee shall comply with General Engineering Standards, including but not limited to the following:
- a. A band pass cavity/filter or crystal filter is recommended at the input of all receivers. Its purpose is to protect against RF energy "off frequency" from mixing in a non-linear device such the first RF amplifier in a receiver, which can re-radiate causing interference.
 - b. The band reject duplexer (cross notch duplexer) may not be used without the use of cavities or isolators.
 - c. Single braid coax cable is prohibited. Double shielded cable must have over 98.5% shield coverage. Single braid cable with resistive terminations is acceptable ONLY as a fixed method for relative signal strength measurements.
 - d. Jacketed coaxial cable is required. Unjacketed transmission line of any type is prohibited.
 - e. Use of N, TNC, DIN or other types of constant impedance connector is preferred over a non-constant impedance type. Effort should be made to prevent the use of coax adaptors.
 - f. All equipment is to be grounded. Grounding is to be done with low impedance conductor to the station ground grid, preferably with flat copper or heavy braid. The "green wire" of the AC power plug is not an acceptable grounding point. All cables are to be grounded to the tower at the point where the cables leave the tower for the building entry.
 - g. Transmitting systems must be checked periodically, which includes the isolator, VSWR on the load port of the isolator and overall system insertion loss.
 - h. Bare metallic ties are prohibited for securing transmission lines to towers. In the case of large lines, use of stainless steel or galvanized hangers is permitted. Hardware capable of rusting and dissimilar metals is prohibited. Transmission lines are to be insulated from metallic structures and objects. It is the duty of the installation personnel to prevent "diode junctions" from taking place.
 - i. All loose wire or metal objects are to be removed from the tower and site. Metal fencing should be vinyl coated.
 - j. All equipment shall be licensed by FCC, or have a Radio Frequency Authorization from NTIA, (if required by the regulating agency) and be operated

Agreement No. A21-1600-2
US Forest Service Lease Number 12034321L0410

in full accordance with all applicable rules and regulations of the regulating agency. There shall be no modifications that violate "FCC Type Acceptance."

k. Every effort should be made to protect the equipment from lightning damage. Feed-through lightning protectors shall be used on all coaxial cable connections to equipment enclosures. Gas, gap and MOV and Silicon Avalanche Diode (SAD) protectors shall be used in control, audio, telephone and power connections.

l. Radios, equipment and batteries installed shall use support equipment that is braced, anchored and/or secured in a manner that prevents or reduces possible damage due to an earthquake.

m. Installation personnel shall provide and install a water tight cable boot at the cable entry port when installing cables from the tower into the building.

5. Interference Policy Statement:

a. In the event radio interference (RI) or physical interference occurs, all users of the Site are required to participate in solving the problem by providing technical personnel and test equipment to locate the source of the specific problem. All equipment must be maintained in good working order and meet original manufacturers and FCC specification for reduction of transmitter spurious radiation. In the event radio interference (RI) occurs, and these standards are complied with, additional isolators, filters, cavities, etc., may be required to correct specific problems.

b. Involved systems not in full compliance with these standards shall be required to comply immediately at their own expense.

c. The City has the right to require the offending transmitter owner/operator to finance the required corrections or equipment necessary to correct the problem.

6. These are minimum standards of good engineering practices in the operation and maintenance of communication sites. These standards will be revised as deemed necessary by the City.

7. For equipment using unlicensed frequencies:

a. All equipment shall be compliant with all FCC rules and regulations.

Agreement No. A21-1600-2
US Forest Service Lease Number 12034321L0410

- b. The City has the right to require Lessee to provide additional interference protection devices for existing and new site users to reduce interference and accommodate Site growth.
 - c. The City has the right to require Lessee to reposition antennas on towers, add equipment shielding and reduce effective radiated power to reduce interference and accommodate site growth.
9. Electrical Standards:
- a. Only assigned electrical outlets shall be used.
 - b. Additions or modifications shall not be made to any electrical distribution system without first securing the City's written permission.
 - c. Access to the panel board is provided for the circuit breaker to the user's assigned outlets.
 - d. Equipment and units shall have internal fusing to protect the supply circuit.
3. Cord connections for equipment and units shall have a ground wire and the attachment plugs shall have a "U" slot ground to provide a continuous ground from equipment to distribution panel.

EXHIBIT D

REQUIRED INFORMATION FOR BALDY MOUNTAIN TRANSMISSION FACILITIES

Company Name: USDA Forest Service

Mailing Address: 24 Fort Missoula Rd Missoula, MT 59804

Contact Name and Phone Number: Kaley Haupt 406-329-3159 kaley.haupt@usda.gov (best method)

Description of Service: 4,534 sq ft parcel of land to be used as a communication site by the USDA Forest Service

Microwave Radio:

Equipment Manufacturer: Alcatel

Equipment Model: MDR8000

Serial Number:

Transmit Frequencies: 2223.250 MHz

Transmit Power: (in dBm): 2 watts

Transmit ERP: (in dBm):

Receive Frequencies: 2273.250 MHz

IF Frequencies:

Transmit PL or DPL (if applicable):

Narrowband Conversion Date (if planned):

Private Mobile Radio:

Equipment Manufacturer: Codan

Equipment Model: MT4-E

Serial Number:

Transmit Frequencies: 165.4875 MHz

Transmit Power: (in dBm): 30 watts

Transmit ERP (in dBm): 30 watts

Receive Frequencies: 172.4000 MHz

IF Frequencies:

Transmit PL or DPL (if applicable):

Narrowband Conversion Date (if planned): Already narrowband

Please attach a copy of the FCC License.

Agreement No. A21-1600-2
US Forest Service Lease Number 12034321L0410

EXHIBIT E
LESSEE-OWNED IMPROVEMENTS

No improvements have been made as of initial effective date of this Agreement. Any future improvements will be authorized through an Amendment to this Lease Agreement.

U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE

LEASE NO.

12034321L0410

THIS LEASE, made and entered into this date by and between
The City of Sandpoint Idaho

whose address is

1123 Lake Street, Sandpoint, Idaho 83864

and whose interest in the property hereinafter described is that of

Baldy Mountain Communication Site

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agrees as follows:

1. The lessor hereby leases to the Government the following described premises:

Bonner County, Lease Parcel #7 – 4,535 sq ft. Section 35, Township 58 North, Range 3 West, B.M.; A portion of the South 1/2 of the southwest 1/4 of Section 35, Township 58 North, Range 3 West, Boise Meridian, Bonner County, Idaho and being more particularly described as follows:

COMMENCING at an existing U.S.C and G.S Brass Cap marked "Baldy" 1964 from which the southwest Section Corner of said Section 35 monumented with a 2 1/2" x 30" aluminum pipe with a 3" diameter cap by RLS 853, bears S 49°31'01" W, 1733.78 feet;

to be used for Telecommunication

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on

10/01/2020

through

09/30/2025

, subject to termination

and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of \$ 3,025.66

at the rate of \$ 3,025.66 per year in arrears.

Rent for a lesser period shall be prorated. Rent checks shall be made payable to:

The City of Sandpoint Idaho

4. The Government may terminate this lease at any time by giving at least 60 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals:

Subject to an annual 2% adjustment as set forth in Section 3.02 (collectively, "Rent") beginning October 01, 2021. The breakdown of the initial total rent is as follows: a. October 01, 2020 through September 30, 2021: i. Land area rent up to 2,500 sq ft: \$1,351.00; ii. Area over 2,500 sq ft: 2,034 sq ft @ \$0.49/sq ft: \$996.66; iii. Rent per radio unit: 2 @ \$339.00 each: \$678.00; Road Use Fee: \$500.00, subject to adjustment as set forth in Section 3.02.

provided notice be given in writing to the Lessor at least 60 days before the end of the original lease term or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term. Said notice shall be computed commencing with the day after the date of mailing.

6. The Lessor shall furnish to the Government, as part of the rental consideration, the following:

A21-1600-2 US FOREST SERVICE BALDY MTN COMMUNICATION SITE LEASE AGREEMENT

EXHIBIT A LEGAL DESCRIPTION OF THE SITE

EXHIBIT B SITE MAP

EXHIBIT C MINIMUM COMMUNICATION SITE STANDARDS

EXHIBIT D BALDY MOUNTAIN COMMUNICATION SITE TRANSMISSION FACILITIES INFORMATION SHEET

EXHIBIT E LESSEE-OWNED IMPROVEMENTS - No improvements have been made as of initial effective date of this Agreement. Any future improvements will be authorized through an Amendment to this Lease Agreement.

7. The following are attached and made a part hereof:

The General Provisions and Instructions

8. The following changes were made in this lease prior to its execution:

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR

SIGNATURE

SIGNATURE

Mayor Shelby Rognstad

15B8DFE89CFB492
NAME OF SIGNER

NAME OF SIGNER

Shelby Rognstad

IN PRESENCE OF

SIGNATURE

SIGNATURE

NAME OF SIGNER

NAME OF SIGNER

UNITED STATES OF AMERICA

SIGNATURE

NAME OF SIGNER

James W Thompson

OFFICIAL TITLE OF SIGNER

Real Property Leasing Officer

U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE

LEASE NO

12034321L0410

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The City of Sandpoint Idaho

whose address is

1123 Lake Street, Sandpoint, Idaho 83864

and whose interest in the property hereinafter described is that of

Baldy Mountain Communication Site

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IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR	
SIGNATURE <i>Mayor Shelby Rognstad</i>	SIGNATURE
NAME OF SIGNER <i>Shelby Rognstad</i>	NAME OF SIGNER
IN PRESENCE OF	
SIGNATURE	SIGNATURE
NAME OF SIGNER	NAME OF SIGNER
UNITED STATES OF AMERICA	
SIGNATURE	NAME OF SIGNER <i>James W Thompson</i>
	OFFICIAL TITLE OF SIGNER Real Property Leasing Officer