

LEASE

THIS DEED OF LEASE ("**Lease**") is made and effective as of the date the last Party executes this Lease (the "**Effective Date**"), by and between THE TOWN OF WARRENTON, VIRGINIA, a municipal corporation, PO Drawer 341, 21 Main Street, Warrenton, VA 20188-0341 ("**Lessor**" or "**Town**") and DISH WIRELESS L.L.C., a Colorado limited liability company, with a principal office at 5701 South Santa Fe Dr., Littleton, CO 80120 ("**Lessee**") and together with Town, the "**Parties**," each a Party).

WITNESSETH:

WHEREAS, town is the owner of the property located at North Fourth Street, Town of Warrenton, Virginia, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "Property").

WHEREAS, the Property is improved by, among other things, that certain water tower (the "Water Tower") depicted on Exhibit A-1 to this Lease.

WHEREAS, Town desires to lease to Lessee, and Lessee desires to lease from Town that certain space within the Property and upon the Water Tower, said space being more particularly described and shown on Exhibit "B" attached hereto and made a part hereof (hereinafter "Premises").

NOW, THEREFORE, for the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Commencement Term.

- a. Town hereby leases to Lessee, and Lessee leases and takes from Lessor, the Premises for a term of five (5) years commencing on the Commencement Date (defined below) and expiring on the last day of the calendar month in which the fifth (5th) anniversary of the

Commencement Date occurs (the “**Expiration Date**”). The “**Commencement Date**” shall be the earlier to occur of (a) the first day of the calendar month in which the six (6) month anniversary of the Effective Date occurs; or (b) the first day of the calendar month following Lessee’s commencement of construction pursuant to this Lease, whichever first occurs. As used in this paragraph “commencement of construction” shall mean the date on which all permits and approvals to install the Equipment are obtained by Lessee.

- b. Upon the Expiration Date, this Lease shall automatically renew for three (3) successive five (5) year periods each on the same terms and conditions as set forth herein, unless earlier terminated in accordance with the terms and conditions of this Lease.
- c. Lessee Right to Terminate. Lessee shall have the right to terminate this Lease on the fifth anniversary of the Commencement Date and on each five year anniversary thereafter by providing the Town written notice, delivered at least ninety (90) days prior to such anniversary date of its intention to terminate. Lessee’s termination under this Section 1(b) shall not relieve Lessee of the obligation to remove its equipment and to restore the Premises to their original condition, except reasonable wear and tear and loss due to casualty.
- d. Town’s Right to Terminate. Commencing on the first (1st) day of the month following the month in which the twentieth (20th) anniversary of the Commencement Date occurs, the Town, upon not less than twelve (12) months prior written notice, shall have the right to terminate this Lease for any reason.

2. **Rent.**

- a. Lessee covenants to pay to the Town without prior notice or demand thereof, and without any deductions or set-offs whatsoever, rent for the Premises (the “Rent”) in the initial annual sum of THIRTY FOUR THOUSAND SEVEN HUNDRED FORTY AND 00/100 DOLLARS

(\$34,740.00) per year, which shall be payable in equal monthly installment of TWO THOUSAND EIGHT HUNDRED NINETY-FIVE AND 00/100 DOLLARS (\$2,895.00) . The first Rent payment shall be made within sixty (60) days of the Commencement Date and shall include all Rent due through the date of payment. On each anniversary of the Commencement Date, the Rent shall be automatically increased by three percent (3%) of the then current Rent. In addition to all other remedies provided in this Lease, if Lessee fails to pay within twenty (20) days of the due date, to Lessor any Rent, additional fees or other payments as hereinafter provided, Lessee shall pay to Lessor, as an additional fee, a late payment fee equal to five percent (5%) of such delinquent payment for each and every month or part thereof that such payment remains unpaid or not paid in full.

- b. Town and Lessee agree that the first monthly installment of Rent shall be paid upon the execution of this Lease by Lessee. Subsequent payments of monthly installments of Rent shall be paid to the Town at Town's address established in Section 17 hereof or to such other person, firm or place as the Town may from time to time designate in writing on or before the fifth (5th) day of each month. Lessee shall require receipt of a validly completed IRS approved W-9 form (or its equivalent) prior to paying any Rent or any other amount(s) due under this Lease.
- c. Lessee, in participation with other lessees of space on the Water Tower, agrees to pay a portion of the costs of structural upgrades to the Water Tower as outlined in the proposal from Tower Engineering Professionals, attached hereto as Exhibit C. It is anticipated that the portion payable by Lessee shall total] which shall be due no later than sixty (60) days after receipt by Lessee of Town's invoice for the same.

3. **Use of and Access to the Premises.**

- a. Lessee agrees to use the Premises for the purposes of installing, operating, maintaining, and removing, communications equipment, described in Exhibit B and listed in Section 5 and made a part hereof (hereinafter referred to as "Equipment"), which will form a part of a communications system licensed by the Federal Communications Commission ("FCC"), and for no other purpose ("**Lessee's Permitted Use**"). In furtherance of the foregoing, Lessee shall have the right, subject to Section 3c and Section 5 below, to access the Premises to replace, repair, add, or otherwise modify Equipment, or any portion thereof and the frequencies over which Equipment operates. Lessee shall operate and maintain the Premises during the Term in compliance with all present and future applicable laws, statutes and regulations imposed by any local, state, or Federal authority having jurisdiction with respect thereto. Town reserves the right to utilize the remaining area of the Property as it so desires unless such use materially interferes with Lessee's Equipment or Lessee's Permitted Use.
- b. Town agrees to cooperate with Lessee, at Lessee's expense, in making, application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.
- c. Lessee shall have the right to access the Premises as is reasonably necessary as determined by the Town, for the installation and maintenance of requisite wires, cables, conduits and pipes for the installation, operation, and maintenance of the Equipment. The installation shall be performed in a workmanlike manner with minimal disruption to Town and its tenants. Lessor shall furnish Lessee with necessary means of access to the Property for the purposes of ingress and egress to the site and the Water Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Lessee or persons under their direct supervision will be permitted to enter

said Premises. Access shall be conditioned in accordance with any Town policies requiring proper identification of any person gaining access to the Property. No prior notice shall be required for access sought as provided in a maintenance schedule approved in writing and in advance by Lessor, if any; otherwise, access shall be granted only after 24 hours' notice for non-emergency and as much notice as is reasonably practicable in light of the circumstances for emergency maintenance or repair purposes and only under the supervision by Lessor's employee or agent.

4. **Interference.** In the event the Premises need repainting or other maintenance which requires the temporary removal (not to exceed 60 days) of Lessee's antennas, then Lessee agrees to relocate its antennas at its expense upon one hundred twenty (120) days' notice from Town; provided, however, that during such temporary relocation of Lessee's antennas, Town shall provide other ground space on the Premises for Lessee to place a Cell on Wheels (COW) or other support structure for the installation of Lessee's antennas during such temporary relocation. Lessee's obligations to pay rent hereunder shall abate during such temporary relocation and until Lessee's antennas are reinstalled on the original Premises.

- a. Lessee shall comply with all federal, state, and local regulations governing the installation and operation of its Equipment and shall install and operate its Equipment in a manner which does not cause material interference to pre-existing equipment of Town or other pre-existing tenants of the Property. Lessee shall perform, at Lessee's sole cost and expense, an intermodulation study of Lessee's transmission of signals at the Premises, the results of which shall be given to Town (i) prior to the installation of Lessee's Equipment and (ii) subsequent to said installation, in the event that Lessee changes the frequency at which it operates its Equipment or adds equipment on the Water Tower. Lessee and Town will consult on the location of any future additions to Lessee's Equipment. In the event

that Lessee causes material interference to any pre-existing equipment or Lessee's changes in frequency or additional equipment cause material interference to then existing equipment of Town or other tenants of the Property, Lessee agrees to take all action necessary to eliminate such interference (including, without limitation, reducing the power sufficiently to cease the interference , except for intermittent testing, which testing, shall be coordinated with Town) within seventy two (72) hours of written notice of the same. Should the interference described in this Section 4(a) continue for more than seventy-two (72) hours after notice thereof, Town shall have the right to demand that Lessee turn off power to the interfering equipment until such time as the interference is eliminated.

- b. As of the date of execution of the Lease, Town will use best efforts (which duty shall be met by providing Lessee with details pertaining to installation of equipment by any Future Tenants and affording Lessee reasonable time to respond to same and taking any actions necessary to ensure that any issues raised in Lessee's response are addressed/resolved prior to Future Tenant's installation) to see that the Town, existing tenants and/or other tenants of the Property who in the future take possession of the Town's Property and/or add new equipment thereto (collectively, "Future Tenants") will be permitted to install only such equipment on the Property that is of the type and frequency which will not cause material interference to Lessee's pre-existing Equipment and Town agrees to include and enforce a provision substantially similar to Section 4(a) (including expressly and without limitation Town's right to turn off power to interfering equipment if interference is not eliminated within seventy two (72) hour cure period) in all future agreements for use of the Property. Town shall require Future Tenant(s) to (i) perform an intermodulation study and (ii) provide the results of such study to Lessee for Lessee's

review no less than thirty (30) days prior to the projected installation date of any equipment by Future Tenant. Lessee shall have thirty (30) days from its receipt of such study to review the same and notify Town of any likely interference, Town shall immediately notify the Future Tenant of the same, and Lessee, the Town and the Future Tenant shall thereafter consult on the location and operation of any such Future Tenant's equipment. Town shall not permit any Future Tenant to install equipment, unless Future Tenant has performed an intermodulation study, provided Lessee with the results and Lessee has either confirmed that the proposed installation will not cause interference to Lessee's pre-existing Equipment or has failed to respond to Town within thirty (30) days after Lessee's receipt of the results of the intermodulation study. Should the interference described in this Section 4(b) occur, the Town agrees to use best efforts to cause the interfering party to cease operation of the interfering equipment, except for intermittent testing coordinated with Lessee) within seventy two (72) hours after written notice from Lessee. Should such interference continue for more than seventy two (72) hours despite Town's attempts to eliminate the interference, the Town agrees to turn off power to the interfering equipment (except for intermittent testing coordinated with Lessee) until such time as the interference is cured.

- c. In the event that, despite Town's compliance with the provisions of Section 4(b), there is continuing interference to Lessee by Future Tenant(s) on the Property, the parties agree that, Lessee may terminate this Lease immediately upon notice to Town without further liability to Town and without further liability of Town to Lessee.

5. **Construction by Lessee.**

After obtaining the necessary Government Approvals, as defined hereafter, therefor, Lessee at its sole cost and expense, shall construct and install the following improvements upon the Premises:

- a. An equipment building or pad, to house Lessee's communications equipment.
- b. Up to twelve (12) antennas and related equipment (including but not limited to remote radio reads, overvoltage protectors, etc.), transmission lines, which shall be connected to the equipment building as provided herein. The exact mounting elevations on the Water Tower for Lessee's antennas shall be determined by the parties in conjunction with their respective engineers.
- c. A conduit attached to the Water Tower and one of its legs for enclosure of all cables necessary to connect the antenna with the equipment building. The size, location, color and method of attachment of such conduit shall be reasonably acceptable to the Town and be determined by the parties in conjunction with their respective engineers.
- d. All appurtenant improvements to the foregoing necessary to the operation of the Equipment as shown in Exhibit "B".
- e. The Parties shall work together to ensure that no materials are used in the installation of Lessee's equipment or transmission lines that will cause corrosion or rust or deterioration of the Water Tower structure or its appurtenances. All antennas on the Water Tower must be identified by a marking fastened securely to the bracket(s) therefore on the Water Tower and all transmission lines are to be tagged.

6. **Permits and Approvals.**

- a. The Parties acknowledge and agree that Lessee's ability to lawfully use the Premises is contingent upon Lessee obtaining each of the following: (a) a satisfactory structural analysis showing that the Water Tower is suitable for Lessee's Permitted Use ("Structural Analysis"); and (b) all certificates, permits, approvals and other authorizations that may be required by any Governmental Authority in accordance with Applicable Law, as defined below (collectively, the "Governmental Approvals"). Lessee will endeavor to obtain all

Governmental Approvals promptly following the Effective Date. Town hereby authorizes Lessee to file and submit for Governmental Approvals, at Lessee's sole cost and expense. Town shall: (x) reasonably cooperate with Lessee in Lessee's efforts to obtain such Governmental Approvals; and (y) promptly execute and deliver any and all documents reasonably necessary to obtain and maintain Government Approvals. Prior to the Commencement Date, if: (i) a structural analysis shows that the Water Tower is not suitable for Lessee's Permitted Use; (ii) any application for Governmental Approvals is rejected, conditioned, materially delayed or otherwise not approved for any or no reason; or (iii) Lessee determines, in Lessee's sole and absolute discretion, that such Governmental Approvals cannot be obtained in a timely and commercially reasonable manner, then, following the occurrence of any of the events set forth in clauses (i) through (iii) (collectively, the "Contingencies"), Lessee shall have the right to terminate this Lease immediately upon Notice to Town and without penalty or further obligation to Town, its employees, officers, agents or lenders. If this Lease is terminated in accordance with this Section 6a, this Lease shall be of no further force or effect (except as set forth to the contrary herein). If, following the Commencement Date, and through no fault of Lessee, any Governmental Approval issued to Lessee is canceled, expires, lapses or is otherwise withdrawn or terminated by the applicable Governmental Authority, then Lessee shall have the right to terminate this Lease upon ninety (90) days' written Notice to Town without penalty or further obligation to Town, its employees, officers, agents, or lenders. "Applicable Law" means any applicable federal, state, or local act, law, statute, ordinance, building code, rule, regulation or permit, or any order, judgment, consent or approval of any Governmental Authority having jurisdiction over the Parties or this Lease.

7. **Survey Period.**

After the execution date of this Lease and prior to the Commencement Date, Lessee shall have access to the Premises during, business hours (and at other times, if prearranged with Town) for the purpose of making, necessary engineering surveys, inspections and other reasonably necessary tests relating to Lessee's Permitted Use of the Premises. Lessee shall fully restore to its prior condition any portion of the Premises disturbed by Lessee, reasonable wear and tear and loss due to casualty excepted.

8. Facilities, Utilities, Access.

- a. At Lessee's cost and expense and with minimal disruption to Town and its tenants, Lessee has the right to install, erect, maintain and operate the Equipment and supporting structures thereto on the Premises. In connection therewith, Lessee has the right to complete all work necessary to prepare, maintain and alter the Premises for operation of the Equipment; including, but not limited to, installation of transmission lines. Upon ten (10) days' notice, Lessee agrees to reasonably cooperate with Town and other tenants to facilitate routine maintenance and repair. Title to the Equipment and all associated structures, transmission lines, cables, wires, and conduits shall remain with Lessee. All of Lessee's Equipment shall remain Lessee's personal property and are not fixtures.
- b. Lessee shall remove all of the Equipment at its expense within ninety (90) days after the expiration or earlier termination of the Lease and shall make any and all necessary repairs to the Premises and Property, and shall return the Premises to their original condition, reasonable wear and tear and loss due to casualty expected.
- c. At Lessee's expense, Lessee may upgrade the present fiber and electrical service or install new fiber and electrical service on the Premises, including, but not limited to, a portable standby power generator or battery unit, reasonably acceptable to the Town, for Lessee's

exclusive use during times of public emergency when normal electrical service is not available. Lessee may also bring underground fiber and underground electrical lines across the Property in order to service the Premises at locations shown on Exhibit "B". Any enhancements, upgrades, underground lines and alterations are subject to reasonable review and approval by the Town.

- d. Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to extract electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use).
- e. Subject to the terms and conditions of Section 3 and Section 5, Town shall provide to Lessee, Lessee's employees, agents, independent contractors, and subcontractors access over the Property to the Premises 24 hours a day, 7 days a week, at no charge to Lessee.
- f. Lessee shall be subject to operating restrictions and limitations as set forth in the Town of Warrenton Town Code and Zoning Ordinance and any additional rules and regulations pertaining to access and use of the Water Tower which the Town may promulgate on the basis of health, safety, security and/or welfare, and other state and Federal laws where applicable.

9. **Loss and Damage.**

Town shall not be liable for any damage to property of Lessee located on the Premises or Property, nor for the loss of or damage to any property of Lessee or of others by theft or otherwise unless caused by the negligence or willful misconduct of the Town or its employees, agents, contractors, subcontractors and/or tenants. Town shall not be liable for any injury, death or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow

or leaks from any part of the Premises or Property, or from the pipes, appliances or plumbing works, or from the roof, street or subsurface, or from any other place, or by dampness, or by any other cause unless caused by the negligence of willful misconduct of the Town or its employees, agents, contractors, subcontractors and/or tenants. Town shall not be liable for any such damage, injury or death caused by persons in public, or caused by operations in construction of any private, public or quasi-public work. Town shall not be liable for any patent defect in the Premises or Property or in the building of which they form a part. All property of Lessee kept or stored on the Premises or Property shall be so kept or stored at the risk of Lessee and Lessee shall hold Town, its officers or employees, harmless from any claims arising out of damage to the same, including subrogation claims by Lessee's insurance carrier, unless such damage shall be caused by the negligent act or omission of Town, its officers or employees.

10. Waiver of Town's Lien.

- a. Town waives any lien rights it may have concerning Lessee's Equipment which is deemed Lessee's personal property. Lessee reserves the right to remove it at any time without Town's consent.
- b. The Town acknowledges that Lessee may have entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee's facilities ("the Collateral") with a third party financing entity. In connection therewith, Town (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, and (ii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment or distress for any rent due or to become due, and that such Collateral may be removed at any time without recourse to legal proceeding.

11. Notification of Hazard.

Lessee and Town shall give immediate notice to the other in case of fire, accident or defect in the Premises or in any property comprising the Premises.

12. Termination.

This Lease may be terminated as follows:

- a. by either party, providing thirty (30) days' prior written notice upon default of any covenant or term of this Lease by the other party, which default is not cured within sixty (60) days of receipt of written notice, provided that the grace period for any monetary default is twenty (20) days from receipt of written notice. Upon default, the nondefaulting party may terminate this Lease and exercise any other remedies it may have under this Lease or at law or equity;
- b. by Lessee, upon providing sixty (60) days prior notice to Town, as follows:
 - i. if after the commencement of the Lease an application by Lessee for a permit, license or approval is rejected or upon cancellation, expiration or lapse of a permit, license or approval necessary for use of the Premises and operation of the Equipment, or
 - ii. if Lessee, in its sole discretion determines, determines that Lessee's Permitted Use of the Premises is obsolete or unnecessary; or
 - iii. by Lessee, if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies.
 - iv. By Lessee, upon providing thirty (30) days' prior notice if the Premises or Equipment are destroyed or damaged. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction.

- v. By Lessee if Town or a third party installs any structure, equipment, or other item on the Water Tower, Property or an adjacent property, which blocks, hinders, limits, or prevents Lessee from being able to use the Equipment for Lessee's Permitted Use.
- c. by Town, upon providing sixty (60) days prior notice to Lessee, as follows:
 - i. By Town upon Lessee's failure to perform any terms of this Lease for more than sixty (60) days after written notice of such failure, shall have been given to Lessee. Upon Lessee's default and after notice and opportunity to cure as provided in the prior sentence, Town shall have the following rights which shall be cumulative, in addition to any rights allowed by general law:
 - 1. Town may with or without entry or other action, terminate this Lease, and recover possession of the Premises and such damages as Town may then have as a result of the default and termination, and
 - 2. Lessee shall pay all of the Town's costs, charges and expenses, including reasonable attorneys' fees and the fees of other agents retained by Town, incurred in enforcing Lessee's obligations under this Lease, and
 - 3. Town shall have all of the rights and remedies accorded by law and equity, including specifically the right to injunctive relief for the enforcement of all of the terms of this Lease.
 - ii. By Town if regulatory requirements for structural integrity of Water Tower no longer supports additional weight of Lessee's equipment and (i) reasonable remedy is not available to bring Water Tower into compliance or (ii) other reasons interfering with the Town's ability to maintain Water Tower for the provision of water to its Citizens.

13. Insurance.

- a. Lessee shall procure, maintain and pay for a public liability policy, with limits of \$1,000,000.00 for bodily injury, \$1,000,000.00 for property damage, \$2,000,000.00 aggregate, with certificate of insurance to be furnished to the Town prior to the Commencement Date and at any other time (but no more frequently than annually) within thirty (30) days of written request therefore. The policy shall provide that termination or cancellation will not occur without at least thirty (30) days prior written notice to the Town and shall name the Town as additional insured. The insurance required to be maintained by Lessee or any agent, contractor, agent or designee of Lessee, shall be primary to any insurance or self-insurance maintained by the Town which policy or policies shall be excess only, and not be required to contribute with it. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for Lessee, or failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Lease or relieve Lessee from any obligations under this Lease.
- b. Throughout the Term, Town shall maintain, at Town's sole cost and expense, the following insurance coverage: (i) Commercial General Liability of not less than \$1,000,000 per occurrence; All such policies shall be endorsed to include Lessee as an additional insured. Subject to the policy minimums set forth above in this Section 13(a), the insurance required of Town hereunder may be maintained by a blanket or master policy that includes properties other than the Property.

14. Condemnation/Casualty.

- (a) In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Lessee's right of access to the Premises is damaged by fire or other casualty so that such damage may reasonably

be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may at any time following such fire or other casualty, provided Lessor has not completed the restoration or alternative means of access required to permit Lessee to resume its operation at the Premises, terminate this Lease upon fifteen (15) days written notice to Lessor. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease. Notwithstanding the foregoing, provided that the casualty was not caused by the acts or omissions of Lessee, all Rent shall abate during the period following such fire or other casualty in proportion to the degree to which Lessee's use of the Premises is impaired, until the time repairs are complete and Lessee is able to use the Premises in accordance with its intended purposes.

(b) If any governmental, public body or other condemning authority takes, or if Lessor transfers in lieu of such taking, all or part of the Premises, then Lessee may elect to (i) terminate this Lease, effective on the date that title vests in the condemning authority, or (ii) relocate the Equipment to an alternative location on the Property, reasonably acceptable to Lessor. Lessee shall provide written notice of its election within thirty (30) days after receiving actual notice of a taking.

15. Title and Quiet Enjoyment.

Town warrants that (i) the Town owns the Property and (ii) it holds good and marketable title to the Property and that, provided Lessee has made rental payments as required hereunder, Lessee shall have quiet enjoyment of the Premises.

16. Marking and Lighting Requirements.

Town accepts sole responsibility for the Property's compliance with all tower or building marking and lighting regulations promulgated by the Federal Aviation Administration ("FAA") or the FCC, as applicable. Lessee shall be responsible for compliance with such regulations if marking and lighting is required solely due to the addition of Lessee's Equipment. Each party shall hold the other harmless if in the event that the responsible party's failure to comply with applicable regulations results in legal action or administrative proceedings against the other party by the government agency responsible for enforcement of the applicable regulations. Town shall notify Lessee of (i) the location of any new items on the Water Tower, (ii) any change in the location of any items on the Water Tower, and (iii) any changes to the overall height of the Water Tower (including any attachments thereto).

17. Notices.

All notices under this Lease shall be in writing and shall be deemed validly given if personally delivered, sent via overnight courier providing proof of service, or sent by certified or registered mail, return receipt requested, as follows (or any other address that the part to be notified may designate by like notice to the sender):

If to Town:

Town Manager
Town of Warrenton
P.O Drawer 341
21 Main Street
Warrenton, VA 20188

If to Lessee:

DISH Wireless L.L.C.
Attn: Lease Administration
5701 South Santa Fe Dr.
Littleton, CO 80120

Copy To:

Town Attorney
Town of Warrenton
P.O Drawer 341
Warrenton, VA 20188

17.1 DEFAULT

(a) An event of default by Lessee ("Lessee Default") shall be defined as (i) the failure to pay Rent, additional fees or other payments set forth herein for a period of more than twenty (20) calendar days immediately succeeding written notice from Lessor.; (ii) failure to perform any material term, condition or covenant contained herein for a period of more than thirty (30) days immediately succeeding written notice thereof from Lessor; provided, however, it shall be a Lessee Default under this Lease if Lessee fails, within five (5) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessee if the failure to perform such obligation interferes with Lessor's ability to conduct its business at the Property, but provided further that if the nature of Lessee's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Lease if performance is commenced within such five (5) day period and thereafter diligently pursued to completion. Lessee shall be afforded such additional time to cure any non-monetary Lessee default that cannot reasonably be cured within such five (5) day period or such thirty (30) day period provided, however, that Lessee commences to cure such default within the applicable notice period and diligently pursues such cure.

(b) In the event of a Lessee Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessor shall be entitled to terminate this Lease upon thirty (30) days written notice to Lessee.

(c) An event of default by Lessor ("Lessor Default") shall be defined as the failure by Lessor to perform any material term, condition or covenant contained herein for a period of more than thirty (30) days immediately succeeding written notice thereof from Lessee; provided, however, it shall be a Lessor Default under this Lease if Lessor fails, within seven (7) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessor if the failure to perform such obligation interferes with Lessee's ability to conduct its business at the Property, but provided further that if the nature of Lessor's obligation is such that more than seven (7) days after such notice is reasonably required

for its performance, then it shall not be a default under this Lease if performance is commenced within such seven (7) day period and thereafter diligently pursued to completion. In the event of a Lessor Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessee shall be entitled to terminate this Lease upon thirty (30) days written notice thereof to Lessor.

(d) Other Remedies. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due immediately and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Lease, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Lease and/or pursue any remedy now or hereafter available to the non-defaulting Party under the laws or judicial decisions of the state in which the Premises are located; provided, however, each party shall use reasonable efforts to mitigate its damages in connection with a default by the other party. If either Party so performs any of the defaulting Party's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by the non-defaulting Party shall immediately be owing by the defaulting Party, and the defaulting Party shall pay to the non-defaulting Party upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if Lessor is the defaulting Party and does not pay Lessee the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from Lessor, Lessee may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to Lessor until the full undisputed amount, including all accrued interest, is fully reimbursed to Lessee.

18. Assignment and Subletting.

- a. **Rights of Lessee.** Lessee may not sell, assign or transfer this Lease or any interest herein or sublet the premises or any part thereof without the prior written consent of Town, which consent shall not be unreasonably withheld but may be conditioned or delayed based upon the Town's determination that any proposed assignee is capable of meeting Lessee's obligations under the Lease in accordance with the terms and conditions of Section 18(c) below.
- b. **Intercompany Transfer.** Notwithstanding the foregoing paragraph, Lessee upon prior written notice to Town, but without any approval or consent by Town, may assign its rights under this Lease to its parent company or any subsidiary or Affiliate of Lessee or its parent company, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets. Affiliate(s) shall mean, with respect to a Party, any person or entity, directly or indirectly, controlling, controlled by, or under common control with such Party, in each case for so long as such control continues. For purposes of this definition, "control" shall mean (i) the ownership, directly or indirectly, or at least fifty percent (50%) of either: (a) the voting rights attached to issued voting shares; or (b) the power to elect fifty percent (50%) of the directors of such entity, or (ii) the ability to direct the actions of the entity.
- c. **Financing.** Notwithstanding anything to the contrary contained in this Lease, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without the Town's consent, its interest in this Lease to any financing entity or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities in respect of guarantees thereof.

- d. **Sublet.** Except for assignments contemplated pursuant to Section 18(a) above., if Lessee should desire to assign this Lease or sublet the Premises, or any part thereof, and provided that Lessee is not then in default hereunder, Lessee shall give Town written notice at least forty-five (45) days in advance of the date on which Lessee desires to make such assignment or sublease. Town shall then have a period of thirty (30) days following receipt of such notice within which to notify Lessee in writing that Town elects:
- i. to permit Lessee to assign or sublet such space, subject, however, to the subsequent written approval by Town of the instrument of assignment or sublease as to form and substance and of the proposed assignee or subtenant; or
 - ii. to refuse, in Town's reasonable discretion, to consent to Lessee's assignment or subleasing of such space and to continue this Lease in full force and effect as to the entire Premises. If Town should fail to notify Lessee in writing of such election within such thirty (30) day period, Town shall be deemed to have elected option (1) above.
 - iii. **Effect.** Except as may be otherwise expressly set forth to the contrary, no assignment or subletting by Lessee shall relieve Lessee of Lessee's obligations under this Lease. Any attempted assignment or sublease by Lessee in violation of the terms and provisions of this Section 18 shall be void.

Lessor reserves the right to assign, transfer, mortgage or otherwise encumber the Property and its interest in this Lease (collectively, "Lessor Transfer"). In the event of any such Lessor Transfer, Lessor agrees to cause the transferee to accept an assignment and assumption of this Lease and to recognize Lessee and Lessee's rights hereunder, and Lessee shall recognize such transferee provided that the prospective transferee executes and delivers to Lessee a Subordination and Non-Disturbance and Attornment instrument ("SNDA") agreeing to recognize Lessee and to not disturb Lessee's tenancy. If the Lessor Transfer is to a lender to Lessor, Lessee agrees to execute and deliver to such lender an SNDA subordinating this Lease and Lessee's rights hereunder, as may be required by Lessor and such Lender provided the same is reasonably acceptable to Lessee and such lender agrees to recognize Lessee's rights under this Lease so long as there is no default by Lessee, in connection with Lessor's

contemplated transaction. If Lessor, at any time during the Term, decides (i) to sell or transfer all or any part of the Property or the Water Tower or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Lease and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Lease. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith assigns this Lease to said third party, Lessor shall not be released from its obligations to Lessee under this Lease, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Lease.

19. Liability and Indemnity.

Lessee shall indemnify and hold harmless the Town from any and all claims, suits and/or causes of action, judgment or awards, damages, injuries or loss sustained by any party, person or their property, including any and all claims, demands, suits, and/or causes of action, judgments or awards as a result of the negligence, misfeasance, malfeasance, misconduct of Lessee, its agents, servants or employees occurring at any time after execution of this Lease. This indemnity shall include and not be limited to the acts, commissions and omissions of Lessee, its agents, servants or employees within the demised premises, or the environs surrounding same, incidental to or arising from Lessee's occupancy. Furthermore, Lessee shall defend the Town, at its own expense, and/or be obligated to pay the costs of the defense of the Town, all of which costs, judgements, claims and demands shall be due and payable to Town upon written demand. It is understood and agreed that all property kept and stored or maintained in the demised premises shall be so kept and stored or maintained at the sole risk of Lessee no matter what the cause of the loss, damage or destruction of the Property with the exception of any negligence by Town. The duties described in this Section 19 shall survive any termination of this Lease.

Each party shall be entitled to recover from the other party its actual, direct damages for any breach of this Lease or other act or omission of such party (subject to any applicable sovereign

immunity), but neither party shall be entitled to recover from the other party any special, incidental, indirect or consequential or punitive damages, or to recover for any lost revenue, lost profits, loss of technology, rights or services, loss of data or interruption or loss of use of service, in any case or controversy however arising, even if such party has been advised of the possibility of such damages, and whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

20. Hazardous Substances.

Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under about or within the Property in violation of any law or regulation. Town represents, warrants and agrees (1) that neither Town nor, to Town's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Property in violation of any law or regulation, and (2) that Town will not, and will not knowingly permit, any third party to use, generate, store, or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation Lessee agrees to defend, indemnify and hold harmless the Town and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Lease.

21. Severability.

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Lease or

the application of such term, covenant and condition of this Lease shall be valid and enforced to the fullest extent permitted by law

22. Entire Agreement.

This instrument embodies the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no agreements, warranties or representations between the parties other than those set forth on provided for herein. No amendment or modification of this Lease shall be valid unless made in writing and signed by the parties hereto.

23. Successor or Assigns.

This Lease and each provision hereof (whether so expressed or not) shall be binding upon and inure to the benefit of the Lessee and Town, and their respective successors, heirs, legatees, executors, personal representatives and assigns.

24. Waiver of Subrogation.

To the fullest extent permitted by law, Town and Lessee for themselves and any and all parties claiming under or through them, including, without limitation, their respective insurers, hereby mutually release and discharge each other and the other's Affiliates, and their respective officers, directors, shareholders, agents, employees, contractors, and/or any other person or entity for whom a Party is legally responsible from any claims for damage to any person or to the Premises or any other real or personal property that are or are claimed to have been caused by or result from risks insured against under any insurance policies carried by the waiving party and in force at the time of such damage and hereby waive any right of subrogation that might otherwise exist in or accrue to any person on account thereof. All policies required to be carried by either Party herein shall contain an endorsement in favor of the other Party waiving the insurance company's right of subrogation against such other Party. THIS RELEASE SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF A PARTY HERETO OR BY

ANY PERSON FOR WHICH SUCH PARTY IS RESPONSIBLE. EACH PARTY AGREES TO NOTIFY ITS INSURANCE CARRIER(S) OF THIS PROVISION.

25. Effect of Waiver.

No waiver of any breach of any term contained in this Lease shall waive any succeeding breach of such term.

26. Choice of Law & Forum.

- a. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, and any case or controversy related thereto shall be adjudicated in the state courts of Fauquier County, and shall not be removed to federal court.
- b. Any dispute or controversy arising out of or relating to this Lease, its construction or its actual or alleged breach shall be governed by the Commonwealth of Virginia.

27. Memorandum of Lease.

Town acknowledges that a Memorandum of Lease in the form annexed hereto as Exhibit D will be recorded by Lessee in the official records of the county where the Property is located.

28. Estoppel Letter. Either Lessor or Lessee shall, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges, if any, are paid in advance, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party, or specifying such defaults if any are claimed. Any such statement may be

conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or the Equipment.

28. Sovereign Immunity/Dillon's Rule

Virginia is a Dillon Rule state, and any attempt to require the Town to indemnify as set forth in the terms and conditions of this Lease is invalid unless authorized by state statute.

[Remainder of the page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute
this Lease as of the Effective Date.

[Insert Signature Block]

Exhibit A

Legal Description of Property

Exhibit B
Premises

[Attached]

Exhibit C

Date: **February 21, 2022**

W. Marshall Knight, II
Kimley-Horn
Marshall.Knight@kimley-horn.com
(443) 938-9930



Tower Engineering Professionals
326 Tryon Road
Raleigh, NC 27603
(919) 661-6351
www.tepgroup.net

Subject: Proposal – Water Tank Modification Construction Proposal - Dish

Site Data: Warrenton, VA 4th Tank Water Tank
34 North 4th Street
Warrenton, VA 20186
139 Foot –8 Column Elevated Water Tank

Mr. Knight,

TEP can perform the below tasks for the following fee: (Proposals are valid for 30 days from the date issued)

Item of Work	Fee (\$)	Notes
New Corral	\$36,680.00	Materials and Labor for new corral
Existing Corral Extension/Modification	\$16,650	Materials and Labor for existing corral modification
New Cable Trays + Catwalk Penetration	\$8,470.00	
Demo Mounts on Tank Bowl	\$9,000.00	Dish (Sprint takeover)
Tank Mods (Materials and Labor)	\$77,443.30	
Interior Paint Touchups	\$5,000.00	Interior Paint Touchups per SSPC
PMI,CWI,PM, PCI	\$5,000	
Total Fee	\$158,243.30	

Notes:

- All material will be shop blasted and coated with a 3 coat system to match tank and meet SSPC Standards. All exterior surfaces that are compromised from the welding will be touched up per SSPC Standards
- Includes tank bowl interior paint touchups per SSPC Specification as well as disinfection.

35% of payment due upon commencement of contract for materials
35% of payment due upon tank modification construction completion
Balance due upon completion of Post-Modification Inspection
Payment terms – Net 30 days upon receipt of invoice

Please feel free to call with any questions or concerns and thank you for the opportunity.

Respectfully Submitted,

Bradley K. Little, P.E., G.C., C.W.I.
Vice President - Construction

Exhibit D

Form of Memorandum of Lease

This Memorandum made this _____ day of _____, 2022 , between the TOWN OF WARRENTON, a municipal corporation with its principal mailing address of _____, hereinafter designated "Lessor" and _____, a _____ with its principal offices at _____, hereinafter designated "Lessee".

1. Lessor and Lessee entered into that certain lease (the "Lease") dated as of the _____ day of _____ 2022 leasing the Premises (as hereinafter defined) to Lessee for a term often (10) years with the right to renew for four (4) additional five (5) year terms.
2. The Lease concerns space on Lessor's certain water tower and that certain parcel of land containing _____ square feet (together with the rights-of way described in the Lease, the "Premises") located on that certain property known as [INSERT ADDRESS] (the "Property") (INSERT GPIN, TAX MAP NUMBER, OR OTHER IDENTIFIER), as more thoroughly described on Exhibit "A" attached hereto and incorporated herein by reference.
3. The term of the Lease shall commence upon full execution of the same by both parties and a copy of the Lease is on file in the offices of Lessor and Lessee. [MODIFY AS NECESSARY]
4. The terms, covenants, and provisions of the Lease of which this is a Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors, and assigns of Lessor and Lessee.

IN WITNESS WHEREOF

[INSERT SIGNATURE BLOCKS AND EXHIBIT]