

LEASE AGREEMENT
Document Title

Document Number

LEASE AGREEMENT

Recording Area

Name and Return Address

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569-8994-002

Parcel Identification Number (PIN)

Drafted By: Asst. City Attorney Gregg Hagopian, City of Milwaukee

LEASE AGREEMENT

This Lease Agreement ("Lease"), is made as of this _____ day of _____, 2005 (the "Effective Date"), and is by and between the CITY OF MILWAUKEE, a Wisconsin municipal corporation, hereinafter referred to as "City," as the LANDLORD, and MILWAUKEE COUNTY, also a Wisconsin municipal corporation, hereinafter referred to as "County," as the TENANT.

RECITALS

- A. City owns certain real estate and improvements located at 8775 W. Waterford Avenue, in Greenfield, Wisconsin (the "Property"), more particularly described in **Exhibit A** attached hereto, and the improvements at the Property include a water tank (the "Tank") that is currently fenced-in with a chain-link fence.
- B. The City (as landlord) and the County (as tenant) entered into a November 30, 1982 lease for the Property (the "1982 Lease") whereby the City allowed the County to install on the Tank a radio-communication-system antenna and transmitter. See City Common Council Resolution File No. 81-2133.
- C. The City and County, by an "Agreement for Use of Elevated Water Tower," dated January 18, 2000 (the "2000 Amendment"), amended the 1982 Lease such that (1) the County was allowed to replace its original radio-communication-system antenna and transmitter with 5 antennae mounted at the top of the Tank and supporting equipment housed in a building at the Property below the Tank (which building was also leased to the County), (2) rent was increased from \$40 per month under the 1982 Lease to \$150 per month, and (3) the County was required to install separate electric service and to pay for electrical-energy costs concerning its new antennae and supporting equipment.
- D. Sometime after the 2000 Amendment, the County added a 6th antenna at the top of the Tank.
- E. The City and County intend that the 1982 Lease, as amended by the 2000 Amendment, be (and the same hereby are) terminated. The City and County intend this Lease to instead govern and control.
- F. The City authorized City entry into this Lease by City Common Council Resolution File No. _____, passed _____, 2005.
- G. The County authorized County entry into this Lease by County Resolution File No. _____, passed _____, 2005.

AGREEMENT

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, City, as landlord, and County, as tenant, hereby agree as follows.

1. **Recitals Incorporated.** The recitals above are hereby acknowledged and agreed to.
2. **Lease of Part of the Property.** City hereby leases to County, and County leases from City: (a) so much of the top of the Tank as is currently being used for the housing and location of the County's 6 antennae (plus related wiring) for the County's radio-communication system; (b) that portion of the Property under the Tank and depicted on the map attached hereto as **Exhibit B** (the "Map") that County will use to house a new County-installed generator to serve as a back-up power source for the County's communication systems at the Property and the City's electric systems at the Property; and (c) also as shown on the Map, the existing shelter structure. The portion of the Property used for the generator and shelter is herein called the "County Ground Area."
3. **Term.** The term of the Lease (the "Term") shall be for 20 years commencing on the Effective Date hereof.
4. **Rent.** Rent hereunder shall be \$150 per year, and shall be prepaid as follows. For the first year, rent shall be paid upon execution of this Lease, at the rate of \$150 per year prorated for the number of days remaining from the Effective Date of this Lease to December 31st of that year. For each year thereafter, annual rent of \$150 per year shall be paid on or before January 31 for the particular year at issue. The foregoing monetary rent value reflects recognition of the totality of this Lease and all its terms and conditions. Rent shall be tendered to the City's Superintendent of Water Works (or to such other City office as said Superintendent shall direct) and shall be in the form of a County check made payable to the City of Milwaukee.
5. **County to Construct and Install; Compliance with All Laws.** The County shall, at its sole expense, and according to plans that have first been approved by the City by the City's Superintendent of Water Works, install - on or before September 30, 2005 - on the County Ground Area at the Property the generator and the natural gas hook-up required therefore, all in a professional, and good and workmanlike manner, and in accordance with all federal, state, and local laws. County shall be responsible for obtaining all necessary governmental licenses, permits and approvals for such. Further, County shall comply with all laws, rules and regulations, federal, state, and local regarding County's use and operation of County's equipment at the Property - including, but not limited to, any FCC or FAA regulation and any Homeland Security rule or order, regarding the operation of radio transmitting and receiving equipment, and County's other equipment at the Property. Upon

completion of the installation, County shall provide City with a copy of the as-built drawings.

6. **County-Related Fencing.** The City shall construct at the Property a separate fully-enclosed fence system with a lockable gate (the “County-Related Fencing”) that will coordinate with the City’s existing fence system, such that County personnel can access the County Ground Area (but not the Tank or other City facilities at the Property) to inspect, maintain, and/or repair the County’s generator and other equipment and utilities at or on the County Ground Area without being able to access the Tank or other portions of the Property. Upon completion of City installation of the County-Related Fencing, City shall invoice County for the time and materials of that fencing and its installation, and County shall promptly pay or reimburse City for same. County shall at all times keep the County-Related Fencing (including the gate associated therewith) in good repair and locked so as to provide security against intrusion by third-parties. City’s Superintendent of Water Works shall retain a City set of keys for the County-Related Fencing and gate, and provide a duplicate set to the County so City will be able to enter the County Ground Area in case of emergency or to inspect. (City reserves the right to inspect the County Ground Area, and equipment thereat, from time to time so long as any such entry or inspection is conducted in a manner that will not cause damage or interruption to County’s equipment). And, in case of vandalism or unauthorized entry by third-parties, City reserves the right to make reasonable other improvements or alterations so as to provide better protection for the Property and Tank.
7. **Reservation of City Rights.** City reserves for itself the following express rights:
 - A. The right to install City systems, devices, and antennae at the Property or on the Tank as City deems necessary for City communication systems (including, but not limited to, City emergency-communication systems).
 - B. The right to grant others (including other governmental bodies and private third parties) rights to install communication systems, devices, and antennae at the Property (but not in the County Ground Area) and/or the Tank so long as such use by third parties does not cause disruption of the County’s system.
 - C. The right, upon 3 months advance notice to County, to require County to remove its equipment and property from the Property and/or the Tank, at County’s expense, so as to allow City to undertake maintenance and repair work. For sake of illustration only (and not by way of limitation), if City deems it necessary to repaint the Tank, County (after getting 3-month’s advance notice from the City) shall remove County’s antennae and supporting equipment from the Tank, and, upon completion of the City

painting, County may then reinstall its antennae and equipment in accordance with and subject to this Lease.

D. The continuing right to, from time to time, promulgate reasonable rules concerning the Property, the Tank, and County's use and occupancy of the same – including, but not limited to, added security measures.

8. **County Maintenance and Utilities.** County shall, at all times during the Term, be solely responsible, at County's expense, for the maintenance and upkeep of the County's antennae and communication equipment – including the County generator and any gas or electrical lines, wires, cables, or hook-ups needed for same, and for all utility expenses (including gas and electric) associated with the County's antennae and communication equipment, including the generator. County shall also keep the County-Related Fencing (including the gate and lock associated therewith) in good maintenance and repair, and regularly mow the grass and engage in reasonably good lawn care at the County Ground Area. County shall continue to have electrical service for the County's antennae and transmitter separately metered. County shall be responsible for adequate noise-proofing of its equipment (including its generator) so as to prevent disturbance to neighboring residences.
9. **Replacements/Upgrades.** County has the right to replace and upgrade its equipment at the Property so long as physical area taken up (either on the Tank or in the County Ground Area) is approximately the same, providing, however, that such replacement and upgrade and equipment and use of the Property shall, in all aspects, be subject to the terms and conditions of this Lease, and so long as County first provides City with notice of the replacement and upgrade and the County obtains City's Superintendent of Water Work's prior approval of County's plans, specifications, and equipment (which approval shall not be unreasonably withheld), and so long as no such replacement or upgrade interferes with City's use of the Property or the use of City's other tenants at the Property.
10. **City Use of Generator.** The County generator at the Property shall serve as a back-up-power source for each of the County's communications equipment at the Property and the City's electric-powered facilities at the Property. Per the "maintenance and utilities" paragraph above, County is responsible for all maintenance and utilities for the generator even though it will back up each of the City and County systems.
11. **Restricted Access to Tank; City Chaperone; Payment for City-Representative Time.** County's access rights to the Tank and all other parts of the Property other than the County Ground Area (as used herein, the Tank and all other parts of the Property other than the County Ground Area are herein called the "Restricted Areas") are restricted in that no County access (whether for maintenance, repair,

inspection, or otherwise) may occur unless the County first discloses the need for the access, anticipated activities during access, and the County identifies the personnel (or County contractors) who seek access to the Restricted Areas. Moreover, for any County access to the Restricted Areas, the City reserves the right to require that the County personnel (or County contractors) accessing the Restricted Areas be accompanied by a City chaperone(s) or representative(s). (Said City chaperones or representatives may include, but are not limited to, a MPD communications bureau inspector). County shall contact the City Superintendent of Water Works for prior permission to access the Restricted Areas. City shall act in a reasonable manner so as not to unreasonably delay County concerning Restricted Areas access. The County shall reimburse City for City representative time incurred in accompanying the County regarding Restricted Areas access according to the following formula: (time spent traveling to and from Property and at Property to accompany County) times (the hourly rate of pay of the City representative dispatched to accompany County). The County Ground Area is not part of Restricted Areas and the County may enter the County Ground Area in accordance with this Lease at such times as County desires.

12. **Hold Harmless and Indemnification; Construction Liens.** County shall indemnify and hold City harmless from loss, cost, claim, damage, and expense associated with County's presence at the Property and with County's tenancy. For sake of illustration only, and not by way of limitation, in the event (a) County's antennae damages the Tank, County would be obligated to repair the Tank, and to indemnify City and to pay for any such direct or consequential damage, and/or (b) if a County representative were sent to maintain a County antenna, and if the County representative were injured and such person sought damages from the City, County would be responsible to indemnify City and hold it harmless, and/or (c) if County sent a contractor or subcontractor to work on, maintain, or repair any County equipment at the Property and failed to pay the contractor or subcontractor, County would indemnify and hold the City harmless against any claim asserted against the City or the Property as a result thereof (in which case County would also be required at its expense to ensure that no construction or mechanics liens would be recorded against the Property).
13. **Underground.** All wires, pipes, and other connections to County's radio transmitter and County's generator shall be located underground from the Street to the particular facility.
14. **County Installations at End of Term.** Upon the expiration of the Term, City shall have the right to require County to remove all of County's equipment (including the generator, the antennae, and the transmitter) from the Property (in which case, County shall promptly remove same and repair and restore the Property so that the

Property (and Tank) are left in a good condition unaffected by the removal). Any damage caused by County in removal shall be promptly repaired by County at its expense. Or, the City shall have the right to require County to leave in place any or all of County's equipment in which case the same shall become City's property in its then as-is condition.

15. **Interference.** County shall promptly eliminate any electromagnetic or other signal interference problems that are caused by County's use of or tenancy at the Property upon notice of same from City. If the interference cannot be eliminated by County within 30 days of City's notice, County shall, upon City's request, remove County's antennae and transmitter, and generator, and other equipment from the Property, and restore any damage to the Property caused thereby, in which case this Lease shall be deemed ended and terminated as of the date of such removal and restoration, and City shall then refund to County the prorated portion of advanced rentals paid to the City by the County so County is reimbursed for that portion of the Term that otherwise postdates County's removal and restoration duties hereunder. If any electromagnetic or other signal interference problems that are caused by County's use of or tenancy at the Property are adversely affecting any of City's critical public-service-communications system or other radio systems utilizing the Property, the City reserves the right to demand that the County temporarily cease operations until the problem is corrected, in which case, County shall comply with such demand.

16. **Certain Express Termination Rights.**

- A. County reserves the right to terminate this Lease after 90 days advance written notice: (a) if County is unable to secure, despite good faith and diligent efforts, requisite governmental licenses, permits and/or approvals to maintain and operate its equipment at the Property; (b) if the FCC or FAA or other governmental body or agency issues regulations that make County's continued operation or maintenance of its equipment at the Property imprudent and unfeasible (such as, but not limited to, a take-back of band width or channels that makes County's equipment un-useable for its intended purpose); and/or (c) if County reasonably determines that the Property is not suitable for County's operation of its communications system due to technical reasons, including, but not limited to, unreasonable signal interference or inadequate signal strength.
- B. After the fifth anniversary of the date of this Lease, and notwithstanding anything to the contrary contained in this Lease, City reserves the right to terminate this Lease upon 12-months advance written notice to the County, in which case, City shall return to County its prorated share of advance rental payments, and County shall be entitled to remove its equipment from the Property. County understands that the foregoing termination right of City is

a material part of this Lease. In the event of emergency or to avert substantial or imminent risk to public health, safety, or welfare, City's aforementioned termination right may be exercised prior to the fifth anniversary date of this Lease and upon only so much advance written notice as may be reasonably possible under the circumstances.

- C. If the City's improvements at the Property are destroyed in whole or material part by casualty or other reason beyond City's control during the Term, City reserves the right to declare this Lease terminated, in which case, City shall return to County its prorated share of advance rental payments.
- D. If the Property is taken by eminent domain in whole or material part by an authorized governmental body, City reserves the right to declare this Lease terminated, in which case, City shall return to County its prorated share of advance rental payments, and City and County shall each retain their respective rights against the condemning authority with respect to the taking and its effect on the City and County, respectively.

- 17. **Successors and Assigns.** This Lease binds and inures to the benefit of the parties hereto and their successors and assigns. Notwithstanding the foregoing, however, County may not assign, convey, sublease, license, or transfer any right, title or interest hereunder or in the Property without the express prior written consent of City.
- 18. **Counterparts; Recording.** This Lease may be executed in one or more counterparts which, when taken together, shall constitute one and the same document. The Lease, once fully executed, shall be recorded against the Property by City at County's expense. Upon the expiration or termination of this Lease, City may unilaterally record a memorandum of termination in the register of deeds office to give notice of the expiration or termination.
- 19. **Entire Agreement.** This Lease constitutes the entire agreement between the parties and all prior statements, written or oral, (including the 1982 Lease and 2000 Amendment) are terminated and of no effect. This Agreement may only be amended by a written agreement signed by all the parties hereto.
- 20. **Severable.** The terms and provisions of this Lease are deemed separable and severable such that the invalidity or unenforceability of any term or provision shall not affect or impair the validity or enforceability of the remaining terms and provisions.
- 21. **Authority to Sign.** County and City each represent that their respective signatories have authority to sign this Lease.

22. **Notices.** All notices permitted or required hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier or otherwise personally delivered, (ii) if sent by facsimile, then the notice must be sent during business hours (i.e. 8:30 A.M to 4:30 P.M., Monday through Friday) on days that City's City Hall is open for business, and the notice shall be deemed given when sent as per the following and so long as the notice is successfully sent (i.e. the sender does not receive any error or "busy" or "inability to send" notification), and (iii) within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows:

A. If to City:
Superintendent, Water Works
City of Milw - Department of Public Works
841 North Broadway, Rm. 409
Milwaukee, WI 53202
Fax: 414-286-2801
Phone: 414-286-2672

With a further copy to:

Gregg Hagopian
City Attorney's Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202
Fax: 414-286-8550
Phone: 414-286-2620

B. If to County:
Milwaukee County
Attn: _____
901 N. 9th Street
Milwaukee, WI 532____
Fax: 414-_____
Phone: 414-_____

With a further copy to:

Milw. Co. Corp. Counsel
Attn: _____
901 N. 9th Street
Milwaukee, WI 532____
Fax: 414-_____
Phone: 414-_____

The parties hereto may, from time to time, as needed, change the recipient and address information above by providing notice of new/replacement information by notice as required hereunder.

23. **County's Emergency Contact Person.** County shall also provide to City's Superintendent of Water Works the name, work phone, home phone, and cell phone of an emergency contact person for the County who City may contact, on a 24-hour-per-day, 7-day-per-week, 365-day-per-year basis regarding the Tank, the Property, or County's equipment at the Property. County shall ensure that such emergency-contact data is kept current and up-to-date.
24. **Headings.** The headings used herein are for convenience only.
25. **Remedies.** In the event of breach of this Agreement, the non-breaching party shall have all rights and remedies available at law and in equity against the breaching party. In the event of breach by County, City may, if County has not remedied the breach within 30 days after having received notice of the breach from City, declare an immediate termination of this Lease and City may then elect to retain as City's sole property the generator, antennae, transmitter, and any other of County's property located on the Property – providing, however, that City may not terminate the Lease if the nature of the default is such that it cannot reasonably be cured within 30 days, and if County is proceeding (and continues to proceed) diligently and with good faith toward cure.
26. **COUNTY INSURANCE.** *Is county self-insured? If not, city will want to be named as add'l insured on co's insur certif. and review particular limits.*
27. **Estoppel Certificates; County-Equipment List.** Either party may request from the other, from time to time, confirmation that neither is in breach under their respective duties hereunder. Moreover, County shall provide to City, promptly upon City's request, a listing of County's equipment at the Property. The initial listing of County's equipment at the Property, as of the date of this Lease, is shown on **Exhibit C** attached hereto.
28. **Prohibition Against Cable Television.** County shall not use the Property for the provision of "cable service" or as a "cable-television system" as those terms are defined in state and federal law, nor shall County use the Property as a "cable-communications system" as defined in Milwaukee Code of Ordinances § 99-3-5.
29. **Open Records Law.** County and City are each subject to Wisconsin's open records law, and each understands that this Lease and certain documents and records relating thereto or required hereunder may be subject to disclosure under such law. Each agrees to cooperate with the other concerning open records requests that may be made against either.

- 30. **Environmental.** With the exception of natural gas hook-up for County's back-up power generator and standard over-the-counter cleaners that County shall use in a careful and reasonable manner as part of its maintenance duties, County shall not introduce environmental hazards, solvents, or pollutants to the Property. And, in any event, County shall not release environmental hazards, solvents, or pollutants that could subject the Property or its owner to any state or federal clean-up or remediation order, or in any manner that adversely impacts health, safety, or welfare, or that pollutes or contaminates soils or groundwater at the Property.
- 31. **Occupational/Controlled Exposure.** County shall provide information as may be necessary to enable City to meet (concerning any City personnel who may be required to be or work at the Property) any published guidelines establishing maximum permissible exposure limits for occupational/controlled exposure to radio frequency electromagnetic fields (as referenced in Part 1 of the FCC's Rules and Regulations, including 47 CFR § 1.1310).

IN WITNESS WHEREOF, the parties caused this Agreement to be entered into and executed as of the Effective Date first written above.

LANDLORD:

CITY OF MILWAUKEE

By: _____
Tom Barrett, Mayor

And By: _____
Ronald D. Leonhardt, City Clerk

TENANT:

MILWAUKEE COUNTY

By: _____
Scott Walker, County Executive

And by: _____
Mark Ryan, County Clerk

COUNTERSIGNED:

By: _____
W. Martin Morics, City Comptroller

CITY ATTORNEY APPROVAL (Ord. § 304-21) COUNTY APPROVAL FOR EXECUTION

Assistant City Attorney

County Corp. Counsel's Office

1048-2005-1047:93313

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1 of CSM No. 7132, in the NW quarter of 21-6-21, in the City of Greenfield, Milwaukee County, Wisconsin.

Key No.: 569-8994-002

Address: 8775 West Waterford Avenue, Greenfield.

EXHIBIT B

MAP OF THE PROPERTY INCLUDING DEPICTION OF COUNTY'S GROUND AREA

EXHIBIT C
COUNTY'S EQUIPMENT