

## SITE LEASE AGREEMENT – ROOFTOP ANTENNA

THIS SITE LEASE AGREEMENT (“Lease”), made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between \_\_\_\_\_ (“Landlord”), and PCs for People Ohio, LLC a 501(c)(3) non-profit organization created and existing under the laws of Minnesota (“Tenant”), and collectively with Landlord, the “Parties”).

WHEREAS, Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith located at 1313 W. Reservoir Avenue (Fire Station 5), Milwaukee, WI 53205 and 2903 N. Teutonia Avenue (Fire Station 30), Milwaukee, WI 53206 (collectively the “Property”). Tenant desires to use a portion of the Property in connection with its federally listed telecommunications business, and Tenant desires to grant Tenant the right to use such portion of the Property in accordance with the terms of this Lease.

WHEREAS, Tenant is a nonprofit organization that provides the opportunity for low-income individuals and nonprofits to benefit from the life changing impact of computers and mobile internet by providing low-cost computers, high-speed broadband Internet, and computer literacy training; and

WHEREAS, Landlord desires to create opportunities to expand affordable broadband Internet services to underserved portions of the City of Milwaukee thereby providing the resources required for remote learning, remote work, telemedicine, and other services critical to closing equity gaps and participating in modern society; and

WHEREAS, By Resolution File No. 210695 adopted on \_\_\_\_\_, 2021, the Common Council of the City of Milwaukee has authorized this Lease.

### NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. **Leased Premises.** Landlord hereby leases to the Tenant a portion Property, together with access and utility easements which shall be known as the “Leased Premises,” and includes:
  - a) Non-exclusive use of the rooftop of the Property; and
  - b) Non-exclusive easement over, under and through the Property required to run utility lines and cables to the Leased Premises the exact location of which is subject to Landlord’s approval as depicted in Exhibit A; and
  - c) Non-exclusive easement across the Property for ingress and egress from the right of way to the Leased Premises for reasonable Tenant and subtenant access, the exact location, method, and timing of which are subject to Landlord’s approval as depicted in Exhibit A; and
  - d) Adequate, nominal space in the Property as agreed by the Parties required for the placement of Tenant Equipment as defined in Section 4 below and as depicted in Exhibit A.
2. **Term; Termination.** The “Initial Term” of this Lease Agreement shall be for three (3) years commencing on the date of execution of this Agreement. This Lease shall automatically renew for successive three year periods (“Renewal Term”, collectively with the Initial Term, the “Term”), unless either party sends written notice of non-renewal no later than 90 days prior the expiration of the Term, provided however that the maximum length of the Lease (Initial Term plus any Renewal Term) shall not exceed 15 years.

3. **Rental.** The Parties agree that the Tenant's use of the Leased Premises is rent-free in order to facilitate services to Landlord's tenants and community. If a court or any state or federal agency having jurisdiction declares that Tenant's use of the Leased Premises on a rent-free basis is discriminatory or otherwise unlawful, the Parties shall negotiate an appropriate rent. Alternatively, either Party may terminate this Lease upon 60 days' written notice to the other Party.
  
4. **Tenant's Use.**
  - a) **Purpose.** Tenant shall use the Leased Premises only for the purpose of installing, maintaining, and operating a communications antenna, dish and related equipment, and uses incidental thereto for providing radio and wireless telecommunication services which Tenant is legally authorized to provide. In connection therewith, Tenant may run through the Property and to the roof thereof, lines, conduits, cables, risers and any other lines and/or equipment necessary or desirable in connection with installing and operating the wireless telecommunication equipment including, but not limited to, a Microwave Antenna and Communications Dish (the "Tenant Equipment").
  
  - b) **Tenant Equipment.** Subject to Landlord's prior review and approval of Tenant's plans, Tenant shall be responsible, at its sole cost and expense, for installing, maintaining and repairing the Tenant Equipment, and shall procure and maintain all permits and licenses which are required by any governmental authority in connection therewith. Tenant shall be solely responsible for procuring and paying for all utility service needed to power the Tenant Equipment, and shall arrange and pay for separate metering of such service. Tenant shall at its sole cost and expense repair to the satisfaction of Landlord any damage caused to the Property by reason of the installation, use, operation, maintenance, removal, and/or replacement of any Tenant Equipment. The Tenant Equipment shall be and remain Tenant's property and promptly shall be removed by Tenant upon the expiration or earlier termination of this Lease. Tenant shall be responsible for repairing any and all damage and/or perforations to Landlord's buildings caused by the installation, use, operation, maintenance, removal and/or replacement of any Tenant Equipment.
  
  - c) **Non-Interference.** Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies use on the Property as of the date of this Agreement. Tenant warrants that its use of the Property will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. Tenant shall immediately resolve any interference with the existing radio frequency user(s) caused by its use of the Property at its sole expense. In this section interference may include, but is not limited to, any use on the Property by Tenant that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.
  
5. **Access.** Tenant, at all times during this Lease, shall have access to only those portions of the Property necessary for Tenant to install, operate, and maintain its Antenna Facilities in the Leased Premises. Tenant shall have access to the Property only to those portions of the Property approved by Landlord. Except in case of emergency, all access to the Property by Tenant shall be pre-approved by Landlord. Tenant shall notify Landlord as soon as practicable of an access need caused by an emergency.

6. **Authorization Not Exclusive.** This Lease does not in any way limit Landlord's right to use the Property, including the Leased Premises, in the manner that will best enable it to perform any municipal operations. Landlord shall have the right to grant, renew, and extend rights and privileges to others not a party to this Lease by contract or otherwise, to use the Property, including the Leased Premises. Good faith efforts will be made to avoid interference with Tenant's Equipment.
7. **Additional Maintenance Expenses.** Upon notice from Landlord, Tenant shall promptly pay to Landlord Additional Landlord expenses incurred in maintaining the Leased Premises that are caused by Tenant's occupancy of the Leased Premises.
8. **Insurance.** Tenant shall, during the term of the Lease, maintain property coverage on all personal property and fixtures owned by Tenant in compliance with the insurance requirements set forth in Exhibit B.
9. **Indemnification.** Tenant shall hold Landlord harmless from and indemnify Landlord against any and all liability, damage, loss and expense arising or resulting from the acts or omissions or caused by Tenant or Tenant's employees, servants, agents, guests, assigns, subtenants, visitors or licensees, in, upon or about the Leased Premises, the building or the adjacent areas, including all common areas or arising out of or related to the use and occupancy of the occupancy or the business or activity conducted with respect to the property, including but not limited to injuries to person or property. This indemnification clause specifically includes reasonable attorney's fees incurred by the Landlord, and Tenant shall reimburse Landlord for attorney's fees as incurred and not only at the termination of the litigation or other dispute necessitating the retention of attorney by Landlord.
10. **Site Restoration.** In the event that this Lease is terminated or not renewed, Tenant shall have 60 days from the termination or expiration date to remove Tenant's Equipment from the Leased Premises, repair the site and restore the Leased Premises its condition immediately prior to the date Tenant's Equipment was installed, excepting normal wear and tear. In the event that Tenant's Equipment is not removed to the reasonable satisfaction of the Landlord, Landlord may cause the removal and repair to be accomplished at the Tenant's expense. Alternatively, Tenant's Equipment deemed abandoned and become the property of the Landlord and Tenant shall have no further rights thereto.
11. **Assignment.** This Lease may not be sold, assigned, or transferred by Tenant without the written consent of the Landlord, such consent not to be unreasonably withheld.
12. **Miscellaneous Provisions.** (a) Landlord warrants that it has full right, power, and authority to execute this agreement. Landlord covenants that Tenant, in paying any rent that may become due under this Lease and performing the covenants by it herein made, shall and may peacefully and quietly have, hold, and enjoy the Leased Premises. (b) The provisions of this Lease shall bind and inure to the benefit of the Parties hereto and their heirs, legal representatives, successors and assigns. (c) This Lease contains the entire agreement of the Parties with respect to any matter mentioned herein and supersedes any prior oral or written agreements. (d) This Lease may be amended in writing only, signed by the Parties in interest at the time of such amendment. (e) No waiver by either party of any provision hereof shall be deemed a waiver of any other provision or of any prior or subsequent breach or any provision hereof. (f) Except as provided in Section 3, if any term or provision of this Lease is held to be invalid or unenforceable, such invalidity or unenforceability shall not be construed to affect any other provision of this Lease, and the remaining provision shall be enforceable in accordance with their terms. (g) This agreement

shall be governed by and construed in accordance with the laws of the State of Wisconsin. (h) Each party agrees that this Lease and any other documents to be delivered in connection herewith may be electronically signed. (i) This Lease may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. (j) Landlord shall record this Lease with the Milwaukee County Register of Deeds.

13. **Public Records.** Both Parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Lease are subject to and conditioned on the provisions of Wis. Stat. sec. 19.21 *et. sec.* Tenant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, including but not limited to those records produced or collected by Tenant under this Lease pursuant to Wis. Stat. sec. 19.36(3) and that the failure to do so shall constitute a material breach of this Lease, and that the Tenant must defend and hold the City harmless from any liability under the Wisconsin Public Records Law. Except as otherwise authorized, those records shall be maintained for a period of seven years after the termination of this Lease.
  
14. **Fiber Sharing.** Landlord endeavors to share dark fiber and to provide network connectivity and telecommunications services in certain routes where, in Landlord's sole determination, capacity is available to enable Tenant to connect to provide access to and entry to Landlord's Department of Administration-ITMD Network Operations Center (ITMD-NOC), provided that such sharing and service shall be at no cost to Landlord.
  - a) Landlord shall have no obligation to share dark fiber or to provide the services described in this Section 14 and Tenant shall have no expectation or demands for customer service or connectivity guarantees from Landlord for Tenant's use of the dark fiber or other network services.
  - b) Tenant waives all claims against Landlord, its officers and employees, related to use of Landlord's dark fiber and network services by Tenant or others, including but not limited to any damages suffered by Tenant or others related to failure of the dark fiber or lack of connectivity, regardless of the cause.
  - c) This Lease confers no rights on Tenant to occupy Landlord's underground conduit system and all such requests shall require a separate conduit occupancy license agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Lease agreement as of the day and year first written above.

**City of Milwaukee**

**PCs for People Ohio, LLC**

\_\_\_\_\_  
Mayor Tom Barrett

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

Name: \_\_\_\_\_

\_\_\_\_\_  
City Clerk, James R. Owczarski

Title: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Comptroller, Aycha Sawa

Approved as to form and execution

\_\_\_\_\_  
City of Milwaukee Assistant City Attorney

1215-2021-490:276335

**Exhibit A**

**Depiction of Tenant Equipment and Access Easement**

## **Exhibit B**

### **Insurance Requirements**

#### **INSURANCE REQUIREMENTS**

##### **A. General Requirements**

A certificate of insurance acceptable to City evidencing the insurance requirements is to be provided. The certificate shall state that the issued insurance policies meet the requirements as outlined below. All certificates are to be provided within 30 days of final execution of this Contract. If such certificate is not received, the City of Milwaukee has the authority to declare this Contract terminated.

All policies shall state that the City shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any insurers providing the coverage required by City for the duration of this Contract.

Insurance companies must be acceptable to City and must have a current A.M. Best rating of A- VIII or better.

All policies shall be written on an occurrence form, other than professional liability as noted below.

If subcontractors are used, each must meet all requirements in sections A and B.

##### **B. The minimum insurance requirements are as follows:**

###### **(1) Workers' Compensation and Employer's Liability**

Workers' Compensation	Statutory Coverage
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

- Employer's Liability at limits noted above or higher limits if needed to meet Umbrella underlying insurance requirements.
- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.

###### **(2) Commercial General Liability**

Commercial General Liability	\$1,000,000 each occurrence			
General Aggregate	\$2,000,000 aggregate	Personal & Advertising Injury Limit	\$1,000,000	each occurrence
Products - Completed Operations Aggregate	\$2,000,000 aggregate	Medical Expense	\$ 5,000	each person

- Coverage must be equivalent to ISO form CG0001 or better.
- The City of Milwaukee shall be added as an additional insured using ISO form CG2026 or its equivalent.
- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.

- The policy shall include independent contractors (owner's/contractors protective) and contractual liability.
- Coverage will apply on a primary and non-contributory basis. We suggest the following wording:

“If you have agreed in a written contract that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the contract was executed prior to the bodily injury, property damage, personal injury or advertising injury, then this insurance will be primary over, and we will not seek contribution from, such insurance.”

- Coverage shall apply to the risks associated with or arising out of the services provided under this contract.

**(3) Auto Liability**

Combined Single Limit        \$1,000,000 each accident

Medical Expense        \$        10,000 each person

- If the Contractor owns or has any long term leased vehicles, coverage must be for Any Auto (Symbol 1). If there are no owned or long term leased vehicles, then coverage must be for Hired and Non-Owned Auto Liability (Symbols 8 and 9).
- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.
- The City of Milwaukee shall be added as an additional insured.
- Coverage shall include contractual liability for risks assumed in this contract.
- Coverage shall apply to the risks associated with or arising out of the services provided under this contract.
- If Federal or State government(s) require a Motor Carrier filing, such filing shall be made available to City upon request.

**(4) Umbrella (Excess) Liability**

Umbrella (excess) Liability    \$5,000,000 per occurrence

\$5,000,000 aggregate

- The Umbrella Liability insurance shall provide coverage excess of the Employer's Liability, Commercial General Liability and Auto Liability Coverages, including the amendments stated above.