

AGREEMENT

between

CUYAHOGA COUNTY

And

City of Brecksville

For

Radio Tower Lease Agreement

State of Ohio
County of Cuyahoga

KNOW ALL MEN BY THESE PRESENTS, THAT: This Radio Tower Lease Agreement, hereinafter referred to as "Lease" is made and entered into this 21st day of January, 20 , by and between the County of Cuyahoga, Ohio, hereinafter referred to as "Tenant" or the "County," and the City of Brecksville, a political subdivision, with principal offices located at 9069 Brecksville Road, Brecksville, Ohio 44141, hereinafter referred to as "Landlord".

WITNESSETH:

1. Premises: Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, space on a radio tower structure and associated real property owned and operated by Landlord, hereinafter referred to as "Leased Premises". Said Leased Premises being located at 4450 Oakes Rd., Brecksville, County of Cuyahoga, State of Ohio and said tower being located at Latitude 41° 18' 18" N, Longitude 81° 39' 40" W, more or less
2. Communications Equipment: Landlord hereby grants permission to Tenant to operate at tenant's sole cost and expense the following described communications equipment, and associated equipment on or in the Leased Premises:

Tenant shall maintain two (2) 800 MHz omni fiberglass antennas connected to the landlord's monopole tower at the 160' and 180' level.

Radio communications equipment consisting of two (2) radio cabinets is installed in the landlord's equipment building.

For the purpose of this agreement, all of Tenant's equipment, building, panels, cables, wires, antennas and accessories shall hereinafter collectively be referred to as "Communications Equipment or Communications Center".

3. Term: The primary term of the Lease shall be for Ten (10) Years and shall commence on July 1, 2013 and terminate on June 30, 2023.

4. **Rent:** During the term of the Lease, as rental for the Leased Premises, Tenant will pay Landlord at the address designated in Paragraph number 1, the annual sum of One Dollar and No Cents (\$1.00) payable annually. In addition, the tenant shall maintain the 12 KW standby generator and transfer switch at the site.
5. **Use:** Tenant will use the Leased Premises for the purpose of constructing and operating a Communications Center. Tenant will abide by all Local, State and Federal Laws and obtain all permits and licenses necessary to operate its system. Tenant shall use the Leased Premises for no other purpose, without the prior written consent of Landlord.
6. **Access:** Landlord agrees that during the term of this Lease or its extensions as hereinafter provided, Tenant shall have reasonable ingress and egress on a 24 hour basis to the Leased Premises for the purpose of maintenance, installation, modification, operation, repair, replacement and removal of said Communications Equipment. It is agreed, however, that only authorized engineers or employees of the Tenant, or persons under Tenant's direct supervision will be permitted to enter the Leased Premises to install, remove and/or repair Tenant's Communications Equipment
7. **Utilities:** Landlord shall supply power at its sole cost and expense for Tenant. Tenant requirements will be 110 V and not to exceed 100 Watts per hour.
8. **Holding Over:** If Tenant should remain in possession of the Leased Premises after the expiration of the primary term or any extension of this Lease, without the exercise of an option or the execution by Landlord and Tenant of a new Lease, then Tenant shall be deemed to be occupying the Leased Premises as a tenant-at-sufferance on a month-to-month basis, subject to all the covenants and obligations of this Lease and at a monthly rental \$1,000.00 per month until the tenancy is terminated by judicial decree or otherwise.
9. **Notice:** Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid addresses as follows:

Tenant: Cuyahoga County Public Safety and Justice Services
310 Lakeside Avenue Suite 795A
Cleveland, Ohio 44113

Landlord: City of Brecksville
9069 Brecksville Rd.
Brecksville, Ohio 44141

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if not sent properly by mail).

10. **Liability:** The Landlord and the Tenant, both political subdivisions prohibited by law from entering into an indemnification agreement, agree that each will be solely and entirely

responsible for its acts, errors, omissions, negligence and intentional acts that may cause damage or injury during the performance of this Radio Tower Lease Agreement, and those of its employees and agents.

11. Termination: Tenant shall have the right to terminate this Lease at any time upon thirty (30) days written notice of termination of this Lease. Upon termination, neither party will owe any further obligation under the terms of this Lease, except for Tenant's responsibility financial and otherwise of removing all of its Communications Equipment from the Leased Premises and restoring the areas occupied by Tenant to as near as practicable to its original condition, save and except normal wear and tear and acts beyond Tenant's control.
12. Defaults and Remedies: Notwithstanding anything in the Lease to the contrary, Tenant shall not be in default under this Lease until:
 - a. In the case of a failure to pay rent or other sums due under this lease, thirty (30) days after, receipt of written notice thereof from Landlord, or;
 - b. In the case of any other default, thirty (30) days after, however, where any such default cannot reasonably be cured within fifteen (15) days, Tenant shall not be deemed to be in default under the Lease if Tenant commences to cure such default within said thirty (30) days period and thereafter diligently pursues such cure to completion.

In the event of Tenant's default in the payment of rentals or Tenant's failure to comply with any other material provision of this Lease, Landlord may, at its option, terminate this Lease without affecting its right to sue for all past due rentals, and any other damages to which the Landlord may be entitled including but not limited to the costs associated with the removal of tenant's equipment. Should Landlord be entitled to collect rentals or damages and be forced to do so through its attorney or by other legal procedures, Landlord shall, upon receipt of a favorable ruling, be entitled to its reasonable costs and attorney fees thereby incurred upon said collection.

13. Fixtures: Landlord covenants and agrees that no part of the improvements constructed, erected or placed by Tenant on the Leased Premises or other real property owned by Landlord shall be or become, or be considered as being, affixed to or a part of principles of law to the contrary notwithstanding, it being the specific intention of Landlord to covenant and agree that all improvements of every kind and nature constructed, erected or placed by Tenant on the Leased Premises or other real property owned by Landlord shall be and remain the property of the Tenant.
14. Memorandum of Lease: Following the execution of this Lease, upon the request of either party both parties will execute a Memorandum of Lease to be recorded at the sole expense of the requesting party in the County where the Leased Premises is located.
15. Other Conditions:
 - a. Whenever under the Lease the consent or approval of either party is required or a determination must be made by either party, no such consent or approval shall be

unreasonably withheld or delayed, and all such determinations shall be made on a reasonable basis in a reasonable manner.

- b. Landlord covenants that the Tenant shall, upon paying the rent and observing the other covenants and conditions herein upon its part to be observed, peaceably and quietly hold and enjoy the Leased Premises during the term of this Lease or as it may be extended without hindrance, ejection or molestation by the Landlord, any person or persons claiming under the Landlord or any other tenant of the Landlord.
- c. Landlord assumes no responsibility for license operation and/or maintenance of Tenant's antennas. However, Landlord does have the responsibility of maintaining the tower in good order and repair and of observing tower lights and maintaining records, including notification to Federal Aviation Administration of any failure and repairs and correction of same. Landlord shall also be responsible for compliance with any marking and lighting requirements of the FAA and the FCC applicable to the tower.
- d. Tenant covenants and agrees that Tenant's Communications Equipment, its installation, operation and maintenance will:
 - i. Not irreparably damage the radio tower structure and accessories thereto.
 - ii. Not interfere with the operation of the Landlord's radio equipment or the radio equipment of other tenants currently on said tower. In the event there is interference by Tenant, Tenant will promptly take all steps necessary to correct and eliminate same within a reasonable period of time. If Tenant is unable to eliminate such interference caused by it within a reasonable period of time, Tenant agrees to remove its antennas from Landlord's property and this agreement shall terminate.
 - iii. Not interfere with the maintenance of Landlord's tower and the tower lightning system

Comply with all applicable rules and regulations of the Federal Communications Commission and electrical codes of the City and/or State concerned.

E. Tenant shall have no right to sell, assign or sublet this lease, under any circumstances to any other entity. If the Leased Premises is damaged for any reason so as to render it substantially unusable for Tenant's use, rent shall abate for such period not in excess of ninety (90) days while Landlord, at its expense, restores Landlord's Tower and/or Building to its condition prior to such damage. Provided however, in the event Landlord fails to repair the Leased Premises within said ninety (90) day period, Tenant shall have the right to terminate this lease with no further obligations hereunder.

F. During the term of this Lease, Landlord will not grant a similar lease to any other party if such grant would in any way adversely affect or interfere with Tenant's use of its Communications Equipment. In the event of any interference, Landlord shall take all steps necessary to correct and eliminate same within a reasonable period of time. If Landlord is unable to eliminate the interference within a reasonable period of time, this Lease shall terminate in accordance with the provisions contained in Section 11 hereof.

Entire Agreement and Binding Effect: This Lease and any attaché exhibits signed or initialed by the parties is constitute the entire agreement between Landlord and Tenant; no prior written or prior contemporaneous or subsequent oral promises or representations shall be binding. This Lease shall not be amended or changed except by written instrument signed by both parties hereto. Paragraph captions herein are for convenience only, and neither limit nor amplify the provision of this lease. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrations, successors and assigns of the parties, but this provision shall in no way alter the restriction hereon in connection with assignment and subletting by Tenant.

IN WITNESS WHEREOF, the Landlord and the Tenant have executed and delivered this Lease as of the date and year above written.

WITNESS: Donnie G. Briggs

LANDLORD

BY: [Signature]

DATE: 1.21.2014

STATE OF OHIO

) SS. ACKNOWLEDGMENT

COUNTY OF CUYAHOGA

BEFORE ME, the above signed authority, on this day personally appeared known to me to be those whose names are/is subscribed to the foregoing instrument and acknowledged to me that they/he being duly authorized to execute said instrument executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 21st day
of January 2014

Mary Scullin



Mary Scullin
Notary Public, State of Ohio
My Commission Expires
June 27, 2015

My Commission Expires: June 27, 2015
Notary Public in and for the State of Ohio

TENANT

Edward FitzGerald, County Executive

WITNESS: _____

BY: _____

Edward FitzGerald, County Executive

DATE: _____

STATE OF _____

) SS. ACKNOWLEDGMENT

COUNTY OF _____

BEFORE ME, the above signed authority, on this day personally appeared known to me to be those whose names are/is subscribed to the foregoing instrument and acknowledged to me that they/he being duly authorized to execute said instrument executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this _____ day
of _____ 20 _____

My Commission Expires: _____
Notary Public in and for the State of _____