



**To:** City Council

**Agenda Item #:** IV.I

**From:** Brian Olson, P.E. Director of Public Works *BEO*

**Action**

**Discussion**

**Date:** 1/8/2013

**Information**

**Subject:** Lease Agreement For Use of Radio Equipment On Community Water Tower

**Action Requested:**

Authorize Mayor and City Manager to sign attached agreement with the Edina School District

**Information / Background:**

As you may be aware, the FCC requires that any radio technology emit narrowband emissions in 2013. The Edina School District has requested the use of our broadband radios and repeater that is located on our Water Tower located on the Community Center water tower located at 5849 Ruth Drive.

As you are also aware, the Public Works Department has converted its communication to 800 MHz radios and cell phone technology. The 800 MHz radio system is a much more reliable system and is the same technology that the Police and Fire Department utilize. We would much prefer to spend the amount that is necessary to convert the radio system to narrowband and use that to enhance our 800 MHz to increase our efficiency and ability to communicate with the Emergency Services departments within the City of Edina.

Staff recommends authorizing the Mayor and City Manager to sign the attached agreement for the use of the repeater at the top of the water tower located at 5849 Ruth Drive. This proposal will also allow the school district to enhance and improve their communication system.



# COMMUNICATIONS SITE LEASE AGREEMENT

**THIS COMMUNICATIONS SITE LEASE AGREEMENT** (“Lease”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 between the **CITY OF EDINA**, a Minnesota municipal corporation, (“Landlord” or “City”), and \_\_\_\_\_, a \_\_\_\_\_ corporation, (“Tenant”).

## RECITALS

**WHEREAS**, the Landlord is the owner of certain real property located at 5849 Ruth Drive, Minnesota, as legally described on Exhibit “A” attached hereto and made a part hereof (“Property”); and

**WHEREAS**, Landlord has donated to Tenant certain equipment that is in place on the Landlord’s water tower; and

**WHEREAS**, Tenant has requested that the Landlord lease a portion of the Property to Tenant to enable Tenant to maintain and use the donated equipment; and

**WHEREAS**, Landlord agrees to lease to Tenant a portion of the Property for the Communications Equipment that Landlord has donated to Tenant subject to the terms, covenants and conditions of this Lease.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the parties agree as follows:

- 1. PROPERTY.** Subject to the following terms and conditions, Landlord leases to Tenant certain space on Landlord’s water tower located on the Property subject to all existing easements together with appurtenant non-exclusive easements for access and utilities on Landlord's Property on a non-exclusive basis. The primary purpose of Landlord's ownership of the Property is to: (a) operate and maintain a municipal water tower so as to provide water service to residents of; and (b) to provide communication systems to the Edina and other radio tenants.
- 2. TERM.** This Lease shall be for an indefinite term.
- 3. RENT.** On the Commencement Date, Tenant shall pay Landlord, as rent for the term of the lease One Dollar and No/100 (\$1.00).
- 4. USER PRIORITY.** The Landlord and Tenant agree that the following priorities of use, in descending order, shall apply in the event of communication interference or other uses of the Property that conflict with Tenant’s uses or other users of the Property while this Lease is in effect:
  - a. The Landlord’s water storage and distribution needs and the Landlord’s

communication needs.

- b. Existing leases on the Tower and the Property, unless there is a material modification of any existing equipment configuration and/or frequency characteristics.
- c. Other government-related entities who offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone, not including radio or which the County is legally authorized to provide. This use shall be non-exclusive, and the Landlord specifically reserves the right to allow the Tower and Property to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Tower and the Property.
- d. New leases or renewals of existing leases for non-public safety communications.

## **5. PERMITTED USES.**

a. Subject to the terms of this Lease, and the recommendations of the City's communications consultant, the Property may be used by Tenant solely for the purposes of removing and maintaining the communications equipment that Landlord has donated to Tenant ("Tenant's Equipment") and in accordance with the transmission and reception of wireless communication signals authorized for use by Tenant by the Federal Communications Commission ("FCC"). This use is non-exclusive, and Landlord reserves the right to allow the Property to be used by others, and to make additions, deletions or modifications to its own facilities on the Property. Tenant shall comply with all ordinances, statutes and regulations of local, state and federal agencies.

b. Landlord agrees to give reasonable advance notice of any major repair or maintenance activities related to Tower operations. In the case of an emergency, notification is not required; however, Tenant will be notified as soon as possible of a recognized emergency. In the event that use of the Tower for water service, or use of the Tower to perform any necessary maintenance or repair, is interrupted or made impractical because of Tenant's Equipment on the Tower, the City may interrupt Tenant's use of the Property as reasonably necessary to prevent interruption of water service or interruption of maintenance and repair of the Tower. The City will use its best efforts to prevent or minimize interruptions to Tenant's use.

c. Any additional expense of repainting, repairing, or maintaining the Property, Building or Tower reasonably incurred by the City as a direct consequence of the presence of Tenant's Equipment being located thereon shall be paid promptly by Tenant to the City upon receipt of the City's written notice of such additional cost, which notice shall state the reason(s) for the incurring of such costs and shall include a reasonable itemization of such costs.

e. Tenant shall notify the City of Edina of scheduled work on Tenant's Equipment that is to be done after 5:00 o'clock p.m. on business days, and any time on weekends and holidays. The notice shall be given to City so that it is received at least 48 hours in advance of

the start of the scheduled work. In the case of Tenant's emergency work on Tenant's Equipment Tenant shall notify the City as soon as practicable after commencement of the work.

f. Tenant may not add, change or alter Tenant's Equipment without the prior written approval of the Landlord. Tenant agrees to reimburse Landlord for all reasonable costs incurred by the Landlord in connection with any alteration or modification of, or addition to, Tenant's Equipment pursuant to this paragraph, including but not limited to plan review, structural review, site meetings, inspection time, and as-built updating because of Tenant's changes, including attorney's fees for drafting and and/or reviewing documents; provided, however, that with respect to any such alteration, modification or addition, additional Rent may be charged for the additional equipment that is installed by Tenant.

## **6. TENANT'S COMMUNICATION FACILITIES.**

a. Landlord agrees to maintain and operate the Property and the Property in accordance with good engineering practices, with all applicable FCC rules and regulations.

b. Tenant shall be solely responsible for any taxes on its personal property.

**7. UTILITY SERVICE.** Landlord will allow Tenant, at Tenant's cost and expense, to connect to its existing utility services. Tenant shall furnish Landlord with pertinent information as to the exact type of AC power requirements, and at Tenant's cost and expense, Landlord's electrician will wire the dedicated circuit. Landlord will review Tenant's power usage based on Tenant's application, and what Tenant believes to be its average monthly kilowatt hours. Landlord may charge additional Rent to Tenant's for the electricity used by Tenant. Landlord shall not be responsible for any damages which occur as a result of interruption of any utility services. The Property does not have a generator; therefore, Landlord is not responsible for providing emergency backup electricity to Tenant if there is an interruption in electric service to the Property. Landlord will provide and pay for the cost of air conditioning the Building. Payment for telephone service for Tenant's Antenna Facilities shall be Tenant's responsibility without any adjustment to Rent.

## **8. TERMINATION.**

a. Except as otherwise provided herein, this Lease may be terminated, without penalty or further liability by either party on sixty (60) days advance written notice to the other Party.

b. Upon termination of this Lease, Tenant shall, within thirty (30) days thereof, remove all of its property. Tenant, at its expense, agrees to return the Property and the Tower surface where Tenant's property has been to their original condition, ordinary wear and tear excepted. Any of Tenant's property remaining on the Property or the Tower thirty (30) days after the expiration or the termination of this Lease shall be removed by Landlord at Tenant's cost and expense and shall become the property of Landlord free of any claim by Tenant or any person claiming through Tenant.

**9. DEFENSE AND INDEMNIFICATION.**

a. General. Tenant agrees to defend, indemnify and hold harmless Landlord and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by Landlord or for which Landlord may be liable in the performance of this Lease, except those which arise solely from the negligence, willful misconduct, or other fault of Landlord. Tenant shall defend all claims arising out of the installation, operation, use, maintenance, repair, removal, or presence of Tenant's Communication Facilities, equipment and related facilities on the Property.

b. Tenant's Warranty. Tenant represents, covenants and warrants that its use of the Property will not generate and Tenant will not store or dispose of on the Property, nor transport to or over the Property, any Hazardous Materials, unless Tenant specifically informs Landlord thereof in writing twenty-four hours prior to such storage, disposal or transport, or otherwise as soon as Tenant becomes aware of the existence of Hazardous Materials on the Property. The obligations of this Paragraph 13 shall survive the expiration or other termination of this Lease.

**10. LIMITATION OF LANDLORD'S LIABILITY.** If Landlord terminates this Lease other than as of right as provided in this Lease, or Landlord causes interruption of the business of Tenant or for any other Landlord breach of this Lease, Landlord's liability for damages to Tenant shall be limited to the actual and direct costs of the removal of Tenant's property.

**11. ASSIGNMENT.** This Lease, or rights thereunder, may not be sold, assigned, or transferred at any time by Tenant.

**12. NOTICES.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to Landlord:                   City of Edina  
  4801 W 50<sup>th</sup> St.  
  Edina, MN 55424

with copy to: City Attorney  
Campbell Knutson  
Professional Association  
317 Eagandale Office Center  
1380 Corporate Center Curve  
Eagan, MN 55121

If to Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**13. MISCELLANEOUS:**

a. Complete Lease; Amendments. This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the Landlord and Tenant. This Agreement may only be amended in writing signed by all parties. Exhibit "A" is incorporated into this Agreement by reference.

b. Counterparts. This Agreement may be signed in counterparts by the parties hereto.

c. Binding Effect. The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of Landlord and Tenant.

d. Governing Law. This Agreement shall be construed in accordance with the laws of the state in which the Landlord's Property is located.

e. Severability. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

f. Recitals. The Recital paragraphs and the terms and definitions therein are incorporated into this Lease as if they were set forth herein.

**IN WITNESS WHEREOF** the parties hereto have executed this Lease Agreement the day and year first above written.

**LANDLORD:  
CITY OF EDINA**

BY: \_\_\_\_\_  
James Hovland, Its Mayor

AND \_\_\_\_\_  
Scott Neal, Its City Manager

**TENANT:**

\_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

THIS INSTRUMENT WAS DRAFTED BY:  
**CAMPBELL KNUTSON**  
*Professional Association*  
317 Eagandale Office Center  
1380 Corporate Center Curve  
Eagan, MN 55121  
Telephone: (651) 452-5000  
RNK

**EXHIBIT "A"**  
**TO**  
**COMMUNICATION SITE LEASE AGREEMENT**

Mr. David White  
City of Edina Bus Transportation  
5220 Eden Avenue  
Edina, MN 55436

David,

This letter is in reference to using the City of Edina's UHF repeater and water tower site located by Concord elementary school. With the FCC mandate to go narrowband on January 1, 2013, it would be very beneficial for you to use this repeater and current location to enhance your operations from an efficiency and safety protocol. Your radios have to migrate to narrow band and when you do this your coverage is affected and thus may create a safety concern by not being able to have the coverage needed for your drivers to communicate with you.

The city has the ability, by allowing you to use the water tower site, to make sure you provide the best possible radio coverage which will in turn provide better and safer operations.

Radio coverage depends on power of the transmitter, height of the antenna and emissions of the radio (25kilohertz vs. the mandate to narrow band, 12.5kilohertz). Currently, the bus companies transmitter location and height of antenna is providing only adequate radio coverage today but when they go to narrowband (12.5 kilohertz) a **strong** probability that their radio coverage will not be adequate and create a safety concern.. Thus, by using the city's water tower and repeater, you gain a height advantage compared to your current operations and thus providing a safer solution.

The advantage to the city will be a safer transportation for the children of Edina. You will need to make sure their FCC license is current and correct (at your cost). In addition, the current frequency is being used today by Edina Public Works with no issues of interference occurring. Your only change to the frequency is to change the emission to narrow band (12.5 kilohertz) and this will actually minimize any interference compared to today's usage.

In my opinion, with Edina Public Works going away from this current UHF system (a good decision due to cost associated with being compliant to the FCC mandate), this is a very cooperative and generous decision and a true benefit to the city of Edina.

I welcome any question or concerns and I am willing to assist in any way to make this decision beneficial to all.

Regards,

*Dean Daninger*

Dean Daninger  
Ancom Communications  
Authorized Motorola Dealer

