

## WATER TOWER ANTENNA LEASE AGREEMENT

This Lease Agreement (“*Lease*” and/or “*Agreement*”) is made and entered into on \_\_\_\_\_, 2017 (“*Effective Date*”), by and between the Village of Hillcrest, an Illinois municipal corporation (“*Landlord*”) and the City of Rochelle, an Illinois municipal corporation (“*Tenant*”) (Collectively the “*Parties*”).

### Recitals

The Parties hereto recite, declare and agree as follows:

#### 1. Property Description.

Landlord is the owner of the real property located 204 N. Hillcrest Ave, Rochelle, Illinois 61068, PIN 24-12-376-013 as further depicted in **Exhibit A** (the “*Property*”). The Property includes the premises which is comprised of a water tower (the “*Premises*”). Landlord hereby leases to Tenant a portion of that certain parcel of Property with non-exclusive rights for ingress and egress, seven (7) days a week twenty-four (24) hours a day, as further described in Paragraph 10 for access and Paragraph 9 for utility easements on the Property being substantially as depicted in **Exhibit A** attached hereto.

#### 2. Landlord Cooperation.

Landlord shall cooperate with Tenant’s due diligence activities, which shall include, but not be limited to, access to the Property for inspections, testing, permitting related to the Permitted Uses (as defined below). Landlord authorizes Tenant to file, submit, and obtain all zoning, land use, and other applications for permits, licenses and approvals required for Permitted Uses from all applicable governmental and quasi-governmental entities (collectively, the “*Government Approvals*”). Landlord’s cooperation shall include the prompt execution and delivery of any documents necessary to obtain and maintain Government Approvals or utility services reasonably requested by Tenant within ten (10) days of Tenant’s written request. At any time after the date of this Lease or the Commencement Date, either party shall execute or cause to be executed any documents, or take or cause to be taken any actions, reasonably necessary to carry out the intent of this Lease. Additionally, Landlord shall not take any actions which are in conflict with or interfere with Tenant’s Government Approvals.

#### 3. Antenna Facilities and Permitted Uses.

**Use.** Tenant leases the Premises for its equipment, personal property and improvements associated with Tenant’s wireless telecommunications to be used for public safety communications (the “*Antenna Facilities*”). The Premises may be used for the construction, installation, operation, maintenance, repair, addition, upgrading, removal or replacement of any and all Antenna Facilities (the “*Permitted Uses*”) for no fee or additional consideration in accordance with local rules and government regulations.

The Antenna Facilities shall remain in the exclusive property of the Tenant and shall not be considered fixtures. Tenant shall at all times comply with the conditions set forth in the Ordinance granting a Special Use for the installation of its facility, including all conditions set forth in the same, which are incorporated by reference as though set forth herein. In no event shall the Tenant's Communications Facility interfere with the operations of the neighboring business owners' communications. If within the discretion of the Village of Hillcrest Village Manager and approval by the Village Board, Tenant's Communication Facility is interfering with the operations of the neighborhood business owners' communications, the Tenant shall make all necessary modifications or operational changes to abate the interference. If Tenant fails to abate said interference, following approval by Tenant's City Council to appropriate funds for such abatement, following 30 days of approval, then Tenant shall be in violation of this Lease.

4. **Construction.**

- a. **Improvements.** Tenant may install an antenna structure (including a mounting structure and equipment) directly affixed to the Water Tower of which the Premises comprises a portion, together with antennas, equipment (including antenna mounting structures and equipment), an equipment shelter, equipment cabinets and other enclosures, fencing, equipment, other personal property, fixtures, cables, pipes, conduits, transmission lines, and utilities; and make any other improvements, subject to the conditions and approval of the Landlord as provided in this Article, said Antenna Facilities and are depicted in Exhibit A and B attached hereto. Tenant shall have the right to mount one (1) antenna. Tenant may from time to time replace any of these items with new or like-kind items (similar in size and character with then-existing Tenant equipment) with the same or different specifications so long as their installation is otherwise in compliance with this Lease and applicable laws, ordinances and codes.
- b. Tenant shall not construct/install Tenant's Antenna Facility without receipt of a building permit issued by the Landlord. Prior to execution of this Agreement and issuance of building permit, Tenant shall submit Tenant's construction and antenna drawings to Landlord as depicted in Exhibit B attached hereto to sign off and approve the construction and antenna installations. Landlord shall review such drawings within twenty-five (25) business days of receipt of plans. Within thirty (30) days from the date of completion of all construction activity (or as soon as possible thereafter weather conditions permitting), whether upon installation or later maintenance, repair and replacements, Tenant shall restore or cause to be restored to the reasonable satisfaction of Landlord, the Premises and other affected areas of the Property, including without limitation any and all landscaping, as nearly as may be, to the same condition or to a condition better than that which existed immediately prior to the commencement of such activities by Tenant.

- c. All Antenna Facilities on the Water Tower must be identified by a marking fastened securely to its bracket on the Water Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.
- d. **Approvals.** Tenant's work shall be completed in accordance with all applicable building codes and will conform to all applicable governing codes, ordinances, and approved plans. Tenant undertakes full and complete responsibility at all times hereafter for the expenses of, and quality of, construction and compliance with all code requirements and regulations of government authorities having jurisdiction over the construction, including but not limited to compliance with acts effecting construction of public buildings and service areas used by public employees, and Tenant agrees to remedy or correct any deficiencies with such compliance. The construction shall be processed pursuant to permit and conducted by authorized and licensed personnel and shall be performed in compliance with local and State requirements for construction activities upon public property. The construction shall proceed without interference or disruption, or minimization of the same, to the current operations of the Landlord.
- e. Not later than fifteen (15) business days following the execution of this Agreement, Landlord shall supply to Tenant copies of all structural analysis reports that have been done in respect to the Water Tower and throughout the Term, Landlord shall supply to Tenant copies of all structural analysis reports that are done with respect to the Water Tower promptly after the completion of the same.

## 5. **Tenant's Installation.**

- a. **Improvements.** Without obtaining Landlord consent, Tenant may from time to time replace Tenant's Antenna Facilities with new or like-kind items (similar in size and character with the-existing Tenant equipment) but no additional, items with the same or difference specification ("**Improvements**") so long as their installation is otherwise in compliance with this Lease, applicable laws, ordinance and Codes. Tenant's installation of Improvements shall not interfere with Landlord's use of the Property. Tenant agrees to obtain Landlord's consent prior to making any penetration of the walls of the Water Tower in connection with Tenant's installation of equipment on the Water Tower.
- b. **Workmanlike Construction.** Tenant agrees that the installation and any subsequent Improvements shall be completed in a neat workmanlike condition and consistent with good engineering practices. All costs of the installation, including, but not limited to, the cost of bringing electrical service to Tenant's equipment by directional boring or by open trenching in the event any unforeseen conditions are encountered during the underground boring process,

will be paid by Tenant. Tenant agrees to work in good faith with the appropriate utility companies to install all utilities, where it possible, underground with the easement areas designated in Exhibit B.

- c. **Title to Various Items.** Tenant shall at all times be the sole and exclusive owner of Tenant's Antenna Facilities. All of Tenant's Antenna Facilities shall remain Tenant's personal property and are not fixtures.

6. **Lease Term.**

- a. The Initial Term shall be for ten (10) years commencing upon the earlier start of Tenant's construction, or one hundred and eighty (180) days after the Landlord has issued the Tenant the building permit (the "**Commencement Date**"), and ending at 11:59p.m. on the day immediately preceding the tenth (10<sup>th</sup>) anniversary of the Commencement Date (the "**Initial Term**"). The Initial Term, together with any Renewal Terms and Extended Periods are referred to collectively as (the "**Term**").
- b. The Initial Term may renew for five (5) successive additional terms of ten (10) years each (each a "**Renewal Term**"), provided, however, that either party may elect not to renew by providing written notice ninety (90) days prior to the expiration of the then current Term whereupon this Lease shall be deemed canceled upon the expiration of the then current term.
- c.

7. **Rent/Other Charges.**

Upon the Commencement Date, Tenant shall pay Landlord in the amount of one dollars (\$1.00) as total consideration for this lease ("**Rent**").

8. **Interference.**

Tenant shall not interference with the radio frequency communications of Landlord or any of Landlord's existing tenants as of the Effective Date. After the Effective Date, Landlord shall not install, or permit any third party to install, any equipment or structures that interfere with or restrict the operations of Tenant. Any such interference shall be deemed a material breach of this Agreement by Landlord and Landlord shall remove the cause of the interference within forty-eight (48) hours of notice. Tenant shall have the right to exercise all legal and equitable rights and remedies to end the interference. Tenant's equipment must accept any interference caused by and may not cause any interference to the operation of any public safety equipment such as police, fire department, and 911 dispatches.

9. **Utility Services.**

Tenant shall have the right to connect to existing utility related equipment and shall have the right to install new utility related equipment to service its Antenna Facilities (collectively, the “***Utility Facilities***”), so long as such installation of new utility related equipment does not expand Tenant’s initial square footage of its Premises, as further described in Section 1 above. Tenant shall pay for the electricity it consumes in its operations at a rate charged by the servicing utility company. Tenant shall have the right to draw electricity, by separate meter or by sub meter, 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 Tenant’s exclusive use only in the event of a power loss at the Property and for periodic testing as necessary to ensure proper function of said generator). Landlord agrees to sign such documents or easements as may be reasonably required by said utility company to provide such service to the Premises, including the grant to Tenant or the servicing utility company at no costs to the Tenant, of an easement in, over, across, or through the Land as required by such servicing utility company to provide utility services as provided herein. The parties agree that the easements granted to Tenant at the full execution of this Lease are as depicted as listed in the survey attached to Exhibit B.

10. **Access Easements.**

- a. At all time through the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, contractors, guests and invitees a twenty-four (24) hour per day, seven (7) days per week pedestrian and vehicular ingress and egress across that portion of the Property described in Exhibit B (“Access”) to and over the Property, from an open and improved public road to the Premises, for installation, maintenance and operation of the Antenna Facilities and any utilities serving the Premises, provided however such access shall: (i) To the extent reasonably possible, Tenant shall attempt to coordinate such access in advance with neighboring business owners, (ii) such request shall not be unreasonably denied, but in no even shall Tenant’s access rights interfere with the operations of the Village of Hillcrest. In the event that Landlord requires relocation of said access, Landlord agrees that Tenant shall have the right of access to the Antenna Facilities during the period of said relocation. Tenant agrees to work in good faith with the appropriate utility companies to install all utilities, where it is possible, underground within the easement areas designated in Exhibit B. It is agreed, however, that only authorized engineers, employees or property authorized contractors of Tenant or persons under their direct supervision will be permitted to enter said Premises.
- b. If subsequent to the date of this Lease it is reasonably determined by Tenant that any access or utility easement obtained does not or no longer adequately serves the Premises and Tenant’s use thereof, Landlord agrees to cooperate with Tenant to relocate such Easements where practical at no cost to Tenant. In the event the Landlord is unable to relocate any of the necessary Easements, then at Tenant’s option this Lease may be terminated upon thirty (30) days prior

written notice to Landlord. Notwithstanding anything to the contrary contained herein, Tenant shall be required to restore the Location of the prior easement to its original condition, reasonable wear and tear excepted within 30 days.

#### 11. **Termination.**

- a. **By Tenant.** In addition to termination as a result of action or inaction pursuant to other parts of this Lease, Tenant may terminate this Lease: (i) at any time for any reason upon sixty (60) days written notice to Landlord, or (ii) immediately following written notice to Landlord of either (1) Tenant's inability to secure governmental approvals and/or Tenant has lost, been denied, or has had cancelled, withdrawn, or terminated said approvals, or if Tenant fails to satisfy any necessary government authorization or radio engineering criteria to use the Property as contemplated in this Lease; or (2) Tenant's having obtained a soil test which shows contamination to building conditions which in Tenant's judgment are unsuitable for Tenant's purposes; or (3) Tenant is unable to occupy or utilize the Premises for use stated in Paragraph 3; or (4) Tenant determines that the Premises are not appropriate for its operations for technological reasons, including without limitation, signal interference.
- b. **By Landlord.** Landlord may terminate this Agreement at any time following the second Renewal Term and provided that Landlord provides not less than three hundred sixty-five (365) days notice to Tenant, if Landlord determines, in its sole discretion and for any reason to discontinue use of and to dismantle the water tower, provided, that Tenant at its option shall be permitted to continue its occupancy and use of the premises until not less than thirty days prior to the scheduled demolition date of the water tower, unless the Tenant's continued use of the premises would create a compelling health, safety, or welfare issue. In the event that notice of termination is provided pursuant to this paragraph and its conclusively determined by the parties that Tenant's continued use of the premises would create a compelling health, safety, or welfare issue, then Landlord agrees it shall permit Tenant to install a temporary installation on the Property for a period of one year following the discontinued use and dismantling of the water tower.

#### 12. **Taxes.**

Landlord is an Illinois Municipality and as such its property including the Premises is tax exempt. In addition, Tenant is an Illinois Municipality, and is tax exempt from any tax liability including but not limited to a leasehold tax imposed by Ogle County as a result of this Agreement. In the event that Landlord leases additional space to including but not limited to municipal corporations and wireless carriers, the leasehold tax liability shall not be the responsibility of the Tenant. Tenant shall not be responsible for any real estate, special assessments or similar taxes related to the Property except as permitted by statute. Tenant shall have the right, at its sole option and at its sole

expense, to appeal, challenge, or seek modification of any tax assessment or billing for which is wholly or partly responsible for payment. If Landlord receives notice of any personal property or real property tax assessment or bill against Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient time to pay said tax assessment or to allow Tenant to consent to or challenge such assessment, whether in a court, administrative proceeding, or other venue, on behalf of Landlord and/or Tenant.

13. **Indemnification.**

Landlord hereby agrees to indemnify, defend and hold the Tenant harmless from and against any claim of liability or loss from personal injury or property damage in connection with the Property or resulting from or arising out of the use and occupancy of the Property by Landlord, Tenant or its agents, excepting, however, such claims or damages as may be due to or caused by the negligent acts or omissions of the indemnified party or its agents. The Tenant shall have any obligation under this Paragraph 13 unless notified in writing of any such claim or loss within sixty (60) business days of receipt by the Landlord of notice of such claim or loss.

Tenant hereby agrees to indemnify, defend and hold the Landlord harmless from and against any claim of liability or loss from personal injury or property damage in connection with the Property, Antenna Facilities, Utility Facilities and/or Improvements or resulting from or arising out of the use and occupancy of the Property by Landlord, Tenant or its agents, excepting, however, such claims or damages as may be due to or caused by the negligent acts or omissions of the indemnified party or its agents. The Landlord shall have no obligation under this Paragraph 13 unless notified in writing of any such claim or loss within sixty (60) business days of receipt by the Tenant of notice of such claim or loss.

14. **Notices.**

All notices, requests, demands, and other communications shall be in writing, validly given, and shall be effective three (3) business days after deposit into the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via nationally recognized courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

Landlord: Village of Hillcrest  
204 Hillcrest Avenue  
Rochelle, IL 61068

Cc: Paul E. Chadwick  
Fearer, Nye & Chadwick  
420 Fourth Avenue  
Rochelle, IL 61068  
(815) 562-2156

paul@fnclaw.com

Tenant: City of Rochelle  
420 N. 6<sup>th</sup> Street  
Rochelle, IL 61068  
Attn: City Manager

Cc: Dominick L. Lanzito  
Peterson, Johnson, & Murray – Chicago LLC  
200 West Adams – Ste. 2125  
Chicago, IL 60606  
(312) 724-8024  
[dlanzito@pjmchicago.com](mailto:dlanzito@pjmchicago.com)

15. **Quiet Enjoyment, Title, and Authority.**

Landlord covenants and agrees that upon the observance and performance of all the covenants, terms, and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the property, the right, and privileges granted for the Term demised without hinderance or interference by Landlord or any other person and Landlord shall perform all its obligations under this Lease.

16. **Assignment.**

a. **By Tenant.** Tenant shall have the right to assign, sublease or otherwise transfer this Agreement, upon written notice to Landlord. Tenant shall be relieved of all liabilities and obligations and Landlord shall look solely to the transferee for performance under this Agreement. Upon receipt of a written request from Tenant, Landlord shall promptly execute an estoppel certificate.

b. **By Landlord.** Landlord shall have the right to assign and transfer this Agreement only to a successor owner of the Property. Only upon Tenant's receipt of written verification of a sale, or transfer of the Property, Landlord shall be relieved of all liabilities and obligations and Tenant shall look solely to the new landlord for performance under this Agreement. Landlord shall not attempt to assign, or otherwise transfer this Agreement separate from a transfer of ownership of the Property (the "**Severance Transaction**"), without the prior written consent of Tenant, which consent may be withheld or conditioned in Tenant's sole discretion. If Tenant consents to a Severance Transaction, Landlord and its successors and assigns shall remain jointly and severally responsible for the performance of all duties and obligations of the Landlord under this Agreement.

17. **Relocation.**

a. Landlord must provide Tenant at least ninety (90) days written notice of any repairs, maintenance or other work (the "**Work**") during the Term of this Lease which would require the relocation of the Antenna Facilities. Landlord agrees

that the Work will not interfere with or alter the quality of the services provided by the Antenna Facilities.

- b. Upon request of the Landlord on two occasions total during the Initial Term and any of the Renewal Terms, Tenant agrees to relocate its equipment on a temporary basis to another location on the Property, hereinafter referred to as the "Temporary Relocation," for the purpose of Landlord performing maintenance, repair or similar work at the Property or on the Water Tower provided:
  - i. The Temporary Relocation is similar to Tenant's existing location in size and is fully compatible for Tenant's use, in Tenant's reasonable determination; and shall be subject to City's prior approval, which approval shall not be unreasonably withheld;
  - ii. Tenant shall pay all costs associated with any instance where Temporary Relocation and reinstallation of equipment on the Water Tower is necessary and required by Landlord.
  - iii. Landlord gives Tenant at least ninety (90) days written notice prior to requiring Tenant to relocate;
  - iv. Tenant's use at the Premises is not interrupted or diminished during the relocation and Tenant is allowed, if necessary, in Tenant's reasonable determination, to place a temporary installation on the Property during any such relocation; and
  - v. Upon the completion of any maintenance, repair or similar work by Landlord, Tenant is permitted to return to its original location from the temporary location.

**18. Marking; Lighting Requirements; and Tower Compliance.**

- a. If any tower or other support structure for Tenant's Antenna Facilities is owned by Landlord, Landlord acknowledges that Landlord shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration and the FCC. Landlord shall indemnify and hold Tenant harmless from any fines or other liabilities caused by Landlord's failure to comply with these requirements.
- b. Landlord covenants that it will keep the Water Tower in good repair as required by all Laws (as defined in Paragraph 30 below). Upon written notification by the Tenant, if the Landlord fails to make such repairs within a reasonable time, the Tenant's remedy shall be to exercise its right to terminate this Lease in accordance with the terms of paragraph 11 in this Lease.

**19. Lease Construction.**

This Lease shall be construed in accordance with the laws of the State of Illinois without regard to the principles of conflicts of law. In the event that any provisions of this Lease are legally unenforceable, the other provisions shall remain in effect. Any questions of particular interpretation shall be interpreted as to their fair meaning.

**20. Entire Binding Understanding; No Oral Modification.**

All prior understandings and agreements between the parties are merged into this Lease and this Lease may not be modified orally or in any manner other than by an agreement in writing signed by both parties. Presentation of this Lease by Tenant to Landlord shall not constitute an offer unless the Lease has been signed by Tenant, and this Lease shall not be binding until executed by both Landlord and Tenant.

**21. Successors; Separability.**

Subject to the provisions regarding assignment, this Lease shall be binding upon, and inure to the benefit of, the successors-in-interest and permitted assigns or subtenant of the parties and any grantee of Landlord, but only in accordance with the terms of paragraph 16.

**22. Consent.**

In any case where approval or consent of one party hereto is required, requested or otherwise to be given under this Lease, such party shall not unreasonably delay or withhold its approval or consent.

**23. Miscellaneous.**

- a. **Attorneys' Fees.** The prevailing party in any litigation or other legal proceedings arising under this Agreement (including any appeals and any insolvency actions) shall be entitled to reimbursement from the non-prevailing party for reasonable attorneys' fees and expenses.
- b. Each party hereby represents and warrants to the other that this Agreement has been duly authorized, executed and delivered by it, and that no consent or approval is required by any lender or other person or entity in connection with the execution or performance of this Agreement.
- c. This Agreement and the interests granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.
- d. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Signed facsimile and electronic copies of this Agreement shall legally bind the Parties to the same extent as original documents.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective signatures the day and year first written above:

**LANDLORD**

**TENANT**

VILLAGE OF HILLCREST, an Illinois  
municipal corporation

CITY OF ROCHELLE, an Illinois municipal  
corporation

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

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

Printed

Printed

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A



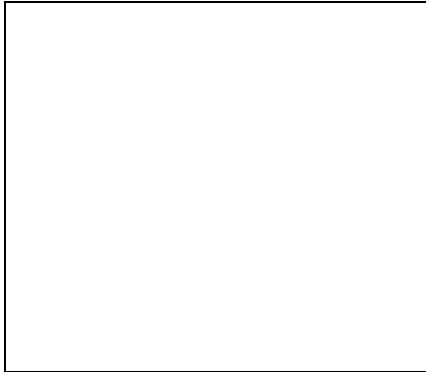


**[Notary block for Tenant]**

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF OGLE                    )

I certify that I know or have satisfactory evidence that Jeff Fiegenschuh is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of City of Rochelle, an Illinois municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

(Use this space for notary stamp/seal)