

LAND LEASE AGREEMENT FOR LOCATION OF TOWER

This Land Lease Agreement ("AGREEMENT") is made and entered into as of this 9th day of June, 2021 ("EFFECTIVE DATE") by and between TOWN OF DAYTON, TOWN OF FARMINGTON AND TOWN OF LIND ("PROPERTY OWNER") and WAUPACA COUNTY.

RECITALS

WHEREAS, PROPERTY OWNER is the owner of real property located at E629 East Road, Town of Dayton, County of Waupaca, State of Wisconsin; and

WHEREAS, WAUPACA COUNTY desires to use a portion of the property for placement of a freestanding telecommunications tower to not exceed 120 feet in height, use a connection to PROPERTY OWNER's electrical system and to install on the property equipment to provide broadband services (as defined below) and, in order to do so, desires to obtain from PROPERTY OWNER the right to use certain portions of the stated real property for the purposes of installing, maintaining, constructing, repairing, replacing, upgrading and operating a tower and broadband internet services and associated equipment, cables, and conduits to provide broadband internet transmission, all in accordance with the terms and conditions contained in this AGREEMENT;

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties here to agree as follows:

1. Grant of Rights.

a. Right of Use.

- i. PROPERTY OWNER hereby grants to WAUPACA COUNTY right to the exclusive use a portion of the real property (as described in Exhibit "A" attached hereto) for the purpose of installing, maintaining, constructing, repairing, replacing, upgrading, and operating broadband internet infrastructure and tower to provide broadband internet services.
- ii. PROPERTY OWNER grants permission to WAUPACA COUNTY to install a free-standing tower with a maximum height of 120 feet, access to property owner's electric service, access to land to trench electric service and cabling to tower, antennas, cabling, grounding, and all associated equipment and supplies to adequately provide broadband internet service. As part of this right of use, WAUPACA COUNTY shall install at its own expense, and maintain at its own expense, a fence sufficient to provide security to the tower to deter unapproved access and mitigate risk of vandalism and other property damage.

b. Access.

- i. PROPERTY OWNER grants to WAUPACA COUNTY reasonable access to the real property and tower twenty-four (24) hours per day, seven (7) days per week.
- ii. WAUPACA COUNTY shall allow a representative of PROPERTY OWNER to observe any installation, repair, maintenance, or removal of the tower.

c. Responsibility for Maintenance.

Except to the extent expressly set forth herein, WAUPACA COUNTY shall be responsible for all maintenance and repairs of the tower and broadband internet infrastructure.

d. Risk Allocation.

It is WAUPACA COUNTY'S election to install and maintain the broadband internet infrastructure and tower on PROPERTY OWNER'S real property and does so solely at its own risk. Except to the extent expressly set forth herein, PROPERTY OWNER makes no representations or warranties regarding the suitability, condition, or fitness of the real property for the installation, maintenance or use of the tower and broadband internet services.

2. Term.

- a. The initial term of this agreement shall commence (COMMENCEMENT DATE) based on the date WAUPACA COUNTY or hired contractors begin construction of the tower and shall be for five (5) years, unless earlier terminated under the terms of this agreement.
- b. Thereafter this agreement shall automatically renew for five-year terms to commence on the termination date of the previous term unless earlier terminated under the terms of this agreement.

3. Rent.

- a. WAUPACA COUNTY, via the City of Waupaca's Internet Service Provider, Waupaca Online, will provide PROPERTY OWNER one free internet connection. If Property Owner does not have use for a free internet connection they may donate it to be utilized by another local government unit or government-related service or government owned property, such as a landfill site. Value is based on required bandwidth but will likely average approx. \$70/month. WAUPACA COUNTY, via Waupaca Online, will make a good faith effort to provide the internet connection at a requested location other than onsite, but cannot guarantee successful connection due to conditions needed to establish a fixed-wireless connection. No additional monetary payment will be provided if internet connection is not utilized. Due to the unique joint ownership of this particular property, WAUPACA COUNTY will endeavor to provide one free internet connection available for the Town of Lind and the Town of Dayton. If, however, due to unforeseen and unanticipated circumstances that may arise during the development of and completion of this project which would result in two connections not becoming available for Town use, then the PROPERTY OWNER shall independently decide which town shall be allocated the one available free internet connection.
- b. WAUPACA COUNTY will pay for actual costs related to supplying electricity for the equipment located on the tower on a monthly basis.

4. Use of Tower for Ancillary Purposes.

PROPERTY OWNER may be provided limited use of the tower for reasons including, but not limited to, TV antenna, security cameras, flood lights, HAM radio or TV Satellite dish placement. Written

permission must be obtained from WAUPACA COUNTY or its designees for PROPERTY OWNER use of tower. WAUPACA COUNTY will review request to ensure requested equipment can be adequately and safely attached to tower. Location, size, and wind load will all be factors. WAUPACA COUNTY staff, or designated contractor, will either place equipment on tower or be allowed to supervise the placement.

5. Right of Use Applicable Only to Leased Area. This agreement shall not be construed to permit the construction, installation, maintenance or use of additional broadband or other equipment on any portion of the property other than the leased area.
6. Amendment. A written amendment will be required for any and all changes or modifications to this agreement.
7. Compliance with Applicable Law and Approvals. WAUPACA COUNTY shall install, operate, maintain, and remove its tower and broadband internet infrastructure in accordance with all applicable federal, state, and local governmental laws, rules, and regulations ("Laws") now in existence or as hereafter amended. WAUPACA COUNTY shall obtain, maintain, and fully comply with any and all permits or approvals required. PROPERTY OWNER agrees to comply with all laws relating to the use of the real property and any improvements on the property.
8. Maintenance and Repair. WAUPACA COUNTY shall maintain its tower and broadband internet infrastructure at no cost to PROPERTY OWNER and shall repair, at no cost to PROPERTY OWNER and to PROPERTY OWNER'S reasonable satisfaction, any damages to the real property or land leased area that may result from WAUPACA COUNTY'S exercise of any of the rights and privileges hereby granted, pursuant to this agreement. WAUPACA COUNTY shall maintain insurance coverage to the extent necessary to cover any liability arising under this provision including Tower Collapse coverage.
9. Damage or Destruction of Property. If the tower is destroyed or damaged so as, in WAUPACA COUNTY'S judgment to render the site unusable as a broadband internet broadcast site, WAUPACA COUNTY may elect to terminate this lease upon thirty (30) days written notice to PROPERTY OWNER.
10. Termination.
 - a. WAUPACA COUNTY may terminate this agreement, without cause, by giving no less than ninety (90) days prior written notice to Property Owner, at the end of any five-year term.
 - b. PROPERTY OWNER can terminate this agreement with ninety (90) days' notice if tower is determined by a responsible agency to be unsafe after an inspection. Prior to termination WAUPACA COUNTY shall have ninety (90) days to correct any defective or unsafe condition.
 - c. If WAUPACA COUNTY terminates the agreement, WAUPACA COUNTY has right to remove and utilize the physical tower for other purposes; if WAUPACA COUNTY does not need the tower PROPERTY OWNER will be offered the opportunity to purchase the tower for one dollar (\$1); if PROPERTY OWNER does not desire to obtain the tower; then, at WAUPACA COUNTY'S expense the tower will be removed within a reasonable period of

time. If PROPERTY OWNER terminates the agreement per section 8, WAUPACA COUNTY agrees to have the tower removed within a reasonable period of time.

- d. PROPERTY OWNER shall record the lease with the Waupaca County Register of Deeds for a clear statement that the lease shall run with the land. Sale of the property by PROPERTY OWNER shall not result in a termination of this agreement if the lease has not been terminated by other mechanisms available within this paragraph. IF PROPERTY OWNER plans to sell real property, PROPERTY OWNER agrees to offer WAUPACA COUNTY the opportunity to purchase the property being used as described in Exhibit "A" together with a deeded access to the property unless prohibited by municipal ordinance.

11. No Liability. Except as provided herein, WAUPACA COUNTY agrees to fully indemnify and hold the PROPERTY OWNER harmless from and against any and all claims, demands, costs, expenses, liabilities, causes of action and damages of every kind and character (including reasonable attorney's fees) which may be asserted by any third party in any way related or incident to, arising out of, or in connection with WAUPACA COUNTY, its agents, officers, employees or contractors negligent, intentional or wrongful performance or failure to perform under this agreement or any negligent, intentional or wrongful act or omission committed by WAUPACA COUNTY as part of this agreement. PROPERTY OWNER, its agents, officers, employees or contractors, shall not be liable for any damage from any cause whatsoever to the broadband internet infrastructure or the leased tower area, specifically including, without limitation, damage, if any, resulting from PROPERTY OWNER'S maintenance operations conducted at the tower site or from vandalism or unauthorized use of the tower, except if such damage is caused by negligence or willful misconduct of PROPERTY OWNER, its agents, officers, employees or contractors.

WAUPACA COUNTY does not waive, and specifically reserves, its rights to assert any and all affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893, and related statutes.

12. Damages. Each party to this agreement agrees to notify the other within a reasonable timeframe if damages or other concerning conditions are observed on the other's equipment or structures when accessing the real property, structures, or vicinity.
13. Insurance. WAUPACA COUNTY, at its own expense throughout the term of this agreement, as extended, shall comply with the insurance requirements as follows:
 - a. Liability Insurance. WAUPACA COUNTY shall deposit with PROPERTY OWNER on or before the COMMENCEMENT DATE, certificate of insurance and listing PROPERTY OWNER as an additional insured. WAUPACA COUNTY agrees to maintain a liability insurance policy for at least \$1,000,000. WAUPACA COUNTY shall keep the insurance in effect, and the certificates evidencing the insurance on deposit with PROPERTY OWNER, during the Term of the agreement.
 - b. Property/Casualty Insurance. Each party to this agreement is responsible for maintaining property/casualty insurance on its own equipment, facilities, and buildings.

14. Frequency Interference. WAUPACA COUNTY operates within unlicensed wireless bands including, but not limited to, 900mhz, 2ghz, 5ghz, 6ghz and 60ghz; property owner agrees to not allow construction of any telecommunications facility on owned real property within 1,000' of WAUPACA COUNTY's tower.

15. Notices. All notices herein required to be given or which may be given by either party to the other shall be made in writing and deposited in the United States mail, first class certified or registered mail, return receipt requested or hand-delivered, to be effective when properly sent and received, refused, or returned undelivered, and addressed as follows:

To PROPERTY OWNER: Town of Dayton
 N2285 State Road 22
 Waupaca, WI 54981

 Town of Farmington
 E913 Prairie View Lane
 Waupaca, WI 54981

 Town of Lind
 N1924 County Rd E
 Waupaca WI 54981

To WAUPACA COUNTY: Waupaca County
 811 Harding Street
 Waupaca, WI 54981
 Attn: Planning & Zoning Director

Either party may change its address for notice by notifying the other party in the manner provided in this section.

16. Governing Law. This agreement shall be constructed and interpreted under the laws of the State of Wisconsin and venue of any suit arising out of this lease shall be in the Circuit Court of Waupaca County, State of Wisconsin or in the United States District Court, Eastern District of Wisconsin, as applicable.

17. No Interest in Property. Nothing herein shall be deemed to create a lease, or easement of any property, or to grant any interest in the real property or tower covered by this agreement, other than a revocable, real property license to use the leased tower area.

18. Miscellaneous.

a. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.

b. Time is and shall be of the essence of each term and provision of this agreement.

- c. The headings of the several paragraphs and section of this agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- d. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision does not materially prejudice either PROPERTY OWNER or WAUPACA COUNTY in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this agreement.
- e. Days, unless otherwise specified, shall mean calendar days.
- f. Whenever in this agreement the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent.

By signing herein, I state that I am authorized to enter this agreement and understand the covenants, conditions and provisions set forth.

PROPERTY OWNER – Town of Payton:

By: *John R. Miller*

Date: 5/27/21

ATTEST:

By: *Danielle Taggart*

Date: 5/27/21

WAUPACA COUNTY:

By: *[Signature]*

Date: 06-09-2021

ATTEST:

By: *Jill Kadeau*

Date: 6-9-21

PROPERTY OWNER – Town of Lind

By: *Steve Hall*

Date: 5/27/21

ATTEST:

By: *Danielle Taggart*

Date: 5/27/21

PROPERTY OWNER – Town of Farmington

By: Caroline J. Murphy, Chair

Date: 5/7/2021

ATTEST:

By: Danielle Taggart

Date: 5/7/2021

END OF DOCUMENT