

**OPTION AND STRUCTURE LEASE AGREEMENT  
CITY OF HARRISONBURG VIRGINIA TOWER STREET WATER TANK**

THIS OPTION AND LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by CITY OF HARRISONBURG, a Virginia Municipal Corporation, in care of the Department of Public Utilities, 2155 Beery Road, Harrisonburg, Virginia 22801 (hereinafter referred to as "**Landlord**") and VIRGINIA PCS ALLIANCE, L.C., a Virginia limited liability company, d/b/a NTELOS (hereinafter referred to as "**Tenant**").

**BACKGROUND**

Landlord owns that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 525 East Washington Street, Tax Map 32-D-1 (the "**Property**"). The Tenant desires to use a portion of the Property in connection with its federally licensed communications business. The Landlord desires to grant to the Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

**1. OPTION TO LEASE.**

(a) Landlord grants to Tenant an option (the "**Option**") to lease a portion of the Property consisting of (i) mezzanine area space of approximately One Hundred Eighty (180') square feet including the air space above such area space and (ii) capacity in the cable tray from the mezzanine to the top of the structure (iii) space on the structure together with such easements as are necessary for the antennas and initial installation as described on attached **Exhibit 1** (collectively, the "**Premises**").

(b) During the Option period, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term (as defined below), reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of Five Hundred and No/100 Dollars (\$500.00) within thirty (30) business days of the Effective Date. The Option will be for a term of one (1) year commencing on the Effective Date (the "**First Option Term**"). Tenant shall have the right to extend the First Option Term to 11:59 p.m. (eastern time) on December 31, 2015 (the "**Second Option Term**") by giving Landlord written notice thereof ("**Extension Notice**") in accordance with the provisions of paragraph 17 before the expiration of the First Option Term and by paying to Landlord, simultaneously with giving the Extension Notice to Landlord, an extension fee of Five Hundred and No/100 Dollars (\$500.00) ("**Extension Fee**"). The First Option Term and the Second Option Term are collectively referred to herein as the "Option Term".

(d) The Option may be sold, assigned or transferred at any time by Tenant to Tenant's parent company or member if Tenant is a limited liability company or any affiliate or subsidiary of, or partner in, Tenant or its parent company or member agreeing to be subject to the terms hereof and that demonstrates the technical and financial ability and experience to complete this Agreement. Otherwise, the Option may not be sold, assigned or transferred without the written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. From and after the date the Option has been sold, assigned or transferred by Tenant to Tenant's parent company or member if Tenant is a limited liability company or any affiliate or subsidiary of, or partner in, Tenant or its parent company or member agreeing to be subject to the terms hereof, Tenant shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action.

(e) During the Option Term, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option then Landlord leases the Premises to the Tenant subject to the terms and conditions of this Agreement. If the option is exercised during the First Option Term, the option sum of Five Hundred and No/100 Dollars (\$500.00) will be applied to the first month's rent. If Tenant does not exercise the Option at any time during the Option Term, this Agreement will terminate and the parties will have no further liability to each other and the initial Option and/or Extension Fees to be retained by the Landlord.

(f) If during the Option Term, or during the term of this Agreement if the Option is exercised, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises, Property or any of Landlord's contiguous, adjoining or surrounding property (the "**Surrounding Property**," which includes (without limitation) the remainder of the structure) or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Any sale of the Property shall be subject to Tenant's rights under this Agreement. Landlord agrees that during the Option Term, or during the Term of this Agreement if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises, Property or Surrounding Property or impose or consent to any other restriction that would prevent or limit Tenant from using the Premises for the uses intended by Tenant as hereinafter set forth in this Agreement.

## **2. PERMITTED USE.**

(a) Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communication fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, I beams, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property; Tenant further has the right, but not the obligation, to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, and to make Property improvements, alterations, upgrades or additions appropriate for Tenant's use ("**Tenant Changes**"). Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement only with prior approval from the Landlord, which approval shall not be withheld unreasonably. Notwithstanding the foregoing, (i) Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant's Changes or to insure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations and (ii) Tenant shall have the right to install, modify, substitute and/or replace any and all equipment in the mezzanine area space of approximately One Hundred Eighty (180') square feet comprising a portion of the Premises without Landlord's consent.. In the event Tenant desires to modify or upgrade the Communication Facility, and

Tenant requires an additional portion of the Property (the “**Additional Premises**”) for such modification or upgrade, Landlord may consider to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by a reasonable amount consistent with rental rates then charged for comparable portions of real property being in the same area. Upon Landlord’s approval of such Additional Premises, Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

(b) Prior to the initial installation of Tenant’s Changes, Tenant will supply the Landlord with plans and specifications (“**Plans**”) to be reviewed and approved by the Landlord prior to commencement of Tenant’s Changes. Landlord’s approval will not be unreasonably withheld, conditioned or delayed. After approval, the Plans will be considered incorporated in this Agreement as **Exhibit 1**. If the Landlord disapproves the Plans then the Tenant will provide the Landlord with revised Plans, such revisions to be within Tenant’s reasonable discretion. In the event Landlord disapproves of the Plans upon a second (2nd) submission, Tenant may terminate this Agreement.

(c) Tenant’s Permitted Use of the Premises shall be on a not-to-interfere basis with other users of the Premises and the Property, as set forth in Paragraph 8, Interference.

### **3. TERM.**

(a) The initial lease term shall be five (5) years (“**Initial Term**”), commencing on the effective date of written notification by Tenant to Landlord of Tenant’s exercise of the Option (the “**Term Commencement Date**”). The Initial Term shall terminate on the fifth (5<sup>th</sup>) anniversary of the Term Commencement Date.

(b) This Agreement shall automatically renew after the initial five year term for an additional four (4) five (5) year renewal terms (“**Extension Terms**”), upon the same terms and conditions unless either party notifies the other in writing of its intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

(c) If, at least sixty (60) days prior to the end of the fourth (4<sup>th</sup>) extended term, either the Landlord or Tenant has not given the other written notice of its desire that the term of this Agreement end at the expiration of the fourth (4<sup>th</sup>) extended term, then upon the expiration of the fourth (4<sup>th</sup>) extended term this Agreement shall continue in force upon the same covenants, term and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such annual term. Monthly rental during such annual terms shall be equal to the rent paid for the last month of the fourth (4<sup>th</sup>) extended term. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the “**Holdover Term**”), subject to the terms and conditions of this Agreement.

(d) The Initial Term, the Extension Terms and the Holdover Term are collectively referred to as the Term (“**Term**”).

### **4. RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the “**Rent Commencement Date**”), Tenant will pay the Landlord a monthly rental payment of One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250.00) (“**Rent**”), at the address set forth above, on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. In partial months occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Rent Commencement Date.

(b) The established rental rate shall not be subject to change during the initial five (5) year period. The annual rent for each and every Extension Term shall be the annual rent in effect for the final year of the prior Term or Extension Term, as applicable, increased by seven and one half percent (7.5 %).

(c) All Rent or other charges payable under this Agreement shall be billed by Landlord monthly in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.

**5. APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

**6. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 Default and Right to Cure of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by Tenant or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable; or

(c) by Tenant upon written notice to Landlord for any reason, at any time prior to commencement of construction by Tenant; or

(d) by Tenant upon sixty (60) days prior written notice to Landlord for any reason, so long as Tenant pays Landlord a termination fee equal to three (3) months Rent, at the then current rate; provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any one or more of Paragraphs 5(b) Approvals, 6(a) Termination, 6(b) Termination, 6(c) Termination, 8 Interference, 11(b) Environmental, 18 Severability, 19 Condemnation or 20 Casualty of this Agreement.

**7. INSURANCE.**

(a) Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by Tenant's commercial general liability insurance shall apply to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property.

(b) Tenant shall have the right to self-insure with respect to any of the above insurance requirements after providing proof of sufficient financial strength to self-insure, based on generally accepted accounting principles.

(c) Landlord will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by Landlord's commercial general liability insurance shall apply to Tenant as an additional insured, but only with respect to Tenant's liability arising out of its interest in the Property.

**8. INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the nearby radio City or ECC emergency communication radio tower, the Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, 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 acknowledges that Landlord uses nearby Property for the operation of an emergency communications system and Tenant shall not interfere therewith in any way. .

(b) Landlord may grant, after the date of this Agreement, a lease, license or any other right to another third party for use of the Property, however, subject that the use may not in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord to the best of its ability will assist Tenant to determine source of interference and to cease interference and will allow Tenant to hire a professional independent consultant to determine the cause of interference at Tenant's cost if the interference is not resolved within forty-eight (48) hours. If the cause of interference is determined to be from a subsequent third party's equipment located on the property then the subsequent third party will be required to reimburse Tenant for the consultant's cost. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Landlord. Nothing in this paragraph 8(c) is to be applied to the Landlord's Emergency Communications operations or its existing operations.

**9. INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs but excluding real property or personal property taxes) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

**10. WARRANTIES.**

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents and warrants that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the structure; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant (subject to Landlord's rights) sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord shall provide to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

**11. ENVIRONMENTAL.**

(a) Landlord represents and warrants, to the best of its knowledge, that the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Landlord's knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Property.

(b) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, as reasonably determined by Tenant renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landlord.

**12. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Landlord grants to Tenant an easement for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. In the event any public utility is unable to use the access or easement provided to Tenant then the Landlord agrees to grant additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

**13. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within one hundred twenty (120) days of the termination of this Agreement, Tenant will remove all of Tenant's above-ground improvements and Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Tenant be required to remove from the Premises or the Property any foundations or underground utilities.

**14. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, in good and tenable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

**15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under this Agreement, law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement. Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under this Agreement, law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord by Tenant.

**16. ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign this Agreement under the terms and conditions set forth in Paragraph 1(d).

**17. NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed to the parties as follows:

If to Tenant:

Virginia PCS Alliance, L.C.  
Attn: Senior Lease Administrator  
1150 Shenandoah Village Drive  
Waynesboro, VA 22980

With a copy to:

NTELOS Wireless  
Attn: General Counsel, Legal Department  
1154 Shenandoah Village Drive  
Waynesboro, VA 22980

If to Landlord:

Harrisonburg Department of Public Utilities  
Attn: Director of Public Utilities  
2155 Beery Road  
Harrisonburg, VA 22801

With a copy to:

City of Harrisonburg, Virginia  
Attn: City Manager  
345 South Main Street  
Harrisonburg, VA 22801

Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other as provided herein.

**18. SEVERABILITY.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

**19. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

**20. CASUALTY.** Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If notice of termination is given, or if Landlord or Tenant undertake to rebuild the Communication Facility, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to secure a replacement transmission location or the reconstruction of the Communication Facility is completed.

**21. WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

**22. TAXES.** Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property. Tenant shall reimburse the Landlord for Tenant's proportionate share of the real estate taxes, upon timely receipt of a copy of the tax bill and request for reimbursement from the Landlord. For purposes herein, Tenant's proportionate share shall be determined based upon the square footage of the Premises (excluding therefrom any unassessed square footage used by Tenant, e.g., the rooftop) relative to Landlord's entire parcel of real estate (using, in the case of building space, the net usable square footage of the building, and in the case of leased land, the unimproved portion of Landlord's real estate (including parking areas)). At the request of either party, the other shall provide evidence of payment of taxes.

**23. SALE OF PROPERTY.** If Landlord, at any time during the Term of this Agreement, decides to sell, subdivide or rezone any of the Premises, all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and Tenant's rights hereunder. Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion, any such testing to be at the expense of Landlord or Landlord's prospective purchaser, and not Tenant.



If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment. Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property for non-wireless communication use. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new landlord. The provisions of this Paragraph 23 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.

#### **24. MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law and Venue.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law. Venue for any cause of action arising from this Agreement shall be proper only in the Circuit Court of Rockingham, Virginia.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean “including but not limited to”; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant.

(i) **No Electronic Signature/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as an Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

**25. PROVISIONS TO MAINTAIN FUNCTIONALITY OF WATER TANK.**

(a) Tenant shall be responsible for the performance of an analysis of the Tank structure to ensure that the facility is sufficient to accommodate Tenant's proposed installation hereunder. Said structural analysis report and engineering certification shall be provided to Landlord. In the event any structural modifications or enhancements are required to accommodate Tenant's proposed installation, the costs of all improvements shall be solely at Tenant's expense, however, all modifications or upgrade design drawings shall be presented to Landlord for approval (not to be unreasonably withheld, conditioned or delayed, and in no event delayed beyond twenty (20) days), prior to the performance thereof. Tenant shall not, at any time, install equipment on the Tank structure which exceeds the structural integrity of the Tank as described by the certifying structural engineer.

(b) Landlord shall have an opportunity to be represented at all construction site inspection with Tenant and its subcontractors, and shall be present for the final site inspection, if the same is deemed required.

(c) Landlord shall have the authority to cause Tenant to immediately suspend all of Tenant's construction activities if it perceives there to be a potential or realized conflict between the Tenant Site construction and existing Landlord site equipment and systems until the time Landlord is satisfied that the conflict has been resolved. During any such suspension, rent shall be abated.

(d) Tenant shall recognize and adhere to the following concerns of Landlord for protection of the tank, understanding that Landlord shall consider the following when reviewing initial installations, modifications or other changes for approval. Furthermore, Landlord can require Tenant to modify design (approved or otherwise) should the following occur: (i) Openings cut in the roof compromise the sanitary integrity of the tank and contents. (ii) Cables mounted on tank ladders and across access openings create OSHA and safety-related deficiencies. (iii) Antenna cables lying across the structure floor make access nearly impossible and create severe trip hazards. (iv) Cables, mounting devices, and the antennas themselves hamper access to vents and manholes. (v) Antenna brackets mounted on the structure floor prevent access around the tank. (vi) Improper (or unperformed) touch-up painting after the antenna is installed lead to premature coating failure on the interior and exterior of the tank. (vii) Cables, antennas, and mounting devices placed too close to the tank and its appurtenances make it difficult, if not impossible, to clean and paint behind the cables. (viii) Structural Problems caused by antenna installation. (ix) Improper cable penetrations cause damage. (x) Improperly mounted brackets or antennas create a potential liability should high winds, ice loading, seismic activity, or other similar events cause the installation to fail, damaging the tank or surrounding property. (xi) Unistruts screwed directly into steel pierce the steel allowing oxygen and moisture inside the steel, thus promoting undetected corrosion. (xii) Improperly designed brackets buckle the tank during high winds. (xiii) Damages from welding to interior and exterior paint coating and metal. Furthermore, Landlord and Tenant shall operate and act together to assure that: (i) All work must be properly scheduled. (ii) Tank penetration and reinforcement requirements must be adhered to. (iii) The size and location of cable support and mounting brackets shall be approved by Landlord. (iv) Welding requirements, procedures, and acceptance criteria shall be clearly stated. (v) The location and placement of cables are verified to prevent safety or personnel hazards.

(e) Tenant further understands and agrees that if Landlord must perform maintenance to the tank and cannot adhere to the standards with communication equipment in place, Tenant shall, upon sixty (60) days notification from Landlord make provisions to remove imparting equipment throughout duration of Landlord's activities, as sole cost of Tenant. Landlord shall provide space as reasonably possible to allow Tenant to position mobile support structures to accommodate the temporary relocation.

**26. REQUIRED GOVERNMENTAL APPROVALS.** This Agreement shall be subject to and conditioned on all provisions of the Code of Virginia applicable to the lease of real property interest by a Virginia municipal corporation, including but not limited to Virginia Code Sections 15-2-2100, *et seq.*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be effective as of the last date written below.

**"LANDLORD"**

Name: City of Harrisonburg

Signature: \_\_\_\_\_

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

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

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

**"TENANT"**

Name: Virginia PCS Alliance, L.C.

Signature: \_\_\_\_\_

Name: R.L McAvoy

Title: Executive Vice President

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

**[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]**



**EXHIBIT 1**

**PERMITTED USE**