

**NOTICE TO BIDDERS**  
**Borough of Beachwood**

**PLEASE TAKE NOTICE** that sealed bids will be received by the Borough of Beachwood, Ocean County, New Jersey **on or before May 17, 2022 at 10:00 a.m.**, prevailing time, in the Municipal Complex Meeting room of the Borough of Beachwood for:

LEASING OF SPACE FOR CELLULAR ANTENNAS  
ON MUNICIPAL WATER TANK LOCATED AT 67 LOCKER STREET, A/K/A BLOCK 2.20, LOT 1

A bid package consisting of the Resolution/Advertisement, this Notice to Bidders, Instructions to Bidders, Specifications, Proposed Lease Agreement, Proposal Sheet and required Affidavits may be obtained at the office of the Clerk of the Borough of Beachwood at the above address between the hours of 9:00 A.M. and 4:00 P.M. Monday through Friday or on the Borough website Legal Ads <https://www.beachwoodusa.com/boroughlegalnotices> .

Proposals must be submitted on forms provided by the Borough of Beachwood and placed in a sealed envelope bearing the name of the bidder, and clearly marked, "**BID CELLULAR TOWER LEASE\_ENCLOSURE** --**DO NOT OPEN**" in the lower left corner, or they will not be considered. Proposals can be mailed or delivered to:

Susan A. Minock, RMC- Borough Clerk  
Borough of Beachwood  
1600 Pinewald Road  
Beachwood, N.J. 08722

The Borough of Beachwood assumes no responsibility for bids returned by mail.

The Borough reserves the right to reject any and all bids or to waive any minor informalities or irregularities in the Proposal received and to accept the bid which is in the best interest of the Borough.

## **INSTRUCTIONS TO BIDDERS**

### **1. SUBMISSION OF BIDS**

The Borough of Beachwood, Ocean County, New Jersey, invites sealed bids pursuant to the Notice to Bidders.

- A. Sealed bids will be received by the designated representative at the time and place stated in the Notice to Bidders, and at such time and place will be publicly opened and read aloud.
- B. The bid proposal form shall be submitted, (1) in a sealed envelope; (2) addressed to the Borough of Beachwood, (3) bearing the name and address of the bidder written on the face of the envelope, and (4) clearly marked "BID" with the contract title and/or bid # being bid.
- C. It is the bidder's responsibility to see that bids are presented to the Borough of Beachwood on the hour and at the place designated. Bids may be hand delivered or mailed; however, the Borough of Beachwood disclaims any responsibility for bids forwarded by regular or overnight mail. Bids received after the designated time and date will be returned unopened.
- D. Sealed bids forwarded to the Borough of Beachwood before the time of opening of bids may be withdrawn upon written application of the bidder who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the bid. Once bids have been opened, they must remain firm for a period of sixty (60) calendar days.
- E. All prices and amounts must be written in ink or preferably typewritten. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be rejected by the Borough of Beachwood. Any changes, white-outs, strikeouts, etc. on the proposal page must be initialed in ink by the person responsible for signing the bid.
- F. Each bid proposal form must give the full business address of the bidder and be signed by an authorized representative. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter. When requested, satisfactory evidence of the authority of the officer signing shall be furnished.

### **2. BID SECURITY AND CONSENT OF SURETY.**

Accompanying each bid shall be a certified check, cashier's check or a bid bond in an amount equal to three (3) months rent. The bid bond shall not exceed \$20,000.00

payable unconditionally to the Borough of Beachwood.

When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid Bond from a surety company authorized do business in the State of New Jersey and acceptable to the Borough of Beachwood. The check or bond of the unsuccessful bidders(s) shall be returned as prescribed by law. The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted. Whereupon the check shall be returned to the successful bidder. However, the check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 40A:11-21.

Accompanying each bid shall be a consent of surety from a surety company authorized to do business in the State of New Jersey indicating that the company shall supply a performance bond in the amount of \$10,000.00 pursuant to the specifications and lease agreement attached hereto and made a part hereof.

**3. BID DOCUMENTS.**

The bid must be returned in its entirety in order to be considered for an award. Each bid must be accompanied by the items requested below in the form attached as Appendix A.

Failure to provide these items and the entire bid package may be cause for rejecting this proposal.

1. Notice to Bidders.
2. Proposal Sheet.
3. Specifications.
4. Instructions to Bidders.
5. Bid Surety.
6. Consent of Surety.
7. Non-collusion Affidavit
8. List of names and addresses of all stockholders in the corporation or partnership who own 10% or more of its stock - "Ownership Disclosure".
9. Form of Lease Agreement.
10. Form of Memorandum of Agreement.

**4. FAILURE TO ENTER INTO A LEASE.**

Should the successful bidder(s) fail to execute and deliver the lease and certificate of insurance within ninety (90) days after receipt of written notification by the Borough Clerk that the lease is ready for execution the bidder forfeits to the Borough as liquidated damages the bid guarantee deposited with its bid.

**5. RIGHT TO REJECT BIDS.**

The Borough reserves the right to reject any and all bids or parts thereof and to waive any informality if deemed in the best interests of the Borough.

**6. FORM OF LEASE.**

The proposed form of lease is attached as Appendix B.

**7. FORM OF CONTRACT.**

The term of the lease shall be for a period of five (5) years with four (4) renewable five (5) year extensions.

**8. MINIMUM BID.**

Said minimum bid to be considered by the Borough for said initial lease shall be \$28,000.00 per annum.

**9. AWARD OF BIDS.**

- A. Bidders are hereby notified and advised that the Borough has invited bids which allow for a co-location on the water tank premises. The Borough may elect to provide for the simultaneous leasing of the leased premises to other tenant(s) under a lease identical in form as the subject lease except as to the amounts of rent. Each lease entered into under this bid shall provide for co-location to the maximum extent.
- B. The highest bidder, as tabulated by the Borough Clerk, will be awarded the right to select its desired location on the tank for its antenna array and ground facility as shown in Exhibit "A" attached. After the award to the highest bidder, the second highest bidder for the site will be afforded the opportunity to select its desired location for antenna array and ground building at the site. This selection process shall proceed through the exhaustion of all bidders for the site.
- C. In the event of a tie in the bidding between two or more bidders the order of priority between such bidders shall be determined by a coin toss made by the Borough Clerk.

**10. AWARD OF CONTRACT.**

Award of the contract, if made, will be made on or before the second regular meeting of the governing body following the bid date.

**11. LOCATION OF CELLULAR ANTENNAS.**

The requirements for the location and installation of cellular antennas by the highest bidder shall be as indicated in the attached Exhibit A, LE-1, LE-2, and LE-3.

## SPECIFICATIONS

- a. The successful Lessee shall at its own cost and expense and in strict conformity with all applicable regulations and specifications, furnish all material, labor and equipment for the installation of the antenna array, cable connections and ground building.
- b. In the event that the subject water tower is destroyed or demolished, then Lessee may terminate the Lease Agreement in accordance with the provisions of paragraph 16 of the Lease Agreement. If the demolition is voluntary by the Borough of Beachwood at least twelve months notice will be given to the Lessee of demolition.
- c. Should Lessor determine it must perform routine maintenance or repair to the water tank in the Tower Space that the Lessee has installed, Lessor shall give Lessee at least one hundred eighty (180) days written notice of such work, such that Lessee may evaluate its options.

Upon prior written request of the Lessor, Lessee 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 Lessor performing maintenance, repair or similar work at the Property or on the Towner provided:

- i. The Temporary Relocation is similar to Lessee's existing location in size and is fully compatible for Lessee' use, in Lessee's reasonable determination;
- ii. Lessee pays all costs incurred by Lessee for relocation Lessee's equipment to the Temporary Relocation and improving the Temporary Relocation so that it is fully compatible for the Lessee's use, in Lessee's reasonable determination; notwithstanding anything to the contrary herein, Lessor acknowledges and agrees that Lessor will not require Lessee to relocate its equipment to the Temporary Relocation any more than one (1) time very ten (10) years.
- iii. Lessor gives Lessee at least one hundred eighty (180) days written notice prior to requiring Lessee to relocate;
- iv. Lessee's use at the premises is not interrupted or diminished during the relocation and Lessee is allowed, if necessary, in Lessee'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 Lessor, Lessee is permitted to return to its original location from the temporary location with all costs for the same being paid by Lessee.

The Borough and the successful bidder shall coordinate their efforts jointly to have the successful bidder complete any connections or mounts to the tank and structure for its antenna

and co axle cables prior to the actual painting of the tower and tank structure. After completion of the painting the successful bidder will attach the antennas and cables to said connections. The Borough acknowledges that is important to Lessee to complete its equipment installation without material delay, and, accordingly, the Borough agrees that it will complete the rehabilitation and painting work as quickly as reasonably possible under all the circumstances.

There will be no additional compensation or reduction in rent to the successful bidder for said coordination of effort.

11. All facilities constructed by the successful bidder shall be erected in accordance with all applicable municipal, state and Federal laws and regulations.
12. All successful bidders will procure and maintain commercial general liability insurance, with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage liability, with a certificate of insurance to be furnished to the town within 30 days of written request. Such policy will provide that cancellation will not occur without at least 15 days prior written notice to Owner.
13. Except as otherwise set forth in the Lease Agreement, the Borough makes no representations regarding the status or condition of the facility. Bidders may contact the Borough Clerk to arrange for inspection of the site and to satisfy themselves of its suitability for its proposed use.
14. The Borough is soliciting bids for location of communication antennas on the following existing municipal water tank:

<u>Street Address</u>	<u>Block</u>	<u>Lot</u>
67 Locker Street	2.20	1

APPENDIX A

BID FORMS

Borough of Beachwood

Bid Proposal Form  
for

# \_\_\_\_\_

\_\_\_\_\_  
(Bid Name)

The firm of \_\_\_\_\_ submits a binding bid for consideration of  
Bid # \_\_\_\_\_ for an annual rent during initial term for each year at  
\$ \_\_\_\_\_/yr.

Signed by Authorizing Person for Company \_\_\_\_\_

Typed \_\_\_\_\_  
(Name) (Position)

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

Typed \_\_\_\_\_  
(Name) (Position or Notary)



**NON-COLLUSION AFFIDAVIT**

**State of New Jersey**        }  
  }  
  } SS:  
**County of**                        }

I, \_\_\_\_\_, residing in \_\_\_\_\_,  
in the County of \_\_\_\_\_, and State of \_\_\_\_\_,  
of full age, being duly sworn according to law on my oath depose and say that:

I am \_\_\_\_\_ of the firm of \_\_\_\_\_, the bidder  
making this Proposal for the bid proposal entitled \_\_\_\_\_, and  
that I executed the said proposal with full authority to do so that bidder has not, directly or  
indirectly entered into any agreement, participated in any collusion, or otherwise taken any in  
restraint of free, competitive bidding in connection with above named project; and that all  
statements contained in said proposal and in this affidavit are true and correct, and made with  
full knowledge that the \_\_\_\_\_ relies upon the truth of the  
statements contained in said \_\_\_\_\_ (Name of Contracting Unit) Proposal  
and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or  
secure such contract upon an agreement or understanding for a commission, percentage,  
brokerage, or contingent fee, except bona fide employees or bona fide established commercial or  
selling agencies maintained by \_\_\_\_\_.

Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Type or print name of affiant under signature)

STOCKHOLDER DISCLOSURE CERTIFICATION

I hereby certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

I hereby certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

\_\_\_\_\_ Partnership    \_\_\_\_\_ Corporation    \_\_\_\_\_ Sole Proprietorship    \_\_\_\_\_ LLC

PLEASE CHECK APPROPRIATE BOXES ABOVE AND SIGN BELOW

Stockholders/Managers:

Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_

THIS STATEMENT MUST BE INCLUDED WITH BID SUBMISSION

Subscribed and sworn before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
(Affiant)

\_\_\_\_\_  
(Print name & title of affiant)

\_\_\_\_\_  
(Notary Public)

My Commission Expires

(Corporate Seal)

APPENDIX B  
LEASE AGREEMENT

**LEASE AGREEMENT  
COMMUNICATIONS SITE/ EXISTING WATER TANK**

**THIS AGREEMENT** entered into as of this            day of            ,            by and between the Borough of Beachwood, 1600 Pinewald Road, Beachwood, N.J. 08722 ("Landlord") and            with its principal office at            ("Lessee").

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Premises:**

Landlord is the owner of the real property upon which a water tank is located at 67 Locker Street, Block 2.20, Lot 1 on the Official Tax Map of the Borough of Beachwood.

**2. Leased Premises:**

The Landlord desires to lease to Lessee and Lessee desires to lease from Landlord, a portion of the Premises ("Leased Premises") as described in Exhibit A in order to operate and maintain certain communications equipment, on the terms and conditions set forth below. The Leased Premises shall include a location for installation of wireless communications antenna array and associated cabling on Landlord's existing water tank together with space at the base of such tank as shown on Exhibit A, LE-3 for an equipment shelter, its entrance pad and space on Premises for running of utilities lines, transmission lines, other cables and all necessary appurtenances, including out limitation generators and fuel storage tanks (being collectively referred to herein as "Antenna Facilities") as more specifically described in Exhibit A. In connection therewith Lessee has the right to do all work necessary for preparing, maintaining and altering Leased Premises for Lessee's business operations and for installing, removing, replacing and modifying a personal communications service system facility. All of Lessee's instruction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Lessee shall pay for the electricity and any of the utilities it consumes in its operations. If permitted by the local utility company servicing the Leased Premises, Lessee shall furnish and install its own electrical meter at the Leased Premises for the measurement of electric power used by Lessee's installation. If however, the local utility company will not permit Lessee's own meter, then Lessee shall be permitted to install its own sub-meter at the Leased Premises for the measurement of electric power used by Lessee's installation and Lessee shall pay for such power consumption thirty (30) days after receipt of invoice from Landlord indicating the usage amount.

Landlord makes no representations regarding the availability of utilities at the Leasehold Premises.

**3. Co-location:**

It is the intent of the parties that this Lease Agreement is a non-exclusive agreement which anticipates utilization of the water tank by other Lessees for wireless communication purposes. The Lessee's operation should occur to the greatest degree

possible so as not to interfere with other users on the premises. Likewise, the Lessee's use of the Leased Premises shall not interfere with the principal use of the Premises by the Landlord for water tank purposes. The Landlord will not permit the installation of any future equipment which results in technical interference problems with the Lessee's or other Lessees then existing equipment. The Landlord will not be responsible for any expense due to interruption of communication service.

**4. Term:**

- A. This Agreement is for a term of five (5) years commencing on the first day of the month following the issuance to the Lessee of all necessary governmental approvals, including a building permit ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date (the "Term") unless otherwise terminated as provided for herein.

This Agreement may be extended by the Lessee at Lessee's option for four (4) additional five (5) year period. This Agreement will be automatically renewed for four (4) additional terms of five (5) years each, (each a "Renewal Term") unless Lessee provides Landlord notice of intention not to renew not less than ninety (90) days prior to the expiration of the Term or any Renewal Term. The rent payment shall increase annually on each anniversary of the Commencement Date to an amount which shall be equal to the greater of; (i) one hundred three (103%) percent of the prior year's annual rent; or (ii) the rent that is calculated in accordance with the following formula:

$$\text{Renewal Rent} = (\text{Current Rent}) + ((\text{IR IL}) / \text{IL} \times \text{Current Rent})$$

Definitions:

IR is the Consumer Price Index for the month which is three (3) months immediately preceding the month in which the second year and each succeeding year commence.

IL is the Consumer Price Index for the month which is the same month as the IR index published twelve (12) months earlier than the IR index.

"Consumer Price Index" shall mean the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor for Urban Wage Earners and Clerical Workers for All Items (CPI W) U.S. City average or shall mean the successor thereto. In the event the Consumer Price Index is converted to a different standard reference base or otherwise revised, the determination of the rent for the second year and each succeeding year shall be made with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics, or if the Bureau should fail to publish the same, then with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by any nationally recognized publisher of similar statistical information. If the Consumer Price Index ceases to be published and there is no successor thereto, such other index as Landlord and Lessee may agree upon shall be substituted for the Consumer Price Index, and if they are unable to agree, then such matter shall be submitted to arbitration in accordance with the then existing commercial rules of arbitration of the American Arbitration Association at the American Arbitration Association office nearest the Lessee.

- B. INTENTIONALLY OMITTED
- C. Upon termination of the Agreement, all equipment shall be removed and the Leased Premises and water tank restored to the original condition, ordinary wear and tear excepted. Upon completion of the Leased Premises and water tank restoration to the Landlord's satisfaction, the performance guarantee will be returned to the Lessee.
- D. Lessee hereby agrees to supply to Landlord a performance guarantee in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00), ("Performance Guarantee"), for the sole purpose of assuring Lessee's faithful performance in the removal of Antenna Facilities as required under provision C above. If Lessee fails to remove the Antenna Facilities within sixty (60) days of the termination of this Agreement, Landlord shall notify Lessee in writing that Landlord will remove the Antenna Facilities and store the same at Lessee's expense. Failure by Lessee to remove Antenna Facilities from storage and to reimburse Landlord for any and all reasonable costs associated with such removal and storage ("Costs"), within sixty (60) days of removal of the Antenna Facilities, will result in Antenna Facilities being deemed abandoned and title of same will revert to Landlord. If Lessee fails to reimburse Landlord for Costs, Landlord may use the proceeds from the Performance Guarantee for Costs. Lessee will have no further responsibility or incur any further costs from the time Antenna Facilities are deemed abandoned.

**5. Rent:**

Lessee shall pay Landlord as annual rent for the premises the sum of \$ \_\_\_\_\_ annually. Lessee shall pay the Landlord the base rent monthly starting on the Commencement Date, monthly thereafter on the first day of each month.

**6. Installation of Equipment and Facilities:**

- A. Lessee shall have the right at its sole cost and expense to install, operate and maintain on the Leased Premises, in accordance with good engineering practices and with all applicable FCC Rules and Regulations the Antenna Facilities, equipment, equipment shelter, utility lines, transmission lines and all necessary appurtenances thereto.
- B. Lessee shall submit copies of the site plan and specifications to the Landlord for prior approval, which approval will not be unreasonably withheld or conditioned. The Lessee shall be required to supply a specific plan concerning the installation methods for the cables, antennas and shielding device. The plan shall specifically indicate and include shrouding of the tank leg and appropriate procedures that will be taken to ensure that the project is carried out in the least destructive and one which protects the safety and integrity of the area and neighboring properties. If the Landlord does not provide such approval or request for changes within fifteen (15) business days, Lessor shall be deemed to approve the plans. Landlord shall not be entitled to receive any additional consideration in exchange for giving its approval of Lessee's plans. Any damage done to the premises and/or the water tank during installation and/or during operation by Lessee shall be repaired and replaced within thirty (30) days of written notice of

said damage at Lessee's expense and to Landlord's sole satisfaction. There shall be a thirty (30) day extension of time for repair and replacement if Lessee is diligently pursuing the work.

- C. Bidders may contact the borough clerk to arrange for inspection of the site and to satisfy themselves of its suitability for its proposed use.

The Borough and the successful bidder shall coordinate their efforts jointly to have the successful bidder complete any connections or mounts to the tank and structure for its antenna and co axle cables prior to the actual painting of the tower and tank structure. After completion of the painting the successful bidder will attach the antennas and cables to said connections. The Borough acknowledges that is important to Lessee to complete its equipment installation without material delay, and, accordingly, the Borough agrees that it will complete the rehabilitation and painting work as quickly as reasonably possible under all the circumstances.

There will be no additional compensation or reduction in rent to the successful bidder for said coordination of effort.

#### **7. Compliance with Statutes, Regulations and Approvals.**

Lessee shall erect, maintain and operate its Antenna Facilities in accordance with applicable industry standards, state statutes, ordinances, rules and regulations now in effect or that hereafter may be issued by the Federal Communications Commission ("FCC") or any governing bodies with jurisdiction.

If the Lessee is unable, after diligent effort, to obtain its necessary governmental permits, then this Agreement may canceled by either party without further obligation.

#### **8. Maintenance.**

- A. Lessee shall, at its own expense, maintain any equipment on or attached to the Leased Premises in a safe condition, in good repair and in a manner suitable to Landlord.
- B. Lessee shall have sole responsibility for the maintenance, repair and security of its equipment, personal property, Antenna Facilities, and leasehold improvements, and shall keep the same in good repair and condition during the Agreement term.
- C. Lessee will not leave debris at the Leased Premises nor create a condition at the Leased Premises which is of a dangerous, noxious or offensive nature or which is hazardous or creates undue vibration, heat, noise or interference.

#### **9. Leased Premises Access.**

Lessee shall be allowed access to the Leased Premises 24 hours per day, 7 days a week. Landlord shall be allowed access to the Leased Premises 24 hours per day, 7 days a week provided that except in the event of an emergency Landlord shall give Lessee a minimum of twenty four (24) hours advanced notice of Landlord's intent to access the Leased

Premises and except in the event of an emergency Landlord shall not be entitled to access Lessee's equipment shelter.

**10. Taxes.**

- A. Lessee shall pay all real and personal property taxes (or payments in lieu of taxes) and assessments for the Leased Premises, if any, which become due and payable during the term of this Agreement as a direct result of Lessee's use of the Leased Premises. All such payments shall be made, and evidence of all such payments shall be provided to Landlord, at least ten (10) days prior to the delinquency date of the payment provided that Landlord gives Lessee notice that such taxes are due at least thirty (30) days prior to this due date. Lessee shall pay all taxes on its personal property on the Leased Premises.
- B. The Lessee shall have the right to file an appeal in a court of competent jurisdiction for any imposition of taxes imposed pursuant to this paragraph. If any increase to Landlord's real property taxes is the direct result of Lessee's improvements on the Premises, then Lessee shall reimburse the Landlord that proportionate share of such tax increase provided that as a condition of Lessee's obligation to pay such tax increases that: (i) that Landlord provide to Lessee the documentation from the taxing authority, reasonably acceptable to Lessee, indicating that the increase is due to Lessee's improvements, and (ii) that Landlord file a timely protest with the appropriate taxing authority, and consent to Lessee's intervention and prosecution of the same (the cost of such appeal to be borne by the parties on a pro rata basis).

Landlord and Lessee shall cooperate with each other in the protest of any such assessment by (i) providing each other with information regarding the relative valuation of their property, and (ii) allowing each other to participate in any proceeding related to the tax protest.

Nothing in this paragraph shall be construed as limiting either party's right to contest, appeal or challenge any tax assessment.

- C. Lessee shall indemnify Landlord from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against Lessee in relation to the taxes owed or assessed against Lessee pursuant to provision 10A above, due to Lessee's installation on the Leased Premises.

**11. Assignment and Subletting.**

Lessee may assign, or otherwise transfer all or any part of its interest in this Agreement or in the Leased Premises only with the prior written consent of Landlord; provided, however, that Lessee may assign its interest without the prior written consent of the Landlord to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets within the relevant market, as established by the FCC, subject to any financing entity's interest, if any, in this Agreement as set forth herein. Landlord may assign this Agreement upon written notice to Lessee, subject to the assignee assuming all



of Lessor's obligations herein, including but not limited to, those set forth in Paragraph 13 below. Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

**12. Marking and Lighting Requirements.**

Lessee shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC as a direct result of Lessee's use of the Leased Premises.

**13. Waiver of Landlord's Lien.**

- A. Landlord waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Landlord's consent.
- B. Landlord acknowledges that Lessee may enter into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Landlord (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

**14. Default and Landlord's Remedies.**

In the event there is a default by the Lessee with respect to the provisions of this Agreement or its obligations under it, including the payment of rent, the Landlord shall give Lessee written notice of such default. After receipt of such written notice of such default, the Lessee shall have fifteen (15) days in which to cure any monetary default, provided and thirty (30) days in which to cure any non-monetary default, provided the Lessee shall have such extended period as may be required beyond the thirty (30) days and the Lessee commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The Landlord may not maintain any action or effect any remedies for default against the Lessee unless and until the Lessee has failed to cure the same within the time periods provided in this paragraph.

**15. Termination.**

This Agreement may be terminated without further liability on thirty (30) days prior

written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default, provided that the grace period for any monetary default is fifteen (15) days from receipt of notice; or (ii) by Lessee if it does obtain or maintain any license, permit or other approval necessary for the construction and operation of the Antenna Facilities; or (iii) by Lessee if Lessee is unable to occupy and utilize the Leased Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (iv) by Lessee if Lessee determines that the Leased Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference. Lessee shall notify the Borough of its intent to terminate pursuant to this paragraph, and in the cast of termination pursuant to paragraph (iv) above and shall pay to the Borough the balance of the current year's rent with Landlord receiving a minimum of six (6) month's rental from said termination notice.

**16. Alteration, Damage or Destruction.**

If the Tank or any portion thereof are altered, destroyed demolished or damaged so as to materially hinder effective use of the Antenna Facilities through no fault or negligence of Lessee, Lessee may elect to terminate this Agreement upon thirty (30) days written notice to Landlord. In such event, Lessee shall promptly remove the Antenna Facilities from the Leased Premises and shall repair such damage as caused by such removal. This Agreement (and Lessee's obligation to pay rent) shall terminate upon Lessee's fulfillment of the obligations set forth in the preceding sentence at which termination Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee. Landlord shall have no obligation to repair any damage to any portion of the Leased Premises, unless caused by Landlord, its employees, agents or contractors. In which event Landlord shall be obligated to repair the Leased Premises if Lessee has not elected to terminate this Agreement. In addition to, and not by way of limitation of the foregoing right, Lessee shall have the option of installing a Cell on Wheels or other temporary structure at a mutually acceptable location on the tank site, until such time as the tower is re-erected, as long as the COW or other temporary structure will not interfere with the tower reconstruction.

**17. Indemnity.**

Landlord and Lessee each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of the ownership, use and/or occupancy of the Site by the indemnifying party. This indemnity does not apply to the extent that any such claims arise from the negligence or intentional misconduct of the indemnified party. The indemnity obligations under this Paragraph will survive termination of this Agreement.

**18. Insurance.**

The Lessee shall purchase at its own expense and maintain for the duration of this Agreement such insurance as will protect it and the Landlord from claims set forth below which may arise out of the Lessee's operations under the Agreement, whether such operations be by itself or by anyone directly or indirectly employed by Lessee or by anyone for whose acts any of them may be liable. Such insurance shall be issued by a

company or companies licensed to do business in the State of New Jersey.

- A. Claims under workers compensation, disability benefit and other similar employee benefit acts;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than his employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- D. Claims for damages insured by usual personal injury liability coverage which are sustained: (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the contractor, or (2) by any other person;
- E. Claims for damages, other than to the work itself because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- F. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The Landlord shall be named as an additional insured on all general and automobile liability insurance policies. Said liability policies shall contain a clause stating that they shall be primary insurance, notwithstanding any insurance maintained by the Landlord, related to Lessee operations

Workers compensation and employers liability coverage as required by New Jersey law shall be provided.

Liability insurance shall be on a comprehensive form or on a commercial general form and shall be written on an occurrence basis (policy shall not be a claims-made basis). Policies shall be written on an ISO (Insurance Services Office) recommended form or better, or a substantial equivalent. It shall include:

- Leased Premises- Operations
- Products-Completed Operations
- Contractual
- Independent Contractors
- Personal Injury
- Third Party Property Damage

Limits shall be not less than \$1,000,000 combined single limit and not less than \$2,000,000 in the aggregate. Automobile liability insurance shall include owned, non-owned and hired vehicle coverage. Limits shall be not less than \$1,000,000 combined single limit.

If by the terms of the Lessee's insurance mandatory deductibles are required, the Lessee shall be responsible for payment of said deductibles.

All policies shall contain a cancellation clause stating that should said policy be canceled

before the expiration date thereof, the issuing company shall mail thirty (30) days written notice to the Landlord, provided that ten (10) days written notice shall apply to cancellation due to non-payment of premium. Notice shall be mailed by regular mail .

At Landlord's request, the Lessee shall file with the Landlord a certificate of insurance setting forth compliance with this Agreement.

If any agreement of insurance shall contain an "Aggregate Limit of Liability" or a "General Aggregate", a statement shall be provided to the Landlord at the inception and for the duration of this contract that there is a \$2,000,000 aggregate for this location, which aggregate shall remain unchanged.

**19. Hazardous Substance Indemnification.**

Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, substance) on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord or Lessee will not introduce or use any such substance on the Site in violation of any applicable law. Landlord and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph.

**20. Subordination to Mortgage.**

Any mortgage now or subsequently placed upon any property of which the Leased Premises are a part shall be deemed to be prior in time and senior to the rights of the Lessee under Agreement. Lessee subordinates all of its interest in the leasehold estate created by this Agreement to the lien of any such mortgage. Lessee shall, at Landlord's request, execute any additional documents necessary to indicate this, provided that each holder of such mortgage furnishes to Lessee a non-disturbance instrument in the form reasonably acceptable to all parties whereby the holder of such mortgage agrees to recognize this Agreement and the rights of Lessee hereunder and not disturb the Lessee in its use and occupancy of the Leased Premises.

**21. Acceptance of Premises.**

By taking possession of the Premises, Lessee accepts the premises in the condition existing as of the Commencement Date. Except as otherwise represented in this Agreement, Landlord makes no representation or warranty with respect to the condition of the Premises and Land shall not be liable for any latent or patent defect in the Premises.

**22. Estoppel Certificate.**

Lessee shall, at any time and from time to time upon not less than thirty (30) days prior

request by Landlord, deliver to Landlord a statement in writing certifying that (a) the Agreement is unmodified and in full force (or if there have been modifications, that the Agreement is in full force as modified and identifying the modifications); (b) the dates to which rent and other charges have been paid; (c) so far as the person making the certificate knows, Landlord is not in default under any provisions of the Agreement; and (d) such other matters as Landlord may reasonably request.

**23. Interference.**

Lessee agrees to have installed equipment of the type and frequency which will not cause measurable interference to Landlord, other current lessees of the premises or neighboring landowners. In the event Lessee's equipment causes such interference, and after Landlord has notified Lessee of such interference, Lessee will take all steps necessary to correct and eliminate the interference. Landlord agrees that Landlord and/or any other Lessees of the Premises who currently have or in the future take possession of Landlord's tank will be permitted to install only such radio equipment that is of the type and frequency which will not cause measurable interference to Lessee.

**24. Tests and Construction.**

Lessee shall have the right at any time following the full execution of this Agreement to enter upon the Leased Premises for the purposes of making appropriate engineering and boundary surveys, inspections, soil test borings, other reasonably necessary tests and constructing the Antenna Facilities. In the event that Lessee is not satisfied with the results of any such tests in its sole discretion, Lessee shall have the right to terminate this Agreement on thirty (30) days written notice to Landlord. Upon Lessee's request, Landlord agrees to provide promptly to Lessee copies of all plans, specifications, surveys and water tank maps for the Premises and the water tank. The water tank map shall include the elevation of all antennas on the water tank and the frequencies upon which each operates.

**25. 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, to: Clerk  
Borough of Beachwood  
1600 Pinewald Road  
Beachwood, N.J. 08722

If to Lessee, to:

**26. Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the parties, their

respective successors, and assigns.

**27. Non-Waiver.**

Failure of Landlord to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but Landlord shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Landlord after a breach of this Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.

**28. Miscellaneous.**

- A. Landlord and Lessee represent that each, respectively, has full right, power, and authority to execute this Agreement.
- B. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.
- C. If requested by Lessee, Landlord agrees promptly to execute and deliver to Lessee a recordable Memorandum of this Agreement in the form of Exhibit B.
- D. This Agreement shall be construed in accordance with the laws of the State of New Jersey.
- E. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect
- F. Landlord covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises.

- 29. One Time Fee.** As additional consideration for this Agreement, Lessee further agrees to pay Lessor the sum of Five Thousand Dollars (\$5,000.00), as additional rent, to offset Lessor's professional and staff costs associated with the necessary review of plans and specification, Lessor's inspections and other Lessor related activities. Such one-time fee shall be due and payable 90 days from the date of execution of this Agreement by the parties and which shall be non-refundable.

This lease was executed as of the date first set forth above.

LANDLORD:

Borough of Beachwood

By: \_\_\_\_\_  
RONALD ROMA, Mayor

By: \_\_\_\_\_  
, Clerk

LESSEE:

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

## **EXHIBIT A**

### **Site Description**

Site situated in the Borough of Beachwood, County of Ocean, State of New Jersey commonly described as follows:

Beachwood Water Tank, Block 2.20, Lot 1, also known as 67 Locker Street on the Official Tax Map of the Borough of Beachwood.

Legal Description:

Sketch of Site:

**Note:** Landlord and Lessee may, at Lessee's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.



**EXHIBIT B**

**Memorandum of Lease Agreement**

This memorandum evidences that a lease was made and entered into by written Lease Agreement dated \_\_\_\_\_, 2022 , between Borough of Beachwood (“Landlord”) and Such Agreement provides in part that Landlord leases to \_\_\_\_\_ a certain site (“Site”) located at 67 Locker Street, Block 2.20, Lot 1, Borough of Beachwood, County of Ocean, State of New Jersey, within the property of Landlord which is described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for a term of five (5) years commencing on \_\_\_\_\_, 2022 which term is subject to four (4) additional five (5) year extension periods by \_\_\_\_\_ .

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

**LANDLORD: Borough of Beachwood**

By: .....

Attach Exhibit A - Site Description

Name: .....

Title: .....

Address: 1600 Pinewald Road, Beachwood, NJ 08752

**LESSEE:**

By: .....

Name: .....

Title: .....

Address:

**BOROUGH OF Beachwood NOTARY BLOCK:**

STATE OF NEW JERSEY

COUNTY OF OCEAN

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2022, by \_\_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_  
corporation, on behalf of the corporation, by \_\_\_\_\_,  
partner (or agent) on behalf of  
\_\_\_\_\_, a partnership.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC STATE OF \_\_\_\_\_

My commission expires:

\_\_\_\_\_  
(PRINTED, TYPED OR STAMPED NAME OF  
NOTARY)  
COMMISSION NUMBER:

**LESSEE'S NOTARY BLOCK:**

STATE OF NEW JERSEY

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, of \_\_\_\_\_, who I am satisfied is the person named in the foregoing instrument and who acknowledged and executed the foregoing instrument on behalf of such limited partnership.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC STATE OF \_\_\_\_\_

My commission expires:

\_\_\_\_\_  
(PRINTED, TYPED OR STAMPED NAME OF  
NOTARY)

**PROPOSAL SUBMISSION CHECKLIST**

(Pursuant to NJSA 40A:11-23.2)

The undersigned BIDDER declares that the required documents, as noted below, have been completed, reviewed and/or executed by the BIDDER and are submitted as part of this proposal.

<u>DOCUMENT REQUIRED</u>	<u>DESCRIPTION OF DOCUMENT</u>	<u>BIDDER'S INITIALS</u>
------------------------------	------------------------------------	------------------------------

Failure to submit any of the following documents with the Proposal will mandate rejection of the bid.

(X)	Notice to Bidders	_____
(X)	Form of Proposal, completed and signed by appropriate authorized representatives of BIDDER	_____
(X)	A Statement (disclosure) of Ownership pursuant to NJSA 52:25-24.2	_____
(X)	A Bid Guarantee (Bid Bond or equivalent) pursuant to NJSA 40A:11-21	_____
(X)	A Surety Company Certificate (Consent of Surety) pursuant to NJSA 40A:11-22	_____

Failure to submit any of the following documents with the Proposal will be cause for rejection of the bid unless waived by the OWNER (1B.11):

(X)	A Non-Collusion Affidavit	_____
(X)	Evidence of Registration for The Bidder pursuant to NJSA34:11-56.48, et seq. (Business Registration Certificate)	_____

