

BILL NO. 30A-2011

AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE LEASE BETWEEN THE CITY OF READING AND THE COUNTY OF BERKS FOR PREMISES WITHIN PARCEL NUMBER 23531702762194 (APPROX. 6,000-10,000 +/-SQ. FT.) SITUATE IN LOWER ALSACE TOWNSHIP, COUNTY OF BERKS, PENNSYLVANIA FOR THE DEVELOPMENT, ERECTION AND OPERATION OF A PUBLIC SAFETY RADIO SYSTEM.

WHEREAS, the City of Reading is the legal owner of certain property known as 611 Skyline Drive, Lower Alsace Township, Berks County, Pennsylvania and Parcel Number 23531702762194 consisting of approximately 647.67 +/- acres; and

WHEREAS, the County of Berks desires to lease a portion of the aforementioned premises (approximately 6,000 - 10,000 +/- sq. ft.) for its development, erection and operation of its public safety radio system; and

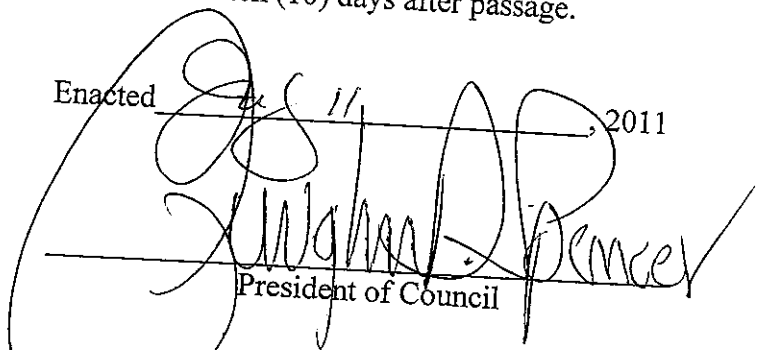
WHEREAS, the City of Reading finds that leasing said premises to the County of Berks for said purpose is in the best interests of the City of Reading,

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Mayor is authorized to execute any and all documents to facilitate and effectuate the lease between the City of Reading and the County of Berks for a portion (6,000-10,000 +/- sq. ft.) of certain property known as 611 Skyline Drive, Lower Alsace Township, Berks County, Pennsylvania (Parcel Number 23531702762194) as set forth in the attachment.

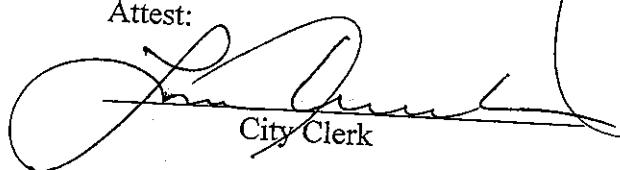
SECTION 2. This Ordinance shall be effective ten (10) days after passage.

Enacted 2011, 2011



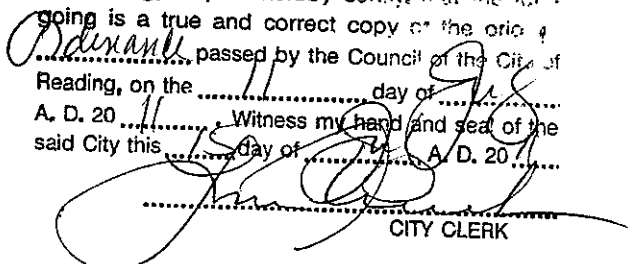
President of Council

Attest:



City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 11 day of August, A. D. 20 11. Witness my hand and seal of the said City this 15 day of August, A. D. 20 11.



CITY CLERK

Submitted to Mayor: [Signature]
Date: 7-15-11

Received by the Mayor's Office: [Signature]
Date: 7-15-11

Approved by Mayor: [Signature]
Date: 7/15/11

Vetoed by Mayor: _____
Date: _____

LEASE AGREEMENT

(MT. PENN SITE)

THIS LEASE AGREEMENT (“**Agreement**”), dated as of the ___ day of _____, 20___ (the “**Effective Date**”), is entered into by CITY OF READING, a municipal corporation organized, established and existing under the law of the Commonwealth of Pennsylvania, having an address at 815 Washington Street, Reading, Pennsylvania 19601 (hereinafter referred to as “**Landlord**”), and THE COUNTY OF BERKS, PENNSYLVANIA, a Pennsylvania political subdivision, having a mailing address of 633 Court Street, Reading, Pennsylvania 19601 (hereinafter referred to as “**Tenant**”).

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, consisting of approximately 647.67 +/- acres and located at 611 Skyline Drive, Lower Alsace Township, in the County of Berks, Commonwealth of Pennsylvania, also known as Parcel No. 23531702762194 (collectively, the “**Property**”). Tenant desires to use a portion of the Property as a site for its public safety radio system to serve Berks County’s regional emergency communications and related needs, including, without limitation, establishing multiple transmission towers through Berks County and neighboring areas and possible incorporation of additional radio equipment operating in other parts of the RF spectrum (collectively, the “**System**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties, intending to be legally bound, agree as follows:

1. **LEASE OF PREMISES.** Landlord leases to Tenant a certain portion of the Property containing approximately 6,000- 10,000 +/- square feet, as well as the rights, privileges, easements, appurtenances and improvements belonging thereto (including, without limitation, the air space above such room/cabinet/ground space as described on attached **Exhibit 1**), together with unrestricted access for Tenant’s uses from the nearest public right-of-way along the Property to the Premises, all as described on the attached **Exhibit 1** (collectively, the “**Premises**”). The exact square footage and dimensions of the Premises will be confirmed by the parties in writing prior to site development. Landlord desires to grant to Tenant the right to build a new tower compound adjacent to the existing tower compound on Mt. Penn.
2. **PERMITTED USE.** Tenant may use the Premises for the development, erection and operation of the System (substantially as it is more fully described on the attached **Exhibit 2**), which may include, but not be limited to, the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements (which may include a suitable support structure, associated antennas, generator and fuel source therefore, equipment shelters and/or cabinets and fencing), and any other items necessary to the successful and secure use of the Premises, 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 System that may be conceptually described on **Exhibits 1 and 2** will not be deemed to limit Tenant's Permitted Use. The parties hereby acknowledge and agree that the description and configuration of the System as depicted in **Exhibits 1 and 2** may be amended and/or replaced prior to Tenant commencing construction of the System based upon factors such as Government Approvals (hereinafter defined in Section 5) and modifications to the System design, as well as space, cost, construction, considerations, ect. In such instance, the parties will amend and/or replace such Exhibits to reflect such changes. If **Exhibits 1 and 2** include drawings of the initial installation of the System, Landlord's execution of this Agreement will signify Landlord's approval thereof. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining or surrounding property as described on **Exhibit 1** hereto (the "**Surrounding Property**"), as may reasonably be required during construction and installation of the System. 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 Changes include, without limitation, the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises, at Tenant's expense. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the System on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the System within the Premises at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant's Changes or to insure that Tenant's System complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the System, and Tenant requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees 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. 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.

3. **TERM.**

(a) The initial lease term will be five (5) years ("**Initial Term**"), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) annual anniversary of the Effective Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as the "**Extension Term**"), upon the same terms and conditions, subject to any rental increases as provided in Section 4, unless the Tenant

notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

(c) If, at least thirty (30) days prior to the end of the fourth (4th) Extension Term, Tenant has not given Landlord written notice of its desire that the term of this Agreement end at the expiration of the fourth (4th) Extension Term, then upon the expiration of the fourth (4th) Extension Term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by Tenant by giving to Landlord written notice of its intention to so terminate at least six (6) months prior to the end of any such annual term. Notwithstanding the foregoing, and in any event, the Lease shall terminate automatically on the twenty-ninth (29th) anniversary of the Effective Date. Monthly rental during such annual terms shall increase each year by one percent (1%) over the rent paid for the last month of the immediately preceding term (commencing with the fourth (4th) Extension 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 at the monthly Rent called for in this Agreement at the time of such holdover.

(d) The Initial Term, all of 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 nominal monthly rental payment during the Term of One Dollar (\$1.00) ("**Rent**"), at the address set forth above, on or before the fifth (5th) day of each calendar month in advance. Tenant may prepay Rent out any time for any period of time, without premium or penalty.

(b) All charges payable by Tenant under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year 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 foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.

5. APPROVALS; LEASE CONTINGENCIES.

(a) Notwithstanding the foregoing or anything herein in to the contrary, Landlord agrees that this Lease and Tenant's ability to use the Premises are expressly contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all regulatory, administrative and governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation any and all applications for zoning permits and variances, zoning ordinance amendments, land development approvals, environmental permits and approvals, special use permits, construction permits, licenses and FCC licenses, permits and approvals (collectively, the "**Government Approvals**"). As of the Effective Date, Tenant shall have the right to enter upon the Property to inspect, survey, test, evaluate, assess, measure or appraise the Property, including without limitation the Premises, and/or to perform such other due diligence as Tenant deems necessary in its sole discretion, all at Tenant's expense, to determine the suitability and feasibility of the Premises for Tenant's intended use thereof. Tenant shall indemnify, defend and

hold harmless Landlord from and against any and all claims relating to physical damage to the Property (including without limitation the Premises) or personal injuries to third persons arising out of Tenant's entry upon the Property (including without limitation the Premises) pursuant to the terms of this paragraph. These provisions shall survive the expiration or earlier termination of this Agreement.

(b) In furtherance of the foregoing and subject to the indemnity provisions above, Tenant shall have a continuing right to perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests, reports or due diligence on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will (continue to) be compatible with Tenant's engineering specifications, systems, designs, operations or Governmental Approvals.

(c) Further, as of the Effective Date, Tenant at Tenant's expense, and as Landlord's limited agent pursuant hereto, shall have the right to seek and obtain all Government Approvals. The authority granted above by Landlord to Tenant shall include, without limitation, the power to: (i) file an application or applications for land development, land subdivision or reverse land subdivision, conditional use, special exception, and variances under, and/or amendment of, applicable zoning, subdivision and land development ordinances with the appropriate governmental authorities, agencies, councils, boards, commissions, etc.; (ii) appear before such authorities, agencies, councils, boards, commissions, etc.; and (iii) perform all such other acts in order to obtain all necessary final Government Approvals of the System as may be necessary. **This agreement is intended to be coupled with an interest and create a valid and present interest in the subject property in favor of Tenant for purposes of qualifying Tenant as a "landowner" as contemplated by the Pa. Municipalities Code and to have standing to seek the above Government Approvals.** Landlord, at no expense to Landlord, agrees to cooperate with Tenant and take all actions and execute, notarize and deliver to Tenant within five (5) business days of Landlord's receipt thereof, all documents that Tenant determines are reasonably necessary for Tenant to obtain such 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 of this Agreement after the applicable notice and 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 System as now or hereafter intended by Tenant (including without limitation all Government Approvals); or if Tenant determines at any time in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(c) by Tenant upon written notice to Landlord for any reason (or no reason), at any time prior to commencement of construction by Tenant; or

(d) by Tenant after commencement of construction upon sixty (60) days prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to one (1) month's 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 6(a), 6(b), 6(c), 8, 11(d), 18, 19 or 23(j) of this Agreement.

7. **INSURANCE.** 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 Two Million Dollars (\$2,000,000.00) 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. Notwithstanding anything to the contrary in this Agreement, the parties hereby confirm that the provisions of this Section shall survive the expiration or earlier termination of this Agreement.

8. **INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, 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 comply with all Federal Communications Commission (FCC) regulations regarding interference with existing radio frequency user(s) on the Property so disclosed by Landlord.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use adversely affects or interferes with the System, 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 System, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease immediately (but in no event more than 24 hours) after receipt of notice of interference from Tenant. 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.

(d) This Section shall survive expiration or earlier termination of this Agreement.

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) arising directly from the installation, use, maintenance, repair or removal of the System 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) Landlord agrees to indemnify, defend and hold Tenant 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) arising directly from the actions or failure to act of Landlord or its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) 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.

(d) This Section shall survive expiration or earlier termination of this Agreement.

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; (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 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, or any court order, 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 will provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement substantially in the form of attached **Exhibit 3**.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants 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) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation 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 conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

(c) The indemnifications of this Paragraph 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any

clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 will survive the expiration or termination of this Agreement.

(d) 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, in Tenant's sole determination, 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 System and any utilities serving the Premises. Landlord grants to Tenant an easement for such access and utilities, and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. Landlord acknowledges that in the event Tenant cannot access the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Paragraph 12, such failure shall be a material default under this Lease. Upon Tenant's request, Landlord will execute a separate recordable easement reasonably satisfactory to Tenant 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 System 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 System 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. Notwithstanding the foregoing, at least ninety (90) days prior to the termination of this Agreement, Tenant shall give Landlord the opportunity to purchase the System located on the Property from Tenant at fair market value at the end of the Term (determined by an appraiser mutually acceptable to the parties). If Landlord elects to take title to the System located on the Property, Tenant shall convey same by Bill of Sale in "AS IS" condition at the end of the Term and Tenant shall have no further obligations or rights with respect thereto. If Landlord does not elect to take title to such property, within one hundred eighty (180) 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 subsurface 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 tenantable 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. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty days of receipt of the usage data and required forms. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least 24 hours advanced notice of any planned interruptions of said electricity. Landlord acknowledges Tenant's intended use of the Premises, which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, the Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. 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 law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) failure to provide access to the Premises or to cure an interference problem within twenty-four (24) hours after receipt of written notice of such default; or (ii) 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 or as otherwise provided herein. 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 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 from Tenant.

16. ASSIGNMENT/SUBLEASE. Tenant will have the right to assign this Agreement (including selling its rights to the transmission tower and reasonably related equipment, apparatus, etc.) or to sublease the Premises and its rights herein (including renting antenna space on the System to third parties), in whole or in part, upon written notice to Landlord. Notwithstanding the foregoing, Tenant and Landlord shall share in any rental income derived from the assignment/subletting of any space on the System as follows: (i) for any assignments/subleases to governmental and non-profit agencies and authorities or for purely public services/purposes, to the extent that rent is charged to these entities as determined by the Tenant in its sole discretion, Tenant and Landlord shall split (50%/50%) all annual net rental revenues generated by such subleases; and (ii) for assignments/subleases to private/for-profit parties (but not including those as part of a sale of Tenant's rights to the tower, etc. as referenced above). Tenant and Landlord shall split equally (50/50) all annual net rental revenues generated by such subleases. For purposes of the foregoing, the term "net rental revenues generated by subleases" shall mean all rental revenues received by Tenant from such third party subleases less the reasonable amount of those reasonable costs and expenses actually incurred by Tenant in owning and operating the System at the Premises (including, without limitation, maintenance and repair costs, utilities, driveway maintenance, taxes, etc., but not including any base rent hereunder (to the extent greater than nominal)). On or before March 1 of each calendar year under this Lease, Tenant shall forward to Landlord its share of such rentals, together with a reasonably detailed calculation thereof. Tenant's calculations shall be final and binding absent error. Neither the foregoing revenue sharing provisions, in particular, nor the terms of this Lease, generally, shall apply to the existing County tower at or near the Property pursuant to the certain lease between Landlord and Tenant dated March 23, 2006.

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. Notices will be addressed to the parties as follows:

If to Tenant: County of Berks
Attention: County Commissioners
633 Court Street
Reading, PA 19601

With a copy to: County of Berks
Attention: Solicitor
633 Court Street
Reading, PA 19601

Berks County Department of Emergency Services
Attention: Director
2561 Bernville Road
Reading, PA 19605

If to Landlord: City of Reading
Attn: Managing Director
815 Washington Street
Reading, PA 19601

With a copy to: City of Reading
Attn: Solicitor
815 Washington Street
Reading, PA 19601

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

In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the below documents to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord:

- a. New Deed to Property
- b. Bill of Sale or Transfer (if applicable)
- c. New Payment Direction Form
- d. Full contact information for new Landlord including all phone numbers

18. 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 System, 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 as of the date of taking.

19. CASUALTY. The parties will provide notice to each other of any casualty affecting the Property of which each becomes aware within forty-eight (48) hours of the casualty. If any part of the System 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 System, 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 activate a replacement transmission facility at another location or the reconstruction of the System is completed.

20. **WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the System or any portion thereof. The System 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 System from time to time in Tenant's sole discretion and without Landlord's consent.

21. **TAXES.** Landlord shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of Landlord. Tenant shall be responsible for all taxes (if any) levied upon Tenant's leasehold improvements (including any equipment building and tower) on the Premises. Landlord shall provide Tenant with copies of all assessment notices on or including the Premises immediately upon receipt, but in no event later than thirty (30) days after receipt by Landlord. If Landlord fails to provide such notice within such time frame, Landlord shall be responsible for all increases in taxes for the year covered by the assessment. Tenant shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied against the Premises by such appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate in the institution and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant.

22. **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 will interfere with Tenant's Permitted Use as determined by radio propagation tests performed by Tenant in its reasonable 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, in its reasonable discretion, 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 22 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.

23. 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.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation; Existing Lease.**

(i) Unless otherwise specified, the following rules of construction and interpretation apply: (1) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (2) use of the term "including" will be interpreted to mean "including but not limited to"; (3) 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; (4) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (5) use of the terms "termination" or "expiration" are interchangeable; and (6) reference to a default will take into consideration any applicable notice, grace and cure periods; and (7) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement.

(ii) The existing lease between the parties dated March 23, 2006 with respect to the Tenant's existing telecommunications tower on the Property (the "Existing Lease") shall remain in effect as to such existing tower and the rights and responsibilities of the parties in connection therewith, except that such Existing Lease is hereby amended to eliminate the right early termination and to make the term thereof co-terminus with the Term of this Lease (including all Extension Terms).

(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 encumbrance 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) **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 a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

(i) **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.

(j) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered on and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It being understood that all parties need not sign the same counterpart.

(k) **Survival.** All indemnity provisions contained herein survive expiration or early termination of this Agreement.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and effective as of the date first written above.

"LANDLORD"

City of Reading

By: _____
Name: _____
Title: _____

"TENANT"

THE COUNTY OF BERKS, PENNSYLVANIA

By: _____
Mark C. Scott, Chair
County Commissioner

By: _____
Kevin S. Barnhardt
County Commissioner

By: _____
Christian Y. Leinbach
County Commissioner

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF _____)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that Kevin S. Barnhardt, County Commissioner for The County of Berks, Pennsylvania, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act on behalf of The County of Berks, Pennsylvania for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 20__.

Notary Public

My Commission Expires:

LANDLORD ACKNOWLEDGMENT

STATE/COMMONWEALTH OF _____)
) SS
COUNTY OF _____)

I CERTIFY that on _____, 20__, _____ personally came before me and acknowledged under oath that he or she:

(a) is the LANDLORD of 611 Skyline Drive, Lower Alsace Twp., Berks County, Pennsylvania, and

(b) was duly authorized to execute this instrument on behalf of the CITY OF READING, and

(c) executed the instrument as his/her own voluntary act on behalf of the CITY OF READING as the act for the uses and purposes herein set forth.

Notary Public

My Commission Expires:

EXHIBIT 1
DESCRIPTION OF PREMISES

EXHIBIT 2

DESCRIPTION OF SYSTEM

***NOTE:** *FOR PRELIMINARY DISCUSSION PURPOSES. DESCRIPTION WILL BE UPDATED PRIOR TO EXECUTION AND SUBMITTED TO LANDLORD FOR REVIEW. THEREAFTER, EXHIBITS 1 AND 2 SUBJECT TO FURTHER CHANGE AS PROVIDED IN SECTION 2 OF THE LEASE AGREEMENT.*

EXPLANATION OF PROPOSED SYSTEM

SPECIFICATIONS:

1. Undeveloped Land (no tower)

For a site without an existing tower, it is anticipated that a transmission site will include addition of the following:

- a. A 300' self supporting tower (or per design) suitable for general communications use including two way radio antennas, panel antennas, microwave dishes, etc.
 - b. A 12 foot by 20 foot, one-story shelter (or per design) will be installed within the transmission site boundaries for the purpose of providing sufficient space for the public safety radio system, as well as licensed microwave radio equipment.
 - c. Security fencing surrounding the tower, shelter and generator equipment.
 - d. Emergency Generator
 1. A propane-fueled electrical generator and propane storage tank will be installed within the transmission site boundaries to provide backup power to the shelter, in the event of a commercial power outage.
- Or
2. A diesel-fueled electrical generator with integral fuel-storage tank will be installed within the transmission site boundaries to provide backup power to the shelter, in the event of a commercial power outage.
- e. Microwave dish antennas will be installed on the tower as part of this project, along with elliptical waveguide.

- f. Antennas will be installed on the tower as part of this project, with coaxial transmission lines, and receive tower-top amplifiers (TTAs), where necessary.

EXHIBIT 3
FORM OF SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

[FOLLOWS ON NEXT PAGE]

Prepared by and Return to:

Property Address/ID: _____

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT ("Agreement"), dated as of the date below, between _____ having its principal office at _____, (hereinafter called "**Mortgagee**") and CITY OF READING, having a mailing address of 815 Washington Street, Reading, Pennsylvania 19601 (hereinafter called "**Landlord**"), and THE COUNTY OF BERKS, PENNSYLVANIA, a Pennsylvania political subdivision, having a mailing address of 633 Court Street, Reading, PA 19601 (hereinafter called "**Tenant**").

WITNESSETH:

WHEREAS, Tenant has entered into a certain lease dated _____, 20___, (the "**Lease**") with Landlord, covering property more fully described in **Exhibit 1** attached hereto and made a part hereof (the "**Premises**"); and

WHEREAS, Landlord has given to Mortgagee a mortgage (the "**Mortgage**") upon property having a street address of _____, being identified as Parcel No. _____ in the _____ of _____ County, Commonwealth of Pennsylvania ("**Property**"), a part of which Property contains the Premises; and

WHEREAS, the Mortgage on the property is in the original principal sum of _____ (\$_____) Dollars, which Mortgage has been recorded in the appropriate public office in and for _____ County, Pennsylvania ("**Mortgage**"); and

WHEREAS, Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. So long as this Agreement will remain in full force and effect, the Lease is and will be subject and subordinate to the lien and effect of the Mortgage insofar as it affects the real property and fixtures of which the Premises forms a part (but not Tenant's trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Mortgage had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

2. In the event Mortgagee takes possession of the Premises as mortgagee-in-possession, including but not limited to, by deed in lieu of foreclosure or foreclosure of the Mortgage, Mortgagee agrees not to affect or disturb Tenant's right to possession of the Premises and any of Tenant's other rights under the Lease in the exercise of Mortgagee's rights so long as Tenant is not then in default, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

3. In the event that Mortgagee succeeds to the interest of Landlord or other landlord under the Lease and/or to title to the Premises, Mortgagee and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; accordingly, from and after such event, Mortgagee and Tenant will have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Mortgagee succeeded to the interest of Landlord; provided, however, that Mortgagee will not be:

- (a) personally liable for any act or omission of any prior landlord (including Landlord); or
- (b) bound by any rent or additional rent which Tenant might have paid for more than the payment period as set forth under the Lease (one month, year etc.) in advance to any prior landlord (including Landlord).

4. In the event that Mortgagee or anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Mortgage, or upon the sale of the Premises by Mortgagee or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but will remain bound unto the new owner so long as the new owner is bound to Tenant (subject to paragraph 3 above) under all of the terms, covenants and conditions of the Lease.

5. Mortgagee understands, acknowledges and agrees that notwithstanding anything to the contrary contained in the Mortgage and/or any related financing documents, including, without limitation, any UCC-1 financing statements, Mortgagee will acquire no interest in any furniture, equipment, trade fixtures and/or other property installed by Tenant on the Property. Mortgagee hereby expressly waives any interest which Mortgagee may have or acquire with respect to such furniture, equipment, trade fixtures and/or other property of Tenant now, or hereafter, located on or affixed to the Property or any portion thereof and Mortgagee hereby agrees that same do not constitute realty regardless of the manner in which same are attached or affixed to the Property.

6. This Agreement will be binding upon and will extend to and benefit the successors and assigns of the parties hereto and to any assignees or subtenants of Tenant which are permitted under the Lease. The term "Mortgagee", when used in this Agreement will be deemed to include any person or entity which acquires title to or the right to possession of the Premises by, through or under Mortgagee and/or the Mortgage, whether directly or indirectly.

MORTGAGEE (CORPORATION)

STATE/Commonwealth of _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ date of _____, 20____, by _____ (name of representative) the _____ (title) of _____ (name of banking institution), a _____ on behalf of the bank () who is personally known OR () who produced _____ as identification, and in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the bank by himself/herself as such officer.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1 TO SNDA
DESCRIPTION OF PREMISES