

REAL PROPERTY LEASE

KPBL# 18-0822-00

This lease (hereinafter called "LEASE"), for good and valuable consideration, and pursuant to Ordinance 2018-XX, enacted _____, 2018, is made and entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, AK 99669 (hereinafter called "LESSOR"), and Chugach Electric Association, Inc., an Alaska electric and telephone cooperative corporation (hereinafter called "LESSEE"), whose address is PO Box 196300, Anchorage, AK 99519-6300.

I. DESCRIPTION OF REAL PROPERTY

This LEASE grants LESSEE use of the following described parcel of real property, located in the Seward Recording District, Third Judicial District, State of Alaska:

Section 5, Township 06 North, Range 01 West

Tract A, ASLS 2000-01, according to Plat No. 2001-10, Seward Recording District, Third Judicial District, State of Alaska, containing 2 acres more or less (hereinafter called "PROPERTY"),

Ingress and egress to the PROPERTY may utilize existing travel ways located on the adjacent Govt Lot 1 (Tenderfoot Lane) and ADL 227468, a 20' wide non-exclusive use utility easement.

II. PURPOSE OF LEASE

1. Authority. Pursuant to Ordinance 2018-xx, the purpose of this lease is for the development, management, operation and maintenance by LESSEE of a microwave repeater site (hereinafter called "ACTIVITIES"). The allowed uses shall include a variety of communication purposes in conformance with the maintenance, development, and management of LESSEE's Site Plan, and other uses approved by LESSOR. LESSOR makes no guarantee that PROPERTY is suitable for LESSEE's purpose, and shall have no responsibility for the condition of the PROPERTY or any damage suffered by LESSEE or any other person due to such condition.
2. Site Plan. The Site Plan, as shown on Exhibit A, attached hereto and made part hereof, illustrates the type and location of improvements, basic design and construction standards, landscaping features, location of utilities, and the nature of uses. The site plan approved under this lease describes the scope of ACTIVITIES authorized by the LEASE, and is subject to change upon notice.
 - a. Modification of Site Plan. Upon notice from LESSEE, the site plan may be modified by mutual agreement as necessary to advance the purpose of this lease. Modifications of LESSEE's site plan may be made through written approval by the KPB Mayor. A proposal for a modified site plan shall be submitted in writing at least sixty (60) days prior to the anticipated modification of ACTIVITIES. Approved modifications shall be attached to this LEASE and effective upon the Mayor's written consent.

3. Equipment List. LESSEE shall supply a list which inventories and describes the equipment located on the PROPERTY. The equipment list, attached hereto as Exhibit B and made part hereof, shall include the name of each sublessee, if any, their address and telephone number, the duration of the sublease, and describe/depict the vertical or physical location of the equipment.

III. TERMS AND CONDITIONS

1. Lease Term. This lease is for a term of twenty (20) years commencing October 23, 2017, and includes an option to renew the lease for one additional five (5) year term upon the same terms and conditions unless LESSEE notifies LESSOR in writing of LESSEE's intention not to renew this lease at least ninety (90) days prior to the expiration of the LEASE.
2. Lease Rental. The annual lease rental for the first year of this lease is Five Thousand Four Hundred Sixty-Four Dollars (\$5,464.00), plus any applicable sales taxes as may otherwise be required by law, which shall be due with each annual lease payment. The annual lease payment is due on or before October 23 of each year. Rent shall be increased each year by 3 percent over the previous year's rent, as shown on Exhibit C, attached hereto and made part hereof. Rent will be prorated for any partial year.
3. Scenic Corridor. Improvements authorized under this LEASE shall be constructed in a manner which reasonably conceals them from Seward Highway view, to minimize impacts to the visual aesthetics, consistent with the *Seward Highway Scenic Byways Partnership Plan*.
4. Reservations. LESSOR reserves a right to install emergency response communication equipment on LESSEE's tower or the right to construct a separate communication tower within the PROPERTY, in a location which does not materially interfere with LESSEE's operations. 90-days prior to the exercise of this reservation, LESSOR shall provide LESSEE with a complete inventory of equipment and proposed vertical or physical location. LESSEE shall confirm LESSOR's equipment will not interfere with LESSEE's or sublessee's then-existing equipment or propose an alternate location. Upon installation of LESSOR's equipment on the PROPERTY, future sublessee's equipment shall not interfere with LESSOR's emergency response communication equipment.
5. Interference. LESSOR and LESSEE agree that neither will use nor permit an employee, tenant, licensee, invitee or agent to use any portion of this property in any way which interferes with the operations or rights under this LEASE. In the event that interference does occur, and does not cease within forty-eight (48) hours after notice, the notifying party shall have the right to terminate this LEASE. Interference is defined as anything that prohibits the uses specified in Section II and in Section III(4) and (17) of this LEASE.
6. Conditional Lease. This LEASE is issued on a conditional basis and shall be canceled in whole or in part in the event the borough is denied title to said lands. However, the borough shall in no way be liable for any damage that may be done to

the land by the LESSEE or liable for any claim of any third party, or to any claim that may arise from ownership. In the event the borough does receive title to the land under lease, the conditional lease shall have the same standing, force and effect as non-conditional leases issued under any provision of KPB 17.10.

7. Defense and Indemnification. LESSEE shall indemnify, defend, save and hold LESSOR, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees resulting from LESSEE's performance or failure to perform in accord with the terms of this LEASE in any way whatsoever. LESSEE shall be responsible under this clause for any and all claims of any character resulting from LESSEE or LESSEE's officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by LESSOR or its agents which are said to have contributed to the losses, failure, violations, or damage. However, LESSEE shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of LESSOR, its agents or employees.

To the extent allowed by law and subject to assembly appropriation of available lands, LESSOR shall indemnify, defend, save and hold LESSEE, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees resulting from the sole negligence or willful misconduct of LESSOR, its agents or employees.

8. Liability Insurance. LESSEE shall purchase at its own expense and maintain in force at all times during the term of this LEASE the following insurance policies:

Commercial General Liability, Automobile Insurance for any automobiles operated by the LESSEE, and Aircraft Liability for all aircraft used. Policy to include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the LESSEE in which the coverage shall not be less than \$1,000,000 per occurrence or such higher coverage as specified by LESSOR. The policy purchased shall name the Kenai Peninsula Borough as an additional insured with respect to the activities conducted on the property. LESSEE shall notify LESSOR within thirty (30) days or more advanced-written notice of any pending cancellation or change in coverage. Failure to maintain the insurance is grounds for termination of the LEASE.

- a. Proof of Insurance: Licensee shall deliver to KPB certificates of insurance. This insurance shall be primary and exclusive of any other insurance held by Owner. Failure to provide insurance as required by this section, or a lapse in coverage, is a material breach of the LEASE terms entitling LESSOR to terminate the LEASE. Upon renewal of insurance coverage during the license, certificates of insurance shall be delivered to the Owner at address shown herein.
9. Assignment or Transfer. LESSEE may assign or transfer this LEASE. An assignment or transfer of this LEASE must be in writing, subject to and governed by

the terms and conditions of the LEASE and applicable laws and regulations. LESSEE's written assignment or transfer must be recorded in the Seward Recording District. LESSEE shall provide LESSOR written notice of such assignment or transfer, as provided in Section 27 of this LEASE.

10. Sublease. LESSEE may sublease to other licensed communication providers, portions of the facility for use of the equipment shelter or cabinet and guyed tower. A sublease shall be in writing and subject to the terms and conditions of the LEASE. LESSEE shall update the Site Plan (EXHIBIT A) and Equipment List (EXHIBIT B) with the addition of each new sublessee.
11. Waste. LESSEE shall not commit waste upon or injury to the lands leased herein.
12. Fire Protection. LESSEE shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the PROPERTY, and comply with all laws, regulations, and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the PROPERTY is located.
13. Safety. LESSEE shall be solely responsible for maintaining the premises in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the PROPERTY as needed for LESSEE's use of the PROPERTY. LESSEE is responsible for the safety of all persons conducting activities on the PROPERTY under this LEASE.
14. Sanitation. LESSEE shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The PROPERTY shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environmental Conservation regulations.
15. Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on PROPERTY. LESSEE shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the PROPERTY. In no event may LESSEE utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the PROPERTY during the term of this LEASE, LESSEE shall IMMEDIATELY report such release to LESSOR and any other agency as may be required by law, and LESSEE shall, at its own cost, assess, contain, and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 CFR 171.8, and any other substance determined by the federal government, the State of Alaska or Kenai Peninsula Borough, to pose a significant health and safety hazard. The covenants and obligations described in this article shall survive the termination of this License.

16. Compliance with Laws. LESSEE shall abide by all applicable federal, state, city, and borough statutes, ordinances, rules, and regulations. LESSEE is responsible for obtaining all federal, state, and local permits applicable to licensee's activities and shall keep such permits in good standing.
17. Easements and Rights-of-Way. This LEASE is subject to all easements, rights-of-way, covenants and restrictions of which LESSEE has actual or constructive notice. LESSOR reserves and retains the right to grant additional easements for utility and public access purposes across the PROPERTY and nothing herein contained shall prevent LESSOR from specifically reserving or granting such additional easements and rights-of-way across the PROPERTY as may be deemed reasonable and necessary.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements or rights-of-way across the PROPERTY, it is agreed and understood that LESSEE shall receive no damages for such grant.

18. Inspections. LESSEE shall allow LESSOR, through its duly authorized representative, to enter and inspect the PROPERTY at any reasonable time, with or without advance notice to LESSEE, to ensure compliance with the terms and conditions of this lease. LESSOR's right to enter and inspect shall be exercised at LESSOR's sole discretion and the reservation or exercise of this right, and any related action or inaction by LESSOR, shall not in any way impose any obligation whatsoever upon LESSOR, and shall not be construed as a waiver of any rights of LESSOR under this LEASE.
19. Property Taxes. LESSEE shall timely pay all real property taxes, assessments and other debts or obligations owed to the Kenai Peninsula Borough. Pursuant to KPB Code, Section 17.10.120(F) this LEASE will terminate automatically should LESSEE become delinquent in the payment of any such obligations.
20. Cancellation. At any time that this LEASE is in good standing it may be canceled in whole or in part upon mutual agreement by LESSEE and LESSOR, so long as LESSEE pays LESSOR a cancellation fee equal to six (6) months' rent, at the then current rate.

The PROPERTY shall be utilized for the purposes of the development, management, and maintenance of a communications site within the scope of the terms and conditions of the LEASE and conditions of LESSEE's development plan, applicable classification, and any land use or comprehensive plans. Utilization or development for other than the allowed uses shall constitute a violation of the LEASE and will become subject to cancellation.

Failure on the part of LESSEE to substantially complete the development plan of the land or to not be consistent with the proposed use and terms and conditions of the LEASE within two (2) years of the anniversary date of said lease shall constitute grounds for cancellation.

20. Termination. Upon termination of this LEASE, LESSEE covenants and agrees to return the property to LESSOR in the condition which existed immediately prior to entry on the PROPERTY by LESSEE, and to immediately remove all items of personal property subject to the conditions of Section 24 below. All terms and conditions set out herein are considered to be material and applicable to the use of the PROEPRTY under this LEASE. Subject to the following, in the event of LESSEE's default in the performance or observance of any of the LEASE terms, conditions, covenants and stipulations thereto, and such default continues for thirty (30) calendar days after written notice of the default, LESSOR may cancel this lease, or take any legal action for damages or recovery of the PROPERTY. No improvements may be removed during the time in which the LEASE is in default.

In the event LESSEE breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials, or hazardous waste on the PROPERTY, and fails to immediately terminate the operation causing such release upon notice from LESSOR, then LESSOR may immediately terminate this LEASE without notice to LESSEE.

21. Violation. Violation of any of the terms of this LEASE may expose LESSEE to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
22. Notice of Default. Notice of the default, where required, will be in writing and as provided in Section 27 of this LEASE.
23. Entry or Re-entry. In the event that this LEASE is terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the LESSEE during the LEASE term, LESSOR or its agents, servants or representatives, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings, or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by LESSOR shall not be deemed an acceptance of surrender of the contract.
24. Removal or Reversion of Improvements Upon Termination of Lease. Improvements on the PROPERTY owned by LESSEE shall, within ninety (90) calendar days after the termination of the LEASE, be removed by LESSEE; provided such removal will not cause injury or damage to the land; and further provided that LESSOR may extend the time for removing such improvements in cases where hardship is proven. LESSEE may dispose of its improvements to a succeeding lessee with the consent of LESSOR.

If LESSEE fails to remove improvements or chattels upon LESSOR's request, the

LESSOR may do so at the expense of LESSEE.

At LESSOR's sole option, it may choose to retain the improvements or chattels rather than having them removed. If LESSOR elects to retain the improvements and chattels, it shall give written notice of the election to LESSEE. Upon request, LESSEE shall convey said improvements and/or chattels by appropriate instrument to LESSOR.

25. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to LESSEE or placed on the PROPERTY during its tenure with or without its permission and remaining upon the premises after the termination of the contract shall entitle LESSOR to charge a reasonable rent therefor.
26. Resale. In the event that this LEASE is terminated, canceled, forfeited, or abandoned, LESSOR may offer said land for sale, lease, or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations.
27. Notice. Any notice or demand, which under the terms of this LEASE must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

LESSOR

Planning Director
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, AK 99669

LESSEE

Land Services Manager
Chugach Electric Association, Inc.
PO Box 196300
Anchorage, AK 99519

28. Responsibility of Location. It shall be the responsibility of LESSEE to properly locate itself and its improvements on the PROPERTY.
29. Liens and Mortgages. LESSEE shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease. In the event that any prohibited lien is placed against the PROPERTY, LESSEE shall immediately cause the lien to be released. LESSEE shall immediately refund to LESSOR any monies that LESSOR may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorney's fees.

For the purpose of interim financing or refinancing of the improvements to be placed upon the PROPERTY, and for no other purpose, LESSEE may, upon written approval of LESSOR, encumber by mortgage, deed of trust, assignment or other appropriate instrument, LESSEE's interest in the PROPERTY and in and to the LEASE, provided said encumbrance pertains only to the leasehold interest. Any such encumbrance

shall be entirely subordinate to LESSOR's rights and interest in the PROPERTY.

A leasehold mortgagee, beneficiary of a deed of trust or security assignee shall have and be subrogated to any and all rights of the LESSEE with respect to the curing of any default hereunder by LESSEE.

In the event of cancellation or forfeiture of this LEASE for cause, the holder of a properly recorded mortgage, deed of trust, or assignment will have the option to acquire the LEASE for the unexpired term thereof, subject to the same terms and conditions as in the original instrument, as may be amended.

30. Non-Waiver Provision. The receipt of payment by LESSOR, regardless of LESSOR's knowledge of any breach by LESSEE, or of any default on the part of LESSEE in observance or performance of any of the conditions or covenants of this LEASE, shall not be deemed to be a waiver of any provision of the LEASE. Failure of LESSOR to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of LESSOR to enforce the same in the event of any subsequent breach or default. The receipt by LESSOR of any payment of any other sum of money after notice of termination or after the termination of the LEASE for any reason, shall not reinstate, continue or extend the LEASE, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.
31. Jurisdiction. Any lawsuits filed in connection with the terms and conditions of this LEASE, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law, without regard to conflict of law principles.
32. Savings Clause. Should any provision of this LEASE fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this LEASE or constitute any cause of action in favor of either party as against the other.
33. Binding Effect. It is agreed that all covenants, terms, and conditions of this LEASE shall be binding upon the successors, heirs and assigns of the parties hereto
34. Full and Final Agreement. This LEASE constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This LEASE may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. LESSEE avers and warrants that no representations not contained within this LEASE have been made with the intention of inducing execution of this LEASE.
35. Warranty of Authority. LESSEE warrants that the person executing this LEASE is authorized to do so on behalf of LESSEE.

KENAI PENINSULA BOROUGH

CHUGACH ELECTRIC ASSOCIATION, INC.

Charlie Pierce, Mayor

Dated: _____

NAME/TITLE

Dated: _____

NAME/TITLE

Dated: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Johni Blankenship
Borough Clerk

Holly Montague
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENTS

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal
corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
Commission Expires: _____

NOTARY ACKNOWLEDGMENTS

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____ (name) _____, _____ (title) _____ of Chugach Electric
Association, Inc., an Alaska electric and telephone cooperative corporation, for and on
behalf of the corporation.

Notary Public in and for Alaska
Commission Expires: _____

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____ (name) _____, _____ (title) _____ of Chugach Electric
Association, Inc., an Alaska electric and telephone cooperative corporation, for and on
behalf of the corporation.

Notary Public in and for Alaska
Commission Expires: _____

SITE PLAN

APN: 03525007 Section 05 Township 06N Range 01W

Legal Description: Tract A, ASLS 2000-01, Plat No. 2001-010, Seward Recording District

Physical Address: _____

Coordinates: Latitude: Longitude:

Site Name: **Summit Microwave Repeater Site**

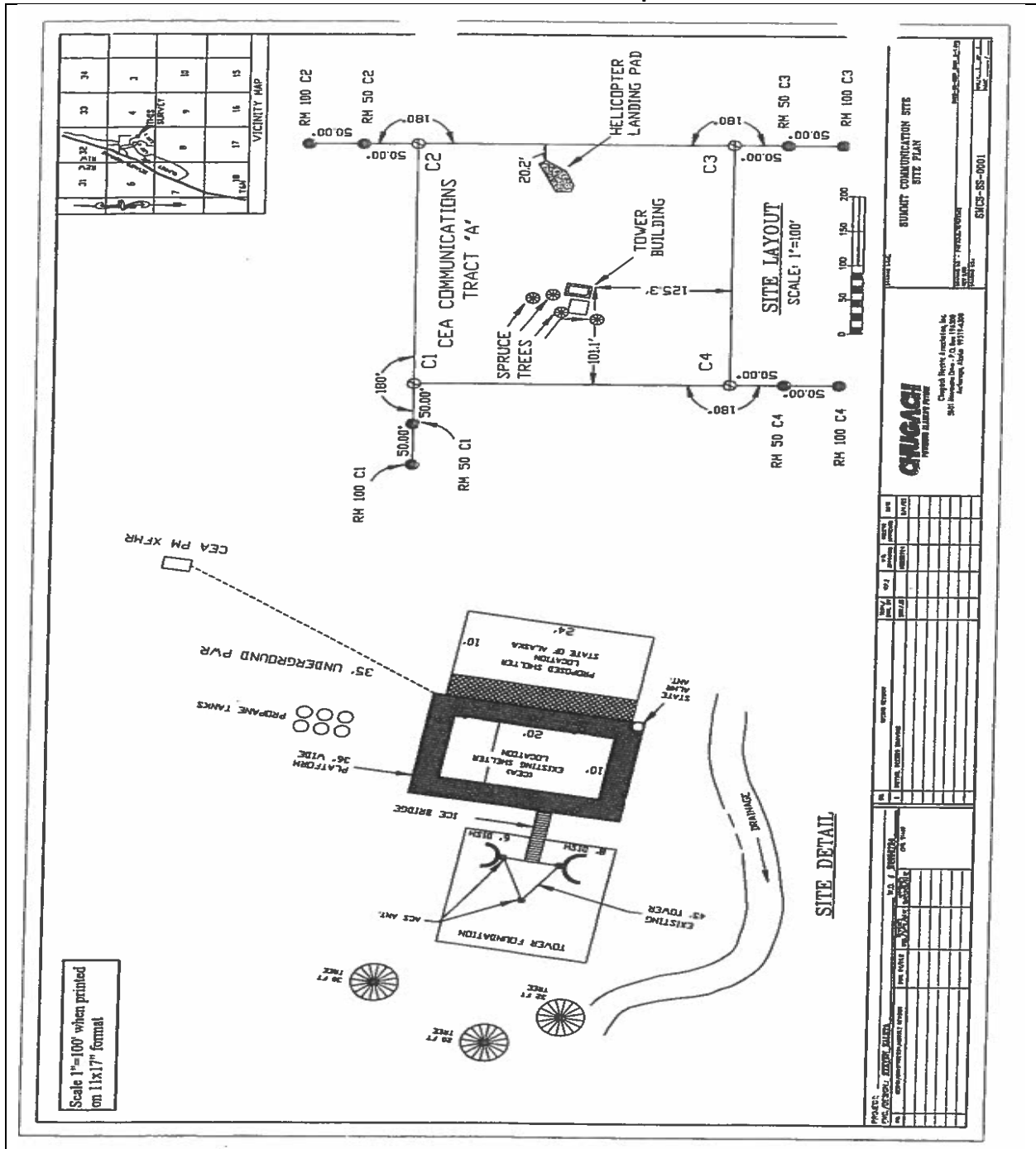


EXHIBIT B

EQUIPMENT LIST

(provide additional pages as needed)

Tower Information:

Tower Owner: ☐ Lessee ☐ Lessor
Tower Type: ☐ Guyed ☐ Self-supporting ☐ Monopole
Tower Height: _____ Apron Dimension: _____

Equipment List:

Equipment Owner: ☐ Lessee ☐ Lessor ☐ Sublessee: Name: _____
Address: _____
City, State, Zip: _____
Telephone: _____
Duration of Sublease: _____

TOWER (SDA) MOUNTED EQUIPMENT LIST

Antenna Mounting Height: _____ ft Direction: ☐ Up ☐ Down
Transmit ☐ Receive ☐ Leg: _____
Make: _____ Model: _____ Length: _____
Azimuth: _____ Weight: _____ Weight: _____
Mount Type: _____ ERP: _____ Coax Size: _____
Total # of Antennas: _____ Total # of Feedlines: _____

GROUND & BUILDING EQUIPMENT LIST

Currently Installed: ☐ Lessee's Building ☐ Sublessee's Building ☐ Lessor's Building
Utilizing Multiplexor/Combiner: Yes ☐ No ☐ Owned by: Lessor ☐ Lessee ☐
Utilizing Combiner: Yes ☐ No ☐ Owned by: Lessor ☐ Lessee ☐
Total # of Cabinets: _____ Total # of Units: _____
Stacked: Yes ☐ No ☐
Cabinet Dimensions: _____ Cabinets #: _____
Floor Space: _____ Building Space: ____ ft x _____ ft
Equipment: _____ Make/Model: _____
Type: Transmitter ☐ Transceiver ☐ Repeater, etc. ☐ Transmit Power: _____
Requirements: _____ Required Breaker Amps: _____
GPS: Yes ☐ No ☐ Make/Model: _____ Filters Duplexers: Yes ☐ No ☐
Transmit Frequency (MHz): _____
Receive Frequency (MHz): _____

Initial: _____

*This schedule contains, in its entirety, Lessee's inventory of
equipment specific to this lease agreement*

Initial: _____

ATTACHMENT C

RENTAL SCHEDULE

Subject to increase 3% annually

<i>Amount Due</i>	<i>Year</i>
\$5,464.00	2017
\$5,627.92	2018
\$5,796.76	2019
\$5,970.66	2020
\$6,149.78	2021
\$6,334.27	2022
\$6,524.30	2023
\$6,720.03	2024
\$6,921.63	2025
\$7,129.28	2026
\$7,343.16	2027
\$7,563.45	2028
\$7,790.36	2029
\$8,024.07	2030
\$8,264.79	2031
\$8,512.73	2032
\$8,768.12	2033
\$9,031.16	2034
\$9,302.09	2035
\$9,581.16	2036
\$9,868.59	2037
\$10,164.65	2038
\$10,469.59	2039
\$10,783.68	2040
\$11,107.19	2041
\$11,440.40	2042
\$11,783.61	2043
\$12,137.12	2044
\$12,501.24	2045
\$12,876.27	2046
Etc.	