

RESOLUTION NUMBER 23-06
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Douglas Cline ON THE
15th DAY OF May, 2006.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER, ON BEHALF OF THE CITY OF CENTERVILLE, TO ENTER INTO AN AGREEMENT WITH THE BOARD OF COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, FOR THE USE OF THE COUNTY'S WATER TOWER FOR PLACEMENT OF EQUIPMENT FOR PUBLIC SAFETY COMMUNICATIONS PURPOSES.

THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES THAT:

SECTION 1. The City Manager is hereby authorized and directed to do all things necessary to execute a Lease Agreement between the City of Centerville and the Board of Commissioners of Montgomery County, a copy of which is attached hereto as Exhibit "A" and incorporated herein, which Agreement provides for lease of a portion of a water tower and for easements allowing for ingress and egress to and from the Leased Area for the installation, maintenance, use, operation and replacement of utilities to serve the Leased Area.

SECTION 2. This Resolution becomes effective upon its adoption.

PASSED this 15th day of May, 2006.

C. Mark Kueper
Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James
Clerk of the Council of the
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 23-06, passed by the Council of the City of Centerville, Ohio, on the 15th day of May, 2006.

Debra A. James
Clerk of Council

Approved as to form, consistency
with existing ordinances, the
charter and constitutional provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

LEASE AGREEMENT

THIS LEASE AGREEMENT, made the _____ day of _____, 2006, by and between THE BOARD OF COUNTY COMMISSIONERS of Montgomery County, Ohio whose address is 451 W. Third Street, Dayton, Ohio 45422 (hereinafter referred to as "Board"), and City of Centerville, 100 W. Spring Valley Road, Centerville, Ohio 45458, (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, the Board is the fee simple owner of real property located in Montgomery County, State of Ohio, upon which the Board has constructed elevated water tanks ("Tank"), located at 1742 South Metro Park Drive, Centerville, Ohio, said real property being more particularly described on Exhibit A attached hereto and made a part hereof (hereinafter said parcel of real property and Tank collectively being referred to as the "Premises"); and

WHEREAS, Tenant is involved in communications, regulated by the Federal Communications Commission ("FCC") and desires to lease from the Board a portion of the Premises as more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Leased Area") and further desires to receive from the Board easements over, under and through that portion of the Premises as described in Exhibit A attached hereto and made a part hereof, (hereinafter referred to as the "Easement Area") for ingress and egress to and from the Leased Area and for the installation, maintenance, use, operation and replacement of utilities to serve the Leased Area, (the Easement Area and the Leased Area being collectively hereinafter referred to as the "Demised Premises"), all for the purpose of installing and constructing transmission and receiving and related facilities as more particularly set forth and described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as "Tenant's Facility" or "Transmission Equipment"); and

NOW, THEREFORE, in consideration of the premises and the mutual promises and benefits contained herein, the parties hereto hereby agree as follows:

PREMISES and TITLE

1. (a) The Board leases the Leased Area to Tenant. Landlord covenants, represents and warrants to Tenant that (i) as of the date hereof, the Board holds good and marketable fee simple title to the real property which is part of the Premises; (ii) as of the date hereof, the Board holds good and marketable title to the Tank; (iii) as of the date hereof, the Board has full authority and power to enter into this Lease; and (iv) so long as this Lease is in effect and Tenant is not in default, Tenant shall, at all times during the continuance hereof, have quiet, continuous, peaceable and undisturbed possession and enjoyment of the Demised Premises and rights-of-way and easements granted herein or to be granted pursuant hereto, free from the claims of the Board claims, subject to the terms and conditions of this Lease.

(b) Tenant acknowledges that the rights hereby granted to Tenant to install, operate, maintain, repair and use its Transmission Equipment at or on the Tank are shared with the pre-existing tenants to which the Board has heretofore granted the right to use space on the Tank for transmission and reception and allied purposes. Tenant covenants and agrees that it shall install, operate, maintain and repair the Transmission Equipment in such a manner as to prevent interference with the transmission or reception of signals by these other pre-existing antennas or dishes located elsewhere at the Tank or in the area surrounding the Tank. In the event the Transmission Equipment causes any such interference, Tenant covenants and agrees to correct such interference or have it corrected immediately and if such interference cannot be so corrected, to take such action as may be necessary to terminate the interference (including, but not limited to, ceasing operation of the Transmission Equipment) until such time as the source of the interference can be located and the cause thereof corrected. In addition, Tenant shall, at the Board's request, make such changes in the location of, and adjustments to, its Transmission Equipment as may be necessary or appropriate to prevent interference with transmitting and receiving devices hereafter located at or on the Tank; provided, however, that Tenant shall not be required to make any changes pursuant to this sentence that will adversely affect Tenant's Radio Transmission or use of Tenant's Transmission Equipment for the purposes for which Tenant is then using such Transmission Equipment.

(i) The Board will use its best efforts to ensure that the interference rights of subsequent Tank users are subordinate to those of Tenant, as well as other

existing licensees, the older licensees receiving the initial protection consideration until modifications are made then they are considered subsequent users. The Board does not warrant or represent that the relay of programs and other transmissions through the Tenant's Transmission Equipment will not be interfered with by the reception or transmission systems of other occupants of the Tank or the surrounding area, and Tenant hereby releases the Board, and waives any and all claims against the Board with respect to any such interference.

(ii) In the event a dispute regarding interference should arise between the Board and Tenant, and should both parties fail to reach an agreement to resolve the dispute, then the Board or Tenant, at their option, may submit the dispute to binding arbitration with a consulting engineer agreeable to both parties, or to a panel of three consulting engineers, to be chosen as follows: Both the Tenant and the Board shall each choose and pay the fee for an engineering consultant. The two consultants so chosen shall choose a third consultant whose fee shall be borne equally by both parties. The three consultants so chosen shall constitute the arbitration panel, which shall study and make a determination regarding the dispute. The arbitration proceeding must be concluded within thirty (30) days, and both parties agree to be bound by such determination as may be made by the aforementioned panel. In the event the determinations of the panel are in favor of the Board, then Tenant shall bear all costs associated with such arbitration proceedings.

(c) Tenant shall order, at its sole cost, a Commitment for Leasehold Title Insurance with respect to the Premises and/or Demised Premises. If said Commitment discloses any liens, defects of and/or encumbrances on title ("defects") which are not acceptable to counsel for Tenant, Tenant shall notify the Board of said defects and the Board shall have thirty (30) days from the date of Tenant's notice to correct the defect(s). If the Board does not elect to correct said defect(s), Tenant may, at its sole option, reject or accept said defect(s), by giving written notice to the Board of its election.

(d) The Board hereby represents to Tenant the following, which shall be true and correct at all times hereafter, as well as on the date hereof, and for which liability for breach shall survive the Lease:

(i) To the best of the Board's knowledge, information and belief, the Premises and/or the Demised Premises, in its current state, conform with all laws,

ordinances, statues or regulations of any governmental agency, or any applicable private restriction. No notice of the violation of any of said laws, ordinances, statues, regulations or restrictions has been received by the Board.

(e) Provided Tenant is not in default in the performance of its obligations under this Lease beyond the expiration of the applicable period of notice or grace hereunder, Tenant shall have the right, during the term or any renewal terms hereof, to grant a mortgage lien or a security interest in its leasehold estate created hereby, all improvements constructed thereon, and any goods and personal property of every type and description owned by Tenant and installed or kept on the Demised Premises. The Board hereby consents to any such mortgage lien or security interest and disclaims any interest of any kind in any fixtures and equipment installed or kept in the Demised Premises. The Board's fee title is not nor shall be subordinated to any mortgage lien or security interest given by Tenant

TERM

2. (a) This Lease shall become effective ("Effective Date") on (a) the date Tenant sends written notice, if any, to the Board that the conditions set forth herein below in paragraph 17(e) have been met to Tenant's sole satisfaction. The Term of this Lease shall commence on the first day of the calendar month next following the Effective Date (hereinafter referred to as the "Commencement Date") and shall end at midnight on the last day of the month preceding the month in which the fifth (5th) annual anniversary of the Commencement Date shall have occurred. At the time the Effective Date and the Commencement Date are established, the parties hereto will enter into a Supplemental Letter Agreement stipulating both the Effective Date of this Lease and the Commencement Date of the initial Term of this Lease as provided herein.

(l) Tenant shall have renewal options for five (5) successive terms of five (5) years each, for a total of twenty-five (25) years, after expiration of the initial Term of the Lease. Said Lease shall automatically be renewed for each five (5) year renewal period without any further election and/or written notice being required on the part of Tenant unless Tenant shall give the Board written notice, prior to the expiration of the initial Term, or any renewal term hereof, of its election not to renew the Lease. The terms and conditions of the lease for the initial five (5) year Term shall apply to each renewal

option period except that the rent for each renewal term shall be as set forth in paragraph 4(d) herein below.

(b) Tenant shall be responsible for all expenses attributable to any permit and license applications, and the Board shall have no obligations with respect thereto. The Board agrees to cooperate with Tenant, at Tenant's expense, in obtaining all licenses, zoning approvals, and permits as may be necessary or required for the operation and construction of Tenant's Facility.

CONSTRUCTION and USE

3. (a) Promptly after the Effective Date, Tenant shall have the right to construct the Tenant's Facility at its sole cost and expense, in good workmanlike manner, in accordance with applicable governmental laws and regulations, and free of any liens or claims for work, labor and services. However, prior to the Effective Date, Tenant shall submit to the Board and the manufacturer of the Tank, for review and approval by both the Board and said manufacturer, detailed Plans and Specifications ("Plans") of said construction, which approval by the Board and said manufacturer shall not be unreasonably withheld or delayed. The Board shall not have any obligation to construct, maintain, repair or replace Tenant's Facility or any part thereof. Tenant shall use the Facility only in connection with a send/receiver tower and any other public safety communications related activities.

(b) The Board shall not be liable for any damage to Tenant's Facility unless said damage is due to or arises out of any act, negligence, or omission on the part of the Board and/or any of the Board's members, guests, licensees, invites, contractors, employees and/or agents. Tenant agrees that the Board is not liable for acts of random vandalism caused by members of the public.

(c) Tenant, at its own expense, shall maintain the Tenant's Facility, including, but not limited to, its equipment, antennas, transmission lines and connecting devices, fencing, access roads, and all its improvements in accordance with good engineering standards to assure that at all times the same are in conformance with the requirements of local governmental bodies having jurisdiction.

(d) Further, Tenant shall, at its own expense, keep the Leased Area in good repair and condition, and Tenant shall not perform any acts or carry on any practice which

may injure any of the Board's other property or be a nuisance or menace to the Board. Tenant shall keep the Leased Area clean and free from all rubbish, and shall promptly comply with all laws, orders, regulations or ordinances of all governmental authorities applicable to the cleanliness, safety, occupation and use of same.

(f) The Board may, at the Board's option and sole expense, post an observer to monitor Tenant's installation of Tenant's Facility.

(g) Tenant shall operate Tenant's Facility in compliance with all present and future requirements and regulations of the FCC.

(h) Tenant shall construct a chain link security fence, subject to approval of the Board and all appropriate governmental boards, commissions and/or agencies for the separation of the Board's storage area from the shelter space for Tenant's equipment which may be installed in the base of the Tank.

INSURANCE and TAXES

5. (a) During the term hereof, Tenant shall be responsible for all personal property taxes and insurance as to Tenant's Facility and shall carry, at no cost to the Board comprehensive general public liability insurance with limits of not less than three million dollars (\$3,000,000) for bodily injury and death, and not less than one million dollars (\$1,000,000) for property damage. Tenant will name the Board as an additional insured thereon as its interest may appear and shall provide the Board, on the Commencement Date of this Lease, with certificates evidencing that such insurance is in full force and effect.

(b) In the event the Demised Premises is destroyed or damaged in whole or in part by casualty during the term of this Lease then, at Tenant's option (exercised by notice to Board), this Lease may be terminated as of the date of the event or at any time within ninety (90) days thereafter, and no further rent shall be due under the Termination Section or any other Section of this Lease.

(c) The Board will indemnify Tenant, its employees, contractors, agents, guests, partners, officers, shareholders and invitees against claims for injuries and death sustained by persons or damage to property arising out of the Board's use and occupancy of the Premises.

(d) During the term hereof, the Tenant, at Tenant's sole cost and expense,

shall be responsible for any increase in real estate taxes and assessments, both general and special, levied against the Premises, solely due to the construction of Tenant's Facility upon the Demised Premises.

EMINENT DOMAIN

8. In the event the Demised Premises or any part thereof shall be taken or condemned permanently or temporarily for any public or quasi-public use or purpose by any competent authority in appropriation proceedings or by any right of eminent domain, the compensation award for the fee, leasehold and easement rights therein shall belong to and be the property of the Board. Tenant shall, however, be entitled to file a separate action and shall have the right to claim therein compensation as may be separately awarded or allocated for Tenant's Facility and/or by reason of the cost or loss suffered by Tenant's business, the cost of and/or loss suffered by removing Tenant's fixtures, leasehold improvements, Facility and equipment.

UTILITIES

10. The Board shall have the responsibility to cooperate with Tenant (without any expense to the Board) in requesting and/or obtaining permission and/or service from the proper utility companies in order to ensure that all utilities are made available to the Demised Premises necessary to allow Tenant to fully operate its business to be conducted thereon. Tenant shall pay all new utility installation charges, if any, and shall pay all utility charges used in connection with the Tenant's business from the Effective Date of this Lease.

SURRENDER AT END OF TERM

12. (a) At the expiration or termination of this Lease, whether by laps of time or otherwise, Tenant will peaceably and quietly surrender to the Board the Tank, the Demised Premises and easements in substantially the same condition as received except for reasonable wear and tear, acts of God, insured casualty, and other causes beyond the control of Tenant. In such event, Tenant shall have no claims for refund of any rent paid to the Board through said date of expiration or termination.

(b) At the expiration or other termination of this Lease, whether by lapse of time or otherwise, Tenant will remove Tenant's Facility and, in such event, Tenant shall restore the Demised Premises, easements and the Tank to substantially the same condition as received prior to Tenant's Work, subject to ordinary wear and tear, acts of God, insured casualty, or other causes beyond Tenant's control.

TITLE TO IMPROVEMENTS

13. Title to Tenant's Facility, as well as all fixtures and chattels used in connection therewith, shall be and shall remain the property of Tenant and the exclusive ownership by Tenant is herein acknowledged by the Board.

TERMINATION

14. (a) This Agreement may be terminated by the Board upon notice, in writing, upon the other party no later than at least one year in advance of the Commencement Date of each successive five (5) year renewal period. The Board may also terminate this Agreement in the event that the Board is of the opinion that the Tenant is carrying out the terms of this Agreement in an unreasonable, unprofessional, or unworkmanlike manner. Said termination for this particular reason shall occur upon the provision of a written notice of termination to the Tenant at least ninety (90) calendar days in advance of the annual anniversary date of the Commencement Date, stating in the termination notice the reason for said termination. The Board, in its sole discretion, may allow the Tenant to cure the reason for the termination provided the cure of the reason is accomplished within thirty (30) days of the date of the forwarding of the termination notice. The parties further agree that should the Tenant become unable for any reason to comply with the terms called for the virtue of this Agreement, the Tenant shall be in default as provided in paragraph 7 herein. Notwithstanding the above, the Tenant shall not be relieved of liability to the Board for damages sustained by the Board by virtue of any breach of the Agreement by the Tenant; and the Board may withhold any compensation to the Tenant for the purpose of set-off until such time as the amount of damages due the Board from the Tenant is agreed upon or otherwise determined.

(b) Tenant shall have the right to terminate this Lease at any time without any penalty or further liability whatsoever in the event the location of the Tenant's Facility becomes unacceptable for receiving and/or transmitting radio waves in accordance with Tenant's engineering and other requirements and/or in the event Tenant's Facility becomes unacceptable in accordance with the standards, requirements and conditions then demanded by the Federal Communications Commission or other state, federal, or local regulatory authority. In such event, Tenant shall have no claims for refund of any rent paid to the Board through said date of expiration or termination.

(c) Subject to the terms of any existing or future mortgage indenture or other financing instrument of the Board, if, at any time during the Initial Term or any renewal terms of this Lease, the Board receives a bona fide offer to sell the Premises and/or the Tank to a 3rd party purchaser for value which offer the Board desires to accept, the Board shall give Tenant notice thereof, which notice shall specify, in detail, the name and address of the prospective purchaser and the purchase price and other covenants and conditions of the proposed offer, accompanied by the Board's affidavit that such proposed offer is in good faith and that all terms and conditions affecting the proposed offer have been accurately disclosed. Tenant shall thereupon have the prior option to purchase the Premises and/or the Tank for the purchase price and upon the other covenants and conditions specified in said notice, which option Tenant may exercise by giving notice to the Board within forty-five (45) business days after receipt of the notice from the Board. Promptly upon Tenant's submission to the Board of a written purchase agreement containing the purchase price and other covenants and conditions of the proposed offer, the Board shall execute, acknowledge and deliver to Tenant such offer in duplicate and shall be entitled to receive one of such offer in duplicate and shall be entitled to receive one of such duplicates executed by Tenant.

BROKERS

15. The Board and Tenant hereby respectively warrant and represent to and with each other that there is no real estate broker involved in this transaction. The Board and Tenant hereby respectively further warrant and represent to and with each other that any fees, commissions or remunerations claimed by reason of this transaction shall be the sole obligation of said party claimed against.

NOTICES

16. All notices required under this Lease to be served upon either party shall be sent by registered or certified mail, return receipt requested, and shall be deemed served when received by the party for whom it is intended at its address herein above set forth (in the case of notice to Tenant, a copy of all notices must be forwarded to City of Centerville., 100 W. Spring Valley Road, Centerville, Ohio 45458, or to such other address as the Board or Tenant shall hereafter give notice to the other in writing. Notwithstanding anything to the contrary contained herein, any notice given hereunder which is either returned or unclaimed shall be deemed served when deposited in the United States mail, properly stamped and addressed to the other party for whom it is intended.

MISCELLANEOUS PROVISIONS

17. (a) It is mutually stipulated and agreed by and between the parties hereto that this instrument contains the entire agreement between them as of this date, and that the execution thereof has not been induced by either party by any representations, promises or undertakings not expressed herein, and that there are no stipulations, promises or undertakings whatsoever by the respective parties in any way affecting the subject matter of this Lease which are not expressly contained in this instrument and no change, alteration or modification hereof may be made except in writing signed by both parties hereto.

(b) The terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors, assigns and personal representatives.

(c) This Lease shall be construed under the laws of the State of Ohio.

(d) Tenant, or its authorized representatives, shall be given and is hereby granted the right of ingress and egress in, on, over and through the Premises at any and all reasonable times for the purpose of constructing the Tenant's Facility. Once construction has been completed and Tenant's Facility is on-line, Tenant shall have a restricted right of ingress and egress in, on, over and through the Premises at any and all times for the purpose of determining what repairs or replacements, if any, are necessary to be made by Tenant and for the further purpose of making said necessary repairs or replacements.

(e) This Lease and Tenant's obligations hereunder are subject to and contingent upon the following conditions (all of which must be met without cost or expense to the Board), which must be satisfied as set forth herein within twelve (12) months from the date of this Lease Agreement:

(i) Tenant obtaining all governmental approvals (including, but not limited to, platting, subdivision, zoning, zoning variances and/or rezoning classifications) necessary, in Tenant's sole opinion, to allow Tenant to develop the Demised Premises as intended by Tenant. Tenant and/or the Board, if required, shall submit applications to commence the appropriate proceedings to obtain such approvals, if necessary. The board agrees to cooperate with Tenant and assist Tenant in obtaining the appropriate approvals as aforesaid.

(ii) A determination, in Tenant's sole opinion, that the Premises and/or Demised Premises, are satisfactory for the Tenant's intended use. In order to make such determination, the Board hereby grants to Tenant, its agents, contractors, employees and/or licensees, the right to enter the Premises and Demised Premises for the purpose of conducting engineering tests, soil test borings, preparing a survey, an environmental Phase I Site Assessment and/or Phase II Subsurface Investigation Report and an inspection of utility services, as well as such other tests as Tenant shall determine to make on or about the Premises and Demised Premises.

(iii) The Premises being acceptable to Tenant, in its sole opinion, for purposes of receiving and transmitting radio waves in accordance with Tenant's engineering and other requirements.

(iv) Tenant obtaining the necessary licenses and permits enabling Tenant to construct Tenant's Facility and operate Tenant's intended business.

(v) Tenant and/or the respective utility companies receiving from the Board the easement(s) referred to in paragraph 11 herein above, which easement(s) must be acceptable to counsel for Tenant and/or the respective utility companies.

(vi) Tenant receiving a policy for Leasehold Title Insurance solely acceptable to counsel for Tenant.

(vii) The Board and Tenant mutually agreeing to the location of the Demised Premises. Tenant shall have a survey of the Leased Area and Easement Area

prepared, at its sole cost and expense, and upon completion thereof, the respective legal descriptions thereof shall be attached hereto as Exhibit A.

(ix) The Title Company issuing the Policy for Leasehold Title Insurance receiving a certified copy of the Ordinance, certifying that Board is authorized, as aforesaid, and that the officers executing this lease are authorized, on behalf of the Landlord.

In the event said conditions/contingencies are not met to Tenant's sole satisfaction by said date, this Lease Agreement shall immediately terminate and be of no further force and effect as between the parties hereto unless said date is extended by the mutual agreement of the parties hereto. In the event said Lease is terminated and does not, therefore, become "effective" as between the parties hereto, Tenant does hereby represent and warrant to the Board that it shall repair and restore the Premises to its original condition due to any damage which has been done to the Premises as a result of Tenant's tests as set forth in paragraph 17(e) (ii) herein above.

(f) The Board understands that monetary damages are not sufficient in the event of breach of the Board's obligation to lease the Leased Area to Tenant and perform pursuant to the terms hereof; therefore, failure to perform by the Board herein shall entitle Tenant to specific performance to enforce the terms, provisions and/or validity of this Lease on behalf of Tenant.

(g) Waiver of a breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach of such provision, or of any breach of any other provision of this Lease.

(h) If any provision of this Lease shall, to any extent, be found by a court of competent jurisdiction, to be invalid or unenforceable, the validity and enforceability of the remainder of this Lease and each of the other provisions hereof shall not be affected or impaired unless a failure of consideration would result thereby.

(I) Tenant agrees that if the estate created hereby shall be taken in execution, or by other process of law, or if any petition in bankruptcy or for the appointment of a receiver be filed concerning Tenant and same is not dismissed within sixty (60) days thereafter, or should Tenant be declared bankrupt or insolvent according to law, or should any receiver be appointed for the business or property of Tenant or if any

assignments shall be made of Tenant's property for the benefit of creditors, then, and in such event, this Lease may be terminated at the option of the Board.

(j) The Board reserves the right to subject and subordinate this Lease at all times to the lien of any mortgages now or hereafter placed upon the Board's interest by parties other than Tenants' lenders in the said Premises and on the land and buildings on said Premises or upon any buildings hereafter erected on said Premises, provided that the holder of any such mortgage shall agree not to disturb Tenant's rights hereunder so long as Tenant shall perform its obligations hereunder. Tenant covenants and agrees to execute and deliver, upon demand, such further instrument or instruments subordinating this Lease to the lien of any such mortgage or mortgages as shall be desired by the Board and by any mortgagees or proposed mortgagees, provided that the Mortgagee at issue shall furnish a non disturbance agreement consistent with the forgoing.

(k) Tenant acknowledges that it has examined the Demised Premises prior to the making of this Lease and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by the Board, or its agent, which are not herein expressed, and Tenant hereby accepts the Demised Premises in their present condition as of the date of the execution of this Lease.

(l) It is agreed that each and every of the rights, remedies and benefits provided by this Lease shall be cumulative, and shall not be exclusive of any said rights, remedies and benefits, or any other rights, remedies and benefits allowed by law.

(m) In the event that, during the initial Term of this Lease or any renewal terms thereof, replacement, repairs and/or renovation to the Tank are required which necessitate the temporary removal of part or all of Tenant's Facility, Tenant will, at its expense, remove the same within thirty (30) days upon receipt of written request from the Board. Tenant will be responsible for reinstallation, at its own expense, after the completion of such repair and/or renovation. Such repair and/or renovation shall be completed by the Board in an expeditious manner so as to minimize disruption of Tenant's Facility.

(n) In the event that, during the initial Term of this Lease or any renewal terms thereof, the Board determines that it is necessary or advisable to remove the Tank and not replace it, the Board may do so upon one hundred eighty (180) days prior written

notice to Tenant. Tenant shall be responsible for the removal of Tenant's Facility prior to the removal of the Tank by the Board. In the event the Tank is to be removed, the Board agrees that Tenant may construct its own tower on the Demised Premises for its facilities, subject to all other terms and conditions of this Lease or any renewal thereof. In the event Tenant does not construct or is unable to construct its own Tower on the Demised Premises pursuant hereto, this Lease shall terminate as between the parties hereto and no termination fee shall be due and owing from Tenant to the Board pursuant to paragraph 14 (a) (i) herein above.

(o) Tenant agrees to replace if required at its expense, any existing antennae of the Board on the Tank together with the cable to the equipment located in the base of the Tank. Tenant will erect, if required, at its expense, up to a total of four (4) of the Board's antennae on the Tenant's antennae platform or "pod" with cable to the base of the Tank.

(p) Tenant will install, if required, at its expense, any OSHA required safety equipment.

**Centerville Police Department Communications Antenna Lease
City of Centerville
Field Operations - South Metro Water Tank**

EXECUTED, at Dayton, Ohio, on the _____ day of _____, 20_____.

WITNESS:

MONTGOMERY COUNTY BOARD OF
COUNTY COMMISSIONERS

By _____
Charles J. Curran

By _____
Deborah A. Lieberman

By _____

Vicki D. Pegg, President

OR

By _____
Deborah A. Feldman, Administrator

WITNESS:

City of Centerville

By _____
City Manager

APPROVED AS TO FORM BY
MATHIAS HECK, JR, PROSECUTING ATTORNEY

By _____

Date: _____

EXHIBIT A

DESCRIPTION OF LAND

to the Agreement dated _____ 2006, by and between
BOARD OF COUNTY COMMISSIONERS of Montgomery County, Ohio, as Landlord, and
City of Centerville, 100 W. Spring Valley Road, Centerville, Ohio 45458, (hereinafter
referred to as "Tenant").

The Land is described and/or depicted as follows (metes and bounds description):

APN: 068 01722 0004

**A WRITTEN DESCRIPTION OF THE LAND WILL BE PRESENTED HERE OR
ATTACHED HERETO**

Pt 3 South Metro Industrial Park, Sec1.

E-Exempt Property Owner by Counties

3.16 Acres

Deed – 1993-00194B004