

RESOLUTION NO. 2665

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH CLACKAMAS 800 RADIO GROUP FOR THE USE OF CITY-OWNED PROPERTY ON LEVEL C RESERVOIR PARCEL AS A WIRELESS COMMUNICATION FACILITY TOWER SITE.

WHEREAS, the City of Wilsonville wishes to allow for the siting of wireless communication facilities on city-owned properties in a manner that does not unfairly discriminate among providers of wireless communication facilities; and

WHEREAS, Clackamas 800 Radio Group seeks to lease a 3000 square foot parcel of city-owned property at the Level C Reservoir Property for use as a wireless communication facility tower site; and

WHEREAS, Clackamas 800 Radio Group is requesting an access right for an area approximately 28.7 +/- feet wide and 148.7 +/- feet long of city-owned property at the Level C Reservoir Property for ingress and egress to the Ground Space; and

WHEREAS, Clackamas 800 Radio Group is requesting an utility easement area for an area approximately 1676 square feet located primarily within the access right area of the property for the purpose of installing underground power to the Ground Space; and

WHEREAS, the Communications Facility shall only be used for communications to, from and among public entities; and

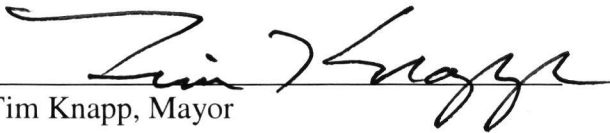
WHEREAS, Clackamas 800 Radio Group is required to obtain an easement or access license for the right of way of ingress and egress to and from the Level C Reservoir Property from the adjacent landowner; and

WHEREAS, Clackamas 800 Radio Group agreed to pay rent to the City for the use of this site;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. Authorizes the City Manager to sign the Communications Facility Ground Lease agreement after Clackamas 800 Radio Group provides an executed copy of the easement or access license for the right of way of ingress and egress to and from the Property from the adjacent landowner.
2. Said agreement is attached to this resolution as "Exhibit 1."

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 5th day of August 2019, and filed with the Wilsonville City Recorder this date.


Tim Knapp, Mayor

ATTEST:

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Councilor President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes

EXHIBIT:

1. Communication Facility Ground Lease



COMMUNICATIONS FACILITY GROUND LEASE

THIS Lease Agreement ("Lease") is entered into this 5th day of August, 2019, by and between the **City of Wilsonville**, a municipal corporation ("Lessor"), and **Clackamas 800 Radio Group** ("C800"), an intergovernmental entity formed pursuant to ORS Chapter 190, Milwaukie, Oregon ("Lessee") [collectively, "the Parties"].

WHEREAS, Lessor is the owner of certain real property located in Clackamas County, State of Oregon, at Tax lot 502, Section 1, T3S, R1W, W.M., Oregon ("the Property"), which is more particularly shown on **Exhibit "A"** attached hereto; and

WHEREAS, Lessee desires to lease an approximate three thousand square-foot (3,000 SF) portion of the Property ("Ground Space") for placement of the Lessee's equipment shelter, generator, propane tank, and communications tower, and the Ground Space, which is more particularly shown and described on **Exhibit "B"** attached hereto, will be leased for the purpose of erecting, constructing, installing, and operating thereon: an equipment shelter; communications tower for antennas and microwave dish(es); an emergency power generator and propane tank; fencing; and all other necessary associated equipment and facilities (collectively, "the Communications Facility," as more particularly described in **Exhibit "C"**); and

WHEREAS, Lessee is requesting an access right for ingress and egress to the Ground Space, which is more particularly shown and described on **Exhibit "B"** attached hereto; and

WHEREAS, Lessee is also requesting an utility easement, which is more particularly shown and described on **Exhibit "B"** attached hereto to install underground wire to provide power to the Communication Facility; and

WHEREAS, the Communications Facility shall only be used for communication to, from, and among public entities such as emergency service providers, public works operations, transit operations, parks operations, schools, and the like; and

WHEREAS, Lessee has agreed that Lessor can place its communications devices on Lessee's Communications Facility without charge; and

WHEREAS, Lessor desires to lease the Ground Space and grant an access license and utility easement to Lessee upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and incorporating the above Recitals as if fully set forth below, the Parties agree as follows:

1. Leased Area. Lessor does hereby lease to Lessee the Ground Space, and the air space above the Ground Space, on the condition that Lessee obtains and maintains an easement or access license for the right-of-way of ingress and egress to and from the Property from the adjacent landowner

2. Nonexclusive Access Area. Lessor shall have a nonexclusive right approximately 28.7+/- feet wide and 148.7+/- feet long for the ingress and egress to the Ground Space. In no event shall Lessee block this area or impede the access of Lessor. The location of the Nonexclusive Access Area is shown in **Exhibit "B"**.
3. Utility Easement. Lessor does hereby grant an utility easement to Lessee for an area of 1676 square feet along the southern area of the Property for providing power via underground wire to and within the Ground Space. The location of the Utility Easement Area is shown in **Exhibit "B"**.
4. Authority. Lessor covenants and warrants that Lessor has title to the Property and that Lessor has the right and authority to enter into this Lease for the Property. Lessor, however, does not have the right to grant any use of the Access Easement to the Property and Lessee must provide Lessor with a signed and recorded copy of the Access Easement to the Property from the owner of the Access Easement.
5. Permitted Use. Lessee may use the Ground Space for the installation, construction, maintenance, operation, repair, replacement, and upgrade of its communications fixtures and related equipment, cables, accessories, and improvements for the transmission and reception of communications signals, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing, and any other items necessary to the successful and secure use of the Communications Facility. The Communications Facility shall only be used by Lessee for communication to, from, and among public entities such as emergency service providers, public works operations, transit operations, parks operations, schools, and the like, but no subleasing is allowed within the Ground Space (collectively, the "Permitted Use"). Lessor and Lessee agree that any portion of the Communications Facility that may be conceptually described by sketch, drawings, or other depictions in **Exhibit "C,"** attached hereto and by this reference made a part hereof, will be deemed to describe the Communications Facility being approved by Lessor. **Exhibit "C"** includes drawings of the initial installation of the Communications Facility, and Lessor's execution of this Lease signifies Lessor's approval of **Exhibit "C"** to the extent **Exhibit "C"** complies with the required Government Approvals, as defined in Paragraph 6. Lessee has the right to request to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas, or relocate the Communications Facility within the Ground Space at any time during the term of this Lease. Such request must be made, in writing, to Lessor.
6. Approvals. This Lease is subject to Lessee's ability to obtain all governmental licenses, permits, approvals, or other relief or authorizations required of or deemed necessary or appropriate by Lessee for its use of the Ground Space, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "Government Approvals"). Placement of any new Communications Facilities will require compliance with Chapter 4 of the Wilsonville Code, as it may be amended from time to time. The Code contains restrictions on size, placement, and appearance which must be approved through the Lessor's Administrative Review Process. Lessor authorizes Lessee to prepare, execute, and file all required applications to obtain Governmental Approvals for Lessee's Permitted Use under this Lease and agrees to reasonably assist Lessee with such applications and with obtaining and maintaining the Government Approvals. In addition, Lessee shall have the right to initiate the ordering and/or scheduling of necessary utilities, subject to advance written notice to Lessor. No Communications Facilities shall be placed within the Ground Space until all approvals have been obtained and copies provided to Lessor.

- 6.1 Prior to the installation of any Communications Facility within the Ground Space, Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Lessee's choice. In the event Lessee determines, in its sole discretion, due to the title report results or survey results, that the condition of the Ground Space is unsatisfactory, Lessee will have the right to terminate this Lease upon written notice to Lessor.
- 6.2 Lessee may also perform and obtain, with Lessor's written approval of the specific scope of any of the following, all at Lessee's sole cost and expense: soil borings, percolation tests, engineering procedures, environmental investigation, or other tests or reports on, over, and under the Property necessary to determine if the Lessee's use of the Ground Space will be compatible with Lessee's engineering specifications, system, design, operations, or Governmental Approvals. Approval for such testing may be granted or denied in Lessor's sole discretion and, if such testing is allowed, Lessee must fully restore the Property to its pre-existing condition.
7. Interference. Lessee use is subordinate to and shall not interfere with Lessor's uses on the Property. Lessor shall have no obligation to guarantee, warrant, or in any other way prevent interference with Lessee's proposed use of the Communications Facility from the use(s) existing on the Property as of the date of the Lease, which uses may be expanded or changed. Lessee's use of the Property shall not in any way interfere with any other use or uses of the Property.
- 7.1 The Lessor will provide Lessee with a list of all existing radio frequency user(s), if any, on the Property to allow Lessee to evaluate the potential for interference. Lessee warrants that its use of the Ground Space will not interfere with existing radio frequency user(s) on the Property, as disclosed by Lessor.
- 7.2 Lessor will not grant, after the date of this Lease, a lease, license, or any other right to any third party for the use of the Property, if such use will adversely affect or interfere with the Communications Facility.
8. Initial Lease Term. The initial term of this Lease shall be for ten (10) years, commencing on the date Lessee executes this Lease, unless earlier terminated according to the terms herein. Thereafter, the Lease will automatically renew annually unless otherwise terminated by either party giving the other party at least ninety (90) days' prior written notice that the Lease will terminate. This Lease may be terminated by either party by giving at least ninety (90) days' notice to the other party after the expiration of the Initial Lease Term.
9. Termination. Lessee may terminate the Lease at any time following ninety (90) days' written notice to Lessor. Upon termination by Lessee, Lessee shall not be entitled to any refund of fees previously paid. Lessor may terminate the Lease after providing ninety (90) days' written notice to Lessee. Lessor may terminate this Lease for default or upon the giving of ninety (90) days' notice following the expiration of the Initial Lease Term.
10. Consideration.
- 10.1 Lease Amount. Lessee shall pay Lessor an annual Lease Amount of Twelve Thousand Dollars (\$12,000.00) per year, in advance, commencing on the date the required

permit(s) for the Lessee's proposed facilities are issued, prorated to January 1st of the following year. The anniversary date thereafter for all Lease payments shall be January 1st of each year.

10.2 Adjusted Fees. The Lease Fee shall increase three percent (3%) per year, and the adjusted rate shall become the Adjusted Lease Fee.

10.3 Damages to the Land. Lessee shall repair or pay to Lessor the cost of repair for any damage to the Property or improvements of Lessor caused by Lessee or its agents or contractors or resulting from Lessee's use of or operations on the Property.

10.4 Improvements Required Maintenance by Lessee

10.4.1 Lessee shall make and maintain roadway related improvements within the Nonexclusive Access Area including but not limited to black vinyl clad fencing with privacy slats(described below), grading, placement of gravel, alarm system(described below), all of which the Lessee must maintain.

10.4.2 Lessee shall remove the existing fence along the south border of the Property and install a new black clad vinyl chain link fence, with three strand barb wire in its place ("Security Fence") to exactly align with the surveyed Property boundary. Lessor shall be given full access to use and operate the Security Fence.

10.4.3 Lessee shall install an alarm system on the Security Fence around the Nonexclusive Access Area and around the Ground Space. This alarm system shall be separate from Lessor's alarm system and shall not in any way impact Lessor's alarm system. Lessor shall have the alarm codes for Lessee's alarm system and shall be allowed to activate and deactivate the alarm system as Lessor deems necessary for its use and operation of the Property

10.4.4 Prior to the commencement of any construction in or around the Property, Lessee shall provide an arborist report, for Lessor's review and approval, that shows any trees that are proposed to be removed as well as a detailed description of any potential impact Lessor's construction might have on any remaining trees. Damage to trees must be minimized and Lessor reserves the right to prohibit the removal of or damage to any tree it deems can be avoided.

10.4.5 Lessee shall purchase 24 nursery stock purple beech (Fagus Sylvatica 'Dawyck Purple') trees, with a minimum 1 1/2 inch caliper diameter, acceptable to and to be provided to the owner of Access Easement to the Property and the adjacent parcel immediately south of the Property as a screen to the Ground Space.

10.5 Late Payments. If Lessee fails to make any payment due under this Section 10 when due, the Lessee shall be in default. The amount in default shall bear interest at the then current statutory judgment rate of interest until paid in full.

11. Use; Utilities and Access.

11.1 Use. Lessee shall only use and occupy the Ground Space for the construction and operation of a Communications Facility and activities directly incidental thereto, including the maintenance, repair, or removal of the Communications Facility, subject to the limitations set forth in this Lease. Any additions to the Communications Facility or any other activities incidental thereto will require Lessor's prior written approval.

11.2 Utilities and Access. Lessee is responsible for all utility costs associated with the Communications Facility including but not limited to the installation of an electric meter, conduit, payment for electricity, etc.

11.3 Construction and Maintenance. Upon reasonable written notice to Lessor, Lessee may make arrangements with Lessor to use other portions of the Property as reasonable necessary for the construction, maintenance, repair, alteration, removal or replacement of the Communication Facility. The scope and duration of the work to be performed will be documented in writing and signed by Lessor. The primary purpose of the Property is and always will be the operation of the water facilities and none of Lessee's activities on or use of the Property can interfere with Lessor's primary use.

12. Ownership of Communications Facility. The Communication Facility and any alterations or additions thereto which may be constructed by Lessee on the Communications Facility shall be owned by Lessee and must be removed by Lessee upon termination of this Lease. Lessee shall promptly restore the Ground Space to pre-lease condition except as otherwise approved, in writing, by Lessor.. If Lessee fails to remove the Communications Facility within thirty (30) days after the termination of this Lease, Lessor may remove the same and dispose of them without any further notice to Lessee, and Lessee shall be liable to Lessor for all costs of removal, including any and all legal costs and fees incurred by Lessor in effecting such removal.

13. Repair and Maintenance. During the term of this Lease, Lessee shall, at its own cost and expense, keep and maintain the Nonexclusive Access Area, Ground Space, and Communications Facility in good order and repair and shall not allow any nuisances to exist. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Nonexclusive Access Area, Ground Space, or Communications Facility or any appurtenances thereto.

14. Lessor's Use of the Communication Facility. Lessor may install, operate, and maintain certain equipment on Lessee's Communication Facility and within the Ground Space, as long as Lessor's proposed equipment installation does not interfere or conflict with Lessee's use of the Communication Facility and the Ground Space at the time of Lessor's desired installation. Such equipment installation shall be subject to Lessee's approval, which approval shall not be unreasonably

withheld, conditioned, or delayed. Said equipment shall be up to, but no larger than, twelve (12) feet of vertical space on the tower structure; and up to, but no larger than, thirty (30) square feet of space on the ground within the Ground Space. Lessee agrees to reserve a minimum of twelve (12) feet of tower space at least one hundred and fifty (150) feet above ground level for Lessor's use. If Lessor determines it would like to use the Communication Facility space, Lessor will submit a no cost site application to Lessee, and will pay for any required government imposed collocation fees, testing, analysis and/or reviews. If modification work is required for the tower to support the Lessor's additional tower equipment, or if any other engineering or governmental approval is required (including, but not limited to, FAA approval of increased height), Lessor will be responsible for any such costs. Lessor shall also be solely responsible for all other costs associated with the installation, operation, maintenance and repair of Lessor's equipment installation on the Communication Facility and within the Ground Space, including, without limitation, utility service charges. Lessor will not be required to pay Lessee rent with respect to Lessor's equipment installation.

15. Notices. All notices, requests, demands, or other communications provided for or permitted or required by this Lease shall be deemed given and received upon the earlier of actual delivery in writing to the following address or three (3) days after such shall be deposited in the United States Mail, postage paid by registered or certified mail, return receipt requested, addressed as follows:

LESSOR: City of Wilsonville
 29799 SW Town Center Loop E
 Wilsonville, OR 97070
 Attn: Public Works Director

LESSEE: Clackamas 800 Radio Group
 11300 SE Fuller Rd
 Milwaukie, OR 97022
 Attn: Manager

16. Damage and Destruction. If the whole of the Communications Facility, or such portion thereof as will make the Communications Facility unsuitable for Lessee's use this Lease may terminate at the option of the Lessee, upon Lessee's removal of all Communications Facilities and restoration of the Ground Space area to pre-Lease condition and inspection and approval by Lessor that Lessee achieved pre-Lease condition. Until all such restoration has been completed, this Lease will remain in full force and effect.
17. Lessee's Right to Cure; Lessor's Remedies. If Lessee defaults on any of Lessee's obligations under this Lease, Lessor shall, before exercising any right or remedy provided herein or by law, give Lessee thirty (30) days' written notice of the claimed default. If the claimed default relates to a matter other than payment, Lessee may request from Lessor a reasonable period of time to cure the default, which, due to its nature, cannot reasonably be cured within thirty (30) days. Provided Lessee is diligently working to cure the default, Lessor shall grant Lessee's reasonable request. If, at the expiration of the applicable period, a cure has not been effected, Lessor may exercise any available right or remedy available at law or in equity, including but not limited to injunctive relief, specific performance, an action for damages, and/or termination of this Lease. Termination of the Lease will not preclude any of the other foregoing remedies. Notwithstanding the foregoing, in the event of a default that jeopardizes Lessor's operations on the Property, Lessor will not be required to give a notice and may seek immediate injunctive relief.

18. Lessor's Right to Cure; Lessee's Remedies. If Lessor defaults on any of Lessor's obligations under this Lease, Lessee shall, before exercising any right or remedy provided herein or by law, give Lessor thirty (30) days' written notice of the default. Lessor may request from Lessee a reasonable period of time to cure the default, which, due to its nature, cannot reasonably be cured within thirty (30) days. Provided Lessor is diligently working to cure the default, Lessee shall grant Lessor's reasonable request. If, at the expiration of the applicable period, a cure has not been effected, Lessee may exercise any available right or remedy available at law or in equity, including but not limited to injunctive relief, specific performance, an action for damages and/or termination of this Lease. Termination of the Lease will not preclude any of the other foregoing remedies.
19. Restrictive Covenants. Except for its continued use of the Property as a water reservoir, which shall take precedence over all other uses, including Lessee's uses, Lessor shall not use the Property in a manner that would materially adversely affect the operation of the Communications Facility. Lessor agrees that Lessee may, at its own expense, control or remove natural vegetative growth, excluding trees and shrubs, on the Communications Facility. Lessee may remove trees and shrubs only after obtaining prior written consent of Lessor. Lessee shall be liable for all damages, whether to the land or improvements of Lessor or any other, which may be caused by erosion created by the removal of any vegetation.
20. Environmental Responsibility. Lessor and Lessee 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. Lessee has inspected the Property prior to occupancy and agrees that it has noted no environmental contamination of any nature. Prior to occupancy, Lessee will perform an environmental assessment of the Property to establish its base line environmental condition to be used in the event contamination later occurs. Copies of any Phase 1 and Phase 2 performed will be provided to Lessor. If Lessee fails to perform such environmental assessment a legal presumption will be established that the Property was free of environmental contamination at the time Lessee took possession of the Ground Space and began work on the Property.
- 20.1 To the extent allowed by the Tort Claims Act and the Oregon Constitution, Lessor and Lessee 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 activities conducted by the party thereon, unless the environmental conditions are caused by the other party.
- 20.2 The indemnifications of this Section 20 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. The provisions of this Section 20 will survive the expiration or termination of this Lease.

- 20.3 In the event the Lessee becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that was caused by Lessor and in Lessee's sole determination, renders the condition of the Ground Space or Property unsuitable for Lessee's use, or if Lessee believes that the leasing or continued leasing of the Ground Space would expose Lessee to undue risks of government action, intervention, or third-party liability, Lessee will have the right to terminate the Lease upon notice to Lessor. Lessee will be entitled to reimbursement for any prepaid Lease Fee on a prorated basis. In the event Lessor becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that was caused by Lessee, Lessee will be in default of this Lease and Lessor shall have available to it any and all remedies for default including damages and termination of this Lease. Lessee further understands and agrees that environmental contamination in and around a water facility can have dire consequences and result in severe and significant damage which, if caused by Lessee or its operations, Lessee shall be fully liable for.
21. Hazardous Materials. Lessee shall not cause, or permit any hazardous material to be brought upon, kept, or used in or about the Ground Space or the Property by Lessee, its agents, employees, contractors, or invitees without the prior written consent of Lessor. As used in this Section, the term "hazardous material" means any hazardous or toxic substance, material, or waste, including but not limited to those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the United States Environmental Protection Agency as a hazardous substance (40 CFR Part 302), and amendments thereto, petroleum products, or such other substances, materials, and wastes that are or become regulated under applicable local, state, or federal law. Lessee may conduct business of operating a communications site, and thus will use batteries as power backup, diesel or propane fuel to power its generator and equipment. Any extra fuel stored on the Ground Space must be limited in amount and held in properly contained facilities to prevent spills, combustion or contamination of the soil and ground water. Storage must be reviewed and approved, in writing, by Lessor.
22. Liens. Each party hereto shall keep the Ground Space and Communications Facility free from liens arising out of the work performed, common materials furnished, or obligations incurred by such parties, and shall indemnify, hold harmless, and defend the other party from any liens and encumbrances arising out of work performed or materials furnished by or at the direction of the party requesting the same.
23. Indemnity. Within the applicable limitations of the Oregon Tort Claims Act, Lessee shall defend, indemnify, and hold harmless Lessor, its officers, directors, employees, agents, affiliates, and subsidiaries, from and against any and all claims arising from Lessee's use of the Ground Space, Communications Facility, the Access Area, the Property, or the conduct of its business, or from any activity, construction, maintenance, work, or thing done, permitted or suffered by Lessee in or about the Ground Space, Communications Facility, or the Property, and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default by Lessee in the performance of its obligations hereunder or violation of state or federal laws and from and against

any and all costs, expenses, and liabilities, including but not limited to attorney fees and litigation costs incurred in connection with such claim.

24. Assignments and Subletting. Lessee may not sub-lease or assign this Lease. Lessor shall have the right to assign this Lease and all of its respective rights and duties hereunder without restriction. Notice of such assignment by Lessor shall be given in writing to Lessee.
25. Holding Over. If Lessee remains in possession of all or any part of the Communications Facility after the expiration of the term hereof, with the express written consent of the Lessor, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term. In such case, any fee or other monetary sums due hereunder shall be paid on the fifth (5th) of each month in an amount of one twelfth (1/12) of the fee described in Section 10 of this Lease, and such month-to-month tenancy shall be subject to every other term, covenant, and agreement contained herein. Any hold-over without a written consent shall be deemed a tenancy at sufferance.
26. Insurance Requirements. Lessee shall maintain insurance coverage acceptable to Lessor in full force and effect throughout the term of this Lease. Such insurance shall cover all risks arising directly or indirectly out of Lessee's use of the Property or the conduct of its business or from any activity, construction, maintenance, work or thing done, permitted by Lessee or suffered by Lessor in the Ground Space, Communications Facility, or the Property. Any and all agents, contractors, or subcontractors with which Lessee contracts to work or be present in the Ground Space, Access Area, Communications Facility, or Property must have insurance that conforms to the insurance requirements in this Lease. The amount of insurance carried is in no way a limitation on Lessee's liability hereunder. The policy or policies of insurance maintained by Lessee shall provide at least the following minimum limits and coverages at all times during performance under this Lease:
 - 26.1 Commercial General Liability Insurance. Lessee and its agents, contractors, and subcontractors operating in the Ground Space, Access Area, Communications Facility, or Property shall obtain, at their own expense, and keep in effect during the term of this Lease, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. Lessee's coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Lease and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Lease.
 - 26.2 Business Automobile Liability Insurance. If Lessee or Lessee's agent, contractor, or subcontractor will be using a motor vehicle in the performance of any work or activities on the Property, Lessee shall provide Lessor a certificate indicating that Lessee or Lessee's agent, contractor, or subcontractor has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**. Notwithstanding who is carrying the insurance when working with or for Lessee or is an invitee of Lessee, Lessee will be primarily liable for and will fully defend, indemnify, and hold harmless Lessor from

and against any claim of personal injury or property damage, and Lessor may make a claim immediately directly against Lessor and shall not be required to pursue any auto insurance claim or exhaust any remedy through any policy holder who caused or allegedly caused the damage or injury.

- 26.3 Workers Compensation Insurance. Lessee and all employers providing work, labor, or materials on behalf of Lessee within the Access Area, Ground Space, Communications Facility, or Property that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.
- 26.4 Insurance Carrier Rating. Coverages provided by Lessee and its agents, contractors, and subcontractors must be underwritten by an insurance company deemed acceptable by Lessor with an AM Best Rating of A or better. Lessor reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to Lessor.
- 26.5 Additional Insured and Termination Endorsements. Additional Insured coverage under Lessee's Commercial General Liability, Automobile Liability, and Excess Liability Policy(ies), as applicable, will be provided by endorsement. Additional insured coverage shall be for both on-going operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give Lessor at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Lessee must be an additional insured on the insurance policies obtained by its agents, contractors, subcontractors performing work or other services within the Access Area, Ground Space, Communications Facility, or Property.
- 26.6 Certificates of Insurance. As evidence of the insurance coverage required by this Lease, Lessee shall furnish a Certificate of Insurance to Lessor. This Lease shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by Lessor. Lessee agrees that it will not terminate or change its coverage during the term of this Lease without giving Lessor at least thirty (30) days' prior advance notice and Lessee will obtain an endorsement from its insurance carrier, in favor of Lessor, requiring the carrier to notify Lessor of any termination or change in insurance coverage, as provided above. Coverage cannot be reduced at any time during this Lease.
- 26.7 Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by Lessor is excess. Lessee shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are

“Claims Made” policies, Lessee will be required to maintain such policies in full force and effect throughout any warranty period.


27. Taxes and Assessments. Lessee shall be responsible for payment of all ad valorem taxes levied upon the Property if this Lease triggers the Property to lose its tax exempt status. Lessee shall be responsible for all taxes levied upon Lessee’s leasehold improvements (including Lessee’s equipment building and tower) on the Ground Space. Lessor shall provide Lessee with copies of all assessment notices on or including the Ground Space immediately upon receipt, but in no event later than thirty (30) days after receipt by Lessor.
28. Entire Agreement. This Lease constitutes the entire agreement between the parties hereto, supersedes all prior written or oral discussions or agreements, and cannot be varied except by the written agreement of the parties hereto.
29. Time. Time is of the essence in the performance of this Lease.
30. Governing Law. This Lease and all rights and liabilities of the parties hereunder shall be construed and governed by the laws of the State of Oregon. Venue shall be in the Circuit Court of Clackamas County.
31. Successors in Interest. To the extent this Lease is assignable, this Lease shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
32. Non-waiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Lease shall in no way affect the party’s rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.
33. Severability. If any provision of this Lease is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Lease shall remain in full force and effect, to the greatest extent allowed by law.
34. Modification. This Lease may not be modified except by written instrument executed by Lessee and Lessor.
35. Time of the Essence. Time is expressly made of the essence in the performance of this Lease.
36. Headings. Any titles of the sections of this Lease are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
37. Interpretation. As a further condition of this Lease, Lessor and Lessee acknowledge that this Lease shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party.
38. Counterparts. This Lease may be executed in one or more counterparts, each of which shall constitute an original Lease but all of which together shall constitute one and the same instrument.

39. Authority. Each party signing on behalf of Lessee and the Lessor hereby warrants actual authority to bind their respective party.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date of execution by the last party to sign this Lease.


LESSOR:

City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

By: 
Print Name: Bryan Cosgrove
Title: City Manager
Date: August 5, 2019

LESSEE:

Clackamas 800 Radio Group
11300 SE Fuller Rd
Milwaukie, OR 97222

By: 
Print Name: Ryan Hael
Title: Chair
Date: July 30, 2019

APPROVED AS TO FORM:

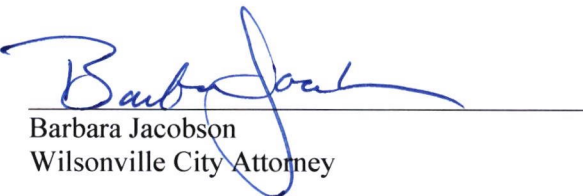

Barbara Jacobson
Wilsonville City Attorney

EXHIBIT "A"

MAP OF PROPERTY

Exhibit A

SECTION 1 T3S R1W W.M.
WASHINGTON COUNTY OREGON
SCALE 1"=400'

3 S 1 1

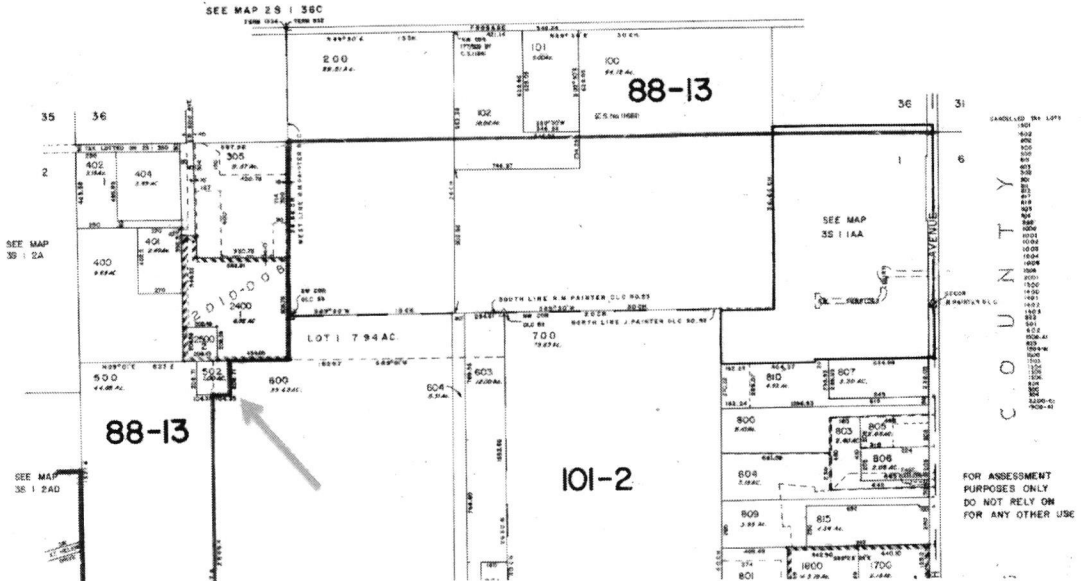


EXHIBIT "B"

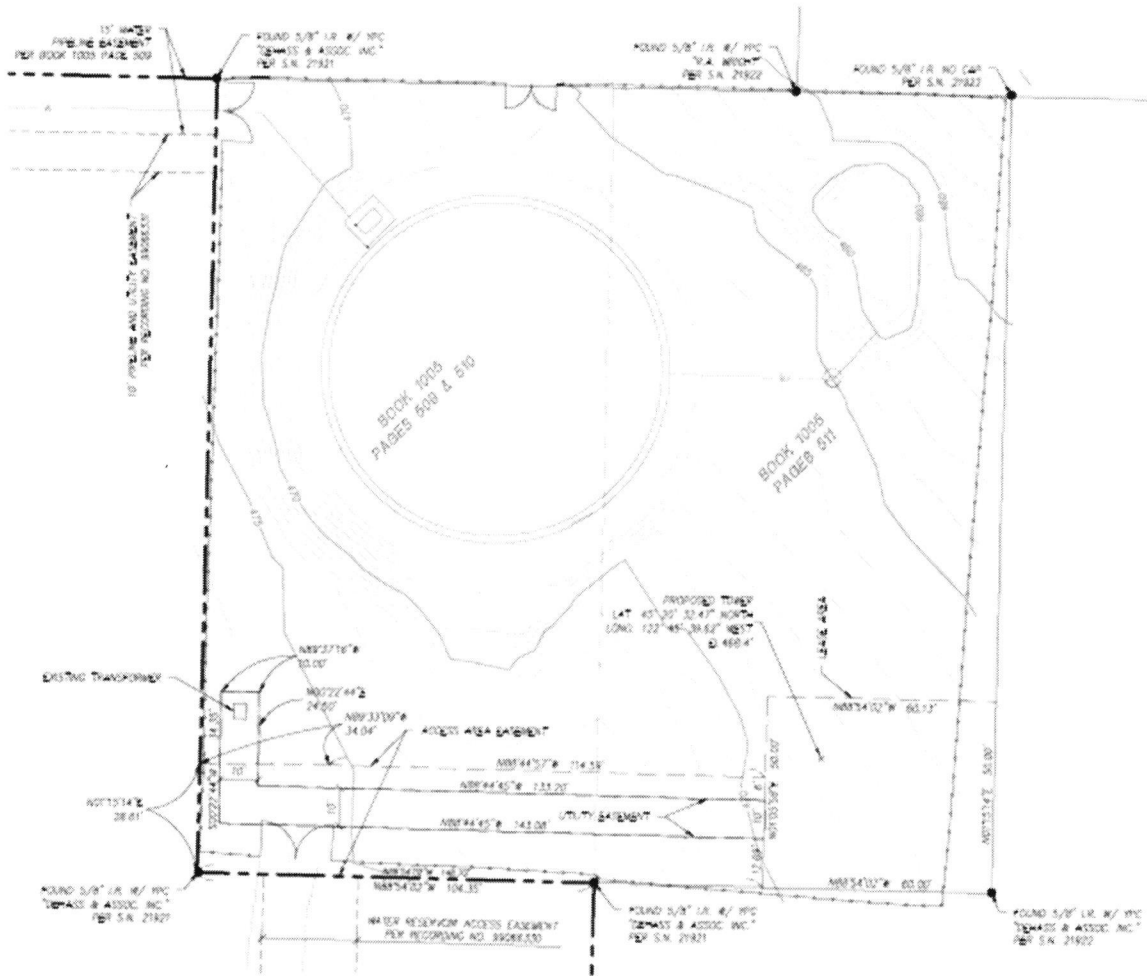


Exhibit "B"

Description of Ground Space

A PORTION OF THAT PROPERTY CONVEYED TO THE CITY OF WILSONVILLE BY THE DEED RECORDED IN BOOK 1005 PAGES 511 OF THE DEED RECORDS OF WASHINGTON COUNTY, OREGON, LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 1 OF TOWNSHIP 3 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "DE HAAS & ASSOC. INC." SET IN SURVEY NO. 21,921 FILED IN THE OFFICE OF THE COUNTY SURVEYOR OF SAID COUNTY TO MARK THE SOUTHWEST CORNER OF THE PROPERTY CONVEYED TO THE CITY OF WILSONVILLE BY THAT DEED RECORD IN BOOK 1005 PAGE 509 OF THE DEED RECORDS OF SAID COUNTY, FROM WHICH A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "DE HAAS & ASSOC. INC." SET IN SAID SURVEY FOR THE SOUTHEAST CORNER OF SAID PROPERTY, BEARS SOUTH 88°54'02" EAST 104.35 FEET; THENCE ALONG THE SOUTH LINES OF SAID BOOK 1005 PAGE 509 AND BOOK 1005 PAGE 511 SOUTH 88°54'02" EAST 148.70 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 01°05'58" EAST 50.00 FEET; THENCE SOUTH 88°54'02" EAST 60.13 FEET TO THE EAST LINE OF SAID BOOK 1005 PAGE 511; THENCE SOUTH 01°15'14" WEST 50.00 FEET TO THE SOUTHEAST CORNER OF SAID BOOK 1005 PAGE 511; THENCE ALONG SAID SOUTH LINE NORTH 88°54'02" WEST 60.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINS 3003 SQUARE FEET MORE OR LESS

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Kaid E. McKay

OREGON
NOVEMBER 10, 2009
KAID EDWARD MCKAY
59859

EXPIRES: 12-31-2020

Exhibit "B"

Description of Access Area

A PORTION OF THOSE PROPERTIES CONVEYED TO THE CITY OF WILSONVILLE BY THE DEEDS RECORDED IN BOOK 1005 PAGES 509, 510 & 511 OF THE DEED RECORDS OF WASHINGTON COUNTY, OREGON, LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 1 OF TOWNSHIP 3 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "DE HAAS & ASSOC. INC." SET IN SURVEY NO. 21,921 FILED IN THE OFFICE OF THE COUNTY SURVEYOR OF SAID COUNTY TO MARK THE SOUTHWEST CORNER OF THE PROPERTY CONVEYED TO THE CITY OF WILSONVILLE BY THAT DEED RECORD IN BOOK 1005 PAGE 509 OF THE DEED RECORDS OF SAID COUNTY; THENCE ALONG THE SOUTH LINES OF SAID BOOK 1005 PAGE 509 AND BOOK 1005 PAGE 511 SOUTH 88°54'02" EAST 148.70 FEET; THENCE NORTH 01°05'58" EAST 28.69 FEET; THENCE NORTH 88°44'57" WEST 114.59 FEET; THENCE NORTH 89°33'09" WEST 34.04 FEET TO A POINT ON THE WEST LINE OF SAID BOOK 1005 PAGE 509; THENCE ALONG SAID WEST LINE SOUTH 01°15'14" WEST 28.61 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 4286 SQUARE FEET MORE OR LESS

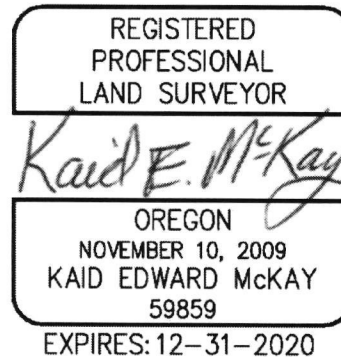


Exhibit "B"

Description of Utility Easement

A PORTION OF THOSE PROPERTIES CONVEYED TO THE CITY OF WILSONVILLE BY THE DEEDS RECORDED IN BOOK 1005 PAGES 509, 510 & 511 OF THE DEED RECORDS OF WASHINGTON COUNTY, OREGON, LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 1 OF TOWNSHIP 3 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "DE HAAS & ASSOC. INC." SET IN SURVEY NO. 21,921 FILED IN THE OFFICE OF THE COUNTY SURVEYOR OF SAID COUNTY TO MARK THE SOUTHWEST CORNER OF THE PROPERTY CONVEYED TO THE CITY OF WILSONVILLE BY THAT DEED RECORD IN BOOK 1005 PAGE 509 OF THE DEED RECORDS OF SAID COUNTY; FROM WHICH A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "DE HAAS & ASSOC. INC." SET IN SAID SURVEY FOR THE SOUTHEAST CORNER OF SAID BOOK 1005 PAGE 509 OF SAID PROPERTY, BEARS SOUTH 88°54'02" EAST 104.35 FEET; THENCE ALONG THE SOUTH LINES OF SAID BOOK 1005 PAGE 509 AND BOOK 1005 PAGE 511 SOUTH 88°54'02" EAST 148.70 FEET; THENCE NORTH 01°05'58" EAST 12.69 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 01°05'58" EAST 10.00 FEET; THENCE NORTH 88°44'45" WEST 133.20 FEET; THENCE NORTH 00°22'44" EAST 24.50 FEET; THENCE NORTH 89°37'16" WEST 10.00 FEET; THENCE SOUTH 00°22'44" WEST 34.35 FEET; THENCE SOUTH 88°44'45" EAST 143.08 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINS 1676 SQUARE FEET MORE OR LESS



EXHIBIT "C"

PROPOSED COMMUNICATIONS FACILITY

See attached drawings for C-4 Wilsonville Tank, last updated 7/23/19

Drawings

T-1 and Survey I, II, III

G-1 through G-3

C-1 and C-1.1 through C-14

E-1 through E-5