

ACCESS LEASE AGREEMENT

BETWEEN

**KANSAS DEPARTMENT OF TRANSPORTATION
AS LESSOR**

AND

**[NAME OF LESSEE]
AS LESSEE**

DATED [EFFECTIVE DATE]

(KANSAS DEPARTMENT OF TRANSPORTATION
COMMUNICATION SYSTEM INFRASTRUCTURE)

CSAL Project No. [TAL NUMBER ASSIGNED BY KDOT]
([TOWER LOCATION], KANSAS)

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**KANSAS DEPARTMENT OF TRANSPORTATION
COMMUNICATION SYSTEM INFRASTRUCTURE**

ACCESS LEASE AGREEMENT

This Access Lease Agreement, dated [Effective Date], hereinafter referred to as the “Lease Agreement” is between the Kansas Department of Transportation as Lessor (the “Lessor”) and the [Name of Lessee], as Lessee (the “Lessee”), [possible additional description of Lessee] principal offices at [address of Lessee].

WITNESSETH:

WHEREAS, the Lessor, pursuant to K.S.A. 75-5073 *et seq.*, hereinafter referred to as “Act,” does hereby propose to lease certain space on the Communications Tower located upon the Premises, both capitalized terms as hereinafter defined, to the Lessee for the rentals and upon the terms and conditions hereinafter set forth; and

WHEREAS, pursuant to the foregoing, the Lessor desires to lease certain space on the Communications Tower located upon the Premises to the Lessee and the Lessee desires to lease certain space on the Communications Tower located upon the Premises, for the Lease Payments and upon the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants, and agreements herein contained, the Lessor and the Lessee do hereby represent, covenant, and agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease Agreement, capitalized words and terms used in this Lease Agreement shall have the meanings given to such words and terms in this **Section 1.1**.

“**Communication System Tower**” means the Department’s Communication System Tower as described in *Exhibit A*, which is attached hereto and incorporated herein.

“**Effective Date**” means [Effective Date].

“**Department**” means the Kansas Department of Transportation.

“**Equipment Shelter**” means the Department’s structure located on the Premises that houses communications equipment including the Rack Space as described in *Exhibit A*, which is attached hereto and incorporated herein, but which does not include the Communication System Tower.

“**FCC**” means the United States Federal Communications Commission.

“Impositions” means all federal, state, or local taxes, general and special assessments, fees, and regulatory charges of whatever nature which may be lawfully taxed, charged, levied, assessed, or imposed upon or against the Communications Systems Tower or any part thereof leased hereby to Lessee.

“Lessee’s Equipment” means that personal property described as Lessee’s equipment at *Exhibit B, Schedule B-1*, which is attached hereto and incorporated herein.

“Lease Agreement” means this Access Lease Agreement between Lessor and Lessee dated the Effective Date, along with any Supplements or Amendments to this Lease Agreement made in accordance with the provisions hereof.

“Lease Payment” means the amount which is due and payable on the Lease Payment Date in the amount shown as the “Lease Payment Amount,” as described on *Exhibit B*, which is attached hereto and incorporated herein, and shall include a Communication System Tower access component and an Equipment Shelter access component.

“Lease Payment Date” means the date described and provided at *Exhibit B*, attached hereto.

“Notice Address” means:

(1) With respect to the Lessor:

Kansas Department of Transportation
700 SW Harrison Street
Topeka, Kansas 66612-3754
Attention: Director of Administration

with a copy to its Chief Counsel at the same address

(2) With respect to the Lessee:

That address as provided at *Exhibit B*, attached hereto.

“Premises” means that real property described at *Exhibit A*, which is attached hereto and incorporated herein.

“Prerequisites” means the requirements, including, but not limited to, structural analysis and interference analysis, set forth in *Exhibit C* that must be successfully completed by Lessee prior to execution of this Agreement.

“Public Safety Agency” means any governmental agency providing law enforcement, emergency management, fire fighting, ambulance, emergency medical, or other emergency services.

“Rack Space” means that physical space located within the Equipment Shelter provided specifically to house Lessee’s Equipment as described at *Exhibit B-1* having the dimensions of **twenty inches in width by twenty-four inches in depth and ninety inches in height (20” X 24” X 90”)**.

“Secretary” means the Kansas Secretary of Transportation.

“State” means the State of Kansas.

“Utilities” means the equipment, labor, and actual costs of providing and supplying propane gas, electrical and telephone service (if required) to Lessee’s Equipment.

Section 1.2. Rules of Interpretation.

(a) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations, and corporations, including public bodies, as well as natural persons.

(b) All references in this Lease Agreement to designated “Articles,” “Sections,” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections, and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section, or other subdivision.

**ARTICLE II
REPRESENTATIONS**

Section 2.1. Representations by the Lessor. The Lessor makes the following representations:

(a) Lessor is a duly created state agency existing under the Constitution and laws of the State. Under the provisions of the Act, Lessor has the power to enter into and perform the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder and thereunder.

(b) Lessor, except as otherwise provided herein, will not, during the Lease Term, in whole or in part, assign, lease, hypothecate, or otherwise create any other interest in, or dispose of, or cause or permit any lien, claim, or encumbrance to be placed against the leasehold interest conveyed hereby to the Lessee, provided and for so long as Lessee’s use of the leasehold interest conveyed by Lessor hereunder does not interfere with or otherwise reduce Lessor’s ability to use the Communication System Tower or Equipment Shelter or any prior existing Public Safety Agency’s use of the Communication System Tower or Equipment Shelter.

(c) Lessor owns fee title to the Premises, the Communication System Tower, and the Equipment Shelter.

(d) The Secretary has duly authorized the execution and delivery of this Lease Agreement.

Section 2.2. Representations by the Lessee. The Lessee makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Lessee is a corporation organized under the laws of the state of Missouri. During the Lease Term, the Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a corporate entity in good standing.

(b) The Lessee has lawful power and authority to enter into this Lease Agreement and to carry out its obligations hereunder and by proper action of the Lessee’s Governing Body has been duly authorized to execute and deliver this Lease Agreement, acting by and through its duly authorized officers.

(c) The Lessee’s [Governing Body] adopted Resolution No. [_____] authorized the Lease Agreement with the Lessor.

(d) The Lessee will not use the leasehold interest conveyed by Lessor hereunder in any manner, whether directly or indirectly, which will or tends to interfere with or otherwise reduce Lessor’s or any prior existing Public Safety Agency’s use of the Communications System Tower or the Equipment

Shelter, or any other prior existing governmental or non-governmental use of the Communications System Tower or Equipment Shelter.

ARTICLE III GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. Lessor, in consideration of the Lease Payment, covenants, and agreements of the Lessee, hereinafter set forth, does agree to lease to Lessee space within the equipment shelter and necessary space on the Communication System Tower located at the Premises, as described at *Exhibit A*.

Section 3.2. Lease Term.

(a) The term of this Lease Agreement shall be ____ (___) years from the Effective Date of this Agreement. This Agreement shall be automatically renewed for a ____ (___) term unless either party gives written notice at least ninety (90) days prior to the end of the initial ____-year term.

(b) If the Communication System Tower and/or the Equipment Shelter are damaged by fire, casualty, natural disaster, or other similar cause so as to render it and/or them untenable, the Lease Payments shall abate from the date of such damage and shall not resume until the Communication System Tower and/or Equipment Shelter are restored to tenantable condition. In the event the damage shall render restoration by the Lessor impossible within sixty (60) days of the time of such damage, Lessee may elect to void this lease and the obligation to occupy and to pay any unpaid balance of the Lease Payments shall cease from the date of said damage; provided, that the unpaid balance of Lease Payments due and owing Lessor shall be prorated as of such termination date and paid in full by the Lessee. Any prepaid Lease Payment shall be returned to the Lessee for the period the premises are untenable.

(c) Lessor reserves the right to terminate this Lease Agreement for any of the following reasons:

1. Lessor shall have the right to terminate this Lease Agreement if Lessee fails to comply with FCC regulations or if Lessee's use of the Communications System Tower and/or Equipment Shelter interferes with Lessor's or any other prior existing tenant's use of said Communications System Tower and/or Equipment Shelter; provided, however, Lessor notifies Lessee in writing of such failure. If Lessee fails to cure the failure within thirty (30) days after date Lessor deposits in United States Mail, postage prepaid and restricted delivery addressed to Lessee a notice to cure such failure, Lessor will notify the Lessee that this Lease Agreement will be terminated thirty (30) days from the date of such notice.

2. Lessor shall have the right to terminate this Lease Agreement for violation of any provision of this Lease Agreement; provided, however, that the Lessor notifies the Lessee in writing and the Lessee fails to correct the violation within thirty (30) days of the date Lessor deposits in the United States Mail, postage prepaid and restricted delivery addressed to Lessee a written notice thereof. It shall be the responsibility of the Lessee to notify Lessor upon correction of the violation.

Section 3.3. Maintenance of Lessee's Equipment. Lessee shall be responsible for and shall pay for all necessary maintenance and repairs to Lessee's Equipment, except such maintenance and repairs as may be necessitated by or as a result of the fault or negligence of Lessor or any agent of Lessor, in which case the costs of such reasonable repairs shall be charged to and paid by Lessor.

Section 3.4. Removal of Lessee's Equipment. All Lessee's Equipment placed upon the Communication System Tower and/or within the Equipment Shelter by Lessee during the Lease Term or any renewal thereof shall remain the sole property of Lessee and shall be removed by the Lessee upon termination of this Lease Agreement. If Lessee fails to remove Lessee's Equipment from the

Communication System Tower and/or from within the Equipment Shelter within a thirty (30) days of the date Lessor deposits in the United States Mail, postage prepaid and restricted delivery addressed to Lessee a notice of such requirement to remove Lessee's Equipment subsequent to the termination of this Lease Agreement, Lessor may remove Lessee's Equipment at Lessee's expense.

ARTICLE IV LEASE PAYMENTS

Section 4.1. Lease Payments. Lessee agrees to make the Lease Payment on the Lease Payment Date according to the Lease Payment Schedule contained in *Exhibit B*. The Lease Payment shall be made within thirty (30) days of the execution of this Lease Agreement.

ARTICLE V OBLIGATIONS OF LESSOR AND LESSEE

Section 5.1. Obligations or Requirements of Lessor.

(a) Upon satisfactory completion of the Prerequisites, Lessor will provide Lessee with the written results of the Prerequisites.

(b) Lessor shall maintain at its expense the Communication System Tower and Equipment Shelter in proper working condition.

(c) Lessor shall furnish all propane service, and electrical power and outlets to support Lessee's Equipment.

(d) Lessor shall install or cause installation of Lessee's Equipment on the Communication System Tower and in the Equipment Shelter in compliance with all applicable FCC rules and regulations or the rules and regulations of any other agency having proper jurisdiction over said Communication System Tower and Equipment Shelter, including municipal or county electrical codes.

(e) Lessor shall not be required to purchase any insurance against loss or damage to any of Lessee's Equipment nor shall the Lessor establish any "self-insurance" fund to protect against any loss or damage to Lessee's Equipment. Under no circumstances shall Lessor be liable for damages to Lessee's Equipment unless cause by Lessor's gross negligence.

Section 5.2. Obligations or Requirements of Lessee.

(a) Lessee agrees to meet all Prerequisites of the Lessor as delineated in *Exhibit C*.

(b) Lessee shall bear the risk of any loss or damage to any of Lessee's Equipment and shall purchase insurance against loss or damage to personal property in an amount satisfactory to cover replacement costs of Lessee's Equipment.

(c) Upon receipt of written approval from Lessor, Lessee will provide Lessee's Equipment listed in *Exhibit B* to Lessor for installation on the Communication System Tower. Lessee shall be responsible for the installation of Lessee's Equipment in the location designated by Lessor in the Equipment Shelter. Lessor agrees to install Lessee's Equipment, and Lessee shall be responsible for all costs incurred by Lessor to install Lessee's Equipment on the Communication System Tower. Lessor shall submit an itemized statement to Lessee. Lessee shall reimburse or otherwise pay all of such costs to Lessor. Further, Lessee agrees to any changes to the installation of Lessee's Equipment as required by Lessor. Lessor may approve and authorize Lessee's contractor or agent to install any of Lessee's

Equipment, provided such approval and authorization shall be in writing and delivered to Lessee prior to any work so undertaken by Lessee's contractor or agent.

(d) Lessee shall make no alteration, addition, or improvement to the Communication System Tower or the Equipment Shelter or the Premises in any way without the prior written approval and authorization of Lessor. Any alterations, additions, and/or improvements made by the Lessee shall become the property of the Lessor upon termination of this Lease Agreement. Lessor shall have the right to remove, or require Lessee to remove, all alterations, fixtures, and improvements at the Lessee's cost upon termination of this Lease Agreement. Lessee agrees that Lessee's Equipment and the installation, operation, and maintenance thereof will not damage the Communication System Tower or the Equipment Shelter, interfere with the maintenance of the Communication System Tower or its lighting system, or interfere with the operation of the Lessor's equipment or the equipment of other existing users, all of which are in place on the effective date of this Lease Agreement. In the event there is interference caused by Lessee's Equipment, for any reason other than the operation of defective Lessor equipment, Lessor, on behalf of Lessee, is authorized hereunder to take all necessary steps to correct and eliminate such interference at Lessee's expense. If said interference cannot be eliminated within a reasonable period of time, Lessee agrees to permit the removal of Lessee's Equipment from Lessor's Communication System Tower and /or Equipment Shelter and this Lease Agreement shall terminate without further obligation on either party, except as otherwise specified herein. Any interference that occurs due to a change in equipment by either Lessor or another of Lessor's existing tenants shall be eliminated at the expense of the user changing such equipment. Lessee shall maintain Lessee's Equipment placed on or around the Communication System Tower in a condition satisfactory to Lessor.

(e) Lessor agrees to have installed, connected and provided all Utilities required by Lessee's Equipment, and Lessee shall be responsible for all costs incurred by Lessor to install, connect and provide Utilities service to Lessee's Equipment. Lessor shall submit an itemized statement to Lessee in the form found at *Exhibit E*. Lessee shall reimburse or otherwise pay all of such costs to Lessor or the vendor providing the service as directed on such invoice and within thirty (30) days of the date of such statement. The charge to Lessee for propane gas shall be one-half (1/2) of the cost charged to Lessor each time Lessor shall be required to fill the propane gas tank from which Lessee's Equipment receives or uses propane gas. Lessee shall be charged the full cost of the electricity costs as shall be identified and specified by the electricity vendor to provide electricity service to Lessee's Equipment, which costs shall be billed one year at a time to Lessee on each anniversary of this Lease Agreement for the initial term hereof and for each renewal permitted hereunder.

(f) Lessee shall keep in full force and effect during the Lease Term and any renewals thereof general accident and public liability insurance covering the operations of Lessee's Equipment under which Lessee shall be named as insured and Lessor shall be named as an additional named insured Lessee shall at all times during the term of this Lease Agreement maintain at its own expense worker's compensation and employers' liability insurance in accordance with appropriate laws on all employees used in the performance of this Lease Agreement, and shall maintain comprehensive general public liability and property damage insurance covering operations, products, completed operation, contractual and independent contractors' liability in minimum bodily injury amounts of \$2,000,000 per occurrence and aggregate or in an amount not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence as provided by the Kansas Tort Claims Act or other similar future law (currently \$500,000 per occurrence); which policy shall provide that such insurance may not be cancelled by the Lessee thereof without at least thirty (30) days' advance written notice to Lessor, such insurance to be maintained throughout the life of this Lease Agreement; and

(g) The following general insurance provisions shall apply to the policy required at subparagraph (f) above:

1. Prior to the expiration dates of any expiring policies, originals, or certificates or acceptable binders of the policies provided for in this Article, each bearing notations evidencing

payment of the premiums or other evidence of such payment satisfactory to Lessor, shall be delivered by Lessee to Lessor. All policies of such insurance and all renewals thereof shall name Lessee as insured and Lessor as additional named insured as their respective interests may appear, shall contain a provision that such insurance may not be cancelled or amended by the issuer thereof without at least thirty (30) days' written notice to Lessor and Lessee and shall be payable to the Lessor and Lessee as their respective interests appear. Lessor and Lessee each hereby agree to do anything and all things necessary, be it the endorsement of checks or otherwise, to cause any such payment, as long as such payment is required by this Lease Agreement.

2. Each policy of insurance hereinabove referred to shall be issued by a nationally recognized responsible insurance company qualified under the laws of the State to assume the risks covered therein except that Lessee may be self-insured as to any required insurance coverage with the consent of the Lessor, which consent will not be unreasonably withheld.

3. Certificates of insurance evidencing the insurance coverage herein required shall be filed by Lessee with the Lessor continuously during the term of this Lease Agreement.

4. Each policy of insurance hereinabove referred to may be subject to a reasonable deductible in an amount approved by the Lessor.

5. Each policy of insurance required herein may be provided through blanket policies maintained by Lessee.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.1. Subletting and Assignment. Lessee shall not assign, transfer, or sublet any of the Lessee's rights or privileges under this Lease Agreement to any person or other entity of any nature without the prior, written consent of Lessor.

Section 6.2. Use of Communication System Tower and Equipment Shelter

(a) Lessor shall furnish Lessee access to Lessee's Equipment in the Equipment Shelter provided under this Lease Agreement. It shall be the responsibility of the Lessee that the Lessor's existing security measures be maintained and shall remain intact as provided in *Exhibit D*, which is attached hereto and incorporated herein.

(b) Lessee acknowledges and agrees that only Lessor shall have access to the Communication System Tower. Lessee may have access to the Communication System Tower provided it secures Lessor's written consent and presence.

Section 6.3. Liability for Damages and Losses. Notwithstanding any language to the contrary, Lessor shall not be responsible for any damages or economic or non-economic losses, including, but not limited to, loss of profits, caused by the public, Lessor's employees, agents, or contractors, or use or failure of the Lessor's Communication System Tower or Equipment, except as provided in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, as amended.

Section 6.4. Limitation of Warranty.

THIS LEASE AGREEMENT IS PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. USE OF THE COMMUNICATION SYSTEM TOWER AND EQUIPMENT SHELTER IS AT LESSEE'S OWN RISK, AND LESSOR DOES NOT WARRANT OR MAKE REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF USING SAID COMMUNICATION SYSTEM TOWER OR EQUIPMENT SHELTER. LESSOR DOES NOT WARRANT THAT USE OF THE COMMUNICATION SYSTEM TOWER OR EQUIPMENT SHELTER WILL BE UNINTERRUPTED OR ERROR-FREE.

NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION OR WARRANTY BY LESSOR THAT LESSOR WILL MAINTAIN THE AVAILABILITY OF THE COMMUNICATION SYSTEM TOWER OR THE EQUIPMENT SHELTER THROUGHOUT THE TERM OF THIS LEASE AGREEMENT.

Section 6.5. Responsibility for Impositions. Lessor shall not be responsible for, nor indemnify, Lessee for any Impositions which may be imposed or levied upon the subject matter of the Lease Agreement. Lessee shall be solely responsible for any Impositions which may be imposed or levied upon the subject matter of the Lease Agreement, and shall promptly pay and discharge the same when due.

Section 6.6. Third Party Beneficiaries. It is expressly agreed that no third party beneficiaries are intended to be created by this Lease Agreement, nor do the parties herein authorize anyone not a party to this Lease Agreement to maintain a suit for damages pursuant to the terms or provisions of this Lease Agreement.

Section 6.7. Indemnity. Lessee shall and hereby covenants and agrees to indemnify, protect, defend, and save Lessor harmless from and against any and all claims, demands, liabilities, and costs, including attorneys' fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on, or about the Communication System Tower and/or Equipment Shelter during the Lease Term hereof, and, upon timely written notice from Lessor, Lessee shall defend Lessor in any action or proceeding brought thereon; provided, however, that nothing contained in this **Section 6.7** shall be construed as requiring Lessee to indemnify Lessor for any claim resulting from any act or omission of Lessor, or its agents and employees.

Section 6.8. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon Lessor and the Lessee and their respective successors and permitted assigns.

Section 6.9. Severability. In the event any provision of this Lease Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect any other provision hereof.

Section 6.10. Amendments, Supplements, and Modifications. This Lease Agreement may not be amended, supplemented, or modified without the prior written consent of the parties.

Section 6.11. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 6.12. Governing Law and Regulations. This Lease Agreement shall be governed by and construed in accordance with the laws of the State, including the Act and the Regulations that are incorporated herein as a part of this Lease Agreement.

Section 6.13. Consents and Approvals. Whenever the written consent or approval of the Lessor shall be required under the provisions of this Lease Agreement, such consent or approval may only be given by the Secretary, or his or her designee, in writing.

Section 6.14. Further Assurances. The Lessee shall, at the request of Lessor, authorize, execute, acknowledge, and deliver such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments as may be reasonably necessary or desirable for better assuring, conveying, granting, assigning, and confirming the rights, security interests, and agreements granted or intended to be granted by this Lease Agreement.

Section 6.15. Waiver. The waiver of any condition or of the breach of any condition of this Lease Agreement shall not be a waiver of any subsequent breach or condition. It is expressly understood if at any time Lessee is in default of any of the terms of this Lease Agreement, an acceptance by the Lessor of any Lease Payment, or part thereof, during such time of default shall not be construed as a waiver in any respect of the default.

Section 6.16. Form DA-146a. The Contractual Provisions Attachment Form DA-146a is attached hereto, agreed to by the Lessee in total, and is incorporated herein by reference.

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IN WITNESS WHEREOF, LESSOR and LESSEE have caused this Lease Agreement to be executed, sealed, and delivered, effective as of the Effective Date set forth above.

THE KANSAS DEPARTMENT OF TRANSPORTATION, acting on behalf of THE STATE OF KANSAS

“LESSOR”

(Seal)

By: _____
Joseph J. Erskine
Deputy Secretary for Finance and Administration
Kansas Department of Transportation

APPROVED AS TO FORM
AND LEGALITY

Jonathan P. Small, Chtd.
Special Counsel to Kansas
Department of
Transportation

Date:

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[NAME OF LESSEE]

"LESSEE"

(Seal)

By: _____
[Name of official]
[Title of Official]
The [Name of Lessee]

ATTEST:

By: _____
[Name of official]
[Title of Official]
The [Name of Lessee]

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ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF SHAWNEE)

This instrument was acknowledged before me on ___ day of [Execution date], by came **Joseph J. Erskine**, Deputy Secretary for Finance and Administration, Kansas Department of Transportation, a duly recognized and existing agency of the State of Kansas under the constitution and laws of the state of Kansas,.

(Seal)

Notary Public

My Commission Expires: _____

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ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

This instrument was acknowledged before me on ___ day of [Execution date], by Name of Executing Official [Name of Lessee], [{Lessee Description}], duly organized and existing under the constitution and laws of the State of Kansas, and attested thereto by [Name of Attesting official], [Title of Attesting official] of the [Name of Lessee].

(Seal)

Notary Public

My Commission Expires: _____

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EXHIBIT A

To
ACCESS LEASE AGREEMENT
CSAL Project No. [TAL NUMBER ASSIGNED BY KDOT]
([Tower Location], Kansas)

(a) Description of KDOT's [Tower Location]Tower:

[description of tower]

(b) Description and location of Premises:

[legal description of tower's location]

Latitude: ----- North

Longitude: ----- West

(c) Description of the Equipment Shelter:

Equipment Shelter will be a 10 feet x 16 feet x 8 feet reinforced concrete structure with environmental controls.

EXHIBIT B

**To
ACCESS LEASE AGREEMENT
CSAL Project No. [TAL NUMBER ASSIGNED BY KDOT]
([Tower Location], Kansas)**

(a) **Lessee's Notice Address:** [Name of Lessee]
[Lessee's address]
Attn: [notice official]

(b) **Description of Lessee's Equipment
to be installed on Lessor's
Communication System Tower and
In the Equipment Shelter:**

See Attached *Schedule B-1* (to be provided by Lessee)

(c) **Lease Payment Date:** ----- 1, 20-- (a ----- payment date only)

Lease Payment Amounts (a one-time payment of each only) as follows:

(d) **Additional Payment to be made by Lessee to Lessor:**

Lessee reimburses Lessor \$----- for the structural analysis performed for Lessee by Lessor upon invoice delivered for the same to Lessee.

Schedule B-1

**To
ACCESS LEASE AGREEMENT
CSAL Project No. [TAL NUMBER ASSIGNED BY KDOT]
([Tower Location], Kansas)**

LESSEE'S EQUIPMENT DESCRIPTION

[Tower Location]
Equipment

- QTY. 5 -

EXHIBIT C

To
ACCESS LEASE AGREEMENT
CSAL Project No. [TAL NUMBER ASSIGNED BY KDOT]
([Tower Location], Kansas)

PREREQUISITES

1. A copy of Lessee's current FCC License (if applicable) will be supplied for review upon request by KDOT.
2. The Lessee is responsible for providing twenty-four (24) hour contact information for all responsible service technicians or service organizations that will have access to the Equipment Shelter and/or state property.
3. The Lessee will provide a listing of any additional authorized persons having access to the equipment shelter and/or state property.
4. The Lessee will provide written information detailing the Effective Radiated Power as defined in Lessee's FCC License for all equipment (licensed or non-licensed) being installed at the tower site. If Lessee does not have an FCC License, the ERP will be calculated by Lessee and submitted in writing for approval by Lessor prior to placing any of Lessee's equipment upon Lessor's property.
5. The Lessee will provide written information detailing the estimated power consumption of all of Lessee's equipment. Billing for electrical services will be included in each year's lease payments (and are subject to adjustment if deemed appropriate), unless a one-time lease payment is to be made by Lessee in which event the electrical services will be charged annually as provided in the Lease Agreement.
6. Lessee is responsible for fee charged by Lessor's contractor to perform the structural analysis of the Communications System Tower.
7. Lessee is responsible for fee charged by Lessor's contractor to perform the interference analysis of the Communications System Tower.

EXHIBIT D

To
ACCESS LEASE AGREEMENT
CSAL Project No. [TAL NUMBER ASSIGNED BY KDOT]
([Tower Location], Kansas)

SECURITY MEASURES

1. Respect other Lessee's equipment within Equipment Shelter.
2. Ensure environmental controls are returned to proper settings (if changed) upon departing the Equipment Shelter.
3. Ensure non-essential lighting is turned off when departing the Equipment Shelter.
4. Maintain Equipment Shelter and site complex. Remove any trash or debris from Equipment Shelter or site complex (the Premises) when departing.
5. Ensure the Equipment Shelter is properly secured upon departure.
6. Secure compound fence when departing. (Lessee is required to supply padlock(s) in series with other locks for compound access)
7. Regarding any and all access to the Premises, it will be the Lessee's responsibility to ensure all gates are closed after entry onto and exit from the Premises. Upon departing the Premises, the Lessee will be responsible for closing the gate and securing it appropriately. (If the gate is secured by padlock, Lessee will be required to supply an additional padlock in series with other locks for access to state property, the Premises)
8. Lessor shall provide to Lessee two (2) "Smart Keys" for Lessee's access to the Equipment Shelter.
9. Notify Lessor communications personnel if the Premises are not secured upon arrival or departure.

EXHIBIT E

**To
ACCESS LEASE AGREEMENT
CSAL Project No. [TAL NUMBER ASSIGNED BY KDOT]
([Tower Location], Kansas)**

SAMPLE ONLY OF “Itemized Statement for Utilities Service”

[SAMPLE BILLING STATEMENT]

Department of Administration
DA-146a (Rev. 1-01)

State of Kansas

**KDOT FORM CSAL DA-146a
CONTRACTUAL PROVISIONS ATTACHMENT**

To

ACCESS LEASE AGREEMENT

CSAL Project No. [TAL Number assigned by KDOT]

([Tower Location], Kansas)

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof"

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being dated [Effective Date].

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 *et seq.*

12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."