RESOLUTION 2018-135  
PASSED: OCTOBER 8, 2018

AUTHORIZING A COMMUNICATIONS SITE LEASE AGREEMENT WITH KISHWAUKEE AMATEUR RADIO CLUB FOR SPACE ON THE CITY’S WEST WATER TOWER LOCATED AT 1505 W. LINCOLN HIGHWAY INCLUDING LAND FOR EQUIPMENT, RIGHTS-OF-WAY FOR INGRESS, EGRESS AND THE INSTALLATION AND MAINTENANCE OF UTILITY WIRES, POLES, CABLES AND CONDUITS.

WHEREAS, the City of DeKalb is authorized to lease real property pursuant to applicable laws; and

WHEREAS, the City of DeKalb owns various parcels of land and right of way with restricted use due to the City’s ownership of the property; and

WHEREAS, many parcels of said land and right of way may be used for purposes that do not cause interference with the City’s ownership; and

WHEREAS, the Kishwaukee Amateur Radio Club (KARC) operates under call sign WA9CJN and serves the area in time of disaster and promotes information and classes to the public for those interested in amateur radio (hams) as a hobby.

WHEREAS, KARC has agreed to pay the City $400 annually for permission to use the City’s West Water Tower located at 1505 W. Lincoln Highway for installation of radio communication equipment including land for equipment, rights-of-way for ingress and egress, and installation and maintenance of utility wires, poles, cables, conduits. The equipment would include one 18-foot tall antenna mounted on the top of the tower, along with a 3’ x 6’ base equipment cabinet placed on the floor of the tower’s interior.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

Section 1. That the Mayor of the City of DeKalb, Illinois, be authorized and directed to enter into a Communications Site Lease Agreement with KARC, substantially in the form attached hereto, subject to such changes as shall be acceptable to him with recommendation of the City Manager, for the installation of an antenna and equipment on the City’s West Water Tower at an annual cost of $400, for a period of five (5) years with the potential for two (2) successive five year extensions.

Section 2. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor’s signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 8th day of October, 2018, and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

ATTEST:

LYNN A. FAZEKAS, City Clerk

JERRY SMITH, Mayor
SITE: West Tower

COMMUNICATIONS SITE LEASE AGREEMENT (WATER TOWER)

This Communication Site Lease Agreement (Water Tower) ("Agreement") is entered into this 10th day of Sept., 2018, between Kishwaukee Amateur Radio Club, DeKalb County-("Lessee"), and the City of DeKalb, an Illinois municipal corporation ("Lessor").

Whereas, the Lessor is a municipal corporation organized and existing under the laws of the State of Illinois; and

Whereas, the Lessor owns and operates a public water supply system pursuant to the applicable provisions of the Illinois Municipal Code, including certain real property legally described on Exhibit A (the "Property"), an elevated water storage facility, and certain associated facilities (the "Water Tower") located on the Property legally described on Exhibit A; and

Whereas, Lessee intends to install, operate and maintain certain wireless Antenna Facilities (as hereinafter defined) on the Water Tower and on the Premises (as hereinafter defined); and

Whereas, the Lessor agrees to lease certain space on the Water Tower for the installation of certain antennae, as depicted on Exhibit B and, further, to lease the Premises for the construction, operation and maintenance of Antenna Facilities, including space for cable, conduit and sleeves, across the Property to serve the Premises; provided, however, that the construction, operation and maintenance does not interfere with the principal use of the Property, including the Water Tower, as a water storage facility for the Lessor's public water supply system;

Now, THEREFORE, in consideration of mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1.0 Recitals Incorporated That the above recitals are incorporated herein by reference as if set forth fully herein

2.0 Definitions

Antenna Facilities Includes all personal property, equipment, improvements, and other related facilities as described and depicted pursuant to approved Plans and Specifications (as hereinafter defined), as may be amended from time to time with the approval of the Lessor, which approval shall not be unreasonably withheld or delayed. The term includes utility lines, electronic equipment, a radio transmitting and receiving antenna and supporting equipment and structures thereto.

Plans and Specifications The plans, drawings, specifications prepared by Lessee and approved by the Lessor, which approval shall not be unreasonably withheld, depicting all facilities, equipment, utility lines and conduits to be installed or constructed on the Premises, and which shall, upon approval by the Lessor, be a part of this Agreement as Exhibit B.

Premises That portion of the Property and the Water Tower leased to the Lessee for the Antenna Facilities as set forth in Exhibit B, which consists of a mounting bracket space on the Water Tower as described on Exhibit B, together with such ancillary rights of access and provisions for utilities, as described in the Agreement.

Property The real Property owned by the Lessor and legally described on Exhibit A.
3.0 **Lease**  Lessor hereby leases to Lessee and Lessee leases from Lessor the Premises to be used and occupied by Lessee in accordance with the provisions of this Agreement.

4.0 **Permitted Uses**

4.1. Lessee shall use the Property, the Premises, or the Water Tower for Lawful telecommunications purposes, including the transmission and reception of radio communications signals (Permitted Use). Such use shall be in compliance with all applicable federal, state and local laws, regulations, ordinances and licenses, including any regulations and licenses of the Federal Communications Commission ("FCC") or any successor agency, and the provisions of this Agreement.

4.2. Lessee shall not, except as permitted by this Agreement, use the Premises in any way which interferes with the Lessor's principal use of the Property and the Water Tower as a water storage facility, nor in any way which interferes with Lessor's use of the Property and the Water Tower as a communications facility either by Lessor or by any other Lessee. The Lessor shall, at all times, have the right to operate, maintain, paint, repair, ("Lessor’s Work") any of its existing facilities on the Property, including the Water Tower. Lessee shall cooperate with the Lessor to allow the Lessor's Work to occur. Whenever necessary to accommodate the Lessor's Work, Lessee shall have the right to install a temporary antenna on the Property with the approval of the Lessor, at Lessee's sole cost and expense. Any expense, loss, or inconvenience sustained by Lessee as a consequence of the Lessor's Work shall be the sole and exclusive responsibility of Lessee. Except in the event of any emergency repairs, prior to the commencement of any work by the Lessor which is in the immediate vicinity of Lessee's antenna installation, or which may require the cooperation and presence of Lessee's personnel, the Lessor shall give Lessee not less than ten (10) business days notice of such work; provided, however, that in case of repainting or other major scheduled repairs, the Lessor shall provide not less than sixty (60) days' advance written notice. The Lessor agrees to notify Lessee of any intended installation within fifteen (15) feet of Lessee's antennae in order for Lessee to determine whether such use will cause any interference with the transmission or receipt of radio signals to Lessee's antenna or unreasonably impair Lessee's ability to construct, operate, maintain, replace or remove the Antenna Facilities. Should Lessee determine that interference or impairment is possible, Lessee may, as its sole and exclusive remedy, provide not less than ten days written notice, terminate this Agreement and remove its equipment.

5.0. **Tests and Construction**  Upon execution of this Agreement, Lessee shall, at its sole expense, promptly make all necessary engineering surveys, inspections, site surveys, soil test borings, or other reasonable necessary tests for the purpose of preparing the Plans and Specifications ("Preliminary Work"). Lessee shall have the right upon notice to the Lessor within at minimum two (2) working days, following the full execution of this Agreement, to enter upon the Property for the purpose of undertaking the Preliminary Work. Upon conclusion of this Preliminary Work and prior to commencement of construction, Lessee shall submit to the Lessor for its approval copies of the Plans and Specifications, attached hereto as Exhibit B, which shall include spotted plats of survey, elevations depicting all structures and the antennas on the Water Tower, and such other additional information as the Lessor may reasonably require. Lessee shall, at its own expense, apply for and secure all necessary building permits from the Lessor including any third party contractor review required by the Lessor and any other permit that may be required from any other federal, state or local government agency as respects the work prior to the commencement of any work. In the performance of such investigations or in the performance of any work arising out of or relating to this Agreement, Lessee shall comply with all OSHA and other applicable codes, regulations, statutes and ordinances.

5.1. Lessee shall prepare all plans, specifications, and drawings ("Permit Plans") necessary for issuance of a building permit for the construction of the Antenna Facilities. Lessee shall diligently pursue and use best efforts to prepare Permit Plans in a timely manner and submit an application for building permit. Lessee shall within twenty-one (21) working days review the Permit Plans and issue a building permit or advise Lessee of any modifications, changes, corrections, necessary for permit issuance.
6.0 **Term** The term of this Agreement shall be for five (5) years commencing on the date Lessee begins installation of the Lessee Antenna Facilities or whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date (the "Term") unless otherwise terminated sooner pursuant to other applicable provisions of this Agreement. The term "installation" shall mean when Lessee has obtained all permits, licenses and other necessary approvals to begin construction and has physically moved men and equipment onto the Premises. Lessee shall have the right to extend the Term for two (2) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein, except that Lessor shall be entitled to Rent increases as provided on Exhibit C, attached hereto and incorporated herein by reference. This Agreement shall automatically be extended for each successive renewal Term unless the Lessee notifies the Lessor, or the Lessor notifies the Lessee, in writing not less than sixty (60) days prior to the end of the Term or any Renewal Term of its intention not to renew the Agreement for the succeeding Renewal Term.

7.0 **Rent** Within thirty (30) days of the Commencement Date and on the first day of each year thereafter, Lessee shall pay to Lessor as rent Four Hundred and 00/100 Dollars ($400.00) per year ("Rent") to be imposed on the anniversary date of the execution of this Agreement each year. Rent shall be payable to the City of DeKalb at ATTN: Finance Department, 200 South Fourth Street, DeKalb, Illinois 60115. A late payment penalty of ten percent (10%) of the rent due shall be paid by the Lessee for any annual payment received three (3) days after the first of each year’s renewal. An additional late payment penalty often percent (10%) of the rent due shall be paid by the Lessee for every additional thirty (30) days that a rent payment is past due.

7.1. Rent for any Renewal Term shall be in accordance with the schedule of rents set forth in Exhibit C.

7.2. Lessee shall be in default upon failure to pay Rent within thirty (30) days after written notice.

7.3. In the event that the Owner undertakes any action to enforce the terms of this Agreement or to collect any amount which is due as Rent and which was not timely paid, the Owner shall be entitled to collect attorneys fees and court costs in addition to any other judgment.

8.0 **Construction, Operation and Maintenance**

8.1 Upon execution of this Agreement and securing all necessary approvals, permits, and licenses from any and all federal, state and local agencies having jurisdiction over the Property, Lessee may install, operate, maintain, repair, replace or remove the Antenna Facilities; provided however, that such installation, operation, maintenance, repair, replacement, or removal is done in accordance with this Agreement, the Plans and Specifications, including any amendments approved by the Lessor, and all applicable federal, state and local laws, statutes, regulations and ordinances. No part of the Antenna Facilities shall become a fixture, but shall remain the personal property of Lessee and can be pledged by Lessee as collateral. Lessee shall not mortgage, encumber, hypothecate or pledge as collateral, or permit to be mortgaged, encumbered, hypothecated or pleaded as collateral, any Real Property of the Lessor nor any property of the Lessee installed at the Property, and Lessee shall, to the extent permitted by law indemnify and hold the Lessor harmless from same, including any reasonable attorneys’ fees and expenses. In the event any Mechanic’s Liens or similar encumbrances are recorded against the Property as a consequence of any work performed by Lessee, Lessee shall promptly post with the Lessor a cash bond equal to 150% of the amount of the lien of encumbrance. Lessee’s right to contest validity, nature or amount of any such lien does not excuse, forgive or in any way diminish its obligation to post bond. The Lessor waives all Lessor liens against the Antenna Facilities.
8.2. The Antenna Facilities shall be installed, operated, maintained, repaired, replaced or removed by Lessee in a good, safe and workmanlike manner consistent with good engineering practices and all applicable laws and regulations. Lessee shall not be required to make any repairs to the Premises or Property unless such repairs shall be necessitated by reason of the presence of the Antenna Facilities or by reason of the default or neglect of Lessee. Lessee shall be responsible for restoration of any trenching, earthwork or construction related impacts to the Property and/or the Water Tower associated with the installation of the Lessee’s equipment within 30 days.

8.3. Any and all costs, fees, and expenses for construction, installation, operation, maintenance, repair, replacement, or removal of the Antenna Facilities shall be the sole and exclusive responsibility of Lessee.

8.4 Lessee shall hire a licensed electrician to install 20 amp 120 V Duplex Outlet connected to the bottom of the 120 V Sub Panel on the Main Electrical panel. This outlet shall provide a source of electric service for operating the KARC repeater equipment. No emergency generator will be installed. Lessee shall be responsible for all costs of the electrician and any required supplies, as well as any costs of permit or inspection customarily imposed by the City. All such work shall be performed in accordance with all applicable laws and regulations, including compliance with the Prevailing Wage Act (and all labor shall be paid at prevailing wage rates). The design, configuration and location of the above-referenced outlet and related conduits shall be subject to approval by Lessor.

8.5. Lessor shall permit access across the Property for all necessary utilities, as provided in Exhibit B. Lessee shall have the right to ingress and egress across the Property from the adjacent roadway; provided that the Lessor may, but is not obligated to, gate and fence the Property, so long as Lessee is provided a key or gate card to open any gate. Except when opening or closing any gate, Lessee shall leave any such gate locked. Lessee shall be permitted to park a vehicle on the Property for temporary servicing and maintenance only. Lessee shall be permitted access across, upon and under the Property at all reasonable times for purposes of installing, operating, maintaining, replacing or removing (“Lessee’s Work”) the Antenna Facilities. Lessee shall have access to the Antenna Facilities twenty-four (24) hours a day, seven (7) days a week for operating and maintenance purposes, provided that the Lessee is accompanied by the Lessor’s Public Works Director or designee. The Lessee shall have access to the Antenna Facilities by contacting Lessor’s Public Works Director or his designee a minimum of one (1) day in advance at (815) 748-2030, and upon proper identification as an authorized representative of the Lessee. Lessor shall have the right to have its Public Works Director, or designee, accompany Lessee or Lessee’s representatives whenever Lessee accesses the Property. If the Public Works Director or his designee accompanies Lessee after the hours of 5:00 p.m. or before 8:00 a.m., Monday through Friday, or any time Saturday, Sunday or on nationally recognized holidays, Lessee shall pay Lessor a supervision fee equal to the Lessor’s actual labor costs for providing access and accompaniment.

8.6. Lessee, Lessee’s employees, agents, subcontractor, lenders and invitees shall have access to the Premises as provided above at no charge during normal City business hours. Lessor grants to Lessee, and its agents, employees, contractors, guests and invitees, a non-exclusive right of access for pedestrian and vehicular ingress and egress across or through the Property as required.

8.7. Lessee agrees that Lessor has the right to have a structural engineer perform at Lessee’s expense, not more than twice per term, an inspection of the Antenna Facilities and the Premises; provided Lessee shall reimburse the Lessor for any reasonable costs and expenses incurred by the Lessor. Such costs shall not exceed One thousand and 00/100 dollars ($1,000.00).

8.8. If required by the Lessor, Plans and Specifications for the Antenna Facilities shall be certified by a structural engineer and shall be stamped by the structural engineer, prepared at the exclusive expense of the Lessee.
8.9. The Lessor will notify Lessee at least sixty (60) days in advance of the date when the Water Tower is scheduled to be painted. The Lessor shall solicit bids or proposals for the painting, which shall include as alternate bid items the cost of painting the Water Tower without the Lessee’s Antenna Facilities and the cost of painting the Water Tower with Lessee’s Antenna Facilities left in place. The Lessor shall submit a bill to Lessee for its share of the cost of painting, which will be the difference between the cost of painting the Water Tower without the Lessee’s Antenna Facilities and the cost of painting the Water Tower with Lessee’s Antenna Facilities left in place. Lessee shall pay the Lessor the difference within thirty (30) days of receipt of the invoice. Lessee shall be responsible only for its share of the cost of painting the Water Tower, and shall provide to the Lessor specifications to be included in any bid or proposal regarding the Antenna Facilities.

9.0 Restoration of Property

9.1. Upon the expiration of this Agreement, or if earlier termination or cancellation for any reason, Lessee shall, at its sole expense, remove from the Premises its Antenna Facilities, and Lessee shall repair any damage to the Premises or the Water Tower or the Property resulting from any installation and/or removal of the Antenna Facilities, ordinary wear and tear excepted. Any other items of Lessee’s Property that shall remain on the property after the expiration or following an earlier termination date, may, at the option of the Lessor, be deemed to have been abandoned, provided Lessor has given Lessee sixty (60) days’ prior written notice, and in such case, such items may be retained by the Lessor as its property or be disposed of by the Lessor, without accountability, in such a manner as the Lessor shall determine, at Lessee’s expense.

9.2. Upon completion of the construction of the Antenna Facilities, Lessee shall restore any areas of the Property damaged or disturbed by its construction to original conditions, normal wear and tear excepted. During the Term or Renewal Terms of this Agreement. Lessee shall repair or indemnify the Lessor, to the extent permitted by law, for any damage to the Water Tower or Property caused by Lessee, Lessee’s agents or contractors. At Lessor’s option, Lessor may permit or require the electrical outlet referenced in Section 8.4 to remain in place or to be removed.

10.0 Interference

(A) Lessee shall operate the Lessee Antenna Facilities in a manner that will not cause interference to Lessor and other lessees or licensees of the Property. Such interference shall be deemed a material breach by Lessee. In the event such interference occurs, Lessee agrees to take all actions necessary to eliminate such interference within forty-eight (48) hours after having received notice of such interference by Lessor. In the event operation of the Lessee’s antenna facilities interferes with the Lessor’s emergency-response communications equipment or any other commercial lessee of the Property, the Lessee shall immediately cease use of their facilities until such interference has been eliminated. In the event Lessee fails to correct any interference caused by it or its Antenna Facilities, Lessor may terminate this Agreement and/or pursue any other remedies it may have at law or in equity. The parties agree and acknowledge that the Lessor has previously installed emergency response equipment, which has been and continues to be in use on the Property. The parties further agree that Lessor permits other commercial users of the Property, at significantly greater lease rates. Lessee acknowledges that its rights shall be subordinate to the rights of the Lessor and subordinate to the rights of other commercial lessees, and should Lessee’s equipment cause interference with any other current or future user, Lessee shall take such action as shall be required to terminate the interference, and failing the same, Lessee shall remove its equipment (or Lessor may terminate this Agreement).

(B) In the event that the Lessor determines that the Lessee is responsible for interference to the Lessor and other lessees or licensees of the Property, the Lessee shall reimburse the Lessor for any reasonable costs and expenses incurred by the Lessor while determining the cause of the interference. In the event, the Lessee agrees to reimburse the Lessor in full within thirty (30) days of receipt of proof of
expenses incurred by the Lessor. In the event that Lessee fails to comply with this provision, Lessor may terminate this Agreement and/or pursue any other remedies it may have at law or in equity.

11.0 Conditions Precedent Lessee’s obligation to perform under this Agreement shall be subject to and conditioned upon:

a. Lessee securing appropriate and necessary approvals for Lessee’s intended use of the Property, as well as any future regulations or requirements, from the Federal Communications Commission, the Federal Aviation Administration and any other federal, state or local regulatory authority having jurisdiction over the Kishwaukee Amateur Radio Club's proposed use of the Property;

b. Lessee may conduct radio frequency propagation studies (“RF Studies”) on the Property. If the RE Studies do not provide results which meet with the personal satisfaction of Lessee, or if the RE Studies provide results which demonstrate that operation of the Lessee’s Antenna Facilities will disrupt or interfere with any program of the Lessor, the Lessee shall have no obligation to perform under this Agreement; Lessee’s inability to successfully satisfy the conditions or the occurrence of any other event which effectively prohibits Lessee’s intended use of the Property shall relieve Lessee from any obligation to perform under this Agreement and shall entitle Lessee to restitution of any unearned Rent which has been paid to Lessor.

12.0. **Termination in the Event of a Casualty or Condemnation**

(A) In the event of any damage, or destruction to the Premises which renders the Premises unusable or inoperable, the Lessor and the Lessee shall each have the right, but not the obligation, to terminate this Agreement and all of its duties and obligations herein by giving written notice to Lessor within thirty (30) days after such damage or destruction, if by virtue of such casualty the Premises are no longer adequate for Lessee to continue its operations or any repairs to the Water Tower have not been completed or cannot reasonably be completed within sixty (60) days from the date of the damage.

(B) If Lessee does not terminate the Agreement: (1) the Rent payable herein shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises; and (2) within sixty (60) days from the date of such damage or destruction, the Lessor shall make any necessary repairs to the Water Tower caused by any such damage or destruction, but only to the extent that the Lessor has received insurance proceeds with respect to damage or destruction to the Water Tower. Lessor may elect not to repair the Water Tower. Under no circumstances shall Lessor be responsible for any costs of repair, restoration, replacement or remediation of any of Lessee’s property.

(C) In the event of condemnation, unless Lessee is allowed by the condemning authority to continue its operations on the Premises, this Agreement shall terminate as of the date title to the Property vests in the condemning authority or Lessee is required to cease its operations, whichever is earlier. Lessee shall not be entitled to share in the proceeds of any condemnation award.

13.0. **Liability and Indemnity**

Lessee shall, to the fullest extent permitted by law, indemnify and hold Lessor harmless from all claims (including attorneys’ fees, costs and expenses of defending against such claims) arising from its use of the Premises and the negligence or willful misconduct of Lessee or Lessee’s agent or employees. Lessor shall indemnify and hold Lessee harmless from all claims (including attorneys’ fees, costs and expenses of defending against such claims) arising from the negligence or willful misconduct of Lessor or Lessor’s agents or employees occurring in or about the Property. However, nothing contained in this Agreement shall be construed as a waiver or limitation of defenses available to either the Lessor or the Lessee under law, including but not limited to the Tort Immunity Act. The provisions of this paragraph shall survive two (2) years after any expiration and/or termination of this Agreement.
14.0. **Taxes**

If personal property taxes are assessed, Lessee shall pay any portion of such taxes directly attributable to the Lessee Antenna Facilities. Except as provided immediately below, Lessor shall pay all real property taxes attributable to the Land. Lessee shall reimburse Lessor for any increases in real property taxes, which are assessed as a direct result of Lessee’s improvements or this Agreement. As a condition of Lessee’s obligation to pay such tax increases, Lessor shall provide to Lessee a copy of the official or original documentation from the taxing authority, indicating the increase is due to Lessee’s improvements.

15.0. **Waiver of Lessor’s Lien**

(A) Lessor waives any lien rights it may have concerning the Lessee Antenna Facilities which are deemed Lessee’s personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor’s consent after submitting written notice to the Lessor no less than two (2) working days prior to removal of said Antenna Facilities.

(B) (Left blank.)

16.0. **Termination**

This Agreement may be terminated without further liability provided thirty (30) days prior written notice is issued as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to other provisions hereof), provided that the grace period for any monetary default is ten (10) days from receipt of notice; or (ii) by Lessee for any reason or for no reason; provided Lessor delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; or (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Antenna Facilities; or (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons including, without limitation, signal interference. Lessee agrees to reimburse Lessor for administrative and/or equipment costs incurred by Lessor as a result of modifications made to the water tank and/or Lessee’s Antenna Facilities in conjunction with the execution and subsequent termination of this Agreement, with such reimbursement not to exceed One Thousand Dollars ($1,000.00).

17.0. **Insurance**

Lessee, at Lessee’s sole cost and expense, shall procure and maintain on the Premises and on the Lessee Antenna Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars ($1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessee, its employees and agents arising out of or in connection with Lessee’s use of the Premises, all as provided for herein. Lessee shall name Lessor as an additional insured on Lessee’s policy. Lessee shall provide to Lessor a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date. Lessor has a funded self-insurance program for commercial insurance. Lessor shall furnish to Lessee documentation to establish such self-insurance.

Should Lessee have any third party or contractor perform work on the Property (such as the installation of the above-referenced electrical outlet), the third party shall be required to adhere to the indemnification

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provisions outlined in Section 13.0 (as if the third party or contractor were the Lessee), and shall further be required to comply with the Contractor Insurance requirements of Exhibit E.

18.0. **Assignment and Subletting** Lessee shall not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Premises without the prior written consent of Lessor.

19.0. **Warranty of Title and Quiet Enjoyment** Lessor warrants that: (I) Lessor owns the Property in fee simple and has rights of access thereto and the property is free and clear of all liens, encumbrances and restriction; (ii) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee’s part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises.

20.0. **Hazardous Substances** Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor’s knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Property in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other’s partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorney’s fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, ‘Hazardous Material’ shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Property is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

Lessor warrants and represents to the best of Lessor’s actual knowledge and belief that the Property and the improvements thereon are free of “Hazardous Material” or other materials the removal of which is required or the maintenance of which is prohibited, regulated or penalized by any federal, state or local government authority. This Agreement shall at the option of Lessee be void and of no further force or effect if Hazardous Materials, not otherwise permitted under federal, state or local government authority, are discovered to exist on the Property after Lessee takes possession of the Property, and Hazardous Materials are not the result of Lessee’s operation, and Lessee shall be entitled to a refund of all consideration given Lessor under this Agreement.

21.0. **Water Tower Marking and Lighting Requirements** Lessor acknowledges that it, and not Lessee, shall be responsible for compliance with all Water Tower marking and lighting requirements of the Federal Aviation Administration (“FAA”) and the FCC, except as may be required as a consequence of Lessee’s Antenna Facilities. Lessor shall indemnify and hold Lessee harmless from any fines or other liabilities caused by the Lessor’s failure to comply with such requirements. Should Lessee be cited by either the FCC or the FAA because the Water Tower is not in compliance because of conditions other than those caused by Lessee’s Antenna Facilities and should Lessor fail to cure such conditions of noncompliance within the time frame allowed by the citing agency, Lessee may terminate this Agreement on 60 days’ notice to the Lessor, during which time the Lessor shall have the opportunity to cure any default, Lessee shall cure any non-complying condition caused by Lessee’s Antenna Facilities.
22.0. Miscellaneous

22.1. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement shall be in writing and executed by both parties.

22.2. If any provision of the Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22.3. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

22.4. Any notice or demand required to given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below.

Lessor: City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115
Attn: City Manager

Lessee: Kishwaukee Amateur Radio Club
P. O. Box 371
DeKalb, IL 60115

With copies to:

City of DeKalb
223 S. Fourth Street
DeKalb, IL 60115
Attn: Community Development Director

City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115
Attn: City Attorney

Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

22.5. This Agreement shall be governed by the laws of the State of Illinois and venue shall be in DeKalb County.

22.6. Lessor acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit D will be recorded by Lessee in the official records of the County where the Property is located. In the event, the Property is encumbered by a mortgage or deed of trust, Lessor agrees to obtain and furnish to Lessee a non-disturbance and atonement instrument for each such mortgage or deed of trust.

22.7. Lessee may obtain title insurance on its interest in the Premises. Lessor shall cooperate by executing documentation required by the title insurance company.

22.8. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.
22.9. All Riders and Exhibits annexed hereto from material parts of this Agreement.

22.10. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:
City of DeKalb, an Illinois Municipal
By: [Signature]
Title: Mayor

LESSEE:
Kishwaukee Amateur Club
By: [Signature]
Title: President, Kishwaukee Amateur Club

By: [Signature]
Title: Trustee, WA9CJN Repeater

ATTEST
Lynn Fazekas, City Clerk
Date: 9/18/2018

ATTEST:
[Signature]
Date: 9/17/18
EXHIBIT A
DESCRIPTION OF PROPERTY

to the agreement dated September 10, 2018, by and between the City of DeKalb, Illinois, as Lessor, and Kishwaukee Amateur Radio Club, as Lessee.

The Property is described as follows: The West Water Tower site, CITY OF DEKALB, DEKALB COUNTY, ILLINOIS, DeKalb, IL.
EXHIBIT B
DESCRIPTION OF PREMISES


The Premises are described and/or depicted as follows: (See Attached)
EXHIBIT C RENT SCHEDULE

to the Agreement dated September 10, 2018, by and between the City of DeKalb, Illinois, and Kishwaukee Amateur Radio Club, as Lessee.

The ANNUAL Rent Schedule is described and/or depicted as follows:

Four Hundred Dollars and Zero Cents ($400.00) per year during the term of the Contract.
EXHIBIT D
MEMORANDUM OF AGREEMENT

CLERK Please return this document to: Kishwaukee Amateur Radio Club
P. O. Box 371
DeKalb, IL 60115

This Memorandum of Agreement is entered into on this _____ day of September, 2018, by and between the City of DeKalb, Illinois, with an office at 200 South Fourth Street, DeKalb, Illinois (hereinafter referred to as “Lessor”) and Kishwaukee Amateur Radio Club, PO Box 371, DeKalb, IL 60115 (hereinafter referred to as”Lessee”).

1. Lessor an Lessee entered into a Communications Site Lease Agreement (Water Tower) (“Agreement”) on the _____ day of September, 2018, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

2. The term of the Agreement is for five (5) years commencing on (September 1st, 2018) with two (2) successive five (5) year options to renew.

3. The Property which is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Property being leased to Lessee (the “Premises”) is described in Exhibit B annexed hereto.

LESSOR:
City of DeKalb, an Illinois municipal corporation

By: ______________________
Mayor

ATTEST:
DeKalb City Clerk

LESSEE:
Kishwaukee Amateur Radio Club

By: ______________________

ATTEST:

DATE: 9/18/2018

DATE: 9-26-18
STATE OF ILLINOIS  
COUNTY OF DEKALB

On September 13, 2018, before me, a Notary Public, personally appeared

Jerry Smith

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

(SEAL)

Notary Public
My commission expires: 2/1/21

STATE OF ILLINOIS  
COUNTY OF DEKALB

On September 17th, 2018, before me, a Notary Public, personally appeared

Thomas P. Lowery
Robert A. Yurs

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

Notary Public
My commission expires:
Exhibit C:  
Contractor Insurance Requirements:

The Contractor shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act in the prosecution of the work or failure to prosecute the work and shall indemnify and hold harmless the City of DeKalb, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting therefrom. The Contractor shall assume all restitution and repair costs arising out of an error, omission and/or negligence.

The Contractor agrees to indemnify and save harmless the City, including its elected or appointed officials, employees, attorneys and agents (collectively, the "City Indemnitees") against any and all claims, loss damage, injury, liability, and court costs and attorney's fees incident thereto, including any claims made by employees of the Contractor or any of their subcontractors, as well as all other persons, resulting directly or indirectly from the work covered by this contract or the equipment used in connection therewith. It is understood that this agreement shall apply to any and all such claims whether resulting from the negligence or the intentional acts of the Contractor, the Contractor's employees, contractors or subcontractors, the City or City Indemnitees or otherwise, with the single exception of any claim, damage, loss, or expense arising solely out of the intentional misconduct of the City or City Indemnitees. The Contractor is solely responsible for determining the accuracy and validity of any information provided to the Contractor by the City or its representatives. This indemnification shall apply to the fullest extent of the law, and in the event that any provision hereof is determined to be unenforceable, the indemnification obligations shall be severable and the fullest extent of indemnification that may lawfully apply shall remain in full force and effect.

This indemnification shall include any claims arising out of the erection, construction, placement or operation of any scaffold, hoist, crane, stay, ladders, support or other mechanical contrivance in connection with such work including but not limited to losses, claims, damages and expenses arising pursuant to claims asserted against the City pursuant to theories premised upon Section 414 or Section 343 of the Restatement (Second) of Torts. This indemnification shall not be limited in any way by limitations on the amount or type of damages, compensation, or benefits payable by or for the Contractor under Workers' Compensation Acts, disability benefit acts, or other employee benefit acts, and serves as an express agreement to waive the protection of Kotecki v. Cyclops Welding Corp, 146 Ill.2d 155 (1991) in Illinois.

The Contractor agrees and warrants that it has procured all licenses, permits or other official permissions required by any applicable law to perform the services contemplated herein, that it will procure all additional licenses, permits or other official permissions hereafter required by law during the term of this Agreement, and that it will keep all such licenses in effect during the term of this Agreement. The Contractor shall provide a copy of any such licenses or permits upon request. All insurance and licensure required herein shall be provided at the Contractor's sole expense.

Contractor shall provide any and all insurance required under any applicable law, regulation, statute or ordinance, including but not limited to workers' compensation insurance, unemployment insurance, automobile liability insurance and other legally required insurance. Contractor shall produce a certificate evidencing current coverage, upon request from the City. Contractor shall indemnify and hold harmless the City from any and all liability, damage, cost or expense which the City may incur or be liable to pay as a result of any and all accidental injuries or damages suffered by the Contractor or its employees (in addition to any other required indemnification or insurance from Contractor).

Unless otherwise indicated herein, any certificate of insurance shall further indicate that the City is additional primary insured on the Contractor's general liability insurance, shall indicate that such policies shall not have any right of subrogation against the City or the City's insurers, and shall indicate that said policy shall not be cancelled or revoked except after the provision of not less than thirty (30) days notice.
to the City. Contractor shall maintain said policy in full force and effect for the duration of this Agreement, and shall periodically provide updated certificates of insurance to evidence continuing coverage in compliance herewith. For purposes of this Agreement and insurance provided hereunder, the “City” shall include the City of DeKalb, its employees, appointed and elected officers, its committees, its attorneys, and all corporate bodies that exist as a subsidiary to the City.

Contractor shall be required to provide the City with a Certificate of Insurance, in a form and from an issuer acceptable to the City, indicating that the Contractor has obtained and maintains comprehensive general liability insurance with policy limits of not less than One Million Dollars ($1,000,000.00) per person / per occurrence.

Contractor shall also be required to provide the City with a Certificate of Insurance, in a form and from an issuer acceptable to the City, indicating that the Contractor has obtained and maintains comprehensive automobile liability insurance with policy limits of not less than One Million Dollars ($1,000,000.00) per person / per occurrence.

The policy limits, availability or inavailability of insurance coverage or the applicability of claims, defenses or limitations based upon applicable law (including but not limited to the Illinois Worker’s Compensation Act or similar laws or statutes) shall in no way limit the Contractor’s obligation to indemnify and hold harmless the City from any claims for damage, liabilities or other costs arising out of or relating to the Contractor’s work or this Agreement.