

MEMORANDUM OF LEASE

THIS MEMORANDUM LEASE, is made as of the last date set forth in the notary acknowledgements below, by and between **GUILFORD COUNTY and CITY OF GREENSBORO**, hereinafter designated as "Lessors" and the **STATE OF NORTH CAROLINA**, a body politic and corporate, hereinafter designated as "Lessee".

Lessor and Lessee entered into a Lease Agreement dated _____ 2019 (the "Lease"), the terms, covenants and conditions of which are hereby incorporated in this Memorandum of Lease, for a term of ten (10) years, commencing on the 1st day of March 2019 and terminating on the 28th day of February 2029. Lessors have the right to terminate the Agreement at the end of ten (10) years, and if renewed, at the end of twenty (20) years, and if renewed, at the end of thirty (30) years.

In consideration of the terms, covenants, conditions and rental as set forth in the Lease, Lessors leased to Lessee that certain premises described as follows: space on the Lessors' tower at 170, 300 and 320' AGL, having a physical street address of 891 Triad Park Maintenance Road, Kernersville, Guilford County, North Carolina. geo-coordinates of 36 °07'35.0 N 80 °02'06.7" W (the "Premises").

LESSORS:

CITY OF GREENSBORO

By: _____

Print Name: _____

City Manager

ATTEST:

_____, (Seal)

City Clerk

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for the aforesaid County and State do hereby certify that _____ personally came before me this day and acknowledged that he/she is Clerk of the CITY OF GREENSBORO and that by authority duly given and as an act of CITY OF GREENSBORO, the foregoing instrument was signed by _____, its City Manager, attested by himself/herself as Clerk and sealed with the common seal.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal, this the _____ day of _____ 2019.

Notary Public

Print Name: _____

My Commission Expires: _____

GUILFORD COUNTY

By: _____

Print Name: _____

County Manager

ATTEST:

County Clerk (Seal)

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____ a Notary Public in and for the aforesaid County and State do hereby certify that _____ personally came before me this day and acknowledged that he/she is Clerk of GUILFORD COUNTY and that by authority duly given and as an act of GUILFORD COUNTY, the foregoing instrument was signed by _____, its County Manager, attested by himself/herself as Clerk and sealed with the common seal.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal, this the _____ day of _____ 2019.

Notary Public

Print Name: _____

My Commission Expires: _____

LESSEE:

STATE OF NORTH CAROLINA

By: _____

Tim Walton- Director
Department of Administration
State Property Office

State of North Carolina

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____, a Notary Public in and for the aforesaid County of _____ and the State of North Carolina, do certify that Tim Walton, personally came before me this day and acknowledged that he is Director of State Property Office, Department of Administration, State of North Carolina, and that by authority duly given and as the act of the State, has signed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 2019.

Notary Public

Print Name: _____

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

**TOWER SPACE
LEASE AGREEMENT**

THIS TOWER SPACE LEASE AGREEMENT ("Lease"), made and entered into as of the last date set forth in the notary acknowledgements below by and between CITY OF GREENSBORO, a political subdivision of the County of Guilford, hereinafter referred to as "Lessor"; and the STATE OF NORTH CAROLINA, a body politic and corporate, hereinafter referred to as "Lessee";

WITNESSETH:

THAT WHEREAS, the North Carolina Department of Public Safety, Division of the State Highway Patrol, has requested and approved the execution of this instrument for the purposes herein specified; and,

WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration, by resolution adopted by the Governor and Council of State on the 9th day of January 2018; and

WHEREAS, the parties hereto have mutually agreed to the terms of this Lease as hereinafter set out.

NOW THEREFORE, in consideration of the Premises. as described herein, and the promises and covenants contained in the terms and conditions hereinafter set forth, Lessor does hereby lease to Lessee for and during the term and under the terms and conditions hereinafter set forth, those premises with all rights, privileges and appurtenances thereto belonging, lying and being in the Kernersville. Guilford County, North Carolina, and being more particularly described herein.

The terms and conditions of this Lease are as follows:

1. **Premises.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor space on the Lessor's tower at 170', 300' and 320' AGL, having a physical street address of 891 Triad Park Maintenance Road, Kernersville, Guilford County, North Carolina, geo-coordinates of 36° 07'35.0 N 80° 02'06.7" W 7 (the "Premises").
2. **Term.** The term of this Lease shall be for a period often (10) years, commencing on the day of March 2019 and terminating on the 28th day of February 2029 (the "Term").

Lessors and Lessee have the right to terminate the Agreement at the end of ten (10) years, and if renewed, at the end of twenty (20) years, and if renewed, at the end of thirty (30) years. Any

renewal or extension of the Initial Term shall be upon the terms and conditions set forth in this Lease. The Initial Term, the First Renewal Term, and the Second Renewal Term are collectively referred to herein as the "Term".

3. **Rent.** Lessee shall pay to Lessors as rental for the Premises, the sum of ONE DOLLAR (\$1.00) for the Term.
4. **Equipment / Use / Fixtures.** Lessee shall use the Premises for the purpose of installing, operating, maintaining, repairing, replacing and removing, intellirepeaters, microwave dishes, batteries, chargers, UPS, generator transfer switch(s), antennas, transmission lines, waveguides, cables, wires, receivers and generator(s) (all such equipment on the Tower being collectively referred to herein as the ("Communications Equipment")). Lessee intends to primarily use the Communications Equipment to support its Voice Interoperability Plan for Emergency Responders ("VIPER") strategic communications system. Lessors agree that any items installed by the Lessee on the Tower shall remain the property of the Lessee and shall not become or be deemed by the Lessor to be fixtures upon the Premises.
5. **Utilities / Maintenance.** Lessors shall be responsible for the maintenance and operation of the Tower. Lessee shall repair at its own expense damage to the Premises. Tower. Building and Communications Equipment, which is the result of Lessee's use of the Premises except if such cost arises out of the negligent or wrongful acts or omissions of Lessor, its contractors or agents. **Any damage to the Tower or to the City or County owned equipment on the Tower caused by or as a result of any modifications, upgrades, installations, or changes to the Tower or Tower foundation performed by the State as p art of this Agreement shall be the responsibility of the State for repair and/or payment of damages.**
6. **Access.** Lessors grant to Lessee free and unrestricted ingress and egress to the Premises during the Term for the purpose of installing, maintaining, operating, repairing, replacing, upgrading and removing the Communications Equipment. Lessor shall provide Lessee with legal and practical means of ingress and egress to the Premises and shall be responsible for the repair and maintenance of said means of ingress and egress. Reasonable notice will be provided to all parties prior to any work scheduled to commence on the Premises.
7. **Insurance & Liability.**
 - (a) Lessors agree that Lessee's decision to self-insure satisfies all insurance requirements of this Lease applicable to Lessee.
 - (b) As between Lessors and Lessee, Lessee, subject to the terms of this Lease, will be primarily liable for the negligent or intentional acts or omissions of its agents, contractors or

employees. As to third parties, Lessee is an immune sovereign and is not ordinarily subject to suit. However, Lessee has enacted Chapter 143, Article 31, of the North Carolina General Statutes (the "Tort Claims Act"), pursuant to which the Lessee may be liable for the torts of its officers and employees, within the terms of the Tort Claims Act, and accordingly, Lessee will be primarily liable for any claims within the coverage of the Tort Claims Act.

(c) Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessors to perform an act required by this Lease, provided that Lessors could reasonably have complied with said requirement.

8. **Governmental Approvals & Compliance.** During the Term, Lessee shall comply with all State and Federal laws and regulations applicable to the Premises. Lessee shall obtain any necessary State or Federal licenses or authorizations required for the installation and construction of the Tower, Building or Communications Equipment and shall comply with government regulations applicable to its operations, including those of the Federal Aviation Administration ("FAA") and the Federal Communications Commission ("FCC").

9. **Interference.** The Communications Equipment and any other equipment used by Lessee on the Tower or in the Building shall be designed, constructed, installed, maintained, and operated in compliance with the applicable rules and regulations of the FCC and good engineering practices.

10. **Condition of Tower.** Lessee has the right and responsibility to repair and maintain the Tower as set forth in paragraph 5 on page 2 of 9 in this agreement, for any repair and maintenance required due to Lessee use of the tower. Subject to other provisions contained in this Lease, Lessee, at its sole cost, except if such cost arises out of a negligent or wrongful acts or omissions of Lessors, their contractors or agents, shall maintain and repair the Tower and access to the Premises, if applicable thereto, such that Lessee may utilize the Premises for the purposes and to the extent herein permitted, including, the Tower lighting system and markings and the structural integrity of the Tower. Installation, maintenance and repair of the Tower by the Lessee must be approved in advanced by the Lessors and must comply with all State and Federal, ordinances, rules and regulations, applied in a manner consistent with standard industry practices. Such duties include, but subject to the other provisions contained in this Lease, the maintenance of appropriate records and notifications to the FAA of any failure on Lessee's part and repairs and correction of the same. Subject to the terms of this Paragraph, Lessee assumes all responsibility for any fines, levies and /or other penalties imposed as a result of non-compliance with said requirements of said authorities. The Tower remains the property of the Lessors at all times.

11. **Security.** Lessors and Lessee agree and acknowledge that the Tower and the Building will be secured by a locked fenced.

12. **Taxes.** If applicable, Lessee will pay any personal property taxes assessed on, or any portion of the taxes attributable to its interest in the Tower or the Communications Equipment installed on the Tower.

13. **Right to Terminate.** Lessee may terminate this Lease, at its option, after giving not less than thirty (30) days' notice to Lessor, if:

- (a) Any governmental agency denies a request by Lessee for or revokes a permit, license or approval, which is required for Lessee to install or operate the Tower, the Building or the Communications Equipment on the Premises; or
- (b) Lessee determines that technical problems or radio interference problems from other antennas or from nearby radio transmitting facilities, which problems cannot reasonably be corrected, preclude Lessee from using the Premises for its intended purpose; or
- (c) Utilities necessary for Lessee's use of the Premises are not available to the Premises; or
- (d) The Premises are damaged or destroyed to an extent which prohibits or materially interferes with Lessee's use of the Premises; or
- (e) Lessee determines, in its sole discretion, that the Premises is no longer needed.

14. **Right to Terminate.** Lessors may terminate this Lease, at its option, after giving not less than thirty (30) days' notice to Lessee, if:

- (a) Any governmental agency denies a request by Lessee for or revokes a permit, license or approval, which is required for Lessee to install or operate the Tower, the Building or the Communications Equipment on the Premises; or
- (b) Lessors determine that technical problems or radio interference problems from the Lessee's use of the Tower interfere with the Lessors' use of the Tower;
- (c) The Tower is damaged or destroyed to an extent which prohibits or materially interferes with Lessee's use of the Premises.

15. Termination. Upon termination of this Lease, Lessee will peaceably surrender the Premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this Lease, excepted. It is understood and agreed that Lessee shall have the right to remove from the Premises the Communications Equipment and any other items belonging to Lessee. Lessee hereby agrees to repair to the reasonable satisfaction of Lessors any portion of the Premises damaged by the removal of the Communications Equipment. Lessors have the right to dissolve the agreement with sufficient notice to the Lessee to the Agreement.

16. Title & Quiet Possession. Lessors agree that Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this Lease peaceably and quietly have, hold, and enjoy the Premises free from the adverse claims of any person. Lessors represent and warrant to Lessee that Lessor has the full right to make this Lease and that Lessee shall have quiet and peaceful possession of the Premises throughout the Term.

17. Holdover. Any hold over after the expiration of the Term, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either Party shall give not less than sixty (60) days written notice to terminate the tenancy.

18. Environmental Laws. Lessee represents, warrants and agrees that it will conduct its activities on the Premises in compliance with all applicable environmental laws. As between Lessors and Lessee, Lessee, subject to the terms of this Lease and to the extent permitted by the Tort Claims Act, will be primarily liable for the existence or discovery of any hazardous substance on the Premises or for the migration of any hazardous substance to other properties or for the release of any hazardous substance into the environment in violation of applicable environmental laws, arising solely from Lessee's use of the Premises. Lessors represent warrants and agrees that it has in the past and will in the future conduct its activities on the Premises in compliance with all applicable environmental laws and that the Premises is free of hazardous substances as of the date of this Lease. Lessors shall be responsible for, and promptly conduct any investigation and remediation as required by any environmental law or common law, of all spills or other release of hazardous substances, not caused solely by Lessee, that have occurred or which may occur on the Premises. Lessors agree, to indemnify Lessee and hold Lessee harmless from and against any and all liens, demands, defenses, suits, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against Lessee with respect to, or as a direct or indirect result of the violation of any environmental laws applicable to the Premises, caused by or within the control of Lessors. Lessors' indemnification of Lessee specifically includes cost incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any governmental authority.

19. Availability of Funds. Lessors and Lessee agree and understand that the continuation of this Lease for the Term, is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose to the agency of Lessee responsible for payment of said rental. Lessors and Lessee also agree that in the event the agency of Lessee or that body responsible for the appropriations of said funds, in its sole discretion, determines, in view of its total local operations that available funding for the payment of rents are insufficient to continue the operation of its local operations on the Premises, it may choose to terminate this Lease by giving Lessor written notice of said termination, and this Lease shall terminate immediately without any further liability to Lessee.

20. Assignment. Without the Lessors' written consent, the Lessee shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. Unless the Lessors otherwise agree in writing, the Lessee and all assigns shall be subject to all of the Lessors' defenses and shall be liable for all of the Lessee's duties that arise out of this contract and all of the Lessors' claims that arise out of this contract. Without granting the Lessee the right to assign, it is agreed that the duties of the Lessee that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

21. Prohibition on Gifts. North Carolina General Statute §133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any employee of Lessee of any gift from anyone with a contract with Lessee, or from any person seeking to do business with Lessee. By execution of this Lease, Lessors attest, for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

22. Modification. No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless made in writing and signed and agreed to by all Parties.

23. Binding Effect. Subject to the provisions herein, this Lease shall extend to and bind the Parties and their heirs, executors, administrators, successors and assigns.

24. Applicable Law. This Lease shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina, regardless of conflict of law principles. Jurisdiction shall be with Guilford County, North Carolina.

25. Effect of Waiver. The failure of either Party to insist in any instance upon strict performance of any of the terms and conditions set forth in this Lease shall not be construed as a waiver of the same in any other instance.

26. Entire Agreement. The Agreement, including any exhibits and amendments annexed hereto and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral and written statements or agreements. This Agreement may be amended only by written amendments duly executed by the Lessors and the Lessee.

27. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

28. Construction. No provision of this Lease shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party's having or being deemed to have prepared or imposed such provision.

29. Interpretation. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural may be substituted for the singular number in any place or places herein in which the context may require such substitution or substitutions.

30. Terms. Capitalized terms used in this Lease shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

31. Authority. Each person executing this Lease on behalf of Lessor does hereby represent and warrant that, if applicable: (a) Lessor is duly organized and in good standing in the State of its organization and, if different, qualified to do business and in good standing in the State of North Carolina, (b) Lessor has full lawful right and authority to enter into this Lease and to perform all of its obligations hereunder, and (c) each person signing this Lease on behalf of Lessor is duly and validly authorized to do so.³².

32. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

33. Memorandum of Lease for Recording. At the request of either Party, Lessors and Lessee shall execute a memorandum of this Lease for recording in the public records at the requesting Party's sole cost and expense. The memorandum of Lease shall set forth the Parties, provide a description of the Site, specify the Term and incorporate this Lease by reference.

34. Notices. All notices herein provided to be given, or which may be given by either Party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows:

to Lessors: CITY OF GREENSBORO
Attn: Manager TSD
1901 Midway Street
Greensboro, North Carolina 27403

GUILFORD COUNTY

Attn: Director Guilford County Emergency Services
1002 Meadowood Street
Greensboro, North Carolina 27409

to Lessee: North Carolina Department of Public Safety
Attn: Lease Coordinator
4701 Mail Service Center
Raleigh, North Carolina 27699-4701

with copy to: State Property Office
Attn: Space Planning and Leasing Manager
1321 Mail Service Center
Raleigh, North Carolina 27699-1321

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either Party may be changed by written notice.

[signatures begin on following page]

IN TESTIMONY WHEREOF, this Lease has been executed by the parties hereto, in duplicate originals, as of the last date set forth in the notary acknowledgement below.

LESSORS:

CITY OF GREENSBORO

By:

Print Name: _____

City Manager

ATTEST:

(Seal)

Clerk

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for the aforesaid County and State do hereby certify that _____ personally came before me this day and acknowledged that he/she is Clerk of the CITY OF GREENSBORO and that by authority duly given and as an act of CITY OF GREENSBORO, the foregoing instrument was signed by _____, its City Manager, attested by himself/herself as Clerk and sealed with the common seal.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal, this the _____ day of _____ 2019.

Notary Public

Print Name: _____

My Commission Expires: _____

GUILFORD COUNTY

By:

Print Name: _____
County Manager

ATTEST:

Clerk (Seal)

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for the aforesaid County and State do hereby certify that _____ personally came before me this day and acknowledged that he/she is Clerk of GUILFORD COUNTY and that by authority duly given and as an act of GUILFORD COUNTY, the foregoing instrument was signed by _____, its County Manager, attested by himself/herself as Clerk and sealed with the common seal.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal, this the _____ day of _____ 2019.

Notary Public

Print Name: _____

My Commission Expires: _____

LESSEE:

STATE OF NORTH CAROLINA

By: _____

Tim Walton- Director
Department of Administration
State Property Office
State of North Carolina

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____, a Notary Public in and for the aforesaid County of _____ and the State of North Carolina, do certify that Tim Walton, personally came before me this day and acknowledged that he is Director of State Property Office, Department of Administration, State of North Carolina, and that by authority duly given and as the act of the State, has signed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 2019.

Notary Public

Print Name:_____

My Commission Expires: _____