

Santa Fe County

ELECTRONIC SITE LEASE AGREEMENT

This Lease Agreement is entered into as of the date set forth for "Date of Lease" in Exhibit A, by and between Tesuque Radio Company, Inc., a New Mexico corporation ("Lessor"), and the person who is identified as Lessee in Exhibit A ("Lessee").

RECITALS

A. Lessor is the lessee under that certain Communication Use Lease under which Lessor is granted a leasehold by the United States Department of Agriculture, United States Forest Service, to construct, maintain and operate a facility to house certain electronic equipment and rent space in that facility for the operation of certain electronic transmission equipment at Tesuque Peak, Santa Fe County, New Mexico, at a site more specifically described as follows:

A building and antenna tower site on Tesuque Peak, Santa Fe National Forest, situated in the northwest quarter NW¼, NW¼, SE¼, Section 16 T.18N., R.11E., NMPM, 35 degrees, 47' 09" north latitude, by 105 degrees 46' 54" west longitude, as shown on the Tesuque Peak Electronic Site Plan.

B. Lessee seeks a lease of space to maintain and operate certain electronic equipment at the Electronic Site, subject to the terms and conditions of this Lease Agreement.

AGREEMENT

1. Definitions. For the purposes of this Lease Agreement, certain terms will be defined as follows.

(a) "Base Rent" is the minimum rent paid by Lessee to Lessor on a monthly basis. Base Rent is described in 3(a).

(b) "Electronic Site" means the building and antenna tower site and the improvements maintained thereon from time to time by Lessor on Tesuque Peak, Santa Fe County, New Mexico.

(c) "Cabinet" means the cabinet, closet or other space which will be furnished for Lessee's use in installing its equipment in the Electronic Site.

(d) "Commencement Date" is the first day for which a rent is due from Lessee to Lessor.

(e) "Equipment" means the electronic equipment, cabinets, wiring, antennae and other fixtures and installation which Lessee installs at the Electronic Site in accordance with its Equipment Layout Plan.

(f) "Equipment Layout Plan" means the set of documents describing the Equipment which Lessee seeks to install at the Electronic Site, together with installation and wiring diagrams, frequency and power usage specifications, and such other information respecting Lessee's Equipment and installation as Lessor may require.

(g) "Objectionable Interference" means both intra-site and inter-site signal interference, of whatsoever cause or source, and is more specifically described in Section 11.

(h) "Term" or "Lease Term" means the term of this Lease Agreement, beginning on the Commencement Date and continuing until termination hereof, including all extensions or renewals.

(i) "Termination Date" means the last date of the Lease Term, as specified in Exhibit A, but subject to provisions of this Agreement under which this Agreement may be extended or earlier terminated.

2. Grant of Lease. In consideration of the Lessee's payment of the rents as provided in this Agreement, and in further consideration of Lessee's representations, warranties and covenants hereinafter set forth, Lessor hereby grants to Lessee during the term hereof the right to occupy the Cabinet in the manner hereinafter described, and further confers upon Lessee a non-exclusive lease to maintain and operate its equipment in the Electronic Site located at the Tower Site, subject, however, to all of the terms and conditions of this Agreement.

3. Rents. Lessee agrees to pay to Lessor, and Lessor agrees to accept from Lessee, as partial consideration for the lease herein granted, the amounts described in this Section 3.

(a) Base Rent. The Lessee will pay to the Lessor the Base Rent described in Exhibit A which is attached hereto and made a part hereof. Subject to Lessor's rights upon any default by Lessee under this Agreement, Lessee will pay to Lessor without abatement, offset, notice or demand, in advance, commencing on the Commencement Date and continuing on the first day of each and every calendar month thereafter during the term of this Agreement, the monthly installment of the Base Rent shown in Exhibit A.

(b) Additional Rent. The Base Rent will be adjusted annually during the term of this Agreement, on the anniversary of the commencement of this Agreement, or if that anniversary does not fall on the first day of a calendar month, the first day of the calendar month in which the anniversary falls (the "Adjustment Date"). For each year subsequent to the first year of the Lease Term, an adjustment to the Base Rent will be made (the "Adjustment"). The Adjustment will be an addition to the Base Rent, and will be computed by use of the Consumer Price Index (the "Index"). The Index will mean the Consumer Price Index (all items) For All Urban Consumers, U. S. City Average (1982-1984 = 100) published by the U. S. Department of Labor, Bureau of Labor Statistics. If the Index is revised so that the base year changes, the Index will be converted in

accordance with the conversion factors published by the Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Agreement, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would have been attained if the Index had not been discontinued or revised. The Index which is published for the second month preceding each Anniversary Date (the "Extension Index") will be compared with the Index published for the month in which the original Commencement Date falls (the "Beginning Index"). If the Extension Index has increased over the Beginning Index, the Adjustment payable for each of the twelve months following the Anniversary Date will be calculated as follows:

- (1) First, subtract the Beginning Index from the Extension Index;
- (2) Second, divide the result of the subtraction by the Beginning Index;
and
- (3) Multiply the monthly installment of Base Rent by the product of (2).

The figure produced by this computation will be the Adjustment for each month of the subsequent year of the Lease Term, and will be paid each month in monthly installments during that year of the Lease Term in addition to the Base Rent, until the next Adjustment Date. There will be an Adjustment in each year of the Lease Term, but in no event will the sum of the Base Rent plus the Adjustment for any year of the Lease Term (the "Total Rent") be less than the Total Rent in the preceding year.

(c) Electricity Charge. Lessee will pay to Lessor an electricity charge computed in accordance with this Paragraph. Lessor will compute an estimated annual electricity charge for Lessee, and will bill the estimated annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the electricity charge. At the end of each calendar year, Lessor will determine the actual electricity charges for the Electronic Site and the actual charge to Lessee. If Lessee has underpaid for the year, Lessee will pay the balance of the actual charge owed on or before the fifth day of the calendar month next following the month in which Lessee is billed for the balance. If Lessee has overpaid for the year, Lessor will return the overage to Lessee within 60 days after the end of the year.

(d) Fuel Charge. The Electronic Site currently is equipped with backup electricity generating equipment, and may be equipped with other generating or heating equipment in the future. Lessor will compute an estimated annual fuel charge for Lessee, and will bill the estimated annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the fuel charge. At the end of each calendar year, Lessor will determine the actual fuel charges for the Electronic Site and the actual charge to Lessee. If Lessee has underpaid for the year, Lessee will pay the balance of the actual charge owed on or before the fifth day of the calendar month next following the month in which Lessee is billed for the balance. If Lessee has overpaid for the year, Lessor will return the overage to Lessee within 60 days after the end of the year.

(e) Gross Receipts Tax. Lessee acknowledges that the amounts described in the preceding Paragraphs of this Section may be or become subject to New Mexico State gross receipts tax or other federal or state taxes or exactions. Accordingly, Lessee will pay with all amounts payable under this Section, together with such amounts, New Mexico State gross receipts tax or other taxes at the rate of taxation then specified in Santa Fe County, upon notice from Lessor.

(f) Additional Charges. From time to time and in accordance with Sections 5(a), 6(b), 6(c), 13 and 22(n) of this Agreement Lessee may be required to pay amounts to Lessor for specific items described in those Sections. Additionally, Lessee will pay a late fee of 1½% of any past due amount of Rent or any other charge for each month or portion of a month during which the past due amount of Rent or any other charge remains unpaid. Lessee will pay each such amount to Lessor, together with any gross receipts tax or other taxes thereon, within the calendar month commencing after the month in which the Lessee is invoiced for the amount.

4. Term. The Term of this Lease Agreement will commence at the Commencement Date set forth in Exhibit A attached hereto and incorporated herein by this reference. The Term of the Lease will continue from the Commencement Date until the Termination Date described in the same Exhibit, unless earlier terminated in accordance with the terms and conditions hereinafter set forth. The Lease Agreement will automatically renew for successive terms, each of the same length as the initial term, unless and until Lessee notifies Lessor no more than ninety (90) and no less than thirty (30) days before the Termination Date that Lessee will not require a renewal of the Lease Agreement. At any time after the initial Term of this Agreement, Lessor may terminate this Agreement by giving written notice to Lessee no less than 120 days before the Termination Date selected by Lessor in its notice to Lessee; provided, however, that Lessor will not effect any such termination if the termination would violate Lessor's Communications Use Lease or Lessee's special use permit to use the Electronic Site.

5. Lessee's Installation of Equipment.

(a) Lessee will submit to Lessor at Lessor's request, before installing any equipment at the Electronic Site, an Equipment Layout Plan respecting all equipment which Lessee proposes to install at the Electronic Site. The Equipment Layout Plan will be subject to Lessor's reasonable approval. Lessor will have Lessee's Equipment Layout Plan, proposed installation and operating frequencies reviewed by a licensed electrical engineer selected by Lessor. Lessee will pay the engineer's reasonable fee for this review, together with a small fee charged by Lessor for arranging the review and inspection. Approval of the Equipment Layout Plan and proposed installation will be granted giving due consideration to good engineering practices dictated by the unique nature of, and mixed uses contemplated for the Electronic Site, compatibility with other lessees, efficient use of mechanical and utility infrastructure and appurtenances, and to construction economics. Lessee hereby represents that it recognizes that the solution to any potential conflict in design and layout alternatives may be less than ideal. Lessor may require reasonable revisions to the Equipment Layout Plan in accordance with applicable regulations and standards of the Federal Communications Commission, United States Forest Service, or recognized professional engineering organizations as a condition for its approval. Upon Lessor's approval of a final Equipment Layout Plan, the parties will initial the final Equipment Layout Plan, and Lessee shall

install its equipment at the Electronic Site in strict accordance with the final Equipment Layout Plan.

(b) Lessee will install its equipment at the Electronic Site in accordance with the final Equipment Layout Plan, and in accordance with all applicable federal, state and local laws, regulations and ordinances. Any change or alteration to the installation or to the equipment specified in the final Equipment Layout Plan will be pursuant to written change order only, approved by both Lessor and Lessee. Changes required by physical site characteristics or governmental regulations or construction economics or exigencies, and which do not materially affect the Electronic Site or the use of the Electronic Site by Lessor or other lessees, will not be unreasonably withheld by Lessor. Lessor may require Lessee, upon reasonable notice, to move its Equipment to another cabinet or other location in the shelter at the Electronic Site, and to move its antennas to another location or locations on the towers or shelter at the Electronic Site. Lessor's engineers and representatives will have the right at all reasonable times during the course of installation to inspect the work in progress.

(c) Lessee acknowledges that Lessor's approvals of Lessee's Equipment and Equipment Layout Plan do not constitute any representation or warranty that the Equipment or Equipment Layout Plan are safe, meet any engineering standard or guideline, or comply with any industry standard or governmental law, regulation or rule and, further, that any inspection or approval does not constitute any waiver or reduction of any right Lessor has under this Agreement to indemnity or other relief from Lessee under this Agreement.

6. Utilities.

(a) Electric Power. Lessor will arrange for the supply of 30 amp, 240 volt alternating current electrical power to the Electronic Site by the electric utility company having the franchise and responsibility for supply of electricity thereto, and will supply a main disconnect and distribution panel to which the supply of electricity is connected. Lessor may, but is not required, to supply standby power. Lessee may connect to the main disconnect and distribution panel at its own cost and expense, and will obtain all its power requirements therefrom. Lessee will effect such connection in a manner specified in its final Equipment Layout Plan, and will cause the work to be performed by a licensed electrical contractor reasonably satisfactory to Lessor. Lessee will pay for power consumed in accordance with Paragraph 3(c), above.

(b) Telephone. Lessor will not provide any telephone service to the Electronic Site. If in the future Lessor obtains any form of telephone service, access which is generally available to lessees, Lessee will have the right to equal access thereto upon appropriate subscription and payment for services therefor independent of this Agreement.

(c) Sewer, Water and Natural Gas. Lessor will not have any obligation to supply sewer, water or natural gas to the Electronic Site. If Lessor in the future supplies propane, liquefied natural gas or a similar energy source to lessees generally, Lessor will make the same available to Lessee in an equitable manner upon appropriate subscription and payment for services therefor independent of this Agreement.

(d) Trash Removal. Lessee will be responsible for the prompt removal from the Electronic Site of any surplus material or trash created in connection with the installation, operation, maintenance, alteration, modification or removal of Lessee's equipment, whether or not flammable or of a dangerous character. In all events, Lessee will not introduce or permit the introduction of any material to the Electronic Site which may by the provisions of any law, rule or regulation be in the nature of, or subject to regulation as, an explosive, poisonous or hazardous material or substance.

(e) Grounding System. Lessor has provided a grounding system at the Electronic Site. Lessee will connect all Equipment to the grounding system in accordance with its Equipment Layout Plan, and will maintain the integrity of these connections throughout the term of this Lease Agreement. All costs and expenses of grounding Lessee's equipment will be paid by Lessee.

(f) Air Conditioning. Lessor will have no duty to supply heating or air conditioning to the Electronic Site.

(g) Security. Lessor has installed a locked gate at the access road and locking devices at entry doors to the Electronic Site. All interior door locks, including the entry doors to the Cabinets and the Electronic Site, may be keyed to a master key which Lessor may keep in controlled custody. Lessor may install and remove other security and monitoring devices from time to time, and Lessee shall cooperate in their installation and use. Notwithstanding the foregoing, Lessor will have no liability for any act of any lessee or other person for any act (whether or not negligent or willful) which causes damage to the Electronic Site or any equipment or person therein, irrespective of the failure of any security system or absence of any security system.

7. Use of Electronic Site by Lessee.

(a) Lessee's use of the Electronic Site is limited to the operation of its unmanned radio transmitting and receiving equipment, on the frequencies, and with the powers, and limited to the scope, set forth on Exhibit B, which is attached hereto and incorporated herein by this reference.

(b) Lessee will not use the Electronic Site for storage, shop space, office, or any other purpose aside from the specific purposes described in the preceding Paragraph (a), it being specifically understood that the Electronic Site is constructed and operated as an unmanned radio transmission site. Lessee will not install or attempt to use additional equipment or devices of any character whatsoever in the Electronic Site unless and until it shall have obtained the prior written approval of Lessor to an amended Equipment Layout Plan.

8. Access to Electronic Site.

(a) Lessee will have the right, through its engineers, technicians and employees, to obtain access to the Electronic Site and its Cabinet at all reasonable times for the purpose of normal, recurring maintenance duties, for extraordinary repair and emergency purposes, and for the installation and removal of equipment in accordance with this Lease Agreement. Lessor will provide Lessee with a key to its Cabinet, and keys to the Electronic Site and any gates on the access

road. Lessee represents and warrants that personnel acting for Lessee or on its behalf will have skills, knowledge and training commensurate with those prevailing in the industry, including knowledge of the possible effects of radio frequency radiation and energy and the hazards of lightning and high voltage electricity. Lessee further warrants that all such personnel for whom it obtains access to the Electronic Site are covered by both worker compensation and other insurance sufficient to cover any hazard, risk or injury which may be attendant to, or occur by reason of or as a proximate cause of, those personnel being at or upon the Electronic Site.

(b) Lessee will perform its repair, maintenance and other work at the Electronic Site in a manner so as to prevent any damage or injury to equipment maintained by Lessor or Lessee or other persons in or about the Electronic Site or to any persons in the Electronic Site or areas nearby. Lessee further agrees to cooperate with Lessor and all other Lessees by removing its carrier from the air when it is necessary for antenna workers to be in a field of radiation which exceeds the prescribed maximum range specified by any industry standard or governmental regulatory authority, in order to work on antennas or other portions of the Electronic Site. Lessee will restrict repair work to periods of time least disruptive to other lessees and users.

(c) Lessee will not place locking devices or otherwise prevent access by Lessor to Lessee's Cabinet, without the previous written consent of Lessor; and in that event Lessee will furnish the keys or other means to permit Lessor to enter the Cabinet. However, Lessor will not, except in emergency situations which could result in immediate danger or harm to life or property, or which by the terms of any insurance carried by Lessor or order of any governmental authority would require immediate action on the part of Lessor, enter into the Cabinet in which Lessee maintains its equipment without first notifying Lessee of its intent to enter, and affording Lessee the opportunity to accompany Lessor's representatives. Lessor agrees to make reasonable attempts to advise Lessee by telephone or comparable means of any such emergency situation or immediate action so that Lessee's representative can be present if possible.

9. Governmental Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal, state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect); and Lessee shall indemnify and hold harmless Lessor from any and all penalties, fines, costs, expenses or damages, including attorney fees and costs, resulting from the failure of Lessee or its employees or contractors to comply with any of these laws, rules or regulations applicable to Lessee's use of the Electronic Site.

10. Repair and Maintenance of Lessee's Equipment. Lessee will keep all of its Equipment in good working order, condition and repair, in a safe and operative condition, at Lessee's sole cost and expense, all in accordance with good engineering practices, taking into consideration and implementing all reasonable precautions to avoid interference or hindrance to and with the operations of all other lessees or other uses of the Electronic Site and the Lessor, and in a manner so as to avoid and preclude any (i) objectionable interference, (ii) hazardous radiation, (iii) any emission or contamination by any hazardous substance or any other dangerous chemical or

substance in or about the Electronic Site, (iv) the creation of any hazard of fire, electrical shock, dangerous emissions or contamination, or other similar hazard or calamity, or (v) the creation of any other hazardous condition or risk which could result in material damage to any person or property in or about the Electronic Site.

11. Prevention of Objectionable Interference.

(a) "Objectionable Interference" means any interference produced by a Electronic Site user which originates at or by reason of the use of the Electronic Site by the user, and which (i) is determined by an authorized representative of the Federal Communications Commission to be objectionable interference, (ii) is objectionable interference within the meaning of the rules and regulations of the Federal Communications Commission as in effect from time to time, or (iii) otherwise causes a material impairment of the signals transmitted or received by a user of the Electronic Site within the Facility's service area as such area is or may be defined by the Federal Communications Commission. Lessee will install and operate its Equipment so as not to cause any Objectionable Interference to any other current lessee of the Electronic Site, Lessor or any other person. Lessee will cooperate fully with all other lessees and users in preventing interference among equipment employed by any of those persons at the Electronic Site. Lessee will install at Lessee's sole cost and expense suitable interference protection devices before equipment operation begins or as may become necessary thereafter because of Lessee's operations.

(b) In all events, the determination of Objectionable Interference, the resolution of disputes and other matters relating to interference will be determined in accordance with and subject to rules, regulations and decisions of the Federal Communications Commission then applicable, as well as Lessor's United States Forest Service Communications Use Lease and applicable United States Forest Service rules and regulations.

12. Lessee's Risk of Loss or Injury.

(a) Lessee assumes all risk of damage or loss to its property or equipment at the Electronic Site and that risk will be and remain exclusively Lessee's responsibility and not that of Lessor. Lessee hereby indemnifies and saves harmless Lessor, its stockholders, directors, officers, agents, employees and affiliates from any liability or expense, including attorney fees and costs, that shall or may arise because of any claims asserted by Lessee or any other person on account of the destruction of or damage to Lessee's property or Equipment.

(b) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorneys' fees and costs) arising from or occasioned in any respect by (i) any alleged act, omission, fault or negligence of Lessee, or (ii) injury (including death) or damage to Lessee's employees or employees of Lessee's contractors and subcontractors arising from or occasioned by or allegedly occasioned by any act or omission, or by reason of the use and occupancy of the Electronic Site or the access road or any part thereof by Lessee or any other person.

(c) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorney fees and costs) arising from or occasioned in any respect by (i) any failure of any warranty or representation by Lessee, (ii) Lessee's failure to perform any obligation by it to be performed hereunder, or (iii) any act or omission of Lessee or its employees or contractors which results in any prejudice to Lessor's rights under its Communications Use Lease with the United States Forest Service.

(d) Lessor will not be liable to Lessee or anyone claiming under or through Lessee for any loss or damage caused by the acts or omissions of any other lessee or any other person or the malfunctioning or interruption of any service, utility, facility or installation.

(e) Lessor undertakes only to exercise reasonable care in the management of the Electronic Site and Lessor will not be liable on this account to Lessee for any event except for any act or omission caused by the negligence, gross negligence or willful misconduct of Lessor. Lessor further agrees to observe its obligations under and will be liable to Lessee for damages provided by law for any material breach of these obligations. Notwithstanding anything else in this Agreement to the contrary, in no event will Lessor be liable to any of the persons described in the preceding sentence for consequential damages under any circumstances, and Lessee, for itself and for all other persons for whom it may make such a waiver, hereby expressly waives all such claims.

(f) Lessee represents and warrants that it or its representatives are knowledgeable in matters of electrical engineering and related fields, and have evaluated fully the suitability of the Electronic Site for Lessee's purposes. Lessee acknowledges that its determination to enter into this Agreement is based solely upon its own investigation and inspection of the Electronic Site and not in reliance upon any representation of Lessor as to any feature, specification or aspect of the Electronic Site, except as specifically described in this Agreement.

13. Insurance. Lessee will obtain, pay all premiums for and maintain in full force and effect during the Term of this Agreement comprehensive public liability insurance, whether by primary or excess loss or blanket coverage covering all of Lessee's operations and activities on or about the Electronic Site and the access road, including but not limited to the operations of contractors and the operation of vehicles and equipment, with aggregate limitations at least equivalent to those prevailing in the industry, but in no event less than \$1 million for injury to, or death of, any one or more persons, and \$1 million for property damage, or such lesser amounts as Lessor may prescribe from time to time. Each of the foregoing limitations will be for each occurrence and shall not be an aggregate limit in the policy or policies. Lessee further agrees to obtain such additional insurance coverage or to increase the foregoing limits as Lessor may from time to time reasonably require by notice applicable to all lessees in similar circumstances. Lessee shall cause all of its contractors installing its equipment and making repairs or changes to the equipment to procure public liability and property damage insurance complying with this Section; and Lessee further shall require of its contractors that they maintain worker compensation insurance. Lessee will give Lessor such evidence of insurance coverage as Lessor may require from time to time. All insurance policies will be issued by insurers having a Best's AAA or better rating, and will provide for not less than 30 days' written notice of cancellation or change, commencing with the receipt thereof, to be given to Lessor before any cancellation or change in the policy will be effective. Such insurance further shall include coverage for the liability assumed by Lessee under this Agreement, and will contain a waiver of subrogation against Lessor. If Lessee fails to procure or maintain the required insurance policies, or fails to cause its contractors to procure the required policies, Lessor may, but will not be required to, procure or maintain such policies at the expense of Lessee. Any amounts so paid by Lessor will be additional amounts due from Lessee under Section 3.

14. Radio Frequency Radiation Considerations. Lessee recognizes and acknowledges that radio frequency radiation ("RF Hazards") as they may affect humans and all other forms of life are of concern and are specifically regulated by the Federal Communications Commission and may be subject from time to time to other rules and regulations ("RF Standards"). Lessee further acknowledges that RF Hazards will be measured and considered under RF Standards in the aggregate of the combined radio frequency densities of all users of the Electronic Site, and that this combined aggregate power density must be considered for assessment of compliance with applicable RF Standards. Accordingly, in order to assure that the Electronic Site complies with applicable RF Standards after consideration of Lessee's and all other transmissions of radio frequency energy from or to the Electronic Site, Lessee hereby agrees:

(a) To design, install and operate its Equipment in such a manner that Lessee's use of the Electronic Site, in concert with all other users of the Electronic Site, will at all times comply with all applicable RF Standards;

(b) To design, install and operate its Equipment so as to minimize downward radio frequency radiation affecting the Electronic Site and surrounding lands;

(c) To provide Lessor with a complete copy of Lessee's FCC filings, permits, and any other documents from any source addressing potential biological or botanical exposure to RF Hazards which could be caused by Lessee's operations or Equipment at the Electronic Site;

(d) That measurements of radio frequency power densities present on the site or surrounding land may be required by Lessor, or in order to assure compliance with RF Standards by government agencies, including but not limited to the Federal Communications Commission and the Environmental Protection Agency and the Environment Department of the State of New Mexico; and

(e) Should such measurements be required by Lessor or under any law, rule or regulation, the measurements will be carefully conducted and results certified by a registered professional engineer (electrical, State of New Mexico) or any other qualified person authorized by Lessor, the cost of the measurement to be paid by Lessee.

15. Use of Road. Lessee will have the nonexclusive right to use the access road for access, ingress and egress to the Electronic Site.

16. Certain Obligations of Lessor. Lessor will keep the foundations, exterior walls, roofs, tower structures and foundations, and the structural portions of the Electronic Site in a good state of repair in accordance with rules and regulations of the United States Forest Service during the term of this Agreement, at Lessor's expense except as to damage or injury thereto caused by any lessee. The access road will be maintained (except during inclement weather) in a condition sufficient for four-wheel drive vehicular travel. In this regard, Lessor reserves the right, without liability to Lessee, to interrupt the electrical or other services at the Electronic Site at such time as may be necessary and for so long as may be reasonably required for the making of necessary repairs, alterations or improvements thereto. Except for emergencies, these interruptions will to the extent possible be confined to non-working hours (or in cases of 24 hour transmitting or receiving

at such hours as will cause the least practicable interruption to Lessee's activities) and will be commenced only after Lessor's having given at least one week's notice to the lessees affected. Lessor will not be liable to Lessee for any consequential damages of any kind, or by reason of inconvenience, annoyance, or injury to the Electronic Site, or activities conducted by Lessee from the Electronic Site, arising from the necessary repairing or maintenance of any portion thereof, whether due to casualty, fire, normal maintenance requirements or otherwise, or from the making of any alteration or improvements in or to any portion of the Electronic Site or its equipment.

17. Termination of Communications Use Lease. If Lessor's Communications Use Lease is terminated for any reason whatsoever, this Agreement will terminate at Lessor's election as of the date of the Communications Use Lease's termination, and from and after the date of such termination, the Rent payments under this Agreement shall be abated. If Lessee's United States Forest Service special use permit respecting Lessee's use of the Electronic Site is terminated through no action or fault of Lessee, this Agreement will terminate at Lessee's election as of the date of the permit's termination, and from and after the date of such termination, the Rent payments under this Agreement shall be abated. Any amounts remaining unpaid with respect to periods before the termination will be immediately due and payable from Lessee to Lessor. Lessee will immediately remove its Equipment and otherwise act in accordance with the provisions of this Agreement ordinarily applicable to termination of this Agreement. Lessor will have no further liability or obligation under this Agreement from and after the date of such termination.

18. Destruction of Electronic Site. If the Electronic Site, or any part thereof, shall at any time during the term of this Agreement be destroyed by fire, wind or other casualty, Lessor will with all reasonable speed, but subject to the receipt of insurance proceeds and other limitations set forth in this Agreement, cause the Electronic Site to be restored to the same condition as existed immediately prior to the damage. However, if substantial damage occurs within one year before the end of the term of this Agreement (exclusive of any option or ability to renew by either party), then Lessor, at its sole option, will have the right to terminate this Agreement by giving notice to Lessee. If reconstruction or repair of the Electronic Site cannot be made without dismantling or removing Lessee's Equipment, then Lessee will cooperate fully with Lessor and its contractors, and Lessor may remove Lessee's Equipment or any portion thereof and interrupt its broadcasting activity during the making of the repairs or during reconstruction. Lessee will be entitled to a *pro rata* abatement of its monthly Rent for such time as it is unable to conduct its normal broadcasting activities as a result of the damage or destruction to the Electronic Site or during the making of repairs or reconstruction of the Electronic Site. Lessee will bear the expense of replacing its equipment, fixtures and appurtenances, or any part thereof, arising as a result of or caused by virtue of the damage, destruction, repairing or reconstruction of the Electronic Site, and in all event shall carry sufficient insurance on its own property to cover the expense of any new installation required.

19. Certain Duties of Lessee Upon Termination of This Agreement. At the end of the Term of this Agreement, or upon the earlier termination of this Agreement, or upon the termination of any extensions or renewals of this Agreement, and provided that Lessee is not in default under the provisions of this Agreement, Lessee will within a reasonable time remove from the Electronic Site any and all Equipment and other property placed in or about the Electronic Site by Lessee. To the extent that this removal causes any damage or change to the Electronic Site, the Lessee will repair the damage and correct any change at its sole cost and expense. If the Lessee continues to

maintain its Equipment in the Electronic Site or otherwise conducts any activity in or from the Electronic Site, this will in no event be construed to be a renewal of this Lease Agreement. However, to the extent and for the time Lessee maintains such Equipment or continues such activity, it will pay a daily fee to Lessor in an amount equal to double the sum it had paid on a daily basis rate of rent payable in the last month of the Term of this Agreement.

20. Default. The following events will be events of default by the Lessee under this Agreement:

(a) Lessee fails to pay any installment of the rent or any other sum due to Lessor from Lessee on the date that the same is due, and that failure continues for a period of ten (10) days thereafter;

(b) Lessee fails to comply with any term, condition or covenant of this Lease, other than the payment of money, and does not cure that failure within thirty (30) days after written notice thereof to Lessee, or there is a material failure of any of Lessee's warranties or representations;

(c) A receiver or trustee is appointed for all or substantially all of the assets of the Lessee; or

(d) Lessee attempts to assign its rights or otherwise attempts to allow the use of any of its interest or right under this Lease, except as expressly provided herein or permitted by a previous written instrument from Lessor, which will not be unreasonably withheld.

21. Remedies Upon Lessee's Default. Upon the occurrence of any of the events of default, Lessor will have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever:

(a) Lessor may terminate this Agreement. In that event, Lessor may remove Lessee's Equipment from the Electronic Site without prejudice to any other remedy which it may have for arrearages in Rents and other amounts owed by Lessee, unless Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of the termination of this Agreement;

(b) Lessor may do whatever Lessee is obligated to do under the terms of this Agreement, and Lessee agrees to reimburse Lessor on demand for any expenses incurred by Lessor in effecting Lessee's compliance with its obligations under this Agreement, and Lessee further agrees that Lessor will not be liable for any damages resulting to Lessee from that action, whether caused by the negligence of Lessor or otherwise;

(c) Lessor may enter Lessee's Cabinet by any means whatsoever not causing physical harm to any individual, to remove Lessee's Equipment, without being liable to any person for damages occasioned thereby, and without terminating this Agreement except at Lessor's sole option by notice to Lessee;

(d) Lessor may obtain a temporary restraining order and injunctive relief, it

being acknowledged by the parties that money damages would be an inadequate relief for Lessee's obligations under this Agreement;

(e) Lessor may make Lessee's Cabinet and Equipment available to any other person, for a fee or other compensation, with the right to receive from Lessee the costs of Lessor's action (including costs of repair and attorney fees and costs) together with any deficiency between what Lessee is obligated to pay and what Lessor actually receives under the arrangement with such other person; and

(f) Lessor may pursue any one or more other rights available to Lessor under applicable law.

22. Miscellaneous Provisions.

(a) Failure of Lessor to declare an event of default immediately upon its occurrence, or delay in taking any action in connection with an event of default, or any delay by Lessor in enforcing any right of Lessor hereunder, shall not constitute a waiver of the default or right, but Lessor will have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement at any time. Pursuit of any one or more of the remedies set forth in Section 21 above will not preclude pursuit of any one or more of the other remedies provided elsewhere in this Agreement or provided by law, nor will pursuit of any remedy provided constitute forfeiture or waiver of any amount or damages accruing to Lessor by reason of the violation of any of the terms, provisions or covenants of this Agreement. The receipt of any amount by Lessor with knowledge of any breach of this Agreement by Lessee or of any default on the part of Lessee in the observance or performance of any of the terms, covenants or conditions of this Agreement, will not be deemed to be a waiver of any provision of this Agreement. No receipt of any amount by Lessor from Lessee after the termination hereof will reinstate the Term of this Agreement, or affect any notice theretofore given to Lessee or operate as a waiver of the right of Lessor to enforce the payment of any other amount required to be paid by Lessee by law or under the terms of this Agreement.

(b) Neither party will be required to perform any covenant or obligation in this Agreement not involving the payment of money to the other party, or be liable in damages to the other, so long as the performance or non-performance of the covenant or obligation is delayed, caused by or prevented by an act of God or *force majeure*. An "act of God" or "*force majeure*" is defined for purposes of this Agreement as negligent or intentional destruction of property by another party, strikes, lockouts, sitdowns, power shortages or blackouts, adverse weather, material or labor restrictions by any governmental authority, any governmental action, unusual transportation delays, military or criminal action, floods, washouts, explosions, earthquakes, fire, acts of the public enemy, insurrections, and any other cause not reasonably within the control of the party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.

(c) If Lessee fails in the performance of any of the terms, covenants, agreements or conditions contained in this Agreement and by it to be performed, and Lessor places in the hands of an attorney the enforcement of all or any part of this Agreement, Lessee agrees to pay Lessor without any further notice or demand Lessor's reasonable attorney fees and costs, whether suit is

actually filed or not; provided, however, that Lessee will not be required to pay such fees and costs if Lessee cures its failure of performance within ten (10) days of the commencement of the failure.

(d) If Lessee continues to occupy or otherwise use the Electronic Site after the expiration or termination of this Agreement, all of the terms and provisions of this Agreement will be applicable during the period, except that Lessee will pay the increased rent described in Section 19 of this Agreement. No holding over by Lessee, whether with or without the consent of Lessor, will operate to extend this Agreement except as otherwise expressly provided.

(e) Lessee agrees to furnish promptly, from time to time, upon Lessor's request, a statement certifying that this Agreement is in full force and effect and that there is no prepayment of the Rent, and that there is no existing default by reason of any act or omission by Lessor, and such other matters as may be reasonably required by Lessor.

(f) This Agreement will be binding upon and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors and assigns. The parties agree that Lessor may assign this Lease, and upon such assignment Lessor shall have no further responsibility hereunder.

(g) The captions appearing in this Agreement are employed only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any paragraph or section.

(h) If any provision of this Agreement is ever held to be invalid or unenforceable, that invalidity or unenforceability will not affect any other provision of this Agreement, and the other provisions will continue in full force and effect.

(i) All payments required to be made by Lessee will be payable to Lessor at Lessor's address set forth below. Any notice or document required or permitted to be delivered under the terms of this Agreement will be deemed to be delivered when personally delivered or (whether or not actually received) when deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below.

If to Lessor:

Tesuque Radio Company, Inc.
Attention: John C. Herklotz
Post Office Box 3636
Laguna Hills, California 92654

If to Lessee:

Santa Fe County
Attn: Katherine Miller, Santa Fe County Manager
P.O. Box 276
102 Grant Avenue
Santa Fe, New Mexico 87504-0276

Any party may change its address by giving notice in the prescribed fashion to all of the other parties hereto.

(j) Lessee and Lessor will execute, acknowledge as appropriate and deliver to the other any document or instrument reasonably necessary to effectuate or carry out the provisions of this Agreement promptly upon request therefor.

(k) Nothing contained in this Agreement will be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties, and it is understood and agreed that neither the method of computation of rent nor any other provision contained in this Agreement nor any acts of the parties, will be deemed to create any relationship other than the relationship of lessor and lessee.

(l) This Lease Agreement will be interpreted according to the substantive laws of the State of New Mexico. If a dispute arises under the terms of this Agreement or with respect to the subject matter hereof, suit shall be brought, if at all, in the courts of general jurisdiction, federal or state, for Santa Fe, New Mexico.

(m) If Lessee is a corporation or partnership, then Lessor may require guaranties of Lessee's obligations hereunder by Lessee's shareholders, officers, or partners; and any such persons, by their execution of any counterpart of this Agreement, do hereby guarantee the timely and complete performance by Lessee of all of its undertakings and covenants herein contained, including the payment of money, and do further guarantee the payment of any sum of money or the performance of any act which it is later determined that Lessee is required to pay or do as a result of any breach of this Agreement by Lessee. This shall be a continuing guaranty given as a further inducement to Lessor to enter into this Agreement, and may not be terminated in any respect by any guarantor. Lessor may extend any obligation of Lessee or any guarantor and may renew, exchange, surrender or otherwise deal with any collateral offered or given by Lessee or any person. Each of the guarantors hereby waives presentment, demand for payment by any person, protest and notice of nonpayment, dishonor or protest and all other notices and demands.

(n) Lessee shall pay to Lessor as additional Rent upon invoice by Lessor any additional charge, fee or rent imposed upon Lessor by the United States Forest Service or other U.S. government agency under Lessor's Communications Use Lease. Lessor shall allocate any such additional charge, fee or rent among its lessees (including Lessee) in accordance with a reasonable method of proration based upon the lessees' respective base rents or other factors.

(o) IT IS EXPRESSLY AGREED BY LESSEE, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT, THAT THIS LEASE AGREEMENT, WITH ANY SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS AGREEMENT OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS ATTACHED TO OR INCORPORATED IN THIS AGREEMENT. THIS AGREEMENT SUPERSEDES ALL PRIOR NEGOTIATIONS AND AGREEMENTS, WRITTEN OR ORAL, PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT. THERE WILL BE NO MODIFICATION OF THIS AGREEMENT EXCEPT BY A SUBSEQUENT WRITTEN INSTRUMENT EXECUTED BY THE PARTIES HERETO. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES BY LESSOR OF MERCHANTABILITY, USE, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS AGREEMENT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE WHICH MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT.

IN WITNESS WHEREOF this Agreement is executed as of the date stated in Exhibit A attached hereto and made a part hereof.

LESSOR:

TESUQUE RADIO COMPANY,
a New Mexico corporation

By: *John C. Herklotz*
John C. Herklotz, President

LESSEE:

SANTA FE COUNTY

By: *Daniel W. Mayfield*
Daniel W. Mayfield, Chair
SANTA FE BOARD OF COUNTY
COMMISSIONERS



ATTEST:

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk

1-28-2014

Finance Department:

By: *Molly J*
Date: *1/14/14*

Approved as to Form:

By: *Stephen C. Ross* *1/14/14*
Stephen C. Ross, County Attorney

**EXHIBIT A
TO
ELECTRONIC SITE LEASE AGREEMENT**

Lessee: Santa Fe County Date of Lease: July 1, 2012
102 Grant Avenue
Santa Fe, New Mexico 87504
Telephone: (505) 986-6200

Commencement Date: July 1, 2012

Termination Date: June 30, 2015

Description of Equipment:

Santa Fe County Fire Department has one (1) repeater with **SN0201482**, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 35’ on tower. Transmit 154.415 MHz; Receive 158.970 MHz.

Santa Fe County Sheriff’s Office has one (1) repeater with **SN0201476**, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 15’ – 20’ off the ground on the roof. Transmit 154.785 MHz; Receive 158.8875 MHz

Monthly Rent Installment and Charges from July 1, 2012 through June 30, 2015 (Base Rent and charges for period, as subject to revision in accordance with the Agreement and paragraph 2, below):

Rate of Monthly Base Rent	\$950.00
Monthly Electricity	25.00
Gross Receipts Tax	<u>65.31</u>
TOTAL	\$1,040.31

Deposit: None

Other Terms:

This Lease terminates and replaces all prior leases between Tesuque Radio Company and Santa Fe County, including the Electronic Site Lease dated July 1, 2007 (the “Prior Lease”). The following provisions, revise and supersede the provisions of the Electronic Site Lease Agreement (the “Agreement”) to which this Exhibit A is attached. In the event of any conflict between this Exhibit A and the Agreement, the provisions of this Exhibit A shall control.

1. Notwithstanding the provisions of Section 3 respecting monthly installments of rent, Lessee shall pay annual rent based upon an annual period of July 1 to June 30. The first payment of rent, for the periods July 1, 2012 through June 30, 2013 and July 1, 2013 through June 30, 2014, in

the amount of \$22,800.00, shall be paid by Lessee to Lessor on or before February 28, 2014, together with electricity charges of \$600.00 and New Mexico gross receipts tax of \$1,567.50.

2. Notwithstanding the provisions of Subsection 3(b) respecting escalations in the rent provided for under the Electronic Site Lease Agreement, there shall be no increase to Base Rent under Subparagraph 3(b) for the periods July 1, 2012 through June 30, 2013 or July 1, 2013 through June 30, 2014. Commencing with the period July 1, 2014 through June 30, 2015, Base Rent shall increase at a rate of five percent on each anniversary date of the Agreement.

3. Lessee shall pay to Lessor, on or before February 28, 2014, the amount of \$15,001.97, representing the amount agreed by Lessor and Lessee to represent and discharge all obligations of Lessee to Lessor for (1) payments of rent, electricity charges, and New Mexico gross receipts tax under the Prior Lease through June 30, 2012, and (2) payments of United States Forest Service use fee amounts through the September 30, 2012 reporting date.

4. Subsection 3(b) of the Electronic Site Lease Agreement is deleted in its entirety.

5. The second sentence of Subsection 3(e) of the Electronic Site Lease Agreement is revised to read as follows:

Accordingly, Lessee will pay with all amounts payable under this Section, together with such amounts, an amount equal to New Mexico State gross receipts tax (or other applicable taxes for which Lessor is entitled to seek reimbursement from Lessee) at the rate of taxation then specified for Santa Fe County, upon notice from Lessor.

6. The third sentence of Subsection 3(f) of the Electronic Site Lease Agreement is revised to read as follows:

Lessee will pay each such amount to Lessor, together with an amount equal to any gross receipts tax (or other applicable tax for which Lessor is entitled to seek reimbursement from Lessee) thereon, within the calendar month commencing after the month in which the Lessee is invoiced for the amount.

7. The words “to indemnity or” are deleted from the last line of Subsection 5(c) of the Electronic Site Lease Agreement, and are replaced with the word “for.”

8. Section 9 of the Electronic Site Lease Agreement is revised to read as follows:

Government Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee’s use of its equipment and the Electronic Site (including, specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect).

9. The second sentence of Subsection 12(a) of the Electronic Site Lease Agreement is deleted in its entirety.

10. Subsections 12(b) and 12(c) of the Electronic Site Lease Agreement are both deleted in their entirety.

11. Section 13 of the Electronic Site Lease Agreement is revised to read as follows:

Insurance. Lessee will obtain, pay all premiums for and maintain in full force and effect during the Term of this Agreement comprehensive public liability insurance, whether by primary or excess loss or blanket coverage covering all of Lessee's operations and activities on or about the Electronic Site and the access road, including but not limited to the operations of contractors and the operation of vehicles and equipment, with aggregate limitations at least equivalent to those prevailing in the industry, but in no event less than \$1 million for injury to, or death of, any one or more persons, and \$1 million for property damage, or such lesser amounts as Lessor may prescribe from time to time. Each of the foregoing limitations will be for each occurrence and shall not be an aggregate limit in the policy or policies. Lessee further agrees to increase the foregoing limits as Lessor may from time to time reasonably require by notice applicable to all lessees in similar circumstances. Lessee shall cause all of its contractors installing its equipment and making repairs or changes to the equipment to procure public liability and property damage insurance complying with this Section; and Lessee further shall require of its contractors that they maintain worker compensation insurance. Lessee will give Lessor such evidence of insurance coverage as Lessor may require from time to time. All insurance policies will provide for not less than 30 days' written notice of cancellation or change, commencing with the receipt thereof, to be given to Lessor before any cancellation or change in the policy will be effective. Such insurance further shall include coverage for the liability assumed by Lessee under this Agreement. If Lessee fails to procure or maintain the required insurance policies, or fails to cause its contractors to procure the required policies, Lessor may, but will not be required to, procure or maintain such policies at the expense of Lessee. Any amounts so paid by Lessor will be additional amounts due from Lessee under Section 3. Lessee's obligation to obtain insurance coverage may be satisfied by Lessee's participation in the insurance pool of the New Mexico Association of Counties, provided that such insurance coverage otherwise meets all of the requirements of this Section 13.

**EXHIBIT B
TO
ELECTRONIC SITE LEASE AGREEMENT**

Equipment and Operating Frequencies:

Santa Fe County Fire Department has one (1) repeater with **SN0201482**, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 35' on tower. Transmit 154.415 MHz; Receive 158.970 MHz.

Santa Fe County Sheriff's Office has one (1) repeater with **SN0201476**, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 15' – 20' off the ground on the roof. Transmit 154.785 MHz; Receive 158.8875 MHz