



STAFF REPORT

DATE: 08/3/2022

REGULAR

TO: City Council
FROM: Ben Hetzel, Lake Elmo City Planner
AGENDA ITEM: Dish Wireless Water Tower Lease Agreement
REVIEWED BY: Molly Just, Planning Director

INTRODUCTION:

Dish Wireless recently submitted a co-locate wireless communications permit application for the water tower at the City of Lake Elmo Public Works property. Dish is proposing to add three antennas and ancillary equipment on top of the tower and lease a 5 foot by 7 foot area inside the water tower for a single equipment cabinet on a steel platform.

The proposed work will require administrative approval of a wireless communications permit pursuant to LEC 105.04.240(c)(5). Antennas co-located on an existing wireless communications facility structure require administrative approval. Verizon Wireless has existing equipment located on the water tower.

ISSUE BEFORE THE CITY COUNCIL:

Does the City Council want to approve the water tower lease agreement?

WIRELESS COMMUNICATIONS PROPERTY:

Address: 3445 Ideal Ave N
PID: 16.029.21.32.001
Existing Zoning: Public Facilities
Applicable Regulations: Article VII – Wireless Communications Facilities

Reason for Request: If the facility is to be located on public property, the agreement allowing the facility shall be approved by the City Council and executed prior to issuing the permit pursuant to LEC 105.04.300(a).

PROPOSAL

The initial term of the lease is five years. Bob Vose from Kennedy and Graven has reviewed the lease. The lease will be automatically extended for four additional five year terms unless Dish Wireless terminates it at the end of the then current term by giving written notice.

The annual rent begins at \$30,000 and increases by 3% annually.

FISCAL IMPACT

The City would receive \$159,274.07 in revenue over initial five year lease term. If extended, the City would receive \$1,093,777.87 in total revenue.

OPTIONS:

The City Council may:

- Approve the Dish Wireless Water Tower Lease Agreement
- Amend and then approve the Dish Wireless Water Tower Lease Agreement
- Do not approve the Dish Wireless Water Tower Lease Agreement

RECOMMENDATION:

Staff recommends that City Council approve the Dish Wireless Water Tower Lease Agreement for 3445 Ideal Avenue N.

“Move to approve the Dish Wireless Water Tower Lease Agreement for 3445 Ideal Avenue N.”

ATTACHMENTS:

- 1) Dish Wireless Water Tower Lease Agreement

WATER TOWER LEASE AGREEMENT

This Water Tower Lease Agreement (the "Agreement") made this ____ day of _____, 20____, between the City of Lake Elmo, Minnesota, with its principal offices at Attention: Finance Director, 3880 Laverne Avenue North, Lake Elmo, Minnesota 55042, hereinafter designated LESSOR, and DISH Wireless L.L.C., a Colorado limited liability company having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112, hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **PREMISES.** LESSOR hereby leases to the LESSEE a portion of that certain space ("Tower Space") on and within the LESSOR's water tower (the "Tower"), located at 3445 Ideal Avenue North, Lake Elmo, Washington County, Minnesota, Tax Parcel ID No. 16.029.21.32.001, and being further described in Deed Document No. 1163065, Certificate No. 61998, as recorded in the Office of the Registrar of Title, Washington County, Minnesota, and which is described on Exhibit A, attached hereto and made a part hereof, along with the existing driveway area described on Exhibit A (together, the "Property"), together with the non-exclusive right (the "Right of Way") for ingress and egress, 7 days a week, 24 hours a day, on foot or motor vehicle, including trucks over the Property; and together with a further right of way (the "Further Rights of Way") through the Property for the installation, operation, repair, replacements, and maintenance of buried utility wires, cables, conduits, and pipes, all as described in Exhibit "C", attached hereto and made a part hereof. The Tower Space is as described on Exhibit "B", attached hereto and made a part hereof. The Tower Space, Right of Way and Further Right of Way are collectively referred to hereinafter as the "Premises."

LESSEE agrees that if its equipment produces noticeable noise levels that exceed noise regulations per the local ordinances and/or state laws, LESSEE will, at its own expense, install a noise buffer or take such other measures necessary to insure compliance with such regulations.

LESSOR hereby grants permission to LESSEE to install, maintain and operate the communications equipment, antennas and appurtenances described in Exhibit "B" attached hereto.

Provided the Tower can structurally support the modified equipment, upon notice to LESSOR, LESSEE shall have the right to replace, repair, or modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto. LESSOR must consent to any addition of equipment to the Tower. LESSEE shall notify LESSOR in writing of any request to add additional equipment to the Tower. LESSEE shall submit to LESSOR the plans for any such additions, and the approval for additional equipment shall not be unreasonably withheld, conditioned or delayed. In the event

the LESSOR does not either (i) object to the plans in writing or (ii) furnish the LESSEE with written approval, within thirty (30) days of the date of submission of the plans, the LESSOR will be deemed to have approved them.

2. SURVEY. LESSEE has surveyed the access and utility rights-of-way, which is attached as Exhibit "C". Cost for such work shall be borne by the LESSEE.

3. TERM; RENT; ELECTRICAL.

(a) This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five years and shall commence on the date defined below at which time rental payments shall commence and be due. The initial annual rent of \$30,000.00 shall be paid in equal monthly installments of \$2,500.00 per month on the first day of the month, in advance, to LESSOR or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least 45 days in advance of any rent payment date by notice given in accordance with **Paragraph 24** below. The initial term shall commence on the earlier to occur of (i) the first day of the month following the date LESSEE commences any improvements on the Property or (ii) January 1, 2023 (the "Commencement Date"). LESSOR and LESSEE agree that they shall acknowledge in writing the Commencement Date in the event the Commencement Date is based upon the date LESSEE commences improvements. LESSOR and LESSEE acknowledge and agree that initial rental payment(s) shall not actually be sent by LESSEE until sixty (60) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required

Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

(b) For any party to whom rental payments are to be made, LESSOR or any successor in interest of LESSOR hereby agrees to provide to LESSEE (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully executed state and local withholding forms if required; and (iii) other documentation to verify LESSOR's or such other party's right to receive rental as is reasonably requested by LESSEE. Rental shall accrue in accordance with this Agreement, but LESSEE shall have no obligation to deliver rental payments until the requested documentation has been received by LESSEE. Upon receipt of the requested documentation, LESSEE shall deliver the accrued rental payments as directed by LESSOR.

(c) LESSOR shall, at all times during the Term, provide electrical service and telephone service access points within the Premises. If permitted by the local utility company servicing the Premises, LESSEE shall furnish and install an electrical meter at the Premises for the measurement of electrical power used by LESSEE's installation. In the alternative, if permitted by the local utility company servicing the Premises, LESSEE

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shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by LESSEE's installation. In the event such sub-meter is installed, the LESSEE shall pay the utility directly for its power consumption, if billed by the utility, and if not billed by the utility, then the LESSEE shall pay the LESSOR 30 days after receipt of an invoice from LESSOR indicating the usage amount based upon LESSOR's reading of the sub-meter. All invoices for power consumption shall be sent by LESSOR to LESSEE at 9601 South Meridian Blvd., Englewood, Colorado 80112, Attn: Lease Administration, or such other physical or email address as directed by LESSEE in writing. LESSEE shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LESSOR. LESSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

4. EXTENSIONS. This Agreement shall automatically be extended for four additional five year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six months prior to the end of the then current term.

5. RENT INCREASES. The annual rental shall be increased by three percent (3%) each year on the anniversary of the Commencement Date.

6. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSOR and LESSEE shall each be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSOR or LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Nothing in this Paragraph shall be construed as making LESSEE liable for any portion of LESSOR's income taxes in connection with any Property or otherwise. Except as set forth in this Paragraph, LESSOR shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar

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document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

7. USE; GOVERNMENTAL APPROVALS. LESSEE shall have the right to use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. All improvements, equipment, antennas and conduits installed by LESSEE shall be at LESSEE's expense. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests and structural analysis which will permit LESSEE's use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests or structural analysis is unsatisfactory; (v) LESSEE determines that the Premises is no longer technically or structurally compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rent paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder which expressly survive termination. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

8. INDEMNIFICATION. Subject to **Paragraph 9** below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

9. INSURANCE.

a. Notwithstanding the indemnity in **Paragraph 8**, the Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not,

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or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

b. LESSEE will maintain at its own cost;

- i. Commercial General Liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence.
- ii. Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a combined single limit of one million (\$1,000,000) each accident for bodily injury and property damage.
- iii. Workers Compensation insurance providing the statutory benefits and Employers Liability with a limit of \$1,000,000 each accident/disease/policy limit.

LESSEE will include the LESSOR as an additional insured as their interest may appear under this Agreement on the Commercial General Liability and Auto Liability policies.

c. LESSOR will maintain at its own cost commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. LESSOR will include the LESSEE as an additional insured as their interest may appear under this Agreement.

10. LIMITATION OF LIABILITY. Except for indemnification pursuant to **Paragraphs 8 and 30**, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

11. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three months prior notice is given to LESSOR and upon payment of an early termination fee equal to six months rent.

12. ACCESS TO TOWER. LESSOR agrees the LESSEE shall have free access to the Tower at all times for the purpose of installing and maintaining the said equipment. LESSOR shall furnish LESSEE with necessary means of access for the purpose of ingress and

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egress to this site and Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of LESSEE or persons under their direct supervision will be permitted to enter said Premises.

13. TOWER COMPLIANCE. LESSOR covenants that it will keep the Tower in good repair as required by all Laws (as defined in **Paragraph 36** below). The LESSOR shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers. If the LESSOR fails to make such repairs including maintenance, the LESSEE may make the repairs and the costs thereof shall be payable to the LESSEE by the LESSOR on demand. If the LESSOR does not make payment to the LESSEE within ten days after such demand, the LESSEE shall have the right to deduct the costs of the repairs from the succeeding monthly rental amounts normally due from the LESSEE to the LESSOR.

No materials or construction methods may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower or its appurtenances.

All antenna(s) on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters LESSEE's equipment space.

Not later than 15 days following the execution of this Agreement, LESSOR shall supply to LESSEE copies of all structural analysis reports that have been done with respect to the Tower and throughout the Term, LESSOR shall, upon request, supply to LESSEE copies of all structural analysis reports that are done with respect to the Tower promptly after the completion of the same.

Upon request of the LESSOR, LESSEE agrees to relocate its equipment on a temporary basis to another location on the Property, hereinafter referred to as the "Temporary Relocation," for the purpose of LESSOR performing maintenance, repair or similar work at the Property or on the Tower provided:

(a) The Temporary Relocation is similar to LESSEE's existing location in size and is compatible for LESSEE's use, in LESSEE's reasonable determination;

(b) LESSOR gives LESSEE at least 90 days written notice prior to requiring LESSEE to relocate;

(c) LESSEE's use at the Premises is not interrupted or diminished during the relocation and LESSEE is allowed, if necessary, in LESSEE's reasonable determination, to place a temporary installation on the Property during any such relocation; and

(d) Upon the completion of any maintenance, repair or similar work by LESSOR, LESSEE is permitted to return to its original location from the Temporary

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Relocation with all costs for the relocation of LESSEE's equipment being paid by LESSEE.

14. INTERFERENCE. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

15. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within 90 days after any earlier termination of the Agreement, remove its building(s), antenna(s), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted provided, however, that any damages to the Tower caused by such removal shall be repaired by LESSEE under LESSOR's direction. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

16. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in **Paragraph 15** herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of **Paragraph 15** or this **Paragraph 16**, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in **Paragraph 15** shall be equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

17. LIMITED RIGHT OF FIRST REFUSAL. If LESSOR elects, during the Term, to sell, otherwise transfer or grant to a third party by easement or other legal instrument an interest

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in and to any portion of the Land Space or Tower Space, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest to such third person in accordance with the terms and conditions of such third party offer.

18. RIGHTS UPON SALE. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Tower thereon to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall be released from its obligations to LESSEE under this Agreement to the extent of the obligations assumed by said third party. To the extent LESSOR's obligations are not assumed by said third party, LESSEE shall have the right to look to LESSOR and the third party for the full performance of such obligations.

19. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy use of the Premises.

20. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

21. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in **Paragraph 3**. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to

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enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

22. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of Minnesota in which the Property is located. Each party further agrees that all legal actions or proceedings arising out of or in connection with this Agreement shall be brought exclusively in the courts of the State of Minnesota located in Washington County, or the federal courts of the United States of America located in Minneapolis, Minnesota, and each hereby irrevocably submits to the exclusive jurisdiction to hear and determine such legal actions or proceedings and waives any objection to the proceedings in such courts on the grounds of venue or forum non-conveniens.

23. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

24. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: City of Lake Elmo, Minnesota
Attention: Planning Director
3880 Laverne Avenue North
Lake Elmo, Minnesota 55042

LESSEE: DISH Wireless L.L.C.
Attn: Lease Admin
5701 S. Sante Fe Dr.
Littleton, CO 80120

With a copy to:

DISH Network
Attn: Wireless Legal Dept.
9601 S. Meridian Blvd.
Englewood, CO 80112

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Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

25. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

26. SUBORDINATION AND NON-DISTURBANCE. LESSOR shall obtain not later than 15 days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property, Tower or right-of-way; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Tower or Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Tower or Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill LESSOR's obligations under the Agreement, and (3) promptly cure all of the then-existing LESSOR defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Tower or Property and (3) agrees accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

27. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

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28. DEFAULT.

(a) In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have 15 days in which to cure any monetary breach and 30 days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the 30 days if the nature of the cure is such that it reasonably requires more than 30 days and LESSEE commences the cure within the 30 day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSEE fails, within 5 days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSEE if the failure to perform such an obligation: (1) presents a risk of damage or harm to the Tower; or (2) creates an emergency that threatens the public health, safety or welfare; provided, however, that if the nature of LESSEE's obligation is such that more than 5 days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such 5 day period and thereafter diligently pursued to completion.

(b) In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have 30 days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the 30 days if the nature of the cure is such that it reasonably requires more than 30 days and LESSOR commences the cure within the 30 day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within 5 days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business on the Property; provided, however, that if the nature of LESSOR's obligation is such that more than 5 days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such 5 day period and thereafter diligently pursued to completion.

29. REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting

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Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, LESSOR shall use reasonable efforts to mitigate its damages in connection with a default by LESSEE. If LESSEE so performs any of LESSOR's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by LESSEE shall immediately be owing by LESSOR to LESSEE, and LESSOR shall pay to LESSEE upon demand the full undisputed amount thereof. Notwithstanding the foregoing, if LESSOR does not pay LESSEE the full undisputed amount within 30 days of its receipt of an invoice setting forth the amount due from LESSOR, LESSEE may offset the full undisputed amount due against all fees due and owing to LESSOR until the full undisputed amount is fully reimbursed to LESSEE.

30. ENVIRONMENTAL. LESSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("EH&S Laws"). LESSEE shall indemnify and hold harmless the LESSOR from claims to the extent resulting from LESSEE's violation of any applicable EH&S Laws or to the extent that LESSEE causes a release of any regulated substance to the environment. LESSOR shall indemnify and hold harmless LESSEE from all claims resulting from the violation of any applicable EH&S Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of LESSEE. The Parties recognize that LESSEE is only leasing a small portion of LESSOR's property and that LESSEE shall not be responsible for any environmental condition or issue except to the extent resulting from LESSEE's specific activities and responsibilities. In the event that LESSEE encounters any hazardous substances that do not result from its activities, LESSEE may relocate its facilities to avoid such hazardous substances to a mutually agreeable location or, if LESSEE desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, LESSOR agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.

31. CASUALTY. In the event of damage by fire or other casualty to the Tower or Premises that cannot reasonably be expected to be repaired within 45 days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than 45 days, then LESSEE may, at any time following such fire or other casualty terminate this Agreement upon 15 days prior written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

32. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation

of the Premises or Tower, LESSEE, in LESSEE's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than 45 days, LESSEE may, at LESSEE's option, to be exercised in writing within 15 days after LESSOR shall have given LESSEE written notice of such taking (or in the absence of such notice, within 15 days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If LESSEE does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, LESSOR shall promptly repair any damage to the Premises caused by such condemning authority.

33. LIENS. LESSEE shall not suffer nor permit any mechanic's or materialmen's lien to be filed against the Property by reason of work, labor or materials supplied to LESSEE. If any such lien at any time shall be filed against the Property, the LESSEE shall proceed with due diligence to cause the same to be discharged of record by payment, deposit, bond, order of court or otherwise, subject, however to the right of the LESSEE to contest any such lien by legal proceedings diligently pursued.

34. SIMILAR TERMS AND CONDITIONS. LESSOR represents and warrants that the rent, benefits and terms and conditions granted to LESSEE by LESSOR hereunder are now and shall be, during the Term, no less favorable than the rent, benefits and terms and conditions for substantially the same or similar tenancies or licenses granted by LESSOR to other parties. If at any time during the Term LESSOR shall offer more favorable rent, benefits or terms and conditions for substantially the same or similar tenancies or licenses as those granted hereunder, then LESSOR shall, within 30 days after the effective date of such offering, notify LESSEE of such fact and offer LESSEE the more favorable offering. If LESSEE chooses, the parties shall then enter into an amendment that shall be effective retroactively to the effective date of the more favorable offering, and shall provide the same rent, benefits or terms and conditions to LESSEE. LESSEE shall have the right to decline to accept the offering. LESSOR's compliance with this requirement shall be subject, at LESSEE's option, to independent verification.

35. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party

has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

36. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property and all structural elements of the Premises in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) that are applicable to the LESSOR (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises (other than general office use); and (b) all safety and building codes including those requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

37. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

38. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

39. JOINT AND SEVERAL LIABILITY. If LESSOR is comprised of more than one person or entity, the obligations hereunder imposed on LESSOR shall be joint and several obligations of all such parties. All notices, payments, and agreements given or made by, with or to any one of such persons or entities shall be deemed to have been given or made by, with or to all of them.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR:

City of Lake Elmo, Minnesota

By: _____
Name: _____
Title: Mayor
Date: _____

By: _____
Name: _____
Title: City Clerk
Date: _____

LESSEE:

DISH Wireless L.L.C., a Colorado limited liability company

By: _____
Name: Dave Mayo
Title: EXP
Date: 7/8/22

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EXHIBIT "A"

Property Description

THAT PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 29 NORTH, RANGE 21 WEST, WASHINGTON COUNTY, MINNESOTA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 03 MINUTES 55 SECONDS EAST, BEARING ORIENTED TO THE WASHINGTON COUNTY COORDINATE SYSTEM, NAD 83, ALONG THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 115.20 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; THENCE NORTH 89 DEGREES 51 MINUTES 08 SECONDS EAST, A DISTANCE OF 815.00 FEET; THENCE SOUTH 00 DEGREES 03 MINUTES 55 SECONDS EAST, PARALLEL WITH SAID WEST LINE, A DISTANCE OF 400.00 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF STATE TRUNK HIGHWAY NO. 5; THENCE SOUTH 89 DEGREES 51 MINUTES 08 SECONDS WEST, ALONG SAID NORTH LINE, A DISTANCE OF 815.00 FEET TO ITS INTERSECTION WITH SAID WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH 00 DEGREES 03 MINUTES 55 SECONDS WEST, ALONG SAID WEST LINE, A DISTANCE OF 400.00 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 7.484 ACRES, MORE OR LESS.

Existing Driveway Area Description

That part of the Northwest Quarter of the Southwest Quarter of Section 16, Township 29 North, Range 21 West, and over, under and across that part of the Southwest Quarter of the Northwest Quarter of Section 16, Township 29 North, Range 21 West, Washington County, Minnesota described as follows:

Commencing at the northwest corner of said Northwest Quarter of the Southwest Quarter; thence South 00 degrees 03 minutes 55 seconds East, bearing oriented to the Washington County Coordinate System, NAD 83, along the west line of said Northwest Quarter of the Southwest Quarter, a distance of 115.20 feet; thence North 89 degrees 51 minutes 08 seconds East, a distance of 75.00 feet to its intersection with the east line of County State Aid Highway No. 13 as described in Document Number 943070, on file and of record in the Office of the County Recorder, Washington County, Minnesota and to the point of beginning of the easement to be described; thence continue North 89 degrees 51 minutes 08 seconds East, a distance of 58.00 feet; thence North 00 degrees 03 minutes 55 seconds West, a distance of 410.01 feet; thence North 13 degrees 24 minutes 28 seconds East, a distance of 287.57 feet; thence North 00 degrees 03 minutes 54 seconds West, a distance of 180.00 feet; thence South 89 degrees 38 minutes 24 seconds West a distance of 125.00 feet to its intersection with said east line of County State Aid Highway No. 13; thence South 00 degrees 03 minutes 54 seconds East, along said east line, a distance of 754.01 feet; thence South 00 degrees 03 minutes 55 seconds East, along said east line, a distance of 115.09 feet to the point of beginning.

{01364781;v5}Exhibit "A"

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EXHIBIT "B"

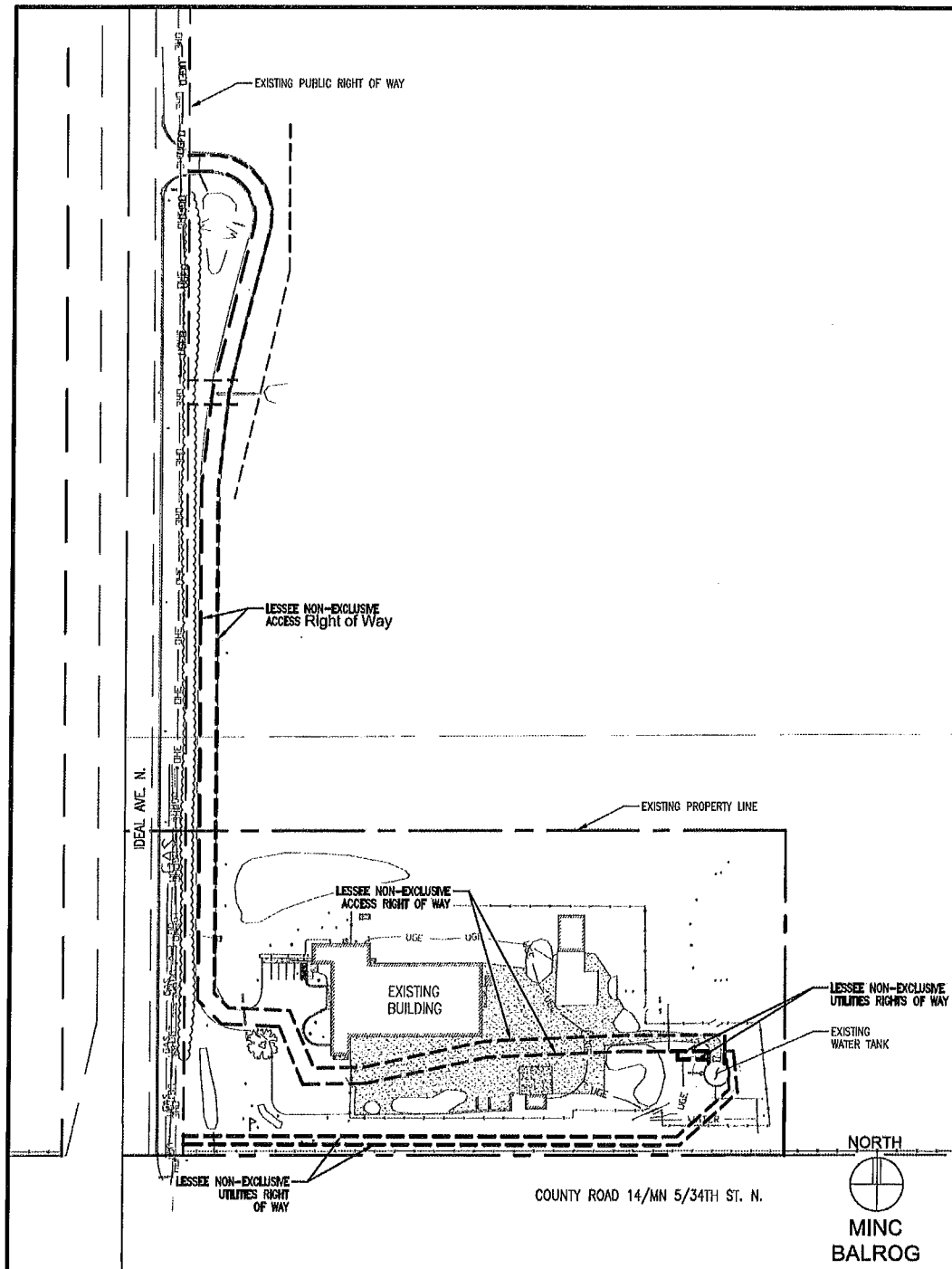


EXHIBIT "C"

See Attached Survey Revised XXX

{01364781;v5}MINC Balrog - Water Tower Lease
(4/24/14)

CORE/0762186.2728/114101482.1
DOCSOPENLA515\11\760354.v1-11/4/21

Proposed Ledge Area contains 35 Square Feet ±.

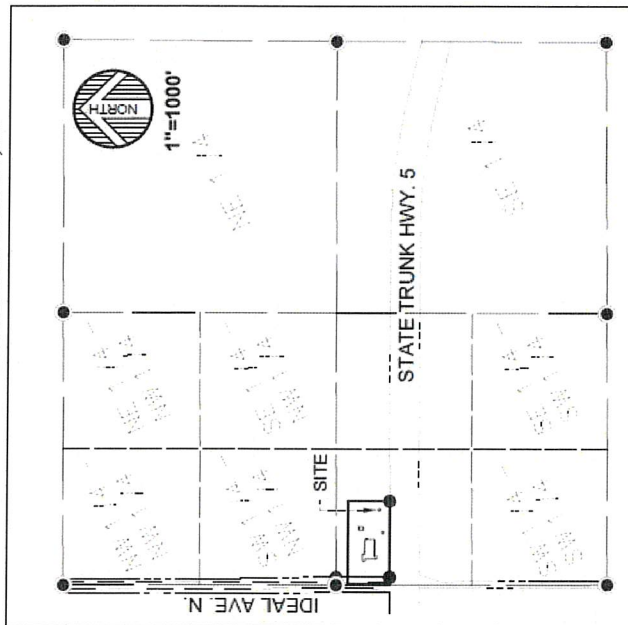
6.) Not related to the survey

SHEET 1 OF 4 SHEETS

SITE SURVEY
DISH MNMSP00384B

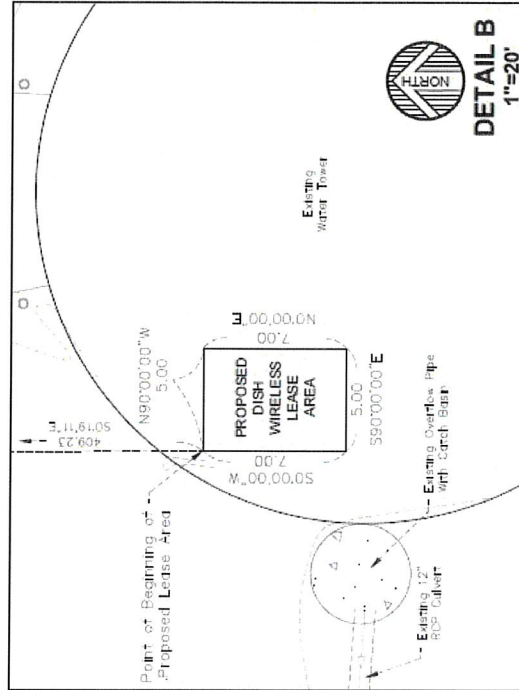
VICINITY MAP

SEC. 16-29-21 WASHINGTON COUNTY, MN



LEGEND

- BOUNDARY LINE
RIGHT OF WAY LINE
SECTION LINE
QUARTER LINE
SIXTEENTH LINE
DEED LINE
PROPOSED LEASE AREA



DETAIL B
1"=20'

SITE ADDRESS:

3445 Ideal Avenue N.
Lake Elmo, MN 55042

SHEET 2 OF 4 SHEETS

WIDSETH
ARCHITECTS • ENGINEERS • SCIENTISTS • SURVEYORS

WE HEREBY CERTIFY THAT THIS DOCUMENT WAS
PREPARED BY OR UNDER MY DIRECT SUPERVISION
AND THAT I AM FULLY QUALIFIED TO SIGN IT AS SUCH
UNDER THE NAME OF THIS INSTITUTION IN GEORGIA

 DATE: 11-11-2011
 NAME: Wayne J. Bullock

24/14)

CORE/0762186.2728/114101482.1
DOCSOPEN\LA515\11\760354.v1-11/4/21



WE HEREBY CERTIFY THAT THIS DOCUMENT WAS
PREPARED BY ME OR UNDER MY DIRECT SUPERVISION
AND THAT I AM A QUALIFIED PERSON AS DEFINED IN
FEDERAL RULES OF EVIDENCE 702 AND 705, AND I
UNDERSTAND THE IMPORTANCE OF THIS STATEMENT AND OF
THE OATH I AM MAKING.

DATE: 10-1-84 SIGNATURE: Raymond A. Boland
TITLE: SA AGENCY: CHICAGO

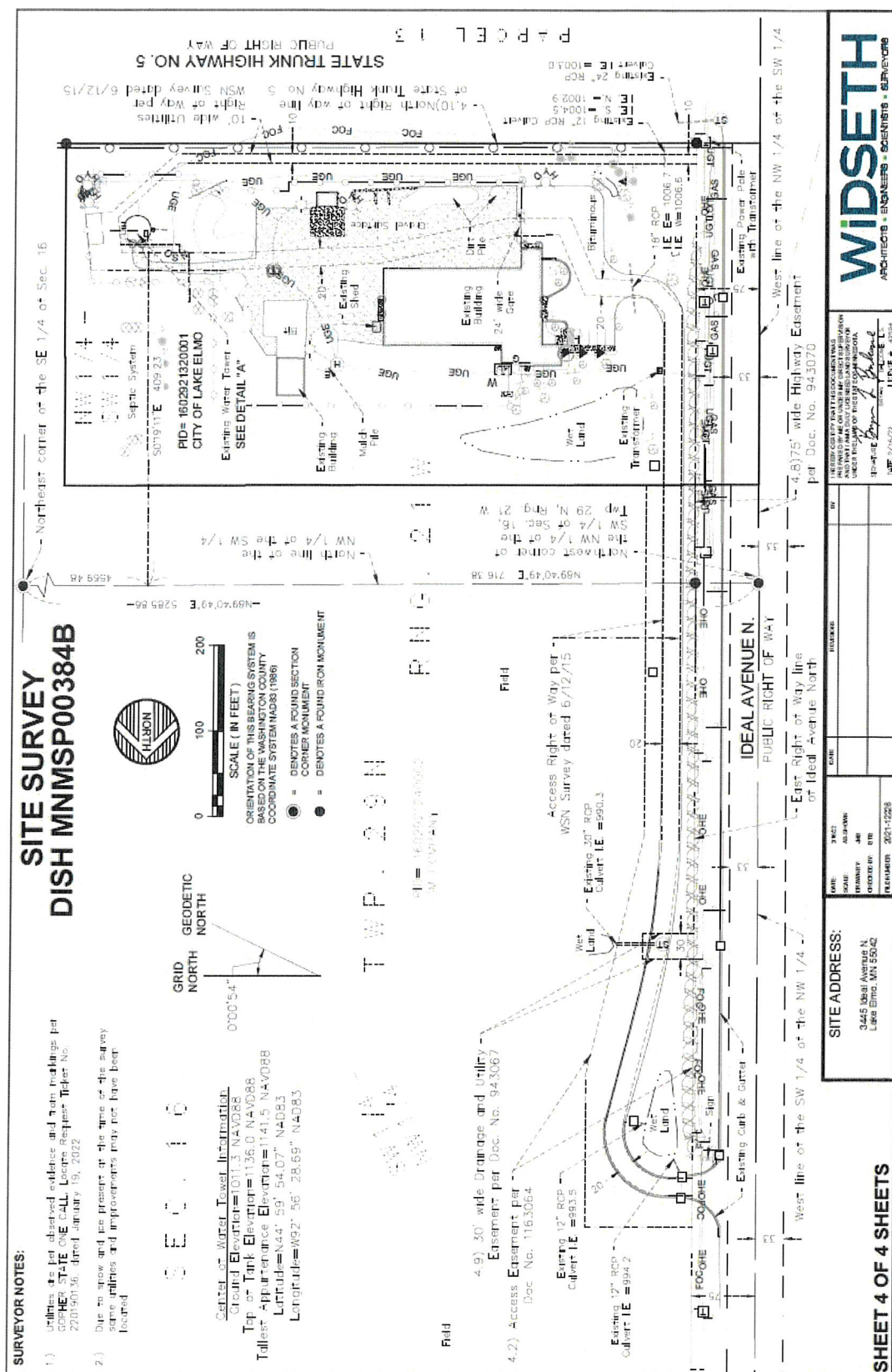
SITE ADDRESS:
3445 Idyll Avenue N.
Lake Elmo, MN 55042

SHEET 3 OF 4 SHEETS

{01364781;v5}MINC Balrog - Water Tower Lease
(4/24/14)

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Email: cbrowder@rothjackson.com



(4/24/14)

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