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New Hampshire DOT
Department of Transportation

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

Victoria F. Sheehan
Commissioner

William Cass, P.E.
Assistant Commissioner

Bureau of TSMO
May 7, 2021

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into agreement with City of Portsmouth, New Hampshire (Vendor # 177463) by license amendment and renewal for communications facility use of a water tank located at Portsmouth International Airport at Pease at a total cost of $18,734.55 effective July 1, 2021 or Governor and Council approval, whichever is later, through June 30, 2026. 54% Highway Funds and 46% Turnpike Funds (Intra-Agency Transfers)

Funding is contingent upon the availability and continued appropriation of funds in FY 2022, FY 2023, FY 2024, FY 2025 and FY 2026, with the ability to adjust encumbrances through the Budget Office between State Fiscal Years if needed and justified:

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
04-096-096-960515-3052 Trans Sys Mgmt & Operations 022-500248 Rent/Lease Other Than State	$3,600.00	$3,672.00	$3,745.44	$3,820.35	$3,896.76

EXPLANATION

The Department of Transportation (NHDOT) operates a statewide intelligent transportation system (ITS) that consists of roadside ITS devices such as closed circuit television cameras, changeable message signs and weather stations that are monitored and operated from the Transportation Management Center located in Concord. Broadband microwave radio communication links communicate with ITS field devices to monitor safety and security cameras located on the following bridges in the Seacoast area: I-95 High Level Bridge, Sarah Mildred Long Bridge, Memorial Bridge, and the Spaulding Turnpike bridge over Little Bay.

The City of Portsmouth, Public Works Department, owner and manager of the Hobbs Hill water tank provide a secure and reliable facility as a mounting structure for a significant microwave radio node in the NHDOT seacoast ITS system. This amendment and renewal is needed due to the replacement of the Hobbs Hill Water Tank and the desire of Department to locate additional microwave radio communication equipment on the new tank.

The Department is satisfied that the new annual lease price with escalator is reasonable. The first year cost is $3,600.00 with a two percent (2%) increase each year after.

This contract amendment has been approved by the Attorney General as to form and execution and the Department has verified that the necessary funds are available. Copies of the fully executed license agreement and amendment are on file at the Secretary of State office and the Department of Administrative Services office, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

Your approval of this license agreement is respectfully requested.

Sincerely,

Victoria F. Sheehan

Victoria F. Sheehan
Commissioner

Attachments

AMENDMENT 1 TO INTERNATIONAL DRIVE WATER TANK LICENSE AGREEMENT

The City of Portsmouth, a municipal corporation with a principal place of business of 1 Junkins Avenue, Portsmouth, New Hampshire (hereinafter "Licensor") and the State of New Hampshire, acting through its Department of Transportation, with an office at 54 TMC, P.O. Box 483, Concord, New Hampshire 03302 ("Licensee") hereby agree as follows:

WHEREAS, the Licensor and Licensee have entered into a License Agreement for the International Drive Water Tank dated September 28, 2011 (the "License Agreement"); and

WHEREAS, the Licensor owns certain infrastructure located on certain premises located off Pinecrest Terrace in the City of Portsmouth, County of Rockingham, and State of New Hampshire, known as the Hobbs Hill Water Storage Tank, (the water tank and other fixtures and improvements referred to collectively as the "Property"); and

WHEREAS, the Licensee seeks to amend the Agreement by including additional telecommunication transmitting and receiving equipment associated with its Advanced Traffic Management System program ("Additional Equipment") which Licensee may install, maintain and operate on the Property and under the terms of and subject to the Agreement; and

WHEREAS, the Licensee and Licensor agree to enter into Amendment 1 to International Drive Water Tank License Agreement ("Amendment 1"); and

NOW THEREFORE, the Licensee and Licensor hereby agree as follows:

1. To remove and replace paragraph 1 of the Agreement, **LICENSE** in the Agreement with the following:

LICENSE: Subject to the terms and conditions of this Agreement, Licensor grants to licensee a license to use certain space on and around the water tank portion of the Property for the installation of Equipment. The Equipment is defined and listed as Exhibit A to this Amendment, attached herewith.

2. To remove and replace paragraph 4. **TERM**, with the following:

TERM: The initial term of this License shall be five (5) years commencing on the date of Governor and Council Approval (the "Commencement Date"). As used herein, "Term" refers to the initial term and any renewal term as provided herein. If, at any time during the Term, Licensee makes a good faith determination that the Licensed Premises have become unsuitable for the conduct of Licensee's telecommunication needs Licensee may terminate this Agreement by written notice to Licensor. Termination shall be effective thirty (30) days after receipt of notice by Licensor, except that in the case of a casualty or taking by eminent domain, the License Fee shall be payable only to the date of the casualty or the transfer of property to the condemning party, as the case may be.

3. To remove and replace Paragraph 5, Fees, in its entirety with the following:

FEES:

(a) License Fee. Licensee shall pay Licensor a license fee hereunder monthly in advance on and from the Commencement Date, the sum of Three Hundred Dollars ($300.00) (the "License Fee"), without notice, deduction or setoff.

(b) Increase of License Fee. At each anniversary of the Commencement Date, the License Fee in effect for the subsequent year shall increase two per cent (2.00%).

(c) Payment. All Fees due from Licensee under this Amendment shall be made payable to:

City of Portsmouth
Attn: Controller
One Junkins Ave
Portsmouth, NH 03801

(d) Invoices. The Licensor may send monthly invoices to the Licensee at the following address:

Bureau of TSMO Administrator
NH. Dept of Transportation
PO Box 483
Concord, NH 03302-0483.

Failure by the Licensor shall not constitute a waiver of Licensee's obligation to pay the License Fee, and shall in no way relieve the Licensee of its duty to pay the License Fee.

4. To remove and replace paragraph 3 of the Agreement, **LICENSE RENEWAL** with the following:

LICENSE RENEWAL: Provided Licensee is not in default of any provision hereunder, the expiration of each five-year (5) Term, this Agreement shall be automatically renewed for the successive five (5) year term unless either party gives written notice to the other of its

intention to cancel this Agreement at least sixty (60) days prior to the expiration of the extended Term hereunder.

LICENSOR
City of Portsmouth
PORTSMOUTH, NEW HAMPSHIRE

Date: 3/8/2021

By: _____
Karen S. Conard, City Manager

Pursuant to vote of the City Council on 2/22/2021.

LICENSEE
STATE OF NEW HAMPSHIRE,
Department of Transportation

By: _____
Print Name: David Rodrigue
Title: **Director of Operations**

Pursuant to vote of Governor and Council on _____.

EXHIBIT A to Amendment 1 to the International Drive Water Tank License Agreement

List of Inventory

A. Radio antennae located on top of water tank
   1. 1 of 6 Microwave dish antenna HP2-18 339° to location-2 Spaulding 2.4-mile marker
   2. 2 of 6 Microwave dish antenna HP4-11, 250° to location-3, Troop –A, Epping, NH
   3. 3 of 6 Microwave dish antenna HP4-11 197° to Location-4, Hampton Water Tank
   4. 4 of 6 Microwave dish antenna HP4-11, 333° to Location-5 Spaulding Turnpike 12.4
   5. 5 of 6 Microwave dish antenna Model TBD 88° to Memorial Bridge, Portsmouth
   6. 6 of 6 Microwave dish antenna Model TBD 60° to Kearsage Way, Portsmouth
   7. 1 of 3 Motorola PMP 49400, 4.9 Ghz Access point (AP) panel antenna integrated radio
   8. 2 of 3 Motorola PMP 49400, 4.9 Ghz Access point (AP) panel antenna integrated radio
   9. 3 of 3 Motorola PMP 49400, 4.9 Ghz Access point (AP) panel antenna integrated radio
   10. 1 of 1 LMR Andrews DB-201, Omni directional uni-gain UHF antenna

Notes: Items 5, 6, and 10 and associated items such as cables to be added during this license term
Item-9 to be removed during this license term and replaced by Item #6

B. Microwave radio integrated with antenna located at top of tank.
   1. 1 of 8 remote mount Dragonwave Compact + Microwave radio, 18 Ghz to Location -2
   2. 2 of 8 remote mount Dragonwave Compact + Microwave radio, 18 Ghz to Location -2 (Standby)
   3. 3 of 8 remote mount Dragonwave Compact + Microwave radio, 11 Ghz to Location- 3
   4. 4 of 8 remote mount Dragonwave Compact + Horizontal Microwave radio, 11 Ghz to Location - 4
   5. 5 of 8 remote mount Dragonwave Compact + Vertical Microwave radio, 11 Ghz to Location - 4
   6. 6 of 8 remote mount Dragonwave Compact + Microwave radio 11 Ghz. to Location-5
   7. 7 of 8 remote mount maker TBD microwave radio to Memorial Bridge, Portsmouth

NH Attorney General

Emily C. Goering
Signature

EMILY C. GOERING
Name

AAG
Title

Authorized to enter into Agreement as approved by Governor and Council on:

Secretary of State

Dated

New Hampshire DOT
Department of Transportation

CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

October 26, 2011
Bureau of Traffic

His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into a five-year license agreement totaling $15,612.12 with the City of Portsmouth, One Junkins Avenue, Portsmouth, New Hampshire 03801, for communications facility & tower space located off Pinecrest Terrace, Portsmouth, New Hampshire, for the period commencing on the day the communication equipment installation begins and extending for a five year period. The license cost of $15,612.12 is to be paid by TransCore ITS LLC to the City of Portsmouth, as part of a contract between the Department of Transportation and TransCore ITS LLC to provide a wireless microwave backbone-network along the I-95, Spaulding Turnpike and RT. 101 corridors, previously approved by Governor and Council. This agreement is to be effective upon Governor and Council approval and does not require any additional funds.

EXPLANATION

On September 22, 2010, Governor and Council approved (Item #239) The New Hampshire Department of Transportation to enter into a contract (contract #4000874) with TransCore ITS LLC, (Vendor #173636) for implementation and maintenance of a wireless microwave communications backbone/network (hardware and software) and deployment of Intelligent Transportation System (ITS) field devices along the I-95, Spaulding Turnpike & RT. 101 corridors.

The purpose of this TransCore ITS LLC project was to develop and install the needed communications infrastructure to facilitate and implement deployment of ITS technologies in the I-95, Spaulding Turnpike and RT. 101 corridors. The deployment of ITS technology is important to help manage traffic, congestion, and incidents in these corridors. More specifically, TransCore ITS LLC was tasked with designing, building, and placing ITS microwave radio communications devices on appropriate communication towers that exist along the I-95, Spaulding Turnpike and RT 101. corridors.

Also as part of their contract, TransCore ITS LLC was required to negotiate and arrange 5 year license agreements between The Department and the owners of the towers to be utilized. The resolution before the Executive Council involves a 5 year license agreement with the City of Portsmouth amounting to $15,612.12, based on $250.00 per month for the first year with a built in 2% escalation each year thereafter. The total cost is paid for by TransCore ITS LLC as part of the original contract with The Department. The Department is satisfied that the annual license price is reasonable and comparable to other commercial rates throughout the State. It is the desire of both the site manager and the Department to form a *long-term* license that would secure tower and floor space for the Department at this strategic site.

This license agreement has been approved by the Attorney General as to form and execution. Copies of the fully executed license are on file at the Secretary of State's office, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

Your approval of this license agreement is respectfully requested.

Sincerely,

Christopher D. Clement, Sr.
Commissioner

TRANSCORE®

253 W. 35th Street, 3rd Floor
New York, N.Y. 10001
Phone: 212.629.8380 · Fax: 212.629.6369

September 27, 2011

Ms. Denise Markow
TMC Manager
New Hampshire DOT
110 Smokey Bear Boulevard
Concord, NJ 03301

Re: Project #11151E
RFP 2010-043A
I-95 ITS Advanced Transportation Management System
Seabrook to Portsmouth

Subject: I-95 Tower Lease Payments

Dear Ms. Markow:

As discussed, TransCore ITS, LLC, agrees to pay the five year lease term per the DOT space on the Pease Water tank in full, prior to the acceptance of the project by the department.

If you have any questions, please contact me.

Sincerely,

Raymond Royandoyan
TransCore

Senior Associate

RR:dk

STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
27 Hazen Dr., Concord, NH 03301
Fax: 603-271-1516 TDD Access: 1-800-735-2964
www.nh.gov/doit

Peter C. Hastings
Interim Commissioner

August 4, 2010

George N. Campbell, Jr.
Commissioner
State of New Hampshire
Department of Transportation
7 Hazen Drive
Concord, NH 03302

Dear Commissioner Campbell:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract with TransCore ITS, LLC, of New York, New York (Vendor # 173636), as described below and referenced as DoIT No. 2010-043A.

> Authorize the New Hampshire Department of Transportation (NHDOT) to enter into a contract with TransCore ITS, LLC, of New York, New York (Vendor #173636), for full implementation and maintenance of a wireless microwave communications backbone/network (hardware and software) and deployment of Intelligent Transportation System (ITS) field devices along the following corridors: I-95 Seabrook to Portsmouth, Spaulding Turnpike from Exit 16 to the Portsmouth Circle, Route 4 from the Portsmouth Circle to the intersection of Route 155 in Durham, and Route 101 to Exit 10 and a communications network connecting the field devices to the NHDOT Transportation Management Center (TMC) in Concord. The contract would be in effect from Governor and Council approval through October 7, 2016, including the warranty, twenty-four month Maintenance period and the required leased line agreement. The Term may be extended for additional periods of up to five (5) years, at the sole option of the State, subject to the parties prior written agreement on applicable fees for each extended term and Governor and Council approval, up to but not beyond October 7, 2021.
>
> The total cost of the I-95 Project contract is not to exceed $4,784,729.60.

A copy of this letter should accompany the submission to the Governor and Executive Council for approval.

Sincerely,

Peter C. Hastings

PCH/efg
OIT 2010-043A
RID 8092

cc: Gail Hambleton, IT Leader, Department of Information Technology for Department of Transportation
Denise Markow, Civil Engineer, Traffic Management Center, Department of Transportation
James Knowlton, Systems Development Specialist, Traffic Management Center, Department of Transportation

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/12/2011

PRODUCER (603)669-3218 FAX: (603)645-4331
Ferdinando Insurance Assoc. Inc.
Laura Perrin
637 Chestnut Street
Manchester NH 03104

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Community Action Program
Belknap-Merrimack Counties Inc.
P.O. Box 1016
Concord NH 03302

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Philadelphia Ins Co	
INSURER B: Liberty Mutual Ins Co	
INSURER C: Hanover Insurance Co	18058
INSURER D: N.H.M.M. JUA	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	PHPK585825	6/17/2011	6/17/2012	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A		AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	PHPK585825	6/17/2011	6/17/2012	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
A		EXCESS / UMBRELLA LIABILITY X OCCUR CLAIMS MADE DEDUCTIBLE X RETENTION $ 10,000	PHUB311486	6/17/2011	6/17/2012	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000 $ $ $
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N If yes, describe under SPECIAL PROVISIONS below	WCJZ91446010010	6/17/2011	6/17/2012	WC STATUTORY LIMITS / OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 500,000 $ 500,000 $ 500,000
A	OTHER	Directors & Officers	PHSD505449	4/1/2011	4/1/2012	$1,000,000	
C		Blanket Crime	BDV1649129	3/27/2011	3/27/2012	$400,000	
D		Professional	NHJUA11882	12/30/2010	12/30/2011	$1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

State of NH, Dept of Transportation is named as an Additional Insured with respect to General Liability and Auto Liability. In accordance with NH law, carrier will give 60 days advance notice of cancellation or non-renewal, except for non-payment which is 10 days.

CERTIFICATE HOLDER

State of New Hampshire
Dept of Transportation
7 Hazen Drive
PO Box 483
Concord, NH 03302

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Laura Perrin/KS5 Laura Perrin

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LICENSE AGREEMENT

INTERNATIONAL DRIVE WATER TANK
PORTSMOUTH, NEW HAMPSHIRE

THIS LICENSE AGREEMENT (this "Agreement") is made as of the 28 day of September, 2011, by and between the City of Portsmouth, One Junkins Avenue, Portsmouth New Hampshire ("Licensor"), and the STATE OF NEW HAMPSHIRE, acting through its Department of Transportation, with an office at 54 TMC, P.O. 483, Concord, New Hampshire 03302 ("Licensee").

W I T N E S S E T H

WHEREAS, Licensor has operational control through a license agreement with the Pease Development Authority ("PDA") of certain premises located off Pinecrest Terrace in the City of Portsmouth, County of Rockingham, and State of New Hampshire, said premises being the International Drive Water Storage Tank, (the water tank and other fixtures and improvements referred to collectively as the "Property"); and

WHEREAS, this Agreement is subject to and subordinate to all agreements between the City of Portsmouth and PDA entered into under the authority of RSA 12-G et seq; and

WHEREAS, Licensor grants to Licensee only such access as Licensor lawfully controls pursuant to such agreements; and

WHEREAS Licensor makes no representations regarding the ownership of the Property as the ownership resides in the PDA; and

WHEREAS Licensor makes no representations regarding the PDA's adherence to the terms of this Agreement; and

WHEREAS, Licensor makes no representations as to the continued existence of the Property; and

WHEREAS, Licensee desires to use a portion of the Property, as it exists upon execution of this Agreement, for the installation, maintenance and operation of telecommunication transmitting and receiving equipment associated with its Advanced Traffic Management System program ("Equipment"); and

NOW, THEREFORE, in consideration of all the foregoing, and in further consideration of the obligations, terms and conditions hereinafter set forth and recited, both parties do hereby agree as follows

1. **LICENSE** Subject to the terms and conditions of this Agreement, Licensor grants to Licensee a license to use certain space on the water tank portion of the Property for the installation of

Three (3) 26" x 7" x 4" antennas pipe mounted to the railing;

Three (3) 4' dish antenna on pipe mount stud welded to the tank face;

One (1) 2' dish antenna on pipe mount stud welded to tank face; and

One (1) 30" square DOT equipment cabinet on a 4' x 4' concrete pad.

These installations are shown in Exhibit A. The space on which they are installed is referred to collectively as the "Licensed Premises". Licensee shall accept the Licensed Premises "as-is"; Licensor making no representations regarding the suitability of the Licensed Premises for Licensee's intended use and Licensor having no obligation to prepare the Licensed Premises for use or occupancy by Licensee. Further, Licensor makes no representations that it shall continue the existence of the Property, if in Licensor's sole discretion such Property is no longer of use to Licensor.

2. USE OF PREMISES

(a) The Licensed Premises are to be used solely for the installation, operation, maintenance, repair and replacement, at Licensee's expense, of telecommunication equipment, along with associated electronic equipment and transmission and utility lines and cables (collectively called "Telecommunication Equipment") for Licensee's Advanced Traffic Management System monitoring program. Licensee shall have the right to install Three (3) 26" x 7" x 4" antennas pipe mounted to the railing; Two (2) 4' dish antenna on pipe mount stud welded to the tank face; One (1) 2' dish antenna on pipe mount stud welded to tank face; and One (1) 30" square DOT equipment cabinet on a 4' x 4' concrete pad on the Property. All portions of the Telecommunication Equipment or other property or improvements attached to or otherwise brought onto the Licensed Premises by Licensee shall at all times and for all purposes related to this Agreement be Licensee's personal property and, at Licensee's option, may be removed by Licensee at any time during the term of this Agreement and, in any case, shall be removed within thirty (30) days after expiration or termination of this Agreement. Any damage caused to the Property by Licensee as a result of the removal by Licensee of its equipment shall be repaired by Licensee, at Licensee's sole cost and expense. If Licensee fails to remove its Telecommunication Equipment and associated property within thirty (30) days of expiration or termination of this Agreement or to repair any damage caused by such removal, Licensor shall be entitled to perform its own removal and/or repair at Licensee's cost and expense.

(b) Licensee, at its sole cost and expense, shall have the right to install and operate the Telecommunication Equipment, according to plans and specifications (the "Plans") submitted to and subject to prior approval in writing by the Deputy Director of Public Works, 680 Peverly Hill Rd., Portsmouth, NH 03801 which approval shall not be unreasonably withheld, conditioned or delayed. Licensor recognizes that, in order for Licensee to install and operate the Telecommunication Equipment, it will need to run data transmission lines from its equipment shelter, if any, to its antenna locations, run power from the main power feed on the Property to the equipment shelter, and run telephone lines from the main telephone entry point on the Property to the equipment shelter. Licensee shall have the right to make the foregoing installations in a reasonable and appropriate manner. Licensee shall have the further right to

make alterations or additions upon or to the Licensed Premises in order to install and operate the Telecommunication Equipment (said installations, alterations or additions in connection with the Telecommunication Equipment collectively referred to herein as "Licensee's Changes") in a manner consistent with Licensee's Plans, provided that Licensee's Changes shall not interfere with the rights of any other licensees at the Property. Notwithstanding the foregoing, Licensor shall not be entitled to review and approve Licensee's Telecommunication Equipment within the equipment shelter, provided Licensee's equipment does not interfere with the rights of Licensor or any other licensee. The approval of Licensee's Plans, or any modifications thereof, shall not be unreasonably withheld or delayed by Licensor, provided the following conditions are met by Licensee

(1) All installations of data transmission lines to the base of the water tank, electric power lines from the main power feed on the Property to the equipment shelter, and telephone lines from the main telephone entry point on the Property to the equipment shelter shall be located underground, field conditions permitting, so as not to interfere with Licensor's use of its facilities and equipment.

(2) The structural integrity of the incumbent improvements, water tank, buildings, and the systems and equipment of Licensor and other licensees already installed and located on the Property shall not be impaired by the installation or modification of Licensee's proposed Telecommunication Equipment.

(3) Only those portions of Licensor's Property designated on Licensee's Plans, approved by Licensor, may be physically altered by the installation or modification of Licensee's proposed Telecommunication Equipment.

(4) The proper functioning of any mechanical, electrical, sanitary or other service systems of Licensor or other licensees already installed and located on the Property shall not be adversely affected by the installation or modification of Licensee's proposed Telecommunication Equipment.

(5) The antennas, antenna cables, and all other related fixtures shall be fastened to the tank by means of mechanical connections bolted to stainless steel brackets welded to the tank surface. All mounting hardware shall be stainless steel. The stainless steel brackets shall be welded to the tank surface in accordance with the standards of the American Water Works Association (AWWA) and any applicable requirements of local, state, and federal governments. The welding shall be performed by a welder licensed to practice welding in the State of New Hampshire. Any surface area of the tank damaged by Licensee's welding activity shall be repaired and prepared for painting by Licensee in accordance with the standards of the AWWA and any requirements of Licensor. Licensor shall have the right to inspect Licensee's materials and welding work and order Licensee to replace any materials or redo any welding work that do not conform with the standards cited herein.

(6) At Licensor's option, Licensee shall paint all materials, trays, fasteners, conduit, and other related fixtures attached to the tank to match the existing color of the tank. If Licensor opts to have Licensee paint such materials, Licensor will furnish Licensee finish specifications for use by Licensee, and Licensee shall be responsible for conforming with same to match the existing color of the tank. In such event, Licensee shall provide Licensor a sample panel, measuring two (2) feet square, painted and finished with any urethane coating to

match as closely as possible the existing color and finish of the tank. Licensor shall have the right to approve Licensee's color matching and materials before Licensee begins painting.

(7) Before commencing any such work on the Property, Licensee shall submit to Licensor, for Licensor's prior approval, the names of the contractors who will perform the proposed work, which approval Licensor agrees shall not be unreasonably withheld or delayed.

(8) Licensee, at its expense and with Licensor's reasonable cooperation, shall obtain all necessary governmental permits, approvals, and certificates required for Licensee's Changes, and shall cause all such work to be made in compliance with all applicable laws and requirements of governmental authorities and insurance bodies having jurisdiction thereof, in a good and workmanlike manner; and if Licensor so requests, Licensee shall deliver to Licensor evidence, reasonably satisfactory to Licensor, of any and all governmental consents or approvals and/or compliance with governmental requirements relating to any work on the Property.

(9) Licensee, at its expense and as soon as practicable, shall procure the cancellation or discharge of all notices of violation arising from or in any way relating to its work on the Property, including the construction or installation thereof, which shall be issued by any governmental or quasi-governmental authority having or asserting jurisdiction.

(10) The operation of the Telecommunication Equipment and Licensee's Changes shall not interfere with the rights of Licensor or any other licensee at the Property established and disclosed to Licensee prior to the Agreement.

(11) Within thirty (30) days following the completion of construction of Licensee's Telecommunication Equipment installation, Licensee's Engineer shall provide Licensor a set of as-built drawings of Licensee's Telecommunication Equipment together with a letter certifying to Licensor that the Telecommunications Equipment has been constructed in accordance with the plans and specifications and changes thereto approved by Licensor.

(c) Licensee shall have the right to make alterations or additions upon or to the Licensed Premises in order to install and operate the Telecommunication Equipment (said installations, alterations or additions in connection with the Telecommunication Equipment collectively referred to herein as "Licensee's Changes"). Licensor shall have the right of prior approval of the plans for Licensee's Changes in accordance with the plan approval process set forth above. Licensee's Changes shall not interfere with the rights of any other licensee with equipment installed and operating prior to the dated of Licensee's Changes at the Property.

(d) Licensor will make available architectural information regarding Licensor's buildings and facilities on the Property upon request or provide access to available plans and surveys, if necessary, to the extent same are in Licensor's possession.

(e) Licensor shall reasonably cooperate with Licensee and join in any applications for governmental licenses, permits, and approvals reasonably required of or reasonably deemed necessary by Licensee for its use of the Licensed Premises, including, without limitation, applications for permits, applications for zoning variances and zoning ordinance amendments and special use permits, provided that Licensee shall reimburse and hold Licensor harmless for any costs or fees actually incurred and payable by Licensor in connection with such applications

and approvals, provided same do not interfere with Licensor's or other licensees' use of the Property.

(f) Licensor hereby grants Licensee a non-exclusive license over the Property providing Licensee suitable, adequate, and direct access, for ingress and egress and for electrical and telecommunication services, to and from the Licensed Premises from the closest public right-of-way. Licensor agrees that it will grant an easement over the Property to the appropriate public service company or agency to facilitate the provision of electric and telecommunication services to the Licensed Premises. Such license shall remain in effect during the term and any extended term of this Agreement. No additional fees shall be payable by reason of Licensor's grant of such license.

(g) Licensee, its officers, employees, agents, invitees, and representatives shall have the right of access to the Licensed Premises, both for the installation and operation of utility lines and for access by foot or motor vehicle, through other portions of the Property mutually agreed by the parties, as set forth in the Plans for Licensee's permitted uses. Such access to the Licensed Premises shall be seven (7) days a week, twenty-four (24) hours a day, and shall be preceded by twenty-four (24) hour verbal notice to the City of Portsmouth, Deputy Director of Public Works 766-1421 except that prior verbal notice may be waived in the event of unscheduled repairs or emergencies, in which event, Licensee shall contact City of Portsmouth Public Works as soon as possible.

(h) All rights granted to Licensee under this Agreement shall not be revoked until the expiration or sooner termination of this Agreement in accordance with its terms.

3. **MANAGEMENT OF EQUIPMENT ENGINEERING**

(a) Licensee is hereby granted a non-exclusive right to install the Telecommunications Equipment on Licensor's water tank located on the Property.

(b) Licensee represents and warrants that, following adequate testing and evaluation by Licensee, the use and operation of the Telecommunication Equipment by Licensee will not interfere with the transmission and receiving equipment of existing wireless communications users at the Property, provided that the equipment of such other users is properly installed and lawfully operated.

(c) Licensee agrees to operate its equipment (or any replacements of such equipment) within the frequencies approved and authorized by the FCC, and shall not cause measurable interference, as defined by the FCC, with Licensor or other licensees at the Property. If the installation or operation of Licensee's Telecommunication Equipment, or modifications thereto, should cause such interference, Licensee agrees and represents that it shall eliminate such interference within a reasonable period of time, not exceeding thirty (30) days after notice thereof by Licensor, after which, if such interference has not been eliminated, Licensor may elect to terminate this Agreement and Licensee's rights and privileges hereunder. Licensee further agrees and represents that it shall cooperate with Licensor to eliminate any such interference that Licensee's operations on the Licensed Premises may cause to radio transmission or reception equipment placed on Licensor's water tank subsequent to the installation of Licensee's Telecommunication Equipment.

(d) In the event Licensor needs to repair, alter or replace any of its equipment or improvements located on the Property to fulfill its governmental purpose to promote the public good or to comply with any governmental regulations, and such repair, alteration or replacement would render continued use of the Telecommunication Equipment by Licensee unsuitable, in Licensor's sole discretion, Licensor shall have the right to terminate this Agreement upon thirty (30) days prior written notice to Licensee.

(e) In the event the exercise of the rights and privileges of Licensee provided in this Agreement are determined to interfere with or contravene any present or future law or regulation regarding protection of or operation of public water supply by any government agency having authority over Licensor, or interferes with Licensor's municipal purpose to promote the public good, then in that event, Licensor shall have the right to terminate this Agreement upon thirty (30) days prior written notice to Licensee, Licensee acknowledging that as a Licensee it has no vested interest in or to the Licensed Premises.

(f) In no event shall either party be liable to the other for indirect, special, incidental, exemplary or consequential damages, including but not limited to, loss of profits or revenues, loss of use of any property, fines or penalties, cost of capital, cost of substitute equipment, facilities or services, or claims of Licensee's constituents for such damages.

(g) Either Licensor or Licensee may terminate this Agreement upon thirty (30) days written notice to the other party in the event that the Federal Communications Commission or other authorized government agency makes a determination which is final and non-appealable or which is affirmed and becomes final after the exhaustion of all available appeals concluding that Licensee's use as set forth in this Agreement presents a material risk to the public health or safety.

(h) If at any time after the expiration of the first, five-year term of this Agreement, Licensor determines, in its sole discretion, that the exercise of Licensee's privileges pursuant to this license adversely interferes with Licensor's efficient use and enjoyment of its Property, Licensor shall have the right to terminate this Agreement upon thirty (30) days prior written notice to Licensee, notwithstanding the commencement of the renewal option of the License.

4. <u>TERM</u> The initial term of this License shall be five (5) years, commencing on the start of construction f Licensee's improvements (the "Commencement Date"). The initial term of this License shall end on the day before the fifth (5th) anniversary of the Commencement Date. As used herein, "term" refers to the initial term and any renewal term as herein provided (the "Term"). If, at any time during this Agreement, Licensee makes a good faith determination that the Licensed Premises have become unsuitable for the conduct of Licensee's telecommunications needs Licensee may terminate this Agreement by written notice to Licensor. Termination shall be effective thirty (30) days after receipt of such notice by Licensor, except that in the case of a casualty or taking by eminent domain, the License Fee shall be payable only to the date of the casualty or the transfer of property to the condemning party, as the case may be.

5. <u>FEES</u>

(a) <u>License Fee</u>. Licensee shall pay Licensor a license fee hereunder monthly in advance

on and from the Commencement Date, the sum of Two Hundred Fifty Dollars ($250.00) (the "License Fee"), without notice, deduction or setoff.

(b) Increase of License Fee. At the commencement of each successive year of this License, as hereinafter provided, the License Fee in effect for the preceding year shall increase two per cent (2.00%)

(c) Payment. All fees due from Licensee under this Agreement shall be made payable to City of Portsmouth, Attn Controller, One Junkins Ave. Portsmouth, NH 03301.

6. LICENSE RENEWAL Provided Licensee is not in default of any provision hereunder, this Agreement shall be automatically renewed for three (3) additional, consecutive five-year (5) periods, unless either party gives written notice to the other of its intention to cancel the Agreement at least sixty (60) days prior to the expiration of the initial Term hereof. Upon the expiration of each five-year (5) Term, this Agreement shall be automatically renewed for the successive five-year (5) Term, unless either party gives written notice to the other of its intention to cancel this Agreement at lease sixty (60) days prior to the expiration of the extended Term hereof.

7. CONTINGENCIES

(a) Licensor agrees that this agreement, including any renewal terms hereof, is contingent upon Governor and Council approval, or the approval of the New Hampshire Department of Transportation ("DOT") and the appropriation of sufficient funds from the New Hampshire Legislature for Lessee to carry out its obligation under this contract. If, in the sole discretion of Lessee, sufficient funds were not appropriated, Lessee may terminate this agreement upon thirty (30) days written notice. Such termination shall relieve both parties of all obligations hereunder, except for the obligation to pay rent for the period prior to termination. In the event of termination pursuant to this clause prior to the end of the lease term, Lessor shall reimburse Lessee on a pro-rata basis for rent paid in advance.

(b) Licensor understands and agrees that Licensee's ability to use the Licensed Premises is contingent upon its suitability for Licensee's intended use from a technical engineering basis and upon Licensee's ability to obtain and maintain any governmental licenses, permits and approvals that may be required of or deemed necessary or appropriate by Licensee for its use of the Licensed Premises, including applications for zoning variances, zoning ordinances, amendments, special use permits, and building permits (collectively referred to as "Governmental Approvals") by that date which is one year from the date of the License Agreement herein (the "Contingency Date"); provided that Licensee shall have the right, without obligation, to appeal any denial by a governmental agency, and the Contingency Date for obtaining Governmental Approvals shall be extended until such time as a final decision is rendered and is not the subject of any further appeal made or defended by Licensee. Licensor agrees to use reasonable efforts to cooperate with Licensee and join in any application to obtain the Governmental Approvals, provided that Licensee shall pay and hold Licensor harmless for any costs or fees actually incurred by Licensor in connection with such applications and approvals.

(c) Licensor agrees that, if there are any violations of any applicable law at or relating to the Property, which have a material adverse effect on Licensee's intended use of the Licensed Premises, including any environmental, land use or other governmental laws, ordinances, rules, regulations, directives, policies or judicial determinations (collectively called "Laws"), Licensee may, at Licensee's option, terminate this Agreement at any time prior to the Contingency Date.

(d) If either contingency set forth in this Paragraph 7 is not satisfied (including within any applicable time period as may be provided) or is not expressly waived by Licensee in writing, then Licensee shall have the right, without obligation, to terminate this Agreement at any time prior to expiration of the Contingency Date.

8. <u>LIABILITY</u>

(a) Licensee agrees to self-insure all liability for bodily injury, death and/or property damage under the State of New Hampshire's self-insurance program, in accordance with the Laws of the State of New Hampshire. Such self-insurance shall insure against all costs, damages, expenses and/or any payment of any and all claims, accidents, and injuries, and all damages whatsoever caused to any person or any property in or about the Property or Licensed Premises caused by to the operation of Licensee's Telecommunication Site.

(b) If Licensee shall, at any time following the execution of the Agreement herein, change from a self-insurance program to a traditional insurance program, then Licensee shall, prior to the termination of said self-insurance program, procure such insurance policies and limits of coverage as shall be agreed to by Licensor and Licensee and furnish Licensor endorsements of such insurance coverage naming Aquarian Company and its subsidiaries as an additional insured.

(c) Except for the intentional acts or willful misconduct of Licensor, its agents or employees, and to the extent permitted by law, Licensee agrees to indemnify and hold harmless Licensor from all claims, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees (including disbursements) incurred by Licensor in connection with (i) Licensee's Telecommunication Equipment, (ii) Licensee's Changes (iii) any work related thereto or on account of any claims under Licensee's Workmen's Compensation or employees' disability, and (iv) Licensee's use of or access to or over the Licensed Premises or Property, including without limitation, the installation, maintenance, operation, replacement, repair and removal of Licensee's equipment.

(d) Licensor shall not be responsible for any loss or damage to property, materials, or equipment located on the Licensed Premises, resulting from theft, vandalism, the actions of other licensees, or other casualty except for the intentional or willful misconduct of Licensor, their agents or employees.

(e) The obligations of Licensee to Licensor pursuant to this Paragraph 8, shall survive the expiration or sooner termination of the License Agreement herein.

(f) This License does not abridge or limit, nor shall it be interpreted as abridging or limiting, the sovereign or official immunity to which Licensee and its representatives and agents are lawfully entitled.

9. CONDITION OF PREMISES

Upon termination or expiration of this Agreement, Licensee shall surrender the Licensed Premises to Licensor in good condition as described in Paragraph 2 above, except for reasonable wear and tear, and damage due to the elements.

10. WARRANTY OF TITLE AND RIGHT TO LICENSE

(a) Both parties represent that they are duly organized/formed, validly existing, in good standing and have all rights, power, and authority to make this Agreement and bind themselves thereto through the party set forth as signatory of Licensor and Licensee set forth below, subject to the Licensor's agreement with the PDA regarding the Property

(b) Both parties represent that they have not dealt with, and that no brokerage commission is due to, any real estate broker in connection with this Agreement.

(c) Licensee shall have quiet and peaceful use, enjoyment, and possession of the Licensed Premises during the Term of the License for its permitted uses, provided Licensee is not in default of any of the terms or conditions of this Agreement (after notice and opportunity to cure).

11. ACCESS

Nothing contained herein shall operate to prevent Licensor from granting similar licenses to other parties so long as such parties comply with all applicable laws, rules, and regulations and do not interfere with Licensee's effective use of the Property for Telecommunication Equipment.

12. LICENSEE'S RIGHT TO MAINTAIN SECURITY

Licensee, at its cost and expense, may place, construct, and maintain a fence around any equipment structure housing Licensee's equipment, or undertake any other appropriate means to restrict access thereto, subject to Licensor's approval, not to be unreasonably delayed or withheld. Licensee's rights provided herein shall not interfere in any way with Licensor's right to access the Property.

13. MECHANICS' LIENS

If, because of any construction, addition, alteration or other activity by or on behalf of Licensee, any Notice of Intention, mechanic's or other lien, charge, or order for the payment of money or other encumbrance shall be filed against Licensor or the Property, Licensee shall, at its own cost and expense, cause same to be discharged of record, bonded or otherwise secured to Licensor's reasonable satisfaction within forty-five (45) days after the filing thereof. If Licensee fails to comply with the foregoing, Licensor shall have the option of discharging or bonding any such lien, charge, order, or encumbrance, and Licensee agrees that it shall promptly reimburse Licensor upon demand for all reasonable costs, expenses, and other sums of money in connection therewith.

14. MAINTENANCE AND REPAIRS, UTILITIES

(a) Licensee shall perform all repairs necessary to keep its Telecommunication Equipment and all other Licensee improvements located on the Licensed Premises or located on any rights-of-way or other access to the Licensed Premises in good condition so that same do not create any form of nuisance on the Property. Licensor shall maintain the Property and access thereto, other than Licensee's Telecommunication Equipment and other improvements thereon, in good condition and repair.

(b) Licensee, at its sole expense, shall arrange for its own separately metered electrical supply service from the local utility company and shall pay for all charges for electricity and other utilities consumed by Licensee. Licensee shall be permitted to bring a generator onto the Property for temporary or emergency power, provided that the generator shall comply with all state and local laws and regulations governing the use of same.

(c) Licensee shall conduct its activities on the Licensed Premises in compliance with all applicable environmental laws. Licensee shall not store, produce, use or maintain any hazardous materials in its equipment shelter or anywhere else on the Property, other than if contained in sealed gel-cell batteries for back-up power or in fire suppression equipment located on the Licensed Premises. Licensee shall, subject to its insurance coverage, defend, indemnify, and hold Licensor harmless from and against all liabilities, damages, losses, costs, assessments, penalties, fines, expenses and fees incurred, including reasonable attorneys' fees, that Licensor may suffer due to the existence or discovery of hazardous materials on the Property or release into the environment of such hazardous materials arising in either case from Licensee's use of the Property.

15. DEFAULT AND RIGHT TO CURE

(a) Each of the following shall be deemed a default by Licensee and a breach of this Agreement

(i) Non-payment of License Fee, including any adjustments in fee amount as required hereunder, due hereunder for a period of ten (10) days after receipt of notice of such failure to pay from Licensor;

(ii) Failure to perform any other covenant under this Agreement for a period of thirty (30) days after receipt of notice from Licensor specifying the failure. No such failure, however, shall be deemed to exist if Licensee shall have commenced good faith efforts to rectify the same within such thirty-day (30) period and if such efforts shall be prosecuted to completion with reasonable diligence and within a reasonable period of time.

(b) In the event Licensor has defaulted under the terms of this Agreement, Licensor shall use reasonable efforts to cure such default within thirty (30) days after receipt of notice from Licensee specifying the failure. If such default interferes with Licensee's ability to operate its Telecommunication Equipment, Licensor shall use reasonable efforts to cure such default within thirty (30) days after notice from Licensee or as expeditiously as possible. If Licensor does not cure the default within said thirty-day (30) period, Licensee may, as its sole and exclusive remedy, terminate this Agreement.

(c) Following default by Licensee as defined herein, beyond any applicable cure

period, Licensor shall have the right to terminate this Agreement upon five (5) days written notice, whereupon Licensee shall forthwith remove all of its equipment and antennae and repair any damage caused by such removal, at the Licensee's sole expense. Licensee shall not be released from any liability that may accrue to Licensee under this Agreement prior to the termination date. Licensee shall also pay to Licensor as damages for any such default the balance of the license fees that would otherwise have constituted the balance due for the then current term of this Agreement.

16. ASSIGNMENT

Licensee may not sell or assign this License. Licensor has granted this License to the State of New Hampshire, Department of Transportation, for the sole use and enjoyment of the State of New Hampshire for its Advanced Traffic Management System program for public purposes.

17. NOTICES

Unless otherwise provided herein, any notice of demand required or permitted to be given hereunder shall be given in writing by overnight delivery, certified or registered mail, return receipt requested, in a sealed envelope, postage prepaid, to be effective when received, refused or returned undelivered. Notice shall be addressed to the parties at the addresses hereinafter set forth. Either party hereto may change the place for the giving of notice to it by like written notice to the other as provided herein.

As to Licensor	City Attorney City of Portsmouth One Junkins Ave. Portsmouth, NH 03801
As to Licensee	Mr. David Chase State of New Hampshire Department of Transportation Bureau of Traffic 54 TMC, P.O. Box 483 Concord, NH 03302

18. RESERVATION OF RIGHTS

Licensor reserves to itself, its successors and assigns, the right to access the Property at any time in order to operate and maintain its facilities and improvements thereon in such a manner as will best enable it to fulfill its own requirements as a municipality, consistent with the respective rights of the parties, pursuant to this Agreement, including the right to remove the Property at Licensor's sole discretion. Notwithstanding the foregoing, Licensor agrees to notify Licensee thirty (30) days prior to removal or undertaking extensive maintenance to the tank, such as repainting the tank, which may involve pressure blasting the tank surface, or performing any

work that may require the temporary protection of Licensee's equipment. Such maintenance will be conducted as diligently and expeditiously as possible by Licensor, but Licensor shall not be responsible for Licensee's inability to operate its Telecommunication Equipment while Licensor undertakes extensive maintenance to its facilities located on the Property, or removes the Property itself. Licensor will, however, allow Licensee to utilize another portion of the Property for the placement of a temporary antenna structure, to the extent such alternative may be reasonably feasible. If such maintenance cannot be completed within one hundred twenty (120) days, Licensee shall have the right to terminate the License upon written notice to Licensor, which notice shall be effective upon receipt. If Licensee terminates the License pursuant to the provision herein, Licensee shall, at its own cost and expense, remove all of its equipment and infrastructure from the Property and restore Licensor's Property to its prior condition; however, in that event, there shall be a pro-ration of the License Fee for that year as provided for in paragraph 5 (a) above.

19. Intentionally Omitted

20. SEVERABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall be binding upon the parties and shall be enforceable as though said invalid, illegal or unenforceable provision where not contained herein, provided, however, that if the invalid, illegal or unenforceable provision is material to this Agreement, this Agreement may be terminated by either party on ten (10) days prior written notice to the other party hereto providing that Licensee, at its own cost and expense, remove all of its equipment and infrastructure from the Property and restore Licensor's Property to its prior condition as existing on the date of execution of this License.

21. AMENDMENT; WAIVER

No revision of this Agreement shall be valid unless made in writing and signed by an authorized representative of both parties. No provision of this Agreement may be waived except in writing signed by both parties.

22. BIND AND BENEFIT

All the conditions and covenants contained in this Agreement shall inure to the benefit of and be binding upon the successors and permitted assignees of each of the parties hereto.

23. ENTIRE AGREEMENT

This Agreement and the exhibits attached hereto constitute the entire agreement of the parties hereto and shall supersede all prior offers, negotiations and agreements.

24. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New Hampshire. Any action arising out of or related to the Agreement shall be brought in State Court in New

Hampshire.

25. LICENSEE'S RIGHT TO TERMINATE: Notwithstanding any provision contained in this Agreement, Licensee may terminate this Agreement under the following circumstances and notice given to Licensor in accordance with Paragraph 17. hereof:

(a) Before the Commencement Date, Licensee shall have the right to terminate this Agreement at any time and for any or no reason by delivering prior written notice to Licensor.

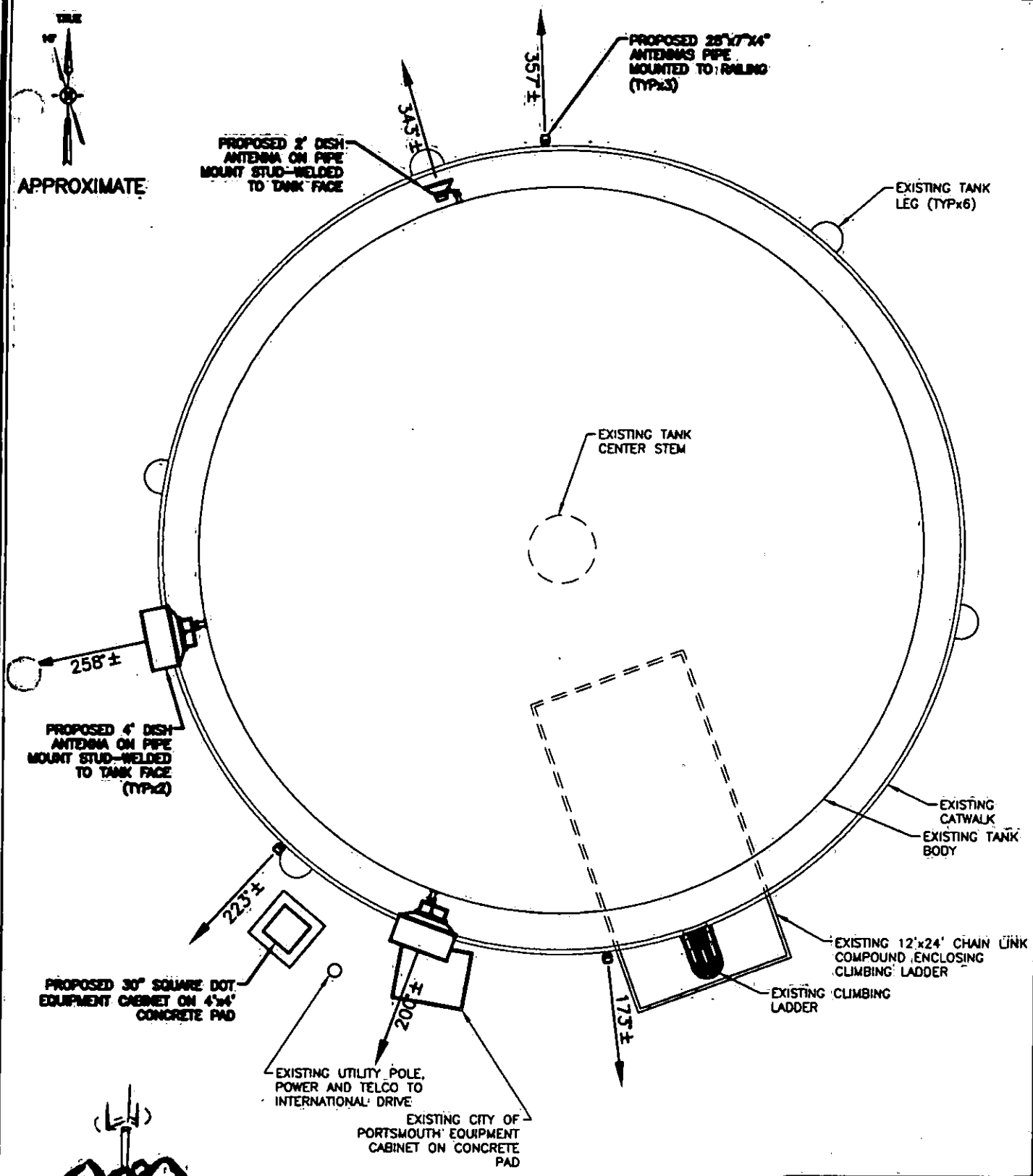
(b) After the Commencement Date, during the Initial Term and any Renewal Term, Licensee shall have the right to terminate this Agreement at any time and for any or no reason by delivering prior written notice to Licensor and paying Licensor a fee equal to six (6) months of the then current License Fee ("Termination Fee"), unless Licensee terminates for reasons set forth in Paragraph 7(a), 24(c) or otherwise set forth within this Agreement, in which event Licensee shall not pay a Termination Fee to Licensor.

(c) After the Commencement Date, during the Initial Term or any Renewal Term, Licensee shall have the right to terminate this Agreement without paying Licensor any Termination Fee by delivering prior written notice to Licensor upon occurrence of any of the following events (which Licensee shall cite and explain in its notice): (i) if Licensor fails to have proper ownership of the Property or authority to enter into this Agreement; (ii) if Licensor is in default of any covenant herein and has not cured such default within the time allotted; (iii) if Licensee, through no fault of Licensee, forfeits or is unable to obtain or maintain any license (including, without limitation, a FCC license), permit or any governmental approval necessary to the installation and/or operation of the Telecommunications Site, and Licensee provides Licensor evidence of such forfeiture, denial or termination, satisfactory to Licensor; (iv) if any modifications of or additions to the wireless communications equipment of other licensees operating on the Property interfere with the operation of Licensee's Telecommunication Site, and such interference is not resolvable in accordance with Section 3(b); (v) if destruction or damage to the Licensed Premises occurs, through no fault of Licensee, or the taking thereof by eminent domain, sufficient, in Licensee's sole discretion, to adversely affect Licensee's use of its Telecommunication Site.

26. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first written above.



GREEN MOUNTAIN COMMUNICATIONS, INC.

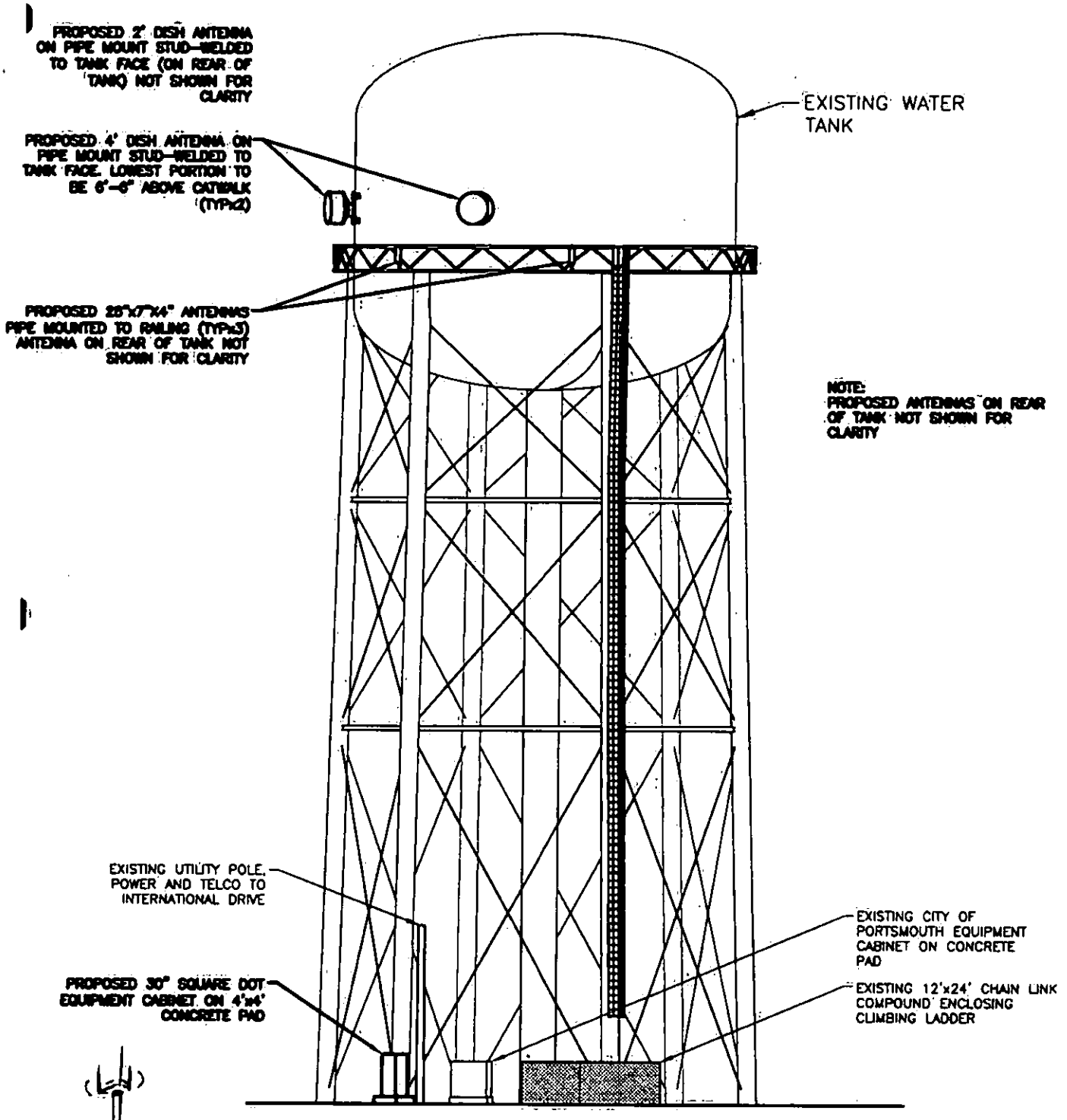
TANK PLAN VIEW

10 0 5 10 20

1"=10'±

Site Coordinates
N 43.077781°
W 70.798888°
Datum: WGS84

Applicant Information	L1 Tank Layout Plan	Site Address
State of New Hampshire Acting through it's Department of Transportation, with an office at 54 TMC, P.O. 483, Concord, NH 03302 ("Licensee")	Date: 03-10-2011 Rev # 1: Rev # 2: Rev # 3:	Access off of: Pinecrest Terrace Portsmouth, NH 03801



GREEN MOUNTAIN COMMUNICATIONS, INC.

SOUTH TANK ELEVATION

20 0 10 20 40

1"=20'±

Site Coordinates
N 43.077781°
W 70.798888°
Datum: WGS84

Applicant Information	L2 Tank Elevation	Site Address
State of New Hampshire Acting through it's Department of Transportation, with an office at 54 TMC, P.O. 483, Concord, NH 03302 ("Licensee")	Date: 03-10-2011 Rev # 1: Rev # 2: Rev # 3:	Access off of: Pinecrest Terrace Portsmouth, NH 03801

LICENSOR

City of Portsmouth
PORTSMOUTH, NEW HAMPSHIRE

John P. Bohenko
Print Name.

BY _____
John P. Bohenko
City Manager

Pursuant to vote of the City Council on September 6, 2011.

LICENSEE

STATE OF NEW HAMPSHIRE,
Department of Transportation

Lyle W. Knowlton, P.E.
Director of Operations
NHDOT
Print Name

BY _____

H\RPS\PEASE\Pease water tank Industrial Drive.doc

8. New Hampshire Department of Transportation (DOT) Request for License to Affix Telecommunication Equipment to Pease Water Tower

City Manager Bohenko reported that the New Hampshire Department of Transportation (NHDOT) is requesting use of the Water Tower licensed by the Pease Development Authority (PDA) to the City located off International Drive at Oak Avenue on the Tradeport. He indicated that the NHDOT proposes to deploy an Advanced Traffic Management System (ATMS) on the southern corridor of Route I-95. Further, the wireless communication network will involve three (3) antennas on the railing of the water tank with support structure on the land near the tank.

City Manager Bohenko advised the Council in order to proceed with the project, NHDOT requires a license from the City to allow the antennas to be attached to the water tank. He also reported that the PDA will be involved as the owner of the property.

City Manager Bohenko indicated that NHDOT will pay the City $250.00 a month and all design, construction, maintenance and risk associated with the antennas will be the responsibility of NHDOT. In addition, the NHDOT desires that the license be for a term of five (5) years with three (3) automatic five (5) year renewal periods.

Councilor Coviello moved to authorize the City Manager to negotiate and execute an agreement with NHDOT to allow use of the International Drive Water Storage Tank by NHDOT and adjoining property for the purpose of installing telecommunication equipment for the purpose of creating and operating an Advance Traffic Management System kept on the southern corridor of Route I-95. Seconded by Councilor Smith.

Councilor Kennedy asked what the support structures would look like. City Attorney Sullivan reported that it would be like a small electrical box.

Assistant Mayor Novelline Clayburgh asked if the PDA had to approve the request. City Attorney Sullivan responded affirmatively.

Motion passed.

9. Report Back Re: On-street Parking at 233 Vaughan Street

City Manager Bohenko requested that Parking and Transportation Manager Frederick to come forward to speak on this matter.

Parking and Transportation Director Frederick said that the Site Review Technical Advisory Committee referred the project to the Parking Committee. He indicated there would be two-hour metered parking on the south side of Vaughan Street and no parking on the north side.

Approval by the Attorney General (Form, Substance and Execution)	
By:	On: 11/14/11
Approval by the Governor and Executive Council	
By:	On: NOV 30 2011

DEPUTY SECRETARY OF STATE