

**RECORDING  
NOT REQUIRED**

**RETURN TO:**

**CLERK, CITY OF TROY  
116 E. MARKET  
TROY, IL 62294**

**CITY OF TROY**

**RESOLUTION 2022 – 23**

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**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE  
AN ELEVATED STRUCTURE LEASE AGREEMENT WITH JARVIS TOWNSHIP**

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**ADOPTED BY THE CITY COUNCIL OF THE CITY OF TROY, ILLINOIS  
THIS 18TH DAY OF APRIL 2022**

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**CITY OF TROY  
RESOLUTION NO. 2022 - 23**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE  
AN ELEVATED STRUCTURE LEASE AGREEMENT WITH JARVIS TOWNSHIP**

**WHEREAS**, the City Council for the City of Troy, Illinois, believes that it is in the best interest of the City and its citizens to enter into an Elevated Structure Lease Agreement with Jarvis Township with regard to the erection and operation of a licensed UHF 464 MHz frequency radio signal antennae on the City's water tower, and for the installation and operation of a radio repeater inside the communication building; and

**WHEREAS**, the City and Jarvis Township have negotiated the terms and conditions of the Agreement attached hereto and incorporated herein as Exhibit A, and the City believes that such terms and conditions are in the best interest of the health, safety and general welfare of its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TROY, ILLINOIS, AS FOLLOWS:**

1. The recitals set forth above are hereby incorporated herein as if fully set forth.
2. The Mayor of the City of Troy, Illinois, is hereby authorized to execute and enter into the attached Elevated Structure Lease Agreement with Jarvis Township, and is further authorized to take all actions and sign all documents necessary to fulfill the intent of this Resolution.
3. This Resolution shall be in effect following its passage, approval and publication as provided by law.

**PASSED** by the City Council of the City of Troy, Madison County, Illinois, approved by the Mayor, and deposited in the office of the City Clerk this 18th day of April, 2022.

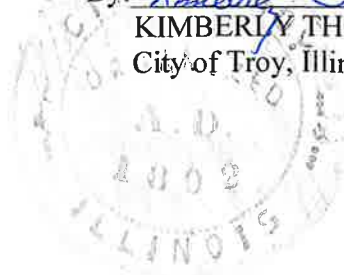
Aldermen Vote:

Dan Dawson	<u>AYE</u>	Sam Italiano	<u>AYE</u>	Ayes:	<u>8</u>
Tim Flint	<u>AYE</u>	Debbie Knoll	<u>AYE</u>	Nays:	<u>0</u>
Elizabeth Hellrung	<u>AYE</u>	Tony Manley	<u>AYE</u>	Absent:	<u>0</u>
Nathan Henderson	<u>AYE</u>	Troy Turner	<u>AYE</u>	Abstain:	<u>0</u>

APPROVED: \_\_\_\_\_  
By: David Nonn  
DAVID NONN, Mayor  
City of Troy, Illinois

ATTEST:

By: Kimberly Thomas  
KIMBERLY THOMAS, Clerk  
City of Troy, Illinois



## **Elevated Structure Lease Agreement**

**THIS LEASE**, entered into the \_\_\_\_ day of \_\_\_\_\_, by and between Jarvis Township, having its principal place of business at 112 N. Main Street, Troy, Illinois 62294 (hereinafter referred to as "Tenant"), and the City of Troy, Illinois, having its principal address at 116 E. Market St., Troy, Illinois 62294 (hereinafter referred to as "Landlord").

### **WITNESSETH:**

**WHEREAS**, Tenant desires to erect and operate a licensed UHF 464 MHz frequency radio signal antennae on the Landlord's water tower and install and operate a radio repeater inside the communication building in accordance with the terms and conditions set forth herein; and

**WHEREAS**, Landlord, in consideration of valuable considerations to be received from Tenant, desires to Lease specific space on the Landlord's water tower to Tenant for the placement of said antenna, subject to compliance with all terms and conditions set forth herein; and

**NOW THEREFORE**, in consideration of the covenants and agreements hereinafter set forth to be performed by the parties hereto, it is agreed by and between Landlord and Tenant as follows:

1. **Term.** The Term of the Lease shall be for twenty (20) years, commencing upon the execution date of this Lease. Either party may terminate the Lease at any time and for any reason by providing the other party ninety (90) days-notice in writing.
2. **Premises, Permitted Use, Priority.** Tenant may mount an antenna, as needed and within reason, on the Landlord's water tower. Tenant agrees that the following priorities of use, in descending order, shall apply in the event of communication interference or other conflict while this Lease is in effect, and Tenant's use shall be subordinate accordingly:
  - a. City of Troy; and
  - b. Public safety agencies, including law enforcement, fire, and ambulance services, that provide public safety in the City of Troy; and
  - c. Other non-governmental agencies where use is not related to public safety; and government-regulated entities whose antenna offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone, not including radio.
3. **Approval Contingency.**
  - a. **Tenant Application.** Tenant's right to use the water tower is expressly made contingent upon it obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. Landlord shall cooperate with Tenant in its efforts to obtain and retain such approvals and shall take no action which would adversely affect the status of the water tower with respect to the Tenant's proposed use thereof.

- b. **Interference Study.** Tenant must pay for the reasonable cost of a radio frequency interference study, to be carried out by a mutually agreeable contractor, pre-approved by both Landlord and Tenant, showing that Tenant's intended use will not interfere with any existing communications facilities. If the study finds that there is a potential for interference that cannot be reasonably remedied, Landlord may terminate this Lease immediately with Tenant.
  - c. **Drawings.** Tenant shall provide Landlord with as-built drawings of the antennae, equipment and improvements installed on the water tower, which show the actual location of all antenna facilities. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and antenna facilities actually placed on the water tower.
4. **Construction; Maintenance.** Tenant shall utilize existing supports on the water tower if available for Tenant's use, or, at Tenant's sole expense, and in accordance with Tenant's plans, Tenant may install adequate support for Tenant's antenna. Said construction and Tenant's subsequent maintenance of the antenna shall be at Tenant's sole risk and cost and shall be in compliance with all applicable laws and ordinances.
5. **Access.** Tenant, at all times during this Lease, shall have access to the water tower in order to install, operate, and maintain its antennae. Tenant shall request access to the water tower twenty-four (24) hours in advance except in an emergency, and Landlord's approval thereof shall not be unreasonably withheld or delayed. In the event it is necessary for Tenant to have access to the water tower at some time other than the normal working hours of Landlord, Landlord may, in its discretion, charge Tenant for whatever expense, including employees' wages, that Landlord may incur in providing such access to Tenant.
6. **No Interference.** Tenant shall, at its own expense, maintain any antennae and/or related equipment on the water tower in a safe condition, in good repair and in a manner suitable to the Landlord so as not to conflict with the use of the surrounding premises. Tenant shall not unreasonably interfere with the operations of any prior agencies using the water tower and shall not interfere with the working use of the water storage facilities thereon or to be placed thereon by the Landlord.
7. **Interference With Higher Priority Users.** If Tenant's antennae causes impermissible interference with higher priority users with pre-existing tenants, Tenant shall take all measures necessary to correct and eliminate the interference. If the interference cannot be eliminated within forty-eight (48) hours after receiving Landlord's written notice of the interference, Tenant shall immediately cease operating its antennae and shall not reactivate operation, except intermittent operation for the purpose of testing, until the interference has been eliminated. If the interference cannot be eliminated within thirty (30) days after Tenant received Landlord's written notice, Landlord may at its option terminate this Lease immediately.

8. **Interference Study - New Occupants.** Upon written notice by Landlord that it has a bona fide request from any other party to lease an area including or in close proximity to the water tower, Tenant agrees to provide Landlord, within sixty (60) days, the radio frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operational by Tenant on the water tower at the time of such request. Landlord may then have an independent, registered professional engineer of Landlord's choosing perform the necessary interference studies to determine if the new applicant's frequencies will cause harmful radio interference to Tenant. Landlord shall require the new applicant to pay for such interference studies, unless the Landlord or other higher priority user requests the use. In that event, the Tenant and all other tenants occupying the water tower shall pay for the necessary interference studies, pro rata.
9. **Interference - New Occupants.** Landlord agrees that it will not grant a future lease on the water tower to any party if such party's use is reasonably anticipated to interfere with Tenant's operation of its antennae. Landlord agrees further that any future lease of the water tower will prohibit a user of equal or lower priority from interfering with Tenant's antennae. Landlord agrees that it will require any subsequent occupants of the water tower of equal or lower priority to Tenant to provide Tenant these same assurances against interference. Landlord shall have the obligation to eliminate any interference with the operations of Tenant caused by such subsequent occupants. If such interference is not eliminated, Tenant shall have the right to terminate this lease or seek injunctive relief against the interfering occupant, at Tenant's expense.
10. **Rent.** Tenant shall pay Landlord \$1.00/year for the antenna location, which Tenant agrees to hereby waive the collection of for the duration of the Term of the Lease, in exchange for other unrelated services shared/provided by/between the parties.
11. **Indemnity of Landlord.** Tenant shall indemnify and hold harmless against and from any and all loss, costs, damages, and claims to the extent of such damage arises from Tenant's negligence or wrongful acts or from any activity, work, or thing done, or permitted by the Tenant on the water tower, and shall further indemnify and hold harmless Landlord against and from any and all loss, costs, damages, and claims to the extent such damages arises from Tenant's negligence or wrongful acts arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or of its agents, contractors, servants, invitees, or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred or paid in connection with any such claim or any action or proceeding brought against the Landlord by reason of Tenant's use of the water tower.

Neither Landlord nor its agents shall be liable for any incidental or consequential damages or for any damage to property of Tenant on the water tower, nor for loss of or damage to any property by theft or otherwise, nor for any injury or damage to persons or property, nor from any other cause whatsoever, unless caused by or due to the gross negligence or willful and wanton conduct of Landlord, its agents, servants, or employees. Tenant shall give prompt notice to Landlord in case of defects in their fixture(s) or equipment.

12. **Rights of Landlord.** The Landlord reserves the following rights: (a) to have unfettered access 24 hours a day 7 days a week 365 days a year to the water tower; (b) to grant to anyone the exclusive right to conduct any particular business or undertaking in the structure; and (c) at any time, and from time to time, whether at the insistence of Landlord or pursuant to government requirements, at Landlord's expense, to decorate or make repairs, alterations, additions, or improvements, whether structural or otherwise, in or to the water tower or any part thereof. Landlord will not knowingly permit the installation of equipment on or within the water tower which will interfere with the reception of signals by Tenant's antenna or operate within the same frequencies as the tenant and Tenant will take no action to interfere with other tenants at said location.
13. **Assignment and Subletting.** Tenant shall not sublet or grant access to the water tower or any part thereof or assign this Lease, or permit any business to be operated in or from the water tower by any person, firm or corporation other than Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld or denied.
14. **Damage or Destruction.** If the water tower is damaged by fire or other casualty, Landlord may elect to immediately terminate this Lease, or if Landlord elects to so repair, Tenant, to the extent of its obligation to maintain and repair its antennae and related equipment on the water tower, shall also promptly repair such damage.
15. **Rules and Regulations.** Tenant shall faithfully observe and strictly comply with the rules and regulations as Landlord may from time to time reasonably adopt.
16. **Requirements by Law.** Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders, regulations, and requirements of all public authorities and any fire underwriter's insurance rating agency or similar organization which may impose any violation, order or duty upon Landlord or Tenant with respect to use of the water tower.
17. **Surrender of Premises.** At the expiration of the Term hereof, Tenant will remove its antenna and other related equipment, and repair any damage which may be caused to the water tower as a result of such removal, reasonable wear and tear excepted.
18. **Site Restoration.** In the event that this Lease is terminated, Tenant shall have 60 days from the termination date to remove its antenna and related equipment from the water tower, repair the site and restore the surface of the water tower. In the event that Tenant's antennae and related equipment are not removed to the reasonable satisfaction of the Landlord, then after 60 days, they shall be deemed abandoned and become the property of the Landlord, and Tenant shall have no further rights thereto.
19. **Liens.** Tenant shall do all things necessary to prevent the filing of any mechanic's, material provider's, or other lien against the water tower or the interest of the Landlord by reason of any work, labor, services, or material performed or supplied or claimed to have been performed or supplied to Tenant, or anyone holding the water tower, or any part thereof, though or under Tenant. If any such lien shall at any time be filed, Tenant shall either

cause the same to be immediately vacated and canceled of record. If Tenant in good faith determines that such lien should be contested, Tenant shall furnish such security, surety bond or otherwise, as may be necessary or be prescribed by law to release the same as a lien. If Tenant shall fail to vacate or release such lien, Landlord may, but shall not be obligated to, vacate or release the same. Tenant shall repay to Landlord, on demand, all sums disbursed or deposited by Landlord pursuant to the foregoing provisions of this paragraph, including Landlord's costs and expenses and reasonable attorneys' fees incurred in connection therewith.

20. **Insurance.** Tenant shall obtain and keep in force during the Term of this Lease a Commercial General Liability policy of insurance protecting Tenant and Landlord (as an additional insured) against claims for bodily injury, personal injury, and property damage based upon, involving or arising out of the use, occupancy or maintenance of the water tower and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$5,000,000 per occurrence. The limits of said insurance required by this Lease or as carried by Tenant shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only.
21. **Waiver of Subrogation.** Provided that, and for so long as the provisions of this paragraph do not result in the cancellation or invalidation of policies of fire and extended coverage or additional perils insurance covering the water tower, Landlord and Tenant agree to, and each does hereby, waive all rights of recovery and causes of action against the other and all parties claiming by, though or under either Landlord or Tenant for any damage or destruction of any property of either Landlord or Tenant caused by any of the perils embraced within the fire and extended coverage and additional perils insurance policies of Landlord and Tenant, or either, notwithstanding that said damage or destruction shall result from the negligence of any or all of the parties in whose favor this agreement operates.
22. **Subordination.** This Lease is and shall at all times, unless Landlord shall otherwise elect, be subject and subordinate to all covenants, restrictions, easements and encumbrances now or hereafter affecting the fee title to the water tower and to all ground and underlying leases and mortgages or financing of refinancing.
23. **Attornment.** Tenant agrees that, in the event of a sale, transfer, or assignment of the Landlord's interest in the water tower or any part thereof, including the water tower, Tenant will attorn to and recognize such transferee, purchaser, ground or underlying lessor or mortgagee as Landlord under this lease.
24. **Estoppel Certificate.** Tenant shall, at any time and from time to time execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect and the dates to which the rental and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any, which are claimed. Any such statement may be relied upon by any

prospective purchaser or encumbrancer of all or any portion of the real property of which the water tower is in part.

25. **Transfer of Landlord's Interest.** In the event of any transfer of Landlord's interest in the water tower or in the real property of which the water tower is a part, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer.
26. **Fees or Commissions.** Tenant covenants, warrants and represents to Landlord that there are no possible claims for broker's commissions or finders' fees in connection with this lease.
27. **Notices.** Every notice to be given under this Lease shall be in writing and shall be sent by Certified or Registered Mail, postage prepaid, return receipt requested, or overnight courier, and shall be addressed to the respective party's mailing address and the same shall be deemed given when received or refused by the addressee. Either party may designate, by similar written notice to the other party, any other address for such purposes. Except with respect to service of a summons and other papers in a lawsuit, each of the parties hereto waive personal or any other service than as provided for in this paragraph. Notwithstanding the foregoing, either party hereto may give the other party telegraphic notice of the need for emergency repairs.
28. **Entire Agreement.**
  - (a) This Lease, the exhibits and addenda, if any, attached hereto set forth all of the covenants, promises, agreements, conditions and understanding, between the parties.
  - (b) All prior conversations or writings between the parties hereto or their representatives are merged herein and extinguished.
  - (c) This Lease shall not be modified, except by a writing subscribed to by the party to be charged, or be canceled by Tenant or the water tower surrendered except with the prior express written authorization of Landlord, unless in accordance with paragraph 1 or as otherwise specifically provided herein.
29. **Successors and Assigns.** Except as otherwise provided in this Lease, all of the conditions, covenants, and agreements of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representative, successors and assigns. Each provision of this Lease to be performed by Tenant shall be construed as both a covenant and a condition, and if there shall be more than one Tenant, they shall all be bound, jointly and severally, by the provisions of this Lease.
30. **Governing Law.** This agreement shall be governed by the laws of the State of Illinois and any disputes, causes of action or claims shall be brought in the Circuit Court for the Third Judicial District, Madison County, Illinois, and the parties hereto consent to the jurisdiction of such Court.

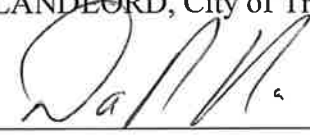


**IN WITNESS WHEREOF**, Landlord and Tenant have executed the Lease, in duplicate, as of the Date(s) set forth below their respective signatures hereto.

LANDLORD, City of Troy, Illinois

TENANT, Jarvis Township

By:



By:



Print:

DAVID PROUN

Print:

DALE A. GRAPPENHAUS

Date:

4-18-22

Date:

4/12/22