

# LEASE

This Lease is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between \_\_\_\_\_, (hereinafter, "Landlord"), and the City of Ashland, an Alabama municipal corporation, (hereinafter, "Tenant").

## 1. PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, a space on the ground with a radius of one foot for installation/operation of one (1) exterior pole that is approximately \_\_\_\_\_ feet tall, located on the certain real property commonly known as \_\_\_\_\_, together with ingress, egress, and utility easement providing access to and from a public road, as described in paragraph 4 below (hereinafter, "the Premises").

Legal description of the Premises, including an aerial map showing where the pole is to be erected, is attached hereto and incorporated herein as Exhibit A.

## 2. TERM

The term of this Lease shall be for a period of thirty (30) years, commencing on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_. Landlord grants to Tenant the right to renew this Lease for two (2) additional terms of five (5) years each. To exercise this renewal option, Tenant shall deliver to Landlord a written notice of Tenant's intent to renew this Lease not less than ninety (90) days before the expiration of the then current Lease term. The initial term and all renewal terms are referred to herein as the "Term."

## 3. INGRESS, EGRESS, AND REGRESS EASEMENT

Landlord hereby grants to Tenant an easement for ingress, egress, and regress over the property of Landlord adjacent to the Premises for the installation of a City of Ashland Police Department camera and maintenance of said camera.

A. The term of this Easement shall commence upon the Commencement Date of this Lease and shall continue until the last to occur of:

- i. The expiration of the Lease term; or
- ii. The removal by Tenant of all of its property from the Premises after expiration of the Lease Term.

B. The location and configuration of the Easement is set forth in Exhibit A hereto. In addition, at Tenant's request and expense, this Easement shall be set forth in a separate Easement Agreement which Landlord and Tenant agree to execute, and which Tenant shall have recorded as an encumbrance on the property of Landlord and binding upon all subsequent owners, successors, and assigns.

## 4. TITLE AND QUIET POSSESSION

Landlord represents and covenants that Landlord owns the Premises and property subject to the Easement in fee simple, free and clear of all liens, encumbrances, and restrictions of every

kind and nature, except for those which currently appear in the chain of title and are reported as exceptions on the commitment for title insurance which Tenant may obtain.

#### **5. SUBORDINATION, ATTORNMENT, AND NONDISTURBANCE**

Tenant agrees that, if requested by Landlord, this Lease shall be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided that Tenant's possession of the Premises shall not be disturbed so long as Tenant shall continue to perform its duties and obligations under this Lease and Tenant's obligation to perform such duties and obligations shall not be in any way increased or its rights diminished by the provisions of this paragraph. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser in a sale pursuant to the foreclosure thereof; provided that Tenant's possession of the Premises shall not be disturbed so long as Tenant shall continue to perform its duties and obligations under this Lease. Tenant's obligations hereunder are conditioned upon receipt by Tenant, now or within ten (10) ten days of the creation of any mortgage or deed of trust, of an Attornment and Nondisturbance Agreement in a form reasonably acceptable to Tenant, executed and acknowledged by Landlord and the holder of any mortgage or deed of trust to which this Lease is, or shall become, subordinate.

#### **6. GOVERNMENTAL APPROVALS AND COMPLIANCE**

During the Term of this Lease, Tenant shall comply with all applicable laws affecting the Premises, the breach of which might result in any penalty to Landlord or forfeiture of Landlord's title to the Premises.

#### **7. NOTICES**

All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given by this Lease shall be in writing and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service, or by overnight express mail, or upon mailing if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Landlord :

To Tenant:

With a copy to:

The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

#### **8. TENANT IMPROVEMENTS**

Tenant shall have the right, at its sole expense, to make such improvements to the Premises as it may deem necessary, including site improvements. Upon termination of this Lease, Tenant shall, to the extent reasonable, restore the Premises to its condition at the commencement of this Lease, except for ordinary wear and tear and damages by the elements or damages over which Tenant had no control. Tenant and Landlord agree that Tenant shall not be required to remove any improvements which are permanent in nature, including but not limited to, foundations, footings,

concrete, or new pole.

#### **9. OPERATING EXPENSE**

Tenant shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities furnished to the Premises and used by Tenant throughout the Term hereof. Landlord shall be responsible for all other costs and expenses associated with or arising from the Premises, including, without limitation, *ad valorem* property taxes.

#### **10. TAXES**

Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Premises.

#### **11. MAINTENANCE**

Tenant shall maintain the Premises in good condition and state of repair.

#### **12. HOLD HARMLESS**

Tenant shall hold Landlord harmless from any liability (including reimbursement of reasonable legal fees and all costs) for damages to any person or any property in or upon the Premises at Tenant's invitation, or for damages to property resulting from the physical structure or actions of Tenant (including damages caused by or resulting from the existence of the installed, kept, stored, or maintained at the risk of Tenant. Landlord shall not be responsible for any loss or damage to equipment owned by Tenant which might result from tornadoes, lightning, wind storms, floods, or other Acts of God. Neither Landlord nor Tenant shall in any event be liable in damages for each other's business loss, business interruption, or other consequential damages of whatever kind or nature, regardless of the cause of such damages, and each party, and anyone claiming by or through them, expressly waives all claims for such damages.

#### **13. TENANT'S PERFORMANCE AND SURRENDER**

Tenant shall pay the rent and all other sums required to be paid by Tenant hereunder in the amounts, at the times, and in the manner herein provided, and shall keep and perform all terms and conditions hereof on its part to be kept and performed, and at the expiration or sooner termination of this Lease, surrender to Landlord the Premises subject to the other provisions of this Lease.

#### **14. RIGHT TO TERMINATE**

Tenant may terminate this Lease, at its option, after giving not less than seven (7) days' notice to Landlord, if:

A. Tenant determines that technical problems that cannot reasonably be corrected preclude Tenant from using the Premises for its intended purpose;

B. Tenant determines that Tenant does not have acceptable and legally enforceable means of ingress and egress to and from the Premises;

C. The premises are damaged or destroyed to an extent that prohibits or materially interferes with Tenant's use of the Premises.

D. For the convenience of the Tenant, with or without cause, upon thirty (30) days advance notice for any reason whatsoever.

If Tenant terminates the lease under this provision, it shall be relieved of all further liability under this lease except its obligation to remove its equipment and improvements as provided in this lease. Any rental fees paid before the termination shall be retained by Landlord. Landlord may terminate this lease for any reason upon thirty (30) days' notice.

#### **15. BINDING ON SUCCESSORS.**

The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

#### **16. ACCESS TO PREMISES**

In addition to the Easement granted in Section 5, Tenant and its officers, employees, agents, and contractors shall have full access to the Premises during the Lease Term.

#### **17. GOVERNING LAW**

The parties intend that this Lease and the relationship of the Parties shall be governed by the laws of the State of Alabama.

#### **18. ENTIRE AGREEMENT**

All of the representations and obligations of the parties are contained herein, and no modification, waiver, or amendment of this Lease, or of any of its conditions or provisions, shall be binding upon a party unless in writing signed by that party or a duly authorized agent of that party empowered by a written authority signed by that party. The waiver by any party of a breach of any provision of this Lease shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Lease.

#### **19. SURVEY AND TESTING**

Tenant shall have the right to survey, soil test, and make any other investigations necessary to determine if the Premises is suitable for its desired purpose. If Tenant, within the above-stated time, determines that for any reason the Premises is not suitable, this Lease, upon written notice given to Landlord, shall become null and void; provided that at Tenant's sole expense the Premises shall be promptly restored to its condition before the testing and investigations.

#### **20. OIL, GAS, AND MINERAL RIGHTS**

Landlord does not grant, lease, let, or demise hereby, but expressly excepts and reserves from this Lease all rights to oil, gas, and other minerals in, on, or under and that might be produced or mined from the Premises; provided, however, that no drilling or other activity will be undertaken on the surface of the Premises to recover any oil, gas, or minerals during the Term hereof. This Lease is given and accepted subject to the terms and provisions of any valid oil, gas, and mineral lease covering the Premises or any part thereof, now of record in the office of the County Clerk, provided, however, that any future oil, gas, or mineral lease covering the above-described lands or any part thereof shall be in all respects subordinate and inferior to the rights, privileges, powers, options, immunities, and interests granted to Tenant under the terms of this Lease.

## 21. HAZARDOUS WASTE

A. The term Hazardous Materials shall mean any substance, material, waste, gas, or particulate matter that is regulated by any local governmental authority, the State of Alabama, or the United States Government, including, but not limited to, any material or substance that is:

- i. Defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of state or local law;
- ii. Petroleum;
- iii. Asbestos;
- iv. Polychlorinated biphenyl;
- v. Radioactive material;
- vi. Designated as a "hazardous substance" by section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1317);
- vii. Defined as a "hazardous waste" pursuant to section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903); or
- viii. Defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601). The term "Environmental Laws" shall mean all statutes specifically described in the foregoing sentence and all applicable federal, state, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Materials.

B. Landlord represents and warrants that, to the best of Landlord's knowledge:

- i. The Premises have not been used for the use, manufacturing, storage, discharge, release or disposal of hazardous waste;
- ii. Neither the Premises nor any part thereof is in breach of any Environmental Laws;
- iii. There are no underground storage tanks located on or under the Premises; and
- iv. The Premises are free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner inaccurate or any such warranty is in any manner breached during the term of this Lease (collectively, a "Breach"), and if such Breach gives rise to or results in liability (including, but not limited to, a response action, remedial action, or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Landlord shall promptly take any and all remedial and removal action as required by law to clean up the Premises, mitigate exposure to liability arising from, and keep the Premises free of any lien imposed pursuant to, any Environmental Laws as a result of such Breach.

C. In addition, Landlord agrees to indemnify, defend, and hold harmless Tenant, its officers, partners, successors and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/ or

remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties, and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, Court Costs, and all other out-of-pocket expenses, suffered or incurred by Tenant and its grantees as a result of any Breach, or any matter, condition, or state of fact involving Environmental Laws or Hazardous Materials that existed on or arose during the term of this Lease and which failed to comply with:

- i. The Environmental Laws then in effect; or
- ii. Any existing common law theory based on nuisance or strict liability.

D. Landlord represents and warrants to Tenant that Landlord has received no notice that the Property or any part thereof is, and, to the best of its knowledge and belief, no part of the Property is located within an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers, or any other governmental body as being subject to special hazards.

E. The covenants of this paragraph shall survive and be enforceable and shall continue in full force and effect for the benefit of Tenant and its subsequent transferees, successors, and assigns and shall survive the term of this Lease and any renewal periods thereof.

## **22. HEADINGS**

The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of those sections or subsections.

## **23. TIME OF ESSENCE.**

Time is of the essence for Landlord's and Tenant's obligations under this Lease.

## **24. SEVERABILITY**

If any section, subsection, term, or provision of this Lease, or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of that section, subsection, term, or provision of the Lease or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term, or provision of this Lease shall be valid or enforceable to the fullest extent permitted by law.

## **25. FURTHER ASSURANCES**

Each of the parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence, or confirm this Lease or any other agreement contained herein in the manner contemplated hereby.

## **26. Right to Record**

Upon the request of Tenant, Landlord agrees to promptly execute and deliver to Tenant a Memorandum of Lease in recordable form setting forth the general terms of the Lease, and such other information as Tenant shall request.

**27. Interpretation**

Each party to this Lease and its counsel, if counsel is retained by either or both parties, have reviewed and revised this Lease. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or of any amendments or exhibits to this Lease.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**LANDLORD:**

**TENANT:**

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_