Town of Norton, Massachusetts

Request for Proposals

Lease of Antenna Space and Land for Wireless Communications Facility

Cottage Street Water Tank, Norton

December 19, 2019

Proposals Due:
Thursday, January 30, 2020
11:00 A.M.

Office of the Town Manager
Norton Town Hall
70 East Main Street
Norton, MA 02766
Town of Norton

Request for Proposals

Lease of COTTAGE STREET Water Storage Tank Site for Telecommunications Facility

I. Overview

The Town of Norton, Massachusetts, acting through its Board of Selectmen, the awarding authority, is accepting proposals to lease space at the Town-owned water storage tank located on Cottage Street and a portion of the land at the perimeter of the water tank to a telecommunications provider or company for the purpose of installing on the tank and on approximately 300 square feet of land at the base of the tank personal communications services, including approximately twelve (12) antenna spaces, an equipment pad or shelter, cables, transmission and utility wires, poles, conduits, pipes, accessories and related equipment and improvements.

The term of the lease will be ten (10) years, with options to extend the term of the lease for two (2) additional terms of five (5) years each, for a term of twenty years (20) in total.

The Request for Proposal (RFP) is available at the Town Manager’s Office, Norton Town Hall, 70 East Main Street, Norton, MA 02766, from 8:30 A.M. to 4:30 P.M. and at www.nortonma.org. The contact person is Michael Yunits, the Town Manager.

Proposers may correct, modify or withdraw proposals, in writing only, not less than forty-eight (48) hours prior to the date set for proposal opening. Corrections or modifications must be in a sealed envelope when submitted.

Each original proposal must be delivered together with five (5) additional copies in a sealed envelope clearly marked "Request for Proposals: Cottage Street Water Tank Lease - Telecommunications Facility":

Proposals will be accepted until Thursday, January 30, 2020, at 11:00 A.M. at the Town Manager’s Office at the Norton Town Hall.

The annual rent shall not be less than Thirty Thousand Dollars ($36,000) per year, and the rent shall increase annually during the term of the lease by three percent (3%). Proposers are encouraged to offer more than the minimum rent as price is one of the comparative criteria.

All proposals shall remain open and available for acceptance by the Town for a period of one hundred twenty (120) calendar days from the deadline for submission, or until any and the lease has been executed, or this Request for Proposals is cancelled, whichever occurs first.

The Town of Norton reserves the right to reject any or all proposals, waive informalities, and to award the lease in the best interest of the Town. Any proposal received after the time and date specified shall not be considered.
II. Introduction

The Town of Norton, Massachusetts, owns a parcel of land located on Cottage Street, shown on Assessors Map 21 as Parcel 102 (the “Site”) and owns and operates thereon an elevated storage tank as part of the Town’s municipal drinking water distribution system (the “Water Tank”). The Board of Selectmen has determined that there is available surplus space at the Water Tank, and has decided to offer to a telecommunications the non-exclusive right to use portions of the Water Tank for the purpose of installing and operating wireless communications services, including approximately twelve (12) antenna spaces, an equipment pad or shelter, cables, transmission and utility wires, poles, conduits, pipes, accessories and related equipment on the Water Tank and on approximately 300 square feet of land at the base of or near the Water Tank, under a non-exclusive ten (10)-year term lease agreement which may be extended for two (2) additional terms of five (5) years each at the tenant’s option.

The Town's objectives in offering this Request for Proposals (this “RFP”) are to: (a) control the potential number of telecommunication facilities in the Town; (b) ensure that any telecommunications facilities which are constructed are as innocuous as possible; and (c) identify a reliable and experienced firm capable of providing and supporting the services requested.

This RFP describes all of the terms, conditions and minimum requirements, which must be the basis of any proposal response.

If a contract is awarded, it shall be awarded to the responsible and responsive proposer whose proposal is deemed the most advantageous, taking into consideration the price and the evaluation criteria set forth in this RFP. The lease shall be on terms substantially similar to the Lease Agreement attached hereto. The Board of Selectmen reserves the right to reject any or all proposals and to select the proposal that the Selectmen deem to be in the best interests of the Town of Norton.

The successful proposer shall be fully responsible for obtaining all permits in accordance with all applicable federal, state, and local regulations and bylaws, and for all costs of construction and maintenance of the facilities.

III. The Site, the Water Tank, the Leased Premises, and Site Visit

The Water Tank is located on a parcel of Town-owned land located on Cottage Street, shown on Assessors Map 21 as Parcel 102 and is a portion of the property described in an instrument recorded with the Bristol (South) District Registry of Deeds in Book 1272, Page 276 (the “Site”). The Water Tank was constructed in the 1950’s and is a welded steel tank. The Water Tank is 185 ± ft. in height.

Throughout the duration of the lease, the Town will use the Water Tank as an active part of the Town’s water distribution system. The Water Tank shall be used primarily for water supply purposes, and such use will take priority over any other use. Under the lease agreement, the successful proposer will be allowed to install, operate, and maintain approximately twelve (12) antennas on the exterior of the Water Tank. The successful proposer will also be allowed to
install, operate and maintain related equipment on a ground location at the base of or near the Water Tank for ancillary electrical and mechanical equipment, as needed. The only equipment that will be allowed on the exterior of the Water Tank itself is the antenna or antenna systems. All equipment, installation, operation, and maintenance shall be in accordance with the terms of the technical requirements outlined in this RFP.

The Town makes no representations of any kind with respect to the Site, the Water Tank or its adequacy to support the equipment or its appropriateness for the intended use. Proposers will be permitted to inspect Town records relating to the Site and the Water Tank and will have access to the Site to make inspections, perform engineering surveys and tests at their own expense and with the prior written approval of the Town to assure themselves that the Site and the Water Tank will be suitable for the proposed use.

The Town reserves the right to install, provide access to, lease space and/or negotiate future lease agreements on additional antenna arrays and to contract in the best interests of the Town of Norton.

The Superintendent of the Water Department will conduct a site visit on the Property on Tuesday, January 14, 2020. Interested proposers should meet at 10:00 A.M. at the Property. Proposers are advised to do their own due diligence, and that neither the Town nor any of its agents or representatives is responsible for representations made regarding the physical condition of the Property.

IV. Proposal Award Fee

The successful bidder shall, within three (3) days of receipt of the notice of award, pay the Town a non-refundable proposal award fee of Five Thousand Dollars ($5,000.00) in the form of a company check or a certified check, treasurer's check or cashier's check issued by a responsible bank or trust company and payable to the Town of Norton, in order to partially defray the costs incurred by the Town this RFP, leasing, and construction process and to guarantee diligent pursuit of a lease with the Town.

V. Price

The lease price components will be evaluated on the basis of the most advantageous price for the initial ten-year term of the lease. Proposals shall specify an annual rent for the first year (base rent of lease) in an amount not less than Thirty Thousand Dollars ($36,000) per year ($3,000 per month), and shall increase annually during the term of the lease by a minimum of three percent (3%).

At least twenty-five (25%) percent of all rent the successful bidder receives from any sublessee or licensee, if any, is to be paid to the Town.
VI. **Installation of Municipal Equipment**

The Water Tank is presently equipped with antennas and repeaters used by the Town to monitor its water supply equipment system and for fire and police. At the same time that a successful bidder, who currently does not have equipment on the Site, installs its antenna and equipment on the Site, the bidder shall, at the Town’s request, install on the Water Tank and the Property additional communications equipment for future microwave link, police/fire/dpw radios, and electric, telephone, and other utilities for the foregoing and related appurtenances, and provide antenna mast space, for use by the police, fire, water and other departments of the Town, if any, without charge to the Town.

VII. **Terms Relative to Use of Water Tank**

Bidders are informed that the Town will continue to use the Water Tank for water supply purposes. The mounting of equipment on the Water Tank shall not interfere with or degrade the long-term functioning of the Water Tank. No construction and installation work may commence unless and until the successful bidder obtains all necessary permits and approvals as further provided in this RFP, and, at the Town’s request, furnishes a structural assessment, prepared by a Massachusetts Registered Professional Engineer, attesting that the Water Tank, including railings, ladders, walkways and supports, will not be damaged or compromised structurally by the attachment of antennas and that the tank can structurally support the antennas. The location for access to the facility shall be coordinated with the Town and shall not interfere with the operations and maintenance of the Water Tank.

The installation and maintenance of any equipment on the Water Tank by the successful bidder shall conform to the Bureau of Resource Protection “Policy on Antenna and/or other Appurtenances proposed to be attached to the Public Drinking Water Storage Tanks or on Water Supply Land”, effective date 6-18-89, as updated, or as superseded by more recent applicable policies, standards or regulations.

All work must be performed in a good and workmanlike manner, and in a manner that will not adversely affect the structural integrity of the Water Tank or any other structures thereon. The Town reserves the right to request that the tenant remove its equipment or any part thereof from the Water Tank or to turn the antennas off, at the tenant’s own expense, at any time and from time to time, when the maintenance or repair of the Water Tank or the Site necessitates said removal, including repainting of the Water Tank, provided, however that (i) the Town shall give the tenant notice of such removal/shut-off at least sixty (60) calendar days prior to such removal or interruption, except in the case of emergency, where notice will be given as soon as practicable, and (ii) the relocated area is reasonably comparable to the leased premises. If the tenant cannot operate its equipment at the relocated area, the tenant may, for the duration of such period of removal or shut-off, install and use a cell-site-on-wheels at a mutually acceptable alternative location on the Site until such time that the inspection and/or maintenance has been completed and the tenant can reinstall or turn back on its antennas at the original location on the Water Tank. Any connecting utilities or other connecting apparatus between the structures to be constructed by the tenant and the Water Tank shall be installed underground.
The successful bidder shall pay all costs for preparing, filing, and pursuing the application which the Town will submit to the Department of Environmental Protection for approval to install communications equipment on the Water Tank.

The successful bidder shall certify that it will employ best practices and qualified experts acceptable to the Town to avoid any damage the Water Tank, in general, and specifically to the proposed attachment measures, tank coating or the ability to apply any future tank coatings; and that it will assume full responsibility for the cost of immediate repair and/or replacement of the components of the Water Tank, water supply system, land, structures and environment damaged by the installation, operation, and maintenance of the successful bidder’s equipment on the Water Tank and the Site. Upon the attachment of the equipment to the Water Tank, the bidder shall certify by evaluation by independent experts qualified to do so and approved by the Town that the installation of the new facilities on the Water Tank have maintained the structural integrity of the Water Tank.

Equipment and antennas mounted on the Site and on the Water Tank, and the emissions from such equipment and antennas, shall not degrade or interfere with the operation, maintenance and performance of the Town on communications operating from the Site. The successful bidder shall, at the Town’s request, undertake an Intermodulation Study to ensure that the combinations of two or more radio frequency emissions at the Property do not cause interference with the existing wireless, public safety and municipal communication users at the Property.

VIII. Instructions to Bidders

1. Failure to complete the enclosed forms, answer any questions, or provide the required documentation will result in the proposal being deemed non-responsive and will result in rejection of the proposal, unless the Town determines that such failure constitutes a minor informality, in accordance with the provisions of G.L. Chapter 30B.

2. All requests for clarification and any questions about information contained in this RFP must be submitted in writing and addressed to:

   Town Manager’s Office  
   Norton Town Hall  
   70 East Main Street  
   Norton, MA 02766

   No requests or questions will be accepted after 11:00 A.M. on Wednesday, January 15, 2020. The name, address, email address, telephone number and fax number of the person to whom such additional information shall be sent must be provided by the bidder. Answers to questions shall be provided in writing to all bidders. Only answers provided by the Town in writing may be relied upon by the bidders.

3. One original and five copies of the proposal must be received in the Office of the Town Manager by 11:00 A.M. on Thursday, January 30, 2020. Proposals must be delivered in a sealed package, plainly marked "Request for Proposals: Cottage Street Water Tank Lease - Telecommunications Facility".
4. If at the time of the deadline for submission, the Town offices are closed due to uncontrolled events such as fire, weather, or building evacuation, the proposal submission deadline will be postponed until 12:00 Noon on the next normal business day that the Town offices are re-opened and, in such case, proposals will be accepted until such date and time.

5. The proposal shall include a cover letter on company letterhead signed by a person who is authorized to contractually bind the bidder, including the bidder’s name, address, and telephone number. It should state the subject as “Water Tank Lease” and should state the name, title, and phone number of the organization’s primary contact person for this RFP if he/she is other than the signer.

6. Bidders may correct, modify, or withdraw proposals in writing not less than 48 hours prior to the proposal opening. Oral communications will not be accepted. Corrections or modifications must be submitted in a sealed envelope when submitted.

7. A bidder’s proposal will remain in effect for a period of one hundred twenty (120) calendar days from the deadline for submission, until a lease has been executed, or until this RFP is canceled, whichever occurs first.

8. In the case of a discrepancy on the Price Summary Form between written and numerical amounts, the written amount shall prevail.

9. Each proposal shall include completed Certificates of Non-Collusion and of Tax Compliance, Disclosure of Financial Interest in Real Estate Transactions, and Certificate of Authority, forms of which are attached to this RFP.

10. The successful bidder will be responsible for securing all necessary permits, state and local, as required for the operation and maintenance of the wireless communications facilities at the Water Tank Site.

11. The Town reserves the right to seek additional information or revised proposals from bidders at any time prior to selection of a lessee through written notice to all bidders.

12. **The Town and the successful bidder shall enter into a lease substantially similar to the Lease Agreement attached hereto and incorporated herein** within ninety (90) days from the date on which the Town notifies the successful bidder that it has been awarded the lease. If the parties fail to execute a lease within ninety (90) days of notice of award, the Town may select the next most advantageous offer.

13. The successful proposer must, within three (3) days of receipt of notice of award, pay a non-refundable proposal award fee of Five Thousand Dollars ($5,000.00) in the form of a certified check, treasurer’s check or a cashier’s check issued by a responsible bank or trust company and payable to the Town of Norton, in order to partially defray the costs incurred by the Town, this RFP, leasing and construction process and to guarantee due diligence in pursuit of a lease with the Town.
IX. **Evaluation of Proposals**

All proposals will be reviewed in accordance with the provisions of G.L. Chapter 30B by the Board of Selectmen, and final selection will be based on the results of the evaluation and analysis of the information and materials required under this RFP. The lease will be awarded to a bidder who meets the evaluation criteria, submits the required documents, has the demonstrated experience and resources to fulfill the requirements of this RFP, and best meets the comparative evaluation criteria, subject to successful negotiation of final lease terms.

The Town may make such investigation as it deems necessary, including interview with proposers, to determine the ability of the bidder to install and telecommunications facilities on the leased municipal property. The bidder shall furnish to the Town, all such information and data for this purpose as the Town may request.

Bidders must specify their regular place of business and demonstrate their ability to commence the construction or installation and submit data for this purpose as the Town may request.

The Town shall award a lease, if at all, to the responsive and responsible bidder whose proposal is deemed by the Town to be the most advantageous, taking into consideration price and the evaluation criteria stated in this RFP. The Town reserves the right to reject any and all proposals if such rejection is deemed to be in the best interest of the Town. The Town also reserves the right to waive any informalities in the proposal process and to accept the proposal deemed to be in the best interest of the Town.

The successful bidder shall, within three days of receipt of the notice of award, pay the Town a **non-refundable proposal award fee of Five Thousand Dollars ($5,000.00)** in the form of a certified check, treasurer's check or cashier's check issued by a responsible bank or trust company and payable to the Town of Norton, in order to partially defray the costs incurred by the Town in the RFP, leasing, and construction process, including review of the proposed plans and specifications, and to guarantee diligent pursuit of a lease with the Town.

X. **Lease Requirements**

The award of a lease for the installation of the wireless communications facility on and at the Water Tower Site (the “Facility”) pursuant to this RFP **shall be on terms substantially similar to the Lease Agreement attached hereto and incorporated herein**. The lease shall be entered into by the Town and the successful proposer within thirty (30) days of the notice of the award. If the parties fail to execute a Lease within thirty (30) days of notice of award, the Town may select the next most advantageous offer.

XI. **Comparative Evaluation Criteria**

The purpose of information requested in this Section is to assist the Board of Selectmen in evaluating each proposal. Responses should be complete and full:
1. **Total Annual Net Fee Income During the Lease Term**

2. **Financial Strength and Credit Worthiness**

   A Highly Advantageous rating will be given to a bidder who has more than sufficient assets to enter into the lease agreement and make payments for the total annual lease value set forth in the proposal. In particular, this highest rating will be reserved for bidders whose Dun and Bradstreet (or equivalent) classification for financial strength is “3A” or better, with a composite credit appraisal of 1.

   An Advantageous rating will be given to any bidder who has sufficient assets to enter into the lease, as shown by its Dun and Bradstreet (or equivalent) classification for financial strength of “1A” or above, with a composite credit rating of at least 2. Ratings of parent or sister companies who have only limited liability for the bidder shall not be considered.

   An Unacceptable rating will be given to a bidder who does not have sufficient assets to enter into the lease, as shown by its Dun and Bradstreet (or equivalent) classification for financial strength of lower than 1A.

3. **Most Aesthetically Appropriate Use of the Property**

   A Highly Advantageous rating will be given to a bidder whose proposed plans for the Site involve the most aesthetically appropriate use of the site by minimizing the visual and environmental impacts of the proposed facilities, consistent with the requirements of the Town of Norton’s bylaws. Design measures taken to minimize the visual impact of the equipment will contribute to a Highly Advantageous rating. The successful bidder shall be responsible for determining compliance with applicable zoning bylaws.

   An Advantageous rating will be given to a bidder whose proposed plans for the Site comply with the requirements of the Town’s Zoning Bylaw relative to such installations, and which use standard installation techniques, with only modest efforts in the area of mitigating visual impacts and protecting the environment.

   An Unacceptable rating will be given to a bidder whose proposed plans for the Site are not for wireless communication purposes or otherwise do not comply with the Town’s Zoning Bylaw and the provisions of this RFP.

4. **Technical Expertise and Capabilities Documentation of Need**

   A Highly Advantageous rating will be given to a bidder who has significant technical expertise and capabilities for the construction, operation and maintenance of wireless communications towers, antennas, and other equipment. In particular, this highest rating will be reserved for bidders whose experience, professional licenses and accreditations, and professional references demonstrate that the bidder is capable of developing a specialized approach to the operation and maintenance of the wireless communication
tower, antennas and communications equipment in a manner that is suitable for the lease. To obtain this rating, bidder must also provide detailed documentation of the need for such facilities to be located at this site. The material submitted pursuant to this RFP will be used to evaluate this criterion, and compelling argument must be made of the need for proposed installation at this site.

An Advantageous rating will be given to a bidder who has some technical expertise and capabilities for the operation and maintenance described above, and who provides adequate documentation of need in the Town of Norton for these facilities.

An Unacceptable rating will be given to a bidder who has no specific technical expertise or capabilities for operation and maintenance described above and who does not adequately describe the need for these facilities to be located in the Town of Norton.

5. **Experience with Similar Projects**

A Highly advantageous rating will be given to a bidder who has significant experience in the development and operation of facilities that are similar in nature, size, and scope, including installation of antennas on existing public water storage tanks. In particular, this highest rating will be reserved for bidders who have significant experience in dealing with municipalities and leasing of public land, who have developed sites in Massachusetts, and who have experience using design methods and techniques to minimize visual impacts of the proposed equipment.

An Advantageous rating will be given to a bidder who has experience in the development and operation of similar projects.

**XII. Document Submission Requirements**

The following information shall be provided:

**A. Information on the Proposer:**
- Name, address, size and organizational structure of the proposer’s firm;
- Name and title of the person authorized to act for the proposer; this person must sign the proposal; *and*
- Name and telephone numbers of the firm's contact person, technical consultant and project manager.

**B. Background of the Proposer:**
- List the locations of at least three (3) wireless facilities the proposer has installed in the last two years and the name and telephone number of the owners of the sites;
- List all current lease relationships with Massachusetts’s municipalities and the Commonwealth of Massachusetts or any of their sub-entities;
- List three (3) recent projects that the proposer has completed that are most similar to the structure being proposed with the names and telephone numbers of references;
• List any proceeding by the federal, state or local government to revoke any license or permit or to impose any fines or penalties relating to the location or operation of wireless communication facilities owned or operated by the proposer; and
• List any litigation involving the proposer concerning the location or use of a wireless communication facility in Massachusetts over the last three (3) years, giving the names of the parties, the court and case number and the outcome of such litigation.
• A copy of the bidder’s most recent audited annual financial statement.
• Evidence of the current Dun & Bradstreet (or equivalent) rating of the bidder itself.

C. Description
• Site plan showing the design of the facilities to be installed on the Water Tank and any structures to be erected on the site, identifying the exact footprint for such structures;
• Plans, photographs and computer renderings of the elevations of all buildings and structures and how the site will be seen from various locations on Cottage Street and photographs of similar facilities shall be provided;
• List and description of equipment to be installed (Note: detailed specifications of proprietary equipment is not required);
• Description of electrical utility power requirements and of the means to be employed to supply backup power to the lessee’s facilities; and
• Landscape plans and security structures proposed.

D. Completed Forms (forms attached)
• Completed Certificate of Non-Collusion and Statement of Tax Compliance;
• Certificate of Authority;
• Disclosure of Beneficial Interests in Real Property Transaction form, as required under M.G.L. Chapter 7, Section 39A; and
• Certificate of authority, if proposer is other than an individual.

E. Proposed Time Line for Completing the Installation
• List schedule for permitting, construction timetable, and the date of commencement of projected operations.

F. Price Proposal
• Base lease price, which shall be no less than $36,000 per year ($3,000 per month).
Checklist

A complete proposal must have the following items:

One original and five (5) copies of the completed Project Proposal, which includes:

___ Information on the offeror
___ Background on the offeror
___ Description of facility and proposed time line
___ Certificate of Non-Collusion and Statement of Tax Compliance (Form Attached)
   (Please note that failure to submit the certificate of non-collusion and statement of tax
   compliance will result in immediate disqualification of the proposal)
___ Disclosure of Beneficial Interest form (form attached)
___ Certificate of Authority (form attached)
___ Price Proposal (form attached)

471281/NORT/0229
TOWN OF NORTON

REQUEST FOR PROPOSALS
COTTAGE STREET WATER TANK LEASE

PRICE PROPOSAL

The undersigned proposed to lease a portion of the Town owned water tank and approximately 700-750 square feet of land at the perimeter of the tank on Cottage Street (Water Tower) in Norton, MA, for the sole purpose of erecting, operating and maintaining a cellular/wireless communication facility to provide personal communications services, including antennas, an equipment pad or shelter, cables, transmission and utility wires, poles, conduits, pipes, accessories and related equipment and improvements.

$______________ Annual payment for the first year (base year) of the lease ($36,000 minimum bid required), subject to an annual escalation during each year of the lease at the rate of______________ percent (___%) (minimum increase of three percent (3%) required).

______________ percent of any rent or fee received by the bidder from any subleases or licenses.

Name of Bidder:
(Company)__________________________________________________________

Signature:___________________________________________________________

Date:__________________________, 20____
TOWN OF NORTON

REQUEST FOR PROPOSALS
COTTAGE STREET WATER TANK LEASE

TAX COMPLIANCE AND NON-COLLUSION STATEMENTS

Any person or corporation that fails to date, sign with original signature, and submit the following statements shall not be awarded this contract.

Certificate of Non-Collusion

The undersigned certified under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization entity, or group of individuals.

Name of Person Signing Proposal

Name of Business

Date

Statement of Tax Compliance

I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

Countersignature of Individual or Corporate Name (mandatory)

By: Corporate Officer (mandatory)

Federal Identification No.

* Approval of a contract or other agreement will not be granted unless this certification clause is signed by the applicant.

471281/NORT/0229
TOWN OF NORTON

REQUEST FOR PROPOSALS
COTTAGE STREET WATER TANK LEASE

DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) Real Property: A portion of the parcel of land located on Cottage Street, Norton, which land is shown on Assessors Map 21 as Parcel 102, and is a portion of the premises described in the instrument recorded with the Bristol (South) District Registry of Deeds in Book 1272, Page 276.

(2) Type of Transaction, Agreement, or Document: Lease of Property by Town of Norton.

(3) Public Agency Participating in Transaction: Town of Norton

(4) Disclosing Party’s Name and Type of Entity (if not an individual):

(5) Role of Disclosing Party (Check appropriate role):

_____ Lessor/Landlord  X  _____ Lessee/Tenant

_____ Seller/Grantor  _____ Buyer/Grantee

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

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DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

(7) None of the above-named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert "none" if none):

(8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms-length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.
(9) This Disclosure Statement is hereby signed under penalties of perjury.

Print Name of Disclosing Party (from Section 4, above)

Authorized Signature of Disclosing Party Date (mm / dd / yyyy)

Print Name & Title of Authorized Signer

471281/NORT/9229
TOWN OF NORTON

REQUEST FOR PROPOSALS
COTTAGE STREET WATER TANK LEASE

CERTIFICATE OF AUTHORITY

Give full names and residences of all persons and parties interested in the foregoing proposal:

(Notice: Give first and last name in full; in case of Corporation give names of President, Treasurer; and in case of Firms give names of the individual members.)

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Kindly furnish the following information regarding the Proposer:

(1) If a Proprietorship

Name of Owner: ____________________________________________

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Business: ___________________________          ___________          ___________

Home: _______________________________          ___________          ___________

(2) If a Partnership

Full names and address of all partners:

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<th>Names</th>
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(3) **If a Corporation**

Full Legal Name:

State of Incorporation:

Principal Place of Business: ZIP

Qualified in Massachusetts: Yes No

Place of Business in Massachusetts: ZIP CODE TEL. #

(4) **If a Trustee**

Full Legal Name of Trust:

Recording Information on Declaration of Trust:

Authorized Signature of Proponent:

Title:

Date:
LEASE AGREEMENT

This Lease Agreement (this “Lease”) is entered into as of this _____ day of ____________, 2020, by and between the Town of Norton (the “Town”), acting by and through its Board of Selectmen, having an address of 70 East Main Street, Norton, Massachusetts 02766, and __________________ (“Tenant”), a __________________ company, having an address at ____________________.

Recitals

Whereas, the Town owns certain real property located on East Main Street, shown on Town of Norton Assessors Map 21 as Parcel 102, and being a portion of the premises described more particularly in the instrument recorded with the Bristol (North) District Registry of Deeds (the “Registry”) in Book 1252, Page 276 and (the “Property”). There is a water storage tank (the “Water Tank”) on the Property;

Whereas, the Town issued a Request for Proposal dated December 19, 2019, soliciting proposals for the lease of space on the Water Tank and at the Property for the installation and operation of a wireless telecommunications facility;

Whereas, Tenant submitted a proposal, seeking to lease a portion of space on the Water Tank and land around the Water Tank;

Whereas, the Town has selected Tenant as the successful proposer, and the Town and Tenant wish to set forth herein the terms and conditions governing Tenant’s use of a portion of the Property.

Now, therefore, for good and valuable consideration, the Town and Tenant agree as follows:

Agreement

1. Lease of Premises.

1.1 The Premises. The Town hereby leases to Tenant, and Tenant hereby leases from the Town, (i) approximately _____ (_____ ) antenna mounting positions on the Water Tank, as shown on the plan attached hereto as Exhibit A and incorporated herein (the “Antenna Mounting Positions”), and (ii) a parcel of land containing _____ square feet, more or less, on the ground at the perimeter of the Water Tank and shown as “_____________”(the “Equipment Area”) on the sketch plan entitled “_______________,” attached hereto as Exhibit B and incorporated herein, which Antenna Mounting Positions and Equipment Area are referred to, together, as the “Premises.” Said Premises are leased together with the non-exclusive rights described below:

(a) The right to use the Equipment Area to construct and install an equipment room, building or cabinet to house Tenant’s equipment;
(b) The right to locate on the Water Tank antennas, transmission cables and other appurtenances, all in accordance with plans approved by the Town;

(c) The right to install connections between Tenant's equipment in the Equipment Area and the Antenna Mounting Positions; and between Tenant's equipment in the Equipment Area and the electric power, telephone, and fuel sources for the Property, and any other reasonably appropriate improvements and alternations;

(d) The non-exclusive right to use connecting rights-of-way, access roads and casements thereto for vehicular ingress to the Premises and egress out to public ways, and to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the nearest public right-of-way to the Premises. Notwithstanding the foregoing, Tenant shall, to the extent feasible, locate all lines, wires, conduits and cables on existing poles extending from the nearest public roadway into the Property;

(e) Such reasonable easements as may reasonably be required by electric, telephone and other utility companies for the purposes of servicing Tenant equipment on the Premises, subject to Town Meeting authorization, and

(f) For a period of ninety (90) days following the start of construction, Tenant shall have the right to use such portions of the Property that are contiguous, adjoining or surrounding the Premises as may reasonably necessary during construction and installation of the Facility.

1.2. Condition of Premises. The Premises are delivered to Tenant, and Tenant accepts the Property, including the Premises and the easement areas, in its present condition, "AS IS," it being agreed that the Town has made no representations or warranties of any kind with respect thereto, and that the Town shall have no obligation to maintain, do any work on, or make any improvements to or provide utilities to the Property, including the Premises, unless such maintenance and/or improvement work is required as a result of the Town's negligence and/or willful misconduct. The Town shall have no obligation to remove snow or ice from the Property.

1.3. Utilities. Tenant shall be solely responsible for bringing onto the Premises, providing, and paying for all electrical and other utilities of sufficient capacity to serve Tenant's use of the Premises for the purposes set forth in Section 2.1, which shall be installed in accordance with the reasonable requirements of the Town and in a manner that avoids unnecessary interference to other activities on the Property and is reasonable in appearance, in the Town's reasonable judgment. Tenant shall be responsible for and promptly pay to the appropriate utility companies, all charges for electricity and other utilities used or consumed by Tenant on the Premises. Landlord will, at Tenant's cost, reasonably cooperate with Tenant to obtain utilities from any location provided by Landlord or the servicing utility, including the signing of a license reasonably required by the utility company, subject to any approvals required by any state and local laws and regulations.

In the event utilities are provided by Landlord, Tenant shall pay additional rent equal to the cost of utility service provided to the Premises and attributable to Tenant's use at utility
company rates as charged to Landlord ("Utility Charge"), Tenant shall pay the estimated cost of any Utility Charge monthly in advance together with the monthly rent, following construction of the facility. At least annually during the lease term, Landlord (or, at Landlord’s election, Tenant) shall calculate the actual Utility Charge for the immediately preceding twelve (12) months based on readings from the utility meters at the Premises and on the rate currently charged by the applicable utility. Any excess amounts paid by Tenant will be credited to Tenant’s next due Utility Charge, and any shortage shall be paid by Tenant to Landlord within thirty (30) days of notice of such calculation. Upon the first anniversary of the Rent Commencement Date, and on such anniversary thereafter, at the Landlord’s or Tenant’s option, the estimated Utility Charge paid monthly by Tenant may be increased or decreased to equal the average actual Utility Charge paid per month for the preceding year, as reasonably determined by Landlord.

2. Use.

2.1 Permitted Uses. Tenant shall have the non-exclusive right to use the Premises for the provision of personal wireless telecommunications services only. There shall be no services, equipment or storage at the Premises other than what is necessary to provide such wireless communication services. Under this Lease, Tenant may install, place, alter, upgrade, repair, replace and maintain on the Premises such antennas, radio transmitting and receiving equipment, conduits, wires, batteries, back-up generators, utility lines and facilities, supporting structures, storage facilities, telephone facilities, microwave equipment, and related equipment (collectively, the “Facility”) as Tenant deems necessary for the operation of the Facility at the Premises or as required by any county, state or federal agency or department. The equipment to be installed on the Premises is shown on a plan entitled “______________” (the “Equipment Plan”), attached hereto as Exhibit C and incorporated herein. The Town and Tenant agree that Exhibit C show the initial installation of the Facility and the equipment and other personal property to be placed on the Premises under this Lease. The Town and Tenant agree that Exhibit C does not limit Tenant’s rights under this Lease to improve, modify, replace, supplement, upgrade or remove the Facility or any part thereof within the Premises during the Term of this Lease, provided that Tenant complies with the provisions of this Lease. The only equipment that will be allowed on the exterior of the Water Tank is the antennas or antenna systems.

2.2 Installation of Town’s Equipment. The Town shall have the right to continue to use and to install on the Water Tank and the Property communications equipment, including without limitation cabinets, structures, cables and other facilities related thereto, for police, fire, rescue, emergency broadcasting systems, monitoring of water supply equipment systems and other municipal purposes (collectively, the “Municipal Antennas and Equipment”), if it so chooses, without charge to the Town. Tenant agrees to install the Municipal Antennas and Equipment on the Water Tank and/or the Premises at Tenant’s sole cost at the time Tenant installs its equipment on the Water Tank.

2.3 Hours of Use. Tenant and its subtenants, employees, agents, and subcontractors, will have access to the Premises at all times for the installation, maintenance and operation of the Facility and any utilities serving the Premises.
3. **Permits: Prior Approvals.** Tenant shall obtain all permits, licenses and approvals necessary for location and operation of the Facility and shall furnish the Town with copies of such permits before commencing with construction or installation of Facility at the Premises. If the Town determines that Tenant is not proceeding diligently to obtain all required permits and approvals or to complete the design and construction of its Facilities, the Town reserves the right to revoke this Lease by giving Tenant written notice thereof at least thirty (30) days prior to the termination date stated in said notice. The Town agrees to cooperate with Tenant’s reasonable requests for the Town’s signature as real property owner on permit applications, for allowing site inspections by governmental agencies required in connection with reviewing permit applications, and for assistance in obtaining such necessary approvals, provided that such cooperation and assistance shall be at no expense to the Town, but Tenant acknowledges that the Town has no control over and cannot guarantee that permits required from municipal boards or officers within their statutory or regulatory authority will be granted or fees waived.

4. **Term.**

4.1 **Initial Term.** The term of this Lease shall be ten (10) years, commencing on ___________, 2020 (the “Commencement Date”) and terminating on ___________, 2030 (the “Initial Term”).

4.2 **Extension Terms.** Tenant shall have the option to extend the term of this Lease for up to two (2) additional and consecutive periods of five (5) years each (each, an “Extension Term”), provided Tenant sends notice of such extension to the Town at least ninety (90) days prior to the termination of the then-applicable term and Tenant is not then in default under this Lease beyond any applicable cure period. In the event that Tenant has been in default of its obligations under this Lease more than three (3) times during the Initial Term (beyond any applicable cure period), Tenant option to extend shall be subject to the Town’s prior written consent, to be exercised in the Town’s sole discretion. In the event of any extension, all terms and conditions of this Lease shall remain in full force and effect, including the increase in the rental payment (see Section 5 below).

4.3 **Term.** The Initial Term and, if exercised, the Extension Terms, are referred to, collectively, as the “Term.” The term “Lease Year” means a period of one (1) year commencing on the Commencement Date or the annual anniversary date thereof. This Lease may be terminated earlier, as provided in Sections 3, 7, and 16.

4.4 **Holdover.** If Tenant remains in possession of the Premises after the expiration of the Term of this Lease, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the “Holdover Term”), subject to the terms and conditions of this Lease.

5. **Rent.**

5.1 **Rent Commencement Date.** Tenant’s obligation to pay Base Rent shall commence on the earlier to occur of: (i) the issuance of all permits and approvals necessary for Tenant to use the Premises for the Permitted Use; (ii) commencement of construction of the
5.2 Base Rent. Commencing on the Rent Commencement Date, Tenant shall pay the Town base rent in the amount of $____ per month or $____________ per year (as adjusted from year to year, the “Base Rent”). The first payment of Base Rent shall be due within ten (10) days from the Rent Commencement Date and thereafter, rental payments will be made in equal monthly installments, in advance, without demand or offset, on the first day of the month, and as specified in Section 5.4 below. Furthermore, the Base Rent shall increase automatically each year thereafter, on each anniversary of the Rent Commencement Date, by ___ percent (___%). In addition, Tenant shall pay the Town ____ percent (___%) of all gross revenues, if any, obtained from each subtenant or sublicensee for its occupancy of the Premises (the “Sublease Rent”)

5.3 Additional Rent. Tenant shall, from the Lease Commencement Date, be responsible for the payment of all personal property taxes assessed upon the Facility, and shall reimburse the Town, as “Additional Rent,” for any increase in property taxes, levies, betterments or assessments, fees or charges that are assessed or chargeable during the Term of this Lease in relation to the Premises, the Facility, or Tenant use thereof.

5.4 Rent. The Base Rent, the Sublease Rent, and the Additional Rent are referred to, collectively, as “Rent.” Rent shall be payable by Tenant to the Town monthly in advance on the first day of each month during the Term of this Lease. All Rent and other payments required to be made by Tenant to the Town under this Lease shall be paid by check made payable to the “Town of Norton” and delivered to the Town at the address set forth above, or at such other place as the Town may from time to time direct by written notice to Tenant.

5.5 Interest. All payments becoming due under this Lease and not paid when due shall bear interest from the applicable due date until received by the Town at an annual rate equal to the prime rate of interest charged from time to time by Bank of America or its successor or similar entity, plus two percent (2%).

5.6 Rent Adjustment. If this Lease is terminated prior to the expiration date stated in this Lease, Rent and Sublease Rent shall be adjusted as of the termination date. Any prepaid Base Rent and Sublease Rent shall be returned to Tenant, provided, however, that if Tenant owes the Town any payments under this Lease, including, without limitation, the Termination Fee (defined in Section 16), the Town shall have the right to deduct such amounts from the prepaid Base Rent and Sublease Rent. Nothing herein shall affect the Town’s rights to collect the balance of any amounts owed to the Town hereunder.

6. Bonds. Tenant shall furnish and pay all costs for obtaining and maintaining a performance bond, in the amount of $36,000, for the duration of this Lease, to secure Tenant obligations under this Lease, including, without limitation, Tenant obligation to pay Rent and the
Termination Fee. Tenant shall also furnish a removal bond in the amount of $20,000 to provide for removal of the Facility in accordance with the requirements of this Lease. The bonds shall be written by a company authorized to issue such bonds in the Commonwealth of Massachusetts and satisfactory to the Town, and shall be issued before the commencement of any work. The bonds shall not be cancelled, materially changed or reduced without first giving written notice to the Town and Tenant at least thirty (30) days in advance and obtaining the Town’s consent.

7. **Due Diligence.**

7.1 **Due Diligence.** The Town acknowledges that Tenant’s use of the Premises is contingent on Tenant being satisfied with the title to and condition of the Premises and the suitability of the Premises for the Permitted Use. Tenant shall have the right at any time following the full execution of this Lease and prior to the Rent Commencement Date, to enter the Premises, upon giving the Town at least two (2) business days’ prior notice thereof, for the purpose of making necessary inspections, taking measurements and conducting engineering surveys (and soil tests where applicable) and other reasonably necessary tests to determine the suitability of the Premises for the Facility ("Due Diligence"), and for the purpose of preparing the Premises for the installation or construction of the Facility.

7.2 **Subsurface Testing.** Notwithstanding the foregoing, Tenant shall not conduct any subsurface tests until a Phase I Assessment concludes that a recognized environmental condition (as such term is defined in ASTM Standard E1527-05) exists and/or recommends a so-called Phase II Site Assessment be conducted for the Premises; provided that, in each case, Tenant shall submit a written scope of work to the Town detailing the work to be done and the portion of the Premises to be affected by such work and containing such other matters as the Town shall reasonably request. Tenant shall not conduct such subsurface inspections or investigations until the Town has approved such scope of work, which approval shall not be unreasonably withheld.

7.3 **Terms of Access.** The Town or its designees shall have the right to accompany Tenant during the performance of Tenant’s Due Diligence. During any Due Diligence activities or pre-construction work, Tenant shall have insurance which covers such activities as set forth in Section 20, Insurance. Tenant will notify the Town of any proposed tests, measurements or pre-construction work and will coordinate the scheduling of such activities with the Town. Tenant will defend, indemnify, and hold harmless the Town against all costs (including reasonable attorneys’ fees), claims, damages and liabilities arising as a result of the negligence or willful misconduct of Tenant or its agents, employees, representatives, contractors or invitees, or from Tenant’s exercise of the rights granted herein.

7.4 **Termination of Lease.** If in the course of its Due Diligence Tenant determines that the Premises are unsuitable for Tenant contemplated use, Tenant shall have the right to terminate this Lease prior to the Rent Commencement Date by delivery of written notice thereof to the Town as set forth in Section 16, Termination, without the payment of a Termination Fee. If Tenant fails to object to the title to or condition of the Premises by the expiration of the Due Diligence Period, Tenant shall thereafter have no right to terminate the Lease for the condition of the Premise or the title to the Property as the same exist as of the expiration of the Due Diligence Period.
8. **Tenant Access.** Tenant shall have a non-exclusive right of pedestrian and vehicular access to the Premises twenty four (24) hours a day, seven (7) days a week for purposes of providing periodic and as-needed maintenance, repairs and other necessary service to the Facility, but Tenant shall give the Town at least five (5) days notice prior to commencement of any construction at the Premises and at least two (2) days notice prior to accessing the Water Tank to alter any Facilities located on the Water Tank. Access may be limited to the access points and areas to be designated by the Town. Access shall also be limited to Tenant and its sublessees’ employees, contractors and agents.

10. **Town’s Access; Use of Water Tank.**

10.1 **Access to Premises.** Tenant acknowledges that the Town owns and operates the Water Tank as part of the Town’s municipal drinking water distribution system, and that the Town shall have the right to access and use the Property, including the Water Tank, for the foregoing purposes. In addition, the Town shall have the right to use the Water Tank and the Premises for the purpose of using, maintaining, repairing and replacing the Municipal Antennas and Equipment.

10.2 **Use of Water Tank.** The mounting of the Facility or other equipment on the Water Tank shall not interfere with or degrade the long-term functioning of the Water Tank. No construction and installation work may commence unless and until Tenant obtains all necessary permits and approvals, and, at the Town’s request, furnishes a structural assessment, prepared by a Massachusetts Registered Professional Engineer, attesting that the Water Tank, including railings, ladders, walkways and supports, will not be damaged or compromised structurally by the attachment of antennas and conduits and other equipment and that the Water Tank can structurally support the same. The location for access to the Facility shall be coordinated with the Town and shall not interfere with the operations and maintenance of the Water Tank. Tenant shall pay all of the Town’s costs for preparing, filing, and pursuing the application which the Town will submit to the Department of Environmental Protection for approval to install communications equipment on the Water Tank.

10.3 **Standards.** (a) The installation and maintenance of any equipment on the Water Tank by Tenant shall conform to the Bureau of Resource Protection “Policy on Antenna and/or other Appurtenances proposed to be attached to the Public Drinking Water Storage Tanks or on Water Supply Land”, effective date 6-18-89, as updated, or as superseded by more recent applicable policies, standards or regulations. All work undertaken by Tenant, it sublessees, or others acting by or on their behalf, must be performed in a good and workmanlike manner, and in a manner that will not adversely affect the structural integrity of the Water Tank or any other structures thereon. Any connecting utilities or other connecting apparatus between the structures to be constructed by Tenant and the Water Tank shall be installed underground.

(b) Tenant shall certify that it will employ best practices and qualified experts acceptable to the Town to avoid any damage the Water Tank, in general, and specifically to the proposed attachment measures, tank coating or the ability to apply any future tank coatings; and that it will assume full responsibility for the cost of immediate repair and/or replacement of the components.
of the Water Tank, water supply system, land, structures and environment damaged by the installation, operation, and maintenance of Tenant’s equipment on the Water Tank and the Premises. Upon the attachment of the equipment to the Water Tank, Tenant shall certify by evaluation by independent experts qualified to do so and approved by the Town that the installation of the new facilities on the Water Tank have maintained the structural integrity of the Water Tank.

(c) Equipment and antennas mounted on the Premises and on the Water Tank, and the emissions from such equipment and antennas shall not degrade or interfere with the operation, maintenance and performance of the Town on communications operating from the Property. Tenant shall, at the Town’s request, undertake an Intermodulation Study to ensure that the combinations of two or more radio frequency emissions at the Premises do not cause interference with any existing wireless, public safety and municipal communication users at the Property.

10.4 Removal. The Town reserves the right to request that Tenant remove its Facility or any part thereof from the Water Tank or to turn the antennas off, at Tenant’s expense, at any time and from time to time, when the maintenance or repair of the Water Tank or the Premises requires said removal, including repainting of the Water Tank, provided, however that (i) the Town shall give Tenant notice of such removal/shut-off at least seven (7) calendar days prior to such removal or interruption, except in the case of emergency, where notice will be given as soon as practicable, and (ii) the relocated area is reasonably comparable to the Premises. If Tenant cannot operate its Facility at the relocated area, Tenant may, for the duration of such period of removal or shut-off, install and use a Cell Premises on Wheels (“COW”) at a mutually acceptable alternative location on the Property until such time that the inspection and/or maintenance has been completed and Tenant can reinstall or turn back on its antennas at the original location on the Water Tank, all at Tenant’s expense.

11. Installation, Maintenance and Repair of Facility.

11.1 Approved Plans and Specifications. The installation, construction, attachment, alteration of any component of the Facility, and any material changes thereto during the Term of this Lease, is subject to prior approval of the Town. Tenant shall, at its sole cost and expense, prepare and deliver to the Town complete working drawings, plans and specifications detailing the location, size and specifications of the Facility and such other items as the Town may reasonably request (the “Approved Plans and Specifications”) and specifically describing all proposed excavation, construction and other work, and obtain the Town’s approval of Tenant Plans for such construction, installation or alteration work, and the precise location of Tenant equipment on the Water Tank and the Premises, at least forty-five (45) days to undertaking the same. Tenant agrees to secure the Facility and other improvements and to address reasonable safety and aesthetics issues raised by the Town. If the Town fails to disapprove the Approved Plans within said forty-five (45) day period, said plans and specifications shall be deemed to be approved. The review and approval by the Town under this Lease shall be in addition to any other approvals required under all applicable federal, states and local laws, rules and regulations. The Approved Plans and Specifications shall be updated during the course of construction to reflect approved changes. Tenant agrees to reimburse the Town for reasonable fees and costs incurred by the Town in reviewing such Approved Plans and Specifications and any work
performed by or on behalf of Tenant, provided that the Town submits to Tenant invoices showing such costs.

11.2 **As-Builts.** Tenant shall provide the Town with “as-built” drawings of the Facility, including any utilities installed on the Premises, showing the actual location thereof within ninety (90) days after the completion of such work. The drawings shall be accompanied by a complete and detailed inventory of the Facility and every part thereof and any other personal property of fixture placed on the Premises, including the Water Tank.

11.3 **Construction Standards.** All work must be performed in a good and workmanlike manner, and in a manner that will not adversely affect the structural integrity of the Water Tank or any other structures thereon. Tenant’s construction, operation, use and maintenance of the Facility and any and all other improvements on or at the Premises shall at all times comply with all applicable governmental requirements. Tenant will be responsible for obtaining and maintaining, at its sole cost and expense, all approvals, and permits necessary for the construction of the Facility and any and all other improvements on or at the Premises.

11.4 **Construction and Operating Costs.** Tenant will pay all costs and expenses incurred in connection with the construction, maintenance and operation of the Facility and any and all related improvements on or at the Premises, including utility connections and the cost of electricity and other utilities the Tenant consumes in its construction, maintenance and operational activities at the rate charged by the servicing utility company, for which Tenant will make payments directly to said company. Tenant shall repair, at its sole cost and expense, any damage caused to the Property as a result of any act or omission of Tenant or its employees, agents, contractors, or invitees.

11.5 **Mechanics Liens.** Tenant shall not permit any mechanics’ liens, or similar liens, to remain upon the Premises for labor and material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed at the direction of Tenant, and shall cause any such lien to be released of record without cost to the Town within thirty (30) days after Tenant receives notice of filing of same. In connection with the foregoing, Tenant agrees to indemnify, save, defend, and hold harmless the Town against, of and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom.

11.6 **Removal.** At the expiration or earlier termination of this Lease, Tenant shall be responsible for removal of all portions of the Facility in accordance with Section 17 of this Lease.

12. **Modifications; Alterations; Maintenance.**

12.1 **Modifications.** Tenant may not make structural alterations, changes or additions to the Water Tank without the Town’s prior written consent, which may be withheld in the Town’s sole discretion, or to the Equipment Area without the prior written approval of the Town, which shall not be unreasonably withheld. Tenant shall have the right to modify, supplement, upgrade, replace or alter the Facility or any part thereof at any time during this Lease, provided
that the foregoing is of substantially the same size, weight, number and height of the Facilities shown on the Approved Plans. Tenant shall be responsible for all reasonable and documented costs and expenses arising from the Town’s review of any proposed alteration, addition, replacement or expansion of the Facility. Any allowed alterations or additions shall be of a quality at least equal to that of the then existing construction and shall be made at the expense of the Tenant. Tenant shall follow the review and approval procedures set forth in Section 11.1 to obtain the Town’s consent.

12.2 Maintenance. Tenant shall maintain and repair the Facility and the Premises in good and safe order and condition, reasonable wear and tear and damage by casualty excepted.

13. Title to the Facility. Title to the Facility and any other equipment placed on the Premises by Tenant shall be held by Tenant. The Facility shall remain the property of Tenant and are not fixtures. The Town waives any and all lien rights it may have under this Lease to the Facility or any portion thereof and Tenant has the right to remove all or any portion of the Facility at its sole expense on or before the expiration or termination of this Lease, provided that Tenant repairs any damage caused to the Premises or the Property by Tenant removal.

14. Frequency Interference. Tenant shall install communication equipment of the types and frequencies that will not cause "measurable interference," as defined by the Federal Communications Commission, to present and future municipal communications equipment of the Town (including the equipment installed by the Town on the Premises), or to local radio, television, police, public safety, national defense or other similar operations, or to lessees, licensees or carriers operating wireless communications facilities on the Property existing as of the date of this Lease. If Tenant equipment causes such interference, Tenant shall correct and eliminate such interference within thirty (30) days of written notice from the Town. The Town reserves the right to build another water tank or other buildings or structures on the Property, and shall not be liable to Tenant for any interference caused to the facility (Tenant sole remedy shall be to terminate this Lease). The Town agrees to incorporate equivalent provisions regarding non-interference with pre-existing communications equipment into any new leases, licenses or rental agreements that it enters after the date of this Lease.

15. Default. It shall be an event of default if:

(i) Tenant fails to pay Rent when due hereunder and such failure continues for ten (10) days after written notice from the Town that the same is due;

(ii) Tenant fails to perform or observe any other term or condition contained in this Lease and such failure is not cured within thirty (30) days after written notice from the Town; or

(iii) Tenant shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of Tenant property for the benefit of creditors.

In the event of default, the Town shall have the right, while such default continues, to re-enter and take complete possession of the Premises, to declare the Term of this Lease ended (in which event Tenant shall pay the Town the Termination Fee (defined below)), and remove the
Facility and Tenant's other affects on the Property if Tenant fails to remove the same in accordance with Section 17, without prejudice to any remedies which might be otherwise be available to the Town.

Tenant agrees to reimburse the Town for all costs associated with the enforcement of this Lease, or any and all provisions therein, including but not limited to all legal and court costs. Without limiting any of the Town's rights and remedies hereunder, and in addition to all other amounts Tenant is otherwise obligated to pay, it is expressly agreed that the Town shall be entitled to recover from Tenant all costs and expenses, including reasonable attorneys' fees, incurred by the Town in enforcing this Lease from and after Tenant default. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

16. **Termination.** This Lease may be terminated by Tenant as follows: (i) upon ninety (90) days written notice, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Facility as now and hereafter intended by Tenant or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable, so long as Tenant pays the Town a termination fee equal to one year's Rent at the then-current rent rate as liquidated damages (the "Termination Fee"); said Termination Fee not to be applicable in the event that a license or permit necessary for the construction or operation of the Facility is revoked by any agency, board, court or other governmental authority without Tenant's fault or Tenant is unable to obtain same, despite Tenant diligent efforts; (ii) upon ninety (90) days written notice for any reason other than (i) above, so long as Tenant pays the Town the Termination Fee; or (iii) if the Town's failure to fulfill its obligation under this Lease materially and adversely affects Tenant ability to use the Premises for the permitted purposes, provided that (a) Tenant shall give the Town at least sixty (60) days written notice of said default and (b) the Town shall have failed to cure the same within said sixty (60)-day period (or, if the default is such that a cure cannot reasonably be completed, within a reasonable period of time, so long as the Town commences the cure within said sixty (60)-day period and thereafter pursues it diligently). The provisions of this Section shall survive the termination of this Lease.

17. **Surrender.** At the expiration or earlier termination of the Term of this Lease, Tenant shall, within thirty (30) days from said expiration or termination, remove all personal property and equipment installed at the Premises, and shall, at the request of the Town, remove any building or other structures, including the Facility itself, erected by it at the Premises, including any utility connections, and shall restore the Premises to its condition as of the date of this Lease, reasonable wear and tear excepted. Any improvements not removed from the Premises within said thirty (30)-day period shall be deemed abandoned and shall become the sole property of the Town. The Town may use the removal bond to effectuate the removal if Tenant fails to do so in a timely manner. The provisions of this Section shall survive the termination of this Lease.

18. **Destruction of Premises.** If the Water Tank or the Facility is substantially destroyed or damaged by fire or other casualty so as in Tenant reasonable judgment to interfere unreasonably with its effective use of Premises for the ongoing operation of a wireless
communications site, Tenant may elect to terminate this Lease without further liability of Tenant as of the date of the damage or destruction by so notifying the Town no more than thirty (30) days following the date of such damage or destruction. In the event that Tenant elects to terminate this Lease, all rights and obligations of the parties which do not survive the termination of this Lease shall cease as of the date of the damage or destruction. In the event that Tenant does not elect to terminate this Lease as provided for above, the Town shall use reasonable efforts to find an alternative location within the Property suitable for the placement of the Facility or any temporary facilities of Tenant such that Tenant is able to utilize the Property as contemplated herein (the “Alternative Facilities”), subject to Town Meeting approval, if required, and compliance with applicable laws.

19. **Condemnation.** If a condemning authority takes all or substantially all of the Premises, which, in Tenant reasonable judgment, interferes unreasonably with its effective use of Premises for the ongoing operation of a wireless communications site, then this Lease shall terminate without further liability of Tenant as of the date when possession is delivered to the condemning authority. In any condemnation proceeding, each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law.

20. **Insurance.** Tenant shall maintain, during the Term of this Lease and so long as Tenant and/or the Facility or any part thereof remains on the Premises, commercial general liability insurance with a minimum coverage amount of $1,000,000 per occurrence and $3,000,000 aggregate with respect to loss of life, bodily or personal injury, and damage to property. The policy shall provide coverage for products and completed operations liability, independent contractor’s liability, coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage. Tenant shall choose an insurer licensed in Massachusetts having an A+ or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company). All such insurance shall name the Town as an additional insured on all such policy, and shall provide for a thirty (30)-day written notification to the Town in the event of cancellation or modifications of the policy or policies. In addition, Tenant shall provide evidence of worker’s compensation coverage for its employees as required by Massachusetts General Law. Tenant shall provide the Town with certificates of insurance prior to entering the Premises for any reason, and annually, on the anniversary of the Commencement Date and at such other times as the Town may reasonably request.

Tenant shall also pay, if substantiated, the cost of any increase in the Town’s liability insurance currently in place as of the date of this Lease provided that such increase is a direct result of the installation of the Facility on the Premises.

21. **Assignment/Sub-lease.** Tenant may assign or transfer this Lease to any entity which is licensed by the Federal Communications Commission to operate the Facility and (i) is a parent, subsidiary or affiliate of Tenant; (ii) controls or is controlled by or under common control with Tenant; (iii) is merged or consolidated with Tenant; or (iv) acquires more than fifty percent (50%) of an ownership interest in Tenant or the assets of Tenant in the area in which the Property is located, provided that notification is submitted to the Town within sixty (60) days of said
assignment or transfer. Tenant shall not otherwise assign this Lease without the Town's written consent, which may be withheld in the Town’s sole discretion.

Tenant may, without the Town’s consent, sublease or license a portion or portions of the Premises for collocation by other wireless communication carriers and similar entities, provided that Tenant pays the Town the Sublease Rent as provided in Section 5.2, and that such subtenant or licensee shall be bound to comply with the terms of this Lease. Tenant shall provide the Town with a copy of all subleases and licenses and any amendments thereto for space at the Premises within ten (10) days of entering into any sublease, license or amendment. Any subtenant or licensee of Tenant shall not have the right to further sublease or license their space to another entity or person. The Town may require Tenant or the sublessee to perform a structural analysis to determine whether the personal wireless services equipment placed on the Water Tank by Tenant or the sublessee does not impair the condition of the Water Tank.

22. **Quiet Enjoyment.** The Town covenants and warrants to Tenant that so long as Tenant is not in default under this Lease, Tenant shall be entitled to quiet enjoyment of the Premises during the Term of this Lease, and Tenant shall not be disturbed in its occupancy and use of the Water Tank or the Premises, except as provided in this Lease.

23. **Estoppel Certificates.** At any time upon not less than fifteen (15) days’ prior written notice from the other, the Town or Tenant shall execute, acknowledge and deliver to the other or any other party specified by the requesting party a statement in writing certifying that this Lease is in full force and effect, if true, and the status of any continuing defaults under this Lease.

24. **Indemnifications.** Tenant shall indemnify, hold harmless, release and defend the Town, and its officers, agents, and employees against and from any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) (a) arising directly or indirectly from the failure of Tenant or Tenant’s contractors, agents, employees or invitees to comply with the terms of this Lease or with any applicable laws, codes, bylaws, rules, orders, regulations, or lawful direction now or hereafter in force of any public authority; (b) to the extent caused by any act, omission, or negligence on the part of Tenant, or Tenant contractors, licensees, agents, invitees, servants, employees or customers, or anyone claiming by or through Tenant, provided, however, that in no event shall Tenant be obligated to indemnify the Town to the extent such claim, expense, or liability results from the negligence or willful misconduct of Town or the officers, agents, or employees of the Town on or about the Premises; and (c) from any and all costs and expenses incurred in connection with any cleanup, remediation removal or restoration work required by any federal, state or local governmental authority because of the presence of any Hazardous Material (defined in Section 25) on or about the Premises to the extent Tenant caused or contributed to such environmental occurrence. However, Tenant shall not be obligated to indemnify the Town to the extent such claim, expense, or liability results from the negligence or willful misconduct of Town or the officers, agents, or employees of Town on or about the Premises.
To the maximum extent permissible by law, Tenant agrees to use and occupy the Premises at Tenant own risk, and the Town shall have no responsibility or liability for any loss or damage to the personal property of Tenant or any person claiming by, through or under Tenant unless caused by the negligence or willful misconduct of Town or the officers, agents, or employees of Town on or about the Premises.

The provisions of this Section shall survive the termination or expiration of this Lease.

25. **Hazardous Materials.** Tenant agrees that it shall not maintain, generate, store, allow or bring on the Premises or transport or dispose of on or from the Premises any Hazardous Material. Tenant hereby agrees to indemnify and hold harmless the Town, and those claiming by, through and under the Town, from and against any and all liability, loss, damage, costs, expenses (including, without limitation, reasonable attorneys’ fees and expenses), causes of action, suits, claims, demands or judgments of any nature in any way suffered, incurred, or paid as a result of any release or threatened release of oil or hazardous material as defined under federal, state or local law on or from the Premises which is caused by Tenant or its subtenants or their agents, employees, contractors, representatives, visitors, or invitees. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, oil, any substance known by the state in which the Property is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. The provisions of this Section shall survive the expiration or termination of this Lease.

26. **Notices and Deliveries.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or a nationally recognized overnight delivery service to the address of the respective parties set forth below:

**The Town:**

Town of Norton  
70 East Main Street  
Norton, MA 02766  
Attn: Board of Selectmen  
Telephone: (508) 285-0210  
Facsimile: (508) 285-0297

**With a copy to:**

Kopelman and Paige, P.C.  
101 Arch Street  
Boston, MA 02110  
Attn: Shirin Everett, Esq.  
Telephone: (617) 556-0007  
Facsimile: (617) 654-1735
Tenant:  


With a copy to:  


The Town or Tenant may from time to time designate any other address for notices or deliveries by written notice to the other party.

27.  **Miscellaneous.**

   (a) **Severability.** If any provision of this Lease is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law, and the parties shall negotiate in good faith to amend this Lease to retain the economic effect of the invalid or unenforceable provisions.

   (b) **Binding Effect.** Each party represents and warrants that said party has full power and authority, and the person(s) executing this Lease have full power and authority, to execute and deliver this Lease, and that this Lease constitutes a valid and binding obligation of each party, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor’s rights generally and by general equitable principles (whether enforcement is sought in proceedings in equity or at law). This Lease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

   (c) **Waivers.** No provision of this Lease shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease.
(d) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

(e) **Attorneys’ Fees and Costs.** The prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys’ fees and court costs.

(f) **Survival.** Terms and conditions of this Lease which by their sense and context survive the termination, cancellation or expiration of this Lease will so survive.

(g) **Memorandum of Lease.** The Town acknowledges that a Memorandum of Agreement substantially in the form annexed hereto as Exhibit D will be recorded by Tenant in the Plymouth Registry of Deeds.

(h) **Entire Agreement; Amendments.** This Lease constitutes the entire agreement and understanding between the parties regarding Tenant’s lease of the Premises and supersedes all prior and contemporaneous offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by duly authorized representatives of both parties.

(i) **No Presumptions Regarding Preparation of Lease.** The parties acknowledge and agree that each of the parties has been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Lease are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease.

(j) **Exhibits.** All Exhibits referred to herein and any Addenda are incorporated herein.

(k) **No Indirect/Consequential Damages.** The Town shall have no liability to Tenant for any interruption of Tenant business due to casualty or any other reason. In no event shall the either party incur liability hereunder with respect to indirect or consequential damages incurred by the other due to any act or omission by the breaching party.

471281/NORT/0229

[signature page follows]
IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed by their duly authorized representatives on the dates set forth below and acknowledge that this Lease Agreement is effective as of the date first above written.

TOWN OF NORTON,
By its Board of Selectmen

By: __________________________
Name: _________________________
Title: __________________________

By: __________________________
Name: _________________________
Title: __________________________

By: __________________________
Name: _________________________
Title: __________________________

Date: __________________________

Date: __________________________

471281/NORT/0229
EXHIBIT B

Description of Premises and Plan of Equipment Area
EXHIBIT C

Description of the Facility and Related Equipment
MEMORANDUM AND NOTICE OF LEASE AGREEMENT

This Memorandum and Notice of Lease Agreement is entered into on this ____ day of ________, 2020, by and between the Town of Norton, a Massachusetts municipal corporation, with an office at 70 East Main Street, Norton, MA 02677 (hereinafter referred to as "the Town"), and ______________________, a ____________________ company, with an office at ___________________________ (hereinafter referred to as "Tenant").

1. The Town and Tenant entered into a Lease Agreement (the "Agreement") on ________________ , 2020, for the purpose of installing, operating and maintaining a communications facility and other improvements, on a portion of the certain real property located on Cottage Street, Norton, which is shown on Assessors Map 21 as Parcel 102, and is portion of the premises which is described more particularly in the instrument recorded with the Bristol (North) District Registry of Deeds (the "Registry") in Book 1252, Page 276 (the "Property"). The portion leased to Tenant is shown on the sketch plan attached hereto as Exhibit A and incorporated herein (the "Premises").

2. The term of the Agreement is for ten (10) years commencing on ________________ , 2020 ("Commencement Date") and terminating on ________________ , 2030, with Tenant having the right to extend the term of the Agreement for two (2) successive periods of five (5) years each, for a total term of twenty (20) years.
IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of
the day and year first above written.

LESSOR: 

TOWN OF NORTON, 
By its Board of Selectmen

LESSEE:

By: ______________________
Name: ____________________
Title: ____________________

________________________________________

Date: ___________________________ 

Date: ___________________________

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

On this day of ______________________, 2020, before me, the Notary Public,
personally appeared ______________________, Selectman of the Town of
Norton, as aforesaid, proved to me on the basis of satisfactory evidence of identification, which
was ________________________, to be the person whose name is subscribed to the
within instrument and acknowledged to me that he/she/they executed the same voluntarily on
behalf of the Town of Norton.

________________________________________
Official Signature and Seal of Notary

My commission expires:
STATE OF __________________________

COUNTY OF _______________________

On this _____ day of ________________, 2020, before me, the undersigned Notary Public, personally appeared ________________, proved to me on the basis of satisfactory evidence of identification, which were _______________________, to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they signed it voluntarily for its stated purpose as ________________________ of ________________________.

Official Signature and Seal of Notary

My commission expires:

471281/NORT/0229