

CENTRAL GARAGE TOWER AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2021 (the “**Effective Date**”)

BETWEEN

THE CORPORATION OF THE COUNTY OF MIDDLESEX

(the “**County**”)

OF THE FIRST PART

-and-

MUNICIPALITY OF MIDDLESEX CENTRE

(the “**Municipality**”)

OF THE SECOND PART

WHEREAS

- A. The County is a municipality and an upper-tier municipality as defined by the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or replaced (the “***Municipal Act***”);
- B. The Municipality is a lower-tier municipality and local municipality as defined by the *Municipal Act*;
- C. Section 9 of the *Municipal Act* provides that municipalities have the capacity, rights, powers and privileges of natural persons, which includes the power to do things that natural persons can do, such as, inter alia, owning radio towers or radio receiving and transmission equipment and to enter into agreements;
- D. The County is the owner of the radio antenna tower (the “**Tower**”) and associated radio equipment located adjacent to the tower in the Middlesex County Central Garage (the “**County Radio Equipment**”), located at Lot 32, Concession III, Middlesex Centre (collectively referred to as “**County Infrastructure**”);
- E. The Municipality maintains or will obtain prior to the Effective Date a license pursuant to an agreement with Industry Canada and/or the Canadian Radio-television and Telecommunications Commission to install, operate or occupy equipment on the Tower for the purposes of radio communications and to make use the County Radio Equipment on the terms and conditions set out in this Agreement; and
- F. The County reserves the right to make modifications to the County Infrastructure and to reconfigure, relocate or multiplex from time to time in its discretion the antennas and equipment located on the Tower, including equipment installed on the Tower by the Municipality, in whole or in part, in accordance with the terms of this Agreement.

NOW THEREFORE in consideration of the payment of the sum of TWO DOLLARS (\$2.00) from each Party to the other and for other good and valuable consideration, including the covenants herein, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

COUNTY AUTHORIZATION

1. The consent, permission and authority of the County is hereby given and granted to the Municipality to install, maintain and operate on the Tower and/or on the racks inside the Middlesex County Central Garage, the antenna and other equipment described in *Schedule "A"* attached hereto (collectively referred to as the "**Municipal Equipment**"). No additional antennas or equipment shall be installed or used by the Municipality without the express written prior consent of the County.
2. The County grants to the Municipality the right to obtain electrical power services from the County's panel required for the Municipal Equipment or for any other purpose in connection with Municipality's use of the Tower.

TERM

3. The rights hereby given and granted shall be for a term of ten (10) years commencing on the Effective Date, except that either Party may terminate this agreement at any time subject to 90 days written notice to the other advising of the termination.
4. At any time within two (2) years prior to the termination of this agreement, either party to this agreement may by notice given to the other request that the other enter into negotiations for new terms and conditions for renewal of this agreement.

FEES

5. In consideration of the rights hereby given and granted, and without prior demand, the Municipality agrees to pay to the County, annually and in advance, One Hundred Dollars (\$100.00), commencing on the Effective Date and on every anniversary thereof for the term of this Agreement.

OBLIGATIONS OF THE MUNICIPALITY

6. The Municipality shall bear all costs related to the installation, maintenance and operation of the Municipal Equipment on the Tower. Any modification or repair to the Municipal Equipment shall be carried out by the Municipality using contractors and engineers approved by the County. The Municipality shall reimburse the County for any amount paid by the County in respect of the installation, maintenance and operation of the Municipal Equipment.
7. The Municipality shall obtain all necessary permits, licenses and consents from any applicable authority, including but not limited to the CRTC and Industry Canada, required to carry out the installation, maintenance and operation of the Municipal Equipment on the Tower and/or to make use of County Radio Equipment. The Municipality shall pay all fees required to obtain same.
8. Access to the Municipal Equipment shall be limited to normal business hours of the County and subject to advising the County that Municipal personnel is on County property. Twenty four (24) hour emergency access may be arranged by contacting appropriate County officials.
9. The Municipality shall under no circumstances climb or cause the Tower to be climbed without first obtaining the prior written approval of the County Engineer. Such approval shall only be given in respect of qualified Tower riggers and may require the Municipality, its employees or its contractors to produce satisfactory evidence of workers'

compensation coverage or any additional comprehensive general liability insurance that may reasonably be required by the County. Notwithstanding the approval of the County Engineer, the County shall not be liable, and the Municipality undertakes to indemnify the County, for any loss, damage or injury including death that may be suffered by the Municipality, its employees or contractors in this regard.

10. The Municipality shall maintain the Municipal Equipment in a good and safe state of repair and in a clean and orderly condition.
11. The Municipality shall notify the County promptly of, and shall repair and make good at its expense promptly upon demand by the County, any damage whatsoever caused to the County's property or that of a third party user of the County Infrastructure, if caused by an act or omission of the Municipality, its officers, employees, agents, contractors or invitees or reasonably attributable to the Municipal Equipment.

RELOCATION OF MUNICIPAL EQUIPMENT

12. The County may require the Municipality to relocate all or some of the Municipal Equipment on the Tower during the term of this Agreement at the Municipality's expense.

INTERFERENCE

13. In the event that the Municipality's use of the Municipal Equipment causes any transmission problem to the County or third party user of the County Infrastructure, then such transmission problem shall be resolved to the satisfaction of the County by the Municipality at the Municipality's expense and as soon as possible. In the event that such transmission problem is not resolved by the Municipality within eight (8) hours and if the Municipality is not able to provide a solution to the satisfaction of the County, then the County may disconnect the Municipal Equipment at the expense of the Municipality and this Agreement shall come to an end and neither party shall have any continuing rights or obligations to each other save and except for the Municipality's obligation to remove and repair set forth in section 18 of this Agreement. The Municipality shall only be permitted to reconnect the Municipal Equipment when the County is satisfied that the Municipal Equipment will not cause any such transmission problem.

INDEMNITY

14. The Municipality agrees that the County shall not be responsible for any injury to any person (including death) or for any loss of or damage to any property or equipment belonging to or used by the Municipality or its employees or invitees of the Municipality while such property or equipment is on County property, unless such loss or damage is caused by the negligence or misconduct of the County and the Municipality hereby releases the County from all liabilities, fines, suits, claims, demands, costs and actions of any kind or nature whatsoever to which the County might otherwise be liable for in that regard.
15. Without limiting the foregoing, the Municipality hereby indemnifies, saves harmless and agrees to defend the County, its Councilors, officers, employees and legal counsel, agents and contractors from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, penalties, liabilities, losses and costs, including but not limited to any and all liability for:

- (a) damages to any property;

- (b) any direct, indirect, special or consequential damages; and
 - (c) any injury to any person (including death), however caused,
- which in any manner arises out of or is in any manner related to:

- (i) the Municipality's exercise of any of its rights under this Agreement;
 - (ii) the installation, maintenance or operation of the Municipal Equipment by the Municipality or any other Person; or
 - (iii) any breach of this Agreement by Municipality.
16. Any and all releases of liability and indemnifications in this Agreement made by the Municipality shall survive the expiration or earlier termination of this Agreement, anything to the contrary in this Agreement notwithstanding.

INSURANCE

17. The Municipality will at all times throughout the term of this Agreement and any extension thereof maintain:
- a. All-Risk Property Insurance covering the full insurable replacement cost of its undertaking, including the Municipal Equipment, pursuant to this Agreement without deduction for depreciation and with reasonable deductibles; and
 - b. Commercial General Liability Insurance Coverage in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury and property damage. Such policy shall extend to include the County as an additional insured but solely with respect to any liability arising out of the Municipality's premises, property or operations. Such insurance shall be endorsed to include a Cross Liability Endorsement with a Severability of Interests Clause, Blanket Contractual Liability and Lessee's Legal Liability coverage.

It is also understood and agreed that in the event of a claim any deductible or self-insured retention under this policy of insurance shall be the sole responsibility of the Municipality and that this coverage shall be primary insurance as respects the County. Any insurance or self-insurance maintained by the County shall be considered excess of the Municipality's insurance and shall not contribute with it. The County reserves the right to modify the insurance requirements as deemed suitable."

18. The Municipality shall provide a Certificate of Insurance, on the County's standard form, evidencing that said coverage's are in full force and shall also notify the County thirty (30) days in advance of any material change in coverage or cancellation of any such policy.

REMOVAL OF EQUIPMENT

19. Upon the expiration of this agreement or any renewal thereof the Municipality shall have the right, but nothing herein contained shall require it to remove its equipment from the Tower. Upon the expiration of this agreement or any renewal thereof the Municipality shall remove the Municipal Equipment it desires to remove from the Tower within 30 days of the expiration date. Such equipment not removed within the 30 day period shall become the property of the County. The Municipality shall be responsible to repair any damage to any property caused by the removal of the Municipal Equipment by the Municipality.

ASSIGNMENT

20. The Municipality may not assign any part of this agreement unless the assignee covenants with the County to assume full responsibility for this agreement and such assignment shall be effective only upon the delivery of such Assumption agreement to the County.

SUCCESSORS AND ASSIGNS

21. This agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

GOVERNING LAW: LANGUAGE

22. The provisions of this Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the parties hereto attorney to the exclusive jurisdiction of the courts of that Province. The parties have requested that this Agreement and all related documents be in English.

AMENDMENT

23. This Agreement, including the Schedules, may not be amended or modified except by written instrument executed by both parties.

ENTIRE AGREEMENT

24. This Agreement, including its schedules, constitutes the entire agreement between the Parties with respect to the placement of equipment on the Tower and/or on the racks inside Middlesex County Central Garage. This Agreement, inclusive of its schedules, replaces and/or supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties concerning the aforementioned equipment and the Parties hereby acknowledge that there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement and its schedules. No Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement. Except as amended herein, the terms of this Agreement shall remain in full force and effect.

NOTICE

25. Any notice to be given hereunder in writing, shall be deemed to be given if either personally delivered or mailed by registered mail, postage prepaid, or by facsimile transmission (at any time other than during a general discontinuance of postal services due to a strike, lockout or otherwise) and,

(a) addressed to the County as follows:

County of Middlesex
399 Ridout Street, North
London, ON N6A 2P1

Attn: Office of the Clerk

or such other addresses as the County may in writing direct.

(b) addressed to the Municipality as follows:

Municipality of Middlesex Centre
10227 Ilderton Road
Ilderton, ON N0M 2A0

Attn: Office of the Clerk

or such other addresses as the Municipality may in writing direct.

SEVERABILITY

26. Should any provision or provisions of this Agreement be determined to be void or unenforceable in whole or in part, it or they shall be deemed not to affect or impair the validity or enforceability of any other provision and it or they shall be considered separate and severable from the Agreement and its remaining provisions which shall remain in force and be binding on the parties.

[ONE (1) ENDORSEMENT PAGE FOLLOWS]

IN WITNESS WHEREOF the parties hereto have duly executed these presents with effect from the day first above written.

THE CORPORATION OF THE COUNTY OF MIDDLESEX

Per: _____
Cathy Burghardt-Jesson, Warden

Per: _____
Kathy Bunting, Clerk

We have authority to bind the Corporation.

MUNICIPALITY OF MIDDLESEX CENTRE

Per: _____
Aina DeViet, Mayor

Per: _____
James Hutson, Clerk

We have authority to bind the Corporation.

SCHEDULE “A”

MUNICIPAL EQUIPMENT

- Repeater
- Cable
- Power Supply Connection
- Antenna