

**SUBLEASE AGREEMENT FOR WSSC'S GERMANTOWN
TANK SITE**

THIS SUBLEASE AGREEMENT ("Sublease"), is made this 27th day of September, 2018, by and between the Washington Suburban Sanitary Commission, a public body corporate and agency of the State of Maryland ("WSSC") and Montgomery County, Maryland, a body politic and corporate ("Sublessee"), (and collectively referred to as the "Parties").

WHEREAS, the WSSC entered into a lease with the Board of Trustees of Montgomery College Germantown Campus ("College"), on September 25, 1978, and recorded in Liber 5228, Folio 582 among the Land Records of Montgomery County, Maryland ("Lease"), for use of certain property located at 20150 Observation Drive, Germantown, Maryland ("Property"):

WHEREAS, the College and WSSC amended the Lease on even date hereof, by executing a Second Amendment to Lease Agreement and Termination of First Amendment to Lease Agreement and Sublease Agreement, ("Second Amendment"), to include additional land and further memorialize the terms and conditions of the Lease; and

WHEREAS, the total area leased by WSSC at the Property is 0.587 acres or 25,600 square feet of land located at 20150 Observation Drive, Germantown, Maryland ("Tank Site"), more particularly described or depicted on **Exhibit A**, attached hereto and incorporated herein; and

WHEREAS, the Lease and Second Amendment permit the WSSC to construct, operate, maintain, inspect, and reconstruct a water tank on the Tank Site (as that term is defined in the Lease) at the Property that is operated and maintained by WSSC ("Water Tank"); and

WHEREAS, the Second Amendment allows the WSSC to sublease the Tank Site or a portion thereof to the State, Montgomery County, WMATA, and any other governmental or quasi-governmental entity, and to the State to sublease to T-Mobile, Sprint and the Department of the Army, for purposes of installing and maintaining communications systems, as determined and managed by WSSC; and

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto enter this Sublease pursuant to the following terms and

1. USE OF PROPERTY

a. The above Recitals are hereby made a part of this Sublease.

b. The Parties acknowledge and agree that the primary function of the Tank Site and Water Tank is to provide water and water storage to the surrounding community, which constitutes a public benefit and therefore, the security, functionality and safety of the Tank Site and Water Tank are paramount.

c. The Tank Site contains a communications tower ("Tower") that is owned, operated, and maintained by the State of Maryland ("State"). WSSC has no authority regarding the Tower except to review and approve the location, relocation, and scheduled maintenance of the Tower. Any use of the Tower by Sublessee must be coordinated with the State. WSSC shall, within reason and subject to the primary purpose of the Tank Site and Water Tank stated in 1.b. above, provide Sublessee with accommodations on the grounds of the Tank Site to support its communications network on the Tower. The number, size and location of any supporting equipment, cables, and appurtenances for Sublessee's use of the Tower shall be reviewed and approved by WSSC prior to any installation of same by Sublessee.

d. WSSC hereby grants to Sublessee permission to install a 12'x20' equipment shelter and pad, eight antennas, eight antenna mounts, one ice bridge with an 8' minimum clearance, utility cables and ancillary equipment ("Facilities"), as depicted on **Exhibit B**, at Sublessee's sole cost, for the purpose of establishing wireless communications. The Sublessee will remove LP tanks, a generator, and foundations as marked on Exhibit A, page C-2. The Facilities will be used to support Montgomery County's P25 800 MHz public safety radio system. The Sublessee may install, upgrade, operate, maintain, and inspect its communications cables, antennas, and appurtenances ("Communication Equipment") at the Tank Site. The Sublessee shall make its own provisions with the State for placement of the Communications Equipment on the State's Tower. Sublessee's use of the Tank Site includes ingress and egress to and from the Facilities and the Tower, on foot or by motor vehicle including trucks, for the construction, installation, operation and maintenance of the Facilities, and Communications Equipment. Easements for needed electric, telephone and other utilities may be granted subject to WSSC's review and acceptance of said easements, which acceptance shall not be unreasonable withheld, conditioned or delayed. Sublessee shall endeavor to connect to the nearest utility company in order to obtain

review and potential approval. WSSC reserves the right to maintain and develop the Tank Site as it sees fit

f. Except during emergencies or upon planned painting or maintenance of the Tank Site or Water Tank, WSSC grants the Sublessee access to the Tank Site at all times. WSSC shall furnish Sublessee the key or lock combination to the existing gate. Sublessee shall use the WSSC lock for entry. Sublessee shall not place any other lock at the gate.

2. TERM

a. This Sublease shall have a term of fifty (50) years (“Initial Term”), and is not to exceed the fifty-year term of the Second Amendment to Lease between the College and WSSC. The Initial Term shall commence on the date of the last signature to this Sublease (“Commencement Date”).

b. This Sublease may be renewed if the College and WSSC renew the Second Amendment to Lease, by an amount not to exceed the renewal time between the College and WSSC. WSSC shall notify the Sublessee prior to the termination of the Initial Term whether the College and WSSC intend to renew their lease and the time period of said renewal. The WSSC and Sublessee shall determine whether this Sublessee may be renewed upon information provided by the College.

3. TERMINATION

a. The WSSC may terminate this Sublease Agreement prior to the expiration of the Initial Term or any renewal term upon two (2) years’ prior written notice to the Sublessee if any of the following conditions apply:

i. The expansion or enhancement of WSSC’s communication system or core business of providing water and sewer service would be adversely impacted by the Sublessee’s presence at the Tank Site;

ii. The WSSC necessitates use of the space occupied by the Sublessee

v. The College notifies WSSC that it is terminating the Second Amendment to Lease between WSSC and the College.

b. Sublessee may terminate this Sublease Agreement prior to the expiration of the Initial Term or any renewal term upon prior written notice to the WSSC if any of the following conditions apply:

i. Any necessary governmental approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by a governmental authority;

ii. Sublessee determines that the Tank Site is no longer technically compatible for its use;

iii. Sublessee determines in its sole discretion, that it will be unable to use the Tank Site for its intended purposes.

iv. Funds necessary for Sublessee's performance under this Sublease Agreement are not appropriated at any point during the Initial Term or any renewal term.

c. Upon the termination or the expiration of this Sublease, the Sublessee shall remove its Facilities and Communications Equipment, within a reasonable period, not to exceed six (6) months. Upon failure to remove its Facilities or Communications Equipment within the six (6) month period, WSSC shall consider the Sublessee's property abandoned and dispose of it in accordance with the laws pertaining to abandoned property. Upon removal of its Communications Equipment and Facilities, Sublessee shall return the Tank Site which has been damaged, modified or altered by or on behalf of Sublessee to its condition on the Commencement Date, at Sublessee's sole cost and expense, reasonable wear and tear excepted.

4. PERMISSIONS

a. Installation and maintenance of the Sublessee's Communications Equipment and Facilities shall be done at the Sublessee's sole expense, using contractors who are licensed to perform the work. Such work shall be performed in accordance with

b. The Sublessee, at its sole cost and expense, shall keep and maintain its Communications Equipment and Facilities in good condition, in a safe state of repair and in compliance with all laws, rules and regulations of any and all governmental authorities.

c. The Sublessee may install its Facilities and Communications Equipment necessary to establish its wireless communications on the Tank Site pursuant to the following conditions:

i. All placement, construction, installation or modifications of the Facilities and Communications Equipment shall be reviewed and approved by WSSC prior to any installation, relocation or removal on the Tank Site. Such review shall include plans, drawings, sketches, permits, insurance certificates and other documents as required by WSSC.

ii. All placement, construction and installation of the Facilities and Communications Equipment shall be in conformance with applicable ordinances, codes and laws.

iii. WSSC may inspect the Sublessee's Communications Equipment and Facilities upon reasonable notice to the County, but in no event shall WSSC have access to the interior of Sublessee's equipment shelter or to its generator. Sublessee reserves the right to have a representative present during any inspection.

iv. Sublessee shall be responsible for all costs associated with the installation, operation and maintenance of its Communications Equipment and Facilities. Any modifications or upgrades to the Sublessee's Communications Equipment or Facilities shall be submitted to the WSSC prior to any changes being made on the Tank Site.

v. The Sublessee may be permitted to construct a security fence to secure its Facilities, as long as:

(1) the location, materials and timing for construction of the security fencing are reviewed and approved by WSSC;

d. The Sublessee shall maintain its Facilities/Communication Equipment at the Tank Site at its sole cost and expense, free of hazards, debris, and in good condition and in a safe state of repair and without interfering with the WSSC's use of the Tank Site.

e. The Sublessee shall not damage the Tank Site or any personal property, fixtures or structures located on the Tank Site and shall repair any damage caused by the Sublessee or its employees, agents or contractors within thirty (30) days' after receiving written notice from the WSSC that damage has occurred. Any property damaged by the Sublessee shall be repaired or restored to the same condition that existed prior to the damage or replaced in kind by the Sublessee.

f. WSSC shall maintain the Tank Site in good condition and safe state of repair. To the extent possible, WSSC shall endeavor to avoid interfering with Sublessee's use of the Tank Site. WSSC shall provide Sublessee 48 hours notice, pursuant to paragraph 13 herein, in the event Sublessee's access to its Facilities or Communications Equipment may be hindered.

5. TAXES AND OPERATING EXPENSES

a. The Sublessee shall be solely responsible for obtaining utility service for its Communications Equipment and Facilities and shall be solely responsible for all costs and expenses relating to the connection, disconnection and consumption of any utilities in connection with Sublessee's construction, installation, operation and maintenance on the Tank Site or Tower including, without limitation, any electric consumption by its equipment, and Sublessee agrees to pay all costs for service and installation of an electric meter directly to the local utility company.

b. The Sublessee shall be solely responsible and shall pay any tax, assessment, levy, charge, fee or license attributable to its use of the Tank Site, Tower, its Facilities or its Communications Equipment. If WSSC is billed for the real estate taxes levied against Sublessee, then WSSC shall provide Sublessee a copy of any notice, assessment or billing relating to real estate taxes for which Sublessee is responsible under this Sublease within sixty (60) days of receipt of same by WSSC. If Sublessee is billed directly by the agency that levies the tax, then Sublessee shall pay the tax directly to such agency and shall provide WSSC written notice of the tax payment

of the deficiency, Sublessee agrees to correct the condition or hazard at its sole cost to WSSC's satisfaction and in accordance with industry standards. Sublessee shall perform said corrections within sixty (60) days of the date of the written notice provided by WSSC. In the event Sublessee shall fail to perform said corrections within such sixty (60) day notice period, and WSSC determines it is in its best interest to effect repairs resulting from the Sublessee's waste, misuse or neglect, WSSC shall make any such repairs necessary to alleviate its concerns upon thirty (30) days prior written notice of Sublessee, and Sublessee agrees to reimburse WSSC for its reasonable costs and expenses incurred in effecting the repair. Payment of WSSC's costs shall be paid within ninety (90) days of written notice to Sublessee.

d. The Sublessee shall be solely responsible for the exterior and aesthetic appearance of its Communications Facilities and Equipment. If Sublessee's exterior or aesthetic appearance conflicts with neighborhood covenants, local governing land use authorities, or WSSC's functions, the Sublessee shall make any required modifications and rectify the non-conformance at the sole cost and expense of Sublessee. Any modifications shall be reviewed and approved by WSSC prior to implementation and shall be made at the sole expense of the Sublessee and shall be reviewed and approved by WSSC prior to implementation.

e. Any generator, air conditioner or alarm system installed by the Sublessee pursuant to its Communications Equipment or Facilities shall meet the noise requirements imposed by the State or local jurisdiction and shall not be installed or operated in such a manner as to cause a nuisance to surrounding properties in violation of applicable laws.

6. PERMITS AND GOVERNMENTAL APPROVALS

a. WSSC agrees, at the Sublessee's sole cost and expense, to exercise commercially reasonable efforts to cooperate with the Sublessee in obtaining any licenses, permits and other approvals required by any federal, state or local authority for the Sublessee's use of the Tank Site and the installation and use of the Communications Equipment and Facilities.

b. It is understood and agreed that the Sublessee's ability to use the Tank Site

c. The Sublessee shall have the right to terminate this Sublease in the event it is not able to obtain or maintain the required Government Approvals needed to operate the Communications Equipment or Facilities. Notice of the Sublessee's exercise of its right to terminate this Sublease under this subsection shall be in writing to the WSSC.

7. INDEMNIFICATION

a. The Sublessee agrees to indemnify WSSC and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence upon or at the Tank Site, or the occupancy or use by the Sublessee of the Tank Site or any part thereof, including the Water Tank and Tower, occasioned wholly or in part, to such extent, by any negligent act or omission of the Sublessee, its agents, contractors, or employees. The Sublessee's liability under this paragraph is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Section 5-301 *et seq.*, Courts and Judicial Proceedings Article, Annotated Code of Maryland, all as amended from time to time. This indemnification is not intended to increase the Sublessee's liability over and above the caps provided by statute, as applicable. Nothing herein shall be construed to abrogate, impair, or waive any defense to liability, damages limitation, or governmental immunity of the Sublessee, its members, officers, employees, or agents pursuant to Maryland law, or otherwise.

b. Sublessee agrees to indemnify the College and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence upon or at the Tank Site, or the occupancy or use by the Sublessee of the Tank Site or any part thereof, including the Water Tank and Tower, occasioned wholly or in part, to such extent, by any negligent act or omission of the Sublessee, its agents, contractors, or employees. The Sublessee's liability under this paragraph is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Section 5-301 *et seq.*, Courts and Judicial Proceedings Article, Annotated Code of Maryland, all as amended from time to time. This indemnification is not intended to

8. INTERFERENCE

a. The Sublessee warrants that its Communications Equipment shall not materially interfere with use and enjoyment of the property by WSSC or any third party located at the Tank Site, including material interference with the communications system of WSSC or any such third party. Material interference must be measured in accordance with industry standards at the time of the alleged material interference. In the event a material interference is identified as being caused by the Sublessee's Communications Equipment, the Sublessee shall immediately power-down the equipment causing the interference (allowing power-up for intermittent testing) until such interference issue is resolved. If the interference issue is not resolved within fifteen (15) days of first learning of its interference issue, the Sublessee shall immediately cease all interfering operations at the Tank Site.

b. WSSC shall not allow any use of the Tank Site by a third party to cause material interference with the Sublessee's use of the Tank Site. In the event of such material interference, WSSC will immediately require the interfering party to immediately power-down and disable the interfering equipment until such interference issue is resolved. If the interfering party fails to resolve the interference within fifteen (15) days of the Sublessee's written notice to WSSC, WSSC shall require the interfering party to immediately cease all interfering operations at the Tank Site.

9. SURVEY PERIOD

a. After the Commencement Date, the Sublessee shall have access to the Tank Site during business hours for the purpose of performing necessary engineering surveys, inspections, environmental testing and other reasonably necessary tests relating to the Sublessee's proposed use of the Tank Site. The Sublessee shall provide WSSC with fifteen (15) days advance written notice of the exercise of its rights under this Section. The surveys and inspections by the Sublessee shall not disturb any of the Tank Site without WSSC's consent. Any portion of the Tank Site disturbed by the Sublessee shall be restored to its prior condition within ten (10) days of finishing the testing activity.

limit of \$400,000. The County shall have the right to self-insure. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, as determined by the Local Government Tort Claims Act, Section 5-301 et seq., Courts and Judicial Proceedings Article, Annotated Code of Maryland, as amended (the "LGTC"). If the LGTC is amended to increase any of these limits, then the increased limits shall automatically apply to this Lease.

b. The Sublessee shall require its contractors while on the Tank Site to obtain and maintain in effect Worker's Compensation Insurance meeting statutory requirements and Commercial General Liability Insurance, to protect against liability for injury or death of any person or property damage in connection with the negligent use, operation and condition of the Tank Site, of One Million Dollars (\$1,000,000) per occurrence and in the aggregate, combined single limit, for Personal Injury and Property Damage coverage. Such policy shall cover the entire Tank Site and include WSSC and the College as an additional insured. The Sublessee must submit a certificate of insurance applicable to its contractor prior to the Sublessee's contractor performing any work on the Tank Site, and copy WSSC on each subsequent renewal.

11. ASSIGNMENT AND SUBLEASING

This Sublease may not be sold, assigned, sublet or transferred by Sublessee at any time, except the State may sublease to the already existing sublessee's T-Mobile, Sprint, and the Department of the Army. No further subleasing is permitted.

12. HAZARDOUS SUBSTANCES

a. "Hazardous Substances" shall mean any substance, chemical, waste, product or the like which now or in the future is identified as hazardous, toxic, dangerous or the like, or is regulated or otherwise subject to any Environmental Laws, including, but not limited to, asbestos, polychlorinated biphenyls, urea formaldehyde insulation, and any substance which requires reporting, registration, notification, removal, abatement or special treatment, storage, handling or disposal under any Environmental Laws. The term "Environmental Laws" shall mean all existing and future Federal, state and local laws

Occupational Safety and Health Act of 1970 (29 U.S.C. §§651 et. seq.) (“OSHA”) and the Toxic Substances Control Act (15 U.S.C. §§2601 et. seq.) (“TSCA”).

b. Sublessee shall not use or permit the Tank Site to be used in violation of any Environmental Laws. Sublessee assumes sole and full responsibility for, and will remedy at its cost, all such violations, provided that the Sublessee must first obtain WSSC’s written approval of any remedial actions, which approval WSSC may not unreasonably withhold. The Sublessee shall not use, generate, release, store, treat, dispose of, or otherwise deposit, in, on, under or about the Tank Site, any Hazardous Substances, nor will the Sublessee permit or allow any third party to do so, without WSSC’s prior written consent. The foregoing shall not preclude the Sublessee from using materials commonly used in the course of operating a wireless communications facility, provided that the Sublessee properly uses, handles and disposes of the same in accordance with applicable law and the manufacturers’ instructions with respect thereto.

13. NOTICES

a. All notices, payments, demand and requests shall be in writing and shall be deemed to have been properly given when sent by next-business-day delivery by a nationally recognized overnight carrier (or another delivery method that provides verification or receipt delivery) and addressed to the intended parties as follows:

Washington Suburban Sanitary Commission
14501 Sweitzer Lane,
Laurel Maryland 20707
ATTN: Senior Manager, Network Infrastructure and Data Center
Operations

With a copy to:

14501 Sweitzer Lane
Laurel, Maryland 20707
ATTN: General Counsel’s Office

Sublessee

Montgomery County, Maryland
101 Monroe Street, 2nd Floor
Rockville, MD 20850

With a copy to:

Department of Technology Services
PSSM Radio System Infrastructure Project
Attn: Gerry Adcock, Radio System Manager
16647 Crabbs Branch Way
Derwood, MD 20855

With a copy to:

Montgomery County, Maryland
Office of County Attorney
101 Monroe Street, 3rd Floor
Rockville, MD 20850

With a copy to:

Montgomery County, Maryland
Department of General Services
Attn: Director, Office of Real Estate
101 Monroe Street, 9th Floor
Rockville, MD 20850

14. GOVERNING LAW

a. This Sublease and the performance thereof shall be governed, interpreted, and construed in accordance with the laws of the State of Maryland. Any enforcement of this Sublease shall be in a court of law in the State of Maryland. Each party waives any right to a trial by jury in any legal action relating to this Agreement.

15. ENTIRE AGREEMENT

a. This Sublease constitutes the entire agreement between the Parties. This Sublease may not be modified unless done so in writing and executed by WSSC and Sublessee.

IN WITNESS WHEREOF, the Parties' authorized representatives executed this Sublease Agreement for WSSC's Germantown Tank Site as of the date set forth above.

WITNESS

MONTGOMERY COUNTY, MARYLAND

By: Julie L. White

By: Fariba Kassiri
Fariba Kassiri
Assistant Chief Administrative Officer

Reviewed and approval recommended.

Reviewed for form and legal sufficiency.

By: Agneta B...

By: [Signature]

Date: 8/28/18

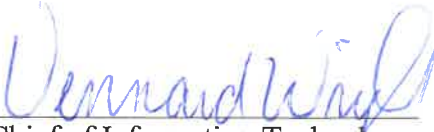
Date: 8/24/18

WITNESS

WASHINGTON SUBURBAN SANITARY
COMMISSION

[Signature]

Reviewed and approval recommended.


By: 
Chief of Information Technology

Reviewed technically and approval recommended.

By: 

Telecommunications and Cellular Leasing
Engineer

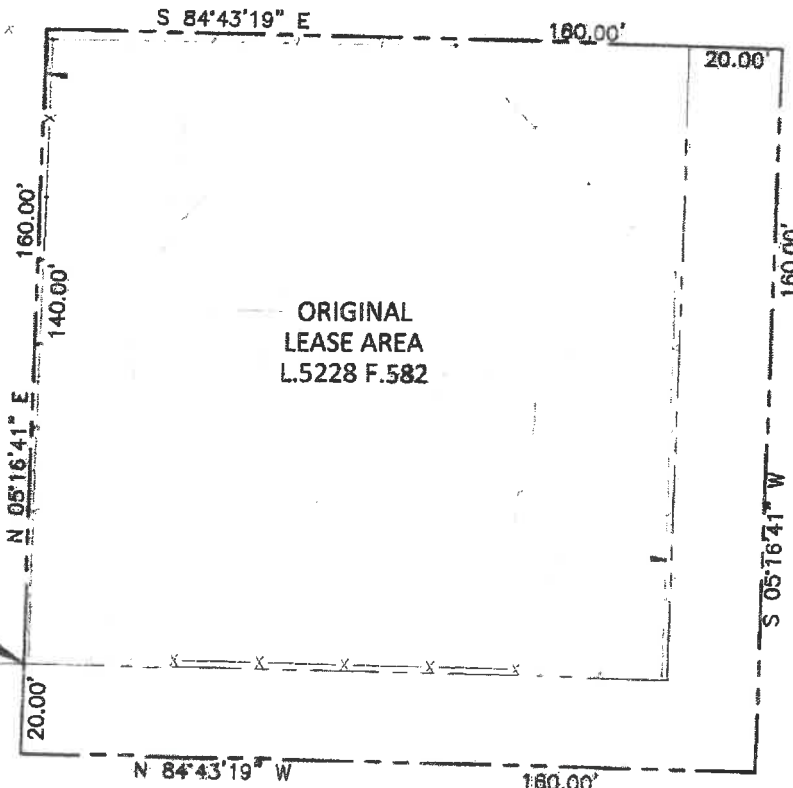
Reviewed for form and legal sufficiency.

By: 

PROPERTY OF
BOARD OF TRUSTEES
OF MONTGOMERY
COLLEGE
L.4623 F.318

'OLD' WSSC DATUM

SCALE 1" = 40'



ORIGINAL
LEASE AREA
L.5228 F.582

Point of Beginning

S 84°43'19" E
117.80'

POINT OF
COMMENCEMENT

PARCEL 'A-1'
CORRECTION PLAT
PARCELS A-1 & B-1
MONTGOMERY COMMUNITY COLLEGE
GERMANTOWN CAMPUS
Plat No. 11892

PLAT LINE

832.85'

578.58'

N 05°16'41" E

