

# ANTENNA SITE LEASE AGREEMENT

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This non-exclusive Antenna Site Lease Agreement (the "Agreement") is entered into, by and between Graham Media Group, San Antonio, Inc. d/b/a KSAT-12 Television Station, ("Station"), and the City of San Antonio, a municipal corporation ("City"). The Station and City, referred to individually as "Party" or collectively as "Parties," enter into this Agreement pursuant to San Antonio City Ordinance No. \_\_\_\_\_.

#### **WITNESSETH:**

**WHEREAS**, Station owns or controls real property located at 1408 N. St. Mary's Street San Antonio, TX 78215 (the "Property"), along with the wireless tower erected at that site (the "KSAT Tower"), as described in **Exhibits A**; and

**WHEREAS**, City wishes to collocate wireless facilities on the KSAT Tower; including without limitation, radio transmitting and receiving antennas, microwave dishes, equipment shelters and/or cabinets, and related cables and utility lines; including antenna(s) (up to a maximum of 10 antenna arrays), coaxial cable, base units, ice bridge (that protects cables as they traverse from the Base Station to the KSAT Tower) and other associated equipment ("Antenna Equipment") to be installed on the KSAT Tower and connecting to the telecommunications equipment shelter ("Base Station") on the adjoining property owned by the San Antonio Museum of Art, located at 317 Arden Grove and as described in **Exhibit B**; and

**WHEREAS**, as a result, Station will provide City space for the installation of Antenna Equipment on the KSAT Tower, as described in **Exhibit C**; and access for ingress and egress to the Property and KSAT Tower, for the purpose installing, maintaining, upgrading, and operating the Antenna Equipment to support City's public safety radio system.

**NOW THEREFORE**, in consideration of the mutual promises, covenants, undertakings, and other consideration set forth in this Agreement, City and Station agree as follows:

#### **1. PERMITTED USE**

**1.1 Permitted Use of Premises.** The Premises may be used by City for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, and upgrade of wireless facilities such as antennas, microwave dishes, equipment shelters and/or cabinets), *and including the strengthening of the KSAT Tower to support the City's Antenna Equipment*, but only for the purpose of installing Antenna Equipment to support the City's public safety radio system, and not for any other purpose. City shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use of (and operations, maintenance, construction and/or installations at) the Premises. The Parties agree that the permitted use includes network upgrades, replacement of antennas; and installation of additional antennas and/or radio equipment on an existing array. However, the installation of additional equipment arrays and increasing the footprint of ground space are not permitted uses. These activities will require an amendment to this Agreement.

**1.2 Number of Antennas.** The Parties agree that the City shall have a right to install up to a maximum of ten (10) antenna arrays, and that the City may reduce the number of antenna arrays during the term of this Agreement dependent on City needs. The Parties further agree that the City shall pay only for the number of antennas actually installed on

the KSAT Tower in any calendar year of the Initial Term and any Renewal Term.

## 2. TERM

2.1 **Initial Term.** The initial term of the Agreement shall be for twenty (20) years commencing on the effective date of the Agreement and ending at midnight on the last day of the initial term ("Initial Term"). The effective date of the Agreement shall be the date on which both Parties execute the Agreement following approval of the Agreement by the City Council (the "Effective Date").

2.2 **Renewal Terms.** City shall have the right to extend this Agreement for two (2) additional five-year (5) terms (each a "Renewal Term") subject to approval by Station, which shall not be unreasonably withheld. Each Renewal Term shall be based on the same terms and conditions as set forth herein. City may request renewal of the Agreement by sending ninety (90) days notice to Station prior to expiration of the Initial Term or any Renewal Term.

2.3 **Hold Over.** Any holding over by City after the expiration of the Initial Term and any Renewal Term, with the consent of Station, shall be construed to be a tenancy from month-to-month based on the terms and conditions herein.

## 3. SITE PAYMENTS

3.1 **Site Payments.** City shall pay Station, as rent, One Thousand Five Hundred Dollars (\$1,500) per antenna array per month, and City may install up to a maximum of 10 antenna arrays. City shall pay Station One Hundred Eighty Thousand Dollars (\$180,000) (\$1,500 x 10 antenna arrays x 12 months) for the first year of the Initial Term of this Agreement, and starting on the calendar year following the Effective Date, and each calendar year thereafter during the Initial Term, the maximum amount paid will be increased and compounding by three percent (3%) per year (collectively "Site Payment").

3.2 **Timing of Annual Site Payments.** The annual Site Payment for the first year will be due on the Effective Date and will be the prorated amount for the days remaining in the current calendar year following the Effective Date. Thereafter, the annual Site Payment for the next calendar year shall be due in full on December 1st of each year and will be subject to the annual appropriation of funds by the San Antonio City Council; provided that if the San Antonio City Council fails to appropriate the full amounts due hereunder, Station may pursue the remedy in section 10.1.1 herein. Annual Site Payments will be paid consistent with the schedule included in **Exhibit D**.

3.3 **Payment of Site Payment.** City shall pay Station the Site Payments based on the payment schedule set out in **Exhibit D** and sent to:

KSAT-12 Television Station  
1408 N. Saint Mary's  
Attn: \_\_\_\_\_  
P.O. Box \_\_\_\_\_  
San Antonio, TX 78215

#### 4. INTERFERENCE, TESTING AND RESERVATION

4.1 **Interference with Use of Premises Prohibited.** City shall not use the Premises in any way which interferes with the use of any portion of the Premises by Station or by other licensees of Station with rights in any portion of the Premises prior to execution of this Agreement. Similarly, Station shall not use, nor shall Station permit its licensees, grantees, employees, invitees or agents to use, any portion of the Premises in any way which materially interferes with the operations of the City's public safety radio system. Such interference shall be deemed a material breach by the interfering Party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease following the process described in Section 4.2, the Parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured Party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Agreement immediately upon written notice.

4.2 **Radio Frequency Emission and Interference Studies.** Both Station and City shall be allowed to conduct radio frequency emission and interference studies from time to time to determine whether City's use of the Antenna Equipment will interfere with Station's or other licensees' current use of the Premises. In the event that such a study indicates that City's use interferes with Station's or its licensees' current use of the Premises, City and Station (or other affected licensee) shall work together to eliminate the interference. After good faith attempts to eliminate the interference have been exhausted without success, the City and Station shall agree on a transition period to relocate City's Antenna Equipment at the City's expense. This Agreement shall terminate upon removal of City's Antenna Equipment. Station shall permit City to place temporary Antenna Equipment (Cell on Wheels or similar installation) on Station's Property during relocation of Antenna Equipment to another location.

4.3 **Reservation of Rights.** Station does not grant, and reserves for itself, its licensees, successors and assigns, (i) all mineral rights, seismic rights and rights to oil, gas, other hydrocarbons or minerals on, as to, under or about any portion of the Property; (ii) ground water rights associated with the Property; (iii) rights to generate electricity from the wind or wind power on, as to or about any portion of the Premises; and (iv) the right to grant to others the rights hereby reserved.

#### 5. INSTALLATION OF CITY'S PERSONAL PROPERTY

5.1 **City Improvements.** City shall have the right, at its expense, to install, operate, maintain, and upgrade on the Premises personal property consisting of the Antenna Equipment to support its public safety radio system, as set forth in **Exhibit B**. **Exhibit A** shall contain a survey and legal description of the Property. **Exhibit C** shall contain drawings of the size and type of Antenna Equipment to be installed on the KSAT Tower. **Exhibit D** shall include the Site Payment schedule.

5.2 **Approval of Plans.** Prior to commencing installation of Antenna Equipment, or any subsequent upgrade, City shall submit its construction plans for Station approval,

which shall not to be unreasonably withheld. No Antenna Equipment installation or network upgrade shall be commenced until plans for such work have been approved by the Station and all necessary permits have been properly issued.

## **6. CONSTRUCTION**

**6.1 No Construction Liens.** City shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. If any lien is filed against the Premises or Property as a result of acts or omissions of City or City's employees, agents or contractors, City shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Station within sixty (60) days after City receives written notice that the lien has been filed.

**6.2 No Interference with Construction.** Station acknowledges that except for City's non-compliance with this Agreement it shall not interfere with City's construction on the Premises including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Antenna Equipment.

## **7. UTILITY FACILITIES**

**7.1 Installation of Utility Facilities.** City shall have the right to install utility lines serving the City's Antenna Equipment, at City's expense, and to improve the present utilities on the Property if necessary to properly serve the Antenna Equipment, all at City's expense. Station agrees to use reasonable efforts in assisting City to acquire necessary utility service. City shall install separate meters for utilities on the Property used by City. City shall pay when due all utility charges it incurs during the Term of the Agreement.

## **8. MAINTENANCE**

**8.1 Maintenance of Antenna Equipment.** City shall, at City's expense, keep and maintain the Antenna Equipment now or hereafter located on the Premises in commercially reasonable condition and repair during the Term of this Agreement, normal wear and tear and casualty excepted. City shall have the right to conduct testing and maintenance activities, and repair and replace the Antenna Equipment at any time during the Term of this Agreement.

**8.2 Signage.** City may not place or allow the placement of any signs or graffiti on the Premises, except for those required for emergency notification and identification, or as required by law or rule.

**8.3 Facilities Management.** City shall, at its own expense, maintain the Premises and all improvements, equipment and other personal property on the Premises in good working order, condition and repair. City shall keep the Premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.

**8.4 Network Upgrades.** City shall give Station thirty (30) days advanced written notice of any planned network upgrade of the Antenna Equipment. The engineering design drawings for the network upgrade shall replace and supersede the then current engineering design plans incorporated into **Exhibit C**. Following notice, the Parties will agree on the date for

implementing the network upgrade.

## **9. ACCESS**

**9.1 Access to Property and Premises.** As partial consideration for Site Payments paid under this Agreement, Station hereby grants City non-exclusive access to the Property and Premises for ingress, egress, and utilities installation and maintenance, which include, but are not limited to, the installation of power and telecommunications service cables, and to access and service the Premises and the Antenna Equipment at all times during the Initial Term of this Agreement and any Renewal Terms. City shall have 24-hours-a-day, 7-days-a-week access to the Premises ("Access") at all times during the Initial Term of this Agreement and any Renewal Term, consistent with the regulations applicable to the Premises. City shall use the Premises and any part of the Property to which it is granted access under this Agreement with the same degree of care as it accords its *own* property, and shall in no way interfere with the operations of the Property or Premises. Station and its agents shall have the right to enter the Premises at reasonable times to examine and inspect the KSAT Tower and Antenna Equipment; however, Station, its employees or agents shall not impede or deny Access to City, its employees, or agents. Station shall have the right to enter and inspect the Premises.

**9.2 Photo Badges Required.** While on the Property, City's employees and contractors must wear a suitable photo ID badge, to be provided by the City, which includes a nominal 1 1/2" square personal photo, unique logo and labeling that identifies the City and the employee or contractor by name and a telephone number where confirmation of employment may be readily confirmed.

## **10. TERMINATION**

**10.1 Termination.** Except as otherwise provided herein, this Agreement may be terminated, without any penalty or further liability as follows:

- 10.1.1 upon ninety (90) days written notice by Station to City if City fails to cure a default for payment of amounts due under this Agreement within that ninety (90) day period; and
- 10.1.2 upon ninety (90) days written notice by City if destruction or damage to the Antenna Equipment substantially and adversely affects their effective use.
- 10.1.3 upon one hundred eighty (180) days written notice by City to Station if City decides to remove all Antenna Equipment from KSAT Tower for any reason prior to the end of the Initial Term or any Renewal Term.

## **11. RELOCATION AND REMOVAL OF ANTENNA EQUIPMENT**

**11.1 Relocation of Equipment.** In the event the Property is sold, transferred, developed, redeveloped, renovated, upgraded, or put to another use which is inconsistent with retaining the KSAT Tower by Station, the City will be required to remove the Antenna Equipment at City's expense for the purpose of relocation or disposal. Station will provide City at least one hundred eighty (180) days' notice of the

need for removal and relocation, and City shall fully cooperate in such removal and relocation. Station shall permit City to place a temporary Antenna Facility (Cell on Wheels or similar installation) on Station's Property until such relocation is complete. The Parties will work together in an attempt to achieve a transition to the new location without service interruption.

## **12. DEFAULT AND RIGHT TO CURE**

**12.1 Default and Right to Cure.** Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each Party shall have the right, but not the obligation, to terminate this Agreement on written notice pursuant to Section 10.1 hereof, if the other Party: (i) fails to perform any material covenant for a period of ninety (90) days after receipt of written notice thereof to cure; or (ii) commits a material breach of this Agreement and fails to diligently pursue such cure to its completion after ninety (90) days' written notice to the defaulting Party.

**12.2 City Default.** City shall be in default if it: (i) fails to make any payment of Site Payments and does not cure such default within ninety (90) days after receipt of written notice from Station of such failure; (ii) abandons or vacates the Premises; (iii) is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or (iv) if City becomes insolvent.

## **13. TAXES**

**13.1 Right to Contest Taxes.** Station shall pay any personal property, real estate, state franchise, or any other taxes assessed on the Property and operation of the Premises. Station hereby grants to City the right (with written notice to Station complying with Section 20 herein) to challenge, whether in a court, administrative proceeding, or other venue, on behalf of Station and/or City, any personal property tax that may affect City. If Station receives notice of any personal property against the Station, which is directly attributable to City's Antenna Equipment installation, Station shall provide timely notice of the assessment to City sufficient to allow City to consent to or challenge such assessment; such notice must comply with Section 20 herein.

## **14. INSURANCE**

**14.1 Proof of Insurance.** The City maintains a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their applicable statutory obligations to its employees.

It is the City's stated policy not to acquire commercial general liability insurance for torts committed by employees who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the City under this chapter is limited to monetary damages in the stated amounts for bodily injury or death of any individual, or for the loss or destruction of, or damage to, any property. Employees of City are provided



Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

## **15. ASSIGNMENT**

**15.1 Station's Assignment Rights.** Station may assign or transfer this Agreement, and, upon written notice to City of such assignment, shall be relieved of all liabilities and obligations hereunder provided that such assignee or transferee agrees in writing to fulfill the duties and obligations of the Station in said Agreement, including the obligation to respect City's rights to non-disturbance and quiet enjoyment of the Premises during the remainder of the Term hereof.

**15.2 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives, and assigns.

## **16. WAIVER OF LIENS**

**16.1 Waiver of Liens.** Neither Party shall have the right to create or impose any extrajudicial liens or any other encumbrance on the Property, Premises, KSAT Tower, Antenna Equipment, and any other property owned by the other Party. Specifically, Station hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Equipment or any portion thereof, which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and Station gives City the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in City's sole discretion and without Station's consent.

## **17. QUIET ENJOYMENT AND AUTHORITY TO ENTER AGREEMENT**

**17.1 Quiet Enjoyment and Authority to Enter Agreement.** Station covenants and warrants to City that (i) Station has full right, power and authority to execute this Agreement; (ii) it has title to the Property free and clear of any liens or mortgages, except those disclosed to City, of record, or which will not interfere with City's rights to or use of the Premises; and (iii) execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Station. Station covenants that at all times during the Term of this Agreement, City's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as City is not in default beyond any applicable grace or cure period.

## **18. DISPUTE RESOLUTION**

**18.1 Dispute Resolution.** Except as otherwise provided in this Agreement, any controversy between the Parties arising out of this Agreement or breach thereof, is subject to the mediation process described below.

**18.2 Dispute Resolution Process.** A meeting will be held promptly between the Parties to attempt in good faith to negotiate a resolution of the dispute. Representatives with decision making authority for both Parties will attend the meeting regarding the dispute. If within twenty (20) days after such meeting the Parties have not succeeded in

resolving the dispute, they will, within twenty (20) days thereafter submit the dispute to a mutually acceptable third party mediator who is acquainted with dispute resolution methods. Station and City will participate in good faith in the mediation and in the mediation process. The mediation shall be nonbinding. Neither Party is entitled to seek or recover punitive damages in considering or fixing any award under these proceedings.

**18.3 Cost of Mediation.** The costs of mediation, including any mediator's fees, and costs for the use of the facilities during the meetings, shall be born equally by the Parties. Each Party's costs and expenses will be borne by the Party incurring them.

## **19. FORCE MAJEURE**

**19.1 Force Majeure.** If a Party is delayed or hindered in, or prevented from the performance required under this Agreement (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrections, war, acts of God or other reasons of like nature, not the fault of the Party delayed in performing work or doing acts, and where reasonable measures by such Party could not have avoided or mitigated the effects of such acts, then such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay. In the event that City invokes this provision because damage to the Antenna Equipment, KSAT Tower or Property has hindered, delayed, or prevented City from using the Property, City may immediately erect any temporary Electronic Equipment on the Property and such temporary antennas at such location as Station and City may agree as is necessary to resume service, provided that such temporary facilities do not unreasonably interfere with Station's use of the Property or ability to repair or restore the KSAT Tower or Property. If, in Station's sole and absolute discretion, it elects to repair or restore the KSAT Tower and Property, upon completion of such repair or restoration, City is obligated to repair or restore the Antenna Equipment in accordance with the terms of this Agreement.

## **20. NOTICE**

**20.1 Notices Regarding Agreement.** Any communication regarding this Agreement shall be in writing and deemed delivered when delivered personally (with receipt acknowledged), or three days after deposit in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service for expedited delivery to be confirmed in writing by such courier, at the addresses listed or to such other address as either party may designate in writing.

If intended for City, to:

City of San Antonio  
Information Technology Services  
Department P.O. Box 839966  
San Antonio, TX 78283-3966

If intended for Station, to:

KSAT – 12 Television Station  
Attn: \_\_\_\_\_

P.O. Box \_\_\_\_\_  
San Antonio, Texas \_\_\_\_\_

**20.2 Operational and Emergency Contacts.** Notice for all operational and emergency contacts shall initially be as follows. Station and City shall each notify the other as the following change from time to time:

If to City, for general operational matters:

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City Emergency Services contact:

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If to Station, for general operational matters:

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Station Emergency Services contact:

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## **21. GENERAL PROVISIONS**

**21.1 Compliance.** The Parties will comply with all current local, state and federal laws, regulations, ordinances, and orders.

**21.2 No Brokers.** Each Party represents that no broker was involved in this transaction or is entitled to a commission.

**21.3 Legal Authority.** The signatories to this Agreement guarantee they have full legal authority to execute this Agreement and to bind Party to all of the terms, conditions and obligations in this Agreement, which shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

**21.4 No Fixtures.** City's Antenna Equipment will remain the sole property of City whether or not attached to the KSAT Tower or Premises provided that any structural modifications to the KSAT Tower (including mounting platforms or supports, but excluding Antenna Equipment), will become property of the Station, at Station's option, upon termination or final expiration of this Agreement, and City shall leave such on the

Premises upon vacating. City agrees that ownership of all structural modifications made to the KSAT Tower, on behalf of, or for City shall transfer to Station, and City will transfer title of such facilities to Station.

**21.5 Severability.** If any provision of this Agreement is held unconstitutional, void or invalid, the remainder of this Agreement will remain in effect and the provision so held shall be reformed to reflect the parties' intent as closely as legally possible.

**21.6 Applicable Law.** THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

**21.7 Venue.** Any legal action or proceeding brought or maintained, directly or indirectly, resulting from this Agreement shall be determined in the City of San Antonio, Bexar County, Texas.

**21.8 No Warranties.** Station makes no warranty, expressed or implied, and hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the Premises. City accepts the Premises "As Is."

**21.9 Non-Waiver.** Failure of Station to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but Station shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

**21.10 Exhibits Incorporated.** All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.

**21.11 Entire Agreement.** This Agreement, which includes recitals, with attached **Exhibits A to D** constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and other agreements. This Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing, executed by both Parties, and approved by the San Antonio City Council.

**21.12 Execution of Agreement in Counterpart Copies.** This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.**

## 22. SIGNATURES

**IN WITNESS THERETO**, the Parties affirm their signatures to this Agreement following City Council approval of said Agreement.

**CITY:**

*City of San Antonio*

**STATION:**

*Graham Media Group, Santonio, Inc.  
d/b/a KSAT-12 Television Station*

By: \_\_\_\_\_

Printed Name: Hugh Miller

Title: Chief Information/Technology Officer

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

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Approved as to Form:**

\_\_\_\_\_  
Martha G. Sepeda, Acting City Attorney

## **EXHIBIT A**

### **Property Description**

**Legal Description of Parcel Owned by Station on which KSAT Tower Is Located**

## **EXHIBIT B**

**Drawing of Premises, including KSAT Tower, Ice Bridge and Base Station**

## **EXHIBIT C**

### **Drawings of City's Antenna Equipment to be installed on KSAT Tower**



## **EXHIBIT D**

### **Site Payments Schedule**