

VILLAGE OF MAPLE PARK, KANE AND DEKALB COUNTIES

RESOLUTION 2017-16 Approved: November 7, 2017

AUTHORIZING THE VILLAGE PRESIDENT TO EXECUTE LEASE AGREEMENT BETWEEN THE VILLAGE OF MAPLE PARK AND FUTURE LINK FOR THE LEASE OF WATER TOWER SPACE FOR AN ANTENNA

WHEREAS, the village of Maple Park (the "Village") is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and

WHEREAS, the President and Board of Trustees of the Village finds it is in the best interest of the Village of Maple Park to approve and to authorize such lease agreement, now therefore,

BE IT RESOLVED by the Board of Trustees of the Village of Maple Park, Counties of Kane and DeKalb, Illinois, as follows:

Section 1. The recitals set forth above are incorporated and made a part hereof.

Section 2. That the lease agreement is substantially the same form as attached to this Resolution and incorporated herein by reference, is approved and accepted by the Village.

Section 3. The President or designee is authorized to execute the lease agreement on behalf of the Village and, as may be required, the Village Clerk to attest to the same.

Section 4. That this Resolution shall be in full force and effect from and after its adoption and approval.

PASSED by the Board of Trustees of the Village of Maple Park, Kane and DeKalb Counties, Illinois at its regular Board meeting held on November 7, 2017.

Ayes: Harris, Dalton, Shaver, Dries, Goucher

Nays: None

Absent: None

Abstain: Higgins



Kathleen Curtis

Kathleen Curtis, Village President

ATTEST:

Elizabeth Peerboom

Elizabeth Peerboom, Village Clerk

STATE OF ILLINOIS

COUNTY OF KANE

LEASE FOR WATER TOWER SPACE

BE IT KNOWN AND REMEMBERED that effective this _____ day of _____, 2017, the following contract of lease is hereby entered by and between the following parties:

LESSOR:

Village of Maple Park
302 Willow Street, P.O. Box 220
Maple Park, IL 60151

and

LESSEE:

Future Link/Data Moving Company
(hereinafter referred to as "Lessee")

WITNESSETH:

- 1) **LEASED PROPERTY** Lessor does hereby lease and permit Lessee to enter upon, use and occupy for the sole purpose and on the conditions herein set forth, a certain portion of water tower located in and owned by The Village of Maple Park, together with an easement for ingress, egress and utilities. The water towers, land and/or facilities to be used by the Lessee are referred to as the "Leased Premises" are shown on a document attached hereto as Exhibit "A". RF transceiver antennas, masts and mounts ("Outdoor Equipment") and transceiver(s) cable(s), router(s) and all related devices ("Indoor Equipment") are collectively known as the "Equipment"
- 2) **TERM** The primary term of this agreement shall be for five (5) years commencing on the effective date hereof or the date Lessee begins construction of the Lessee facilities ("Commencement Date"), which ever occurs later, provided, however, construction shall not begin later than May of 2018, and remaining in effect until cancelled or terminated as provided herein. At the end of the primary term the lease will automatically renew for an additional three (3) years, unless either party terminates the contract with written notice sixty (60) days prior to the end of the term.
- 3) **RENT** Lessee shall pay to the Lessor monthly rent of \$350.00 ("Rent"), which shall include Lessee's right to use and occupy the tower spaces. Lease payments shall be paid monthly commencing on the effective date hereof or the Commencement Date, whichever is later, and on the first day of each calendar month thereafter to Lessor at Lessor's address as specified below. Monthly rent shall be increased by 5% of the initial monthly rent each year on the anniversary date of the execution date.
- 4) **LAWS AND REGULATIONS** Lessee agrees to comply with any and all Ordinances, regulations, and laws pertaining to the operation of its business on the Leased Premises. Lessee further covenants and agrees to keep all improvements situated on the leased premises and facilities in compliance with all rules and

regulations of the Federal Communications Commissions ("FCC") and Federal Aviation Administration ("FAA") as well as their successor organizations.

Should the FCC or the FAA terminate lessee's right to operate its facilities, then Lessee shall have the option to cancel this Lease after giving reasonable notice to Lessor with no further obligation to make any further annual payments to Lessor.

Lessor further agrees that it will not use the Leased Premises for storage or placement of any dangerous or Lessee agrees that it will maintain its equipment at its expense and in compliance with all federal and local rules and regulations including, but not limited to, those of the FCC and the FAA, and their successors, and in the event that Lessor fails to do so and fails to correct any deficiencies, then Lessor shall have the option to terminate this Lease.

If Lessee's installation of Equipment on the Tower results in the Lessor's present lighting and electrical systems on the Tower to no longer comply with the applicable rules and regulations of the Federal Communications Commission, Federal Aviation Administration and all applicable codes and regulations of the city, county and state concerned, then, the cost of bringing electrical systems back into compliance shall be that of the Lessee.

- 5) **USE OF THE PREMISES** Lessee, its employees or agents, shall have the non-exclusive right to use the Leased Premises only for the purpose expressed herein and shall not have the right to permit others, either directly or indirectly to use the Leased Premises for any other purpose without having obtained the prior written consent of Lessor. Lessor reserves the right to continue to use the Leased Premises as long as such right does not interfere with the specific rights granted Lessee herein. Lessee agrees that it will conduct its uses in such a manner so as not to materially interfere with the operations of Lessor.

Lessee shall use the Leased Premises only as a site for Lessee's Internet access services, Lessee, at all times during this Lease, shall have access to its equipment and on ground improvements. Such access shall be subject to such reasonable rules and regulations of Lessor regarding access as Lessor may from time to time deem necessary to provide for the security of Lessor's facilities. Neither Lessee nor its contractors shall be permitted to climb Lessor's water tower for purposes of attaching antenna or any maintenance work without Lessor's prior specific approval.

Lessee shall have the right to tap into existing electrical service lines on the property, provided, however, all permits have been properly approved according to Village Code. Lessee further understands that the Premises are rented without any other utilities such as water, gas, sewage, drainage and telephone services, however, Lessee may install such utilities as it desires at its sole expense. Lessor shall provide any necessary utility servitude at no cost.

- 6) **LIGHTING** Lessee shall use lighting on its facilities (if needed) which is approved by the Federal Aviation Administration and as may be changed and approved by the Federal Aviation Administration from time to time during the Lease. Lessee further agrees to ensure that the aviation obstruction marking and lighting equipment, if required, complies with the obstruction lighting and marking requirements designated

by the FCC on Lessee's radio license, and that compliance with such requirement shall be in the manner prescribed by the FCC rules and policies.

- 7) **INTERFERENCE** Lessee's antennae installation shall be designed, installed and operated so as not to disrupt any emergency services transmissions. If, in the opinion of Lessor, the operation of Lessee's antenna, transmitter or related equipment causes objectionable electrical or radiation interference to the operation or performance of any emergency services transmissions, Lessor shall have the right to disconnect the equipment immediately. If Lessee is unable to cure all interference problems, then Lessee's obligation to pay future rental payments or provide service shall cease and this Lease shall be terminated. In the event Lessor wishes to lease water tower space to another party, Lessor must give Lessee sixty (60) days written notice before signing agreement with another provider using similar equipment that could possibly cause interference or require relocating equipment. Lessee has the right to inspect the proposal to determine if any new installation could cause interference. Lessor must give the lessee thirty (30) days written notice of any installation of equipment by another vendor so that lessee can be present or available in case lessee's equipment must be relocated or temporarily disconnected during the installation. Damage to lessee's equipment by another provider is the responsibility of the other provider including and not limited to cost of damaged equipment and labor to replace equipment. If interference is caused, the other party will be required to correct the interference at their expense.
- 8) **TAXES** Lessee agrees to pay all taxes due and payable on the installation of and/or placement of improvements on the Leased Premises. Lessor shall continue to pay all taxes on its water tower and land if required by law.
- 9) **LIENS** Lessee shall keep all of the Leased Premises and every part thereof and all improvements at any time located thereon free and clear of any and all mechanics' and material men's liens for or arising out of or in connection with work or labor done on the Leased Premises. Lessee shall at all times promptly and fully pay and discharge any and all claims for labor or materials on which any such lien may or could be based, and to indemnify Lessor and all of the Leased Premises and all improvements thereon against all such liens and claims of liens, suits or other proceedings. If Lessee desires to contest any such lien it shall notify Lessor of its intention to do so within thirty (30) days after the filing of such lien. In such case, and provided that Lessee shall on demand protect Lessor by a good and sufficient surety bond (or other evidence of financial responsibility acceptable to Lessor) against any such lien and any cost, liability, or damage arising out of such contest, Lessee shall not be in default hereunder until twenty (20) days after the final determination of the validity thereof, within which time Lessee shall satisfy and discharge such lien to the extent held valid; but the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered thereon, and such delay shall be a default on Lessee hereunder. In the event of any such contest, Lessee shall protect and indemnify Lessor against all loss, expense, and damage resulting therefrom.
- 10) **DEFAULT** In the event that Lessee (a) default in payment of any rental due hereunder, or (b) fails to keep or perform any other covenants herein contained: Lessee shall have a period of thirty (30) days following receipt of written notice from Lessor of the nature of such default within which to correct such default. If Lessee

fails to take steps to correct such default within said thirty-day period, Lessor shall have the right at its option to (a)cancel this Lease in accordance with law, or (b) proceed one or more times for past due installments or rental without prejudicing its rights to proceed later for remaining installments or (c) have recourse to any other remedy to which Lessor may be entitled by law.

11) **PARTIES** this Lease and all its provisions hereof shall be applicable to and binding upon the parties, their respective successors and assigns.

12) **INDEMNIFICATION AND HOLD HARMLESS** Lessee hereby expressly assumes full responsibility for all loss, damage, injury and death to person and property on the Leased Premises during the term of this Lease caused or contributed by Lessee, its agents, employees, contractors, successors, or assigns and agrees and covenants to hold Lessor, its agents, employees, contractors, successors, or assigns harmless from any such claim or claims arising on the Leased Premises caused or contributed by Lessee, its agents, employees, contractors, successors, or assigns. In addition, Lessee agrees to indemnify Lessor, its agents, employees, contractors, successors, or assigns, for any and all liability, loss or damage Lessor, its agents, employees, contractors, successors, and assigns may suffer as a result of claims, demands, costs or judgments arising out of Lessee's operations hereunder. Such indemnification shall include the reimbursement to Lessor, its agents, employees, contractors, successors, and assigns for attorney's fees incurred by Lessor, its agents, employees, contractors, successors, and assigns in connection with the defense of any action covered by this indemnification.

13) **DAMAGE OR DESTRUCTION CAUSED BY THIRD PARTIES** Lessor shall not be liable to Lessee for damages arising from interference, discontinuance or interruption of Lessee's operations on the Leased Premises under this lease which are due to acts of God or circumstances beyond Lessor's control or the acts of other Lessees who have entered into a written lease with Lessor prior to this Lease. "Circumstance beyond its control" shall include, but shall not be limited to, interference whether electrical, radiation or physical.

14) **REMOVAL OF IMPROVEMENTS** Upon termination of this Lease, whether by expiration, cancellation, forfeiture or otherwise, Lessee shall remove from the Leased Premises all improvements installed, placed or erected on the Leased Premises by Lessee, restoring the Leased Premises to its original condition. Lessee shall have (30) days after termination of this Lease within which to dismantle and remove the improvements. If Lessee is prevented from removing the improvements during that time because of the weather, public disorder or natural disaster, Lessor shall grant such additional time as shall be reasonable under the circumstances. After the aforementioned period all improvements not removed by Lessee shall become the property of Lessor. Cost of removal of improvements shall be borne by Lessee.

15) **WAIVER** No waiver by Lessor or failure by it to require strict and punctual performance by Lessee of any of the terms, conditions, provisions or obligations of the Lease, or any other forbearance, sufferance, or indulgence, however long continued or under whatsoever conditions, shall constitute a waiver by Lessor of the right at any subsequent time to strict, full and punctual performance of Lessee's obligations hereunder.

- 16) **INSURANCE** the Lessee shall, at its cost and expense, take out and maintain during the term of this Lease, not less than the following insurance coverage:
Comprehensive General Liability Insurance against claims for bodily injury, including personal injury and accidental death; as well as for claims for injury or destruction of property. The policy shall be written to include the Lessor as an additional name insured. Not less than the following limit shall be provided: bodily injury liability, including death at \$1,000,000.00 each occurrence; property damage liability \$1,000,000.00 each occurrence; \$1,000,000.00 each accident. The policy shall be written by a reputable company approved by Lessor and shall provide a (30) day written notice of cancellation or change in coverage to Lessor. All policies shall include a waiver of subrogation. Against Lessor and include coverage for contractual liability to specifically include the hold harmless and indemnification provisions under paragraph 12 of this lease. Lessee shall furnish certificates of insurance e of other evidence satisfactory to Lessor of compliance by Lessee with the provisions hereof at the execution of this Lease.
- 17) **SEVERABILITY** Each paragraph of this Lease Agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs will remain in full force and effect.
- 18) **INTERPRETATION** This Lease shall be interpreted according to and enforced under the laws of the State of Illinois. Venue of all resolution of all claims made with respect to this lease shall lie in the Sixteenth Judicial Circuit, Kane County.
- 19) **ENTIRE AGREEMENT** This Lease Agreement contains the entire Agreement of both parties hereto, and no other oral or prior written agreement shall be binding on the parties hereto. This lease supersedes all prior agreements, contracts and misunderstandings of any kind between the parties relating to the subject matter hereof.
- 20) **INTEREST ON ARREARS** Lessee shall pay Lessor on demand interest at the rate of 10% per annum on the amount of any payment not made when due hereunder from the date due here of until payment is received by Lessor.
- 21) **NOTICES** All demands, notices and other communications hereunder shall b e in writing and shall be deemed to have been duly given when personally delivered or when deposited in the United States mail, certified mail, postage prepaid, addressed as follows:

LESSOR:

Village of Maple Park
302 Willow Street
P.O. Box 220
Maple Park, IL 60151
Attention: Village Clerk

LESSEE

Future Link/Data Moving Company

Elgin, IL
Attention: Martin Mingl

NOTARY PUBLIC

State of Illinois

County of _____

Signed (or subscribed or attested) before me on _____, 2017 by
_____ (name of person).

(Seal)

Signature of Notary Public

VILLAGE OF MAPLE PARK



ATTEST

Elizabeth Peerboom
Elizabeth Peerboom, Village Clerk

LESSOR:

Kathleen Curtis
BY: Kathleen Curtis, Village President

FUTURE LINK

WITNESSES

LESSEE

By:

Its: _____

Addendum to Lease for Water Tower Space

Key Access for Village Infrastructure properties

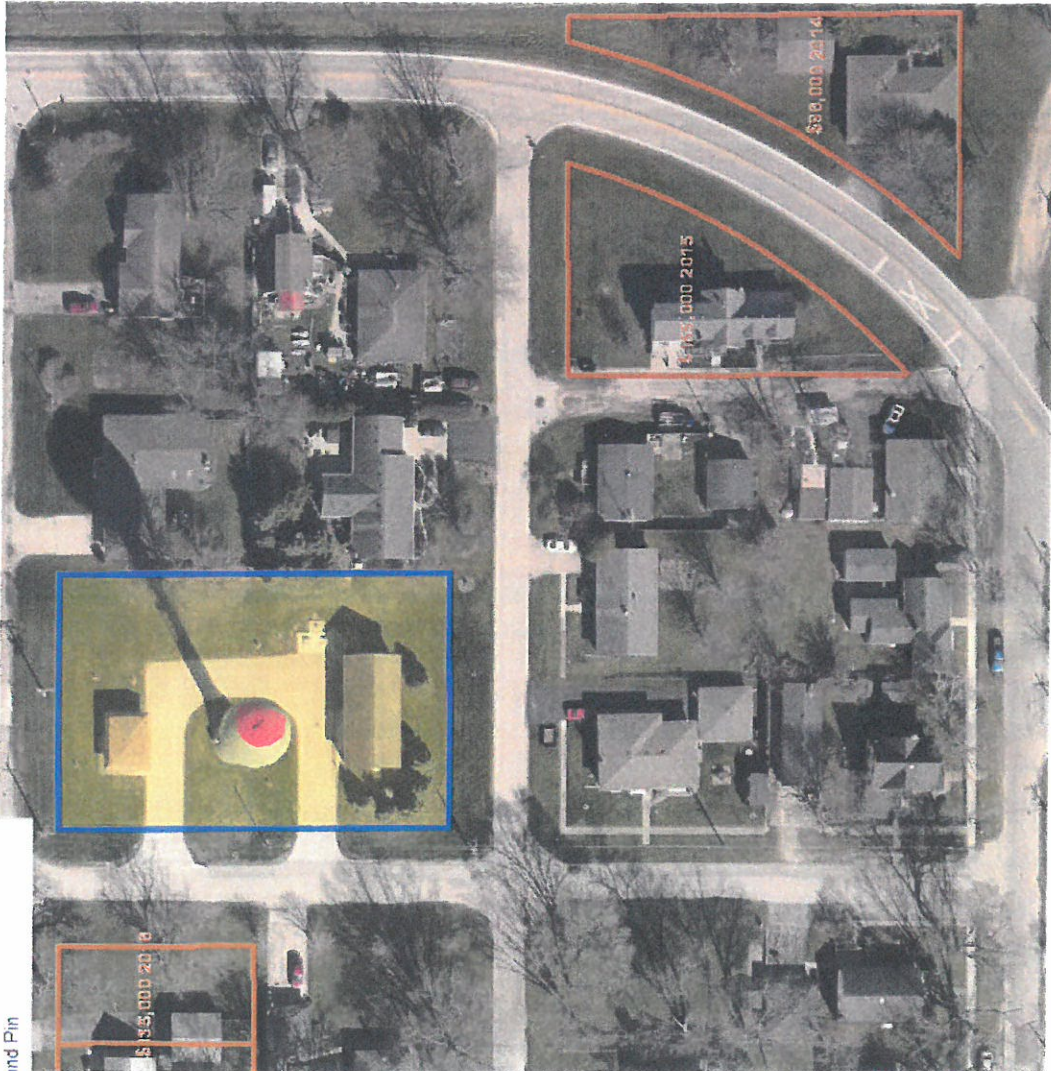
For any third party to have key access to any village property they must meet the following requirements

- Provider must have equipment in or be providing a service to the village.
- Third Party must provide 2 references from other municipalities that they have done similar service for.
- Third party must provide proof of insurance for a minimum of \$1,000,000
- Primary Service person must submit to a federal criminal background check. Cost of the background check to be paid for by the service provider.

Lessee agrees to;

- Engineering Impact Study – The lessee will provide the Village Engineer with Impact Studies on how the equipment will be mounted, how the equipment will be grounded, and a Frequency Study to determine if there will be any conflicts with the frequency.
- The Lessee will provide Impact and Frequency Studies to the Village Engineer prior to the Village entering the lease.
- The Lessee will pay a one-time fee of \$75 for the equipment space (indoor equipment).

Exhibit A



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PIN 07-30-388-006

 Leased premises