

*THIS LEASE DOES NOT BECOME EFFECTIVE UNTIL EXECUTED
BY THE NORTH CAROLINA DEPARTMENT OF ADMINISTRATION*

STATE OF NORTH CAROLINA

COUNTY OF RUTHERFORD

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") made and entered into as of the last date set forth in the notary acknowledgements below, by and between, the STATE OF NORTH CAROLINA, a body politic and corporate, hereinafter referred to as "Lessor", and the COUNTY OF RUTHERFORD, a body politic and corporate, hereinafter referenced to as "Lessee"(Lessor and Lessee each individually referred to herein as a "Party" and collectively referred to herein as the "Parties");

WITNESSETH:

WHEREAS, the North Carolina Department of Public Safety, Division of Law Enforcement, State Highway Patrol has requested and approved the execution of this instrument for the purposes herein specified; and

WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration, by resolution adopted by the Governor and Council of State on the 9th day of January, 2018; and

WHEREAS, the Parties have mutually agreed to the terms of this Lease as hereinafter set out.

NOW THEREFORE, in consideration of the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Lessor does hereby let and lease unto Lessee and Lessee hereby takes and leases from Lessor for and during the period of time and subject to the terms and conditions hereinafter set forth the Premises, as more particularly described herein.

1. Premises. The "Premises" shall consist of non-exclusive space to accommodate: three (3) VHF antennas on that self-supported 150' communications tower ("Tower ") constructed by Lessor at 100 VIPER Tower Trail, Lake Lure, Rutherford County, North Carolina (the Site) the non-exclusive space on the Tower for the location of said antennas being referred to herein as the ("Tower Space"), along with sufficient space in Lessor s equipment building ("the Building") to house three (3) racks of equipment, as shown in the construction documents produced by Tower Engineering Professionals dated 7/24/2017, CHIMNEY ROCK SITE, HP

(Exhibit A), HP 1048, SCO#16-15987-01A, 100 VIPER TOWER TRAIL, LAKE LURE, NC, RUTHERFORD COUNTY. The exact location of the Tower Space on the Tower and space in the Building where Lessee may locate its Communications Equipment, as said term is defined herein, shall be designated by Lessor in its reasonable discretion.

2. Term. The term of this Lease shall be for a period of twenty-five (25) years, commencing on the 1 day of May 2018 and terminating on the 30th day of April 2043 (the "Term").

3. Rent. Lessee shall pay to Lessor as rental for the Premises, the sum of ONE DOLLAR (\$ 1.00) for the Term.

4. Condition of Premises. Lessor represents, subject to the terms of this Lease, that the Premises are suitable for the uses described in Paragraph 6 below.

5. Use and Equipment. Lessee shall use the Premises for the purpose of installing, operating, maintaining, repairing, replacing and removing antennas, microwave dishes, transmission lines, cables, wires, receivers, generator(s), transmitter(s), transfer switch(es) and accessories necessary to broadcast radio waves (all such equipment whether located in the Building or on the Tower being collectively referred to herein as the "Communications Equipment") and for no other purpose without the prior written consent of Lessor. Lessee shall not use or knowingly permit any part of the Premises to be used for any unlawful purpose, nor for any purpose or in any manner which is in violation of any present or future Federal, State or local governmental laws or regulations, or which will constitute a public or private nuisance, nor for any business, use, or purpose deemed disreputable or extra hazardous. Lessee shall not drill, cut, saw, burn, add to or remove any part of the Tower without the prior written consent of Lessor. Lessee agrees that the use and operation of any Communications Equipment installed on the Premises shall be consistent with the quiet use, enjoyment, and occupancy of Lessor.

6. Fixtures. Lessor hereby acknowledges and agrees that the Communications Equipment and any other items belonging to Lessee on the Premises, shall remain the property of Lessee and shall not be, become or be deemed by Lessor to be fixtures upon the Premises.

7. Conditions Precedent to Installation or Modification. Notwithstanding anything to the contrary herein, the Parties agree that Lessee's right to install its Communications Equipment or to make any modifications to its Communications Equipment at the Premises shall not commence until Lessee, at its sole cost and expense, completes the following: (i) tenth order inter-modulation study; (ii) update of the most recent Tower loading analysis; (iii) provision for commercial electric service and emergency power to operate its Communications Equipment; and (iv) receipt of all required permits (if any) for the installation of, or modification to, its Communications Equipment and all required regulatory or governmental approvals of Lessee's proposed use of the Premises. Lessor shall have the right to review said inter-modulation study, Tower loading analysis and governmental permits to determine if Lessee's Communications Equipment will cause a degradation in Lessor's VIPER system or adversely affect the physical and structural capacity of the Tower. After reviewing said inter-modulation study, Tower loading analysis and governmental permits, if Lessor determines in its sole

discretion that the installation of, or modification to, Lessee's Communications Equipment will result in a degradation of the VIPER system or adversely affect the physical and structural capacity of the Tower, Lessee shall, at its sole cost and to the satisfaction of Lessor, make any modifications, upgrades or improvements to its Communications Equipment necessary to prevent any disruption to the VIPER system or any impairment to the structural integrity of the Tower.

8. Governmental Approvals and Compliance. Lessor agrees that the Tower and its operations shall meet applicable rules and regulations of the Federal Communications Commission ("FCC"), the Federal Aviation Administration ("FAA"), as well as all applicable State codes and regulations. Lessee, at its sole cost and expense, shall obtain any necessary governmental licenses or authorizations required for installation, repair, alteration, improvement, or expansion of its Communications Equipment and shall comply with government regulations applicable to its operations, including those of the FCC and FAA.

9. Lessor's and Lessee's Rights in the Event of Interference. The Communications Equipment shall be designed, constructed, installed, maintained, and operated in compliance with the applicable rules and regulations of the FCC and good engineering practices. Lessee confirms to Lessor that the installation and use of its Communications Equipment will not interfere with the operation of the VIPER system or any other equipment on the Tower. In the event the Communications Equipment causes interference with the VIPER system or other equipment on the Tower, Lessee shall proceed immediately to correct and eliminate the interference. Lessee shall cease operation of its Communications Equipment until the cause of such interference is removed. Lessee expressly agrees to pay for such equipment as may be necessary to prevent its interference with any radio transmissions by Lessor, and will also be responsible for purchasing any equipment to correct any interference that Lessor's equipment may cause in Lessee's use and operation of its Communications Equipment. If interference caused by the Communications Equipment is not corrected and eliminated within thirty (30) days after Lessee is notified of the interference, then Lessor may terminate this Lease forthwith without liability to Lessee.

10. Repair and Maintenance. Lessor shall, at all times during the Term, at its own expense, put and maintain in thorough repair and in good and safe condition the Tower, the Building and the Site, whether such maintenance is necessitated by wear, tear, obsolescence, government regulation, or defects, latent or otherwise. Lessee shall, at all times during the Term, at its own expense, maintain its Communications Equipment.

11. Utilities. Lessor shall permit Lessee access to its electric power source so that Lessee may obtain all electrical energy required to operate its Communications Equipment. Lessor shall pay for all electricity needed to power and operate Lessee's Communications Equipment.

12. Lessor's Right of Access. Lessor or its agents shall have the right to enter the Premises at all times in order to examine it, or to make such alterations, repairs, improvements, or additions to the Premises as Lessor may deem necessary or desirable without the same constituting an eviction of Lessee in whole or in part, or a breach of this Lease.

13. Lessee's Right of Access. Lessee, with Lessor's prior approval, shall have the right of access to the Premises throughout the Term for the purposes of installing, inspecting, maintaining, operating, repairing, and removing its Communications Equipment; provided, however, that Lessee and its agents and employees shall not compromise the security of the VIPER system or disturb or interfere with Lessor's operations during such time as they are on the Premises.

14. Lessor's Right to Terminate. In the event that Lessor should elect, pursuant to the Ground Lease, to abandon its use and possession of the Tower, Building and Site, this Lease shall terminate without liability to Lessor. Lessor shall give Lessee not less than thirty (30) days written notice of its intent to so terminate this Lease. Upon such abandonment and termination, Lessee shall have the option to remain in possession of the Premises, provided that Lessee shall assume and be responsible for all costs associated with the operation and maintenance of the Tower, Building and Site.

15. Surrender Upon Termination of Lease. Upon termination of this Lease, Lessee shall surrender the Premises in as good condition as they were at the beginning of the Term, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this Lease, excepted. It is understood and agreed that Lessee shall have the right to remove from the Premises, at Lessee's own expense and without damage or injury to the Tower, the Building or any other property of Lessor, the Communications Equipment and all items of Lessee property, trade fixtures, and other items belonging to Lessee used in connection with Lessee's operations on the Premises.

16. Fire or Other Casualty Loss.

(a) If the Premises is totally or partially destroyed by wind, explosion, fire, or casualty of any kind, either Lessor or Lessee shall have the option of terminating this Lease or any renewal thereof, upon giving written notice at any time within thirty (30) days from the date of such destruction, and if this Lease be so terminated, any rent payable hereunder shall cease as of the date of such destruction.

(b) If the Premises should be partially damaged by wind, explosion, fire, or casualty (or if totally and completely destroyed) and neither Party elects to terminate this Lease within the provisions of subparagraph (a) above, then in either event, Lessor agrees, at Lessor's sole cost and expense, to restore the Tower and the Building, as may be applicable, to a condition substantially similar to that immediately prior to such destruction or damage. Lessor shall not be liable for any interruption of Lessee's operations occasioned by electrical interference, wind, explosion, fire or other cause or casualty of any kind.

(c) If Lessor undertakes to restore, rebuild, or repair the Tower and the Building in accord with the provisions of subparagraph (b) above, and such restoration, rebuilding or repair is not accomplished within one hundred eighty (180) days from the date of the casualty,

Lessee shall have the right to immediately terminate this Lease by written notice to Lessor.

17. Insurance. Lessee shall obtain adequate insurance coverage in accordance with all applicable laws for (i) workers' compensation, (ii) automobile liability and (iii) fire and extended coverage with regard to the Lessee's activities on or about Premises and its Communications Equipment located on the Premises. Lessee shall require any of its contractors or agents entering the Premises to obtain and keep in place with well rated insurers, licensed to do business in the State of North Carolina, adequate insurance coverage, as applicable, for (i) statutory workers' compensation including employers' liability; (ii) comprehensive general liability including personal injury, broad form property damage, independent contractor, products/completed operations and, only if applicable, XCU (explosion, collapse, underground) and; (iii) automobile liability; and (iv) fire and extended coverage insurance. Notwithstanding the rights of any insurer, nothing herein shall affect the authority of the Attorney General of North Carolina, including but not limited to, the Attorney General's authority to represent Lessor in any and all litigation.

18. Liability.

(a) To the extent permitted by applicable law, Lessee shall be liable for the negligent or intentional acts or omissions of its agents and employees and shall save Lessor harmless from and against any and all loss, damage, claim, demand, liability, or expense, including reasonable attorney fees, by reason of damage to Rutherford or property on or about the Premises or the Site, which may arise or be claimed to have arisen as a result of the use of the Premises by Lessee or which may arise out of the installation, operation, repair, maintenance, inspection, or removal of Communications Equipment by Lessee, its agents or employees, except where such loss or damage arises from the willful or negligent misconduct of Lessor, its agents or employees.

(b) As between Lessor and Lessee, Lessor, subject to the terms of this Lease, will be primarily liable for the negligent or intentional acts or omissions of its agents and employees. As to third parties, Lessor is an immune sovereign and is not ordinarily subject to suit. However, Lessor has enacted Chapter 143, Article 3), of the North Carolina General Statutes (the "Tort Claims Act"), pursuant to which Lessor may be liable for the torts of its officers and employees, within the terms of the Tort Claims Act; accordingly, Lessor will be primarily liable for any claims within the coverage of the Tort Claims Act. No provision of this Lease shall be construed as constituting a waiver of Lessor's sovereign immunity or Lessor's immunity under the Eleventh Amendment of the Constitution of the United States.

19. Hazardous Materials.

(a) For purposes of this Lease: (i) "Hazardous Material" or "Hazardous Materials" means and includes, without limitation, (1) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, or in any applicable state or local law or regulation, (2) hazardous substances, as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), or in any applicable state or local law or regulation, (3)

gasoline, or any other petroleum product or by-product, (4) toxic substances, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, or in any applicable state or local law or regulation, as each such Act, statute, or regulation may be amended from time to time; (ii) "Release" shall have the meaning given such term, in Environmental Laws, including, without limitation, CERCLA; and (iii) "Environmental Law" or "Environmental Laws" shall mean "Super Fund" or "Super Lien" law or any other federal, state, or local statute, law, ordinance, or code, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: Super Fund Amendments and Reauthorization Act of 1986 ("SARA"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"); The Clean Air Act ("CAA"); the Clean Water Act ("CWA"); the Toxic Substance Control Act ("TSCA"); the Solid Waste Disposal Act ("SWDA"), as amended by the Resource Conservation and Recovery Act ("RCRA"), the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970 ("OSHA"). All obligations and liabilities arising under this Paragraph 20 which arise out of events or actions occurring prior to the expiration or termination of this Lease shall survive the assignment of this Lease and the expiration, termination, cancellation or release of record of this Lease.

(b) Lessee agrees that it will conduct its activities on the Premises and the Site in compliance with all applicable Environmental Laws. As between Lessee and Lessor, Lessee, subject to the terms of this Lease and to the extent permitted by applicable law, will be primarily liable for the existence or discovery of any Hazardous Materials on the Premises or the Site or for the migration of any Hazardous Materials to other properties or for the release of any Hazardous Materials into the environment in violation of applicable Environmental Laws, arising solely from Lessee's use of the Premises. As between Lessor and Lessee, Lessor, subject to the terms of this Lease and to the extent permitted by the Tort Claims Act, will be primarily liable for the existence or discovery of any Hazardous Materials on the Site or for the migration of any Hazardous Materials to other properties or for the release of any Hazardous Materials into the environment in violation of applicable Environmental Laws, arising solely from Lessor's use of the Site.

20. Right to Assign and Lease. Lessee shall not assign this Lease or sublet the Premises or any part thereof without the prior written consent of Lessor.

21. Prohibition on Gifts. North Carolina General Statute §133-32 prohibits the offer to, or acceptance by, any employee of Lessor of any gift from anyone with a contract with Lessor, or from any Rutherford seeking to do business with Lessor. By execution of this Lease, Lessee attests, for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

22. Modification. No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless made in writing and signed and agreed to by both Parties.

23. Binding Effect. Subject to the provisions herein, this Lease shall extend to and bind the Parties and their heirs, executors, administrators, successors and assigns.
24. Applicable Law. This Lease shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina, regardless of conflict of law principles.
25. Effect of Waiver. The failure of either Party to insist in any instance upon strict performance of any of the terms and conditions set forth in this Lease shall not be construed as a waiver of the same in any other instance.
26. Complete Agreement. This Lease represents the entire agreement between the Parties covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the Parties.
27. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
28. Construction. No provision of this Lease shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party's having or being deemed to have prepared or imposed such provision.
29. Interpretation. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural may be substituted for the singular number in any place or places herein in which the context may require such substitution or substitutions.
30. Terms. Capitalized terms used in this Lease shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.
31. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.
32. Memorandum of Lease for Recording. At the request of either Party, Lessor and Lessee shall execute a memorandum of this Lease for recording in the public records at the requesting Party's sole cost and expense. The memorandum of Lease shall set forth the Parties, provide a description of the Premises, specify the Term and incorporate this Lease by reference.

34. Notices. All notices herein provided to be given, or which may be given by either Party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows:

to Lessor: North Carolina Department of Public Safety
Attn: Real Estate Manager
4227 Mail Service Center
Raleigh, North Carolina 27699-4227

with copy to: State Property Office
Attn: Manager, Leasing and Space Planning Section
1321 Mail Service Center
Raleigh, North Carolina 27699-1321

to Lessee: County of Rutherford
Attn: County Manager
240 N. Washington Street
Rutherfordton, North Carolina 28139

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either Party may be changed by written notice.

[signatures begin on following page]

IN TESTIMONY WHEREOF, this Sublease has been executed by the Parties, in duplicate originals, as of the dates set forth in the notary acknowledgements below.

LESSEE:

COUNTY OF RUTHERFORD

By: _____

Print Name: _____

Title: _____

ATTEST:

Clerk (Seal)

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for the aforesaid County and State do hereby certify that _____ personally came before me this day and acknowledged that he/she is Clerk of the COUNTY OF RUTHERFORD and that by authority duly given and as an act of the COUNTY OF RUTHERFORD, the foregoing instrument was signed by _____, its _____, attested by himself/herself as Clerk and sealed with the common seal.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 2018.

My Commission Expires: _____

Notary Public

Print Name: _____

LESSOR:

STATE OF NORTH CAROLINA

By: _____
Tim Walton, Director
Department of Administration
State Property Office
State of North Carolina

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____, a Notary Public in and for the aforesaid County of Wake and the State of North Carolina, do certify that Tim Walton, personally came before me this day and acknowledged that he is Director of State Property Office, Department of Administration, State of North Carolina, and that by authority duly given and as the act of the State, has signed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the ____ day of _____, 2018.

Notary Public

Print Name

My Commission Expires: _____

EXHIBIT A

NOTES:

1. THIS PLAN HAS BEEN PREPARED WITHOUT THE BENEFIT OF A REPORT OF TITLE.
2. THIS PLAN DOES NOT REPRESENT A TITLE SURVEY.
3. ALL DISTANCES ARE GROUND UNLESS OTHERWISE NOTED.
4. THE BASIS OF THE SURVEY AND COORDINATES FOR THIS PLAN IS THE NORTH CAROLINA STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983 (NAD 83) BASED ON DIFFERENTIAL GPS OBSERVATIONS PERFORMED ON APRIL 7, 2016.
5. THIS PROPERTY IS LOCATED IN FLOOD ZONE "X" AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN (FEMA/FIRM MAP NUMBER 3710062200).
6. SUBJECT PIN: 0632000782430900
7. PROPERTY OWNER: STATE OF NORTH CAROLINA

SURVEY NOTE:

INFORMATION SHOWN ON THIS PLAN IS TAKEN FROM A SURVEY BY TOWER ENGINEERING PROFESSIONALS, INC. ALL INFORMATION SHOWN ON THIS PLAN IS FOR REFERENCE ONLY. ANY DISCREPANCIES SHOWN ON THIS PLAN SHALL BE CONSIDERED BY THE ADOPTIVE REFERENCED SURVEY.

WATER SUPPLY NOTE:

THE APPROVED WATER SUPPLY PER SECTION 508.1 OF THE NC FIRE CODE HAS BEEN ADDRESSED BY NOTING THE CHIMNEY ROCK VOP ASSISTANT CHIEF OF FIRE DEPARTMENT HAS RESPONDED WITH A LETTER THAT STATES THE CONEYVILLE FIRE DEPARTMENT WILL RESPOND IN A LETTER ADDRESSED TO THE NC DEPARTMENT OF ADMINISTRATION - STATE CONSTRUCTION OFFICE. DATED: MAY 25, 2016

LEGEND	
---	EXIST. PROPERTY LINE
---	ADJ. PROPERTY LINE
---	EXIST. UTILITY POLE
---	EXIST. TELCO PEDESTAL
---	EXIST. MANHOLE COVER
---	EXIST. LIGHT POLE
---	EDGE OF PAVEMENT
---	OVERHEAD WIRE
---	CHAIN LINK FENCE
---	EXISTING TRIC LINE
---	IRON ROD FOUND
---	PROPERTY CORNER

SITE PLAN

SCALE: 1" = 200'

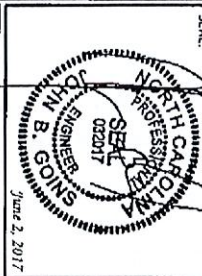
0 200 400
SCALE IN FEET

OVERALL MAP

SCALE: 1" = 4000'

SHEET NUMBER:	REVISION:
C-1	1
TWP # 47522 70-5-17	

SITE PLAN	
DATE:	06/02/17
BY:	BU SE
CHECKED BY:	SCO IN/IN/IV
ISSUED FOR:	
DRAWN BY:	CS
CHECKED BY:	JDC



TOWER ENGINEERING PROFESSIONALS
326 TRION ROAD
RALEIGH, NC 27603-3530
OFFICE: (919) 661-6351
www.tegpro.net

PLANS PREPARED BY:

PROJECT INFORMATION:
CHIMNEY ROCK
SITE # HP-1048
SCO ID # 16-15987-01A
SCO PROGRAM #13568
VIPER SPY 2016-2017
100 VIPER TOWER TRAIL
LAKE LURE, NC 28746
(FULTON COUNTY)

PLANS PREPARED FOR:
3318 GARNER ROAD, BLDG. 2
RALEIGH, NC 27607
OFFICE: (919) 662-4440

